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NOTES


INTRODUCTION

Employers can be held liable for the injuries inflicted on others by their employees.\(^1\) Sometimes, the employee is at fault while the employer is not.\(^2\) The law broadens the liability for this fault by imposing liability upon the employer under the doctrine of respondeat superior.\(^3\) Yet, when a release or a covenant not to sue is executed between the employee and an injured third party the question arises whether the release of any claim against the employee releases the claim against the employer.\(^4\)

In Yates v. New South Pizza, Ltd.,\(^5\) the North Carolina Supreme Court held that the Uniform Contribution Among Tort-feasors Act\(^6\) applies to master-servant vicarious liability.\(^7\) Upon the

2. Id.
facts of this case, the Court held that the covenant not to sue the employee which expressly reserves the right to sue the employer does not release the defendant-employer from liability.8

This Note will examine the court’s decision in Yates v. New South Pizza. The Note will first address the facts of the case. Second, this Note will discuss the doctrines that affect the decision of the case. Third, this Note will discuss the enactment and purpose of the Uniform Contribution Among Tort-feasors Act.9 Fourth, this Note will analyze the Yates decision and its effect on the purpose of the Uniform Act. Fifth, this Note will explore the public policy behind the courts’ ruling. Finally, this Note concludes that the Yates decision supports the equitable doctrine of respondeat superior by providing additional protection for injured plaintiffs from harsh common law rules while seeking compensation from an employee as well as the vicariously liable employer.

THE CASE

On September 5, 1985, Donald Lee Powell, a delivery person for New South Pizza,10 ran a stop sign and collided with another car.11 The injured plaintiff, Anthony Gene Yates, was a passenger in the other car.12 The plaintiff suffered injuries to his head, right wrist and permanent damage to his left hip.13 On August 26, 1987, the plaintiff executed a covenant not to sue Powell or his insurer in exchange for $25,000.14 The $25,000 consideration represented the full amount of coverage under Powell’s insurance policy.15 The covenant expressly reserved the right of the plaintiff to proceed against the employer.16

8. Id.
9. Within the Note the Uniform Contribution Among Tort-feasors Act promulgated by the National Conference of Commissions on Uniform State Laws will hereinafter be referred to as the "Uniform Act". The North Carolina statute by the same name will hereinafter be referred to as "the Act".
12. Id.
13. Id.
14. Id.
15. Id.
16. Yates, 330 N.C. at 791, 412 S.E.2d at 667. The covenant not to sue reads in relevant part:

   It is understood that [plaintiff] contends there are joint tort-feasors
In August 1988, the plaintiff instituted a claim against the employer, New South Pizza. At the trial, the defendant employer denied Powell was negligent, but admitted Powell, as an employee, was acting within the scope of his employment. Additionally, New South Pizza argued that the settlement between the plaintiff and Powell operated to release the defendant from liability as a matter of law. The defendant was granted a motion for summary judgment. The Court of Appeals affirmed by concluding that under the doctrine of respondeat superior the covenant not to sue released any claim against the defendant.

The Supreme Court of North Carolina reversed, agreeing with the plaintiff that section 1B-4 of the Uniform Contribution Among Tort-feasors Act would apply to vicariously derived liability.

BACKGROUND

A. Respondeat Superior

1. General Common Law Doctrine

The doctrine of respondeat superior means that when an employee negligently injures a third party the act of the employee becomes the negligent act of the employer. Liability is imposed in this matter; to wit, Donald Lee Powell and Domino's Pizza, Inc., said joint tort-feasors relationship arising out of the servant-master relationships and [plaintiff] expressly reserves and maintains his right to pursue any and all claims against Domino's Pizza, Inc. arising out of the incident and that [plaintiff] agrees only not to sue Donald Lee Powell and INA/Action, his vehicular insurance carrier. Id.

19. Id.
20. Id.
23. KEETON ET AL., supra note 3, at 500. This Latin phrase means nothing more than "look to the man higher up." Id.
24. 53 AM. JUR. 2d Master and Servant § 417 (1970). "The employer is deemed to be constructively present; the act of the employee is his act, and he becomes accountable as for his own proper act or omission." Id.
upon the employer for acts his employees commit within the scope of their employment.\textsuperscript{25} This doctrine is based upon equitable principles; the goal being to make the injured plaintiff whole.\textsuperscript{26} A variety of justifications exist which support the common law rationale behind the vicarious liability of the employer.\textsuperscript{27} The modern policy justification for vicarious liability is predicated upon a theory of allocation of the risks attendant upon the operation of any enterprise.\textsuperscript{28} The loss caused by the torts of employees is viewed as a required cost of doing business.\textsuperscript{29} These costs are perceived to be more easily absorbed and assimilated through the business arena than by individuals and the commercial enterprise system is seen as having a better opportunity to disseminate these costs of doing business throughout society while still able to maintain the economic livelihood of its members.

2. \textit{North Carolina Common Law}

The doctrine of \textit{respondeat superior} in North Carolina arises out of the relation between master and servant.\textsuperscript{30} The act of the employee that injures a third party is frequently perceived by law as the act of the employer.\textsuperscript{31} The general rule in North Carolina is

\textsuperscript{25} Id. "The law imputes to the master the act of the servant, and if the act is negligent or wrongful, proximately resulting in injury to a third person, the negligence or wrongful conduct is the negligence or wrongful conduct of the master, for which he is liable." \textit{Id.}

\textsuperscript{26} Id.

