



Arent Fox LLP Survey of Damage Laws of the 50 States including the District of Columbia and Puerto Rico

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Practice Group**

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Arent Fox LLP Survey of Damage Laws of the 50 States including the District of Columbia and Puerto Rico

by Elliott M. Kroll and James M. Westerlind

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We are pleased to share with you the Arent Fox LLP Survey of Damage Laws of the 50 States including the District of Columbia and Puerto Rico.

Tort and business-related litigation is a fact of life for companies in the United States. Companies are under assault from employment-related suits, intellectual property suits, product liability suits, environmental claims and a host of tort and contract litigation. Tort reform is a frequent topic of legislative discussion, but it does little to limit the creativity of the plaintiffs' bar. Businesses need to be able to operate with reasonable certainty concerning the nature and magnitude of the risks that they face. Our objective in this Survey is to provide guidance on some of these issues in a readily useable format.

We also like to note that our partner Martin Cuniff has co-edited the authoritative text, *Calculating and Proving Damages*. In a prologue to this Survey, Mr. Cuniff provides insights on Medical Monitoring.

We hope that you find this book useful.



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Elliott M. Kroll represents clients nationally and internationally in all major areas of the insurance industry spanning the life and non-life areas including property and casualty, aviation/space, accident and health. In addition, he has in-depth experience with premium financing, captives, financial and structured reinsurance transactions and regulatory representation.

Elliott has served as an officer and director for several major insurers and reinsurers and currently is corporate secretary and general counsel for a New York company. He has significant experience in the financial reinsurance arena and is intimately familiar with regulatory, tax and commercial components of complex insurance and reinsurance transactions and handling mergers and acquisitions.

His practice includes the formation of insurers including protected cell captives, commutations, offshore captive arrangements, assumption-innovation transactions, representation of agents and brokers, intermediaries, internal investigations, compliance and records retention protocols.

In his 35 years of practice, Elliott has served as lead counsel in over 100 reinsurance disputes including some of the most significant industry issues. Prior reinsurance arbitration and litigation experience has included insolvency issues, asbestos/environmental allocation and disputes involving managing agents and brokers.



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James' practice focuses primarily on resolving insurance and reinsurance disputes. He also concentrates on legal issues relating to insurance and reinsurance coverage for policyholders and carriers and regulatory work for domestic, foreign and alien companies, including captives, brokers, agents and MGAs.

James has substantial litigation experience in both state and federal trial courts within and outside of New York, representing plaintiffs and defendants in insurance and non-insurance disputes. In addition to insurance litigation, he has defended a number of prominent US companies in product liability actions involving allegations of serious bodily injuries, property damage and death claims. He has also defended toxic tort cases.

James has represented both plaintiffs and defendants in a number of heated lawsuits involving allegations of fraud and wrongdoing, applications for emergency relief and evidentiary hearings for emergent relief and contempt motions.

James has also taken the lead in a number of appeals in the New York State Supreme Court, Second Judicial Department, and the Second and Eleventh Circuits.

James' current focus is litigating matters in the emerging regulatory landscape of life settlements in the insurance industry, typically representing investors and secured lenders in disputes with life insurance companies over the validity of the subject life insurance policy(ies).

In addition, he has devoted a substantial portion of his time to pro bono matters, including not-for-profit public interest endeavors and Family Court litigation.

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Developments in Damages: Medical Monitoring

by **Martin Cunniff**¹

Partner

Arent Fox LLP

Over the past several decades, a nontraditional remedy has emerged to address plaintiffs whose injuries are latent but may manifest over the long term. This remedy, known as medical monitoring, compensates plaintiffs for medical expenses they incur over time to periodically monitor their health for conditions that may develop as a result of a defendant's conduct. It contrasts with the traditional rule which is that medical expenses are recoverable only when immediate, recognizable injury is present. Damages for medical monitoring, also called medical surveillance, have been recognized in an increasing number of states as an avenue for plaintiffs to recover damages for medical expenses.

The cause of action grew out of asbestos litigation, which in the mid-1980s, began to see claims for emotional distress after asbestos exposure based on a fear of developing lung cancer, a type of cancer closely related to asbestos exposure. There were also asbestos-related claims to recover damages based on the increased probability that a plaintiff would develop lung cancer later in life. These claims eventually morphed into what we now consider damages for future medical monitoring. By definition, these claims are awarded solely to cover the cost of medical expenses incurred for periodic monitoring in order to detect any future manifestation of injury caused by previous exposure. Awarding damages for medical monitoring is often more palatable to courts than the previous asbestos-related iterations of these claims because a monetary award for doctors visits to run diagnostic tests is more concrete than an amorphous monetary award for the probability that a plaintiff may develop cancer twenty, thirty, or forty years down the road.

A plaintiff who develops cancer or another illness later in life after previously being awarded damages for medical monitoring could be barred from further recovery by operation of the single controversy rule. This rule typically precludes plaintiffs from getting a second bite at the apple. However, some courts are bending the rule in these types of cases by not preemptively excluding the possibility of additional litigation if an illness later develops.² Courts reason that imposition of the rule under these circumstances is illogical because it would “act as a deterrent to persons seeking early detection of catastrophic disease, and it would expose both plaintiffs and defendants to far more serious consequences should the disease later manifest itself in an advanced stage.”³

Medical monitoring claims are most commonly brought in environmental and toxic tort cases. For example, in Maryland, two separate juries recently awarded damages against Exxon Mobil, in part, for medical monitoring. In both cases, an underground gasoline tank at an Exxon Mobil station leaked gasoline, undetected, for 37 days into the plaintiffs' groundwater wells, contaminating their drinking water. The jury in the first trial awarded the plaintiffs \$150 million in compensatory damages, while the second jury awarded \$495 [??] in compensatory damages, and \$1 billion in punitive damages. Because the Maryland appellate courts have not yet addressed the issue of medical monitoring,⁴ Exxon Mobil is appealing the issue of whether Maryland law permits damages for medical monitoring. The first case, *Exxon Mobil Corp. v. Ford, et al.*, is currently pending, *en banc*, before the Maryland Court of Special Appeals.

Developments in Damages: Medical Monitoring

The states are currently split over whether or not to recognize such a claim for damages. Less than half of the states have either not yet addressed the issue, like Maryland, or have already rejected claims for medical monitoring. The remaining states that recognize medical monitoring as a valid claim for damages are further divided between those that recognize a medical monitoring claim if there is no present physical injury, and those that require present physical injury to sustain a claim.

In the states that do recognize medical monitoring without a present injury, a plaintiff is generally required to prove the following elements to sustain a claim:

1. significant exposure to a proven toxic or hazardous substance because of the defendant's tortious conduct;
2. as a result of the exposure, a significantly increased risk of contracting a serious disease, illness, or injury;
3. a medical test for early detection of the injury exists, and is beneficial; and,
4. periodic monitoring and testing has been prescribed by a physician as reasonably necessary.⁵

To establish these elements, plaintiffs must rely heavily on the use of expert testimony.⁶

There are, of course, concerns that adopting this novel tort remedy will open the floodgates of recovery, particularly in an age of heightened sensitivity to environmental pollutants. However, the case law has made certain to distinguish medical monitoring cases from litigants alleging general exposure to toxic pollutants. In order to recover for medical monitoring damages, a plaintiff must prove specific exposure to a toxic substance that is greater than the average person. Recently, the Supreme Court put an end to some of these concerns. In *Am. Elec. Power Co., Inc. v. Connecticut*,⁷ several states, the city of New York, and three private land owners brought suit against four private power companies and the Tennessee Valley Authority alleging federal common law public nuisance claims for general contribution to global warming by carbon-dioxide emissions. The Court held that “the Clean Air Act and the EPA actions it authorizes displace any federal common law right to seek abatement of carbon-dioxide emissions from” the power plants, but left the issue of whether relief under state law was cognizable open for consideration on remand.⁸

As plaintiffs become more strategic with claims for medical monitoring, new legal backdrops have emerged. Notably, medical monitoring claims have been recognized in prescription drug and medical device cases.⁹ Courts seem to fit these cases relatively easily into the environmental toxic tort mold for medical monitoring. For example, plaintiffs in Kentucky who used the now controversial diet drug “Fen-Phen” brought suit against the drug manufacturer for damages, including medical monitoring, alleging a significant increase in their risk of serious injury

Developments in Damages: Medical Monitoring

and disease as a result of consuming the drug.¹⁰ While the Supreme Court of Kentucky recognized that the type of case would fit the medical monitoring framework, the court dismissed the claim because the plaintiffs did not show present physical injury, as is required in Kentucky.¹¹

As more states decide whether to adopt this nontraditional action for damages, some are choosing to defer to the legislature to write new laws on medical monitoring and are shying away from creating a judicial tort remedy.¹² In responding to plaintiffs' claims for medical monitoring damages, the Supreme Court of Michigan stated in *Henry v. Dow Chem. Co.* that "plaintiffs have asked this Court to effect a change in Michigan law that, in our view, ought to be made, if at all, by the Legislature. . . . As a matter of prudence, we defer in this case to the people's representatives in the Legislature, who are better suited to undertake the complex task of balancing the competing societal interests at stake."¹³ It remains to be seen whether state legislatures will take to medical monitoring as the courts have, or which side of the issue the states who have yet to address the issue will emerge, but it is clear that this novel approach is becoming part of the damage law landscape.

Notes

1. Martin Cunniff is a partner in Arent Fox's antitrust and litigation groups. His practice focuses on high-exposure business litigation for leading corporations. He has represented a number of corporations located outside the United States and is familiar with the jurisdictional and logistical issues faced by such clients. His practice encompasses litigation of all types of complex commercial disputes including antitrust, securities fraud, breach of contract, business torts, fraud, intellectual property, trade secrets, and other commercial issues. He has been involved in numerous class actions. Martin has led several award-winning teams involved in training and development programs to make litigation management more efficient and less expensive. He is also a co-editor of the leading treatise on the calculation and proof of damages in business litigation.

2. See, e.g., *Ayers v. Jackson Twp.*, 106 N.J. 557, 583 (1987) ("[I]t is appropriate that all of the parties in interest understand that neither the single controversy doctrine nor the statute of limitations . . . will preclude a timely-filed cause of action for damages prompted by the future "discovery" of a disease or injury related to the tortious conduct at issue in this litigation.").

3. *Donovan v. Philip Morris USA, Inc.*, 455 Mass. 215, 227 (2009).

4. See *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 782 (2000).

5. See, e.g., *Donovan v. Philip Morris USA, Inc.*, 455 Mass. 215, 226 (2009); *Hansen v. Mountain Fuel Supply Company*, 858 P.2d 970, 979 (Utah 1993); *Ayers v. Township of Jackson*, 106 N.J. 557, 605-06 (1987); *In re Paoli R.R. Yard PCB Litig.*, 916 F.2d 829, 852 (3d Cir. 1990).

6. *In re Paoli*, 916 F.2d at 852.

7. *Am. Elec. Power Co., Inc. v. Connecticut*, 131 S. Ct. 2527 (2011).

8. *Id.* at 2537, 2540.

9. See, e.g., *Sinclair v. Merck & Co., Inc.*, 195 N.J. 51(2008) (seeking damages for medical monitoring after use of prescription drug Vioxx); *Wood v. Wyeth-Ayerst Laboratories, Div. of Am. Home Products*, 82 S.W.3d 849 (Ky. 2002) ("Fen-Phen").

10. *Wood*, 82 S.W.3d at 850-51.

11. *Id.* at 854-55.

12. *Henry v. Dow Chem. Co.*, 473 Mich. 63 (2005).

13. *Id.* at 68-69.

