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# Permissive Joinder of Parties in Florida

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be used as a defense to a suit for dissolution.[113] The current Florida alimony statute permits fault to surface at a later stage of this proceeding and thus frustrates the purpose of no-fault divorce, intensifies the trauma of divorce, and increases the legal expense. The present statute is a "cut and paste" job. Four years of judicial confusion over its meaning mandates legislative action to insure that the entire dissolution proceeding will no longer be distorted by the volatile factor of spousal misconduct.

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## PERMISSIVE JOINDER OF PARTIES IN FLORIDA*

Permissive joinder, as it is known in modern practice, was not allowed at common law, where participation in litigation depended entirely on the substantive rights of the parties.[1] Joinder of parties with joint rights or liabilities was compelled; joinder under any other circumstances was forbidden.[2] In equity, considerations of fairness and convenience led to a rejection of inflexible common law rules in favor of an approach emphasizing the complete settlement of a controversy in one action.[3] The chancery courts exercised broad discretion in applying generally-phrased rules that allowed joinder of plaintiffs who were "interested in the subject of the action and in obtaining the relief demanded."[4] Defendants could be joined in equity when the claim against them concerned "matters of the same nature . . . having a connection with each other, and in which all the defendants were more or less concerned, though their rights in respect to the general subject of the case may be distinct . . . ."[5]

The original state practice codes adopted the more liberal equity rules and applied them to actions both at law and in equity.[6] Under these codes,

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113. FLA. STAT. §61.044 (1975) abolishes the common law defenses to a divorce suit. See note 18 *supra.*

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1. 3A J.W. MOORE, FEDERAL PRACTICE §20.02 (2d ed. 1970); B. SHIPMAN, COMMON-LAW PLEADING 393-99 (3d ed. 1923).

2. C.E. CLARK, CODE PLEADING §56 (2d ed. 1947).

3. J. STORY, EQUITY PLEADINGS 82-83 (3d ed. 1844).

4. C.E. CLARK, *supra* note 2, at 355

5. Brinkerhoff v. Brown, 6 Johns. Ch. 139, 156 (N.Y. 1822).

6. The widespread movement for pleading reform in the nineteenth century resulted in the 1848 adoption of the New York Field Code, which became the model for the development of similar practice codes in other states. The most significant reforms accomplished by these codes were the combination of the systems of law and equity and the substitution of fact pleading for issue pleading. C.E. CLARK, *supra* note 2, at 21-23.

permissive joinder of parties was first employed as a procedural device to avoid a multiplicity of suits.[7] Unfortunately, the permissive joinder provisions of the codes were interpreted restrictively, and in many instances they represented slight improvement over common law rules.[8]

Modern provisions expand the concept of permissive joinder of parties[9] into a useful procedural device by eliminating obstacles to joinder encountered under the codes.[10] Patterned on the English rule,[11] these provisions replace the vague and restrictive provisions of the codes with two practical tests for determining the propriety of joinder. Rule 20(a) of the Federal Rules of Civil Procedure, which exemplifies the modern approach, allows joinder of defendants if the right to relief asserted against them arises from the same transaction or occurrence and if any question of law or fact common to all defendants will arise in the action.[12] Identical criteria govern joinder of plaintiffs.[13] Many states now have permissive joinder provisions identical with or substantially similar to the federal rule.[14]

Florida has not adopted the modern permissive joinder approach but has retained a provision similar to those found in the original practice codes.[15] Recent developments in the area of permissive joinder of defendants indicate that the Florida rule and the federal rule, although different in content, may be interpreted to allow identical results. It is doubtful, however, that Florida's permissive joinder of plaintiffs rule could be interpreted to embody the modern approach. This commentary will examine the history of permissive joinder in Florida, evaluate the present permissive joinder rule, and propose changes designed to eliminate the existing shortcomings of the Florida approach.

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7. *Id.* at 348.

8. F. JAMES, CIVIL PROCEDURE, §10.8 (1965).

9. Litigants fall into one of four classes of parties — improper, proper, necessary, or indispensable. Whether permissive joinder will be allowed depends on whether the party is a proper or an improper party. On the other hand, whether joinder will be compelled depends on whether the party is a necessary or indispensable party. *See* Shields v. Barrow, 58 U.S. (17 How.) 130, 139 (1854). For a discussion of both the federal and the Florida approaches to compulsory joinder, see Lewis, *Mandatory Joinder of Parties in Civil Proceedings: The Case for Analytical Pragmatism*, 26 U. FLA. L. REV. 381 (1974).

10. Tone & Stifler, *Joinder of Parties and Consolidation of Multiparty Actions*, 1967 U. ILL. L.F. 209, 212. *See generally* Reed, *Compulsory Joinder of Parties in Civil Actions*, 55 MICH. L. REV. 327 (1957).

11. J.W. MOORE, *supra* note 1, §20.03.

12. FED. R. CIV. P. 20(a). *See generally* 2 W. BARRON & A. HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE §§531-35 (1961); *Developments in the Law — Multiparty Litigation in the Federal Courts*, 71 HARV. L. REV. 874 (1958).

13. See authorities cited in note 12 *supra.*

14. *E.g.*, DEL. R. CIV. P. 20(a); GA. CODE ANN. §81A-120 (1972); IOWA R. CIV. P. 23, 24; MASS. R. CIV. P. 20(a); N.C. GEN. STAT. §1A-1, Rule 20(a) (1969); PA. STAT. ANN. tit. 12. Rule 2229 (1967). *See also* Gavit, *The New Federal Rules and State Procedure*, 25 A.B.A.J. 367 (1939); Hoff, *Joinder of Claims and Parties Under the Alabama Rules of Civil Procedure*, 25 ALA. L. REV. 667 (1973); Paine, *Recent Developments in Tennessee Procedure: The New Tennessee Rules of Civil Procedure*, 37 TENN. L. REV. 501 (1970); Young, *Parties*, 59 MASS. L.Q. 131 (1974).

15. FLA. R. CIV. P. 1.210(a). For a complete review of parties in Florida, see FLA. R. CIV. P. 1.180, 1.210, 1.220, 1.230, 1.240, 1.250, 1.260, 1.270,

## PRIOR LAW

### *Common Law*

In contract actions at common law, the crucial criterion for determining the propriety of joinder of parties defendant was the status of the obligor. It was mandatory that joint obligors be sued together,[16] and a dismissal or discontinuance of the cause of action against one joint obligor constituted a dismissal or discontinuance against all.[17] Since "joint"[18] liability was essential to the maintenance of a joint suit,[19] "several" obligors could not be joined in one action.[20] Thus, a maker and an indorser of a promissory note could not be sued as joint defendants because their liability depended on separate contracts and different contingencies.[21]

When the obligations of the contract were "joint and several," the plaintiff had the option of suing all the obligors jointly or each of them severally;[22] however, if the plaintiff elected to sue more than one of the joint and several obligors, he was compelled to sue them all.[23] If one of the obligors died, the decedent's representative and the surviving obligors could be sued separately, or the surviving obligors could be sued together; however, the decedent's representative and the surviving obligors could not be sued in one action.[24]

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16. Alderman v. Puleston, 156 Fla. 731. 734, 24 So. 2d 527, 528 (1945). *See* C.E. CLARK, *supra* note 2, at 373-74, 375-76.

