

# Torts Tutorial Chapter 6 – Joint Tortfeasors

## INTRODUCTION

This program is designed to provide a review of basic concepts covered in a first-year torts class and is based on DeWolf, Cases and Materials on Torts (<http://guweb2.gonzaga.edu/~dewolf/torts/text>). You have accessed the tutorial for Chapter 6, "Joint Tortfeasors." Prior to doing these exercises you should read the relevant material in DeWolf, Cases and Materials on Torts. A brief overview of this Chapter is provided below.

## OVERVIEW

### Ch. 6. Joint Tortfeasors

Plaintiffs frequently sue more than one defendant for the same injury. Even if they don't, one defendant may name another party as a third-party defendant. Two defendants are joint tortfeasors if their negligence (or other "fault," such as a strict liability theory) combines to cause an indivisible injury to the plaintiff. At common law, the doctrine of joint and several liability (J&SL) made joint tortfeasors liable for all of the plaintiff's damages; since negligent plaintiffs recovered nothing, the theory was that it was better for a slightly negligent defendant to pay more than his share than for an innocent plaintiff to be unable to collect his judgment because one tortfeasor was (relatively) insolvent. Modern comparative fault, under which negligent plaintiffs are permitted to recover, required rethinking this position. Some jurisdictions retained J&SL in its entirety (*American Motorcycle*); some abolished it wherever the plaintiff was at fault (Washington statute);



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Oklahoma); and some provide for proportionate sharing of a defendant's insolvency (UCFA).

A defendant usually seeks to minimize his net payout by including as many potential payors in the system as possible. He may need to file a third-party claim to bring them in, or they may already be defendants, so that he can simply cross-claim for contribution. At common law, defendants were sometimes permitted to obtain *indemnity* (a complete payment of the loss) from other defendants, on various bases. Today, the availability of *contribution* in virtually all jurisdictions makes it a flexible procedure rather than an all-or-nothing award. Each defendant theoretically pays in proportion to his fault. However, where one defendant is insolvent, the problems mentioned above must be resolved according to the rules of the jurisdiction. Another problem arises from partial settlements. If one defendant settles with the plaintiff, but another is found liable at trial, by how much is the plaintiff's claim reduced? Again, there are three alternatives: one is to reduce the recovery only by the amount that the plaintiff has received (the "dollar method"); this is most favorable to plaintiffs; least favorable to non-settling defendants. Another approach is to reduce the plaintiff's recovery by an arbitrary "equal share" representing the number of defendants (one-half for two defendants; one-third for three defendants, etc.); a third method is to reduce the claim by the percentage share of the settling defendant.

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## EXERCISE

Each question gives you a fact pattern, and then you must choose an answer that best reflects the law as you understand it. Be careful to read the question and the suggested answers thoroughly. Select your answer by clicking on it. If you give an incorrect answer, you will be given feedback on what was wrong with your answer. By clicking on the feedback you will be taken back to the question to try again. Once a correct answer is selected, click on the feedback to go to the next question. This chapter relies upon the statutes that are given in Chapter 6 of the text. Make sure you have them handy as you answer the questions. The first questions deal with the Uniform Comparative Fault Act. The next sections deal with the Idaho and Oregon statutes respectively.

Throughout the tutorial three Shortcut Buttons will be located in the bottom right-hand corner of each page. The Return Button  brings you back to this page allowing you jump to questions of your choice if you prefer. The Information Button  takes you to the Torts Glossary. The Home Button  takes you to the Torts Tutorial Home Page.



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## Question #1

Under the Uniform Comparative Fault Act, which of the following is NOT considered "fault," and may NOT be assigned a percentage of fault?

- (1) Strict liability based upon a defendant's abnormally dangerous activity
- (2) Breach of warranty
- (3) A plaintiff's failure to mitigate damages
- (4) None of the above; the definition of "fault" includes all of these terms



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Which of the following is NOT considered "fault," and may NOT be assigned a percentage of fault?

**(1) Strict liability based upon a defendant's abnormally dangerous activity**

(2) Breach of warranty

(3) A plaintiff's failure to mitigate damages

(4) None of the above; the definition of "fault" includes all of these terms

No, that's incorrect. Even though some courts suggest that strict tort liability is an "apple" and can't be compared to the "orange" of negligence, most commentators suggest that a comparative approach is better than an "all- or-nothing" determination. In any event, the Uniform Comparative Fault Act takes a broad approach to the definition of fault. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Which of the following is NOT considered "fault," and may NOT be assigned a percentage of fault?

(1) Strict liability based upon a defendant's abnormally dangerous activity

**(2) Breach of warranty**

(3) A plaintiff's failure to mitigate damages

(4) None of the above; the definition of "fault" includes all of these terms

No, that's incorrect. Products liability actions may be based upon breach of warranty, and the effect will be similar to a finding of strict tort liability, which the authors of the Uniform Comparative Fault Act wanted to include as part of its definition of "fault." Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Which of the following is NOT considered "fault," and may NOT be assigned a percentage of fault?

- (1) Strict liability based upon a defendant's abnormally dangerous activity
- (2) Breach of warranty
- (3) A plaintiff's failure to mitigate damages**
- (4) None of the above; the definition of "fault" includes all of these terms

No, that's incorrect. Failure to mitigate damages is similar to contributory negligence in the sense that it represents a basis for refusing to make the defendant compensate the plaintiff. Traditionally failure to mitigate simply resulted in a reduction of, rather than a bar to, liability. Under the Act, the jury will simply reduce the recovery by the percentage of the injury that they conclude is a result of the plaintiff's failure to mitigate. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Which of the following is NOT considered "fault," and may NOT be assigned a percentage of fault?

- (1) Strict liability based upon a defendant's abnormally dangerous activity
- (2) Breach of warranty
- (3) A plaintiff's failure to mitigate damages
- (4) None of the above; the definition of "fault" includes all of these terms**

That's correct. The definition of "fault" is intended to include any act or omission that is in any measure negligent or reckless toward person or property, or that subjects a person to strict tort liability.





## Question #2

Under the Uniform Comparative Fault Act, in determining the percentage of fault to be assigned to each party in the action, the jury should consider:

- (1) the nature of the party's conduct
- (2) the causal relationship between the party's conduct and the injury;
- (3) the insurance or other assets available to pay for the injury.
- (4) Any of the above.
- (5) Only (a) and (b).



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In determining the percentage of fault to be assigned to each party in the action, the jury should consider:

**(1) the nature of the party's conduct**

- (2) the causal relationship between the party's conduct and the injury;
- (3) the insurance or other assets available to pay for the injury.
- (4) Any of the above.
- (5) Only (a) and (b).

Sorry, that's only partially correct. There is more that can be considered in the mix.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In determining the percentage of fault to be assigned to each party in the action, the jury should consider:

(1) the nature of the party's conduct

**(2) the causal relationship between the party's conduct and the injury;**

(3) the insurance or other assets available to pay for the injury.

(4) Any of the above.

(5) Only (a) and (b).

