

10-1-1975

The Abolishment of Contributory Negligence as a Defense in North Carolina

Julian T. Pierce

Follow this and additional works at: <https://archives.law.nccu.edu/ncclr>

 Part of the [State and Local Government Law Commons](#), and the [Torts Commons](#)

Recommended Citation

Pierce, Julian T. (1975) "The Abolishment of Contributory Negligence as a Defense in North Carolina," *North Carolina Central Law Review*: Vol. 7 : No. 1 , Article 12.
Available at: <https://archives.law.nccu.edu/ncclr/vol7/iss1/12>

This Comment is brought to you for free and open access by History and Scholarship Digital Archives. It has been accepted for inclusion in North Carolina Central Law Review by an authorized editor of History and Scholarship Digital Archives. For more information, please contact jbeeker@nccu.edu.

The Abolishment of Contributory Negligence as a Defense in North Carolina

It is time for North Carolina to abolish contributory negligence as a defense and adopt a more equitable and just form of fault liability such as comparative negligence. The defense of contributory negligence in North Carolina works as an open turnstile for a tortfeasor to escape liability. Legally, the tortfeasor has only to prove that his claimant was contributorily negligent to the slightest degree to unload his burden of liability.

Legal scholars attribute the origin of the common law doctrine of contributory negligence to the 1809 English case of *Butterfield v. Forrester*.¹ The defendant in *Butterfield* while making repairs to his house, left one of the poles being used, protruding into a part of the roadway. The pole was discernible for about 100 yards down the roadway and could easily have been avoided. The plaintiff riding violently on his horse ran into the pole and was injured. The court held that the plaintiff could not recover any damages because a person has a duty to use ordinary caution and care for himself. Thus, the common law adopted the rule that a plaintiff's lack of ordinary care, no matter how slight, barred recovery if it was the proximate cause of his injury.

Courts in the United States were prompt to adopt the doctrine of contributory negligence.² Perhaps no rule of the common law has been more readily or more widely accepted in the United States than the general rule of contributory negligence.³ Several reasons have been given for the early acceptance of the rule but none of them may be considered as reliable or concrete.⁴ The doctrine fitted the laissez faire philosophy of the time and the unspoken social policy of protecting valuable new industries, particularly the transportation industry, from the supposedly crippling threat of large and numerous verdicts imposed by "incurable plaintiff minded" juries.⁵

In North Carolina, as in all states which do not apply the doctrine of comparative negligence, a plaintiff's negligence which occurs concurrently with that of the defendant will bar recovery, even though the plaintiff's negligence was comparatively small.⁶ Contributory negligence

1. 11 East 59, 103 Eng. Rep. 926 (K.B. 1809).

2. *Smith v. Smith*, 19 Mass. (2 Pick) 621 (1824); *Washington v. Tracy*, 2 D Chip 128 (Vt., 1824).

3. Annot. 32 A.L.R.3d 463 (1970).

4. Maloney, *From Contributory to Comparative Negligence: A Needed Law Reform*, 11 U. FLA. L. REV. 135, 142 (1958) [hereinafter cited as MALONEY].

5. *Id.* at 143.

6. *Miller v. Miller*, 237 N.C. 228, 160 S.E.2d 65 (1968).

CONTRIBUTORY NEGLIGENCE

117

has been defined in North Carolina as conduct on the part of the plaintiff amounting to a want of ordinary care which concurs with some negligent act or omission of the plaintiff and is a proximate cause of the injury complained of.⁷ The negligence of the plaintiff does not negate negligence of the defendant as alleged in the complaint, but presupposes or concedes such negligence by him.⁸ Contributory negligence by the plaintiff "can exist only as a co-ordinate or counterpart" of negligence by the defendant as alleged in the complaint.⁹ Foreseeability and proximate cause are essential elements of contributory negligence, as well as of negligence.¹⁰

As a general rule, one who has the capacity to understand and avoid a known danger and fails to take advantage of that opportunity with resulting injury is chargeable with contributory negligence.¹¹ There is no essential difference between negligence and contributory negligence, contributory negligence being merely the negligence of the plaintiff, who becomes defendant *pro hac vice* upon the issue of contributory negligence.¹²

