

This resource demonstrates our general experience as to verdict results in each county, and outlines 15 points on the most common questions and issues in personal injury claims.

- 1. STATUTE OF LIMITATIONS:** A one-year limitation applies to claims for malicious prosecution, false imprisonment, libel or slander, breach of employment contract, wrongful termination, liability created by statute, and actions against public entities or employees. A two-year limitation applies to claims for injury to person, injury when death ensues, and injury to or conversion of property. A six-year statute of limitation applies to claims for breach of contract. Time limits are tolled while a person is a minor. Claims made by a state or political subdivision are generally not barred by a statute of limitations.
- 2. PUNITIVE DAMAGES:** Punitive damages are awardable in the most egregious cases, involving outrageous and reprehensible conduct. A plaintiff must show, by “clear and convincing evidence,” proof of the defendant’s evil hand guided by an evil mind which either: (1) consciously sought to injure the plaintiff; or (2) consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others such that an “evil mind” may be inferred.
- 3. COMPARATIVE NEGLIGENCE:** Arizona is a pure comparative fault and several liability jurisdiction, meaning each defendant is liable only for that amount of the plaintiff’s damages allocated to that defendant in direct proportion to the defendant’s percentage of fault.
- 4. ASSUMPTION OF THE RISK:** In all cases, this defense is a question of fact for the jury. Even if the jury finds that a plaintiff assumed the risk, it still has discretion to find for the plaintiff or the defendant, or assign percentages of fault to both.
- 5. DRAM SHOP ACT:** Applies to commercial vendors. The vendor can be sued by anyone, including the intoxicated individual, for injury, property damage, or death. It does not apply to a social host, so long as the person served is 21 years of age, or older.
- 6. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS:** May be sought by: (1) a bystander who witnesses bodily injury to a closely related person and suffers mental anguish at the time of the accident from witnessing that injury; or (2) an individual who develops mental anguish from a threat to his or her personal security. In both instances, the individual must be within the zone of danger when the accident occurs and the mental anguish must manifest itself with physical injury.
- 7. COLLATERAL SOURCE RULE:** In general, a defendant may not introduce evidence that a plaintiff’s damages were paid by a collateral source (e.g., insurance), or that a plaintiff’s bills were satisfied by a reduced amount. However, evidence of collateral source payments is admissible in medical negligence cases, subject to the plaintiff’s right to introduce evidence of any liens against the plaintiff’s claim. In all cases, a plaintiff must prove that billed charges are reasonable and customary in the community.
- 8. MANDATORY LIABILITY COVERAGE:** Minimum auto liability limits: \$15,000 for bodily injury or death of one person in any one accident; \$30,000 for bodily injury or death of two or more persons in any one accident; and \$10,000 for damage or destruction of property of others in any one accident. Punitive damages are covered by a liability policy, unless specifically excluded, but they are not covered in UM/UIM policies, unless specifically included.
- 9. MED PAY:** None required. Purely contractual.
- 10. UNINSURED AND UNDERINSURED MOTORIST COVERAGE:** A carrier is required to offer UM/UIM coverage in writing, in limits not less than bodily injury liability limits. Failure to make the offer results in inclusion of UM/UIM in the policy by operation of law.
- 11. OFFER OF JUDGMENT:** In cases not subject to arbitration, a plaintiff or defendant can make an offer of judgment at any time more than 30 days before a trial begins. If an offer is not accepted, and the offeree does not later obtain a more favorable judgment, the offeree must pay reasonable expert witness fees and double the taxable costs incurred by the offeror after making the offer. A plaintiff offeror may also recover prejudgment interest on unliquidated claims to accrue from the date of the offer.

12. SEAT BELT RULE: A jury may consider the plaintiff's failure to wear a seat belt if: (1) the injured party is of an age or discretion that failure to wear a seat belt could be viewed as fault; (2) the failure to use the seat belt was unreasonable under all circumstances; (3) the failure caused or enhanced the plaintiff's injuries; and (4) evidence shows, with reasonable probability, the degree of enhancement.

13. COURTS: Lawsuits filed in the Arizona superior courts are subject to mandatory arbitration if the amount in controversy is \$50,000 or less (lower limits in some outlying counties). A party not satisfied with the arbitrator's decision has a right to appeal the matter for a trial de novo in superior court. However, there are sanctions for failing to obtain at least a 23% more favorable outcome in the superior court.

14. WRONGFUL DEATH CASES: A wrongful death action can be brought by and in the name of the surviving spouse, parents, or children. If none of them survive, a wrongful death action can be brought by the decedent's estate.

15. SETTLEMENT OF WRONGFUL DEATH AND MINOR CASES: A minor lacks capacity to enter into a binding contract, including settlement agreements. Therefore, obtaining a binding settlement of a minor's claim requires court approval, regardless of the amount of the settlement. To do otherwise risks the possibility that the minor can later reopen the claim.

FAVORABILITY TO DEFENSE