Sorry, that's only partially correct. There is more that can be considered in the mix. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In determining the percentage of fault to be assigned to each party in the action, the jury should consider:

- (1) the nature of the party's conduct
- (2) the causal relationship between the party's conduct and the injury;
- (3) the insurance or other assets available to pay for the injury.**
- (4) Any of the above.
- (5) Only (a) and (b).

Sorry, that's incorrect. Insurance (or other ability to pay) is not relevant to the determination of whether the party was at fault, or what role that fault played in the injury. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In determining the percentage of fault to be assigned to each party in the action, the jury should consider:

- (1) the nature of the party's conduct
- (2) the causal relationship between the party's conduct and the injury;
- (3) the insurance or other assets available to pay for the injury.

**(4) Any of the above.**

- (5) Only (a) and (b).

Sorry, that's incorrect. Insurance (or other ability to pay) is not relevant to the determination of whether the party was at fault, or what role that fault played in the injury. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In determining the percentage of fault to be assigned to each party in the action, the jury should consider:

- (1) the nature of the party's conduct
- (2) the causal relationship between the party's conduct and the injury;
- (3) the insurance or other assets available to pay for the injury.
- (4) Any of the above.
- (5) Only (a) and (b).**

That's correct. Insurance may not be considered, but the jury should consider both the "culpability" of each party's conduct and the causal relationship between it and the plaintiff's injury.



## Question #3

The Uniform Comparative Fault Act provides that in all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

- (1) any party who lacks the ability to pay a judgment.
- (2) any party who has already been released by the plaintiff.
- (3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.
- (4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

**(1) any party who lacks the ability to pay a judgment.**

(2) any party who has already been released by the plaintiff.

(3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.

(4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.

Sorry, that's incorrect. Whether or not a party has the ability to pay, their share should be considered along with the shares of solvent parties. If a party cannot pay because of insolvency, that share will be reallocated according to the terms of the Act. Try again.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

- (1) any party who lacks the ability to pay a judgment.
- (2) any party who has already been released by the plaintiff.**
- (3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.
- (4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.

Sorry, that's incorrect. If a defendant settles, his percentage share will be subtracted from the plaintiff's ultimate recovery. However, the settling party's share needs to be included in the determination of the percentage shares in the first place. Otherwise, it would be impossible to subtract it from the ultimate award. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

- (1) any party who lacks the ability to pay a judgment.
- (2) any party who has already been released by the plaintiff.
- (3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.**
- (4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.

Sorry, that's incorrect. The plaintiff's decision not to sue a defendant is not determinative of whether or not they can be made a party to the lawsuit. If the defendant has named a party as a third-party defendant, that additional party's share can be considered by the jury if the jury finds that that party is also in part responsible for the plaintiff's injury. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

- (1) any party who lacks the ability to pay a judgment.
- (2) any party who has already been released by the plaintiff.
- (3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.
- (4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.**

That's correct. The purpose of assigning percentage shares of fault is to determine who ought to pay for the injury. Relative ability to pay, previous release (e.g., through settlement) or the failure of the plaintiff to name the party in the first place are all irrelevant.



## Question #4

Look at the Idaho Comparative Fault Act. Suppose plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

- (1) \$100,000
- (2) \$60,000
- (3) \$40,000
- (4) zero



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

**(1) \$100,000**

(2) \$60,000

(3) \$40,000

(4) zero

Sorry, that's incorrect. Remember that the principle of comparative fault requires that the plaintiff's damages be reduced in proportion to the plaintiff's share of negligence. To give her \$100,000 would not recognize her own share of comparative fault.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

(1) \$100,000

**(2) \$60,000**

(3) \$40,000

(4) zero

Sorry, that's incorrect. Remember that the plaintiff was found 60% at fault, and the defendant was found 40% at fault. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

(1) \$100,000

(2) \$60,000

**(3) \$40,000**

(4) zero

Sorry, that's incorrect. In Idaho the plaintiff can only recover if he or she is less negligent than the defendant. Under the facts, the plaintiff in this case wouldn't meet that test.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

(1) \$100,000

(2) \$60,000

(3) \$40,000

**(4) zero**

That's correct. The Idaho Comparative Fault Act only permits a plaintiff to recover if he or she is less negligent than the defendant.





## Question #5

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000. They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. Under the Uniform Comparative Fault Act, what is the maximum that P can recover from D(1)?

- (1) Nothing, because P was at fault.
- (2) \$30,000
- (3) \$60,000
- (4) \$90,000
- (5) \$100,000



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000. They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

**(1) Nothing, because P was at fault.**

(2) \$30,000

(3) \$60,000

(4) \$90,000

(5) \$100,000

Sorry, that's incorrect. Remember that the principle of comparative fault is that a plaintiff is never barred from recovery simply because he or she is at fault.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000. They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

(1) Nothing, because P was at fault.

**(2) \$30,000**

(3) \$60,000

(4) \$90,000

(5) \$100,000

Sorry, that's incorrect. Assuming that both parties are solvent, D(1) can recover the excess of what he has paid from the other defendant, but the plaintiff is entitled to recover his full judgment from any of the defendants who are found at fault.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000. They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

(1) Nothing, because P was at fault.

(2) \$30,000

**(3) \$60,000**

(4) \$90,000

(5) \$100,000

Sorry, that's incorrect. Remember that D(1) was found only 30% at fault. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000. They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

(1) Nothing, because P was at fault.

(2) \$30,000

(3) \$60,000

**(4) \$90,000**

(5) \$100,000

That's correct. The Uniform Comparative Fault Act permits a plaintiff to recover his full damages from any defendant; to that extent it recognizes the principle of joint and several liability (subject to the reapportionment rules).



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000. They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

(1) Nothing, because P was at fault.

(2) \$30,000

(3) \$60,000

(4) \$90,000

**(5) \$100,000**

Sorry, that's incorrect. Remember that the plaintiff is made responsible for his or her share of fault. Try again.



## Question #6

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff recovers \$90,000 from Defendant (1). Under the UCFA, Defendant (2) is liable to Defendant (1) for

- (1) \$30,000.
- (2) \$45,000.
- (3) \$60,000.
- (4) None of the above.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff recovers \$90,000 from Defendant (1). Defendant (2) is liable to Defendant (1) for

**(1) \$30,000.**

(2) \$45,000.

(3) \$60,000.

(4) None of the above.

Sorry, that's incorrect. Try again.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff recovers \$90,000 from Defendant (1). Defendant (2) is liable to Defendant (1) for

(1) \$30,000.

**(2) \$45,000.**

(3) \$60,000.

(4) None of the above.

Sorry, that's incorrect. \$45,000 would represent an equal share of the liability, making each defendant's share the same. But that's not how the Uniform Comparative Fault divides the liability. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff recovers \$90,000 from Defendant (1). Defendant (2) is liable to Defendant (1) for

(1) \$30,000.

(2) \$45,000.

**(3) \$60,000.**

(4) None of the above.

That's correct. Since Defendant (1)'s percentage share is only 30%, he is entitled to reimbursement for the excess. He paid \$90,000; his share is \$30,000, so the difference would be \$60,000. By the terms of the Act, Defendant (1) is entitled to contribution for that amount.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff recovers \$90,000 from Defendant (1). Defendant (2) is liable to Defendant (1) for

(1) \$30,000.

