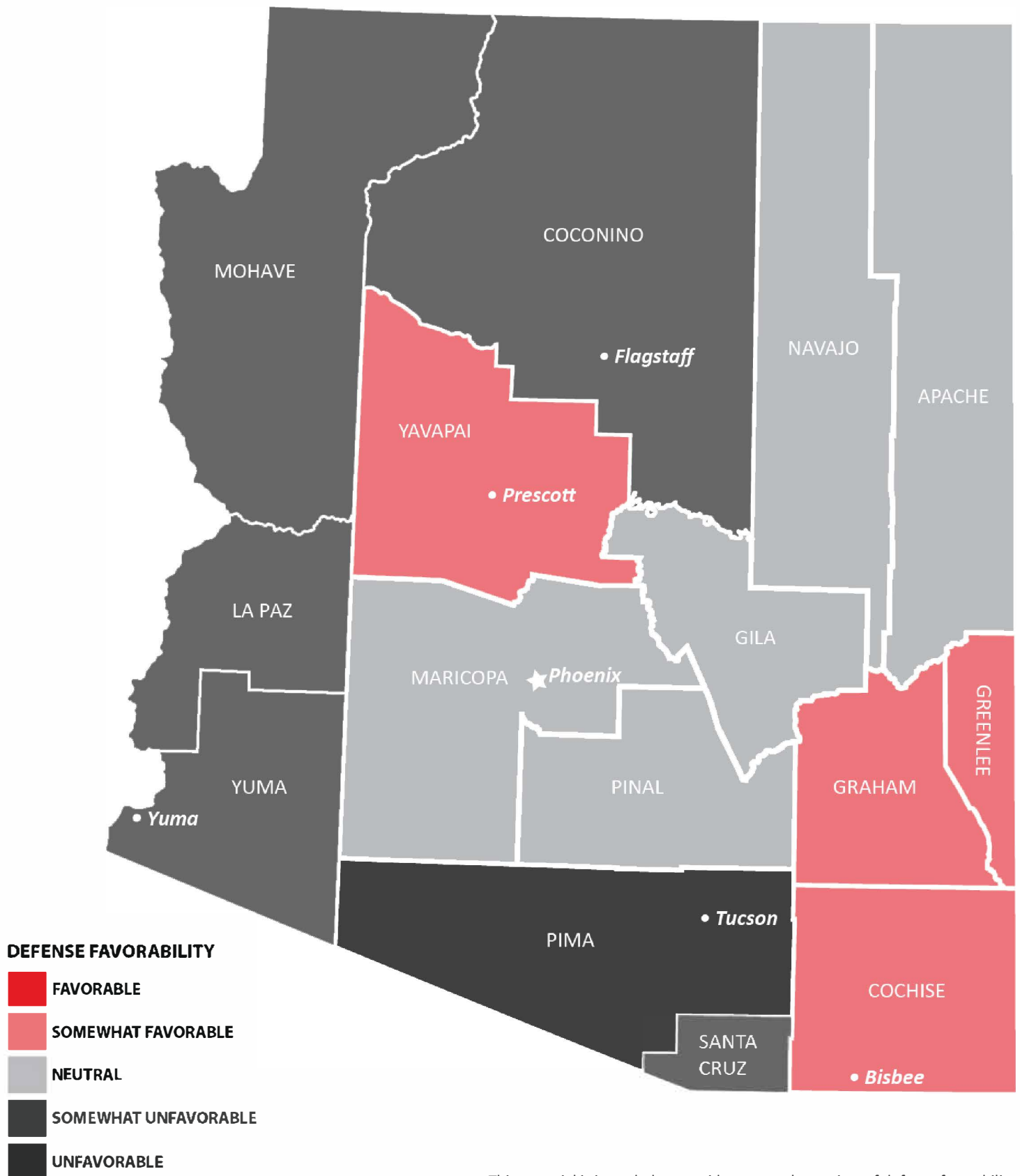




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1 Statute of Limitations Statute of Limitations: Arizona's statutes of limitations are: One year: malicious prosecution, false imprisonment, libel or slander, breach of employment contract, wrongful termination, workers' compensation, liability created by statute, and actions against public entities or employees. Two years: insurance bad faith, medical malpractice, legal malpractice, injury to person, injury when death ensues, and injury to or conversion of property. Three years: legal malpractice claims based on oral contracts. Six years: breach of contract and legal malpractice claims based on written contracts. Time limits are tolled while a person is a minor or of unsound mind. Claims made by a state or political subdivision in their governmental capacities are generally not barred by a statute of limitations.

2 Punitive Damages Punitive damages are awardable in the most egregious tort cases. Plaintiff must establish that the defendant engaged in tortious conduct of any kind, intentional or negligent, then prove the defendant engaged in such conduct with an "evil mind." Establishing evil mind requires clear and convincing evidence that the defendant's actions either (1) intended to cause harm, (2) were motivated by spite, or (3) were outrageous, creating a "substantial risk of tremendous harm to others." It is not enough that a defendant had reason to appreciate the severity of the risk; the defendant must have actually appreciated the severity of the risk before consciously disregarding it. Only the rare negligence case will meet this standard. Public entities and employees are immune from punitive damages.

3 Comparative Negligence Arizona is a pure comparative fault and several liability jurisdiction, meaning each defendant is liable only for that 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. Three exceptions allow joint liability: where defendants act in concert; where a person acts as an agent or servant of another; and where liability arises out of the FELA.

4 Assumption of 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 A.R.S. § 4-311(A) provides for a liquor licensee's liability where the licensee sells liquor to a person who was either obviously intoxicated or under the legal drinking age (21), the person consumes the liquor, and the consumption is a proximate cause of injury, death, or property damage. The statute defines obvious intoxication. A.R.S. § 4-312 provides that the licensee is not liable to the consumer or purchaser himself, if he or she is over the legal drinking age, or any other adult present with the consumer/purchaser who knew of the person's impaired condition. These statutes pre-empt any common law dram shop claim. A social host is not liable. A.R.S. § 4-301.