17. 156 Fla. at 734, 24 So. 2d at 528. If one joint obligor were discharged by operation of law, however, the suit against the discharged obligor could be discontinued, and the plaintiff could proceed against the remaining obligors. C.E. CLARK, *supra* note 2, at 373. Under circumstances such as infancy, death, or absence from the jurisdiction of one joint obligor, the plaintiff was also allowed to sue the remaining obligors. *Id.* at 373-74.

18. For a discussion of the terms "joint," "several," and "joint and several," see Reed, *supra* note 10, at 356-74.

19. Edgar v. Bacon, 97 Fla. 679, 683, 122 So. 107, 109 (1929); Mechanics & Metals Nat'l Bank v. Angel, 79 Fla. 761, 771, 85 So. 675, 678 (1920); Rentz v. Live Oak Bank, 61 Fla. 403, 414, 55 So. 856, 859 (1911); Sommers v. Florida Pebble Phosphate Co., 50 Fla. 275, 282, 39 So. 61, 63 (1905); Hale v. Crowell, 2 Fla. 534, 535 (1849). *See* Ebeling v. Lowry, 203 So. 2d 506, 508 (4th D.C.A. Fla. 1967) (an accommodation party is equally liable with the maker of a note and both were properly joined as defendants in action by lender).

20. Webster v. Barnett, 17 Fla. 272 (1879). The distinction between joint obligors and several obligors was strictly enforced: "[T]he law cannot tolerate a judgment against one of two joint debtors, both being sued by a joint action; nor will the law tolerate a suit or judgment against two while the declaration does not disclose a joint liability, but shows that there was actually no joint liability." *Id.* at 279.

21. *Id.* at 278. *Accord,* Cracowaner v. Carlton Nat'l Bank, 98 Fla. 792, 801, 124 So. 275, 278 (1929); Hough v. State Bank, 61 Fla. 290, 292, 55 So. 462, 462-63 (1911). *Cf.* Prosser v. Orlando Bank & Trust Co., 93 Fla. 177, 111 So. 516 (1927).

22. Springstead v. Crawfordville State Bank, 63 Fla. 267, 273, 57 So. 668, 679 (1912). *Accord,* Jones v. McConnon & Co., 100 Fla. 1158, 130 So. 760 (1930) (the creditor may proceed either jointly or separately against the principal debtor and the guarantor; the fact that the debt was evidenced by different instruments was immaterial since the same consideration sustained both promises).

23. Springstead v. Crawfordville State Bank, 63 Fla. 267, 273, 57 So. 668, 670 (1912).

24. International Shoe Co. v. Hewitt, 123 Fla. 587, 591-92, 167 So. 7, 9-10 (1936); Orlando v. Gooding, 34 Fla. 244, 257, 15 So. 770, 774 (1894): "The one is to be charged *de bonis*

In tort actions,[25] parties jointly and severally liable to the plaintiff could be sued either jointly or separately.[26] For example, an employer and an employee were held jointly and severally liable for the employee's negligence and both were properly joined as parties defendant in one action.[27] Liability also was deemed joint and several where the negligent acts of two or more wrongdoers concurred in producing a single, indivisible injury to the plaintiff.[28] Yet neither the concurrence in time nor the subsequent intermingling of the consequences of two negligent acts determined joint and several liability.[29] Where no concerted action existed and damages were capable of being apportioned, the defendants' liability was several, and joinder was improper.[30] For example, several phosphate companies who damaged the plaintiff's oyster beds by their independent pollution of a stream were severally liable for their proportionate shares of the damages and were improperly joined as defendants in one suit.[31]

The development of permissive joinder of plaintiffs at common law in Florida is less discernible than that of permissive joinder of defendants because of the relative paucity of cases on the subject. In general, plaintiffs were compelled to join when their rights were joint, but joinder under any other circumstances was improper.[32] Thus, in a contract action, all joint obligees were properly joined as plaintiffs.[33] It was not essential to joinder that each plaintiff stand in the same relation to the defendant. A seller and a mortgagee were permitted to join as plaintiffs in a suit against a buyer for breach of contract when their rights depended on one promise and when that promise could be completely discharged only by a satisfaction executed by both.[34] Similarly, an insured and an insurer who had already paid fire insurance benefits to the insured were properly joined as plaintiffs in an action against

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*testatoris*, the others *de bonis propriis*, forms of judgment that the rules of law governing the law courts are not flexible enough to permit them to include in the same judgment."

25. See C.E. CLARK, *supra* note 2, at 374-75, 376-78.

26. Colle v. Atlantic Coast Line R.R., 153 Fla. 258, 263, 14 So. 422, 424 (1943); Pendarvis v. Pfeifer, 132 Fla. 724, 730, 182 So. 307, 309 (1938); Anderson v. Crawford, 111 Fla. 381, 383, 149 So. 656, 657 (1933); Fincher Motor Sales v. Lakin, 156 So. 2d 262, 264 (3d D.C.A. Fla. 1963).

27. International Shoe Co. v. Hewitt, 123 Fla. 587, 593-94, 167 So. 7, 10 (1936); Stinson v. Prevatt, 84 Fla. 416, 418-19, 94 So. 656, 657 (1922); Weaver v. Hale, 82 Fla. 88, 91, 89 So. 363, 364 (1921); Greer v. Workman, 203 So. 2d 665, 668 (4th D.C.A. Fla. 1967).

28. Hudson v. Weiland, 150 Fla. 523, 527-28, 8 So. 2d 37, 38 (1942); Florida Telephone Corp. v. Wallach, 104 Fla. 566, 569, 140 So. 472, 473 (1932).

29. Standard Phosphate Co. v. Lunn, 66 Fla. 220, 228-29, 63 So. 429, 432 (1913).

30. *E.g.*, Gulf Refining Co. v. Wilkinson, 94 Fla. 664, 114 So. 503 (1927); Standard Phosphate Co. v. Lunn, 66 Fla. 220, 63 So. 429 (1913).

31. Symmes v. Prairie Pebble Phosphate Co., 66 Fla. 27, 63 So. 1 (1913). *See* Maloney, Plager, & Baldwin, *Water Pollution—Attempts to Decontaminate Florida Law*, 20 U. FLA. L. REV. 131, 138-39 (1967).

32. C.E. CLARK, *supra* note 2, at 349-50.

33. Edgar v. Bacon, 97 Fla. 679, 686, 122 So. 107, 110 (1929). *Cf.* Atlanta & St. A.B. Ry. Co. v. Thomas, 160 Fla. 412, 53 So. 510 (1910); Jacksonville v. Aetna Fire Engine Co., 20 Fla. 100 (1883).