(2) \$45,000.

(3) \$60,000.

**(4) None of the above.**

Sorry, that's incorrect. One of the other answers is correct. Try again.



## Question #7

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

- (1) \$30,000
- (2) \$60,000
- (3) \$75,000
- (4) \$90,000



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

**(1) \$30,000**

(2) \$60,000

(3) \$75,000

(4) \$90,000

Sorry, that's incorrect. Remember that the plaintiff is entitled in the first instance to joint and several liability. To limit the plaintiff to 30% would have the effect of eliminating joint and several liability. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

(1) \$30,000

**(2) \$60,000**

(3) \$75,000

(4) \$90,000

Sorry, that's incorrect. Please try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

(1) \$30,000

(2) \$60,000

**(3) \$75,000**

(4) \$90,000

That's correct. The court will reallocate the insolvent party's share so that it is borne in the same proportion as the remaining party's percentage shares. It works like this:

	Before	After
PI	10%	25%
D(1)	30%	75%
D(2)	60%	-0-
Total	100%	100%

Notice that after reallocation, the plaintiff and Defendant(1) pay in the same proportion (1 to 3) as before reallocation.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

(1) \$30,000

(2) \$60,000

(3) \$75,000

**(4) \$90,000**

Sorry, that's incorrect. Even though joint and several liability is applied when all defendants are solvent, there is a reallocation procedure that is used when one of the defendants is insolvent and the remaining defendant asks for a redistribution of the obligation. To make the defendant pay 90% would give the plaintiff in effect a full recovery (on his judgment) and force the solvent defendant to bear the entire burden of his co-defendant's insolvency.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

## Question #8

This question asks about how the Uniform Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

Plaintiff settles with Defendant(1) for \$10,000;

The jury determines the value of plaintiff's damages to be \$100,000;

Plaintiff is found to be 10% at fault;

Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

(1) \$90,000

(2) \$80,000

(3) \$60,000

(4) None of the above



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Uniform Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

Plaintiff settles with Defendant(1) for \$10,000;  
The jury determines the value of plaintiff's damages to be \$100,000;  
Plaintiff is found to be 10% at fault;  
Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$90,000**
- (2) \$80,000
- (3) \$60,000
- (4) None of the above

Sorry, that's incorrect. Note that the plaintiff has already received \$10,000 in settlement, and another \$90,000 would give him a full recovery (\$100,000) despite the finding that the plaintiff was 10% at fault. Try another answer.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Uniform Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

Plaintiff settles with Defendant(1) for \$10,000;  
The jury determines the value of plaintiff's damages to be \$100,000;  
Plaintiff is found to be 10% at fault;  
Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$90,000
- (2) \$80,000**
- (3) \$60,000
- (4) None of the above

Sorry, that's incorrect. Although the plaintiff would only be receiving the same amount (\$10,000 + \$80,000 = \$90,000) that he would have received if he went to trial against the defendants, this result would be achieved by forcing Defendant(2) to pay more than his percentage share. Try another answer.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Uniform Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

Plaintiff settles with Defendant(1) for \$10,000;  
The jury determines the value of plaintiff's damages to be \$100,000;  
Plaintiff is found to be 10% at fault;  
Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$90,000
- (2) \$80,000
- (3) \$60,000**
- (4) None of the above

That's correct. The plaintiff's claim against both defendants totals \$90,000 (his damages of \$100,000 less his own contributory fault of 10%). However, because he settled with Defendant(1), that defendant's percentage share must be deducted from the total. Thus, \$90,000 less the 30% share leaves \$60,000. Note that the effect of this rule is that the plaintiff receives only \$70,000, whereas if he had gone to trial he would have received \$90,000.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Uniform Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

Plaintiff settles with Defendant(1) for \$10,000;  
The jury determines the value of plaintiff's damages to be \$100,000;  
Plaintiff is found to be 10% at fault;  
Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$90,000
- (2) \$80,000
- (3) \$60,000
- (4) None of the above**

Sorry, that's incorrect. One of the other answers is correct. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

## Question #9

This question, like the previous question, concerns the effect of settlement. For this question, assume the following:

Plaintiff settles with Defendant(1) for \$10,000.

The jury determines the value of the plaintiff's damages as \$100,000.

The jury assigns the following percentage shares of fault:

Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

(1) \$40,000

(2) \$50,000

(3) \$60,000

(4) \$90,000



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question, like the previous question, concerns the effect of settlement. For this question, assume the following:

Plaintiff settles with Defendant(1) for \$10,000.

The jury determines the value of the plaintiff's damages as \$100,000.

The jury assigns the following percentage shares of fault:

Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

**(1) \$40,000**

(2) \$50,000

(3) \$60,000

(4) \$90,000

Sorry, that's incorrect. The settling party's share was 40%, but that amount is DEDUCTED from the judgment; it is not the amount that the court would award. Choose another answer.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question, like the previous question, concerns the effect of settlement. For this question, assume the following:

Plaintiff settles with Defendant(1) for \$10,000.

The jury determines the value of the plaintiff's damages as \$100,000.

The jury assigns the following percentage shares of fault:

Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

(1) \$40,000

**(2) \$50,000**

(3) \$60,000

(4) \$90,000

Sorry, that's incorrect. In some jurisdictions, the court will deduct an "equal share" (in this case, 50%) to reflect the value of the claim against the defendant who has settled. However, the Uniform Comparative Fault Act bases the amount of the deduction on the percentage share of the settling defendant. Choose another answer.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question, like the previous question, concerns the effect of settlement. For this question, assume the following:

Plaintiff settles with Defendant(1) for \$10,000.

The jury determines the value of the plaintiff's damages as \$100,000.

The jury assigns the following percentage shares of fault:

Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

(1) \$40,000

(2) \$50,000

**(3) \$60,000**

(4) \$90,000

That's correct. The total of plaintiff's damages is \$100,000. (Note that, unlike the previous case, the plaintiff is not at fault so therefore there is no reduction before the settlement share is figured in.) From this amount the court must deduct the amount of the settling party's percentage share. In this case the settling defendant was 40% at fault, and therefore  $\$100,000 - \$40,000 = \$60,000$ . Note that under this scenario the plaintiff would recover a total of \$70,000 (the judgment plus \$10,000 already received in settlement).



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question, like the previous question, concerns the effect of settlement. For this question, assume the following:

Plaintiff settles with Defendant(1) for \$10,000.

The jury determines the value of the plaintiff's damages as \$100,000.

The jury assigns the following percentage shares of fault:

Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

(1) \$40,000

(2) \$50,000

(3) \$60,000

**(4) \$90,000**

Sorry, that's incorrect. This would provide the plaintiff with a full recovery, but the Uniform Comparative Fault Act chooses to protect the nonsettling defendant from being forced to pay more than his percentage of fault. Since the nonsettling defendant was found to be only 60% at fault, to require him to pay \$90,000 would violate that principle.

