

HANDOUT #9

**Multi-State Jurisdictional Chart:
Allocation, Apportionment & Joint
and Several Liability (2018)**

SURVEY OF APPORTIONMENT OF FAULT BY STATE - 2018

By: John Elliott Leighton (June, 2005)

Updated by: Leto Copeley, Jeff Fritz & Chelsie Lamie (September, 2018)

State	Joint and several liability abolished?	Apportion fault of nonparties?	Compare negligent & intentional conduct?
Alabama	<p>No, Alabama still has Joint and several liability. Alabama has joint and several liability as to compensatory damages but not as to punitive damages.</p> <p><u>Tatum v. Schering</u>, 523 S..2d 1042, 1048 (Ala. 1988).</p> <p>“Damages are not apportioned among joint tortfeasors in Alabama; instead, joint tort-feasors are jointly and severally liable for the entire amount of damages awarded.” <u>Matkin v. Smith</u>, 643 So. 2d 949, 951 (Ala. 1994). <i>See also</i>, <u>Ex parte Barnett</u>, 978 So. 2d 729 (Ala. 2007); <u>Schaeffer v. Poellnitz</u>, 154 So. 3d 979 (Ala. 2014).</p>	<p>No. there is no apportionment of fault at all in Alabama.</p> <p><u>Buchanan v. Collier</u>, 555 So. 2d 134, 136 (Ala. 1989); <u>Robbins v. Forsburg</u>, 257 So. 2d 353, 354 (Ala. 1971)</p>	<p>No.</p>
Alaska	<p>Yes.</p> <p>ALASKA STAT. § 09.17.080.</p>	<p>No, but negligent tortfeasor can join intentional tortfeasor.</p> <p>ALASKA STAT. § 09.17.080.</p> <p>No allocation of fault to a non-party if parties had opportunity to join that defendant but chose not to.</p>	<p>Yes.</p> <p>ALASKA STAT. §§ 09.17.080, 09.17.900 (Supp. 1997); <i>see also</i> L.D.G., Inc. v. Brown, 211 P.3d 1110, 2009 Alas. LEXIS 89 (2009); <u>Pederson v. Barnes</u>, 139 P.3d 552 (Alaska 2006).</p>

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Arizona	<p>Yes – Joint and several liability abolished by A.R.S. § 12-2506 in 1987.</p> <p><u>State Farm Ins. Cos. v. Premier Manufactured Sys.</u>, 217 Ariz. 222, 225 (Ariz. 2007). They have several liability instead.</p> <p>There are some notable exceptions to Arizona’s several liability rule. Joint and several liability remains the rule in cases where vicarious liability applies; where the tortfeasors acted in concert; for actions brought under the Federal Employers’ Liability Act, which addresses compensation of injured railroad workers; and for waste disposal cases. Ariz. Stat. § 12-2506 (1984); <u>Yslava v. Hughes Aircraft Co.</u>, 936 P.2d 1274 (Ariz. 1997).</p>	<p>Yes. UCATA (A.R.S. § 12-2506) § 12-2506(B); <i>see</i> Ariz. R. Civ. P. 26(b) (5) (identifying procedural requirements for parties' providing notice of nonparty at fault pursuant to § 12-2506(B)); <u>Rosner v. Denim & Diamonds, Inc.</u>, 188 Ariz. 431, 433, (App. 1996. <u>Cramer v. Starr</u>, 240 Ariz. 4, 8 (Ariz. 2016)</p>	<p>Yes. <u>Natseway v. City of Tempe</u>, 184 Ariz. 374 (Ariz. App. 1995); <u>Hutcherson v. City of Phoenix</u>, 192 Ariz. 51, 54 (Ariz. 1998).</p>

