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# **THE DARKSIDE THAT DWELLS IN THE SHADOW** **OF JOINT AND SEVERAL LIABILITY**

AUHORED BY - MARIA PHILIP MAMPILLY  
& ROHAN AJOY KADAVAN

## **ABSTRACT:**

The present holding of the laws on the torts governing that of Joint and Several Liability seems to have certain discrepancies that, in the opinion of this author, may contradict the very purpose of law and the civilizing mission the law stands for. In this context, the author in this paper intends to dive into the practicalities and flaws that have been ‘dwelling in the shadow of Joint and several liability’. The paper aims to establish that the present laws on these liabilities are unfair and unjust.

The sole idea behind joint and several liability is that all the parties that are responsible for causing any sort of damage to a person are equally responsible for it. In the case of joint liability when two or more tortfeasors cause any damage to the plaintiff, they have to jointly compensate for the damages they have caused. In the case of several liability when two or more tortfeasors cause damages to the plaintiff each tortfeasor has to equally compensate the person who suffered the damage. Thus, the law does not preclude the grieved party or parties; i.e.; the plaintiff from suing the wrongdoers individually or selectively or collectively for damage or injury suffered.

For example, if A suffers an injury by the actions of B, C and D, the position of law allows A to sue B, or C or D individually or B or C or D alone or B and C and not D etc. or all of them together. However, in the opinion of the author this is problematic and unjust. It is important to focus and view the position of law from the lens of the wrong doers as well. It can be unambiguously acknowledged that the wrongdoers may not have always proportionally contributed to the injury. For example, if A suffers an injury by the actions of B which also involved C and D, as under the present law A is entitled to sue any of them and every one of them as well, irrespective of whether they are responsible for the same in the same degrees or not. It is unjust and unfair to make D liable

for something B has done though he was a party to it, the same goes for C. It is also unjust and unfair to make B liable for the same thing when C and D has also contributed or been involved in such an action. Moreover, the action for example could be caused by them in different degrees say 60%, 21%, 19% by B, C and D. Therefore, it can be without doubt put forth that making B, C and D jointly and severally liable for the act in the above discussed instance is blatantly unfair and unjust and does not fit in well within principles of justice, equity and good conscience. It is also problematic in ways such that the above situation would be considered to be the same as such situations wherein B, C and D could be in actual terms equally or jointly responsible.

The situation becomes more problematic when two or more breaches of duty by various parties result in the claimant suffering a single, indivisible injury. According to the law, the claimant has the right to sue them altogether or individually for the full amount of his loss resulting to unjustness towards a defendant or the other.(1530) As a result, additional rules must be in place to deal with the possibility of further legal actions regarding that damage as well as claims for contribution or compensation made by one tortfeasor against the other parties.(1530) The author would also like to focus on the fact that it would be necessary for the claimant to file many cases, some of which may involve complicated questions of liability, causation, and proof, under a system that allowed him to sue each party merely for a proportionate share of the damage. The claimant would now easily initiate legal action against the "easiest target" under current legislation. (1530). However, the choice of "easiest target" or even "desired target" is problematic and unjust, basically on plain terms as one should not be in trouble for being vulnerable but because one should be. For example, when the factor of solvency is taken under notice the very fact that the insolvent defendant can depend on the solvent defendant to be responsible for the entire compensation (1530) and also appealing from the standpoint of the solvent defendant, who might end up bearing complete responsibility for a loss in which he only played a small, even insignificant role demonstrates how this law does not advance equality.

Some exceptions like the In *Holtby v. Brigham & Cowan (Hull) Ltd.* 13, even though the claimant had worked for multiple companies and had likely been exposed to asbestos at some point, only one of them was held liable for the asbestosis he later got. (1531) The claimant had been exposed for a proportionate amount of time while working for the defendant, thus that was the method used to

assign blame. (1531)<sup>1</sup>, here we can see the reasoning for the judgement is reasonable because liability is assigned to the one that caused the most damage. Then there are cases where the defendant is required to have caused 60 percent or minimum only then the plaintiff can sue the defendant, this is another limitation to which joint and several liability can be invoked.

Tort law determines the precise conditions under which a person is liable for his actions to another. Laws; according to McBright, bring order and civilization to society<sup>2</sup>. In the opinion of the author, it will be possible on ideal terms if it is based on the principles of equality, fairness, good conscience, equity and justice. The importance of the Latin maxim “*audi alterum partum*” is very much relevant in this context. The purpose of the law is not just to side with the affected, but also to consider the perspectives of the wrongdoer and society as well. On the lines of the above discussed, the author establishes that it is not fair to shift the laws to the person who caused it or to the beneficiary” considering the doctrine of joint and several liability. It would be best if the law is made capacious enough to encompass the nuances of reality and situations possible. It is ideal to make room for such, by way of setting up a limit or base requirement or criteria in determining liability of those wrong doers who are stuck in the dark side in the shadow of joint and several liability.

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<sup>1</sup> Freedman, Waïien. *Defenses to Products Liability: A Pïmeï foi Plaintiffs and Defendants*. Buffalo, William S.Hein & Co., Inc.

<sup>2</sup> McBride NJ and Varuhas J, *Letters to a Law Student* (4th edn, Pearson 2022)