Note that it doesn't matter that the plaintiff was not at fault in this case. It does matter in cases of insolvency, where the insolvent defendant's share is reallocated. But in the context of settlement, the treatment of the nonsettling defendant is the same regardless of whether the plaintiff is at fault or not.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

## INTRODUCTION

The next section concerns the IDAHO Code.

Each question gives you a fact pattern, and then you must choose an answer that best reflects the outcome under Idaho's Comparative Fault Act. You can call up the text by pressing **Alt-S**. Be careful to read the question and the suggested answers carefully. If you give an incorrect answer, you will be given feedback on what was wrong with your answer, and then the question will reappear so that you can choose the correct answer.

Would you like to continue?

Yes

No

## Question #10

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

- (1) any party who lacks the ability to pay a judgment.
- (2) any party who has already been released by the plaintiff.
- (3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.
- (4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

**(1) any party who lacks the ability to pay a judgment.**

(2) any party who has already been released by the plaintiff.

(3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.

(4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.

Sorry, that's incorrect. I.C. ^s 6-802 says that the court shall direct the jury to find separate special verdicts determining the amount of damages and the percentage of negligence or comparative responsibility attributable to EACH PARTY. Whether or not a party has the ability to pay, their share should be considered along with the shares of solvent parties. If a party cannot pay because of insolvency, that is a separate problem. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

- (1) any party who lacks the ability to pay a judgment.
- (2) any party who has already been released by the plaintiff.**
- (3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.
- (4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.

Sorry, that's incorrect. If a defendant settles, the amount received in settlement will reduce the plaintiff's ultimate recovery. However, the settling party's share needs to be included in the determination of the percentage shares in the first place. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

- (1) any party who lacks the ability to pay a judgment.
- (2) any party who has already been released by the plaintiff.
- (3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.**
- (4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.

Sorry, that's incorrect. The plaintiff's decision not to sue a defendant is not determinative of whether or not they can be made a party to the lawsuit. If the defendant has named a party as a third-party defendant, that additional party's share can be considered by the jury if the jury finds that that party is also in part responsible for the plaintiff's injury. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

- (1) any party who lacks the ability to pay a judgment.
- (2) any party who has already been released by the plaintiff.
- (3) any party who is made a defendant only by action of another defendant rather than by the plaintiff.
- (4) None of the above; all are proper parties to whom a percentage share of fault can be assigned.**

That's correct. The purpose of assigning percentage shares of fault is to determine who ought to pay for the injury. Relative ability to pay, previous release (e.g., through settlement) or the failure of the plaintiff to name the party in the first place are all irrelevant.





## Question #11

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

- (1) \$100,000
- (2) \$60,000
- (3) \$40,000
- (4) zero



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

**(1) \$100,000**

(2) \$60,000

(3) \$40,000

(4) zero

Sorry, that's incorrect. Remember that the principle of comparative fault requires that the plaintiff's damages be reduced in proportion to the plaintiff's share of negligence. To give her \$100,000 would not recognize her own share of comparative fault.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

(1) \$100,000

**(2) \$60,000**

(3) \$40,000

(4) zero

Sorry, that's incorrect. Remember that the plaintiff was found 60% at fault, and the defendant was found 40% at fault. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

(1) \$100,000

(2) \$60,000

**(3) \$40,000**

(4) zero

Sorry, that's incorrect. Unlike the so-called PURE forms of comparative fault, Idaho has adopted a "modified" form of comparative negligence, which doesn't let the plaintiff recover if her negligence exceeds the defendant's. Thus, if she is more negligent than the defendant (the facts here), her claim is barred. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000. What will plaintiff recover?

- (1) \$100,000
- (2) \$60,000
- (3) \$40,000
- (4) zero**

That's correct. The Idaho statute,  $\Lambda$ s 6-801, states that contributory negligence does not bar recovery IF such negligence is NOT AS GREAT as the negligence of the party against whom recovery is sought. Since the plaintiff's fault (60%) is more than the defendant's (40%), she cannot recover.



## Question #12

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000 (\$40,000 in economic damages and \$60,000 in noneconomic damages). What will plaintiff recover?

- (1) \$100,000
- (2) \$50,000
- (3) zero
- (4) Cannot be determined from the statute and the facts given.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000 (\$40,000 in economic damages and \$60,000 in noneconomic damages). What will plaintiff recover?

- (1) \$100,000**
- (2) \$50,000
- (3) zero
- (4) Cannot be determined from the statute and the facts given.

Sorry, that's incorrect. Remember that the principle of comparative fault requires that the plaintiff's damages be reduced in proportion to the plaintiff's share of negligence. To give her \$100,000 would not recognize her own share of comparative fault.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000 (\$40,000 in economic damages and \$60,000 in noneconomic damages). What will plaintiff recover?

- (1) \$100,000
- (2) \$50,000**
- (3) zero
- (4) Cannot be determined from the statute and the facts given.

Sorry, that's incorrect. The Idaho statute, <sup>^s</sup> 6-801, states that contributory negligence does not bar recovery IF such negligence is NOT AS GREAT as the negligence of the party against whom recovery is sought. Since the plaintiff's fault (50%) is equal to the defendant's, it cannot be said that her negligence is "not as great" as the defendant's. Therefore the claim would be barred.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000 (\$40,000 in economic damages and \$60,000 in noneconomic damages). What will plaintiff recover?

- (1) \$100,000
- (2) \$50,000
- (3) zero**
- (4) Cannot be determined from the statute and the facts given.

That's correct. The Idaho statute, <sup>^s</sup> 6-801, states that contributory negligence does not bar recovery IF such negligence is NOT AS GREAT as the negligence of the party against whom recovery is sought. Since the plaintiff's fault (50%) cannot be said to be "not as great as" the defendant's, her claim is barred.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000 (\$40,000 in economic damages and \$60,000 in noneconomic damages). What will plaintiff recover?

- (1) \$100,000
- (2) \$50,000
- (3) zero
- (4) Cannot be determined from the statute and the facts given.**

Sorry, that's incorrect. There is a correct answer in the group. Try again.



## Question #13

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000 (\$40,000 economic damages and \$60,000 in noneconomic damages). They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

- (1) Nothing, because P was at fault.
- (2) \$30,000
- (3) \$60,000
- (4) \$90,000
- (5) \$100,000



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000 (\$40,000 economic damages and \$60,000 in noneconomic damages). They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

**(1) Nothing, because P was at fault.**

(2) \$30,000

(3) \$60,000

(4) \$90,000

(5) \$100,000

Sorry, that's incorrect. Remember that the principle of comparative fault is that a plaintiff is never barred from recovery simply because he or she is at fault.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000 (\$40,000 economic damages and \$60,000 in noneconomic damages). They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

(1) Nothing, because P was at fault.

**(2) \$30,000**

(3) \$60,000

(4) \$90,000

(5) \$100,000

That's correct. The Idaho Comparative Fault Act, <sup>^s</sup> 6-803(3), provides that the liability of each party shall be limited to the percentage of negligence of such party. Since Defendant(1) was only 30% at fault, he would pay 30% of the damages (\$100,000), or a total of \$30,000.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000 (\$40,000 economic damages and \$60,000 in noneconomic damages). They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

(1) Nothing, because P was at fault.