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Arkansas	Yes, abolished. “TORTS -- JOINT AND SEVERAL LIABILITY -- DETERMINED BY IMPACT. -- Arkansas has long since abolished the requirement that joint tortfeasors act in concert to result in joint and several liability; rather, joint and several liability is determined by impact; where there is a single injury, it is irrelevant that the acts of the individual defendants would not have caused the ultimate result; where concurrent negligent acts result in a single injury, each tortfeasor is jointly and severally liable, and a plaintiff can institute an action against any or all tortfeasors, individually or jointly.” <u>Boatmen's Nat'l Bank v. Cole</u> , 329 Ark. 209, 210 (Ark. 1997)	Yes. A.C.A. § 16-55-202	No. <u>Kellerman v. Zenov</u> , 64 Ark. App. 79 (Ark. App. 1998).
California	No, California has joint and several liability. “Proposition 51 [Cal. Civ. Code § 1431 et seq.] retains the traditional joint and several liability doctrine with respect to a plaintiff's <i>economic</i> damages but adopts a rule of several liability for <i>noneconomic</i> damages, providing that each defendant is liable for only that portion of the plaintiff's noneconomic damages which is commensurate with that defendant's degree of fault for the injury.” <u>Evangelatos v. Superior Court</u> , 44 Cal. 3d 1188, 1198 (Ca. 1988).	Yes, but there are limits. <u>Richards v. Owens-Illinois, Inc.</u> , 14 Cal. 4th 985 (Ca. 1997).	Yes. <u>Thomas v. Duggins Construction Co., Inc.</u> , 139 Cal. App. 4th 1105 (Ca. App. 2006)

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Colorado	Yes, unless the defendants act in concert. COLO. REV. STAT. § 13-21-111.5 (2017).	Yes. COLO. REV. STAT. § 13-21-111.5 (2017).	Yes. <u>Slack v. Farmers Insurance Exchange</u> , 5 P.3d 280 (Colo. 2000).
Connecticut	Yes, except in products liability actions. CONN. GEN. STAT. ANN. §§ 52-572h.	No. CONN. GEN. STAT. ANN. § 52-572h; <u>Sowell v. Konover Constr. Corp.</u> , 2006 Conn. Super. LEXIS 94, 2006 WL 240576 (Conn. Super. Ct. January 17, 2006)	No. CONN. GEN. STAT. ANN. § 52-572h(o).
Delaware	No. 10 Del. C. § 6301 (2018); <u>Medical Ctr. v. Mullins</u> , 637 A.2d 6 (Del. 1994).	Yes.	Yes.
District of Columbia	No. <u>Faison v. National Mortgage Corp.</u> , 839 F.2d 680, 686 (D.C. Cir. 1987); <u>Leiken v. Wilson</u> , 445 A.2d 993, 999 (D.C. App. 1982).		

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Florida	<p>Yes, abolished. “The enactment of section 768.81, Florida Statutes, represented a policy shift in the State of Florida from joint and several liability that resulted in a single recovery for the plaintiff to the apportionment of fault. Therefore, instead of each defendant being severally responsible for all of the plaintiff’s damages, with limited statutory exceptions, the defendant is responsible only for the percentage of fault determined by the jury. <i>See</i> § 768.81, Fla. Stat. (2000).”</p> <p><u>Gouty v. Schnepel</u>, 795 So. 2d 959, 961 (Fla. 2001).</p>	<p>Yes. “In order to allocate any or all fault to a nonparty, a defendant must affirmatively plead the fault of a nonparty and, absent a showing of good cause, identify the nonparty, if known, or describe the nonparty as specifically as practicable, either by motion or in the initial responsive pleading when defenses are first presented, subject to amendment any time before trial in accordance with the Florida Rules of Civil Procedure.” Fla. Stat. § 768.81 and <u>Fabre v. Marin</u>, 623 So. 2d 1182 (Fla. 1993).</p>	<p>No. <u>Merrill Crossings Associates v. McDonald</u>, 705 So. 2d 560 (Fla. 1997); §768.81(4) (2011), this section does not apply...to any action based upon an intentional tort...; <u>Clark v. Polk County</u>, 753 So. 2d 138 (Fla. 2d DCA 2000).</p>
Georgia	<p>Yes, abolished in 2005, O.C.G.A. § 51-12-33</p>	<p>Yes. <u>Walker v. Tensor Mach., Ltd.</u>, 298 Ga. 297 (Ga. 2015)</p>	<p>Yes. <u>Zaldivar v. Prickett</u>, 297 Ga. 589 (Ga. 2015)</p>