34. Roe v. Winter Haven Co., 104 Fla. 317, 321, 140 So. 463, 465 (1932). *See also In re* McDaniel, 160 Fla. 518, 35 So. 2d 585 (1948).

a utility company.[35] Joinder was permissible because the insurer, by subrogation, was entitled to participate in the proceeds of the recovery.[36]

Although misjoinder of parties at common law did not affect the court's jurisdiction over the proper parties to the action,[37] defendants were entitled to object to the presence of a misjoined party. When the improper joinder appeared on the face of the complaint, a demurrer was the correct means for objection;[38] a plea in abatement was used when the misjoinder was not apparent.[39] The failure to make a seasonable objection to a misjoinder of parties resulted in an implied waiver of the right to object.[40] If a defect in parties was not corrected by amendment,[41] a proper objection to misjoinder resulted in a failure of the action.[42]

The history of joinder of parties at common law in Florida reveals strict adherence to the rule whereby the propriety of joinder was determined by jointness of rights or obligations. This restrictive attitude resulted in needless multiple actions in situations where the rights of the parties would have been more justly and expediently settled in one suit. The advantages of permissive joinder as a procedural device to promote convenience and fairness were effectively foreclosed in actions at law until the 1954 Rules of Civil Procedure adopted the more flexible equity approach for actions both at law and in equity.[43]

### *Equity*

Until 1954 the "strict preservation of the demarcation between courts of equity and of law"[44] was apparent in the law of permissive joinder of

35. Florida Public Utilities Co. v. Wester, 150 Fla. 378, 7 So. 2d 788 (1942).

36. *Id.*

37. Gordon v. Clarke, 10 Fla. 179, 196 (1860).

38. International Shoe v. Hewitt, 123 Fla. 587, 593, 167 So. 7, 10 (1936); Mechanics & Metals Nat'l Bank v. Angel, 79 Fla. 761, 771, 85 So. 675, 678 (1920) (the court was justified in finding for the defendants when the plaintiff refused to amend the declaration to eliminate the improperly joined parties); Hough v. State Bank, 61 Fla. 290, 292, 55 So. 462, 463 (1911); Jacksonville v. Aetna Fire Engine Co., 20 Fla. 100, 109 (1883).

39. International Shoe Co. v. Hewitt, 123 Fla. 587, 593, 167 So. 7, 10 (1936); Springstead v. Crawfordville State Bank, 63 Fla. 267, 273, 57 So. 668, 670 (1912).

40. International Shoe Co. v. Hewitt, 123 Fla. 587, 593, 167 So. 7, 10 (1936); Edgar v. Bacon, 97 Fla. 679, 122 So. 107 (1929); Campbell v. Knight, 92 Fla. 246, 109 So. 577 (1926).

41. Cracowaner v. Carlton Nat'l Bank, 98 Fla. 792, 801, 124 So. 275, 278 (1929); Paul v. Commercial Bank, 69 Fla. 62, 70-71, 68 So. 68, 70-71 (1915); FLA. COMP. GEN. LAWS §4208 (1927).

42. Atlanta & St. A.B. Ry. Co. v. Thomas, 60 Fla. 412, 53 So. 510 (1910). Under the present rules, misjoinder of parties is not grounds for dismissal of an action. Lawrence v. Eastern Air Lines, 81 So. 2d 632, 634 (Fla. 1955); Kennedy & Ely Ins. v. American Employers' Ins., 179 So. 2d 248, 249 (3d D.C.A. Fla. 1965); Parham v. Kohler, 134 So. 2d 274, 276 (3d D.C.A. Fla. 1961). Any party, or the court of its own initiative, may move at any stage of the action to correct a defect in parties. A misjoined party will be dropped on such terms as the court deems just, Dixon v. Travelers Indem. Co., 174 So. 2d 53, 55 (3d D.C.A. Fla. 1965), and may proceed with his claim in a separate action. FLA. R. CIV. P. 1.250.

43. 1954 FLA. R. CIV. P. 1.17(a). The present Rule 1.210(a) was taken directly from Rule 1.17(a).

44. Royal Indemnity Co. v. Knott, 101 Fla. 1495, 1499, 136 So. 474, 476 (1931).

parties. Thus, trustees and sureties on an indemnity bond could be properly joined as defendants in a suit in equity for an accounting, but the sureties could not be joined in a suit at law for payment.[45]

In general, the courts of equity maintained a wide discretion in determining the propriety of joining parties defendant.[46] In the exercise of discretion, the equity courts were guided not by definite rules[47] but rather by the broad objective of reaching a complete determination of the controversy at hand.[48] Thus, a bill was not multifarious[49] if all the defendants were interested in substantially the same rights,[50] even though a particular defendant might not be interested in every aspect of the case.[51] In a suit for reformation of a deed, defendants who claimed land covered by the deed were properly joined with the makers of the deed.[52] The heirs of a deceased vendee and the vendee's personal representative could be joined in an action by the vendor for specific performance of a land sale contract.[53] Where the plaintiff alleged two distinct causes of action against the defendants, and the defendants were not interested in the same rights, joinder was im-

45. *Id.* at 1500-02, 136 So. at 476-77. *Cf.* Hecht v. Wilson, 107 Fla. 421, 144 So. 886 (1932), *reh. denied and modified*, 107 Fla. 421, 145 So. 250 (1933). *But see* Grant v. Amiker, 120 Fla. 356, 162 So. 712 (1935).

46. Milton v. City of Marianna, 107 Fla. 251, 256, 144 So. 400, 402 (1932); Bonded Rental Agency v. City of Miami, 192 So. 2d 305, 306 (3d D.C.A. Fla. 1966). *Cf.* Trueman Fertilizer Co. v. Allison, 81 So. 2d 734, 738 (1955).

47. 107 Fla. at 257, 144 So. at 402. The equity courts were deemed "courts of conscience" that should not be "shackled by the rigid rules of procedure." Degge v. First State Bank, 145 Fla. 438, 441, 199 So. 564, 565 (1941).

48. 107 Fla. 257, 144 So. at 402. *See* Spear v. McDonald, 67 So. 2d 630, 635 (Fla. 1953); Yates v. St. Johns Beach Development Co., 118 Fla. 788, 793, 160 So. 197, 199 (1935). *Cf.* Gross v. Cohen, 58 So. 2d 703 (Fla. 1952).

49. *See* Franklin Life Ins. Co. v. Tharpe, 118 Fla. 832, 837, 160 So. 199, 201 (1935): "There exists [*sic*] . . . two general and distinct forms of multifariousness. One occurs when distinct and disconnected subjects, matters, or causes are united in the same bill of complaint. The other occurs in joining in the same suit, either as defendants or as complainants, parties who have not a common interest in the subject of the litigation and have no connection with each other insofar as the issues in litigation are concerned."

50. 107 Fla. at 257, 144 So. at 402. "The statutory power to join defendants in the same suit where the complainant claims relief against them severally is not confined to cases in which the causes of action alleged against several defendants are identical, but extends to cases where the subject-matter of the complaint as against the several defendants is substantially the same, and the respective rights of all the defendants depend substantially upon the decision of the same questions of law and facts, although the interest of each defendant is separate and distinct, rather than a joint or mutual interest." *Id.* at 258, 144 So. at 403. *Compare* the above statement of the equity approach to permissive joinder of defendants *with* FED. R. CIV. P. 20(a).

51. Willis v. Hillsborough County, 117 Fla. 1, 8, 157 So. 29, 32 (1934). Defendants were protected against unnecessary harrassment by the flexible procedures of the equity courts. Certain Lands in Putnam County v. East Palatka Drainage Dist., 111 Fla. 795, 149 So. 766 (1933) (bill against against 98 defendants of varying interests held not multifarious): "The fact that all defendants are joined in one suit does not prohibit the chancellor from proceeding to finally adjudicate the rights of any defendant as soon as the issues are matured as to him." *Id.* at 796, 149 So. at 766.