Alabama

I. Wrongful Death

Statutes¹	<p>Ala. Code § 6-5-410. A personal representative may commence an action for wrongful death.</p> <p>Death of Minor: Parents or persons with legal custody. § 6-5-390. Personal representative may bring action if parents are dead or after 6 months if parents fail to act. § 6-5-391.</p>
Beneficiaries	<p>According to the laws of intestate succession. § 6-5-391; § 6-5-410.</p>
Damages	<p>Damages recoverable are those for the wrongful act if testator had lived. § 6-5-410; <i>Black Belt Wood Co., Inc. v. Sessions</i>, 514 So.2d 1249 (Ala. 1986).</p> <p>Recoverable losses - Measure of recovery based upon quality of wrongful act and degree of culpability involved. <i>Black Belt Wood Co., Inc. v. Sessions</i>, 514 So.2d 1249 (Ala. 1986).</p> <p>No ceiling on recovery. §§ 6-5-391; 6-5-410; 6-11-20; 6-11-29.</p>
Survival Of Other Causes Of Action	<p>The following survive in favor of and against personal representatives. § 6-5-462:</p> <ol style="list-style-type: none"> All proceedings not of an equitable nature; All claims upon which an action has been filed. All personal claims upon which an action has been filed, except for injuries to reputation. All claims upon which no action has been filed on a contract <p>All personal claims upon which no action has been filed survive against the personal representative of a deceased tortfeasor. § 6-5-462.</p> <p>Wrongful death action does not abate by death of defendant and may be revived against personal representative. § 6-5-410(b).</p>

II. Statutes Of Limitations

Personal Injury	<p>2 years from date of injury. § 6-2-38(l).</p> <p>Trespass - 6 years from date of occurrence. § 6-2-34(2).</p>
Wrongful Death	<p>2 years. § 6-2-38(a).</p>
Property Damage	<p>2 years. 6-2-38(l).</p> <p>Trespass - 6 years. § 6-2-34(2).</p>

II. Statutes Of Limitations

Contract	6 years. § 6-2-34(9).
Contract For Sale, Breach Of Warranty (Commercial Code)	4 years; parties may reduce to not less than 1 year. § 7-2-725(1).
Products Liability	<p>1 year from occurrence of injury, death or property damage. § 6-5-502(a).</p> <p>Latent or undiscoverable by nature at time of occurrence or toxic substance - 1 year from date of discovery. § 6-5-502(b).</p> <p>Statute of repose of 10 years after first use. § 6-5-502(c) (violative of Alabama Constitution, Article I, § 13, per Lankford v. Sullivan, Long and Hagerty, 416 So.2d 996 (Ala. 1982)).</p> <p>Asbestos - Accrues on discovery. § 6-2-30(b) (violates § 95 of Alabama Constitution as applied to actions which were time barred by the statute of limitations at the time this section was passed, per Tyson v. Johns-Manville Sales Corp., 399 So. 2d 263 (Ala. 1981)).</p> <p>(Note: Senate bill No. 246 proposes to amend statute §6-2-30(b) by adding add subsections (c) and (d), which are proposed to apply with retroactive effect).</p>

III. Conflicts Rule

Tort	Lex loci delicti. Fitts v. Minnesota Mining and Mfg. Co., 581 So.2d 819 (Ala. 1991).
Torts In Flight Over State	Alabama law governs. § 23-1-383.
Contract	The law of the state in which the contract is executed governs the interpretation of the contract. Ailey v. Nationwide Mutual Insurance Co., 570 So.2d 598 (Ala. 1990); <i>see also</i> § 27-14-22.

IV. Contributory/Comparative Negligence

Contributory Negligence	Yes. Norfolk Southern Ry. Co. v. Johnson, No. 1090011, 2011 WL 835060, at *11-12 (Ala. Mar. 11, 2011).
Comparative Negligence	No. Godfrey v. Vinson, 110 So. 13 (Ala. 1926).

V. Contribution and Indemnity

Contribution No, for joint tortfeasors. *Crigler v. Salac*, 438 So.2d 1375 (Ala. 1983).
Products Liability – No. § 6-5-501.

Indemnity No, for joint tortfeasors. *Crigler v. Salac*, 438 So.2d 1375 (Ala. 1983).
Products Liability – No. § 6-5-501.

VI. Punitive Damages

Burden Of Proof Generally, must show by clear and convincing evidence that defendant deliberately engaged in oppression, fraud, wantonness or malice. § 6-11-20.

Limitation On Award Generally, limited to three times the compensatory damages or \$500,000, whichever is greater. § 6-11-21(a). But in personal injury cases, the ceiling is \$1,500,000. § 6-11-21(d). Limitations inapplicable to actions for wrongful death or for intentional infliction of physical injury. § 6-11-21(j).

Wrongful Death Yes. §§ 6-5-391; 6-5-410; 6-11-20; 6-11-29.

Personal Injury Yes, § 6-11-20. Cap per § 6-11-21 held violative of Alabama Constitution. *Henderson v. Alabama Power Co.*, 627 So.2d 878 (Ala. 1993).

Covered By Insurance Directly assessed - Yes. *American Fidelity & Cas., v. Werfel*, 162 So. 103 (Ala. 1935).
Vicariously assessed – Yes. *Capital Motor Lines v. Loring*, 189 So. 897 (Ala. 1939).

Amount Payable To The State None. § 6-11-21(l).

VII. Products Liability Law

Cause Of Action Negligence; innocent or negligent misrepresentation; the manufacturer's liability doctrine; Alabama's extended manufacturer's liability doctrine; breach of implied warranty; or breach of any oral express warranty. No others. § 6-5-521.

VII. Products Liability Law

Collateral Source Rule

Evidence that the plaintiff's medical or hospital expenses have been or will be paid or reimbursed (1) by medical or hospital insurance, or (2) pursuant to the medical and hospital payment provisions of law governing workmen's compensation, shall be admissible as competent evidence in mitigation of such medical or hospital expense damages. § 6-5-522.

Warranties

Extended to persons reasonably expected to use product and who are injured by breach. § 7-2-318.

VIII. Limitations On Compensatory Damages

Governmental Entity

The recovery of damages under any judgment against a governmental entity shall be limited to \$100,000 for damage or loss of property arising out of any single occurrence, \$100,000 for one person in any single occurrence, and \$300,000 in the aggregate for bodily injury or death. §11-93-2.

Collateral Source Rule

In all actions where damages for any medical or hospital expenses are claimed and are legally recoverable for personal injury or death, evidence that the plaintiff's medical or hospital expenses have been or will be paid or reimbursed shall be admissible as competent evidence. § 6-5-545. A similar statute, §12-21-45, holds that the same is true in all civil actions. *See also* Marsh v. Green, 782 So.2d 223, 233 (Ala. 2000).

DRAM Shop

Tort liability exists for serving liquor contrary to law, including exemplary damages. § 6-5-71.

Health Care Industry/Providers

Although the legislature passed a damage cap in 1987, the Alabama Supreme Court held it to be unconstitutional. *Moore v. Mobile Infirmity Ass'n*, 592 So. 2d 156 (Ala. 1991).

Note that §6-11-21 provides that in all civil actions where there is an entitlement to punitive damages, an award may not exceed three times the compensatory damages or \$500,000, whichever is greater. This is applicable in all cases except physical injury (where the cap is the greater of three times compensatory damages or \$1,500,000), wrongful death or intentional infliction of physical injury, or against a small business (where the award shall not exceed the greater of \$50,000 or 10% of the business' net worth). *See also* Mobile Infirmity Med. Ctr. V. Hodgen, 884 So. 2d 801 (Ala. 2003).

Economic Loss Doctrine

Profits within the contemplation of both parties can be recovered, particularly where profits are the direct result of a contract. *Kirkland & Co. of Aniston, P.C. v. A.M. Food Service, Inc.*, 579 So.2d 1278 (Ala. 1991).

IX. Joint And Several Liability

Yes. General Motors Corp. v. Edwards, 482 So.2d 1176 (Ala. 1985), *overruled on other grounds*, Schwartz v. Volvo North America Corp., 554 So.2d 927 Ala. 1989).

X. Consumer Fraud Act

Not adopted.

Alaska

I. Wrongful Death

Statutes¹	<p>Alaska Stat. § 09.55.580. (a personal representative must commence the action).</p> <p>For death of minor, parents or guardian must commence the action. § 09.15.010.</p>
Beneficiaries	<p>§ 09.55.580(a).</p> <p>First Priority - Spouse and children or other dependents.</p> <p>Second Priority - Estate, but pecuniary losses only.</p>
Damages	<p>§ 09.55.580. Compensatory and punitive damages are available.</p> <p>Punitive damages disfavored in Alaska; the nature and quality of wrongful act should dictate whether its perpetrator should respond in more than compensatory damages. <i>Portwood v. Copper Valley Elec. Ass'n</i>, 785 P.2d 541 (Alaska 1990). Punitive damages are available where wrongdoer's conduct is outrageous, such as acts done with malice or bad motive, or reckless indifference to interests of another and conscious action in deliberate disregard of them. <i>Tommy's Elbow Room v. Kavorkian</i>, 727 P.2d 1038 (Alaska 1986).</p> <p>Recoverable Losses. § 09.55.580(c)(1)-(6).</p> <ol style="list-style-type: none"> a. Loss of pecuniary benefits. b. Loss of contribution. c. Loss of assistance or services. d. Loss of consortium. e. Loss of prospective training and education. f. Medical and funeral expenses. g. Loss of society for death of a minor. § 09.15.010; <i>Gillispie v. Beta Constr. Co.</i>, 842 P.2d 1272 (Alaska 1992). <p>Death of beneficiary before judgment does not affect amount of damages recoverable. § 09.55.580(d).</p> <p>In action for wrongful death, damages for noneconomic loss is limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary losses and these damages may not exceed \$400,000. § 09.17.010.</p> <p>Punitive damages may not exceed three times the amount of compensatory damages or \$500,000. § 09.17.020(f).</p>
Survival Of Other Causes Of Action	<p>Yes, § 09.55.570, except injured party may not recover damages from the estate of a deceased tortfeasor. <i>Doe v. Colligan</i>, 753 P.2d 144 (Alaska 1988).</p>

II. Statutes Of Limitations

Personal Injury	2 years. § 09.10.070. 10 year statute of repose. § 09.10.055.
Wrongful Death	2 years. § 09.55.580(a).
Property Damage	2 years. § 09.10.070. 10 year statute of repose. § 09.10.055. 6 years -- action for waste or trespass upon real property. § 09.10.050.
Contract	3 years. § 09.10.053.
Breach Of Warranty, U.C.C.	4 years. § 45.02.725.
Products Liability	2 years. § 09.10.070.

III. Conflicts Rule

Tort	Most significant relationship, as set forth in Restatement (Second) Conflicts of Law § 145. <i>Savage Arms, Inc. v. Western Auto Supply Co.</i> , 18 P.3d 49 (Alaska 2001).
Contract	Most significant relationship as set forth in Restatement (Second) Conflicts of Law § 188. <i>Palmer G. Lewis Co., Inc. v. Arco Chem. Co.</i> , 904 P.2d 1221 (Alaska 1995).

IV. Contributory/Comparative Negligence

Comparative	Damages diminish in proportion to contributory fault. § 09.17.060.
Apportionment	Damages apportioned in proportion to fault. § 09.17.080.

V. CONTRIBUTION AND INDEMNITY

Contribution

Yes. § 09.17.080; Alaska General Alarm, Inc. v. Grinnell, 1 P.3d 98 (Alaska 2000).

Indemnity

No indemnification agreements - § 45.45.900 (agreement indemnifying promisee against liability is against public policy).

No indemnity will lie between two negligent tortfeasors; each tortfeasor must pay his own portion of the plaintiff's damages according to the contribution statute, but retailer or lessor found liable on strict products liability theory may obtain indemnity from the manufacturer, provided retailer or lessor was not independently negligent. Koehring Mfg. Co. v. Earthmovers of Fairbanks, Inc., 763 P.2d 499 (Alaska 1988) (Note: holding partly based on § 09.16.10, which has been repealed).

VI. PUNITIVE DAMAGES

Pleading

Although rules do not require that punitive damages be specifically pled in complaint, the complaint should, at a minimum, allege conduct that meets the legal standard for the award of punitive damages. Alternatively, a sufficiently early notification in the course of pretrial proceedings that punitive damages are being sought could also serve to give fair notice to the opposing party. Great Divide Ins. Co. v. Carpenter, 79 P.3d 599 (Alaska 2003).

Limitation On Award

May not exceed the greater of three times the compensatory award or \$500,000, except in limited circumstances. § 09.17.020.

Wrongful Death

Yes. Tommy's Elbow Room v. Kavorkian, 727 P.2d 1038 (Alaska 1986).

Personal Injury

Yes. Weason v. Harville, 706 P.2d 306 (Alaska 1985) (punitive damages available where ship owner in bad faith refused to pay maintenance and cure to seaman where it is clearly owed, availability of punitive damages will act as deterrent to unscrupulous employer, and will result in more speedy resolution of claims).

Covered By Insurance

Directly assessed - Yes. State Farm Mut. Auto. Ins. Co. v. Lawrence, 26 P.3d 1074 (Alaska 2001).

Vicariously assessed – Yes. Providence Wahington Ins. Co. v. City of Valdez, 684 P.2d 861 (Alaska 1984).

