

quiring municipal employes to pay to the bargaining representatives fees to cover costs of negotiating and administering contracts is lawful. 54 Atty. Gen. 56.

Legal aspects of public school teacher negotiating and participating in concerted activities. Seitz, 49 MLR 487.

A municipality's rights and responsibilities under the municipal labor law. Mulcahy, 49 MLR 512.

Public employes' right to picket. 50 MLR 541.

Labor relations in the public service. Anderson, 1961 WLR 601.

Municipal employment relations in Wisconsin. Love, 1965 WLR 652.

The strike and its alternatives in public employment. Moberly, 1966 WLR 549.

The strike ban in public employment. Rowe, 1969 WLR 930.

111.80 History: 1965 c. 612; Stats. 1965 s. 111.80; 1969 c. 276.

111.81 History: 1965 c. 612; Stats. 1965 s. 111.81; 1969 c. 276 ss. 423, 424, 593.

111.82 History: 1965 c. 612; Stats. 1965 s. 111.82.

111.83 History: 1965 c. 612; Stats. 1965 s. 111.83; 1969 c. 276 s. 593.

111.84 History: 1965 c. 612; Stats. 1965 s. 111.84; 1969 c. 276 s. 593.

The strike and its alternatives in public employment. Moberly, 1966 WLR 549.

The strike ban in public employment. Rowe, 1969 WLR 930.

111.85 History: 1965 c. 612; Stats. 1965 s. 111.85; 1969 c. 276 s. 593.

111.86 History: 1965 c. 612; Stats. 1965 s. 111.86; 1969 c. 276 s. 593.

111.87 History: 1965 c. 612; Stats. 1965 s. 111.87; 1969 c. 276 s. 593.

111.88 History: 1965 c. 612; Stats. 1965 s. 111.88; 1969 c. 276 ss. 425, 593.

111.89 History: 1965 c. 612; Stats. 1965 s. 111.89; 1969 c. 276.

111.90 History: 1965 c. 612; Stats. 1965 s. 111.90.

111.91 History: 1965 c. 612; Stats. 1965 s. 111.91.

111.92 History: 1965 c. 612; Stats. 1965 s. 111.92; 1969 c. 276 s. 593.

111.94 History: 1965 c. 612; Stats. 1965 s. 111.94.

CHAPTER 112.

Fiduciaries.

112.01 History: 1925 c. 227; Stats. 1925 s. 112.01; 1951 c. 238; 1959 c. 43.

Editor's Note: For foreign decisions construing the "Uniform Fiduciaries Act," consult Uniform Laws, Annotated.

The surety of a fiduciary who has been compelled to respond for the fiduciary's breach of

trust is entitled to be subrogated to all rights of action which the cestui que trust or creditor has against the fiduciary and all parties who participated in his wrongful acts which were the cause of the default. Martineau v. Mehlberg, 221 W 347, 267 NW 9.

The executor's knowledge as president of the bank that his misappropriations as executor from the state funds in the bank were in breach of his trust as a fiduciary was not imputed to the bank so as to render the bank liable for his defalcations and thus deprive his surety in other estates of the right to subrogation in the premises. Fidelity & Casualty Co. v. Maryland C. Co. 222 W 174, 268 NW 226.

Where the cashier of a bank, who was also guardian for certain minors whose funds he had deposited in a checking account in his name as guardian, withdrew the funds from the bank on checks issued by him as guardian payable to a corporation of which he was secretary-treasurer, which checks were indorsed by the payee corporation and honored by the bank, the bank was not liable to the wards under 112.01 (8), or otherwise, for the amount of the funds because of the cashier's alleged misappropriation thereof, since the cashier withdrew the funds as guardian, and the bank (the cashier's knowledge of his own alleged unlawful acts not being imputed to the bank) had the right in good faith to pay out the funds on checks issued by the cashier as guardian, and the bank had no further responsibility in the matter. Matz v. Ibach, 235 W 45, 291 NW 377.