52. Raulerson v. Peeples, 79 Fla. 367, 379, 84 So. 370, 371 (1920).

53. Booth v. Bobbitt, 94 Fla. 704, 707, 114 So. 513, 514 (1927). *Cf.* Nixon v. Temple Terrace Estates, 97 Fla. 392, 121 So. 475 (1929).

proper.[54] For example, in a suit for recission of property conveyances, a county could not join two defendants who acquired their property in separate sales, especially since grounds for recission depended on the particular circumstances of each transaction.[55]

Permissive joinder of plaintiffs in equity was allowed where the parties had "a common interest in the subject of the litigation and had some relation to each other growing out of the common interest and the allegations were of a single distinct equity as to which a specific relief was prayed against . . . the defendants . . . ."[56] In contrast to the emphasis on the broad discretion of the equity courts in cases involving joinder of defendants,[57] the cases concerning joinder of plaintiffs reveal a relatively strict adherence to the common law idea that a joint cause of action was essential to the maintenance of a joint suit.[58] Thus, tenants in common of undivided interests in a lease were properly joined as plaintiffs in a suit for specific performance since they possessed the same rights in the subject of the suit and were entitled to the same remedy.[59] A bill was clearly multifarious, however, where the claims of the plaintiffs were based on two separate contracts. For instance, a wife and a minor child were not permitted to join as plaintiffs in an action against the husband's life insurance company when their rights depended on two distinct insurance policies.[60]

As might be expected, misjoinder of parties in equity was not fatal to the action.[61] A defect in parties could be corrected by amendment.[62] If the bill were multifarious,[63] it was dismissed without prejudice to a new suit.[64]

54. Willis v. Hillsborough County, 117 Fla. 1, 6-8, 157 So. 29, 31 (1934); Mountein v. King, 75 Fla. 12, 16-17, 77 So. 630, 631 (1918). *Cf.* Stark v. Marshall, 67 So. 2d 235 (Fla. 1953).

55. 117 Fla. at 6, 157 So. at 31.

56. Singleton v. Knott, 101 Fla. 1077, 1085, 133 So. 71, 75 (1931).

57. See text accompanying notes 46-51 *supra.*

58. Krusen Land & Timber Co. v. Tampa Suburban Corp., 118 Fla. 173, 158 So. 712 (1935); Standard Lumber Co. v. Florida Indus. Co., 106 Fla. 884, 893, 141 So. 729, 733, *cert. denied,* 289 U.S. 723 (1932).

59. C.J.G. Corp. v. Hurwitz, 123 So. 2d 44 (3d D.C.A. Fla. 1960). *See also* Krusen Land & Timber Co. v. Tampa Suburban Corp., 118 Fla. 173, 158 So. 712 (1935) (owners whose lumber had been wrongfully sawed up and commingled with other lumber into an unidentifiable mass were permitted to join as plaintiffs in a suit against lumber company); Standard Lumber Co. v. Florida Indus. Co., 106 Fla. 884, 141 So. 729, *cert. denied,* 289 U.S. 723 (1932) (pledgee and mortgagee properly joined as plaintiffs in suit against vendor for remainder of purchase price). *But see* Ratliff v. Nowery, 102 Fla. 1072, 1076, 136 So. 895, 897 (1931): "It is well settled that creditors of the same debtor, each of whom is entitled to resort to equity, although their claims are several and distinct, may join in a creditors' bill, provided all creditors so joining stand on the same footing and have judgments."

60. Franklin Life Ins. Co. v. Tharpe, 118 Fla. 832, 835-37, 160 So. 199, 201 (1935). *See also* Doggett v. Florida R. Co., 99 U.S. 72 (1878); Osceola Groves v. Wiley, 78 So. 2d 700 (Fla. 1955); Edason v. Central Farmers' Trust Co., 100 Fla. 348, 129 So. 698 (1930).

61. C.E. CLARK, *supra* note 2, at 357. *Cf.* Edason v. Central Farmers' Trust Co., 100 Fla. 348, 129 So. 698 (1930).

62. C.E. CLARK, *supra* note 2, at 357.

63. If the bill were multifarious, only a party who was particularly prejudiced could object to the multifariousness. Milton v. City of Marianna, 107 Fla. 251, 258, 144 So. 400, 403 (1932).

64. C.E. CLARK, *supra* note 2, at 357. *Cf.* Franklin Life Ins. Co. v. Tharpe, 118 Fla. 832, 837, 160 So. 199, 201 (1935).

There is no apparent reason for equity's more restrictive attitude toward joinder of parties plaintiff than toward joinder of parties defendant. Nevertheless, this puzzling distinction was reinforced when the equity principles were codified. Two specific prerequisites, an interest in the subject of the action and an interest in obtaining the relief demanded, were established for joinder of plaintiffs.[65] In contrast, the general provision that any person could be made a defendant who claimed an interest adverse to the plaintiff[66] invited a broad exercise of discretion, thereby encouraging a continued liberal approach toward joinder of defendants. The relevant portions of the present permissive joinder provision in Florida, Rule 1.210(a),[67] were taken verbatim from the former equity rule. It is not surprising, therefore, that the distinction between plaintiffs and defendants at equity continues to characterize the law of permissive joinder in Florida today.

## JOINDER OF DEFENDANTS UNDER RULE 1.210(a)

Rule 1.210(a) allows the joinder of any person as a defendant "who has or claims an interest adverse to the plaintiff."[68] C.E. Clark has observed that similarly worded provisions in other states were interpreted almost as strictly as the common law rules, despite the intention of the code makers to adopt more liberal equity principles.[69] Clark attributed this reluctance to permit joinder of defendants to restrictive rules for both joinder of claims[70] and joinder of parties plaintiff.[71] In Florida, however, Rule 1.110(g)[72] provides for the unlimited joinder of claims, and the restrictive attitude toward joinder of plaintiffs has not discouraged substantial development in the field of joinder of parties defendant.

## Shingleton *and its Impact*

Stressing the "liberal joinder provisions of Rule 1.210(a),"[73] the Supreme Court of Florida in *Shingleton v. Bussey*[74] held that the plaintiff, as a third

65. Fla. Laws 1881, ch. 3241, §1, at 60.

66. *Id.*

67. FLA. R. CIV. P. 1.210(a).

68. *Id.*

69. C.E. CLARK, *supra* note 2, at 382-83. *See also* F. JAMES, *supra* note 8, at 457.

70. C.E. CLARK, *supra* note 2, at 383. See Kraft v. Smith, 24 Cal. 2d 124, 128, 148 P.2d 23, 25 (1944) (stringent joinder of claims provision would have unduly restricted a liberal joinder of parties, so the joinder of parties rule was exempted from the requirements of the joinder of claims rule).

71. C.E. CLARK, *supra* note 2, at 383: "It seems that the possible scope of a single case seems more or less delimited by the extent of the rules within which plaintiffs may be joined; and courts naturally fall into the practice of setting a limit to the joinder of defendants corresponding roughly to that set for plaintiffs."

72. FLA. R. CIV. P. 1.110(g).

73. Shingleton v. Bussey, 223 So. 2d 713, 718 (Fla. 1969). *See also* Jefferson Realty v. United States Rubber Co., 222 So. 2d 738, 741 (Fla. 1969), which presents a very liberal, if not inaccurate, statement of permissive joinder in Florida: "The Rules of Civil procedure in effect when this trial was had, and which are still in effect, particularly provide for amendments of pleadings and joinder of parties when the interest of justice requires."