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Hawaii	<p>Mixed. HRS § 663-10.9(1999). Joint and several liability for joint tortfeasors as defined in section 663-11 is abolished except in the following circumstances: (1) For the recovery of economic damages against joint tortfeasors in actions involving injury or death to persons; (2) For the recovery of economic and noneconomic damages against joint tortfeasors in actions involving: (A) Intentional torts; (B) Torts relating to environmental pollution; (C) Toxic and asbestos-related torts; (D) Torts relating to aircraft accidents; (E) Strict and products liability torts; or (F) Torts relating to motor vehicle accidents except as provided in paragraph (4).</p>	<p>No. See notes to HRS § 663-31 citing <u>Sugue v. F. L. Smithe Mach. Co.</u>, 56 Haw. 598, 546 P.2d 527, 1976 Haw. LEXIS 180 (Haw. 1976).</p>	<p>Yes. <u>Moyle v. Y & Y Hyup Shin, Corp.</u>, 118 Haw. 385 (Hi. 2008).</p>
Idaho	<p>Yes, except in cases of respondeat superior and when defendants act in concert. IDAHO CODE § 6-803 (2003).</p>	<p>Yes. <u>Pocatello Industrial Park v. Steel West</u>, 621 P.2d 399 (Idaho 1980); <u>Beitzel v. City of Coeur d'Alene</u>, 827 P.2d 1160 (Idaho 1992).</p>	<p>Yes. <u>Rausch v. Pocatello Lumber Co. Inc.</u>, 14 P.3d 1074 (Idaho Ct. App. 2000); IDAHO CODE § 6-803 (2003).</p>

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Illinois	<p>No, joint and several liability for nonmedical damages; defendants are severally liable for all other damages if they are less than 25% at fault. ILL. ANN. STAT. ch. 735, § 5/2-1117 (Smith-Hurd 2003).</p> <p>Notwithstanding § 1117, defendants are jointly liable in all actions involving discharges of pollutants into the environment or negligent medical malpractice. <i>Id.</i> § 5/2-1118.</p>	<p>Yes (in comparative negligence of plaintiff determination).</p> <p><u>Bofman v. Material Service Corp.</u>, 466 N.E.2d 1064 (Ill. App. 1984); <u>Bodkin v. 5401 S.P. Inc.</u>, 768 N.E. 2d 194 (Ill. App. 2002).</p>	<p>No.</p> <p><u>Hills v. Bridgeview Little League Ass'n</u>, 306 Ill. App. 3d 13, 21, 713 N.E.2d 616, 1999 Ill. App. LEXIS 406, 239 Ill. Dec. 85 (Ill. App. Ct. 1st Dist. June 14, 1999), <i>reversed on other grounds</i>, <u>Hills v. Bridgeview Little League Ass'n</u>, 195 Ill. 2d 210, 745 N.E.2d 1166, 2000 Ill. LEXIS 1699, 253 Ill. Dec. 632 (Ill. November 16, 2000); see also <u>Poole v. City of Rolling Meadows</u>, 212 Ill. Dec. 171, 656 N.E.2d 768 (1995) (“A plaintiff’s negligence cannot be compared with a defendant’s willful and wanton misconduct” that was intentional, but may be compared to defendant’s reckless conduct.)</p>
Indiana	<p>Yes.</p> <p>IND. CODE ANN. § 34-51-2-8.</p>	<p>Yes.</p> <p>IND. CODE ANN. § 34-51-2-8, 34-51-2-11.</p>	<p>Undecided.</p> <p>IND. CODE ANN. §§ 34-51-2-10.</p>
Iowa	<p>Yes, for defendants less than 50% at fault. For defendants more than 50% at fault, joint and several liability applies to economic damages only. IA. CODE § 668.4.</p>	<p>Some, including persons who have been released, but not unidentified persons.</p> <p>IA. CODE §§ 668.2, 668.3; <u>Selchert v. State</u>, 420 N.W.2d 816 (Iowa 1980).</p>	<p>No.</p> <p><u>Reilly v. Anderson</u>, 727 N.W.2d 102, 112 (Iowa 2006); <u>Tratchel v. Essex Group, Inc.</u>, 452 N.W.2d 171, 180-81 (Iowa 1990).</p>