\textsuperscript{27} \textsc{Keeton et al.}, supra note 3 at 500. A variety of reasons are offered for imposing liability upon the master, including: a fictitious control over the behavior of the servant, that the master has set the whole thing in motion and is therefore responsible for what happens, the master selected the servant and thus should suffer for his wrongs rather than an innocent stranger or, more frankly and cynically, "In hard fact, the reason for the employers' liability is the damages are taken from a deep pocket." \textit{Id.}

\textsuperscript{28} Id.

\textsuperscript{29} Id. "They are placed upon the employer because, having engaged in an enterprise, which will on the basis of all past experience involve harm to others through the torts of employees, and sought to profit by it, it is just that he, rather than the innocent injured plaintiff, should bear them; and because he is better able to absorb them, and to distribute them, through prices, rates or liability insurance, to the public, and so to shift them to society, to the community at large." \textit{Id.}


\textsuperscript{31} Id. "The principle upon which a master is in general liable to answer for
that "[l]iability exists as against the master for wrongful or negligent acts of his servant only when the agent is acting within the scope of his employment and is about his master's business, attempting to do what he was employed to do." Thus, if these conditions exist, compensation for an injury caused by an employee can be found by looking to the supervising entity or enterprise.

B. The Release and Covenant not to Sue

1. Common Law

The early rule provided that a release of one joint tort-feasor served to release all joint tort-feasors. This theory was based upon the idea that a release involves an abandonment or extinguishment of a claim. Where the release contained an express reservation of the right to make a claim against another tort-feasor, that reservation was seen as having no effect. The covenant not to sue, on the other hand, did not abandon or extinguish liability, but merely was an agreement not to sue on the claim. Thus, a covenant not to sue one joint tort-feasor did not discharge the other tort-feasors. It is accordingly clear that at common law it was critical to acknowledge the distinction between these two actions and it was incumbent upon the plaintiff who wished to utilize either of these measures to carefully consider the ramifications of his act.

2. Vicarious Liability

In cases dealing with vicarious liability, the courts are not in accord with regard to whether a release or covenant not to sue con-
taining an express reservation of rights against one who is vicari-
ously liable will bar recovery against that party.\textsuperscript{40} The majority of
cases dealing with a release hold that such a release will bar recov-
ery despite the express reservation of rights against the tort-feasor
held vicariously liable.\textsuperscript{41} These cases adhere to the common law
rule that a release of one tort-feasor releases all.\textsuperscript{42} However, there
are a few cases which have held that the release did not discharge
the claim against the vicariously liable tort-feasor.\textsuperscript{43}

Courts dealing with a covenant not to sue have similarly dis-
charged a claim against a tort-feasor alleged to have been vicari-
ously liable, even in the presence of an express reservation by the
injured plaintiff of his right to proceed against the vicariously lia-
ble tort-feasor.\textsuperscript{44} Conversely, other courts have ruled that a claim
may proceed against one vicariously liable when the covenant not
to sue expressly reserves that right.\textsuperscript{45} It is thus apparent that

\textsuperscript{40} Id.

\textsuperscript{41} Dickey v. Estate of Meier, 197 N.W.2d 385 (Neb. 1972) (derivative claims
against an employer based on respondeat superior were discharged by a settle-
ment release of a negligent driver); Jacobson v. Parrill, 351 P.2d 194 (Kan. 1960)
(release of a negligent agent discharged the principal's liability despite a reserva-
tion of rights against the principal in wrongful death claim from automobile acci-
dent); Barsh v. Mullins, 338 P.2d 845 (Okla. 1959) (despite the express reserva-
tion of rights the release of a tort-feasor directly involved in an accident released
the liability of a common carrier derivatively liable).

\textsuperscript{42} Annotation, \textit{Release-Secondary Liability}, supra note 4, § 3[a], at 557.

\textsuperscript{43} Driskill v. State, 787 S.W.2d 369 (Tex. 1990). "As a general rule, a settle-
ment with a release of employee does not bar subsequent action against employer
under doctrine of respondeat superior for any damages that have not been fully
satisfied." 787 S.W.2d at 370. Swanigan v. State Farm Ins. Co., 299 N.W.2d 234
(Wis. 1980) (release by injured party of tort-feasor primarily liable did not dis-
charge liability of party secondarily liable reasoning the release should be given
the effect intended by the parties); see also, Annotation, \textit{Release-Secondary Li-
ability}, supra note 4, § 3[b], at 558.

\textsuperscript{44} Stewart v. Craig, 344 S.W.2d 761 (1961) (derivative liability of a master
or principal is extinguished by a covenant not to sue the servant or agent); Simp-
son v. Townsley, 283 F.2d 743 (10th Cir. 1960) (covenant not to sue an employee
removed the basis to impute employee's negligence upon employer under the doc-
trine of respondeat superior and discharged employers liability despite reserved
rights against employer); see also, Annotation, \textit{Release-Secondary Liability} supra
note 4, § 4[a], at 559.