74. 223 So. 2d 713 (Fla. 1969). *See generally* Note, *Direct Action Against the Liability*

party beneficiary of an automobile insurance policy, had a direct cause of action against the insurer and allowed joinder of the insured and the insurer as parties defendant. Since the *Shingleton* court considered the liability of the insured and the insurer as joint and several,[75] their joinder was within the purview of the common law rule, which permitted a plaintiff to join those who were jointly and severally responsible for his damages. The *Shingleton* decision emphasized the same factors that had been stressed by the equity courts: "providing an efficient and expeditious adjudication of the rights of persons possessing adverse interests in a controversy"[76] and eliminating a multiplicity of suits.[77]

Subsequent cases have relied on the *Shingleton* rationale to permit joinder of the insured and the insurer when other forms of liability insurance are involved;[78] however, the impact of *Shingleton* on permissive joinder of defendants has not been limited to the insurance field. In *Cowan v. Knott*,[79] the Second District Court of Appeal permitted joinder of the trustee and the beneficiaries of a land trust as parties defendant in a foreclosure action. The decision to allow joinder was based on the desirability of allowing beneficiaries to appear and defend when the trustee failed to do so.[80] The *Cowan* court determined that a result prohibiting joinder of the trustee and the beneficiaries would be incongruous in a state such as Florida, "where insurer and insured litigate hand in hand . . . ."[81]

### *Joinder of Successive Tortfeasors*

It is generally accepted that concurrent tortfeasors may be joined as defendants in one action.[82] The permissibility of joinder rests on the theory

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*Insurer: A Legislative Approach for Florida*, 23 U. FLA. L. REV. 304 (1971); Comment, *Judicial Creation of Direct Action Against Automobile Liability Insurers*, 22 U. FLA. L. REV. 145 (1969).

75. 223 So. 2d at 719. *See* Lewis, *supra* note 9, at 425.

76. 223 So. 2d at 718.

77. *Id.*

78. *E.g.*, Beta Eta House Corp. v. Gregory, 237 So. 2d 163 (Fla. 1970); Pyles v. Bridges, 239 So. 2d 278 (2d D.C.A. Fla. 1970); Ray v. Pfeiffer, 237 So. 2d 562 (2d D.C.A. Fla. 1970). Recent cases permitting joinder of insured and insurer include: Godshall v. Unigard Ins. Co., 281 So. 2d 499 (Fla. 1973); Strecher v. Pomeroy, 253 So. 2d 421 (Fla. 1971); Quinomes v. Coral Rock Inc., 258 So. 2d 485 (3d D.C.A. Fla. 1972); Kratz v. Newsom, 251 So. 2d 539 (2d D.C.A. Fla. 1971); Hartford Acc. & Indem. Co. v. Myers, 247 So. 2d 83 (2d D.C.A. Fla. 1971); Vilord v. Jenkins, 240 So. 2d 68 (2d D.C.A. Fla. 1970); Pyles v. Bridges, 239 So. 2d 278 (2d D.C.A. Fla. 1970); Ross v. Bowling, 233 So. 2d 415 (3d D.C.A. Fla. 1970).

79. 252 So. 2d 400 (2d D.C.A. Fla. 1971).

80. *Id.* at 402. *See* FLA. R. CIV. P. 1.210(c).

81. 252 So. 2d at 402.

82. W. PROSSER, LAW OF TORTS §47, at 293-97, §52, at 314-16 (4th ed. 1971). *See also* Leasure, *Joinder of Joint and Concurrent Tortfeasors*, 23 OHIO ST. L.J. 521 (1962).

In Florida, concurrent tortfeasors are severally liable when the injury caused by their negligent acts is capable of being apportioned. Gulf Refining Co. v. Wilkinson, 94 Fla. 664, 114 So. 503 (1927); Symmes v. Prairie Pebble Phosphate Co., 66 Fla. 27, 63 So. 1 (1913). If the negligences concur to produce a single, indivisible injury, however, then the tortfeasors are held jointly and severally liable. William G. Roe & Co. v. Armour & Co., 414 F.2d 862, 867-71 (5th Cir. 1969); De La Concha v. Pinero, 104 So. 2d 25 (Fla. 1958); Hudson

that individual wrongdoers are jointly and severally liable for a single, indivisible injury to another caused by their concurrent, although independent, acts.[83] Courts are split, however, on the question of whether successive tortfeasors may be similarly joined.[84]

There can be no doubt of the desirability of a procedural rule that permits the joinder of successive tortfeasors. The conservation of judicial time and expense is a policy that deserves continued emphasis in order to ease overcrowded court calendars.[85] The presentation of all issues relevant to the plaintiff's injuries before one trier of fact ensures the fairest result to all concerned. The joinder of all defendants in one trial increases the likelihood that all evidence relevant to the issues of liability and apportionment of damages will be presented to the jury.[86] In addition, the plaintiff is more likely to receive full compensation for his injuries when one jury determines the amount of damages and apportions it among the defendants than when separate juries independently assess the liabilities of each defendant.[87] Inconvenience to joined defendants is usually slight compared with the many advantages of joinder for all parties;[88] however, if it appears that joinder will unduly complicate the issues for the jury or will prejudice a defendant, the trial judge may order a severance for trial.[89]

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v. Weiland, 150 Fla. 523, 8 So. 2d 37 (1942); Florida Telephone Corp. v. Wallace, 104 Fla. 566, 140 So. 472 (1932).

83. *See, e.g.*, William G. Roe & Co. v. Armour & Co., 414 F.2d 862, 869 (5th Cir. 1969).

84. *Compare* Lawrence v. Hethcox, 283 So. 2d 41 (Fla. 1973), *with* Caygill v. Ipsen, 27 Wis. 578, 135 N.W.2d 284 (1965). *See generally* Comment, *Joinder of Consecutive Tortfeasors*, 52 MARQUETTE L. REV. 568 (1970).

85. *See* Ryan v. Mackolin, 14 Ohio St. 2d 213, 216-17, 237 N.E.2d 377, 380 (1968): "The statutory changes reflect a constantly developing policy in pursuit of simplified pleading and procedure. To save time and to relieve court congestion, parties are encouraged, if not commanded, to litigate all their claims in one action, except to the extent that joinder of multifarious and complex issues would produce confusion and prejudice. Defendants and the courts are thus saved from vexation caused by multiple litigation." *Cf.* Patterson & Patterson, *A Plea for Procedural Reform in Mississippi*, 42 MISS. L.J. 293, 320 (1971); Rosenburg, *Devising Procedures That Are Civil To Promote Justice That Is Civilized*, 69 MICH. L. REV. 797, 801 (1971).

86. Loui v. Oakley, 50 Hawaii 260, 264, 438 P.2d 393, 397 (1968).

87. Sutterfield v. District Court, 165 Colo. 225, 230, 438 P.2d 236, 240 (1968): "Proper apportionment can be more justly accomplished by one jury than by two juries sitting separately, each faced with the argument that the greater portion of the injury was caused by the defendants other than the ones in the case at trial. The situation of two juries faced with the task of apportioning liability for a single injury could very well result in the plaintiff's receiving aggregate verdicts for much less than the admitted amount of permanent injuries, or, on the other hand, for much more than the admitted amount of permanent injuries."