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Kansas	Yes. KAN. STAT. ANN. § 60-258a (d) (2011).	Yes. <u>Mathis v. TG&Y</u> , 751 P.2d 136 (Kan. 1988).	No. <u>Kansas State Bank & Trust Co. v. Specialized Transportation Services, Inc.</u> , 819 P.2d 587 (Kan. 1991). But see <u>Maunz v. Perales</u> , 76 P.3d 1027 (Kan. 2003) (wrongful death claim against negligent doctor for decedent's suicide), discussing apportionment in cases where defendant owes duty to protect plaintiff from intentional conduct.
Kentucky	Yes. KY. REV. STAT. ANN. § 411.182 (3).	Only if they have settled by release or agreement. KY. REV. STAT. ANN. § 411.182 (1)(b), (4); <u>Baker v. Webb</u> , 883 S.W.2d 898 (Ky. Ct. App. 1994).	Yes. <u>Roman Catholic Diocese v. Sectar</u> , 966 S.W. 2d 286 (Ky. Ct. App. 1998).
Louisiana	Yes, abolished. Unless Defendants conspired to commit an intentional tort. La. Code Art. 2324 (1979); <u>Ross v. Conoco, Inc.</u> , 828 So.2d 546 (La. 2002).	Yes. LA Civ Code 2323	No, at least in cases where plaintiff is partly at fault. See LA Civ Code 2323. See also <u>Veazey v. Elmwood Plantation Assoc., Ltd.</u> , 650 So. 2d 712 (La.1994)

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Maine	No. ME. REV. STAT. ANN. tit. 14, § 156.	No. ME. REV. STAT. ANN. tit. 14, § 156.	Yes. ME. REV. STAT. ANN. tit. 14, § 156. (“The damages recoverable in respect thereof must be reduced to such extent as the jury thinks just and equitable having regard to the claimant's share in the responsibility for the damage.” “Fault means negligence, breach of statutory duty or other act or omission that gives rise to a liability in tort . . .”)
Maryland	No. MD. CODE § 3-1401(c); Owens-Illinois v. Armstrong, 604 A.2d 47 (Md. 1992).	No. <u>Hashmi v. Bennett</u> , 7 A.3d 1059 (Md. 2010).	
Massachusetts	No. MASS. GEN. LAWS ANN. ch. 231B, § 1 (West 1986).	No. “A jury must apportion negligence between only the plaintiff and the defendant; the fault of non-parties . . . is not to be taken into account.” <u>Shantigar Found. v. Bear Mt. Builders</u> , 804 N.E.2d 324 (Mass. 2004), citing <u>Correia v. Firestone Tire & Rubber Co.</u> , 446 N.E. 2d 1033 (Mass. 1983).	No. “The comparative negligence statute is not applicable to intentional or wilful, wanton, or reckless conduct.” <u>Boyd v. AMTRAK</u> , 845 N.E.2d 356 (Mass. 2006), footnote 11.
Michigan	Yes, except in medical malpractice cases where the plaintiff is without fault. MICH. STAT. ANN. § 600.6304 (West 1996).	No. <u>Department of Transportation v. Thrasher</u> , 493 N.W. 2d 457 (Mich. Ct. App. 1992).	Undecided. MICH. STAT. ANN. § 600.6304.

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Minnesota	Yes, except for: persons whose fault is greater than 50%, two or more persons who act in concert that results in injury, any person who commits an intentional tort, or damage to the environment or public health. MINN. STAT. § 604.02 (2003).	Yes. MINN. STAT. § 604.01 (2003); <u>Johnson v. Niagara Mach. & Tool Works</u> , 666 F.2d 1223 (Minn. 1981).	Undecided. MINN. STAT. §§ 604.01, .02
Mississippi	Yes, abolished. “Except as otherwise provided in subsection (4) of this section, in any civil action based on fault, the liability for damages caused by two (2) or more persons shall be several only, and not joint and several and a joint tort-feasor shall be liable only for the amount of damages allocated to him in direct proportion to his percentage of fault. . . Joint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it.” Miss. Code Ann. § 85-5-7	Yes. <u>Ghane v. Mid-South Inst. of Self Def. Shooting, Inc.</u> , 137 So. 3d 212 (Ms. 2014).	Yes. Miss. Code Ann. § 85-5-7
Missouri	No. Joint and several liability where defendants are at least 51% at fault; otherwise, several liability except where respondeat superior applies. MO. REV. STAT. § 537.067.	No. <u>Teeter v. Missouri Highway and Transportation Comm.</u> , 891 S.W.2d 817 (Mo. 1995) (en banc); <u>Millentree v. Tent Restaurant Operations, Inc.</u> , 618 F. Supp. 2d 1072 (W.D. Mo. 2009).	Undecided. MO. REV. STAT. § 537.067.