The North Carolina Supreme Court in *Moore v. Chicago Bridge and Iron Works*¹³ enunciated a two prong test for determining whether the plaintiff was contributorily negligent. The following two questions must be answered in the affirmative: Did the plaintiff fail to exercise that degree of care which an ordinary prudent man would have exercised or employed under the same circumstances? Was his failure to do so the proximate cause of his injury?¹⁴

Plaintiff's negligence, in order to bar recovery, need not be the sole proximate cause of the injury, for this would exclude the idea of negligence on the part of the defendant.¹⁵ All that is necessary is that plaintiff's negligence be one of the causes, without which the injury would not have occurred.¹⁶

Over the years the courts have recognized the harshness of the rule of

7. Jackson v. McBride, 270 N.C. 367, 373, 54 S.E.2d 468, 472 (1967); Adams v. State Bd. of Educ., 248 N.C. 506, 511, 103 S.E.2d 854, 857 (1958); Moore v. Chicago Bridge & Iron Works, 183 N.C. 438, 439, 111 S.E. 776, 777 (1922).

8. Jackson v. McBride, 270 N.C. 367, 372, 154 S.E.2d 468, 473 (1970).

9. *Id.*

10. Holderfield v. Rummage Bros. Trucking Co., 232 N.C. 623, 625, 61 S.E.2d 904, 906 (1950).

11. Presnell v. Payne, 272 N.C. 11, 13, 157 S.E.2d 601, 602 (1967).

12. Tyson v. Ford, 228 N.C. 778, 47 S.E.2d 251 (1948); Templeton v. Kelley, 215 N.C. 577, 581, 2 S.E.2d 696, 699 (1939); Jones v. Bagwell, 207 N.C. 378, 386, 177 S.E. 170, 176 (1935).

13. 183 N.C. 438, 111 S.E. 776 (1922).

14. *Id.* at 440, 111 S.E. at 778.

15. West Const. Co. v. Atlantic Coast Line R.R., 184 N.C. 179, 181, 113 S.E. 672, 673 (1922).

16. Rodgers v. Thompson, 256 N.C. 265, 271, 123 S.E.2d 785, 789 (1962).

contributory negligence and have originated legal devices to alleviate some of the injustice resulting from its application. North Carolina has adopted the doctrines of "last clear chance" and "willful and wanton" negligence. The legal devices are employed to place the liability back upon the predominant tortfeasor, even though the plaintiff has been contributorily negligent.

The doctrine of least clear chance originated in the English case of *Davies v. Mann*.¹⁷ The plaintiff negligently left his donkey fettered in the road and the defendant drove his carriage against the animal. The court held that the plaintiff could recover damages from the defendant, even though both parties were negligent, because the defendant had the last clear chance to avoid the animal. Thus, the doctrine of last clear chance is applicable when both plaintiff and defendant have been negligent and the defendant has time to avoid the injury after the respective negligences have created the hazards.¹⁸

The North Carolina Supreme Court has referred to the doctrine of last clear chance as a humane rule of law that imposes upon a person the duty to exercise ordinary or due care to avoid injury to another who has negligently placed himself in a dangerous situation and who he can reasonably apprehend is unconscious thereof or is unable to avoid the danger.¹⁹ The doctrine presupposes contributory negligence²⁰ and when the doctrine is applicable, contributory negligence does not preclude recovery.²¹

While the doctrine of last clear chance alleviates the harshness of the rule of contributory negligence in certain cases, it has the effect of shifting the fault of the negligence of both parties to the defendant. The doctrine in itself is arbitrary and the reverse of the doctrine of contributory negligence. The doctrine was referred to by James²² as "a way station on the road to apportionment of damages." It has had a negative effect on the trend in tort law of changing from a contributory negligence doctrine to comparative negligence. Its application over a long period of time has actually been "to freeze the transition rather than to speed it."²³

The other legal device used by the North Carolina courts to alleviate

17. 10 Mees & W 546, 152 Eng. Rep. 588 (1842).