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. The damages must be caused by the emotional disturbance that occurred at the time of the accident, and not thereafter.

7 Med Pay Medical payments insurance covers medical bills for the policyholder and their passengers regardless of who is at fault. MedPay coverage is not required in Arizona. Purely contractual issue.

8 Collateral Source Rule In general, a defendant may not introduce evidence that a collateral source unconnected with the defendant (e.g., plaintiff's insurance) paid for plaintiff's damages or that a health care provider accepted a reduced amount for plaintiff's medical care. The purpose is to prevent a tortfeasor from deriving any benefit from the fact that plaintiff happened to exercise foresight in protecting themselves. By statute, however, collateral source evidence is admissible in medical negligence cases, subject to the plaintiff's right to introduce evidence of (a) amounts plaintiff paid to secure those benefits, and (b) any liens against plaintiff's recovery. In all cases, a plaintiff must prove that billed charges are reasonable and customary in the community.

9 Mandatory Liability Coverage Minimum auto liability limits: \$25,000 for bodily injury or death of one person in any one accident; \$50,000 for bodily injury or death of two or more persons in any one accident; and \$15,000 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.

10 Uninsured & 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 in amounts equal to the insured's bodily injury liability limits.

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 the case is assigned to arbitration, the offer of judgment must be made more than 25 days before the arbitration. 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. Note also that the defendant must prove that the plaintiff did not use an available operational seatbelt.

13 Courts Lawsuits filed in the Arizona superior courts are subject to mandatory arbitration if the amount in controversy is less than an amount specified by the county. The county limits vary from \$100 to \$65,000; and are \$50,000 in Maricopa County and \$1,000 in Pima County. 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 an appellant who fails to obtain an outcome that is at least 23% more favorable in the trial de novo.

14 Wrongful Death Cases 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 & 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.