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Montana	No, except when the defendant is 50% or less at fault and the defendants did not act in concert. MONT. CODE ANN. § 27-1-703 (1997).	Yes. Mont. Code Ann. § 27-1-702. Contributory fault does not bar recovery in an action by a person or a person's legal representative to recover tort damages for death of a person or injury to a person or property if the contributory fault was not greater than the fault of the defendant or the combined fault of all defendants and nonparties, but damages allowed must be diminished in proportion to the percentage of fault attributable to the person recovering.	Undecided. <u>Boyken v. Steele</u> , 847 P.2d 282 (Mont. 1995).
Nebraska	Not for defendants who act in concert. For other defendants, liability for economic damages is joint and several; liability for non-economic damages is several only. NEB. REV. STAT. § 25-21, 185.10.	No. NEB. REV. STAT. § 25-21, 185.10; <u>Tadros v. City of Omaha</u> , 273 Neb. 935, 735 N.W.2d 377 (2007); <u>Richter v. Slaughter</u> , 2009 Neb. App. LEXIS 8, 2009 WL 97142 (Neb. Ct. App. January 13, 2009).	No. <u>Brandon v. County of Richardson</u> , 624 N.W.2d 604, 620 (Neb. 2001).
Nevada	Yes, abolished. Nev. Rev. Stat. Ann. § 41.141	Yes. <u>Bhatia v. Eighth Judicial Dist. Court of Nev.</u> , 2018 Nev. Unpub. LEXIS 394; <i>slip op</i> (Nv. May 9, 2018).	Yes. <u>Café Moda, LLC v. Palma</u> , 128 Nev. 78 (Nv. 2012)

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New Hampshire	Yes, but only when a defendant is 50% or greater at fault and did not knowingly pursue or take active part in a common plan or design resulting in harm. N.H. REV. STA. ANN. § 507:7-e(I)	Yes. <u>State v. Exxon Mobil Corp.</u> , 168 N.H. 211, 126 A.3d 266, 2015 N.H. LEXIS 108 (N.H. October 2, 2015), <i>cert. denied</i> , 136 S. Ct. 2009, 195 L. Ed. 2d 215, 2016 U.S. LEXIS 3184 (U.S. 2016); <u>Ocasio v. Fed. Express Corp.</u> , 162 N.H. 436, 33 A.3d 1139, 2011 N.H. LEXIS 124 (N.H. September 22, 2011); <u>DeBenedetto v. CLD Consulting Eng'rs, Inc.</u> , 903 A.2d 969 (N.H. 2006).	Undecided. N.H. REV. STA. ANN. § 507:7-e (considers “proportionate <i>fault</i> of each of the parties”)
New Jersey	Yes, but not for defendants 60% or more at fault. For defendants greater than 20% but less than 60% at fault, liability is several. Notwithstanding the amount of fault, there is joint and several liability for environmental tort actions. N.J. STAT. ANN. § 2A:15-5.3.	No. N.J. STAT. ANN. § 2A:15-5.2(a)(2) (fact finder shall make finding of extent of fault of each “party”); <u>Brodsky v. Grinnell Haulers, Inc.</u> , 181 N.J. 102, 853 A.2d 940, 2004 N.J. LEXIS 943 (N.J. August 10, 2004) (apportionment permitted of defendant dismissed by bankruptcy); <u>Bencivenga v. J.J.A.M.M., Inc.</u> , 609 A.2d 1299 (N.J. Super. Ct. 1992) (apportionment of settling defendants who are no longer parties is permitted).	Yes. <u>Waldron v. Johnson</u> , 368 N.J. Super. 348, 845 A.2d 1287, 2004 N.J. Super. LEXIS 151 (App.Div.), <i>certif. denied</i> , 182 N.J. 139, 861 A.2d 844, 2004 N.J. LEXIS 1292 (N.J. 2004); <u>Blazovic v. Andrich</u> , 590 A.2d 222 (N.J. 1991). <i>but see</i> N.J. STAT. ANN. § 2A:15-5.2(a) (allocation of fault to be made in “negligence”, “strict liability actions” and “social host actions”).