\textsuperscript{45} Boucher v. Thomsen, 43 N.W.2d 866 (1950) (held the express language of
the covenant not to sue left no question as to what the parties intended); Hovat-
§ 885 and held that a covenant not to sue a primarily liable servant expressly
reserving rights against the master does not discharge the claim against the
courts throughout the United States are not yet in full accord with 
regard to the effect of either a release or a conveant not to sue 
upon potential recovery from one who is alleged to be vicariously 
liable for injuries to a plaintiff who executes such an agreement.

3. North Carolina Common Law

The common law rule in North Carolina maintains that the 
release of one joint tort-feasor releases all other joint tort-feasors.\(^4\) The reason stated is that the injured plaintiff is entitled to but one 
satisfaction and the cause of action is indivisible between the tort-
feasors for the same injury.\(^5\) Thus, the release operates to extin-
guish the cause of action, thereby releasing the other joint tort-
feasors.\(^6\)

In the case of vicarious liability, although a master and a ser-
vant are not strictly deemed as being joint tort-feasors, a release of 
either master or servant from liability for a tort does operate to 
release the other.\(^7\) The rationale of the common law rule stated by 
the North Carolina Supreme Court is that the principle invoked to 
impose liability should also be invoked for protection.\(^8\)

On the other hand, the covenant not to sue does not release 
other tort-feasors from liability.\(^9\) A cause of action can be main-
tained against any of the other tort-feasors who are not a party to 
the agreement.\(^10\) The remaining tort-feasors are, however, entitled 
to have any amounts paid for the covenant by the party to the 
agreement credited against any judgment the plaintiff may obtain

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master); see also, Annotation, Release-Secondary Liability, supra note 4, § 4(b), at 561.

48. Id.
50. Smith v. South & W. R. Co., 151 N.C. 479, 482, 66 S.E. 435, 437 (1909) abrogated, see supra note 30. "If the master is bound through his agent, can he not be released through his agent? If an act of negligence imposes liability, ought nót an act of fidelity bring relief? This would seem to be obvious except in those cases where the master actively participates in the wrong and thereby makes him-
self a joint tort-feasor." Id.
51. Simpson v. Plyler, 258 N.C. 390, 128 S.E.2d 843 (1963). A covenant not to sue "is not a present abandonment or relinquishment of the right or claim, but merely an agreement not to enforce an existing cause of action." Id at 394, 128 S.E.2d at 846.
52. Id; McNair v. Goodwin, 262 N.C. 1, 3, 136 S.E.2d 218, 220 (1964).
against them.\textsuperscript{53}

It is therefore clear that previous common law made a significant distinction between a release and a covenant not to sue.\textsuperscript{54} A plaintiff who desired to settle with one tort-feasor while maintaining rights against other tort-feasors would properly execute a covenant not to sue with that party, as opposed to a release.\textsuperscript{55} This distinction had the distinct potential to operate as a trap for the unwary.\textsuperscript{56}

C. \textit{The Uniform Contribution Among Tort-feasors Act}

1. \textit{Prior Law}

Prior to the adoption of the Act in North Carolina, the common law did not recognize the right to compel contribution\textsuperscript{57} among tort-feasors.\textsuperscript{58} In 1919, the common law rule changed and eventually was codified as N.C.G.S. \textsection{} 1-240.\textsuperscript{59} This former statute provided that where two or more persons were liable for their joint tort and judgment was rendered against some, but not all such persons, those that paid were entitled to enforce contribution against the others jointly liable.\textsuperscript{60} Thus, the right to contribution in North Carolina was established.


\textsuperscript{54} Ottinger v. Chronister, 13 N.C. App. 91, 185 S.E.2d 292 (1971). \textit{"[T]he distinction between a covenant not to sue and a release is critical."} Id at 94, 185 S.E.2d at 294.

\textsuperscript{55} Recent Development, 47 N.C.L. Rev. 275 (1968).

\textsuperscript{56} 66 AM. JUR. 2d Release \textsection{} 36 (1973); see also, Simpson v. Pyler, 258 N.C. 390, 128 S.E.2d 843 (1963) (covenant not to sue operated to release other tort-feasors because the agreement, judgment and satisfaction of judgment constituted a release). \textit{"The critical question, in determining whether an instrument is a release or a covenant not to sue, is whether the cause of action has been extinguished. The cause of action is single, indivisible and non-apportionable. Once it is extinguished it has no further vitality."} Id at 395, 128 S.E.2d at 846-47; see also McNair v. Goodwin, 262 N.C. 1, 136 S.E.2d 218 (1964); Ottinger v. Chronister, 13 N.C. App. 91, 185 S.E.2d 292 (1971).

\textsuperscript{57} Contribution is defined as the principle under which \textit{"a tort-feasor against whom a judgment is rendered is entitled to recover proportional shares of judgment from other joint tort-feasors whose negligence contributed to the injury and who were also liable to the plaintiff."} BLACK'S LAW DICTIONARY 297 (5th ed. 1979).


\textsuperscript{59} Id. In 1919, North Carolina enacted Chapter 194, which was changed by Chapter 68, Public Laws of 1929. These enactments were codified as N.C. GEN. STAT. \textsection{} 1-240 (1953) (repealed 1967). Id.