88. Landau v. Salam, 4 Cal. 3d 901, 907-08, 484 P.2d 1390, 1395, 95 Cal. Rptr. 53 (1971) (rejecting a defendant's contention that joinder should be prohibited because of the inconvenience and expense of attending proceedings relating to the liability of the other defendant); Kraft v. Smith, 24 Cal. 2d 124, 130, 148 P.2d 23, 26 (1944) (permitting joinder even though one defendant would be compelled to attend trial in a county other than that of his residence). *See* Prosser, *Joint Torts and Several Liabilities*, 25 CALIF. L. REV. 413 (1937).

89. Lawrence v. Hethcox, 283 So. 2d 41, 44-45 (Fla. 1973). *See* FED. R. CIV. P. 42(b); FLA. R. CIV. P. 1.270(b). Rule 1.270 should be read in conjunction with Rule 1.210(a). If

Different courts have interpreted various permissive joinder provisions to allow the joinder of successive tortfeasors. Permissive joinder of defendants in Florida was further liberalized in *Highland Ins. Co. v. Walker Memorial Sanitarium & Benevolent Ass'n*,[90] which permitted joinder of two doctors and a hospital whose successive negligent acts had resulted in injury to the plaintiff. The decision in *Highland Ins. Co.* was based principally on the policy of *Shingleton* that Rule 1.210(a) should be interpreted liberally to prevent a multiplicity of suits and to provide an expedient settlement of controversies.[91]

The Florida supreme court approved the *Highland Ins. Co.* result in *Lawrence v. Hethcox*,[92] where the plaintiff, who was suing one motorist for injuries sustained in an automobile accident, was permitted to join as a defendant another motorist who was involved in a subsequent accident on grounds that the injuries sustained in both accidents were overlapping and not apportionable. The *Lawrence* court did not find the defendants jointly and severally liable but determined that each defendant was responsible for only that part of the plaintiff's injuries to which he proximately contributed.[93] The basis for the decision to permit joinder was twofold. First, the court cited with approval *Kraft v. Smith*,[94] a California case that had permitted joinder under a similar factual situation.[95] Second, the *Lawrence* court accepted the result in *Kraft* because it furthered the broad policy considerations of convenience and expedience set forth in *Shingleton*.[96]

The decision in *Kraft*, however, was based on an interpretation of a permissive joinder provision[97] substantially different from Rule 1.210(a). The California rule specifically permitted joinder of persons "against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative."[98] The rule further provided for joinder when the plaintiff

joinder under Rule 1.210(a) is permitted, but the court determines that separate trials would more adequately serve the interests of fairness and convenience, it may order a severance under Rule 1.270(b). *See* Roberts v. Keystone Trucking Co., 259 So. 2d 171 (4th D.C.A. Fla. 1972): "[T]he trial court had broad discretion in the interest of effective judicial administration . . . to order separate trials under the provisions of Rule 1.270(b) . . . in order to avoid prejudice to a party." On the other hand, if joinder under Rule 1.210(a) is not permitted, Rule 1.270(a) provides for the consolidation of the separate actions where the actions present a common question of law or fact. *See* DuPont v. Rubin, 237 So. 2d 795 (3d D.C.A. Fla. 1970).

90. 225 So. 2d 572 (2d D.C.A. Fla. 1969). *See* Rose & Schmukler, *Civil Procedure*, 24 U. MIAMI L. REV. 534, 551 (1970).

91. 225 So. 2d at 574-75.

92. 283 So. 2d 41 (Fla. 1973). *Accord*, Lapointe v. Weekley, 299 So. 2d 645 (3d D.C.A. Fla. 1974). *Contra*, Fitzwilliams v. O'Shaughnessy, 40 Wis. 2d 123, 161 N.W.2d 242 (1968) (interpreting a permissive joinder rule identical to Rule 1.210(a) to prohibit joinder of defendants in successive automobile accidents).

93. 283 So. 2d at 43-44.

94. 24 Cal. 2d 123, 148 P.2d 23 (1944).

95. 283 So. 2d at 43-44. The Second District Court of Appeal had previously relied on *Kraft* in Highland Ins.Co. v. Walker Memorial Sanitarium and Benevolent Ass'n, 225 So. 2d 572, 575-76 (2d D.C.A. Fla. 1969).

96. 283 So. 2d at 44.

97. CALIF. CIV. PRO. CODE §379 (West 1973).

98. *Id.* §379(a).

was uncertain as to which defendants, if any, were liable.[99] Although the *Kraft* court noted that one of the purposes of the permissive joinder rule was to avoid a multiplicity of actions,[100] its decision to allow joinder was based on an extensive analysis of the rule's provisions as applied to the particular problem of joining successive tortfeasors.[101]

Although noting that the California provision was "somewhat different in content than Rule 1.210(a),"[102] the *Lawrence* court found the construction adopted in *Kraft* "compatible" with the provisions of the Florida rule.[103] The complete absence of any analysis of Rule 1.210(a) in *Lawrence* presents a striking contrast to the meticulously analytical approach of the California court in *Kraft*. The inability of the *Lawrence* court to reach a decision based solely on Rule 1.210(a) is not surprising in light of the general wording of the Florida provision.

Rule 1.210(a) fails to establish the minimum requirements to be satisfied by a plaintiff attempting to join multiple defendants. Considerations of trial convenience and fairness to the defendants require a closer factual relatedness between the joined defendants than mere interests adverse to the plaintiff. Only an adequate articulation of such requirements can effectively accomplish the rule's purpose of delimiting the scope of joinder. Although its breadth has unquestionably encouraged a flexible and liberal application, Rule 1.210(a) nevertheless fails to limit the court sufficiently in the exercise of its discretion to allow joinder of defendants. Thus, in the absence of more specific criteria, the *Lawrence* court was prompted to rely on general policy considerations to justify the joinder of successive tortfeasors. Although preventing a multiplicity of suits is a worthwhile objective, it is but a general goal underlying all the rules of civil procedure. The fact that this policy alone was the primary factor permitting the result in *Lawrence* emphasizes the inadequacy of Rule 1.210(a).

The federal rule also allows the permissive joinder of successive tortfeasors.[104] Rule 20(a) provides that:

> All persons . . . may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.[105]

In *Poster v. Central Gulf Steamship Corp.*,[106] a seaman was permitted to join as defendants two steamship companies whose alleged negligence had

99. *Id.* §379(c).
100. 24 Cal. 2d at 129, 148 P.2d at 25.
101. *Id.* at 127-31, 148 P.2d at 25-27.
102. 283 So. 2d at 44.
103. *Id.*
104. *See* Poster v. Central Gulf S.S. Corp., 25 F.R.D. 18 (E.D. Pa. 1960); McNeil v. American Export Lines, Inc., 166 F. Supp. 427 (E.D. Pa. 1958); Lucas v. City of Juneau, 127 F. Supp. 730 (D.C. Alas. 1955).
105. FED. R. CIV. P. 20(a).
106. 25 F.R.D. 18 (E.D. Pa. 1960).

occurred several months apart.[107] The plaintiff contended that a disease contracted as a result of the first company's allowing natives to board the vessel was aggravated by similar negligent acts of the second company. Applying Rule 20(a), the *Poster* court determined that the plaintiff's employment on the two vessels constituted a series of occurrences.[108] Furthermore, the question of whether the employment of the natives was negligent or rendered the ships unseaworthy involved a common question of law.[109] In permitting joinder, however, the *Poster* court placed primary emphasis on the tort doctrine holding that once a wrongdoer causes injury to another, he is liable for any subsequent injury caused by an intervening force that reasonably could have been foreseen or that is a normal incident to the risk created.[110] Under this doctrine, the original and the subsequent tortfeasors are held jointly and severally liable for injury caused by the subsequent tortfeasor's negligence.[111] Joinder of the two steamship companies was permitted because both companies could be held liable for the aggravation of the existing condition that occurred while the plaintiff was employed on the second vessel.