(2) \$30,000

**(3) \$60,000**

(4) \$90,000

(5) \$100,000

Sorry, that's incorrect. Defendant (1) was only found to be 30% at fault. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000 (\$40,000 economic damages and \$60,000 in noneconomic damages). They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

(1) Nothing, because P was at fault.

(2) \$30,000

(3) \$60,000

**(4) \$90,000**

(5) \$100,000

Sorry, that's incorrect. Idaho has retained joint and several liability only in those cases that fall into the categories listed in <sup>^s</sup> 6-803(5)-(7). Since this is not one of those cases, joint and several liability will not apply. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's damages are \$100,000 (\$40,000 economic damages and \$60,000 in noneconomic damages). They also find that the plaintiff was 10% at fault, D(1) was 30% at fault, and D(2) was 60% at fault. What is the maximum that P can recover from D(1)?

(1) Nothing, because P was at fault.

(2) \$30,000

(3) \$60,000

(4) \$90,000

**(5) \$100,000**

Sorry, that's incorrect. Remember that the plaintiff is made responsible for his or her share of fault. Try again.





## Question #14

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff collects \$60,000 from Defendant (2). Defendant (2) is entitled to recover from Defendant (1):

- (1) \$30,000.
- (2) \$45,000.
- (3) \$60,000.
- (4) None of the above.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff collects \$60,000 from Defendant (2). Defendant (2) is entitled to recover from Defendant (1):

**(1) \$30,000.**

(2) \$45,000.

(3) \$60,000.

(4) None of the above.

Sorry, that's incorrect. Since Defendant (2) has not paid more than his pro rata share of liability, he is not entitled to contribution. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff collects \$60,000 from Defendant (2). Defendant (2) is entitled to recover from Defendant (1):

(1) \$30,000.

**(2) \$45,000.**

(3) \$60,000.

(4) None of the above.

Sorry, that's incorrect. Since Defendant (2) has not paid more than his pro rata share of liability, he is not entitled to contribution. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff collects \$60,000 from Defendant (2). Defendant (2) is entitled to recover from Defendant (1):

(1) \$30,000.

(2) \$45,000.

**(3) \$60,000.**

(4) None of the above.

Sorry, that's incorrect. Since Defendant (2) has not paid more than his pro rata share of liability, he is not entitled to contribution. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts (plaintiff's damages are \$100,000; plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault). Assume that plaintiff collects \$60,000 from Defendant (2). Defendant (2) is entitled to recover from Defendant (1):

(1) \$30,000.

(2) \$45,000.

(3) \$60,000.

**(4) None of the above.**

That's correct. Since Defendant (2) has not paid more than his pro rata share of liability, he is not entitled to contribution.



## Question #15

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

- (1) \$30,000
- (2) \$60,000
- (3) \$75,000
- (4) \$90,000



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

**(1) \$30,000**

(2) \$60,000

(3) \$75,000

(4) \$90,000

That's correct. Unless the plaintiff qualifies for one of the exceptions listed in subsections (5)-(7), the plaintiff is only entitled to collect from each defendant his pro-rata share. If any defendant is unable to pay his pro rata share, the plaintiff is simply out of luck to that extent.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

(1) \$30,000

**(2) \$60,000**

(3) \$75,000

(4) \$90,000

Sorry, that's incorrect. Unless the plaintiff qualifies for one of the exceptions listed in subsections (5)-(7), the plaintiff is only entitled to collect from each defendant his pro-rata share. If any defendant is unable to pay his pro rata share, the plaintiff is simply out of luck to that extent.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

(1) \$30,000

(2) \$60,000

**(3) \$75,000**

(4) \$90,000

Sorry, that's incorrect. Unless the plaintiff qualifies for one of the exceptions listed in subsections (5)-(7), the plaintiff is only entitled to collect from each defendant his pro-rata share. If any defendant is unable to pay his pro rata share, the plaintiff is simply out of luck to that extent.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Assume the same findings of fact at trial (Plaintiff's damages are \$100,000; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, assume a new scenario: suppose Defendant(2) is unable to pay his share. How much will the court allow the plaintiff to recover from Defendant(1)?

(1) \$30,000

(2) \$60,000

(3) \$75,000

**(4) \$90,000**

Sorry, that's incorrect. Unless the plaintiff qualifies for one of the exceptions listed in subsections (5)-(7), the plaintiff is only entitled to collect from each defendant his pro-rata share. If any defendant is unable to pay his pro rata share, the plaintiff is simply out of luck to that extent.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

## Question #16

This question asks about how the Idaho Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$90,000
- (2) \$80,000
- (3) \$60,000
- (4) None of the above



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Idaho Comparative Fault Act deals with cases

where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$90,000**
- (2) \$80,000
- (3) \$60,000
- (4) None of the above

Sorry, that's incorrect. Note that the plaintiff has already received \$10,000 in settlement, and another \$90,000 would give him a full recovery (\$100,000) despite the finding that the plaintiff was 10% at fault. Try another answer.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Idaho Comparative Fault Act deals with cases

where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$90,000
- (2) \$80,000**
- (3) \$60,000
- (4) None of the above

Sorry, that's incorrect. Although the plaintiff would only be receiving the same amount (\$10,000 + \$80,000 = \$90,000) that he would have received if he went to trial against the defendants, this result would be achieved by forcing Defendant(2) to pay more than his percentage share. Try another answer.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Idaho Comparative Fault Act deals with cases

where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$90,000
- (2) \$80,000
- (3) \$60,000**
- (4) None of the above

That's correct. The statute,  $\Lambda$ s 6-805, provides that the claim against the nonsettling tortfeasor will be reduced by the amount that the plaintiff received in settlement, or the proportion of the claim being released, whichever is greater. Note also that  $\Lambda$ s 6-806 provides that the settlement will not shield the settling defendant from responsibility for contribution unless the plaintiff agrees to give up the pro rata share attributable to the settling party.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Idaho Comparative Fault Act deals with cases

where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$90,000
- (2) \$80,000
- (3) \$60,000
- (4) None of the above**

Sorry, that's incorrect. One of the other answers is correct. Try again.



## Question #17

This question, like the previous question, concerns the effect of settlement.

For this question, assume the following:

- Plaintiff settles with Defendant(1) for \$10,000.
- The jury determines the value of the plaintiff's damages as \$100,000.
- The jury assigns the following percentage shares of fault:  
Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against

Defendant(2)

in the amount of:

- (1) \$40,000
- (2) \$50,000
- (3) \$60,000
- (4) \$90,000





# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question, like the previous question, concerns the effect of settlement.

For this question, assume the following:

- Plaintiff settles with Defendant(1) for \$10,000.
- The jury determines the value of the plaintiff's damages as \$100,000.
- The jury assigns the following percentage shares of fault: Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

**(1) \$40,000**

(2) \$50,000

(3) \$60,000

(4) \$90,000

Sorry, that's incorrect. The settling party's share was 40%, but that amount is DEDUCTED from the judgment; it is not the amount that the court would award. Choose another answer.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question, like the previous question, concerns the effect of settlement.