112.02 History: 1943 c. 283; Stats. 1943 s. 112.02.

112.03 History: 1959 c. 141; Stats. 1959 s. 112.03.

112.05 History: 1909 c. 347; Stats. 1911 s. 4539m; 1925 c. 4; Stats. 1925 s. 348.179; 1955 c. 696 s. 200; Stats. 1955 s. 112.05.

348.179, Stats. 1933, does not apply to a director of a bank. Shinnors v. State, 219 W 23, 261 NW 880.

112.06 History: 1959 c. 43; Stats. 1959 s. 112.06.

Editor's Note: For foreign decisions construing the "Uniform Simplification of Fiduciary Security Transfers Act" consult Uniform Laws, Annotated.

Fiduciary security transfers simplified by uniform act. Bolliger, WBB, Aug. 1959.

CHAPTER 113.

Uniform Joint Obligations Act.

Editor's Note: For foreign decisions construing the "Uniform Joint Obligations Act," consult Uniform Laws, Annotated.

113.01 History: 1927 c. 235; Stats. 1927 s. 113.01; 1929 c. 482 s. 5.

Where independent torts result in separate injuries, each tort-feasor is separately liable for his own torts; but where independent torts concur to inflict a single injury, each tort-feasor is liable for the entire damage. Bolick v. Gallagher, 268 W 421, 67 NW (2d) 860.

Where injuries resulting from a tort are ag-

gravated by a doctor's malpractice, and it is impossible to separate the damages resulting from each wrong, both the original tort-feasor and the doctor may be liable for the entire damage, in which case a payment made to the plaintiff by one of them will inure to the benefit of the other and require a corresponding reduction in any judgment recovered by the plaintiff from the nonpaying tort-feasor. *Heims v. Hanke*, 5 W (2d) 465, 93 NW (2d) 455.

Comparison of negligence among joint tort-feasors for contribution purposes. *Antoine*, 26 MLR 151.

113.02 History: 1927 c. 235; Stats. 1927 s. 113.02.

113.03 History: 1927 c. 235; Stats. 1927 s. 113.03.

See note to 113.01, citing *Heims v. Hanke*, 5 W (2d) 465, 93 NW (2d) 455.

113.04 History: 1927 c. 235; Stats. 1927 s. 113.04.

A person injured in an automobile collision was not entitled to recover \$1,000 awarded to her as damages in her action against one joint tort-feasor, where she had already received \$1,500 for the same injury from the liability insurer of another joint tort-feasor pursuant to a covenant not to sue, which contained an express reservation of her rights against the first tort-feasor. *Haase v. Employers Mut. Liability Ins. Co.* 250 W 422, 27 NW (2d) 468.

The driver of an automobile injuring a person, and a physician charged with malpractice in treating the injuries, would not be joint tort-feasors, and there would be no right of contribution as between them, but the driver, if settling with the injured person and obtaining a complete release, would have a claim by subrogation to the injured person's rights for that part of the damages primarily due to the physician's negligence. The presumption that a settlement with the injured person by the person causing the injury includes compensation for injury occasioned by malpractice prior to the settlement and release is conclusive unless, in releasing the primary tort-feasor, the injured person saves his cause of action against the physician by appropriate provision in the release, or by a covenant not to sue. A document called a release may in fact be a covenant not to sue, and vice versa, the intention of the parties as revealed by the document itself, and not the name given to the document, being controlling. *Greene v. Waters*, 260 W 40, 49 NW (2d) 919.

The right to contribution between tort-feasors in Wisconsin is recognized as a common-law right, and it is a right based on principles of equity. The common liability is determined as of the time the accident occurs, and not as of the time the cause of action for contribution is later asserted. A release executed to one joint tort-feasor and his insurance carrier by the injured party, reserving rights against the other joint tort-feasor, is not a true release which operates to discharge both joint tort-feasors from liability but constitutes a covenant not to sue, which does not preclude and is not a defense to an action for contribution against the insurance carrier of the first joint tort-feasor by the insurance car-

rier of the other joint tort-feasor, who later has made a reasonable settlement with the injured person. An indemnification agreement in such release whereby the injured party agrees to indemnify the released tort-feasor and his insurance carrier against any liability for contribution, has no effect on the right of contribution of the insurance carrier of the other joint tort-feasor, neither of whom is a party to such agreement. *State Farm Mut. Auto. Ins. Co. v. Continental Cas. Co.* 264 W 493, 59 NW (2d) 425.