VI. PUNITIVE DAMAGES

Amount Payable To The State 50%. § 09.17.020(j).

Burden Of Proof Must prove by clear and convincing evidence. § 09.17.020; Alaska Marine Pilots v. Hendsch, 950 P.2d 98 (Alaska 1997).
Note: No award may be granted from deceased tortfeasors estate. Doe v. Colligan, 753 P.2d 144 (Alaska 1988).

VII. Products Liability Law

Strict Tort Liability Yes. Pratt & Whitney Can. v. Sheehan, 852 P.2d 1173 (Alaska 1993).

Comparative Negligence Yes. § 09.17.080.

Warranties Yes. § 45.02.318.

VIII. Limitations On Compensatory Damages

Governmental Entity No.

Collateral Source Rule Evidence of payments may be introduced. § 09.17.070

DRAM Shop No limit on damages. § 04.21.020

Health Care Industry/Providers Limit on liability, but not on amount of damages. § 09.65.096

Range Of Damage Awards

Economic Loss Doctrine Yes. § 09.17.040

Non-Economic Damages Capped at \$400,000, excluding damages for disfigurement or severe physical impairment which are capped at \$1 million. § 09.17.010.

VIII. Limitations On Compensatory Damages

Verdict Must be itemized as to past and future economic and non-economic losses. § 09.17.040(a).

Periodic Payments Court may enter periodic payment award for future damages at plaintiffs request. § 09.17.040(d).

IX. Joint And Several Liability

Several Liability In accordance with percentage of fault. § 09.17.080(d).

X. Consumer Fraud Act

Adopted § 45.50.471.

Arizona

I. Wrongful Death

Statute¹	Ariz. Rev. Stat Ann. § 12-611.
Empowered Plaintiffs	§ 12-612 General - Surviving spouse, child, or personal representative. § 12-612A Minor - Parent or guardian. § 12-612B
Beneficiaries	§ 12-612A First Priority - Spouse, children or parents Second Priority - Estate
Damages	Compensatory, §§ 12-612 and 12-613, and punitive. <i>Torres v. North American Van Lines, Inc.</i> , 658 P.2d 835 (Ariz. Ct. App. 1982). Recoverable losses. a. Statute: whatever the jury deems fair and just. § 12-613. b. Common Law: i. Loss of love, affection, companionship and consortium. ii. Personal anguish, sorrow, and suffering. iii. Pain and shock. iv. Emotional problems of children from loss of parent. <i>Southern Pac. Transp. Co. v. Lueck</i> , 535 P.2d 599 (Ariz. 1975), <i>decision after remand</i> , 540 P.2d 1258 (Ariz. 1975), <i>cert. denied</i> , 425 U.S. 913 (1976). No ceiling on recovery. Arizona Const. Art. 18 § 6.
Survival Of Other Causes Of Action	Yes, except for damages for breach of promise to marry, seduction, libel, slander, separate maintenance, alimony, loss of consortium or invasion of the right of privacy, and no damages are permitted for pain and suffering of the decedent. § 14-3110. Punitive Damages – Yes. <i>Haralson v. Fisher Surveying, Inc.</i> , 31 P.3d 114 (Ariz. 2001).

II. Statutes Of Limitations

Personal Injury	2 years. § 12-542.
Wrongful Death	2 years. § 12-542 (Accrual rule in subsection (2) declared unconstitutional; discovery rule for accrual applies. <i>Anson v. Am. Motors Corp.</i> , 155 Ariz. 420, 426 (1987)).

II. Statutes Of Limitations

Property Damage	2 years. § 12-542.
Contract	Contract for debt in writing - 6 years. § 12-548. Oral contract for debt - 3 years. § 12-543.
Breach Of Warranty, U.C.C.	4 years. § 12-544. Parties may reduce to not less than 1 year. § 47-2725.
Products Liability	2 years, but no more than 12 years after the product was first sold for use and consumption, unless negligence of manufacturer or seller, or breach of express warranty, §§ 12-551, 12-542.

III. Conflicts Rule

Torts	Most significant contacts, as set forth in the Restatement (Second) Conflicts of Law. Winsor v. Glasswerks PHX, L.L.C., 63 P.3d 1040 (Ariz. Ct. App. 2003).
Tort In Flight Over State	Arizona law applies. § 28-8208.
Contracts	Most significant relationship, unless stated in contract. Swanson v. Image Bank, Inc., 77 P.3d 439 (Ariz. 2003).

IV. Contributory/Comparative Negligence

Comparative Negligence	Defense of contributory negligence or of assumption of risk is in all cases a question of fact and shall at all times be left to the jury. If the jury applies either defense, the claimant's action is not barred, but the full damages shall be reduced in proportion to the relative degree of the claimant's fault which is a proximate cause of the injury or death, if any. There is no right to comparative negligence in favor of any claimant who has intentionally, willfully or wantonly caused or contributed to the injury or wrongful death. § 12-2505.
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V. Contribution And Indemnity

Contribution	Yes, Uniform Contribution Among Tortfeasors Act adopted. §§ 12-2501 to 12-2504.
Indemnity	<p>Yes, but where there is a right to indemnity, there is no right to contribution. § 12-2501.</p> <p>Vicariously liable – Yes. I.N.A. Ins. Co. of North America v. Valley Forge Ins. Co., 722 P.2d 975 (Ariz. Ct. App. 1986) (party seeking indemnity may recover attorney’s fees incurred in defending the underlying action but is not entitled to fees in the action that establishes its right to indemnity). However, Valley Forge case decided on the basis of common law indemnity principles which do not apply when statutory indemnity is involved. Citizens Utils. Co. v. New W. Homes, 848 P.2d 308 (Ariz. Ct. App. 1992).</p>

VI. Punitive Damages

Limitation On Award	No.
Wrongful Death	Yes. Torres v. North American Van Lines, Inc., 658 P.2d 835 (Ariz. Ct. App. 1983). May not be recovered from estate of deceased tortfeasor. Braun v. Moreno, 466 P.2d 60 (Ariz. Ct. App. 1970). The term “aggravating circumstances” in § 12-613 contemplates the imposition of punitive damages in a wrongful death action but a party is not entitled to punitive damages in absence of a finding that this same party suffered actual damages. Quinonez ex rel. Quinonez v. Andersen, 696 P.2d 1342 (Ariz. Ct. App. 1984).
Personal Injury	Yes. Huggins v. Deinhard, 621 P.2d 45 (Ariz. Ct. App. 1980).
Covered By Insurance	<p>Directly assessed - Yes. Price v. Hartford Accident and Indemnity Co., 502 P.2d 522 (Ariz. 1972).</p> <p>Vicariously assessed – Yes. Price v. Hartford Accident and Indemnity Co., 502 P.2d 522 (Ariz. 1972).</p>
Amount Payable To The State	None.
Standard Of Proof	Evil-minded act required. Ranburger v. Southern Pac. Transp. Co., 760 P.2d 551 (Ariz. 1988).

VII. Products Liability Law

Strict Tort Liability

Yes. *Golonka v. GMC*, 65 P.3d 956 (Ariz. Ct. App. 2003), *see also* Products Liability Act, §§ 12-681 to 12-686.

Comparative Negligence

Yes. *Jimenez v. Sears, Roebuck & Co.*, 904 P.2d 861 (Ariz. 1995).

Warranties

Extended to person reasonably expected to use and in family, household or a guest of buyer. § 47-2318.

Affirmative Defenses

Per § 12-683, in any product liability action, a defendant shall not be liable if he proves that any of the following applies:

1. The defect in the product is alleged to result from inadequate design or fabrication, and if the plans or designs for the product or the methods and techniques of manufacturing, inspecting, testing and labeling the product conformed with the state of the art at the time the product was first sold by the defendant.
2. The proximate cause of the incident giving rise to the action was an alteration or modification of the product that was not reasonably foreseeable, made by a person other than the defendant and subsequent to the time the product was first sold by the defendant.
3. The proximate cause of the incident giving rise to the action was a use or consumption of the product that was for a purpose, in a manner or in an activity other than that which was reasonably foreseeable or was contrary to any express and adequate instructions or warnings appearing on or attached to the product or on its original container or wrapping, if the intended consumer knew or with the exercise of reasonable and diligent care should have known of such instructions or warnings.
4. The proximate cause of the incident or incidents giving rise to the action was the repeated consumption of a food product that is not defective and unreasonably dangerous if consumed in reasonable quantities.

Pleading

No dollar amount required in the complaint, rather it should just pray for such damages as are reasonable, but complaint must state that the action satisfies jurisdictional requirements. § 12-685.

VIII. Limitations On Compensatory Damages

Governmental Entity

No punitive or exemplary damages, but no limit on compensatory damages. § 12-820.04.

VIII. Limitations On Compensatory Damages

Collateral Source Rule

Yes. *S. Dev. Co. v. Pima Capital Mgmt Co.*, 31 P.3d 123 (Ariz. Ct. App. 2001) (“the collateral source rule allows a plaintiff to fully recover from a defendant for an injury even when the plaintiff has recovered from a source other than the defendant for the same injury.”) (internal quotation marks and citation omitted). “Arizona law is clear, however, that the collateral source rule does not apply to ordinary breach of contract claims.” *Norwest Bank (Minnesota), N.A. v. Symington*, 3 P.3d 1101 (Ariz. Ct. App. 2000) (citation omitted).

DRAM Shop Liability

Yes. § 4-311; *Brannigan v. Raybuck*, 667 P.2d 213 (Ariz. 1983) (common law liability).

Health Care Industry/ Providers

§ 12-565 abolished collateral source rule as applied to health care providers but does not limit the amount of damages recoverable. *Allen v. Fisher*, 574 P.2d 1314 (Ariz. Ct. App. 1977).

Economic Loss Doctrine

Adopted. *Carstens v. City of Phoenix*, 75 P.3d 1081 (Ariz. Ct. App. 2003); *see also* *Flagstaff Affordable Hous. Ltd. Partnership v. Design Alliance, Inc.*, 223 P.3d 664 (Ariz. 2010) (Finding that “in the context of construction defects, we adopt a version of the economic loss doctrine and hold that a plaintiff who contracts for construction cannot recover in tort for purely economic loss, unless the contract otherwise provides. The doctrine does not bar tort recovery when economic loss is accompanied by physical injury to persons or other property.”).

Periodic Payments

May be requested by parties for future economic loss. §§ 12-581 - 12-594.

IX. Joint And Several Liability

Several

Liability is several only, not joint, but there are exceptions. § 12-2506.

Joint And Several

Applies if:

- a. Defendants acted in concert. § 12-2506(D)(1).
- b. Other person acting as agent or servant of party. § 12-2506(D)(2).
- c. Liability arises out of duty created by federal employer’s liability act. § 12-2506(D)(3).

X. Consumer Fraud Act

Adopted

§ 44-1522.

Arkansas

I. Wrongful Death

Statute¹	Ark. Code Ann. § 16-62-102(a)(1).
Empowered Plaintiffs	First Priority - Personal representative. § 16-62-102(b). Second Priority - If no personal representative, heirs at law. § 16-62-102(b).
Beneficiaries	Surviving spouse, children, parents, siblings, person standing in loco parentis, and persons to whom the deceased stood in loco parentis. § 16-62-102(d).
Damages	Compensatory, § 16-62-102(f)(1), and punitive. <i>Vickery v. Ballentine</i> , 732 S.W.2d 160 (Ark. 1987). Recoverable losses. § 16-62-102(f)(1-2). a. Pecuniary losses, including loss of service and companionship. b. Mental anguish, including grief. No ceiling on recovery. § 16-62-102(a)(1).
Survival Of Other Causes Of Action	Yes, except for slander and libel. § 16-62-101. <i>But see Westridge v. Byrd</i> , 823 S.W.2d 930 (Ark. Ct. App. 1992) (holding that action may not be maintained against tortfeasor's deceased heirs, but may be brought against his estate or personal representative).

II. Statutes Of Limitations

Personal Injury	General - 3 years. § 16-56-105. Construction Deficiency - 4 years. § 16-56-112.
Wrongful Death	General - 3 years. § 16-62-102(c)(1). Construction Deficiency - 4 years. § 16-56-112. Refile for non-suit - 1 year. § 16-62-102.
Property Damage	3 years. § 16-56-105.
Contract	Written - 5 years. § 16-56-111. Oral - 3 years. § 16-56-105.
Breach Of Warranty, U.C.C.	4 years; parties may reduce to not less than 1 year and cannot extend. § 4-2-725(1).
Products Liability	3 years. § 16-116-103.