\textsuperscript{60} Id.
Carolina is dependent upon the terms of the statute. The right to contribution was enforceable two ways: a party sued could have other tort-feasors made parties, or a party could wait until a judgment was rendered against him and then maintain an action against the other tort-feasors. In adherence to the logic underlying the crafting of these alternatives, a joint tort-feasor against whom contribution was sought could use the other tort-feasors’ prior executed release as a defense.

2. The Act in North Carolina

The Uniform Contribution Among Tort-feasors Act, first promulgated in 1939, and revised in 1955, establishes the right of a person liable for damages “to compel others, who are liable with him for the same damages, to share in discharging the common liability.” The purpose of the Act is to “distribute the burden of responsibility equitably among those who are jointly liable and thus avoid the injustice often resulting under the common law.” In 1967, the North Carolina General Assembly adopted the 1955 version of the Act. The North Carolina Supreme Court has stated that, in part, the policy of the statute is to encourage settlements. Section 1B-4 of the Act addresses the technical distinction between the release and the covenant not to sue. The Act abolishes

61. Godfrey v. Tidewater Power Co., 223 N.C. 647, 27 S.E.2d 736 (1943) (under the statute the right accrues when judgment is obtained in an action arising out of a joint tort); Bell v. Lacey, 248 N.C. 703, 104 S.E.2d 833 (1958) (right of contribution between joint tort-feasors who are in pari delicto did not exist at common law but is purely statutory).


63. McNair v. Goodwin, 262 N.C. 1, 136 S.E.2d 218 (1964) (release may be pleaded by joint tort-feasor as a bar to suit by other where subject matter of release is all damages growing out of collision between two automobiles).

64. 12 U.L.A. 57 (1975).


66. Id.


68. Wheeler v. Denton, 9 N.C. App. 167, 171, 175 S.E.2d 769, 772 (1970). “The statute contemplates that settlements are to be encouraged. (citation omitted). It is also desirable that settlements be made promptly and with finality.” Id.

69. Section 1B-4 provides:

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:

(1) It does not discharge any of the other tort-feasors from liability
the distinction between a release and a covenant not to sue. The question of whether this section of the Act applies to vicarious liability in the master-servant context was, nonetheless, a question of first impression for the North Carolina Supreme Court.

ANALYSIS

In *Yates v. New South Pizza, Ltd.*, the North Carolina Supreme Court held that section 1B-4 of the Uniform Contribution Among Tort-feasors Act does apply to vicarious liability in the master-servant context. The issue before the Court in *Yates* was "whether an injured plaintiff is entitled to proceed against an employer on the theory of respondeat superior after having executed, for valuable consideration, a covenant, not to sue the negligent employee or his insurer." The *Yates* majority held that such a plaintiff may proceed. The Court states it is in agreement with other courts which have held that Section 4 of the Uniform Act applies to vicariously derived liability. Additionally, the court believes the Act broadens the definition of tort-feasor to encompass a vicariously liable master. The Court rejects the holding by the Court of Appeals that when there is a right to indemnity from another tort-feasor the Act does not control.

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,

(2) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.

N.C. GEN. STAT. § 1B-4 (1967).

70. Ottinger v. Chronister, 13 N.C. App. 91, 94, 185 S.E.2d 292, 294 (1971). The 1939 Act dealt only with release. The 1955 version added the covenant not to sue or not to levy execution because it should obviously have the same effect. Commissioners' Comment, 12 U.L.A. 98 (1975).


72. *Id.* at 793, 412 S.E.2d at 668.

73. *Id.* at 791, 412 S.E.2d at 667-68.

74. *Id.*


77. *Id.* at 795, 412 S.E.2d at 670.
A. Other jurisdictions

There are twenty-one other states that have adopted either the 1939 or 1955 version of the Uniform Act. States that apply Section 4 to vicarious liability base their holdings on three rationales: (1) that the Uniform Act proffers a broad definition of tort-feasor, (2) that the purpose of the Uniform Act is to encourage settlements, and (3) that to apply Section 4 of the Uniform Act would most effectively uphold the intent of the parties to the release. Those states that decline to extend the Uniform Act to vicarious liability narrowly construe the definition of tort-feasor and hold that the indemnity provision of the Uniform Act precludes its application to principal-agent relationships.

In the *Yates* decision the Court interprets Section 4 of the Uniform Act as being applicable to vicariously liable tort-feasors. The *Yates* court states that the holding is based on two rationales, a broad definition of tort-feasor and the stated public policy that encourages settlement. North Carolina is in accord with Alaska, Nevada and Illinois, which also interpret the 1955 revision to include vicariously derived liability.

1. Alaska Airlines, Inc. v. Sweat

In *Sweat*, the plaintiff was injured in an airplane crash caused by pilot error. The plane that crashed was an air taxi under contract with Alaska Airlines, Inc., who was held vicariously liable as a common carrier. The air taxi and Sweat entered into a covenant not to sue specifically stating the settlement did not include a release of Alaska Airlines.

The Alaska Supreme Court had previously rejected the harsh
common law rule whereby the release of one joint tort-feasor released all in Young v. State, holding that a joint tort-feasor is not released unless specifically named in that release. The Alaska Supreme Court stated that "this rule will insure that the intent of the parties to the release is given effect and will greatly minimize the possibility of any party being misled as to the effect of the release." The rationale of Young was held to further apply to situations involving vicarious liability, and in so holding, advanced the applicability of the Alaska Uniform Joint Tort-feasors Act. The Sweat court noted that "[i]t may be that Alaska Airlines is not technically a 'tort-feasor', but it is 'one of two or more liable in tort for the same injury'." The court further held that the policy favoring termination of litigation and encouraging settlements should prevail.