18. *Mathis v. Marlow*, 261 N.C. 636, 639, 135 S.E.2d 633, 635 (1964); *Clodfelter v. Carrol*, 261 N.C. 630, 634, 135 S.E.2d 636, 639 (1964); *Scott v. Darden*, 259 N.C. 167, 171, 130 S.E.2d 42, 45 (1963); *Gunter v. Winders*, 256 N.C. 263, 265, 123 S.E.2d 475, 477 (1962).

19. *Newbern v. Leary*, 215 N.C. 134, 150, 1 S.E.2d 384, 393 (1938).

20. *Mercer v. Powell*, 218 N.C. 642, 648, 12 S.E.2d 227, 231 (1940).

21. *Ingram v. Smokey Mountain Stages*, 225 N.C. 444, 447, 35 S.E.2d 337, 339 (1945).

22. James, *Last Clear Chance: A Transitional Doctrine*, 27 YALE L. J. 704 (1938).

23. Prosser, *Comparative Negligence*, 51 MICH. L. REV. 465 (1953).

CONTRIBUTORY NEGLIGENCE

119

the harshness of the rule that contributory negligence completely bars recovery is the doctrine of willful and wanton negligence. If defendant's conduct amounts to willful and wanton negligence and is the proximate cause of plaintiff's injuries, the defense of contributory negligence is not available to the defendant.²⁴ As pointed out by the court in *Li v. Yellow Cab Company of California*,²⁵ a comparative negligence concept should have no application when one of the parties has been guilty of willful and wanton conduct. This permits the courts to hold a tortfeasor whose conduct is willful and wanton completely liable for his negligence whether the court uses fault liability based on the doctrine of contributory negligence or comparative negligence.

The concept of dividing or apportioning damages when both defendant and plaintiff are at fault is being steadily adopted by the different jurisdictions in the United States. In 1973, the court in *Hoffman v. Jones*²⁶ indicated that their research revealed sixteen states had adopted by legislative act some form of comparative negligence. The *Li*²⁷ court in their March 31, 1975 decision stated that twenty-five states had adopted some form of comparative negligence by legislative act and that Florida, by judicial decision, had adopted comparative negligence. As of this date twenty-five states²⁸ have by legislative act adopted a form of comparative negligence and two states, Florida²⁹ and California,³⁰ have by judicial decision of the State Supreme Court adopted comparative negligence.

There is no doubt that the state legislatures have the authority to enact legislation changing the basis for fault liability from the common law doctrine of contributory negligence to comparative negligence. However, questions have been raised as to whether the judiciary has the authority to change the common law doctrine of contributory negligence. In Florida, where the judiciary changed to a "pure" form of comparative negligence, the court felt it had the authority to change the common law if the current "social and economic customs" and "modern conceptions of right and justice" call for it.³¹

24. *Pearce v. Barnham*, 271 N.C. 285, 289, 156 S.E.2d 290, 294 (1967); *Blevins v. France*, 244 N.C. 334, 341, 93 S.E.2d 549, 555 (1956).

25. 13 Cal.3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1975).

26. 280 So.2d 431, 436 (Fla. 1973).

27. 13 Cal.3d at 810, 532 P.2d at 1232, 119 Cal. Rptr. at 864.

28. Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin and Wyoming. V. SCHWARTZ, *COMPARATIVE NEGLIGENCE*, App. A, 367-69 (1974).

29. *Hoffman v. Jones*, 280 So.2d 431 (Fla. 1973).

30. *Li v. Yellow Cab Company of California*, 13 Cal.3d 804, 532 P.2d 1226, 119 Cal. Rptr. 858 (1975).

31. 280 So.2d at 436.

The court in *Hoffman* stated: "The rule that contributory negligence as an absolute bar to recovery was—as most tort law—a judicial creation, and it was specifically judicially adopted in Florida"32 The court pointed out that the doctrine of contributory negligence had been modified by different judicial decisions such as establishing the doctrine of last clear chance and willful and wanton conduct. It is understood that all rules of the common law are designed for application to new conditions and circumstances as they may develop and are intended to be vitalized by practical applications in advanced society.³³

The court in *Li*, when California adopted the doctrine of comparative negligence as a defense, was faced with a different problem from that of the Florida Court. In 1872, California had codified its doctrine of contributory negligence enacting California Civil Code section 1714.³⁴ It was urged that any change in the law of contributory negligence must be made by the legislature of California and not by the court, since the legislature had codified the law of contributory negligence.