III. Conflicts Rule

General Lex loci. *St. Louis, I.M. & S.R. Co. v. Brown*, 54 S.W. 865 (Ark. 1899).

Tort In Flight Over State Arkansas law applies. § 27-116-301.

Contracts Most significant relationship test. *Ducharme v. Ducharme*, 316 Ark. 482 (Ark. 1994).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence Plaintiff cannot recover if its fault is equal to or greater than that of defendants; in all other cases, a plaintiff may recover damages diminished in proportion to its fault. § 16-64-122.

V. Contribution And Indemnity

Contribution Yes. Uniform Contribution Among Tortfeasors Act, §§ 16-61-201 to 16-61-212.

Indemnity Limited. Supplier may recover from manufacturer for product liability. § 16-116-107; *see also* § 16-61-206 (subchapter does not impair right of indemnification).

VI. Punitive Damages

Burden Of Proof Clear and convincing evidence; must show aggravating factors and compensatory damages to recover. § 16-55-206.

Remittitur Yes. § 16-55-210; *Advocat, Inc. v. Sauer*, 111 S.W.3d 346 (Ark. 2003).

Wrongful Death Yes. *Vickery v. Ballentine*, 732 S.W.2d 160 (Ark. 1987).

Personal Injury Yes. *Holmes v. Hollingsworth*, 352 S.W.2d 96 (Ark. 1961).

Covered By Insurance	<p>Directly assessed – Yes, except when arising from intentional tort. <i>Southern Farm Bureau Cas. Ins. Co. v. Daniel</i>, 440 S.W.2d 582 (Ark. 1969) (no public policy preventing an insurer from indemnifying its insured against punitive damages arising out of an accident); <i>see Unigard Sec. Ins. Co. v. Murphy Oil USA, Inc.</i>, 962 S.W.2d 735 (Ark. 1998).</p> <p>Vicariously assessed – Yes. <i>Southern Farm Bureau Cas. Ins. Co. v. Daniel</i>, 440 S.W.2d 582 (Ark. 1969).</p>
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Limitation On Award	Limited to the greater of \$250,000, or three times the compensatory damages not to exceed \$1 million; this limit does not apply if defendant intentionally caused injury. § 16-55-208.
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Amount Payable To The State	None.
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VII. Products Liability Law

Strict Tort Liability	Yes. §§ 16-116-101 to 16-116-107; <i>see also Berkeley Pump Co. v. Reed-Joseph Land Co.</i> , 653 S.W.2d 128 (Ark. 1983).
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Affirmative Defenses	Compliance with Federal or State Government Regulations. § 16-116-105. Useful Life. § 16-116-105. Alteration. § 16-116-106.
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Warranties	Extend to persons who are in family, household, or a guest of buyer. § 4-2-318.
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VIII. Limitations On Compensatory Damages

Collateral Source Rule	Although the collateral source rule was held not applicable to a proceeding for distribution of settlement funds, it still applies in the context of a proceeding to determine the liability and damages recoverable from the wrongdoer. <i>Bell v. Estate of Bell</i> , 885 S.W.2d 877 (Ark. 1994).
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Health Care	No; punitive damages allowed. <i>HCA Health Services of Midwest, Inc. v. National Bank of Commerce (of El Dorado)</i> 745 S.W.2d 120 (Ark. 1988).
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Economic Loss Doctrine	No. <i>Rush v. Whirlpool Corp.</i> , No. 07-2022, 2008 WL 509562, at *2 (W.D. Ark. Feb. 22, 2008) (citing <i>Farm Bureau Ins. Co. v. Case Corp.</i> , 878 S.W.2d 741, 743-44 (Ark. 1994)).
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IX. Joint And Several Liability

Several Only, Not Joint

Several only, not joint - based on percentage of fault. § 16-55-201. The percentage may be increased, under certain circumstances, on a showing of uncollectibility of another party's several share. § 16-55-203. A party may, however, be responsible for another party's share if they acted in concert. § 16-55-205.

X. Consumer Fraud Act

Adopted

§ 4-88-101.

California

I. Wrongful Death

Statute¹	C.C.P. § 377.60, et seq.
Empowered Plaintiffs	<p>C.C.P. §§ 377.60 -- Personal representative or the decedent's successor in interest:</p> <ol style="list-style-type: none"> Spouse, children, issue of deceased children, if none, then the person who would be entitled to the property of the decedent by intestate succession; If dependent on decedent, putative spouse, children of putative spouse, stepchildren, or parents; Any minor if at the time of the decedent's death, the minor resided for the previous 180 days in the decedent's household, and was dependent on the decedent for one-half or more of the minor's support. Domestic partner.
Beneficiaries	As named in the will, or by the intestacy laws. C.C.P. §§ 377.10-377.11
Damages	<p>Compensatory damages. C.C.P. §§ 377.34, 377.61.</p> <p>Note: Damages under C.C.P. § 377.61 may not include damages that are recoverable under C.C.P. § 377.34, since decedent's cause of action is separate from wrongful death, but both may be brought by the personal representative or the decedent's successor in interest.</p> <p>Recoverable Losses:</p> <ol style="list-style-type: none"> Wrongful Death - All damages that are just, under all circumstances of the case. C.C.P. § 377.61. <ul style="list-style-type: none"> Note: This section restates the third and fourth sentences of former C.C.P. § 377(a) without substantive change. Case of <i>Aardema v. U.S.</i>, 444 F. Supp. 1354 (C.D. Cal. 1977), <i>aff'd</i>, 602 F.2d 1326 (9th Cir. 1979) (held that pecuniary losses include: (1) past and future earnings; (2) society, comfort, care, protection, and the right to receive support; and (3) funeral expenses). Decedent Cause of Action -- Damages recoverable are limited to loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived and do not include damages for pain, suffering, or disfigurement. C.C.P. § 377.34. <p>No ceiling on recovery. C.C.P. § 377.61.</p>
Survival Of Other Causes Of Action	Yes, pursuant to C.C.P. §§ 377.21, 377.30; 377.31, 377.34, 377.42, except damages recoverable under C.C. § 3294 or other punitive or exemplary damages are not recoverable against the personal representative or successor in interest of a deceased tortfeasor.

II. Statutes Of Limitations

Personal Injury

General - 1 year. C.C.P. § 340.3.

Prenatal - 6 years after birth. C.C.P. § 340.4.

Against health care provider - 3 years from injury or 1 year from discovery. C.C.P. § 340.5. Note: statute held unconstitutional in part -- accrual of statutes of limitation violates the equal protection of minors. *Torres v. County of Los Angeles*, 209 Cal.App.3d 3251 (Cal. Ct. App. 1989).

Wrongful Death

1 year. C.C.P. § 340.3.

Property Damage

3 years. C.C.P. § 338[b], [c].

Contract

Written - General - 4 years. C.C.P. § 337.

Oral - General - 2 years. C.C.P. § 339[1].

Breach Of Warranty, U.C.C.

4 years; parties may reduce to not less than 1 year. Cal. U.C.C. § 2725.

Products Liability

1 year. C.C.P. § 340.3.

Asbestos - 1 year from disability or death, or 1 year from discovery, whichever is longer. C.C.P. § 340.2.

III. Conflicts Rule

Torts

State interest analysis/comparative impairment. *Kilroy Industries v. United Pacific Ins. Co.*, 608 F. Supp. 847 (C.D. Cal. 1985).

Contracts

Where there is no effective choice-of-law agreement, California follows a three-step "governmental interest analysis." *Washington Mutual Bank v. Superior Court*, 15 P.3d 1071 (Cal. 2001).

IV. Contributory/Comparative Negligence

Comparative Negligence

For non-economic harm. C.C.C. §§ 1431 and 1431.2.

V. Contribution And Indemnity

Contribution General - Yes, but tortfeasor must have paid more than his pro rata share. C.C.P. § 875.
Intentional torts – No. C.C.P. § 875.

Indemnity Yes, but where one is entitled to indemnity there is no right of contribution. C.C.P. § 875.

VI. Punitive Damages

Standard Of Proof Must prove by clear and convincing evidence that defendant has been guilty of oppression, fraud, or malice. C.C.C. § 3294.

Wrongful Death Limited, damages are permissible if the death resulted from a homicide and the defendant was convicted of a felony, C.C.C. § 3294, *see also* §§ C.C.P. 377.10, 377.62.

Personal Injury Yes. C.C.C. §§ 3294-3295, 3345-3347; but Constitutional limits applicable to C.C.C. § 3294. *Maheu v. Hughes Tool Co.*, 384 F. Supp. 166 (C.D. Cal. 1974) (First Amendment).

Covered By Insurance Directly assessed – No. *PPG Indus. Inc. v. Transamerica Ins. Co.*, 975 P.2d 652 (Cal. 1999). Cal. Ins. Code § 533 prohibits indemnification for liability due to insured’s own willful wrong.

Vicarious assessed – Yes. *Certain Underwriters at Lloyd’s of London v. Pac. Southwest Airlines, Inc.*, 786 F. Supp. 867 (C.D. cal. 1992); *Arenson v. Nat’l. Auto and Cas. Ins. Co.*, 286 P.2d 816 (Cal. 1955).

Amount Payable To The State None.

VII. Products Liability Law

Strict Tort Liability Yes. *Award Metals, Inc., v. Superior Court (Hernandez)*, 228 Cal. App. 3d 1128 (Cal. Ct. App. 1991).

Affirmative Defenses Manufacturer is not liable if product is known to public to be inherently unsafe. C.C.C. § 1714.45.

VII. Products Liability Law

Warranties Extended to person reasonably expected to use and bystanders. Barrett v. Superior Court, 222 Cal.App. 3d 1176 (Cal. Ct. App. 1990).

VIII. Limitations On Damages

Governmental Entity Immune from liability unless an exception applies. C.C.C. § 815. Exceptions include employees acting within the scope of employment. C.C.C. § 815.2. No liability for punitive damages. C.C.C. § 818.

Collateral Source Rule Yes. Rotolo Chevrolet v. Superior Court, 105 Cal. App. 4th 242 (Cal. Ct. App. 2003).

Health Care Industry Providers Non-economic damages - \$250,000 cap for medical malpractice. C.C.C. § 3333.2.

Economic Loss Doctrine Adoption Yes. Aas v. Superior Court, 12 P.3d 1125 (Cal. 2000).

IX. Joint And Several Liability

Joint Liability “An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except as provided in Section 1431.2, and except in the special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.” C.C.C. § 1431.2 (“In any action for personal injury, property damage, or wrongful death, based upon principles of comparative fault, the liability of each defendant for non-economic damages shall be several only and shall not be joint.”).

Non-Economic Tort Damages Several only and not joint, each defendant is only liable proportional to his fault. C.C.C. § 1431.2.

X. Consumer Fraud Act

Adopted C.C.C. § 1750, et seq. and Bus. & Prof. § 1720, et seq.

Colorado

I. Wrongful Death

Statute¹

Damages for Death by Negligence:

- a. Damages for Death. Colo. Rev. Stat. § 13-21-201.
 - b. Action Notwithstanding Death. § 13-21-202.
 - c. Limitation on Damages. § 13-21-203.
 - d. Limitation of Actions. § 13-21-204.
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Empowered Plaintiffs

Beneficiaries. § 13-21-201(1)(a)-(c); § 13-21-203.

- a. First
 - i. Spouse
 - ii. Upon written election of spouse - spouse and heirs
 - iii. If no spouse - heirs
 - b. Second
 - i. Spouse
 - ii. Heirs, or
 - iii. Spouse and heirs
 - c. If deceased, unmarried minor without descendants or unmarried adult without descendants - parents.
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Damages

General Provisions.

- a. Interest on damages (fatal and non-fatal injuries) - § 13-21-101.
 - b. Election - Plaintiff must elect to proceed under § 13-21-201 or § 13-21-202.
 - c. Ceiling on recovery
 - i. Non-economic damages - \$250,000 cap. § 13-21-203; *see also* § 13-21-102.5 (non-economic losses, including: grief, loss of companionship, pain and suffering, emotional distress).
 - ii. In lieu of non-economic damages, beneficiary may elect in writing to sue for recovery in solatium for a maximum of \$50,000 plus economic damages and funeral expenses. § 13-21-203.5.
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Survival Of Other Causes Of Action

Yes. §§ 13-21-202.

Deceased Tortfeasor - No punitive damages may be awarded against deceased tortfeasor's estate. § 13-20-101(1).

