Torts—Contribution Among Tortfeasors Where the United States Is a Party

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is to be regarded for income tax purposes as embracing only one-half of the community property. Thus it is submitted that in Washington, when the entire estate consists of community property, it is no longer to be considered as a single taxable entity for income tax purposes. Instead, the income from community property during administration is taxable one-half to the estate and one-half to the surviving spouse.

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Torts—Contribution among Tortfeasors where the United States Is a Party. *United States v. State of Arizona*, 214 F.2d 389 (9th Cir. 1954), highlights the recurring problem of contribution between the United States and another joint tortfeasor. In the original case here involved, *P* sued the United States under the Federal Tort Claims Act for injury resulting from an exploding shell picked up on a supposedly dedudded artillery range which had been deeded by the United States to the State of Arizona. The United States brought a third-party complaint against the State of Arizona as a joint tortfeasor, and it is the action on this third-party complaint which is involved in the instant case. The Court of Appeals for the Ninth Circuit held that Arizona law does not permit contribution from another tortfeasor, and, therefore, affirmed the dismissal of the third-party complaint. The court asserted that the basis of this holding was the doctrine of *Erie Railroad v. Tompkins*, 304 U.S. 63 (1937), requiring the application of state substantive law to federal court actions.

The opinion cites *United States v. Yellow Cab Co.*, 340 U.S. 543 (1950), as authority for use of the *Erie* doctrine in matters of contribution where an action is brought under the Federal Tort Claims Act. The *Yellow Cab Co.* case arose out of an accident between a taxicab and a United States mail truck, as a result of which the passenger of the taxicab sued the cab company; whereupon the cab company impleaded the United States, and the court held that under the Federal Tort Claims Act the United States government had consented to be impleaded as a third-party defendant in an action for contribution, since appropriate state law provided such an action. This was not, however, an application of *Erie v. Tompkins*, supra, but was a strict reading of the Federal Tort Claims Act which provides consent to suit against the United States on account of damage caused by negligence of any employee of the Government "under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury or death in accordance with the law of the place where the act or omission occurred." (Italics added.) Because Pennsylvania law permitted contributions between joint tortfeasors, the United States was obliged to contribute 50% of the verdict awarded against the cab company.

Despite the irrelevancy of *Erie v. Tompkins*, supra, to such a situation, these two cases are graphic illustrations of the diversity of results which occur in the matter of contribution when the United States is involved with another as a tortfeasor. The suit must always be brought under the Federal Tort Claims Act, but the liability for or right to contributions depends on state substantive law which is at great variance from one state to another. [For a comprehensive discussion of the problem of lack of uniformity of contribution for the United States see 3 Moore’s Federal Practice § 14.29, at 507, et seq. (3d Ed. 1948).]

Since the common law prohibited contributions among tortfeasors, and many states have made no statutory provision therefor, those states allow no right of contribution at all. In six states the right of contribution is conditioned on a judgment against the tortfeasors in the original action, there being no provision for impleading or third-party defendant actions. In those states the person injured has sole control of the distribution of loss by contribution. In the states which do have laws with respect to contribution,
no two of the statutes are identical. See Uniform Laws Annotated, Vol. 9, Cumulative Annual Pocket Part 33 (1953).

The question of contribution for and against the United States would seem to be a proper matter for appropriate legislation. In United States v. Standard Oil Co., 332 U.S. 301 (1946), the court pointed out that questions involving federal fiscal policy should be exempted from the rule of Erie v. Tompkins, supra, so that there might be uniform rulings made on these issues, but concluded that this was a matter for Congress, rather than for the courts. Certainly liability arising under the Federal Tort Claims Act is a matter of federal fiscal policy, and since the liability is the result of a federal statute, it does not seem illogical that Congress should by statute provide the United States with such protection on distribution of the loss as would be fair and equitable for all parties jointly liable. The tendency in modern law to eliminate the common law prohibition against contribution strengthens the argument.

If, however, this matter is to remain within the control of state law, perhaps there is presented a strong argument for urging the passage of the Uniform Contribution Among Tortfeasors Act in all of the forty-eight states. This would allow liability under the Federal Tort Claims Act, as well as the doctrine of Erie v. Tompkins, supra, to be applied to the matter of contribution among joint tortfeasors with a uniform result throughout the United States.

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