

**Kentucky Jury Instruction 16.12**

**Vehicles meeting; claims by drivers and passengers; comparative fault**

1. It was the duty of each of the two drivers, upon meeting the approaching vehicle of the other, to keep his vehicle to the right side of the highway.

2. If you are satisfied from the evidence that D's truck was not wholly on its right-hand side of the highway at the time of the collision you will find as follows:

(a) for X and Y [guests in one or both vehicles] on their claims against D;

AND(b) for P on his claim against D.

Otherwise you will find for D on all claims against him.

3. If you are satisfied from the evidence that P's automobile was not wholly on its right-hand side of the highway at the time of the collision you will find as follows:

(a) for X and Y on their claims against P;

AND(b) for D on his counterclaim against P.

Otherwise you will find for P on all claims against him.

4.(a) If you are satisfied from the evidence that neither one of the two vehicles was wholly on its right-hand side of the highway at the time of the collision, you will determine from the evidence and indicate in the following blank spaces what percentage of the total fault was attributable to each of the drivers, as follows:

P: \_\_\_\_\_ %

D: \_\_\_\_\_ %

Total: 100%

(In determining the percentages of fault you shall consider both the nature of the conduct of each of the drivers and the extent of the causal relation between his conduct and the damages claimed.)

(b) Using the measures of damages set forth in Instruction 5, state the total amount of damages each of the following parties would be entitled to recover if his [or her] contributory fault (if any) is disregarded:

P: \$ \_\_\_\_\_

D: \$ \_\_\_\_\_

5. [Measures of damages. See Ch. 39 and Sec. 13.14.]

6. [Number of jurors required for a verdict. See Instruction 9, Sec. 15.01.]

References:

[KRS 189.300\(1\)](#); [189.310\(2\)](#); [Meadows v. Bailey, Ky., 350 S.W.2d 630, 634 \(1961\)](#); [Orr v. Coleman, Ky., 455 S.W.2d 59 \(1970\)](#); [Marmor v. Marmor, Ky., 409 S.W.2d 526, 528-529 \(1966\)](#); [Carpenter v. Galloway, Ky., 344 S.W.2d 795, 800 \(1961\)](#).

#### COMMENT

This example illustrates the case in which the liabilities of the respective drivers depend on the single issue of whether either or both vehicles were in violation of [KRS 189.300\(1\)](#). It has been drawn to allow for the possibility that the jury may believe that one party was across the line but may not be able to find whether the other driver was in like fault. In such a case the other driver is entitled to a verdict in all respects, since it is not his burden to negate his own fault. It allows also for the possibility that the jury may not be convinced one way or the other as to which driver was negligent, in which event all claimants fail in their respective burdens of proof. This distinct possibility demonstrates the incorrectness of instructions such as those approved in [Hollis v. Bourne, 292 Ky. 578, 167 S.W.2d 50 \(1943\)](#), to the effect that either one or both drivers must be liable to the passengers. See [Cox v. Cooper, Ky., 510 S.W.2d 530, 534 \(1974\)](#).