II. Statutes Of Limitations

Personal Injury

3 years. § 13-80-101(1)(n).

Wrongful Death

2 years. §§ 13-80-102(1)(d) and 13-80-108.

II. Statutes Of Limitations

Contract	General - 3 years. § 13-80-101. Liquidated or unliquidated debts - 6 years. § 13-80-103.5.
Breach Of Warranty, U.C.C.	3 years. § 13-80-101.
Products Liability	General - 2 years after the claim for relief arises. §§ 13-80-106 and 13-80-108. Limitations of actions against manufacturers, sellers or lessors of new manufacturing equipment - No more than 7 years from first use, unless fraud or intentional conduct by manufacturer or seller. § 13-80-107.
Construction Damage	Against architects, contractors, builders, or builder vendors, engineers, inspectors, and others for property damage, personal injury, or wrongful death - 2 years from discovery of harm or time when reasonable diligence would have discovered harm, § 13-80-104, but no more than 6 years from substantial completion of construction. § 13-80-104.

III. Conflicts Rule

Torts (Including Flights Over State)	Most significant relationship, as defined in Restatement (Second) Conflicts of Law. First Nat. Bank in Fort Collins v. Rostek, 514 P.2d 314 (Colo. 1973).
Contracts	Most significant contacts relationship – however, when two states have comparatively even contacts, the law will be applied of the state that has the greatest interest in the litigation. Wood Bros. Homes, Inc. v. Walker Adjustment Bureau, 601 P.2d 1369 (Colo. 1979)

IV. Contributory/Comparative Negligence

Comparative Negligence	Plaintiff must be less negligent than the defendant, and damages are diminished in proportion to plaintiff's fault. § 13-21-111.
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V. Contribution And Indemnity

Contribution	Yes, Uniform Contribution Among Tortfeasors Act, § 13-50.5-101 to 13-50.5-106, but tortfeasor must have paid more than his pro rata share and amount contributed is limited to the amount pro rata share is exceeded. § 13-50.5-102(2).
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V. Contribution And Indemnity

Indemnity	Limited. <ul style="list-style-type: none"> a. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution. § 13-50.5-102(6) b. No indemnity between joint tortfeasors, <i>Brochner v. Western Ins. Co.</i>, 724 P.2d 1293 (Colo. 1986), unless indemnity is based on pre-existing legal relationship to hold the other harmless. <i>Public Service Co. of Colorado v. District Court In and For City and County of Denver</i>, 638 P.2d 772 (Colo. 1981).
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VI. Punitive Damages

Limitation On Punitive Awards	Not to exceed \$250,000 unless proved by clear and convincing evidence, and then not to exceed \$500,000. § 13-21-102.5.
Personal Injury	Punitive damages may be awarded in “all civil actions in which damages are assessed by a jury for a wrong done to the person or to personal or real property.” § 13-21-102.
Covered By Insurance	Directly assessed - No. <i>Lira v. Shelter Ins. Co.</i> , 913 P.2d 514 (Colo. 1996). Vicariouly assessed – No case on point.
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. <i>Hiigel v. General Motors Corp.</i> , 544 P.2d 983 (Colo. 1975).
Warranties	Extended to persons reasonably expected to use product. § 4-2-318.

VIII. Limitations On Damages

Collateral Source Rule

The court shall reduce the amount of the verdict by the amount by which the plaintiff has been or will be indemnified or compensated for his loss by any other person. § 13-21-111.6.

Health Care Industry/ Providers

The total amount recoverable for all damages for a course of care for all defendants in any civil action for damages in tort brought against a health care professional shall not exceed \$1 million, present value per patient, including any claim for derivative non-economic loss or injury by any other claimant, of which not more than \$300,000 shall be awarded. § 13-64-302.

Economic Loss Doctrine

Yes. *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499 (Colo. 2003).

IX. Joint And Several Liability

Limited

Defendant is only liable for his percentage of fault, unless there is a common plan to commit a tortious act. § 13-21-111.5.

X. Consumer Fraud Act

Adopted

The Colorado Consumer Practice outlaws fraudulent trade practices. § 6-1-101, et seq.

Connecticut

I. Wrongful Death

Statute¹	Generally -- Conn. Gen. Stat. § 52-555.
Products Liability	§§ 52-572m, 52-572n.
Empowered Plaintiffs	Executor or Administrator only. § 52-555.
Damages	Compensatory. §§ 52-555, 45a-448. Recoverable losses: a. Deceased's injuries. b. Medical, hospital and nursing expenses. c. Funeral expenses. d. Expenses of Administration. e. Support surviving spouse and family during settlement of estate. No ceiling on recovery. § 52-555.
Survival Of Other Causes Of Action	Yes. § 52-599.

II. Statutes Of Limitations

Personal Injury	2 years from date of injury or discovery, or in the exercise of reasonable care should have been discovered, but no more than 3 years from date of act or omission, except for counterclaims, which may be made any time before the close of pleadings. § 52-584.
Wrongful Death	2 years from date of death, but no more than 5 years from date of act or omission, but no limitation if party legally at fault is convicted or found not guilty by reason of insanity. § 52-555.
Property Damage	2 years from date of injury or discovery of injury, or in the exercise of reasonable care injury should have been discovered, but no more than 3 years from date of act or omission, except for counterclaims, which may be made at any time before the close of pleadings. § 52-584.
Contract	Simple, implied or written contract - within 6 years after the right of action accrues, but if legally incapable when cause of action accrues, within 3 years of becoming capable. § 52-576(a) and (b). Express oral contracts, not governed by U.C.C. - within 3 years after right of action accrues. § 52-581.

II. Statutes Of Limitations

Breach Of Warranty, U.C.C. 4 years; parties may reduce to not less than 1 year and may not extend. § 42a-2-725.

Products Liability General - 3 years from injury or discovery, but no more than 10 years from date seller last parted with possession or control of the product, unless (a) product was still within its useful safe life; (b) express warranty provides longer period; or (c) seller committed fraud. § 52-577a.

Asbestos -- Personal injury or wrongful death, no more than 80 years from the date of last contact, § 52-577a(e)(1); Property damage, no more than 30 years from date of last contact. § 52-577a(e)(2).

III. Conflicts Rule

Torts Most significant contacts. *Dugan v. Mobile Med. Testing Servs.*, 830 A.2d 752 (Conn. 2003) (citing Restatement (Second) Conflict of Law § 145).

Contracts Most significant relationship. *Interface Flooring Sys. v. Aetna Cas. & Sur. Co.*, 804 A.2d 201 (Conn. 2002) (citing Restatement (Second) Conflicts of Law § 188).

IV. Contributory/Comparative Negligence

General Comparative Negligence, unless negligence of plaintiff is greater than combined negligence of defendants, and damages are diminished in proportion to plaintiffs fault. § 52-572h.

Products Liability Comparative responsibility; recovery diminished in proportion to plaintiffs fault. § 52-572o.

V. Contribution And Indemnity

Contribution Yes, but tortfeasor must have paid more than his proportionate share of the judgment. § 52-572h(h)(1).

Indemnity Yes, but where there is a right of indemnity there is no right of contribution. § 52-572h(j).

VI. Punitive Damages

Standard Of Proof	Must show reckless indifference to rights of others, or intentional, or wanton violation of those rights and purpose of punitive damages is to deter others. <i>Champagne v. Raybestos-Manhattan, Inc.</i> , 562 A.2d 1100 (Conn. 1989).
Limitations	Punitive damages are limited to plaintiff's attorney's fees and non-taxable costs, functioning as both compensatory and punitive damages. <i>Bodner v. United Services Auto. Ass'n</i> , 610 A.2d 1212 (Conn. 1992).
Wrongful Death	Yes. <i>Gionfriddo v. Avis Rent-A-Car System, Inc.</i> , 472 A.2d 306 (Conn. 1984); <i>see also Bodner v. United Servs. Auto Assn.</i> , 610 A.2d 1212, 1217 n.4 (Conn. 1992).
Personal Injury	Yes. § 52-240b; <i>Champagne v. Raybestos-Manhattan, Inc.</i> , 562 A.2d 1100 (Conn. 1989).
Covered By Insurance	Directly assessed – No. <i>St. Paul Fire & Marine Ins. Co. v. Shermow</i> , 610 A.2d 1281 (Conn. 1992). Vicariously assessed – Yes. <i>Avis Rent A Car Sys. v. Liberty Mut. Ins. Co.</i> , 526 A.2d 522 (Conn. 1987) (including treble damages if vicariously imposed).
Products Liability	Limited to twice damages and must prove wanton disregard. § 52-240b.
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. §§ 52-572L and 5272M.
Affirmative Defenses	Misuse. § 52-572L. Knowingly using a defective product. § 52-572L. State of art. § 52-572Q(b).
Comparative Negligence	Recovery diminished in proportion to plaintiff's fault. § 52-572O.
Warranties	Extended to family or household members or guests. § 42a-2-318.

VIII. Limitations On Damages

Governmental Entity	General Assembly has discretion to refuse to pay any claim against the state in excess of \$7,500. § 4-159.
Collateral Source Rule	Yes. §§ 52-225a - 52-225c; <i>see also</i> Piluski v. Waterbury Hosp. Health Ctr., 848 A.2d 373 (Conn. 2004).
DRAM Shop	Seller liable for up to \$20,000 damages to intoxicated person, and for up to an aggregate amount of \$50,000 for any persons injured in consequence of such intoxication. Dram Shop Act, § 30-102.
Health Care Industry/ Providers	No limitation, but prior reasonable inquiry and good faith required in negligence action against health care provider. § 52-190a.
Economic Loss Doctrine	Not adopted. Smith Craft Real Estate Corp. v. Handex of Conn., Inc., No. CV03082188S, 2005 WL 1433237 (Conn. Super. Ct. May 19, 2005).
Periodic Payments	Lump sum payments for all economic and non-economic damages; remaining in excess of \$200,000, parties have 60 days to negotiate an agreement for lump sum payment, periodic payment or a combination; and if the parties cannot agree, the court shall provide for damages to be paid in a lump sum. § 52-225d.

IX. Joint And Several Liability

General	No, each party shall be liable only for his proportionate share. § 52-572h(c).
Uncollectible Portion	<p>Non-economic damages - court shall reallocate any uncollectible portion among the other defendants according to their percentage of negligence, provided that the court shall not reallocate to any such defendant an amount greater than that defendant's percentage of negligence multiplied by such uncollectible amount. § 52-572h(g)(2).</p> <p>Economic damages - court shall reallocate to any such defendant an amount equal to such uncollectible amount of recoverable economic damages multiplied by a fraction in which the numerator is such defendant's percentage of negligence and the denominator is the total of the percentages of negligence of all defendants, excluding those whose liability is uncollectible. § 52-572h(g)(3).</p>

X. Consumer Fraud Act

Not Adopted	For deceptive trade practices, <i>see generally</i> Title 42, Chapter 735a.
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Delaware

I. Wrongful Death

Statute¹ Del. Code Ann. tit. 10 § 3724; *see also* Title 10 §§ 3721, 3722, 3723.

Beneficiaries Title 10 § 3724.
 First Priority - Spouse, parent, child and siblings of the deceased.
 Second Priority - Any person related by blood or marriage.

Damages Compensatory only. Title 10 § 3724.
 Recoverable Losses. Title 10 § 3724.

- a. Pecuniary benefits lost.
- b. Loss of contributions for support.
- c. Loss of parental, marital and household services, including the reasonable cost of providing for the care of minor children.
- d. Reasonable funeral expenses, not to exceed \$7,000.
- e. Mental anguish, but only for surviving spouse, children, and parents, or person standing in loco parentis at the time of death.

Ceiling on recovery - none, except for \$7,000 limit on funeral expenses. Title 10 § 3724.

Survival Of Other Causes Of Action Yes, except actions for defamation, malicious prosecution, or upon penal statutes. Title 10 § 3701.

II. Statutes Of Limitations

Personal Injury 2 years. Title 10 § 8119. *But see* Title 10 § 8127(b)(6)(h) (construction-based claims).

Wrongful Death 2 years. Title 10 § 8107.

Property Damage Personal Property - 2 years. Title 10 § 8107. *But see* Title 10 § 8127(b)(2) & (6) (construction-based claims).
 Real Property - 3 years. Title 10 § 8106. *But see* Title 10 § 8127(b)(2) & (6) (construction-based claims).

Contract 3 years. Title 10 § 8106.