Where a first joint tort-feasor and her insurer paid \$7,500 to plaintiff for a release and covenant not to sue, whereby the plaintiff released them from their direct liability to her, and agreed that her claims and causes of action would be credited and satisfied on their behalf to the extent of one half thereof in case of her obtaining a judgment against the second tort-feasor, the second tort-feasor would not be entitled to any right of contribution even though damages of \$20,000 might be established by the plaintiff, since, by virtue of such release, the second tort-feasor would never become liable to the injured person for more than half the amount of such damages, and hence would never be required to pay more than her appropriate share of the damages. [*State v. Farm Mut. Automobile Ins. Co. v. Continental Casualty Co.* 264 W 493, distinguished.] *Heimbach v. Hagen*, 1 W (2d) 294, 83 NW (2d) 710.

If a wrongdoer who has paid a claim may recover half the payment from another who ought in fairness to pay part of it, then one who is found not to have been guilty of any wrong, and who was not a mere volunteer or intermeddler in paying the claim, should not be denied a like recovery from one who ought in equity and fairness to pay the whole claim, notwithstanding that in such latter case there is no "common liability" as a basis for contribution. *Rusch v. Korth*, 2 W (2d) 321, 86 NW (2d) 464.

Where an injured plaintiff settled 50 per cent of his cause of action, whatever its amount might be, and retained only 50 per cent to enforce against defendant, and therefore defendant would not have to pay more than half of the total verdict, which was the maximum defendant could recover from interpleaded defendant if the latter remained in the case and if both were found liable as joint tort-feasors, defendant's right to contribution was extinguished and he would not be entitled to contribution whatever the amount plaintiff's recovery might be. It was immaterial that the release was not executed prior to commencement of the action. *Lewandowski v. Boynton Cab Co.* 7 W (2d) 49, 95 NW (2d) 823.

In order for one tort-feasor to be entitled to contribution from another alleged joint tort-feasor, common liability must be established. (*Rusch v. Korth*, 2 W (2d) 321, explained.) *Bauman v. Gilbertson*, 7 W (2d) 467, 96 NW (2d) 854.

The decision in *Rusch v. Korth*, 2 W (2d) 321, was not intended to change the traditional law of contribution in this state so as to make it unnecessary for the party seeking contribution to allege and prove his own negligence, the negligence of the defendant, and

common liability resulting from such joint negligence. To recover on the basis of contribution, nonintentional negligent tort-feasors must have a common liability to a third person at the time of the accident created by their concurring negligence. Situations like those of *Rusch v. Korth* may give rise to a claim for subrogation in equity, but on principle cannot be based on the equitable principles governing contribution. *Farmers M. A. Ins. Co. v. Milwaukee A. Ins. Co.* 8 W (2d) 512, 99 NW (2d) 746.

This chapter applies to a tort release only when the release expressly incorporates or refers to the chapter or the intent of the parties is so inadequately expressed that resort to the chapter is necessary to determine the intent. *Pierringer v. Hoyer*, 21 W (2d) 182, 124 NW (2d) 106.

Tort releases in Wisconsin. *McComas*, 49 MLR 533.

113.05 History: 1927 c. 235; Stats. 1927 s. 113.05.

An injured person can have but one satisfaction for his injuries, and therefore the amount paid by a joint tort-feasor in whose favor a covenant not to sue was given will be regarded as a satisfaction pro tanto as to the joint tort-feasors. *Haase v. Employers Mut. Liability Ins. Co.* 250 W 422, 27 NW (2d) 468.