The court held in answering this contention that it was not the intention of the legislature in enacting section 1714 of the Civil Code to insulate the rule of contributory negligence from further judicial development. It was the intention of the legislature to announce and formulate existing common law principles and definitions for purposes of orderly and concise presentation and with a distinct view toward continuing judicial evolution.³⁵

The acrimonious doctrine of contributory negligence in North Carolina could be abolished by the state legislature or by judicial decision. At present, the doctrine of comparative negligence is utilized by North Carolina courts only in cases within the meaning of the Federal Employers Liability Act,³⁶ and subsection (C) of North Carolina General Statute 62-242.³⁷

32. *Id.* at 435.

33. *Id.* at 436.

34. Section 1714 of the Civil Code provides as follows:

Everyone is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself.

35. 13 Cal.3d at 814, 532 P.2d at 1236, 119 Cal. Rptr. at 865.

36. 45 U.S.C. § 51. Provides as follows:

"[E]very common carrier by railroad while engaged in intrastate or interstate or foreign commerce, shall be liable in damages to any employee for injuries 'resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.'"

45 U.S.C. § 53 provides:

"In all actions on and after April 22, 1908 brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee or where such injuries have re-

CONTRIBUTORY NEGLIGENCE

The federal government through the Federal Employers Liability Act in 1908 recognized the doctrine of comparative negligence as the basis of fault liability for the protection of railroad employees dealing in interstate commerce. North Carolina enacted its statute for the protection of railroad employees dealing in intrastate commerce. The doctrine is applied in North Carolina solely for the purposes of mitigating damages or as a partial defense.³⁸

One may ask why North Carolina, unlike so many other jurisdictions, has not completely adopted comparative negligence. Perhaps the biggest factor is the general inertia and resistance to change whenever substantial changes in the law are proposed. Those who defend the doctrine of contributory negligence argue that the rule is not as harsh in its practical effect as it is in theory.³⁹ Advocates of the status quo tell us that the jury handles the majority of such cases adequately now (albeit in the teeth of the instructions they receive), so why rock the boat.⁴⁰

Strong resistance against comparative negligence is also exerted by insurance companies. The superintendent of claims of a large casualty company and the politically powerful group he represents feels that "the average verdict and settlement will have to be greater."⁴¹ However, it has been found in Wisconsin that the average size of verdicts have

sulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: provided, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee."

37. N.C. GEN. STAT. § 62-242(a) (1975) provides:

"Any servant or employee of any railroad company operating in this State who shall suffer injury to his person or the personal representative of any such servant or employee who shall have suffered death in the course of his services or employment with such company, by the negligence, carelessness or incompetence of any other servant, employee or agent of the company, or by any defect in the machinery ways or appliances of the company shall be entitled to maintain an action against such company. Any contract or agreement, expressed or implied, made by any employee of such company to waive the benefit of this section shall be null and void.

§ 62-242(c). In all actions hereafter brought against any common carrier by railroad to recover damages for personal injury to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: provided, however, that no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee."

38. *Moore v. Chicago Bridge & Iron Works*, 183 N.C. 438, 439, 111 S.E. 776, 777 (1922).

39. 280 So.2d at 437.

40. *Maloney*, *supra* note 4, at 160.

41. *Benson*, *Can New York State Afford Comparative Negligence?*, 27 N.Y. BAR. BULL. 291, 299 (1955).

actually decreased since that state adopted comparative negligence.⁴²

Another argument frequently used is that the rule of contributory negligence has a deterrent effect in relation to accident prevention in that it refuses to reward negligent and reckless individuals, and that a system of comparative negligence would allow such individuals to recover damages, thereby approaching a compensation-without-fault system where the reckless and the careful are treated alike.⁴³ The opposite view of this rationale is to say that the rule of contributory negligence encourages negligence by giving the prospective defendant reason to hope that he will avoid liability for his conduct.