Breach Of Warranty, U.C.C. 4 years; parties may reduce to not less than 1 year but may not extend it. Title 6 § 2-725.

II. Statutes Of Limitations

Products Liability 2 years. Title 10 §§ 8107, 8119.

Construction Deficiencies 6 years. Title 10 § 8127.

III. Conflicts Rule

Torts Most significant relationship test. *Travelers Indemnity Co. v. Lake*, 594 A.2d 38 (Del. 1991) (citing Restatement (Second) Conflicts of Laws § 145).

Tort In Flight Over State Delaware law applies. Title 2 § 307.

Contracts Most significant relationship test. *Travelers Indemnity Co. v. Lake*, 594 A.2d 38 (Del. 1991) (citing Restatement (Second) Conflicts of Laws § 188).

IV. Contributory/Comparative Negligence

Comparative Negligence Recovery is barred only if the negligence of the plaintiff is greater than the negligence of the defendant or the combined negligence of all defendants. Damages are diminished in proportion to the amount of negligence attributed to the plaintiff(s). Title 10 § 8132.

V. Contribution And Indemnity

Contribution Yes, Uniform Contribution Among Tortfeasors Law adopted. Title 10 §§ 6301 to 6305 and 6308.

Indemnity Yes. Title 10 § 6305.

VI. Punitive Damages

Wrongful Death No. *Sterner v. Wesley College, Inc.*, 747 F. Supp. 263 (D. Del. 1990). *But see Magee v. Rose*, 405 A.2d 143 (Del. Super. 1979) (holding that punitive damages are available under Delaware's survival statute for pain and suffering incurred by decedent between time of injury and death).

VI. Punitive Damages

Personal Injury	Yes. <i>Sterner v. Wesley College, Inc.</i> , 747 F. Supp. 263 (D. Del. 1990).
Covered By Insurance	Directly assessed - Yes. <i>Whalen v. On-Deck, Inc.</i> , 514 A.2d 1072 (Del. 1986). Vicariously assessed – No case on point.
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Limited - it may apply to bailment-leases. <i>Martin v. Ryder Truck Rental, Inc.</i> , 353 A.2d 581 (Del. 1976); <i>Handy v. Uniroyal, Inc.</i> , 327 F. Supp. 596 (D. Del 1971) (holding that strict liability in tort for defective products is not law of Delaware).
Defense	Seller's sealed container defense. Title 18 § 7001.
Warranties	Extended to any person reasonably expected to use consume or be affected by the goods. Title 6 § 2-318.

VIII. Limitations On Damages

Governmental Entity	An award of damages will not exceed \$300,000 for all claims arising out of a single occurrence, except if the government entity purchases liability insurance in excess of \$300,000 in which event the recovery is limited to the amount of the insurance coverage. Title 10 § 4013; <i>see also</i> §§ 4010 to 4012.
Collateral Source Rule	Yes. <i>Yarrington v. Thornburg</i> , 58 Del. 152 (Del. 1964).
DRAM Shop	None.
Health Care Industry Providers	None.
Economic Loss Doctrine	Not codified, but Delaware case law recognizes the applicability of the doctrine. <i>Danforth v. Acorn Structures, Inc.</i> , 608 A.2d 1194 (Del. 1992).

IX. Joint And Several Liability

Yes. Uniform Contribution Among Tortfeasors Law, Title 10 §§ 6301 to 6308.

X. Consumer Fraud Act

Adopted

§§ 2511 to 2527. The Consumer Fraud Act defines an unlawful practice as the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby.

District of Columbia

I. Wrongful Death

Statute¹	D.C. Code § 16-2701.
Empowered Plaintiffs	An action pursuant to this chapter shall be brought by and in the name of the personal representative of the deceased person. § 16-2702
Beneficiaries	May not be appropriated to the payment of the debts or liabilities of the deceased person, but inure to the benefit of his or her family and shall be distributed to the spouse and next of kin according to the allocation made by the verdict or judgment. § 16-2703
Damages	§ 16-2701. “Compensatory damages” are awarded to repair actual damage which plaintiff proved he suffered at hands of defendant. <i>Morrisette v. Boiseau</i> , 91 A.2d 130 (D.C. App. 1952).
Prejudgment Interest	No. <i>Duggan v. Keto</i> , 554 A.2d 1126 (D.C. 1989) (holding pre-judgment interest may be awarded for conversion, an action in tort involving property).
Damage Caps	None.
Survival Of Other Causes Of Action	Yes. § 12-101.

II. Statutes Of Limitations

Personal Injury	3 years. § 12-301.
Wrongful Death	A wrongful death action must be brought within one year of the date of death. D.C. Code Ann. § 16-2702
Property Damage	3 years. § 12-301
Contract-Express Or Implied	3 years. § 12-301
Medical Malpractice	3 years. § 12-301
Breach Of Warranty, U.C.C.	Within 4 years of contract execution. § 28:2-725.

II. Statutes Of Limitations

Products Liability 3 years from date of discovery. *Gassmann v. Eli and Co.*, 407 F. Supp. 2d 203 (D. D.C. 2005).

III. Conflicts Rule

Torts Jurisdiction “with the ‘most significant relationship’ to the dispute.” *Hercules & Co. v. Shama Rest. Corp.*, 566 A.2d 31 (D.C. 1989)

Contracts Interest analysis. *Estrada v. Potomac Elec. Power Co.*, 488 A.2d 1359 (D.C. 1985).

IV. Contributory Negligence

V. Contribution And Indemnity

Pure contributory negligence. *Wingfield v. People’s Drug Store*, 379 A.2d 685 (D.C. 1994); *Stager v. Schneider*, 494 A.2d 1307 (D.C. 1985).

Contribution Joint tortfeasors who pay more than their pro rata share have a right of contribution. *Berg v. Footer*, 673 A.2d 1244 (D.C. 1996); *Rose v. Associated Anesthesiologists*, 501 F.2d 806 (D.C. Cir. 1974).

VI. Punitive Damages

Pleading Plaintiff must prove by a preponderance of the evidence that defendant committed a tortious act, and by clear and convincing evidence that the act was accompanied by conduct and a state of mind evincing malice or its equivalent. *Jonathan Woodner Co. v. Breeden*, 665 A.2d 929 (D.C. 1995).

Personal Injury Yes. *Croley v. Republican Nat. Committee*, 759 A.2d 682 (D.C. 2000).

Covered By Insurance Directly assessed - Probably not. *Pray v. Lockheed Aircraft Corp.*, 644 F. Supp. 1289 (D. D.C. 1986) (stating that insurance for punitive damages “may” be against public policy); *Salus Corp. v. Cont’l Cas. Co.*, 478 A.2d 1067, 1070 (D.C. 1984) (suggesting that allowing insurability of punitive damages may be contrary to public policy); *see also* *In re Estate of Corriea*, 719 A.2d 1234 (D.C. 1998) (indicating that the question of indemnification for punitive damages was left open in the *Salus* case).
Vicariouly assessed – No case on point.

VI. Punitive Damages

Trade Secrets

Allowed. § 36-403 (complainant is entitled to recover damages for misappropriation, unless a material and prejudicial change of position prior to acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable).

Amount Payable To The State

None.

VII. Products Liability Law

Strict Liability

Firearms -- Any manufacturer, importer, or dealer of a firearm who can be shown by a preponderance of the evidence to have knowingly and willfully engaged in the illegal sale of a firearm shall be held strictly liable in tort. § 7-2531.0(a)

Warranties

§ 28:2-715(b)(2) (manufacturer liable for “injury to person or property proximately resulting from any breach of warranty.”)

VIII. Limitations On Award Of Compensatory Damages

State Or Political Subdivisions

No action for un-liquidated damages for personal injury may be instituted against the District of Columbia, unless notice of claim is made to the Mayor within six months from the date of injury. § 12-309. In addition, absent extraordinary circumstances, the District of Columbia is not liable for punitive damages. *Smith v. District of Columbia*, 336 A.2d 831 (D.C. 1975).

Medical Malpractice

None.

Health Care Industry Providers

None.

Economic Loss-Collateral Source Rule

The District of Columbia recognizes the rule barring evidence of payment from a collateral source; thus, the claimant’s receipt of payments from collateral sources will not serve to reduce the claimant’s damages. *District of Columbia v. Jackson*, 451 A.2d 867 (D.C. 1982); *see Potomac Plaza Terraces, Inc. v. QSC Products, Inc.*, 868 F. Supp. 346 (D. D.C. 1994) (holding plaintiff in tort action may not recover damages for loss of value or use of product itself, cost to repair or replace product, or lost profits resulting from loss or use of product regardless of whether claim is based on negligence, strict liability, or both).

VIII. Limitations On Award Of Compensatory Damages

DRAM Shop Liability

Yes. *Jarrett v. Woodward Bros., Inc.*, 751 A.2d 972 (D.C. 2000).

Remittitur

Court will only require remittitur when (1) the verdict is beyond all reason, so as to shock the conscience, or (2) the verdict is so inordinately large as to obviously exceed the maximum limit of a reasonable range within which the jury may properly operate. *Peyton v. DiMario*, 287 F.3d 1121 (D.C. Cir. 2002).

Additur

No D.C. court has allowed for or directly addressed additur.

IX. Joint And Several Liability

Joint tortfeasors are jointly and severally liable for a claimant's compensatory damages, and damages cannot be allocated. *Remeikis v. Boss & Phelps, Inc.*, 419 A.2d 986 (D.C. 1980). Liability for punitive damages is several, and is apportioned by relative fault. *Id.*

X. Consumer Fraud Act

Adopted

§§ 28-3901 - 28-3913.

Florida

I. Wrongful Death

Statute¹	Florida Wrongful Death Act. Fla. Stat. §§ 768.16- 768.26.
Empowered Plaintiffs	Personal Representative only. § 768.20.
Beneficiaries	Survivors and Estate. § 768.20.
Damages	<p>Compensatory and punitive damages are available. § 768.21.</p> <p>Recoverable Losses:</p> <ol style="list-style-type: none"> a. General Survivors. <ol style="list-style-type: none"> i. Lost support and services from date of injury to death, with interest. ii. Future loss of support and service from date of death reduced to present value. iii. Medical or funeral expenses recoverable. b. Surviving Spouse. <ol style="list-style-type: none"> i. Companionship. ii. Mental pain and suffering. c. Minor children and all children if no spouse survives. <ol style="list-style-type: none"> i. Parental companionship, instruction, guidance. ii. Mental pain and suffering from date of injury. § 768.21(3). Note: damages may not be recovered by adult children. § 768.21(8). d. Parent of deceased minor child. <ol style="list-style-type: none"> i. Mental pain and suffering from date of injury. § 768.21(4). e. Parent of adult child, if no other survivors. <ol style="list-style-type: none"> i. Mental pain and suffering. § 768.21(4). Note: Such damages are not recoverable for medical malpractice. § 768.21(4). f. Personal Representative <ol style="list-style-type: none"> i. Loss of earnings from date of injury to date of death, less lost support of survivors, excluding contributions in kind, with interest. § 768.21(6). ii. Loss of prospective net accumulation of estate, reduced to present money value: <ol style="list-style-type: none"> a. if decedent's survivor included surviving spouse or lineal descendants; b. if decedent is not a minor child, there are no lost support and services recoverable, and there is a surviving parent. iii. Funeral or medical expenses charged against the estate. iv. Evidence of remarriage of decedent's spouse admissible. <p>No ceiling on recovery. § 768.21.</p>
Survival Of Other Causes Of Action	<p>Generally, yes. § 46.021.</p> <p>Where plaintiff dies from injuries arising from a wrongful act, action converts into wrongful death action. §§ 768.20, 768.19.</p>

II. Statutes Of Limitations

Personal Injury	In general - 4 years. § 95.11(3). Medical Malpractice - 2 years from injury or discovery, whichever longer, but not more than 4 years from incident. § 95.11(4)(b).
Wrongful Death	2 years. § 95.11(4)(d).
Property Damage	4 years. § 95.11(3)(c).
Contract	Written - 5 years. § 95.11(2)(b). Oral and implied - 4 years. § 95.11(3)(k). Specific performance - 1 year. § 95.11(5). Action to rescind contract - 4 years. § 95.11(3)(c).
Breach Of Warranty, U.C.C.	Action to enforce rights under UCC - 1 year. §95.11(5)(c).
Products Liability	4 years from injury or discovery, whichever longer. §§ 95.11(3), 95.031.