For this question, assume the following:

- Plaintiff settles with Defendant(1) for \$10,000.
- The jury determines the value of the plaintiff's damages as \$100,000.
- The jury assigns the following percentage shares of fault: Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$40,000
- (2) \$50,000**
- (3) \$60,000
- (4) \$90,000

Sorry, that's incorrect. In some jurisdictions, the court will deduct an "equal share" (in this case, 50%) to reflect the value of the claim against the defendant who has settled. However, the Idaho Comparative Fault Act, <sup>^</sup>s 6-805, bases the amount of the deduction on the percentage share of the settling defendant. Choose another answer.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question, like the previous question, concerns the effect of settlement.

For this question, assume the following:

- Plaintiff settles with Defendant(1) for \$10,000.
- The jury determines the value of the plaintiff's damages as \$100,000.
- The jury assigns the following percentage shares of fault: Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$40,000
- (2) \$50,000
- (3) \$60,000**
- (4) \$90,000

That's correct. The total of plaintiff's damages is \$100,000. (Note that, unlike the previous case, the plaintiff is not at fault so therefore there is no reduction before the settlement share is figured in.) From this amount the court must deduct the amount of the settling party's percentage share. In this case the settling defendant was 40% at fault, and therefore  $\$100,000 - \$40,000 = \$60,000$ . Note that under this scenario the plaintiff would recover a total of \$70,000 (the judgment plus \$10,000 already received in settlement).



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question, like the previous question, concerns the effect of settlement.

For this question, assume the following:

- Plaintiff settles with Defendant(1) for \$10,000.
- The jury determines the value of the plaintiff's damages as \$100,000.
- The jury assigns the following percentage shares of fault: Plaintiff 0%, Defendant(1) 40%, Defendant(2) 60%.

The judge will enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- (1) \$40,000
- (2) \$50,000
- (3) \$60,000
- (4) \$90,000**

Sorry, that's incorrect. This would provide the plaintiff with a full recovery, but the Idaho Comparative Fault Act chooses to protect the nonsettling defendant from being forced to pay more than his percentage of fault. Since the nonsettling defendant was found to be only 60% at fault, to require him to pay \$90,000 would violate that principle. Note that it doesn't matter that the plaintiff was not at fault in this case.

Note that it doesn't matter that the plaintiff was not at fault in this case. It does matter in cases of insolvency, where the insolvent defendant's share is reallocated. But in the context of settlement, the treatment of the nonsettling defendant is the same regardless of whether the plaintiff is at fault or not.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

## INTRODUCTION

The next section of the program deals with comparative fault concepts, particularly the application of the Oregon Comparative Fault Act.

Prior to doing this exercise you should read the Oregon Comparative Fault Statute, contained in Chapter 6 of DeWolf, CASES AND MATERIALS ON THE LAW OF TORTS. You can call up the text by pressing **Alt-S**

Each question gives you a fact pattern, and then you must choose an answer that best reflects the outcome under Oregon's Comparative Fault Act. Be careful to read the question and the suggested answers carefully. If you give an incorrect answer, you will be given feedback on what was wrong with your answer, and then the question will reappear so that you can choose the correct answer.

## Question #18

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

[1] any party who lacks the ability to pay a judgment.

[2] any party who has already been released by the plaintiff.

[3] any party who is made a defendant only by action of another defendant rather than by the plaintiff.

[4] None of the above; all are proper parties to whom a percentage share of fault can be assigned.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

**[1]any party who lacks the ability to pay a judgment.**

[2] any party who has already been released by the plaintiff.

[3] any party who is made a defendant only by action of another defendant rather than by the plaintiff.

[4]None of the above; all are proper parties to whom a percentage share of fault can be assigned.

Sorry, that's incorrect. Oregon Code ^s 18.480 says that the trier of fact shall answer special questions indicating the degree of EACH PARTY's fault. Whether or not a party has the ability to pay, their share should be considered along with the shares of solvent parties. If a party cannot pay because of insolvency, that is a separate problem. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

[1] any party who lacks the ability to pay a judgment.

**[2] any party who has already been released by the plaintiff.**

[3] any party who is made a defendant only by action of another defendant rather than by the plaintiff.

[4] None of the above; all are proper parties to whom a percentage share of fault can be assigned.

Sorry, that's incorrect. If a defendant settles, the amount received in settlement will reduce the plaintiff's ultimate recovery. However, the settling party's share needs to be included in the determination of the percentage shares in the first place. Try again.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

[1] any party who lacks the ability to pay a judgment.

[2] any party who has already been released by the plaintiff.

**[3] any party who is made a defendant only by action of another defendant rather than by the plaintiff.**

[4] None of the above; all are proper parties to whom a percentage share of fault can be assigned.

Sorry, that's incorrect. The plaintiff's decision not to sue a defendant is not determinative of whether or not they can be made a party to the lawsuit. If the defendant has named a party as a third-party defendant, that additional party's share can be considered by the jury if the jury finds that that party is also in part responsible for the plaintiff's injury. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

In all actions involving the fault of more than one party, the jury is asked to assign percentage shares to all parties to the action EXCEPT:

[1] any party who lacks the ability to pay a judgment.

[2] any party who has already been released by the plaintiff.

[3] any party who is made a defendant only by action of another defendant rather than by the plaintiff.

**[4] None of the above; all are proper parties to whom a percentage share of fault can be assigned.**

That's correct. The purpose of assigning percentage shares of fault is to determine who ought to pay for the injury. Relative ability to pay, previous release (e.g., through settlement) or the failure of the plaintiff to name the party in the first place are all irrelevant.



## Question #19

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

[1] \$100,000

[2] \$60,000

[3] \$40,000

[4] zero



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

**[1] \$100,000**

[2] \$60,000

[3] \$40,000

[4] zero

Sorry, that's incorrect. Remember that the principle of comparative fault requires that the plaintiff's damages be reduced in proportion to the plaintiff's share of negligence. To give her \$100,000 would not recognize her own share of comparative fault.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

[1] \$100,000

**[2] \$60,000**

[3] \$40,000

[4] zero

Sorry, that's incorrect. Remember that the plaintiff was found 60% at fault, and the defendant was found 40% at fault. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

[1] \$100,000

[2] \$60,000

**[3] \$40,000**

[4] zero

Sorry, that's incorrect. Unlike the so-called PURE forms of comparative fault, Oregon has adopted a "modified" form of comparative negligence, which doesn't let the plaintiff recover if her negligence exceeds the defendant's. Thus, if she is more negligent than the defendant (the facts here), her claim is barred. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 60% at fault, and the defendant is found 40% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

[1] \$100,000

[2] \$60,000

[3] \$40,000

**[4] zero**

That's correct. The Oregon statute, ORS 18.470 states that contributory negligence does not bar recovery IF the fault of the person was NOT GREATER THAN the negligence of the party against whom recovery is sought. Since the plaintiff's fault (60%) is greater than the defendant's (40%), she cannot recover.



## Question #20

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

[1] \$100,000

[2] \$50,000

[3] zero

[4] Cannot be determined from the statute and the facts given.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

**[1] \$100,000**

[2] \$50,000

[3] zero

[4] Cannot be determined from the statute and the facts given.