The Yates majority is in accord with the Alaska Supreme Court in holding that the plain language of the Uniform Act "is intended to include those vicariously liable." But in Sweat the common law rule that insured that the intent of the parties to the release would be given effect would be supported by a reading of a broad definition of tort-feasor. Although not specifically using an "intent of the parties" rationale, the Yates majority does note that Section 1B-4 provides that a release given in "good faith" does not discharge any of the other tort-feasors from liability. In Yates the "good faith" requirement within Section 1B-4 of the Act supports a broad definition of tort-feasor and will, in effect, support the intent of the parties by applying the Act to situations involving master-servant vicariously liability.

90. Sweat, 568 P.2d at 929. Alaska Uniform Contribution among Tort-feasors Act, ALASKA STAT. § 09.16.010 to 09.16.060 (1970). § 09.16.040(1) is section 4 from the Uniform Act and is worded exactly the same as N.C. GEN. STAT. § 1B-4(1)). Id.
91. Sweat, 568 P.2d at 930.
92. Id.
94. Sweat, 568 P.2d at 929.
95. Yates, 330 N.C. at 794-95, 412 S.E.2d at 669-70.
96. Id.
2. Van Cleave v. Gamboni Construction Company

The facts of Van Cleave, similar to Yates, involve an automobile accident, and again the issue of vicarious liability arises under the doctrine of respondeat superior. In Van Cleave, the plaintiff was rendered a paraplegic by a one-car accident. The plaintiff was a passenger in the car operated by an employee of Gamboni Construction Company acting within the scope of his employment. The plaintiff settled with the employee through the use of a release which expressly reserved the plaintiff's claims against "any other parties". The Van Cleave court held that because both the employee and employer were liable for the injury, their version of the Uniform Act would apply. The court further recognized that the expressed public policy of the Uniform Act is to encourage settlement.


The Court in Yates finds support in an Illinois decision which supports the proposition that "the liability of the master, although derivative, is still a form of liability in tort as that term is used in the [Uniform] Act." The facts of Brady indicate that while in the scope of his employment, the defendant's employee lost control of his truck and crashed into a building, permanently injuring the plaintiff. The plaintiff settled with the employee and his insurance company while generally reserving all other

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99. Id. at 525, 706 P.2d at 846.
100. Id.
101. Id.
102. Van Cleave, 101 Nev. at 528, 706 P.2d at 848: "We... hold that because the employer Gamboni, and its employee, Alimsis are both allegedly liable for Van Cleave's injury, the Uniform Act applies." Id.
103. Van Cleave, 101 Nev. at 530, 706 P.2d at 849. "We recognize that the expressed public policy established by the Uniform Act is 'to encourage rather than discourage settlements.' " Id.
claims. The common law rule in Illinois had been that a release or covenant not to sue was required to specifically reserve the right to sue others. However, the court in this case held that the unqualified general release did not release the employer under the Uniform Act.

B. Definition of "Tort-feasor"

In Yates, the Court states that "for purposes of this act, a tort-feasor is one who is liable in tort." The court relies on the language of the definition of joint tort-feasor contained in the 1939 version of the Uniform Act. The Court's analysis of the Uniform Act states that the 1939 Act defined joint tort-feasor broadly. The term joint tort-feasors means "two or more persons jointly or severally liable in tort for the same injury." Other courts that have interpreted the 1939 version have had no trouble interpreting this language to include master-servant vicarious liability. It is thus apparent that the court in Yates broadly construed the language of the Act, and in so doing, included the master-servant relationship.

This holding is in line with the well reasoned decisions of other courts. In Sweat, the Alaska court, citing Smith v. Rapaport, concludes that the language "one of two or more persons liable in tort for the same injury ... seems to include a party who is vicariously liable." In Sweat, the court construed the 1955 revision of the Uniform Act which does not have a definition of tort-feasor. Yet the Court finds the 1955 revision uses the

107. Id. at 574, 546 N.E.2d at 804-806.
108. Id. at 575, 546 N.E.2d at 804.
109. Id. at 583-84, 546 N.E.2d at 810.
111. Id.
112. Id.
113. Id. (emphasis in original).
114. See Holve v. Draper, 505 P.2d 1265, (Idaho 1973) (held that joint tort-feasors had a broad meaning and would include the master-servant relationship within the purpose of the Uniform Act); Smith v. Rapaport, 225 A.2d 666 (R.I. 1967) (held that the 1939 Act applied to the vicarious liability of the master-servant because they become jointly and severally liable to the plaintiff upon the occurrence of the tort).
116. supra note 76.
117. Sweat, 568 P.2d at 929.
118. Id.
word tort-feasor in the same context as it is used in the 1939 version.119