Interpreting a permissive joinder rule identical to Rule 20(a),[112] the Ohio supreme court allowed the joinder of successive tortfeasors in *Ryan v. Mackolin*.[113] In *Ryan*, the plaintiff suffered a back injury as a result of two automobile collisions occurring five months apart. The *Ryan* court first determined that the two collisions constituted a "series of occurrences" within the meaning of the rule.[114] The court further found that the contribution of each defendant to the injury presented a common question of fact.[115] Although the court supplemented its discussion with a comment on the effectiveness of the permissive joinder rule in avoiding a multiplicity of suits,[116] it was clear that the decision to allow joinder was based solely on a determination that the requirements of the rule were satisfied.

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107. In New York, where the permissive joinder rule is similar to Rule 20(a), joinder of successive tortfeasors is dependent on the length of time between the negligence of the first tortfeasor and that of the second tortfeasor. *Compare* Mullett v. Sacco, 47 Misc. 2d 441, 262 N.Y.S.2d 796 (1965) (joinder permitted when two automobile accidents occurred within a matter of minutes) *with* Cipolla v. LaFranco, 24 Misc. 2d 30, 202 N.Y.S.2d 337 (1960) (joinder prohibited when automobile accidents occurred thirteen months apart).

108. 25 F.R.D. 18, 20 (E.D. Pa. 1960).

109. *Id. But see* Sommers v. Korona, 54 Ill. App. 2d 425, 203 N.E.2d 768 (1964); (joinder prohibited because amount of plaintiff's damages did not constitute a common question of fact); Georges v. Duncan, 16 Md. A. 256, 295 A.2d 809 (1972).

110. 25 F.R.D. 18, 20 (E.D. Pa. 1960). *See* W. PROSSER, *supra* note 82, §44, at 276-81.

111. 25 F.R.D. at 20.

112. OHIO REV. CODE ANN. §2307.191 (Page Supp. 1973).

113. 14 Ohio St. 2d 213, 237 N.E.2d 377 (1968). *Accord*, Hager v. McGlunn, 518 S.W.2d 173 (Mo. 1974); Knapp v. Creston Elevator, Inc., 13 Ohio Misc. 188, 234 N.E.2d 326 (C.P. 1967).

114. 14 Ohio St. 2d at 217, 237 N.E.2d at 380. Interpreting an identical permissive joinder provision, the Colorado supreme court determined that the plaintiff's indivisible injury constituted an "occurrence" within the meaning of the rule. Sutterfield v. District Court, 165 Colo. 225, 226, 438 P.2d 236, 239 (1968).

115. 14 Ohio St. 2d at 217, 237 N.E.2d at 380.

116. *Id.* at 216-17, 237 N.E.2d at 380.

In contrast to the federal court in *Poster*, the *Ryan* court correctly determined that joint and several liability of defendants was not essential to joinder, so long as the rule's requirements were satisfied. The *Ryan* court found it unnecessary to rely on the tort doctrine of intervening causation. Expressly rejecting the contention that the two defendants were jointly liable for the injury flowing from the second collision,[117] the court determined that each defendant was responsible only for "that part of the damages attributable to his particular factor of causation."[118]

In contrast to the general Florida provision, Rule 20(a) establishes two specific prerequisites to joinder of parties defendant — the "same transaction" and "common question of law or fact." These requirements are practical tests directly related to the propriety of joinder and avoid prejudice by assuring a sufficient factual relatedness between the defendants. As demonstrated by *Ryan*, Rule 20(a) successfully sets forth the minimum requirements for joinder without discouraging a liberal interpretation.

Under Rule 20(a), the court is reasonably limited, but not unduly restricted, in the exercise of its discretion.[119] For example, the "common question of law or fact" test requires that the common issues be of "substantial importance as compared with all the issues."[120] The court may properly exercise its discretion to determine the comparative importance of the common and separate issues.

### JOINDER OF PLAINTIFFS UNDER RULE 1.210(a)

The provision of Florida Rule 1.210(a) relevant to permissive joinder of plaintiffs provides that "[a]ll persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs . . . ."[121] Although the present Florida position on permissive joinder of plaintiffs is not readily ascertainable from the few cases in this area, there is little indication that the liberal interpretation of Rule 1.210(a) in *Shingleton* and *Lawrence* has changed the Florida courts' traditionally restrictive approach to permissive joinder of plaintiffs.[122]

Other states rejected provisions identical to Florida's rule when it became apparent that the dual requirements, an interest in the subject of the action and in the relief demanded, defeated the goal of a liberal approach to joinder of parties and claims.[123] The permissive joinder provision adopted by

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117. *Id.* at 220, 237 N.E.2d at 382.

118. *Id.* at 222, 237 N.E.2d at 383.

119. Note, *Merger of Law and Equity in Florida—Problems and Proposals*, 20 U. FLA. L. REV. 173, 186 (1967).

120. Akely v. Kinnicutt, 238 N.Y. 466, 472-73, 144 N.E. 682, 684 (1924); W. BARRON & A. HOLTZOFF, *supra* note 12, at 532.

121. FLA. R. CIV. P. 1.210(a).

122. It may be siginificant, however, that joinder has been permitted in every case since *Shingleton* where the issue was presented. Garner v. Ward, 251 So. 2d 252 (Fla. 1971); Jefferson Realty v. United States Rubber Co., 222 So. 2d 738 (Fla. 1969); State Road Dept. v. Houdaille Indus., 237 So. 2d 270 (1st D.C.A. Fla. 1970).

123. Note, *supra* note 119, at 183-85.

Florida first appeared in New York's Field Code,[124] but its restrictive interpretation by New York courts[125] prompted the adoption of the federal rule in 1949.[126] Similar difficulties with such a provision led California to place the two requirements in the alternative, but even this amended version was soon replaced.[127]

As indicated by the experiences of other states, the restrictive wording of the Florida rule virtually forecloses a liberal interpretation, unless the troublesome requirement that all plaintiffs be interested in the relief demanded is totally ignored.[128] Automobile negligence cases furnish a good illustration of the restrictive nature of Florida's permissive joinder of plaintiffs rule. For example, provisions similar to Florida's rule have been applied to preclude the joinder of several persons injured in the same accident.[129] The denial of joinder is typically based on the idea that all the injured plaintiffs are not interested in the total relief demanded because "one cannot share in the suffering or injury of another."[130] Such a restrictive interpretation results in an unnecessary multiplicity of actions in situations where allowing joinder of multiple plaintiffs would afford a convenient settlement of an entire controversy in one action.