Sorry, that's incorrect. Remember that the principle of comparative fault requires that the plaintiff's damages be reduced in proportion to the plaintiff's share of negligence. To give her \$100,000 would not recognize her own share of comparative fault.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

[1]\$100,000

**[2]\$50,000**

[3]zero

[4] Cannot be determined from the statute and the facts given.

That's correct. The Oregon statute,  $\text{OR} \text{ } \S 18.470$ , states that contributory negligence does not bar recovery IF the fault of the plaintiff is NOT GREATER THAN the combined negligence of the parties against whom recovery is sought. Since the plaintiff's fault (50%) is not greater than the defendant's (50%), she can still recover.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

[1]\$100,000

[2]\$50,000

**[3]zero**

[4] Cannot be determined from the statute and the facts given.

Sorry, that's incorrect. The Oregon statute, ORS 18.470, states that contributory negligence does not bar recovery IF the fault of the plaintiff is NOT GREATER THAN the combined negligence of the parties against whom recovery is sought. Since the plaintiff's fault (50%) is not greater than the defendant's (50%), she can still recover.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with another driver. After a jury trial, the plaintiff is found 50% at fault, and the defendant is found 50% at fault. The jury also finds that plaintiff's damages are \$100,000.

What will plaintiff recover?

[1]\$100,000

[2]\$50,000

[3]zero

**[4] Cannot be determined from the statute and the facts given.**

Sorry, that's incorrect. There is a correct answer in the group. Try again.



## Question #21

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000 (totaling \$100,000). They also find that the plaintiff was not at fault, D(1) was 40% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

- [1] \$40,000
- [2] \$60,000
- [3] \$64,000
- [4] \$100,000



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000 (totaling \$100,000). They also find that the plaintiff was not at fault, D(1) was 40% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

**[1] \$40,000**

[2] \$60,000

[3] \$64,000

[4] \$100,000

Sorry, that's incorrect. Oregon has retained joint and several liability for part of the plaintiff's recovery. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000 (totaling \$100,000). They also find that the plaintiff was not at fault, D(1) was 40% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

[1] \$40,000

**[2] \$60,000**

[3] \$64,000

[4] \$100,000

Sorry, that's incorrect. Defendant (1) was only found to be 40% at fault. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000 (totaling \$100,000). They also find that the plaintiff was not at fault, D(1) was 40% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

[1] \$40,000

[2] \$60,000

**[3] \$64,000**

[4] \$100,000

That's correct. The Oregon Comparative Fault Act,  $\text{OR} \text{ } \S 18.485$ , makes joint tortfeasors severally liable for noneconomic damages. Since D(1)'s share of noneconomic damages is 40% of \$60,000, that would be \$24,000. In addition to that, the statute makes each defendant whose negligence exceeds 15% jointly and severally liable for economic damages, which in this case are \$40,000. The noneconomic share (\$24,000) plus the economic share (\$40,000) equals \$64,000.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000 (totaling \$100,000). They also find that the plaintiff was not at fault, D(1) was 40% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

[1] \$40,000

[2] \$60,000

[3] \$64,000

**[4] \$100,000**

Sorry, that's incorrect. Oregon has abolished joint and several liability for at least part of the plaintiff's recovery. Try again.



## Question #22

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000. They also find that the plaintiff was 30% at fault, D(1) was 10% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

- [1] Nothing.
- [2] \$10,000
- [3] \$40,000
- [4] \$46,000



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000. They also find that the plaintiff was 30% at fault, D(1) was 10% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

**[1] Nothing.**

[2] \$10,000

[3] \$40,000

[4] \$46,000

Sorry, that's incorrect. Reread section 18.485 and try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000. They also find that the plaintiff was 30% at fault, D(1) was 10% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

[1] Nothing.

**[2] \$10,000**

[3] \$40,000

[4] \$46,000

That's correct. The Oregon Comparative Fault Act, 18.485 provides that the defendants shall only be severally liable for noneconomic damages. Thus, D(1) would only be liable for 10% of \$60,000, or \$6,000. On the other hand, the statute says that tortfeasors are jointly and severally liable for economic damages when their percentage of fault is greater than 15%. Since D(1) is less than 15% at fault, his liability would only be several, or 10% of \$4,000, equalling \$4,000. Thus the total would be \$10,000.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000. They also find that the plaintiff was 30% at fault, D(1) was 10% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

[1] Nothing.

[2] \$10,000

**[3] \$40,000**

[4] \$46,000

Sorry, that's incorrect. Reread section 18.485 and try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is involved in an auto collision with two parties, D(1) and D(2). At trial, the jury finds that plaintiff's economic damages are \$40,000 and her noneconomic damages are \$60,000. They also find that the plaintiff was 30% at fault, D(1) was 10% at fault, and D(2) was 60% at fault.

What is the maximum that P can recover from D(1)?

[1] Nothing.

[2] \$10,000

[3] \$40,000

**[4] \$46,000**

Sorry, that's incorrect. Reread section 18.485 and try again.



## Question #23

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 30% at fault, Defendant (1) is 10% at fault, and Defendant (2) is 60% at fault.

What is the maximum that plaintiff can collect from Defendant(2)?

[1] \$60,000.

[2] \$64,000.

[3] \$80,000.

[4] None of the above.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 30% at fault, Defendant (1) is 10% at fault, and Defendant (2) is 60% at fault.

What is the maximum that plaintiff can collect from Defendant(2)?

**[1] \$60,000.**

[2] \$64,000.

[3] \$80,000.

[4] None of the above.

Sorry, that's incorrect. Although Defendant(2)'s share of the liability is only \$60,000, he is jointly and severally liable for the economic damages. Try again.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 30% at fault, Defendant (1) is 10% at fault, and Defendant (2) is 60% at fault.

What is the maximum that plaintiff can collect from Defendant(2)?

[1] \$60,000.

**[2] \$64,000.**

[3] \$80,000.

[4] None of the above.

That's correct. All defendants are only severally liable for noneconomic damages, so D(2)'s share of noneconomic damages would be \$36,000 (60% of \$60,000). In addition, Defendant (2) is jointly and severally liable for the economic damages, minus the plaintiff's percentage of fault (30%). Thus,  $\$40,000 - \$12,000 = \$28,000$ . The noneconomic and economic damages together total \$64,000.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 30% at fault, Defendant (1) is 10% at fault, and Defendant (2) is 60% at fault.

What is the maximum that plaintiff can collect from Defendant(2)?

[1] \$60,000.

[2] \$64,000.

**[3] \$80,000.**

[4] None of the above.

Sorry, that's incorrect. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 30% at fault, Defendant (1) is 10% at fault, and Defendant (2) is 60% at fault.

What is the maximum that plaintiff can collect from Defendant(2)?

[1] \$60,000.

[2] \$64,000.

[3] \$80,000.

**[4] None of the above.**

Sorry, that's incorrect. There is a correct answer in the group. Try again.



## Question #24

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault. Plaintiff does collect \$64,000 from Defendant (2), but nothing from Defendant(1).