Where plaintiff alleged negligence against 2 defendants, and released one before trial and satisfied the cause of action against that one to the extent of one half of the damages, and the other was held 100 per cent liable, the judgment must be reduced by half, where plaintiff did not amend the complaint to charge only the other defendant. No proof was put in to show the released defendant's negligence, but the uncontradicted complaint suffices, and hence on the record they were joint tort-feasors. *Kerkhoff v. American Automobile Ins. Co.* 14 W (2d) 236, 111 NW (2d) 91.

Where the defendant building contractor had actually paid the sum of \$4,500 to the plaintiff in return for a complete discharge, including any obligation by way of contribution, and the plaintiff had agreed to protect the contractor from being obligated to pay any larger amount than the \$4,500 either to the plaintiff or anyone else, the granting of contribution in such case would encourage needless circuitry, and the judgment to be entered on the award of \$12,275.17 for damages and costs should therefore be for one half of the original judgment in favor of the plaintiff and against the nonsettling tort-feasor only, so that in effect such amount will be one half of the judgment, or \$6,137.58, without right of contribution. *Lee v. Junkans*, 18 W (2d) 56, 117 NW (2d) 614.

As to the effect of various types of releases see *Pierringer v. Hoyer*, 21 W (2d) 182, 124 NW (2d) 106.

113.06 History: 1927 c. 235; Stats. 1927 s. 113.06.

Where services were rendered for the benefit of a partnership, as an incident of its business, and at the request of a partner since deceased, and there was no assertion that he lacked authority to act, the obligation to pay

for the services was a partnership obligation under 123.06, but the creditor could file a claim against the estate of the deceased partner, without first resorting to the partnership assets, even though the partnership was not insolvent and its assets were sufficient to pay all partnership debts. *Estate of Bloomer*, 2 W (2d) 623, 87 NW (2d) 531.

113.07 History: 1927 c. 235; Stats. 1927 s. 113.07.

113.08 History: 1927 c. 235; Stats. 1927 s. 113.08.

113.09 History: 1927 c. 235; Stats. 1927 s. 113.09; 1949 c. 262.

113.10 History: 1927 c. 235; Stats. 1927 s. 113.10; 1949 c. 262.

CHAPTER 114.

Aeronautics.

114.001 History: 1969 c. 500; Stats. 1969 s. 114.001.

114.002 History: 1929 c. 348 s. 3; Stats. 1929 s. 114.01; 1935 c. 169; 1937 c. 381; 1943 c. 269; 1943 c. 552 s. 19; Stats. 1943 s. 114.013; 1951 c. 299; 1957 c. 97; 1969 c. 500; Stats. 1969 s. 114.002.

114.01 History: 1943 c. 269; Stats. 1943 s. 114.01; 1947 c. 548; 1951 c. 33; 1969 c. 500 s. 30 (1) (a).

A private airport and flying school is not a nuisance per se. The activities of an airport may be very annoying to persons residing in the neighborhood, but the legislative policy of state and federal governments is to encourage aviation. *Kuntz v. Werner Flying Service, Inc.* 257 W 405, 43 NW (2d) 476.

114.02 History: 1929 c. 348 s. 3; Stats. 1929 s. 114.02.

114.03 History: 1929 c. 348 s. 3; Stats. 1929 s. 114.03.

Relative rights of landowners and aeronauts. *DeLorenzo*, 23 MLR 131.

Landowner's right to air space. 30 MLR 193.
The adjudication of rights in air space by judicial process. *Eubank*, 31 MLR 113.

Survey of aviation case law in Wisconsin. *Arnold*, 31 MLR 193.

Ownership and control of air space. *Cummings*, 37 MLR 176.

The relative rights and remedies of users and surface proprietors in air space. *Carnahan*, 39 WBB, No. 1.

114.04 History: 1929 c. 348 s. 3; Stats. 1929 s. 114.04.

The evidence sustained findings that the defendant's airplane pilots, knowing of the location of the plaintiff's mink farm near the defendant's commercial airport and of the dangers from low flying over the mink farm, flew over the farm during the whelping season at an altitude unnecessarily low and lower than permitted by flying regulations, and caused the female mink to become frightened and destroy their kits; and such low flying, causing damages, was an actionable wrong for