APPORPTIONMENT OF TORT LIABILITY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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WITH REPORTER’S NOTES

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NATIONAL CONFERENCE OF COMMISSIONERS
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APPORTIONMENT OF TORT RESPONSIBILITY ACT

SECTION 1. DEFINITIONS. In this [Act]:

(1) “Fault” includes:

(A) an act or omission that is in any measure negligent or reckless toward the person or property of the actor or another person or that subjects a person to strict liability in tort;

(B) breach of warranty;

(C) unreasonable assumption of risk not constituting an express enforceable agreement;

(D) misuse of a product for which a person otherwise would be liable; and

(E) unreasonable failure to avoid injury or death or to mitigate damages.

(2) “Nonparty at fault” [means] [includes] a person who is allegedly responsible for all or part of a claimant’s injury or harm and, as to that injury or harm, has been released from liability, is legally immune from liability, or is not amenable to service of process or to the jurisdiction of the court where the claim [has been filed] [is being adjudicated].

(3) “Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government; governmental subdivision; agency, or instrumentality; public corporation, or any other legal or commercial entity.

Reporter’s Notes

The definition of “fault” is taken from the Uniform Comparative Fault Act. Notice that it does not allude to intentional acts, but the definition is not exclusive so that one could argue that intentional acts could be compared. The “nonparty at fault” definition was not part of the Uniform Act because the Act did not contemplate that the fault of a nonparty would be taken into account.

The definition of “person” is a standard version definition employed by the Conference.

SECTION 2. EFFECT OF CONTRIBUTORY FAULT. In an action based on fault seeking to recover damages for [bodily] injury to or death of a person or [physical] harm to [tangible] property, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for the injury or harm attributable to the claimant’s contributory fault, but does not bar recovery [unless the claimant’s faults...
[equal to or] greater than the combined fault of all of the other persons whose fault is determined in the action to have caused the injury or harm to the claimant].

Reporter’s Notes
Two basic issues are raised. What types of tort cases should be governed by the Act? Should the Act adopt a pure comparative fault system or a modified system? If it is to be a modified system, what should the threshold be—50 percent or 51 percent or some other figure?

SECTION 3. APPORTIONMENT OF DAMAGES.

(a) In all actions seeking to recover damages for [bodily] injury to or death of a person or [physical] harm to [tangible] property involving fault of more than one person, unless otherwise agreed by all parties, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating:

(1) the amount of damages each claimant would be entitled to recover if any contributory fault is disregarded; and

(2) as to each claim, the percentage of the total fault of all the parties and nonparties that is allocated to each claimant, defendant, and nonparty.

(b) In submitting interrogatories to the jury or in making its findings under subsection (a), the court may determine that two or more persons are to be treated as a single party.

(c) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party and nonparty at fault and the extent of the causal relation between the conduct and the damages.

[(d) Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.]

Reporter’s Notes
This language is taken from the Uniform Act, but it differs in that it takes into account the conduct of nonparties at fault, something the Uniform Act did not do. Should the fault of nonparties be taken into account? Do we need the bracket language in subsection (d). It was in the Uniform Act.

SECTION 4. DETERMINING DAMAGE AWARD; ENTERING JUDGMENT. Upon motion of a
party, the court shall determine the award of damages to each claimant in accordance with the percentage of fault findings made pursuant to Section 3 and enter judgment for the amount severally against each party liable. The court shall also enter judgment against all the liable parties for the total amount recoverable by the claimant on the basis of rules of joint-and-several liability, but condition such liability of the judgment debtors upon the requirements of Section 5.

**Reporter's Notes**

Most jurisdictions require that the trier of fact determine the percentages of fault and the amount of damages separately. It is the responsibility of the court to make the necessary calculations to enter judgment.

The Uniform Act provided for joint and several liability. This section provides for several liability, but conditions joint liability upon the inability of a judgment debtor to satisfy his or her responsibility for the damages assessed. The conditions for joint liability are set out in Section 5.

**SECTION 5. SATISFACTION OF JUDGMENT.**

(a) Except as otherwise provided in subsection (b), upon entry of judgment containing an award of damages under rules of joint-and-several liability under Section 4, a judgment creditor may only proceed to satisfy the judgment against each judgment debtor on the basis of several liability.