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New Mexico	Yes, abolished. N.M. Stat. Ann. § 41-3-2. Certain exceptions exist, however, including for intentional tortfeasors, vicariously liable defendants, the first of successive tortfeasors, defendants named in products liability cases and cases involving inherently dangerous activities. <u>Lewis v. Samson</u> , 35 P.3d 972 (N.M. 2001)	Yes. <u>Richter v. Presbyterian Healthcare Servs.</u> , 2014-NMCA-056 (N.M. App 2014)	Yes. <u>Rodriguez v. Del Sol Shopping Ctr. Assocs., L.P.</u> , 2014-NMSC-014 (N.M 2014).
New York	No, except when the defendant is 50% or less at fault, N.Y. CIV. PRAC. L. & R. § § 1601 & 1602 (McKinney Supp. 1995), then several liability for noneconomic damages, <i>id.</i> § 1602. The provisions in Rule 1601 do not apply in actions requiring proof of intent or involving reckless disregard, motor vehicles, environmental actions, defendants knowingly or intentionally acting in concert, or in very limited circumstances, certain product liability actions.	Yes, unless "the claimant proves that with due diligence he or she was unable to obtain jurisdiction over" the nonparty tortfeasor" in said action. <u>Artibee v. Home Place Corp.</u> , 28 N.Y.3d 739, 744 (2017); N.Y. CIV. PRAC. L. & R. 1601; <u>Chianese v. Meier</u> , 98 N.Y.2d 270 (N.Y. 2002).	Yes. <u>Chianese v. Meier</u> , 98 N.Y.2d 270 (N.Y. 2002); <u>Roseboro v. N.Y. City Transit Auth.</u> , 286 A.D.2d 222, 729 N.Y.S.2d 472, 2001 N.Y. App. Div. LEXIS 7822 (N.Y. App. Div. 1st Dep't August 2, 2001); N.Y. CIV. PRAC. L. & R. 1601
North Carolina	No. <u>State Farm Mut. Auto. Ins. Co. v. Holland</u> , 380 S.E.2d 100 (1989).	No. N.C.G.S. §1B-2(1).	Intentional tortfeasor has no right to contribution. N.C.G.S. §1B-1(c).

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North Dakota	Yes, except defendants who act in concert in committing a tortious act, aid or encourage the act, or ratify or adopt the act for their benefit N.D. CENT. CODE § 32-03.2-02 (1976 & Supp. 1993).	Yes. N.D. CENT. CODE § 32-03.2-02; <u>Haff v. Hettich</u> , 1999 ND 94, 593 N.W.2d 383, 388 (N.D. May 19, 1999). But non-sued tortfeasor not liable for contribution if he did not act in concert with sued tortfeasor. <u>Target Stores v. Automated Maintenance Servs.</u> , 492 N.W.2d 899, 1992 N.D. LEXIS 239 (N.D. November 24, 1992)	Yes. N.D. CENT. CODE § 32-03.2-02 (“under this section, fault includes negligence . . . reckless or willful conduct . . .”) <u>McLean v. Kirby Co.</u> , 490 N.W.2d 229, 244 (N.D. 1992).
Ohio	Abolished for noneconomic loss, but not for economic loss unless plaintiff is also negligent. Defendant who is at least 51% at fault is jointly and severally liable for economic loss; otherwise, several liability. Ohio Rev. Code Ann. § 2307.22 (2003).	Yes. Ohio Rev. Code Ann. §§ 2307.23, 2307.011(G) (2005). Unclear whether this applies where non-party would have immunity.	Intentional defendant is jointly and severally liable for economic loss, even if less than 50% at fault. Non-intentional defendant less than 50% at fault is liable only for proportionate share of economic loss. Ohio Rev. Code Ann. § 2307.22 (2003); <u>Gurry v. C.P.</u> , 972 N.E.2d 154 (Ohio 2012).