In Yates, the North Carolina Court similarly believes the 1955 Uniform Act is consistent with this broad definition, even though the definition was omitted from the later version of the Uniform Act.120 The Yates majority points out that the language, “two or more persons become jointly or severally liable in tort for the same injury,” in section 1B-1(a) of the Act is essentially the same language of its predecessor, Section 1B-4.121 The Yates court states: “Clearly, both the master and the servant are persons liable in tort for the same injury, and tort-feasors as used in this provision refers to those persons liable in tort.”122 Thus, the Yates majority relies on the plain language of the Act to determine that a master is a tort-feasor under section 1B-4.123

Those courts that deny that the Uniform Act applies to master-servant relationships construe the statute to intend a narrow construction of the term tort-feasor.124 Similarly, the Yates dissent narrowly defines “tort-feasor” as a wrongdoer who commits or is guilty of a tort.125 These joint tort-feasors “are those who act together in committing a wrong, or whose acts, if independent of each other, unite in causing a single injury.”126 The dissent claims the majority’s conclusion that an employer derivatively liable is a tort-feasor “blurs the significant distinction between vicarious and joint liability.”127 However, the term “joint tort-feasor” was not included in the 1955 revision in order to avoid confusion in those jurisdictions where persons who act independently and not in concert cannot always be joined as defendants.128 Therefore, the term

119. Sweat, 568 P.2d at 930.
120. Yates, 330 N.C. at 794, 412 S.E.2d at 669.
121. Id.
122. Id.
123. Id.
124. Supra note 81.
128. Commissioners’ Comment § 1(a) 12 U.L.A. 64 (1975). “In these jurisdictions the tendency is to use ‘joint tort-feasors’ to refer only to those who can be joined. The term is not indispensable to the Act . . . .” Id. See also, T. Merritt Bumpass, Jr., Comment, North Carolina Legislation: An Act Providing for Contribution Among Joint Tort-feasors and Joint Obligors, 5 Wake Forest L. Rev. 160 (1968).
"joint tort-feasor" is not indispensable to the Uniform Act and is excluded to promote the purpose of the Uniform Act.\textsuperscript{129} Otherwise, the effect of a narrow interpretation of tort-feasor is to narrowly construe the statute and would once again require the principles of common law to control in these situations.\textsuperscript{130} This result is in direct opposition to the stated purposes of the Uniform Act.\textsuperscript{131}

\section*{C. The Purpose of the Uniform Act}

The policy of the Uniform Act is to encourage settlements.\textsuperscript{132} The Act intends to distribute the burden of responsibility equitably among those who are jointly liable and thus avoid the injustice often resulting under the common law.\textsuperscript{133} The harshness of the common law rule is illustrated in the highly technical process of interpreting a release or a covenant not to sue.\textsuperscript{134} In furtherance of this policy, the objective of Section 4 is to enable one tort-feasor to settle with the injured plaintiff and allow that plaintiff to continue the claim against other tort-feasors.\textsuperscript{135} The \textit{Van Cleave} court determined that if the Uniform Act did not apply to a claim against the employer, "we would be discouraging prompt resolutions of actions, not encouraging such settlements, in contravention of the expressed public policy of the Uniform Act."\textsuperscript{136} Additionally, one commentator points out that the important policy considerations involved in the release provisions of the 1955 Revised Act were intended to be construed in a manner which would best promote settlements.\textsuperscript{137} Section 5 of the Uniform Act also calls for uniformity

\begin{thebibliography}{99}
\bibitem{129} Bumpass, \textit{supra} note 128, at 160.
\bibitem{130} See Yates v. New South Pizza, Ltd., 330 N.C. 790, 805, 412 S.E.2d 666, 675 (1992). “Because New South Pizza is at best derivatively liable here, contribution is not implicated. Therefore, the common law principle that the discharge of the servant requires the discharge of the master, rather than N.C.G.S. § 1B-4, should control.” \textit{Id}.
\bibitem{131} Commissioners’ Comment § 1(d) 12 U.L.A. 65 (1975). “The policy of the Act is to encourage rather than discourage settlements.” \textit{Id}.
\bibitem{132} \textit{Id}.
\bibitem{133} Commissioners’ Prefatory Note (1955 Reversion) 12 U.L.A. 59 (1975).
\bibitem{134} \textit{See supra} text accompanying notes 46-56.
\bibitem{135} See \textit{Van Cleave v. Gamboni Constr. Co.}, 101 Nev. 524, 530, 706 P.2d 845, 849 (1985). “Such a statute is enacted to prevent the harshness of the common-law rule, not to defeat the intentions of the parties and to work as a trap for the unwary.” \textit{Id}.
\bibitem{136} \textit{Id}.
\bibitem{137} Darrell L. West, \textit{Torts-Vicarious Liability-Covenant Not to Sue Servant or Agent as Affecting Liability of Master or Principal}, 44 \textit{Tenn. L. Rev.} 188,
\end{thebibliography}
of interpretation with those states that interpret the statute. Thus, when the *Yates* court broadly interprets the meaning of tort-feasor to include the vicarious liability between employer and employee, the holding maintains the stated policy of the encouragement of settlements.

D. Indemnity

The *Yates* majority rejects the rationale that because a right of indemnity remains against the servant, the servant gains nothing by his settlement and the policy of the Uniform Act is undermined. The dissent maintains that "the rights of contribution and indemnity are mutually inconsistent; the former assumes joint fault, the latter only derivative fault." Additionally, the dissent points out that the distinction between contribution and indemnity is preserved in the Act.