(b) Upon motion made not later than [one year] after judgment is entered, a judgment creditor may petition the court to determine whether all or part of a judgment debtor’s several share is uncollectible. If the court makes such a determination, the court [may][shall]:

(1) authorize the judgment creditor to satisfy the judgment under the rules of joint-and-

several liability; or

(2) reallocate all or part of any uncollectible amount to the other judgment debtors and authorize the judgment creditor to satisfy the judgment from the other judgment debtors to the extent of the reallocation.

(c) Any relief granted under this section does not relieve the judgment debtor from any continuing liability to the judgment creditor or from any obligation to pay contribution to other judgment debtors.

**Reporter's Notes**

The key provision in this section is subsection (b) which would permit or require, depending on the language chosen in the brackets in line 15, the court to order a judgment debtor who has been conditionally adjudged jointly and severally liable to pay more than the several share of responsibility. If the Committee were to choose “may” version, the court would have the discretion to grant or not grant the motion of a judgment creditor.
Should the court have this kind of discretion and, if so, should there be criteria set out in the Act which would govern the court’s decision?

If the court were to grant the motion of a judgment creditor to reallocate the responsibility of the parties to the judgment under this section, subsection (b) also would allow the court to do two different things: (1) enter an order that would permit the judgment creditor to satisfy the judgment as if it had originally been entered on a joint and several basis or (2) the court could recalculate the shares as if the insolvent judgment debtor had not been at fault (or perhaps on some other basis). The second option could, but would not necessarily have to, take into account any share of fault assessed against a judgment creditor. Do we want to give the court the discretion contemplated in the two basic approaches and, if so, should the court have the discretion permitted within the second option?

SECTION 6. SETOFF. A claim and counterclaim shall not be set off against each other, except by agreement of the parties. On motion, however, the court, if it finds that the obligation of either party is likely to be uncollectible, may order that both parties make payment into the court for distribution. The court shall distribute the funds received and declare obligations discharged as if the payment into court by either party had been a payment to the other party and any distribution of those funds back to the party making payment had been a payment to him by the other party.

Reporter’s Notes

This is the language from the Uniform Comparative Fault Act.

SECTION 7. RIGHT OF CONTRIBUTION. A judgment debtor who is [subject to liability under Section 5(b) for more than the debtor’s assessed share of liability under Section 4 or] jointly and severally liable with one or more other judgment debtors upon the same indivisible claim for the same injury, death, or harm, may seek contribution from the other judgment debtors for any amount the judgment debtor has paid in excess of the several amount for which the judgment debtor is responsible. It may be enforced either in the original action or by a separate action brought for that purpose.

Reporter’s Notes

This language, except for that in brackets, is taken from the Uniform Comparative Fault Act and would be applicable to situations under the Apportionment of Tort Responsibility Act where joint and several liability is preserved. If the Committee were to adopt the approach under subsection (b) of Section 5 allowing a judgment to be satisfied on a joint and several basis or otherwise requiring a judgment debtor to pay more than his or her assessed share under Section 4, it probably would be advisable to have an explicit reference in Section 7 to ensure that the right of contribution extends to the situation under subsection (b). The bracketed language is an attempt to recognize and assure that right of contribution.
**SECTION 8. EFFECT OF RELEASE.** A release, covenant not to sue, covenant not to execute a judgment, or similar agreement entered into by a claimant and a person subject to liability discharges the person from liability to the claimant to the extent provided in the release and for contribution to any other person that is subject to liability to the claimant for the same injury, death or harm. The release does not discharge any other person subject to liability upon the same claim unless it so provides. The claim of the releasing person against other persons liable for the same injury, death, or harm for which the released person is liable is reduced by the amount of the released person’s several share of the obligation, determined in accordance with Section 3.

**Reporter’s Notes**
Although I have rewritten this provision which was contained in the Uniform Comparative Fault Act, I do not think there is any substantive difference. Section 3 specifically contemplates that any releasing party’s fault will be an issue in the continuing litigation between the claimant and nonreleasing parties. The effect of the release is determined by whatever share of responsibility is ultimately assessed against the releasing party and the nonreleasing parties are not responsible for that share.

**SECTION __. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

**SECTION __. SHORT TITLE.** This [Act] may be cited as the Uniform Apportionment of Tort Responsibility Act.

**SECTION __. SEVERABILITY CLAUSE.** If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**SECTION __. APPLICABILITY.** This [Act] applies to actions [filed on or][accruing] after its effective date.
SECTION __. EFFECTIVE DATE. This Act takes effect on ....

SECTION __. REPEALS. The following acts and parts of acts are repealed:

(1) ....

(2) ....

(3) ....