Many people fear that there will be many more lengthy and complex lawsuits.⁴⁴ This necessarily means more congestion in the courts, increased legal expenses, higher insurance premiums, and longer delays between commencement of a case and its conclusion.⁴⁵ These fears have been unfounded in several cases and there are sound reasons for believing that adoption of the comparative negligence rule would decrease rather than increase litigation.⁴⁶ Insurance companies would probably be more apt to settle out of court if they knew the rule of contributory negligence was not available as a defense.

Plaintiffs today may ask for a jury trial in fear that the judge will apply the rule of contributory negligence and bar them from recovery, because they believe that a jury will apportion damages according to the fault of the parties regardless of the instructions given concerning contributory negligence.⁴⁷ Under the comparative negligence system more cases would probably be tried before judges without a jury. This would substantially cut down the time required for litigation.

Every trial lawyer is aware that juries often allow recovery in cases of contributory negligence and that the case in the jury room does result in some diminution of the damages because of the plaintiff's fault.⁴⁸ But the process is at best a haphazard and most unsatisfactory one.⁴⁹ Dean Maloney stated that

There is something basically wrong with a rule of law that is so contrary to the settled convictions of the law community that laymen will almost always refuse to enforce it, even when solemnly told to do so by a judge whose instructions they have sworn to follow . . .

42. Bress, *Comparative Negligence*, 43 A.B.A.J. 127, 129 (1957).

43. Haskawy, *Comparative Negligence—the reflections of a skeptic*, 43 A.B.A.J. 1115, 1118 (1957).

44. Levit, *California Supreme Court Abolishes Contributory Negligence as a Defense*, 627 I.L.J. 221 (April, 1975).

45. *Id.*

46. Maloney, *supra* note 4, at 162.

47. *Id.*

48. Prosser, *Comparative Negligence*, 41 CAL. L. REV. 1, 4 (1953).

49. *Id.*

CONTRIBUTORY NEGLIGENCE

123

The disrespect for law engendered by putting our citizens in a position in which they feel it is necessary to deliberately violate the law is not something to be lightly brushed aside; and it comes ill from the mouth of lawyers, who as officers of the courts, have sworn to uphold the law, to defend the present system by arguing that it works because jurors can be trusted to disregard that very law.⁵⁰

Intelligent instructions authorizing jurors to apportion damages in cases involving contributory negligence would change jury cynicism and disrespect to respect for our courts and judicial system.⁵¹

The injustices of North Carolina's harsh contributory negligence rule calls for legislative action. None of the usual arguments given in support of the contributory negligence rule can override its harshness and injustice. A typical statement of the objection to the barring rule was made by Dean Green:

In *Butterfield v. Forrester*, the English court introduced the harshest doctrine known to common law of the nineteenth century in the doctrine of contributory negligence. It is harsh because it throws the entire loss on the injured party, however slight his negligent conduct, and at the same time relieves the negligent defendant altogether, however much he may have contributed to the injury.⁵²

The only legal basis for the rule of contributory negligence as a bar to recovery was the maxim "that no man shall take advantage of his own wrong."⁵³ It is grossly unfair that in this age the man who has sustained injury while being only partly at fault should bear the entire financial responsibility for the loss, while the admittedly negligent tortfeasor goes scot-free.

There are different forms of comparative negligence in use that North Carolina could elect to adopt. The "pure" form of comparative negligence, apportions liability in direct proportion to fault in all cases.⁵⁴ Thus, in the extreme situation under the "pure" form, a plaintiff guilty of 99 percent of the total negligence causing his injury could recover only one percent of the damages.⁵⁵

The second basic form of comparative negligence of which there are several variants, applies apportionment based on fault up to the point at which the plaintiff's negligence is equal to or greater than that of the defendant. At that point, plaintiff is barred from recovery. Thus, a plaintiff guilty of 49 percent of the negligence may recover 51 percent of

50. Maloney, *supra* note 4, at 151-52.

51. Maloney, *supra* note 4, at 152.

52. Green, *Illinois Negligence Law*, 39 ILL. L. REV. 36 (1950).

53. *Galena and Chi. U. R.R. v. Jacobs*, 20 Ill. 478, 491 (1858).