Rule 20(a), the federal rule governing permissive joinder of plaintiffs, states that:

> All persons may join in one action as plaintiffs if they assert any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.[131]

In reference to this provision, one commentator has found it "striking that the problem of joinder of parties [plaintiff], which has vexed many earlier procedural systems, has apparently been so completely resolved by Rule 20."[132] For example, the obstacles to joinder encountered under the Florida rule in automobile negligence cases are effectively obviated when the federal rule

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124. Ch. 379, §97 [1848] N.Y. Session Laws 516.

125. *See* Clark & Wright, *The Judicial Council and the Rule-Making Power: A Dissent and a Protest*, 1 SYRACUSE L. REV. 346 (1950).

126. N.Y.R. CIV. PRAC. 212 (1949).

127. Note, *supra* note 119, at 184; CAL. CIV. PRO. CODE §378 (Deering 1959).

128. *See* Wheaton, *A Study of the Statutes Which Contain the Term* Subject of the Action *and Which Relate to Joinder of Actions, Plaintiffs and to Counterclaims*, 18 CORN. L.Q. 20 (1932).

129. F. JAMES, *supra* note 8, at 457.

130. Brookside-Pratt Mining Co. v. McAlister, 196 Ala. 110, 112, 72 So. 18, 19 (1916): "Several parties cannot sue jointly for injuries to their respective persons. The principle underlying the rule is that it is not the act which injures one or both, but the consequences of the act, in the way of damages, that determines whether plaintiffs should join or sever. One stroke or one word may injure two or more alike, in the person or in the feelings, yet their actions are separate and not joint."

131. FED. R. CIV. P. 20(a). *See generally* Comment, *Multi-Party, Multi-Claim Litigation in the Federal Courts: The Unifying Influence of Judicial Economy*, 24 SW. L.J. 680 (1970).

132. W. BARRON & A. HOLTZOFF, *supra* note 12, at 179.

is applied.[133] The fact that the plaintiffs are injured in one accident satisfies the "same transaction" requirement, and the question of the defendant's liability for the plaintiffs' injuries presents common questions of both law and fact.

The Supreme Court of Florida has stressed that one aim of the rules of civil procedure is "to allow liberal joinder of parties and claims" in order "to grant complete relief and avoid a multiplicity of suits."[134] Full attainment of this objective is impossible until the adoption of a more liberal approach to joinder of parties plaintiff. In view of the obvious advantages of the federal provision, to retain a permissive joinder of plaintiffs rule as restrictive as Florida's provision is to stubbornly disregard the potential benefits of change in favor of a complacent acceptance of existing inadequacy.[135]

## RECOMMENDATION AND CONCLUSION

The Florida position on permissive joinder has remained relatively unchanged since early in the twentieth century, when the equity courts developed an approach allowing liberal joinder of defendants but restricting joinder of plaintiffs. This approach will continue to characterize Florida law until the shortcomings of the present permissive joinder rule are eradicated. The diverse problem created by the overly general joinder of defendants provision and the overly restrictive joinder of plaintiffs provision would be effectively eliminated by the adoption of a new rule similar to Federal Rule 20(a).

Although identical results have been reached under the Florida rule and the federal rule in the area of permissive joinder of parties defendant, it is clear that the approach to a permissive joinder problem under the two rules is entirely different. The Florida rule governing permissive joinder of defendants is a vaguely worded provision under which results must be based on policy considerations of fairness and convenience. The federal rule, although drafted to accomplish these same goals, establishes two practical requirements for permissive joinder. These two requirements serve not only to guide the court but also to limit its exercise of discretion in solving permissive joinder problems.

The specificity of the language in Rule 20(a) provides a clear statement of all criteria relevant to permitting joinder. In contrast, Rule 1.210(a) leaves much unstated. The general provision of Rule 1.210(a) — that all those with an interest adverse to the plaintiff may join as defendants — has long permitted the joinder of those jointly and severally liable to the plaintiff and has more recently been interpreted to allow joinder of those severally liable

133. *E.g.*, Thompson v. United States Glazing Co., 36 F. Supp. 527 (W.D.N.Y. 1941).

134. Miracle House Corp. v. Haige, 96 So. 2d 417, 418 (Fla. 1957); Triangle Distributors, Inc. v. Travelers' Indem. Co., 195 So. 2d 237, 238 (3d D.C.A. Fla. 1967).

135. Knudsen, *The Time Has Come for a Major Change in Oregon's Jabberwocky Code of Civil Procedure*, 8 WILLAMETTE L.J. 299, 302 (1972). A refusal to adopt provisions similar to the federal rules was described as a "failure . . . to join the twentieth century." *Id. See also* Lewis, *supra* note 9, at 382.

to the plaintiff. Joinder in the alternative is also permissible.[136] In contrast, Rule 20(a) expressly provides for the joinder of parties defendant when rights are asserted against them "jointly, severally, or in the alternative."[137] The adoption of this provision in Florida would make the permissive joinder rule more consistent with other more specifically worded Florida rules[138] and also would serve the broader objective of a complete codification of the rules of civil procedure.

Rule 1.210(a) does set forth specific criteria for determining the propriety of joinder of parties plaintiff. These restrictive criteria, however, are not readily susceptible to liberal interpretation. The adoption of a provision similar to Rule 20(a) would replace current stringent criteria with the "same transaction" and "common question of law or fact" tests, which were designed to be liberally implemented.

The objective of permitting joinder of both parties plaintiff and parties defendant is to accomplish a complete settlement of controversies and to avoid a multiplicity of suits. Since the objectives for joining both parties plaintiff and defendant are identical, there is no apparent reason for different criteria. Rule 20(a) prescribes the same tests for permissive joinder of parties plaintiff as for parties defendant. Adoption of this provision would not only promote uniformity within the area of permissive joinder but would also increase predictability. In addition, interpretations by the federal courts and by the many state courts that have adopted the federal rule would be helpful in analyzing particular factual situations previously unconsidered by the Florida courts.

Unlike the Florida rules, the federal rules were designed to operate as a cohesive unit. Rule 20(a) permits joinder when both the "same transaction" and "common question of law or fact" requirements are satisfied. Even if the "same transaction" requirement is not met, however, a satisfaction of the "common question of law or fact" requirement will permit consolidation under Federal Rule 42(a).[139] Since the issue of consolidation will invariably be raised when the propriety of permissive joinder is in question, the similarity of tests under both rules promotes the expedient resolution of both issues. The Florida rule concerning consolidation[140] is identical to Rule 42(a). Adoption of the federal permissive joinder provision would further the

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136. Southern American Fire Ins. Co. v. I.B.H. Liquor Corp., 242 So. 2d 731 (3d D.C.A. Fla. 1971) (permitting joinder of two insurance companies so that it could be determined which, if either, company was liable to the insured). *Cf.* Williams v. Smelt, 83 So. 2d 1 (Fla. 1955).

137. FED. R. CIV. P. 20(a).

138. In contrast, Rule 1.110(g) expressly permits joinder of claims in the alternative: "A party may also set forth two or more statements of a claim or defense alternatively, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements."

139. FED. R. CIV. P. 42(a).

140. FLA. R. CIV. P. 1.270(a). *See* John W. Campbell Farms, Inc. v. Zeda, 59 So. 2d 750 (Fla. 1952).