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Oklahoma	<p>Mixed and complicated.</p> <p>Other than with one exception, Oklahoma abolished joint and several liability in multiple tortfeasor situations where the plaintiff is found contributorily negligent, and adopted instead a rule of several liability only, which set forth that each defendant’s liability to the plaintiff was limited to the percentage of plaintiff’s damages for which that defendant was determined responsible. The singular exception exists where, for whatever reason, the jury is unable to apportion the damages. Oklahoma retained the concept of joint and several liability in situations where a plaintiff is found neither contributorily nor comparatively negligent. <u>Boyles v. Oklahoma Natural Gas</u>, 1980 OK 163, ¶10, 619 P.2d 616-617 (Okla. 1980).</p>	<p>Yes. <u>Nichols v. Mid-Continent Pipe Line Co.</u>, 1996 OK 118 (Ok. 1995)</p>	<p>No. <u>Busby v. Quail Creek Golf & Country Club</u>, 1994 OK 63 (Ok. 1994)</p>
Oregon	<p>Yes – abolished. ORS § 31.610 <u>Eclectic Inv., LLC v. Patterson</u>, 357 Ore. 25 (Ore. 2015).</p>	<p>Yes. Or. Rev. Stat. Ann. § 31.600</p>	<p>No. <u>Shin v. Sunriver Preparatory Sch., Inc.</u>, 199 Ore. App. 352 (Or. 2005)</p>

SURVEY OF APPORTIONMENT OF FAULT BY STATE - 2018

By: John Elliott Leighton (June, 2005)

Updated by: Leto Copeley, Jeff Fritz & Chelsie Lamie (September, 2018)

State	Joint and several liability abolished?	Apportion fault of nonparties?	Compare negligent & intentional conduct?
Pennsylvania	Yes, except for: any defendant found 60% or more liable; intentional misrepresentation; an intentional tort; release of hazardous substances; dram shop cases; 42 Pa.C.S.A. § 7102 (2011).	No. <u>Amato v. Bell & Gossett</u> , 2015 PA Super 83, 116 A.3d 607, 616, 2015 Pa. Super. LEXIS 189 (Pa. Super. Ct. April 17, 2015) (“While some states . . . [permit] the apportionment of liability among all tortfeasors, even those who have not been made parties, Pennsylvania's statute does not so provide.”)	Yes. 42 Pa.C.S.A. § 8321; <u>Svetz v. Land Tool Co.</u> , 355 Pa.Super. 230, 513 A.2d 403 (1986); <i>but see</i> <u>Glomb v. Glomb</u> , 366 Pa. Super. 206; 530 A.2d 1362 (1987), (en banc), <i>appeal denied</i> , 517 Pa. 623, 538 A.2d 876 (1988). (“A court can direct the apportionment of liability among distinct causes only when the injured party suffers distinct harms or when the court is able to identify “a reasonable basis for determining the contribution of each cause to a single harm.” Restatement (Second) of Torts § 433A(1) (1965)).
Rhode Island	No. R.I.G.I. Section 10-6-2. <u>Sousa v. Casey</u> , 111 R.I. 623, 306 A.2d 186, 1973 R.I. LEXIS 1256 (R.I. January 1, 1973); <u>Cooney v. Molis</u> , 640 A.2d 527 (R.I. 1994).	Undecided.	Undecided, but probably, yes. <u>Sousa v. Casey</u> , 111 R.I. 623, 306 A.2d 186, 1973 R.I. LEXIS 1256 (R.I. January 1, 1973) (“There is nothing in the language of § 10-6-2 excluding assault and battery, which are torts, from the [Joint Tortfeasors] Act. “)
South Carolina	Yes – abolished. S.C. Code Ann. § 15-38-15	No. <u>Machin v. Carus Corp.</u> , 419 S.C. 527 (S.C. 2017)	No. S.C. Code Ann. § 15-38-15