Section 6 of the 1939 Uniform Act only contained the first sentence of the current indemnity section. The 1955 Act added the second sentence to clear up the uncertainty of whether there could be contribution in any indemnity situation.

In formulating their position, the dissent relies in part on the rationale of *Craven v. Lawson*. The *Craven* court stated that the change in the indemnity section of the 1955 Uniform Act showed a
clear intent to exclude situations where indemnity would apply.\textsuperscript{146} The court held that where no right of contribution exists, the Uniform Act does not apply.\textsuperscript{147} Therefore, the \textit{Craven} court applied common law and reasoned that any covenant not to sue given to an employee would release the derivative liability of the employer.\textsuperscript{148} Similarly, the view propounded in the \textit{Yates} dissent would hold that the Act does not apply to the derivative liability of the employer.\textsuperscript{149} The dissent retains the common law principle that the discharge of the servant requires the discharge of the master.\textsuperscript{150}

Nevertheless, the indemnity provision of the Uniform Act can be seen as merely defining the rights among tort-feasors without referring to the rights between the injured plaintiff and the tort-feasors.\textsuperscript{151} The indemnity provisions of the 1955 Uniform Act merely clarify the nature of the rights of the various tort-feasors among themselves.\textsuperscript{152} Furthermore, the view of the \textit{Van Cleave} court rejects the \textit{Craven} court's reliance on the indemnity language to exclude applying the Uniform Act to vicarious liability.\textsuperscript{153} The \textit{Van Cleave} court reasons that the rights of indemnity and contribution have nothing to do with the rights of the injured party.\textsuperscript{154} Additionally, as the North Carolina Supreme Court has previously pointed out, there is no fundamental distinction between the right of contribution and the right of indemnity as both rights are based on principles of equity and natural justice.\textsuperscript{155} "Neither right is based on any theory of subrogation to the rights of the injured person."\textsuperscript{156}

\textsuperscript{146} \textit{Id.} at 656. "Where the right of full indemnity exists between persons liable in tort, no right of contribution exists." \textit{Id.} "[T]he 1955 Act makes it clear that where the right of indemnity exists the act has no application." \textit{Id.} at 657.

\textsuperscript{147} \textit{Id.} at 657.

\textsuperscript{148} \textit{Id.} at 654.

\textsuperscript{149} \textit{Yates}, 330 N.C. at 807, 412 S.E.2d at 676.

\textsuperscript{150} \textit{Id.} See also \textit{Smith v. South & W. R.R. Co.}, 151 N.C. 479, 66 S.E. 435 (1909).


\textsuperscript{152} West, supra note 137, at 199.


\textsuperscript{154} \textit{Id.} at 528, 706 P.2d at 848.

\textsuperscript{155} Hunsucker v. High Point Bending & Chair Co., 237 N.C. 559, 570, 75 S.E.2d 768, 776 (1953).

\textsuperscript{156} \textit{Id.}
Thus, the *Yates* majority is among the better reasoned opinions that find nothing in the indemnity provision to preclude the application of the Act to vicarious liability situations.\textsuperscript{157} The Court agrees with the *Van Cleave* court in holding that the indemnity provision merely provides that no contribution exists where indemnity exists.\textsuperscript{158} In addition, the inclusion of the second sentence of the 1955 revision of the Uniform Act reflects the concern with clarifying the position that the servant has no right of contribution against the master.\textsuperscript{159}

E. *The Act Encourages Settlement*

The final determination concerns the effect the *Yates* ruling will have on the stated purposes of the Uniform Act to prevent the harshness of the common law rule and to encourage settlements.\textsuperscript{160} The *Yates* dissent maintains that the indemnity provision will lessen the incentive for settlement.\textsuperscript{161} This argument advances the notion that even if a servant and the injured plaintiff enter into a covenant not to sue, the servant remains liable to the employer as an indemnitor.\textsuperscript{162} One commentator speculated that one effect of the *Craven* decision would have been that the servant or agent would refuse to settle because he would not be relieved of the risk of further litigation and liability.\textsuperscript{163} The master or principal might be lax in defending the suit knowing he can recover any damages assessed against him by way of indemnity from the servant or agent.\textsuperscript{164} This line of argument is unconvincing because the servant often lacks the resources to indemnify the master.\textsuperscript{165} Thus, in all likelihood, a servant would not, out of fear of the possibility of indemnification, forgo a settlement agreement with the injured plaintiff.\textsuperscript{166}

\textsuperscript{157} See *Yates*, 330 N.C. at 795, 412 S.E.2d at 670.

\textsuperscript{158} *Id.*

\textsuperscript{159} Commissioners’ Comment § 1(f) 12 U.L.A. 66 (1975).

\textsuperscript{160} See supra text accompanying notes 64-71.

\textsuperscript{161} *Yates*, 330 N.C. at 806, 412 S.E.2d at 676.

\textsuperscript{162} *Id.*

\textsuperscript{163} West, supra note 137, at 198.

\textsuperscript{164} *Id.*

\textsuperscript{165} Because the employee is a Domino’s Pizza delivery person the court probably inferred he lacks any financial resources. See *Yates*, 330 N.C. at 791, 412 S.E.2d at 667.