54. *Li v. Yellow Cab Co. of California*, 13 Cal.3d 804, 827, 532 P.2d 1226, 1247, 119 Cal. Rptr. 858, 874 (1975).

55. *Id.* at 827, 532 P.2d at 1247, 119 Cal. Rptr. at 874.

the damages against the defendant responsible for 51 percent of the negligence. If the plaintiff is guilty of 50 or more percent, he is barred from recovery.

The principal advanced in favor of a 50 percent form of comparative negligence is moral in nature: that it is not morally right to permit one more at fault in an accident to recover from one less at fault.⁵⁶ The drawback to this form of comparative negligence is that a slight difference in the proportionate fault may permit a recovery. There has been much justified criticism of a rule under which a plaintiff who is charged with 49 percent of a total negligence recovers 51 percent of his damages, while one who is charged with 50 percent is barred from recovery.⁵⁷

A third form of comparative negligence that has been used in a few jurisdictions may be termed as "slight versus gross comparative negligence." Here damages will be apportioned in situations where negligence of the plaintiff is "slight" but the negligence of the defendant is "gross" in comparison.⁵⁸

A majority of the legislatures that have adopted comparative negligence have elected to enact the 50 percent form or one of its variants. The two judiciaries that have adopted comparative negligence and a few state legislatures⁵⁹ have chosen the "pure" comparative negligence form. The courts preferred the "pure" form because they considered the 50 percent form and its variants just a modified form of the rule of contributory negligence.

CONCLUSION

The demise of the absolute-bar theory of contributory negligence has been urged by many American scholars in the law of torts. It has been abolished in almost every common-law nation in the world, including England—its country of origin—and every one of the Canadian Provinces. Some form of comparative negligence now exists in Austria, France, Germany, Portugal, Switzerland, Italy, China, Japan, Poland, Russia and Turkey.⁶⁰

If the North Carolina Legislature adopts a form of comparative negligence, the lawmakers will have time to study all the variants and to set guidelines for the courts to follow. However, if the Supreme Court of

56. *Id.*

57. Prosser, *Comparative Negligence*, 41 CAL. L. REV. 1, 25 (1953).

58. Annot., 32 A.L.R.3d 463, 476 (1970).

59. Mississippi, Rhode Island, and Washington have statutes adopting the "pure" form of comparative negligence. SCHWARTZ, *COMPARATIVE NEGLIGENCE* 341, § 21.3 (1974).

60. 280 So.2d at 436.

North Carolina adopts the doctrine of comparative negligence, the justices will probably only apply it to the case before the court and leave many issues unanswered. The California and Florida courts left many issues to be resolved at the trial level in a practical manner instead of in a theoretical manner at the appellate level.

Whether by legislation or by judicial decision, it is time for North Carolina to abolish the antiquated doctrine of contributory negligence and replace it with a system under which liability damages will be borne by those whose negligence caused it in direct proportion to their respective fault. Logic, practical experience, and fundamental justice beckon that we nullify a doctrine that automatically destroys all claims of injured persons who have contributed to their injuries in any degree, however slight.

JULIAN T. PIERCE

Increasing Application of Federal Securities Laws to Real Estate Transactions

I

INTRODUCTION

The Wall Street crash of 1929 and the ensuing economic chaos of the 1930's prompted Congress to pass corrective legislation to regulate the securities market. To accomplish this purpose, Congress passed the Securities Act of 1933 ("the 1933 Act")¹ and the Securities and Exchange Act of 1934 ("the 1934 Act").² The main thrust of the legislation was "to provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent fraud in the sale thereof"³

The purpose of this comment is to discuss the application of the securities law to real estate transactions. Three main areas of real estate transactions will be examined; cooperative apartment corporations, condominiums, and real estate syndications. This is not meant to be a comprehensive examination of all areas of real estate transactions that are subject to the federal securities laws, but rather an overview of certain select areas.

1. 15 U.S.C. § 77(a) *et seq.* (1971).

2. 15 U.S.C. § 78(a) *et seq.* (1971).

3. Preamble to the Securities Act of 1934, Ch. 38, 48 Stat. 74.