III. Conflicts Rule

Torts	Most significant relationship. <i>Tune v. Phillip Morris</i> , 766 So. 2d 350 (Fla. 2000).
Contracts	Lex loci contractus. <i>Shaps v. Provident Life & Accident Insurance Co.</i> , 826 So. 2d 250 (Fla. 2002).

IV. Contributory/Comparative Negligence

Comparative Negligence	Any contributory fault of claimant diminishes proportionately the amount awarded as economic and non-economic damages but does not bar recovery. § 768.81(2).
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V. Contribution And Indemnity

Contribution	Yes, Uniform Contribution Among Tortfeasors Act adopted. § 768.31.
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V. Contribution And Indemnity

Indemnity Yes, but where there is a right to indemnity, there is no right to contribution. § 768.31(2)(f).

VI. Punitive Damages

Apportionment Economic and non-economic damages are reduced by claimant's comparative fault. § 768.81.

Remittitur/Additur Yes. § 768.74.

Wrongful Death Yes. § 768.71 et seq.

Personal Injury Yes. § 768.71, et seq.

Covered By Insurance Directly assessed – No. Morgan Int'l Realty, Inc. v. Dade Underwriters Ins. Agency, Inc., 617 So.2d 455 (Fla. Ct. App. 1993).
Vicariouly assessed – Yes. Country Manors Ass'n, Inc. v. Master Antenna Sys., Inc., 534 So.2d 1187 (Fla. Ct. App. 1988).

Amount Payable To The State § 768.73 - Gordon v. State, 608 So. 2d 800 (Fla. 1992), awarding 60% punitive damages to state was constitutional.

Standard Of Proof/ Limitations

Must show action was willful, wanton or gross misconduct, and limited by § 768.73 as follows:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or 2. The sum of \$500,000.

Where the fact finder determines that the wrongful conduct proven was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of: 1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or 2. The sum of \$2 million.

Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

VI. Punitive Damages

Standard Of Proof/ Limitations

Court may exercise its jurisdiction under Section 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages.

VII. Products Liability Law

Strict Tort Liability

Yes. *Cunningham v. General Motors Corp.*, 561 So.2d 656 (Fla. Ct. App. 1990).

Comparative Negligence

Yes. § 768.81.

Reduction In Amount Of Recovery

Yes. *Standard Havens Prods. v. Benitez*, 648 So. 2d 1192 (Fla. 1994) (plaintiff's recovery reduced because product misuse merged into defense of comparative negligence and reduced plaintiff's recovery in proportion to plaintiff's own comparative fault).

Warranties

Extended to family members, household members, guests, employees, servants or agent of buyers. § 672.318

VIII. Limitations Of Compensatory Damages

Governmental Entity

Damages limited to \$100,000 per claimant, or \$200,000 for any claim or judgment arising out of the same incident. § 768.28

Collateral Source Rule Award will be reduced

by all amounts paid to or available to claimant, but not if subrogation or reimbursement right exists. § 768.76

DRAM Shop Liability

No liability for serving a drunk person unless served knowingly to underage patron. § 768.215.

Health Care Industry/ Providers

With regard to practitioners, non-economic damages are limited to \$500,000 per claimant, unless the negligence results in death or a permanent vegetative state, in which case non-economic damages are limited to \$1 million. Also, \$1 million cap could apply in the exercise of the court's discretion. § 766.118(2). As to non-practitioner defendants, damages capped at \$750,000 per claimant not to exceed \$1.5 million in cases of death, permanent vegetative state, or trial court discretion. § 766.118(3).

Economic Loss Doctrine

Yes. *D & M Jupiter, Inc. v. Friedopfer*, 853 So. 2d 485 (Fla. Ct. App. 2003).

VIII. Limitations Of Compensatory Damages

Periodic Payments

Court may order, on request of either party, for future economic loss in excess of \$250,000 or defendant may pay lump sum of future damages reduced to present value. § 768.78(1)(a).

IX. Joint And Several Liability

“In a negligence action, the court shall enter judgment against each party liable on the basis of such party’s percentage of fault and not on the basis of the doctrine of joint and several liability.” § 768.81(3). “This section does not apply to any action brought by any person to recover actual economic damages resulting from pollution, to any action based upon an intentional tort, or to any cause of action as to which application of the doctrine of joint and several liability is specifically provided by chapter 403, chapter 498, chapter 517, chapter 542, or chapter 895.” § 768.81(4).

X. Consumer Fraud Act

No.

Georgia

I. Wrongful Death

Statutes¹

Ga. Code Ann. §§ 51-4-1 to 51-4-5.

Empowered Plaintiffs

Death of a Spouse or Parent:

- a. First Priority - Surviving spouse. § 51-4-2.
- b. Second Priority - Surviving children. § 51-4-2.
- c. Third Priority - Personal representative, for benefit of next of kin. § 51-4-5.

Death of a Child:

- a. First Priority - Spouse or children. §§ 19-7-1(c)(2).
- b. Second priority – Parents. §§ 19-7-1(c)(2).
- c. Third Priority - Personal representative for benefit of next of kin. §§ 19-7-1(c)(3); 51-4-5.

Damages

Punitive in nature. § 51-4-1; *Gielow v. Strickland*, 363 S.E.2d 278 (Ga. App. Ct. 1987).

Recoverable Losses:

- a. Pecuniary losses - Personal representative only. § 51-4-5(b). (funeral expenses; medical expenses; other necessary expenses resulting from death of deceased).
- b. Measure of damages - Full value of the life of the decedent without deducting for necessary and personal living expenses. § 51-4-1.

No ceiling on recovery. § 51-4-1.

Survival Of Other Causes Of Action

Yes. §§ 9-2-40; 9-2-41. No punitive damages may be recovered from the personal representative of the deceased tortfeasor. § 9-2-41.

II. Statutes Of Limitations

Personal Injury

General - 2 years. § 9-3-33.

Loss of consortium - 4 years. § 9-3-33.

Wrongful Death

Medical Malpractice - 2 years from injury, but not more than 5 years after date wrongful act occurred. § 9-3-71. *But See Clark v. Singer*, 298 S.E.2d 484 (Ga. 1983), (holding § 9-3-71 unconstitutional as applied to actions for wrongful death).

Construction Deficiency - 2 years after date of injury, but no more than 10 years after substantial completion of construction of such improvement. § 9-3-51.

II. Statutes Of Limitations

Property Damage

Real - 4 years. § 9-3-30.

Personal - 4 years. § 9-3-31.

Contract

Written - 6 years. § 9-3-24.

Oral - 4 years. § 9-3-26.

Implied - 4 years. § 9-3-25.

Breach Of Warranty, U.C.C.

4 years; parties may reduce to not less than 1 year and cannot extend. § 11-2-725.

Product Liability

Generally governed by personal injury and property damage statutes, but no action shall be commenced after 10 years of first sale. § 51-1-11.

III. Conflicts Rule

Torts

Lex loci delicti. *Velten v. Lippert*, 985 F.2d 1515 (11th Cir. 1993).

Contracts

Lex loci contractus. *Velten v. Lippert*, 985 F.2d 1515 (11th Cir. 1993).

IV. Contributory/Comparative Negligence

Contributory Negligence

If plaintiff by ordinary care could have avoided the consequence of defendant's negligence, plaintiff not entitled to recover. § 51-11-7.

Comparative Negligence

Bar if plaintiff's negligence equal or greater than defendant's negligence, and damages are diminished in proportion to plaintiff's fault. *Allen v. Georgia*, 257 S.E.2d 5 (Ga. Ct. App. 1979).

V. Contribution And Indemnity

Contribution

Limited. When damages are apportioned according to the liability of each by the trier of fact, there is no right to contribution. § 51-12-33. Among joint tortfeasors - where act does not involve moral turpitude, contribution is permitted. § 51-12-32.

V. Contribution And Indemnity

Indemnity	Limited. Joint tortfeasor has no right to indemnity from other tortfeasors, unless liability arises from mere negative action or omission on his part. <i>Standard Oil Co. v. Mount Bethel United Methodist Church</i> , 196 S.E.2d 869 (Ga. 1973).
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VI. Punitive Damages

Limitation On Damages	Court may order new trial as to damages if inadequate or excessive. § 51-12-12.
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Wrongful Death	No additional punitive damages because nature of statute itself is punitive. <i>Gielow v. Strickland</i> , 363 S.E.2d 278 (Ga. App. 1987).
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Personal Injury	Yes, but \$250,000 cap unless there is proof of an intent to harm or damages arose from a products liability action. § 51-12-5.1.
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Covered By Insurance	Directly assessed - Yes. <i>Greenwood Cemetery Inc. v. Travelers Indemnity Co.</i> , 232 S.E.2d 910 (Ga. 1977). Vicariouly assessed – No case on point.
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Amount Payable To The State	75% of punitive damage awards, less a proportionate part of the costs of litigation, paid into the treasury of the state. § 51-12-5.1.
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VII. Products Liability Law

Strict Tort Liability	No. § 51-1-11.1. Punitive damages are available, and are not subject to cap. § 51-12-5.1(e).
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Warranties	Extended to family or household member or guest. § 11-2-318.
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VIII. Limitations On Damages

Governmental Entity	State and municipal corporations are immune from liability for damages; there is no waiver of sovereign immunity except as specifically provided. § 36-33-1.
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VIII. Limitations On Damages

Collateral Source Rule

Trier of fact may consider evidence of payments from collateral sources, and may reduce damage award. § 51-12-1. *But see* Amalgamated Transit Union Local 1324 v. Roberts, 434 S.E.2d 450 (Ga. 1993) (while collateral source rule applicable in tort cases, it is inapplicable in breach of contract cases; section 51-12-1(b) is unconstitutional when used for purpose of seeking special damages for tortious injury).

DRAM Shop Liability

A person who willfully, knowingly, and unlawfully sells, furnishes, or serves alcoholic beverages to a person who is not of lawful drinking age, knowing that such person will soon be driving a motor vehicle, or who knowingly sells, furnishes, or serves alcoholic beverages to a person who is in a state of noticeable intoxication, knowing that such person will soon be driving a motor vehicle, may become liable for injury or damage caused by or resulting from the intoxication of such minor or person when the sale, furnishing, or serving is the proximate cause of such injury or damage. § 51-1-40.

Health Care Industry/ Providers

None.

Range Of Damage Awards

Economic Loss Doctrine

No.

IX. Joint And Several Liability

Apportionment Of Damages

If plaintiff is at fault, jury may apportion damage award among defendants assessed to have greater fault than the plaintiff, and apportionment is not subject to joint liability or right of contribution. § 51-12-33.

X. Consumer Fraud Act

Adopted

The Fair Business Practices Act- §§ 10-1-390 to 10-1-407.

Unfair or Deceptive Practices toward the Elderly- §§ 10-1-850 to 10-1-857.

Hawaii

I. Wrongful Death

Statute¹	Haw. Rev. Stat. § 663-3.
Empowered Plaintiffs	The deceased's legal representative, personal representative, surviving spouse, reciprocal beneficiary, civil union partner, children, parents, and any person wholly or partly dependent on the decedent. § 663-3.
Beneficiaries	Surviving spouse, reciprocal beneficiary, civil union partner, children, parents, any person wholly or partly dependent on the decedent, the legal representative may recover on behalf of the estate the reasonable expenses of the deceased's last illness and burial. § 663-3.
Damages	<p>Nature - compensatory only. § 663-3; <i>Greene v. Teixeira</i>, 505 P.2d 1169 (Haw. 1973).</p> <p>Recoverable losses. §§ 663-3, 663-8.</p> <ol style="list-style-type: none"> a. Pecuniary losses b. Loss of love and affection, including: <ol style="list-style-type: none"> i. Loss of society, companionship, comfort, consortium, or protection; ii. Loss of marital care, attention, advice, or counsel; iii. Loss of filial care or attention; iv. Loss of parental care, training, guidance, or education. c. Future earnings.
Survival Of Other Causes Of Action	Yes, except cause of action for defamation or malicious prosecution; actions shall survive notwithstanding the death of the wrongdoer or any other persons who may be liable for damages for such physical injury or death. §§ 663-4, 663-5, 663-6, 663-7.

II. Statutes Of Limitations

Personal Injury/ Property Damage	2 years. § 657-7.
Wrongful Death	2 years from date of death. § 663-3.
Contract	6 years, § 657-1, except where action has arisen in any foreign jurisdiction, it shall be commenced within 4 years after the cause of action accrued. § 657-6.
Breach Of Warranty And Contracts For Sale, U.C.C.	4 years; parties may reduce to not less than 1 year but may not extend it. § 490:2-725.