How much may Defendant(2) collect from Defendant(1)?

[1] Nothing

[2] \$11,200.

[3] \$30,000.

[4] None of the above.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault. Plaintiff does collect \$64,000 from Defendant (2), but nothing from Defendant(1).

How much may Defendant(2) collect from Defendant(1)?

**[1] Nothing**

[2] \$11,200.

[3] \$30,000.

[4] None of the above.

Sorry, that's incorrect. This jurisdiction does permit collection of contribution where the defendant has paid more than his equitable share.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault. Plaintiff does collect \$64,000 from Defendant (2), but nothing from Defendant(1).

How much may Defendant(2) collect from Defendant(1)?

[1] Nothing

**[2] \$11,200.**

[3] \$30,000.

[4] None of the above.

That's correct. Defendant(2) has been held jointly and severally liable for the economic damages (\$28,000). If he had paid only his proportionate share, he would have paid 60% of \$28,000 or \$16,800. Thus, he has been forced to pay \$11,200 more than his share of the total. Consequently, he'd be entitled to collect that amount from his codefendant.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault. Plaintiff does collect \$64,000 from Defendant (2), but nothing from Defendant(1).

How much may Defendant(2) collect from Defendant(1)?

[1] Nothing

[2] \$11,200.

**[3] \$30,000.**

[4] None of the above.

Sorry, that's incorrect. \$30,000 represents Defendant (1)'s share of the total damages, but Defendant(2) has only paid part of that. Try calculating the answer again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Use the previous facts: plaintiff's damages are \$100,000 (economic damages are \$40,000; noneconomic damages are \$60,000); plaintiff is 10% at fault, Defendant (1) is 30% at fault, and Defendant (2) is 60% at fault. Plaintiff does collect \$64,000 from Defendant (2), but nothing from Defendant(1).

How much may Defendant(2) collect from Defendant(1)?

- [1] Nothing
- [2] \$11,200.
- [3] \$30,000.
- [4] None of the above.**

Sorry, that's incorrect. There is a correct answer in the group. Try again.





## Question #25

Plaintiff is injured in an automobile accident with Defendant(1) and Defendant(2). Plaintiff's damages are \$100,000, composed of \$40,000 economic and \$60,000 noneconomic damages; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, Defendant(2) is unable to pay anything.

How much will Plaintiff be able to recover from Defendant(1)?

[1] \$30,000

[2] \$54,000

[3] \$75,000

[4] \$90,000



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is injured in an automobile accident with Defendant(1) and Defendant(2). Plaintiff's damages are \$100,000, composed of \$40,000 economic and \$60,000 noneconomic damages; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, Defendant(2) is unable to pay anything.

How much will Plaintiff be able to recover from Defendant(1)?

**[1] \$30,000**

[2] \$54,000

[3] \$75,000

[4] \$90,000

Sorry, that's incorrect. Oregon has a mixed system, allowing some damages beyond each defendant's individual share. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is injured in an automobile accident with Defendant(1) and Defendant(2). Plaintiff's damages are \$100,000, composed of \$40,000 economic and \$60,000 noneconomic damages; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, Defendant(2) is unable to pay anything.

How much will Plaintiff be able to recover from Defendant(1)?

[1] \$30,000

**[2] \$54,000**

[3] \$75,000

[4] \$90,000

That's correct. Remember that in Oregon the liability of any defendant for noneconomic damages is several only. Thus, Defendant(1) is liable for only his percentage (30%) of the noneconomic damages (\$60,000), totaling \$18,000. In addition, Defendant(1)'s share of fault is 15% or greater, making him jointly and severally liable for the economic damages (\$40,000 - 10% comparative fault, = 36,000). Thus, the total of his liability will be \$54,000.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is injured in an automobile accident with Defendant(1) and Defendant(2). Plaintiff's damages are \$100,000, composed of \$40,000 economic and \$60,000 noneconomic damages; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, Defendant(2) is unable to pay anything.

How much will Plaintiff be able to recover from Defendant(1)?

[1] \$30,000

[2] \$54,000

**[3] \$75,000**

[4] \$90,000

Sorry, that's incorrect. You have to compute the total based upon figuring out the proportions of economic damages and noneconomic damages that are allowable. Try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

Plaintiff is injured in an automobile accident with Defendant(1) and Defendant(2). Plaintiff's damages are \$100,000, composed of \$40,000 economic and \$60,000 noneconomic damages; plaintiff is found 10% at fault; Defendant(1) was 30% at fault, and Defendant(2) was 60% at fault. However, Defendant(2) is unable to pay anything.

How much will Plaintiff be able to recover from Defendant(1)?

[1] \$30,000

[2] \$54,000

[3] \$75,000

**[4] \$90,000**

Sorry, that's incorrect. Your answer reflects pure joint and several liability, but Oregon only allows pure joint and several liability in certain kinds of cases. Reread <sup>^s</sup> 18.485(5) and try again.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

## Question #26

This question asks about how the Oregon Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages—all economic--to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

[1] \$90,000

[2] \$80,000

[3] \$60,000

[4] None of the above



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Oregon Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages—all economic—to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

**[1] \$90,000**

[2] \$80,000

[3] \$60,000

[4] None of the above

Sorry, that's incorrect. Note that the plaintiff has already received \$10,000 in settlement, and another \$90,000 would give him a full recovery (\$100,000) despite the finding that the plaintiff was 10% at fault. Try another answer.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Oregon Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages—all economic--to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

[1] \$90,000

**[2] \$80,000**

[3] \$60,000

[4] None of the above

That's correct. The statute (<sup>^</sup>s 18.455) speaks in terms of reducing the judgment against the other tortfeasors by "the amount stipulated by the covenant [release], or in the amount of the consideration paid for it, whichever is the greater." It doesn't talk about reducing it by a percentage amount. Thus, the plaintiff would be entitled to a judgment of \$90,000 - \$10,000 already received = \$80,000.

Congratulations. You have <sup>^</sup>completed<sup>^</sup> the exercises in Chapter 6.

You will now be returned to the main menu.





# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Oregon Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages—all economic--to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

[1] \$90,000

[2] \$80,000

**[3] \$60,000**

[4] None of the above

Sorry, that's incorrect. The plaintiff is entitled to more than the defendant's share. Try another answer.



# Torts Tutorial Chapter 6 – Joint Tortfeasors

This question asks about how the Oregon Comparative Fault Act deals with cases where one of the defendants settles prior to trial. Assume the following facts for purposes of this question:

- Plaintiff settles with Defendant(1) for \$10,000;
- The jury determines the value of plaintiff's damages—all economic--to be \$100,000;
- Plaintiff is found to be 10% at fault; Defendant(1) is found 30% at fault, and Defendant(2) is 60% at fault.

Based on these facts, the judge would enter a judgment in favor of plaintiff against Defendant(2) in the amount of:

- [1] \$90,000
- [2] \$80,000
- [3] \$60,000
- [4] None of the above**

Sorry, that's incorrect. One of the other answers is correct. Try again.



END

Find more exercises at the Torts Home Page by clicking the Home Action Button

