

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 8
ACTIONS FOR NEGLIGENCE

6-801. COMPARATIVE NEGLIGENCE OR COMPARATIVE RESPONSIBILITY -- EFFECT OF CONTRIBUTORY NEGLIGENCE. Contributory negligence or comparative responsibility shall not bar recovery in an action by any person or his legal representative to recover damages for negligence, gross negligence or comparative responsibility resulting in death or in injury to person or property, if such negligence or comparative responsibility was not as great as the negligence, gross negligence or comparative responsibility of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence or comparative responsibility attributable to the person recovering. Nothing contained herein shall create any new legal theory, cause of action, or legal defense.

[6-801, added 1971, ch. 186, sec. 1, p. 862; am. 1987, ch. 278, sec. 2, p. 577.]

6-802. VERDICT GIVING PERCENTAGE OF NEGLIGENCE OR COMPARATIVE RESPONSIBILITY ATTRIBUTABLE TO EACH PARTY. The court may, and when requested by any party 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; and the court shall then reduce the amount of such damages in proportion to the amount of negligence or comparative responsibility attributable to the person recovering. Nothing contained herein shall create any new legal theory, cause of action, or legal defense.

[6-802, added 1971, ch. 186, sec. 2, p. 862; am. 1987, ch. 278, sec. 3, p. 577.]

6-803. CONTRIBUTION AMONG JOINT TORTFEASORS -- DECLARATION OF RIGHT -- EXCEPTION -- LIMITED JOINT AND SEVERAL LIABILITY. (1) The right of contribution exists among joint tortfeasors, but a joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share thereof.

(2) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

(3) The common law doctrine of joint and several liability is hereby limited to causes of action listed in subsection (5) of this section. In any action in which the trier of fact attributes the percentage of negligence or comparative responsibility to persons listed on a special verdict, the court shall enter a separate judgment against each party whose negligence or comparative responsibility exceeds the negligence or comparative responsibility attributed to the person recovering. The negligence or comparative responsibility of each such party is to be compared individually to the negligence or comparative responsibility of the person recovering. Judgment against each such party shall be entered in an amount equal to each party's proportionate share of the total damages awarded.

(4) As used herein, "joint tortfeasor" means one (1) of two (2) or more persons jointly or severally liable in tort for the same injury to person or

property, whether or not judgment has been recovered against all or some of them.

(5) A party shall be jointly and severally liable for the fault of another person or entity or for payment of the proportionate share of another party where they were acting in concert or when a person was acting as an agent or servant of another party. As used in this section, "acting in concert" means pursuing a common plan or design which results in the commission of an intentional or reckless tortious act.

[6-803, added 1971, ch. 186, sec. 3, p. 862; am. 1987, ch. 278, sec. 4, p. 578; am. 1990, ch. 120, sec. 1, p. 290; am. 2003, ch. 122, sec. 1, p. 370.]

6-804. COMMON LAW LIABILITIES PRESERVED. Nothing in this act affects:

(1) The common law liability of the several joint tortfeasors to have judgment recovered and payment made from them individually by the injured person for the whole injury shall be limited to causes of action listed in section 6-803, Idaho Code. However, the recovery of a judgment by the injured person against one (1) joint tortfeasor does not discharge the other joint tortfeasors.

(2) Any right of indemnity under existing law.

[6-804, added 1971, ch. 186, sec. 4, p. 862; am. 1987, ch. 278, sec. 5, p. 578.]

6-805. EFFECT OF RELEASE OF ONE TORTFEASOR ON LIABILITY OF OTHERS. (1) A release by the injured person of one (1) joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasors unless the release so provides, but, unless otherwise provided in subsection (2) of this section, reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if such amount or proportion is greater than the consideration paid.

(2) A release by the injured person of one (1) or more tortfeasors who are not jointly and severally liable to the injured person, whether before or after judgment, does not discharge another tortfeasor or reduce the claim against another tortfeasor unless the release so provides and the negligence or comparative responsibility of the tortfeasor receiving the release is presented to and considered by the finder of fact, whether or not the finder of fact apportions responsibility to the tortfeasor receiving the release.

[6-805, added 1971, ch. 186, sec. 5, p. 862; am. 1991, ch. 249, sec. 1, p. 617.]

6-806. EFFECT OF RELEASE OF ONE TORTFEASOR ON HIS LIABILITY FOR CONTRIBUTION TO OTHERS -- LIMITS ON APPLICATION OF SECTION. A release by the injured person of one (1) joint tortfeasor does not relieve him from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors. This section shall apply only if the issue of proportionate fault is litigated between joint tortfeasors in the same action.

[6-806, added 1971, ch. 186, sec. 6, p. 862.]

6-807. LIMITATION ON THE RECOVERY OF DAMAGES -- REDUCING OR INCREASING AN AWARD. (1) In all civil actions in which there has been an award of damages as herein defined, the trial judge may, in his discretion, and after considering all of the evidence, alter such portion of the award representing damages if the amount awarded; (a) is unsupported or unjustified by the clear weight of the evidence; or (b) is so unreasonably disproportionate to the loss or damage suffered or to be suffered as to be unconscionable or so as to shock the conscience of the court; or (c) is the product of a legal error or mistake during the presentation of the evidence or submission of the case to the trier of fact; or (d) is demonstrated to be more likely than not the product of passion or prejudice on the part of the trier of fact.

(2) If the court finds that the award of damages is unreasonably great or small by reason of any one or more of the factors set forth above, then the district court may exercise its discretion to reduce or increase such award in order to make the same consistent with the losses as shown by the evidence. In the event that the court shall enter any such order, it shall make detailed findings of fact and conclusions of law explaining the reason for its action, the amount of any increase or reduction, and the basis therefore.

[6-807, added 1987, ch. 278, sec. 6, p. 579; am. 1992, ch. 86, sec. 1, p. 270.]

6-808. CIVIL IMMUNITY FOR SELF-DEFENSE. (1) A person who uses force as justified in section 18-4009, Idaho Code, or as otherwise permitted in sections 19-201 through 19-205, Idaho Code, is immune from any civil liability for the use of such force except when the person knew or reasonably should have known that the person against whom the force was used was a law enforcement officer acting in the capacity of his or her official duties.

(2) The court shall award reasonable attorney's fees and costs incurred by the defendant in any civil action if the court finds that the defendant is immune from such action pursuant to this section.

(3) As used in this section, "law enforcement officer" means any court personnel, sheriff, constable, peace officer, state police officer, correctional officer, probation or parole official, prosecuting attorney, city attorney, attorney general, or their employees or agents, or any other person charged with the duty of enforcement of the criminal, traffic or penal laws of this state or any other law enforcement personnel or peace officer as defined in chapter 51, title 19, Idaho Code.

[6-808, added 2006, ch. 453, sec. 1, p. 1345.]