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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION CONCERNING ITS INVESTIGATION INTO THE APPORTIONMENT OF DAMAGES ACT 34 OF 1956 (PROJECT 96)**

The South African Law Reform Commission has approved a Report containing recommendations and a proposed draft Bill on the Apportionment of Damages Act 34 of 1956 ("the Act"). The Report has been submitted to the Minister for Justice and Constitutional Development on 22 July 2003 for consideration and promotion in Parliament.

The major application of the 1956 Act has been in the field of delictual claims and mostly in the area of motor vehicle accidents. Where a plaintiff claims to have suffered loss and the court finds that he or she was also negligent and that his or her negligence contributed to the loss, the Act requires the court to reduce the damages to which the plaintiff is entitled as the court thinks just and equitable having regard to the degree to which the plaintiff was at fault in relation to the loss. The Act also regulates the position where two or more persons (joint wrongdoers) have caused the same loss to another person (the injured person or plaintiff).

The Act has been severely criticised over the years. Since the Act was passed there have been major developments in the law. There is an urgent need for the Act to be changed to keep abreast with these developments.

Under the Act fault is the sole criterion of apportionment. The courts have interpreted fault to mean negligence and to exclude intentional wrongdoing. The South African Law Reform Commission advocates a broader basis for apportionment and recommends that fault should be one of a wide range of relevant factors which the courts are to consider in attributing responsibility for

loss. The draft Apportionment of Loss Bill (“the Bill”) contained in the Report requires the courts to attribute the responsibility for the loss suffered in proportions that are just and equitable and gives the courts a wide discretion with regard to the method of determining appropriate proportions.

As a result of fault being the sole criterion of apportionment under the Act, the courts have interpreted the Act as being applicable to delictual claims only. They have generally regretted that they have been obliged to do so. With the broader basis for apportionment advocated in the draft Bill, it is possible to extend apportionment to other areas of the law. The Commission supports the application of the draft Bill to all cases covered by the definition of “wrong” which has been widely defined in the Bill to include a breach of a statutory or other legal duty and a breach of a duty of care arising from a contract. The Bill therefore applies to contractual claims where there is liability for breach of a duty of care owed in contract, to breaches of statutory duty and to cases of strict liability in delict and can also be applied to breaches of fiduciary duty including breaches of trust.

Each joint wrongdoer is fully liable to the injured person for the full amount of his or her damages. The injured person may sue any one of the joint wrongdoers for the full amount of his damages. A joint wrongdoer (J1) who has paid the injured person’s damages in full may thereafter recover a contribution from the other joint wrongdoer (J2) of the amount for which the latter is responsible. The Commission considered whether this system of joint and several liability should be changed to one where each wrongdoer was responsible for his or her share of the damages and decided that the rule should not be changed at this stage. The purpose of the rule is to ensure full compensation to the injured person even though it might be to the detriment of the wrongdoer.

The present procedure for proceeding against joint wrongdoers is inadequate and in urgent need of reform. The Bill proposes a more efficient and streamlined

procedure. While rejecting the abolition of the principle of joint and several liability, the Commission recognises the hardship that the rule may cause. The Commission has therefore proposed measures to liberalise the law of contribution in order to improve the position of the joint wrongdoer. Hardship may be caused to a joint wrongdoer (J1) who cannot recover a contribution from the other joint wrongdoer (J2) because the latter is insolvent or cannot be found. The Commission recommends that provision should be made for the joint wrongdoer (J1) to apply for a secondary judgment having the effect of distributing the deficiency among the other defendants at fault in such proportions as may be just and equitable.

The report will be made available on the Internet at the following site:  
<http://www.law.wits.ac.za/salc/salc.html>

**ISSUED BY THE SECRETARY: SA LAW REFORM COMMISSION, PRETORIA**  
**DATE: 22 JULY 2003**

**ENQUIRIES IN RESPECT OF MEDIA STATEMENT:**

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