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South Dakota	Not for defendants 50% or more at fault. If defendant is less than 50% at fault, joint liability may not exceed two times the defendant's percentage of fault. S.D. CODIFIED LAWS §§ 15-8-11, 15-8-15.1.		Apportionment based on degree of fault and causation. S.D. CODIFIED LAWS § 15-8-15.
Tennessee	Yes, abolished. <u>Banks v. Elks Club Pride of Tenn.</u> 1102, 301 S.W.3d 214 (Tn. 2010).	Yes. <u>McIntyre v. Balentine</u> , 833 S.W.2d 52 (Tn. 1992).	No. <u>Turner v. Jordan</u> , 957 S.W.2d 815 (Tn. 1997)
Texas	Modified joint and several liability. "Texas law permits joint and several liability for most actions based in tort, as long as "the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent. <i>See</i> TEX. CIV. PRAC. & REM. CODE § 33.013(b)(1); <u>JCW Elecs., Inc. v. Garza</u> , 257 S.W.3d 701, 705 (Tex. 2008)" <u>Sharyland Water Supply Corp. v. City of Alton</u> , 354 S.W. 3d 407, 424 (Tx. 2011).	Yes. <i>See</i> TEX. CIV. PRAC. & REM. CODE § 33.004	Yes. <i>See</i> TEX. CIV. PRAC. & REM. CODE § 33.013
Utah	Yes – abolished. Utah Code Ann. §§ 78B-5-817 through 78B-5-823	Yes. Utah Code Ann. §§ 78B-5-817 through 78B-5-823	Yes. <u>Field v. Boyer Co.</u> , 952 P.2d 1078 (Utah 1998)
Vermont	Yes, in part. VT. STAT. ANN. tit. 12, § 1036 (Supp. 1994) (for joined parties only); <u>Levine v. Wyeth</u> , 2006 VT 107, 183 Vt. 76, 944 A.2d 179 (Vt. October 27, 2006) (no apportionment to non-parties)	No. VT. STAT. ANN. tit. 12, § 1036 (Supp. 1994); <u>Plante v. Johnson</u> , 565 A.2d 1346 (Vt. 1989).	Undecided. VT. STAT. ANN. tit. 12, § 1036.

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Virginia	No. VA. CODE § 8.1-443.		Intentional tortfeasor has no right to contribution. VA. CODE § 8.01-34.
Washington	Not entirely. Joint and several liability where plaintiff is not at fault; where defendants acted in concert; where there is vicarious liability; or in actions relating to hazardous waste or solid waste disposal sites, tortious interference with contracts, or manufacture of generic products. Otherwise, several liability. WASH. REV. CODE § 4.22.070	Yes, except for those entitled to immunity under the Industrial Insurance statutes. WASH. REV. CODE § 4.22.070.	No. WASH. REV. CODE ANN. § 4.22.015; Welch v. Southland Co., 952 P.2d 162 (Wash. 1998).
West Virginia	Yes, except where defendants consciously conspire. W. VA. CODE §§ 55-7-13a – 13d.	Yes. W. VA. CODE § 55-7-13d.	No, and plaintiff’s criminal conduct bars recovery. W. VA. CODE § 55-7-13d.
Wisconsin	Defendants who are 51 percent or more at fault and all those who acted in a concerted way that led to the plaintiff’s damages are liable jointly and severally. Wis. Stat. § 895.045 (1995); <u>Richards v. Badger Mut. Ins.</u> , 749 N.W.2d 581 (Wis. 2008).	Yes (for comparative negligence determination). <u>Connar v. West Shore Equipment</u> , 227 N.W.2d 660 (Wis. 1975)	No. <u>Gomilla v. Libertas</u> , 2001 WI App 1, 240 Wis. 2d 325, 621 N.W.2d 386, 2000 Wisc. App. LEXIS 1119 (Wis. Ct. App. November 21, 2000)
Wyoming	Yes. WYO. STAT. § 1-1-109.	Yes. <u>Pinnacle Bank v. Villa</u> , 100 P.3d 1287 (Wyo. 2004); WYO. STAT. §§ 1-1-109(a) (1) and (c)(i)(A).	Yes. <u>Board of County Commissioners of Teton County v. Bassett</u> , 8 P.3d 1079 (Wyo. 2000), interpreting WYO. STAT. § 1-1-109.