\textsuperscript{166} The employee settled for the full amount allowed under his automobile insurance policy. *Id.*
The better policy argument realizes that the harsh consequences of the common law rule will discourage settlements because the injured party is the one who will not enter into settlement.\textsuperscript{167} If the settlement entered into with the servant will extinguish his cause of action against the master the injured party will not settle unless he can be fully compensated.\textsuperscript{168} The release provision of the Uniform Act is intended to promote settlements.\textsuperscript{169} A construction of the statute should prevent the harshness of the common law rule.\textsuperscript{170} Thus, section 1B-4 of the Act is intended to prevent an injured party from unwittingly releasing his claim against all tort-feasors.\textsuperscript{171}

The \textit{Yates} majority points out that the servant's settlement was for the entire amount of his insurance coverage.\textsuperscript{172} The Court speculates that a master may choose not to seek indemnity from a servant who in many cases may be judgment proof.\textsuperscript{173} This line of reasoning is convincing because, before the employee is liable for indemnity, the injured plaintiff must first proceed against the employer.\textsuperscript{174} Once the injured plaintiff gets a judgment, a separate action for indemnity may not be commenced until after payment is made on the judgment.\textsuperscript{175} Then, to expand upon the court's speculation, when the employer knows the employee is incapable of indemnification, he will be better off to seek a settlement instead of any added expense of litigation.\textsuperscript{176} The employer is encouraged to settle and the injured plaintiff is fully compensated.\textsuperscript{177} Thus, as the majority states, the servant's settlement with the injured party ful-

\textsuperscript{167} Van Cleave \textit{v. Gamboni Constr. Co.}, 101 Nev. 524, 706 P.2d 845, 849 (1985). "If we determine that the Uniform Act does not apply to [the] claim against the employer, we would be discouraging prompt resolutions of action, not encouraging such settlements, in contravention of the expressed public policy of the Uniform Act." \textit{Id.}
\textsuperscript{168} \textit{West, supra} note 138, at 198.
\textsuperscript{169} \textit{supra} note 132.
\textsuperscript{170} \textit{supra}, text accompanying note 134.
\textsuperscript{171} Bumpass, \textit{supra} note 129, at 174.
\textsuperscript{172} \textit{Yates}, 330 N.C. at 795, 412 S.E.2d at 670.
\textsuperscript{173} \textit{Id.}
\textsuperscript{174} \textit{Ingram v. Smith}, 16 N.C. App. 147, 152, 191 S.E.2d 390, 394 (1972) \textit{cert. denied}, 282 N.C. 304, 192 S.E.2d 195 (1972) (there is no right to sue for indemnity until after a judgment is paid or satisfied by settlement). \textit{Id.}
\textsuperscript{175} \textit{Id.}
\textsuperscript{176} \textit{Yates}, 330 N.C. at 795, 412 S.E.2d at 670.
\textsuperscript{177} \textit{Id.}
RELEASE PROVISIONS fills the underlying policy of the Act.  

Finally, the specific facts of Yates demonstrate how the public policy is fulfilled in applying the Uniform Act to the master-servant relationship. The injured plaintiff seeks relief for his injuries, and, as in this case, these injuries are often permanent. The injured plaintiff is seeking monetary compensation for these injuries. In equity, the doctrine of respondeat superior seeks to compensate an innocent injured plaintiff. Yet, this is not accomplished by forcing those injured to take the risk of running afoul of the harsh, technical common law rules. The policy behind the doctrine of respondeat superior makes the master liable primarily because the servant lacks financial resources. Without the Yates rule applying the release provision of the Act to the master-servant relationship, the injured plaintiff will remain at risk of inadvertently releasing all claims against the master. Thus, the North Carolina Supreme Court’s application of section 1B-4 of the Act to master-servant liability supports the equitable doctrine of respondeat superior, and will quickly get the sought after monetary compensation to the injured plaintiff.

CONCLUSION

In Yates v. New South Pizza, Ltd., the North Carolina Court asserts its place among those courts whose sound reasoning have made the determination to apply Section 4 of the Uniform Contribution Among Tort-feasor Act to the master-servant relationship. The Yates rule applies when an injured plaintiff settles with the employee specifically reserving the right to sue the employer. The vicariously liable employer is a tort-feasor as that term is applied to the Act. The new rule in North Carolina will enable injured plaintiffs to gain partial compensation more quickly than by waiting to obtain a final judgment through the judicial process. The injured plaintiff is at less risk of inadvertently falling into the trap.

178. Id.
179. See id. at 791, 412 S.E.2d at 667.
180. Id.
181. Id.
182. See supra note 29.
183. See supra text accompanying notes 46-56.
184. Supra note 27.
185. See supra text accompanying notes 54-56.
186. In Yates, the injured plaintiff initially received $25,000 from the settlement with the employee. Yates, 330 N.C. at 791, 412 S.E.2d at 667.
of harsh common law rules. The injured plaintiff may settle with an employee and then proceed against the employer. The employee often has limited resources, or as in this case, will settle for the full coverage amount of his insurance. The employer can still settle with the injured plaintiff. In addition, the employer is still entitled to indemnity from the employee. However, as in this case, the employer would probably not be indemnified to any significant amount and therefore has an incentive to settle with the injured plaintiff once the servant has settled.

J. Elizabeth Spradlin