II. Statutes Of Limitations

Products Liability 2 years. §§ 657-7, 663-3.

Tolling Statute of limitations tolls if minor (under 18) insane or in prison at time cause of action accrues. § 657-13.

III. Conflicts Rule

Torts Substantive issue (rather than procedural) - Hawaii courts are not obliged to apply Hawaii law if the pertinent conflict of laws analysis indicates that applying the law of another state with an interest in the proceeding would best serve the interests of the states and persons involved. *Peters v. Peters*, 634 P.2d 586 (Haw. 1981).
Torts in flight over state - Hawaii law applies. § 263-7.

Contracts General - most significant interest, as per Restatement (Second) Conflict of Laws § 188. *UARCO Inc. v. Lam*, 18 F. Supp. 2d 1116 (D. Haw. 1998).
Contract entered into while in flight over state shall have same effect as if entered into on the land or water beneath. § 263-8.

IV. Contributory/Comparative Negligence

Comparative Negligence Contributory negligence is not a bar to recovery in any action by any person or the person's legal representative to recover damages for negligence resulting in death or in injury to property if such negligence was not greater than the negligence of the person(s) against whom damages are claimed, and damages are diminished in proportion to plaintiff's fault. § 663-31.

V. Contribution And Indemnity

Contribution Uniform Contribution Among Tortfeasors Act adopted. §§ 663-11 to 663-17. Right of contribution exists among joint tortfeasors. § 663-12. In cases of disproportionate fault among joint tortfeasors, the degrees of fault may be considered in determining pro rata shares. § 663-12.

Indemnity Common law. § 663-16.

VI. Punitive Damages

Wrongful Death	No. <i>Greene v. Teixeira</i> , 505 P.2d 1169 (Haw. 1973).
Personal Injury	Yes. <i>Beerman v. Toro Mfg. Corp.</i> , 615 P.2d 749 (Haw. Ct. App. 1980).
Covered By Insurance	Directly assessed – Yes, if specifically covered by policy. § 431:10-240; <i>Allstate Ins. Co. v. Takeda</i> , 243 F. Supp. 2d 1100 (D. Haw. 2003). Vicariouly assessed – No case on point.
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. <i>Ontai v. Straub Clinic and Hospital, Inc.</i> , 659 P.2d 734 (Haw. 1983).
Comparative Negligence	Applies in a products cases. § 663-31; <i>Torres v. Northwest Eng'g Co.</i> , 949 P.2d 1004 (Haw. Ct. App. 1997).
Warranties	Extended to any person reasonably expected to use, consume, or be affected by the goods. § 490:2-318.

VIII. Limitations On Damages

Governmental Entity	State Tort Liability Act, §§ 662-1 to 662-19. Hawaii waived immunity, but shall not be liable for interest prior to judgment or for punitive damages. § 662-2. No liability for injuries sustained in public skateboard parks. § 662-19.
Collateral Source Rule	Yes. <i>Sam Teague, Ltd. v. Hawaii Civil Rights Comm'n</i> , 971 P.2d 1104 (Haw. 1999).
DRAM Shop	Statutory prohibition on sale - Liable under § 281-78(b). Statute contains no guidance regarding damages. <i>Reyes v. Kuboyama</i> , 870 P.2d 1281 (Haw. 1994). Common Law - <i>Bertelmaan v. Taas Assocs.</i> , 735 P.2d 930 (Haw. 1987) (explaining that §281-78(b) was not enacted to aid liquor consumers in a recovery of damages).

VIII. Limitations On Damages

Health Care Industry/ Providers

No limitation, but damage awards reviewed by Medical Claims Conciliation Hearing Officer. § 671-15. No liability for authorized withdrawing of blood or urine, unless gross negligence, wanton acts or omissions. § 663-1.9.

Economic Loss Doctrine

Yes. State by *Bronster v. United States Steel Corp.*, 919 P.2d 294 (Haw. 1996).

Non-Economic Damages

Damage award for noneconomic damages, as defined in § 663-8.5, limited to a maximum of \$250,000, but no limitation for actions listed in § 663-10.9(2), including intentional torts and products liability actions. § 663-8.7.

IX. Joint And Several Liability

Yes. Uniform Contribution Among Tortfeasors Act, §§ 663-11 to 663-17. Joint and several liability has been abolished in certain circumstances, but is available for recovery of economic damages arising out of personal injury and also non-economic damages for intentional torts and product liability, among other exceptions. § 663-10.9.

X. Consumer Fraud Act

Not adopted.

Idaho

I. Wrongful Death

Statute¹	<p>General – Idaho Code Ann. § 5-311.</p> <p>Unmarried child - § 5-310.</p> <p>Unborn child - § 5-311; Santana v. Zilog, Inc., 878 F. Supp. 1373 (D. Idaho 1995) (right to assert cause of action for wrongful death of unborn fetus limited to cases involving death of viable fetus).</p>
Empowered Plaintiffs	<p>General - Personal representative or heirs at law. § 5-311.</p> <p>Death of unmarried child (or married child with deceased spouse and no issue) - parents, or guardian. § 5-310.</p>
Beneficiaries	<p>Heirs include: (1) persons entitled to succeed to the property of deceased; (2) spouse, children, stepchildren, parents, any partially or wholly dependent blood relative or adoptive sibling, and illegitimate child of mother, but not of father unless he recognized his responsibility for the child's support; (3) putative spouse, if dependent on deceased. § 5-311.</p>
Damages	<p>Nature - “Such damages may be given as under all the circumstances of the case as may be just.” § 5-311.</p> <p>Recoverable losses. § 5-311.</p> <p>a. Pecuniary losses.</p> <p>b. Support, includes contribution.</p> <p>c. Services.</p> <p>No ceiling on recovery. § 5-311.</p>
Survival Of Other Causes Of Action	<p>Yes. § 5-319.</p>

II. Statutes Of Limitations

Personal Injury	<p>2 years. § 5-219.</p>
Wrongful Death	<p>2 years from date of occurrence, act or omission. § 5-219.</p>
Property Damage	<p>3 years. § 5-218.</p>
Contract	<p>Written - 5 years. § 5-216.</p> <p>Oral - 4 years. § 5-217.</p>

II. Statutes Of Limitations

U.C.C. Breach Of Warranty 4 years from tender of delivery, or if warranty explicitly extends to future performance, then the cause of action accrues when the breach is, or should have been, discovered; parties may reduce to not less than one year. § 28-2-725.

Products Liability 2 years; presumption of 10 year period of repose unless rebutted. §§ 5-219, 6-1403.

III. Conflicts Rule

Torts Most significant relationship, as set forth in Restatement (Second) Conflicts of Law. *De Meyer v. Maxwell*, 647 P.2d 783 (Idaho Ct. App. 1982).

Tort In Flight Over State Idaho law applies. § 21-207.

Contracts Most significant relationship, as set forth in Restatement (Second) Conflicts of Law § 188. *Barber v. State Farm Mut. Auto. Ins. Co.*, 931 P.2d 1195 (Idaho 1997).

IV. Contributory/Comparative Negligence

Comparative Negligence Unless plaintiff's negligence is greater than or equal to defendant's negligence, any award shall be diminished in proportion to plaintiff's negligence. § 6-801.

V. Contribution And Indemnity

Contribution Yes, Uniform Contribution Among Tortfeasors Act, but joint tortfeasor is not entitled to contribution until he has by payment discharged the common liability, or paid more than his pro rata share. §§ 6-803 - 6-807.

Indemnity

Manufacturers - Must indemnify and hold harmless its franchised dealers against any judgment or settlement for defect beyond the dealer's control. § 49-1623.

Indemnification Agreement - In a construction contract, indemnifying the promisee for the negligence caused by the promisee, is void and against public policy. § 29-114.

Common law indemnity available. *Beitzel v. City of Coeur d'Alene*, 827 P.2d 1160 (Idaho 1992).

VI. Punitive Damages

Burden Of Proof	Must prove oppressive, fraudulent, wanton, malicious or outrageous conduct by clear and convincing evidence. § 6-1604(1).
Pleading	Punitive damages may not be alleged in complaint, but only permitted by pre-trial motion to amend pleadings and after hearing. § 6-1604(2).
Non-Economic Damage Limit	No judgment for punitive damages shall exceed the greater of \$250,000 or an amount which is 3 times the compensatory damages contained in such judgment; if a case is tried to a jury, the jury shall not be informed of this limitation; the limitations on non-economic damages contained in § 6-1603 are not applicable to punitive damages. § 6-1604.
Wrongful Death	No. § 5-327.
Personal Injury	Yes. <i>Harrington v. Hadden</i> , 202 P.2d 236 (Idaho 1949).
Covered By Insurance	Directly assessed - Yes. <i>Abbie Uriguen Olds. Buick, Inc., v. United States Fire Ins. Co.</i> , 511 P.2d 783 (Idaho 1973). Vicariouly assessed – No case on point.
Amount Payable To The State	None.

VII. Products Liability Law

Idaho Products Liability Reform Act	Codified in §§ 6-1401 to 6-1410, §§ 6-1301 to 6-1309, 6-1410.
Comparative Negligence	Unless plaintiff's negligence is equal to or greater than defendant's negligence; any recovery is reduced by the proportional fault of the plaintiff. § 6-1404. Strict liability, like negligence per se, is equally capable of causal comparison. <i>Sun Valley Airlines, Inc. v. Avco-Lycoming Corp.</i> , 411 F. Supp. 598, 603 (D. Idaho 1976). Legislative intent to apply principles of comparative negligence to negligence law as well as products liability law. <i>Tuttle v. Sudenga Indus.</i> , 868 P.2d 473 (Idaho 1994).

VII. Products Liability Law

Affirmative Defense

Failure to discover defective condition. § 6-1405(1).
 Use of product with known defect. § 6-1405(2).
 Misuse of product. § 6-1405(3).
 Alteration or modification of product. § 6-1405(4).
 Industry custom, technical feasibility and state of art. § 6-1406.

Pleadings

Dollar amount not permitted in complaint; complaint shall plead damages as are reasonable in the premises. § 6-1408.

Warranties

Extended to family or household members and guests if reasonable to expect such person may use, consume or be affected by goods. § 28-2-318.

VIII. Limitations On Award Of Compensatory Damages

Non-Economic Damages Limited

\$250,000 cap plus annual adjustment with the percentage amount of increase or decrease by which the Idaho Industrial Commission adjusts the average annual wage as computed pursuant to section 72-409(2); applies to non-economic damages sustained by a claimant who incurred personal injury or who is asserting a wrongful death, or non-economic damages sustained by a claimant, regardless of the number of persons responsible for the damages or the number of actions filed; does not apply to willful and reckless misconduct or felonies. § 6-1603.

Periodic Payment

Permitted at the request of either party, and in the court's discretion for future damages that exceed \$100,000. § 6-1602.

Collateral Source Rule

Yes. § 6-1606.

Economic Loss Doctrine

Yes. Clark v. International Harvester Co., 581 P.2d 784 (Idaho 1978).

IX. Joint And Several Liability

Limited:

Defendants acting in concert or acting as an agent. § 6-803(5).

Action arising from a violation of hazardous wastes laws. § 6-803.

Manufacture of medical devices or pharmaceutical products. § 6-803.

X. Consumer Fraud Act

Adopted

§§ 48-601 – 48-619.

Illinois

I. Wrongful Death

Statute¹	General - 740 Ill. Comp. Stat. 180/0.01. Fetal Death - 740 ILCS 180/2.2.
Empowered Plaintiffs	Personal Representative only. 740 ILCS 180/2.
Beneficiaries	740 ILCS 180/2. First Priority - Surviving spouse and next of kin. Second Priority - Where no surviving spouse or kin, person furnishing hospital or medical expenses in connection with the last illness or injury of the deceased, not to exceed \$450, and personal representative for the costs and expenses of administrating the estate, including attorneys fees.
Damages	Compensatory only. 740 ILCS 180/2. Recoverable Losses - pecuniary. 740 ILCS 180/2. No ceiling on recovery, except medical, hospital, administration expenses, and funeral expenses aggregated may not exceed \$900 plus attorney's fees. 740 ILCS 180/2.
Survival Of Other Causes Of Action	Yes. 740 ILCS 180/2.

II. Statutes Of Limitations

Personal Injury	2 years. 735 ILCS 5/13-202.
Wrongful Death	2 years. 740 ILCS 180/2.
Property Damage	5 years. 735 ILCS 5/13-205.
Contract	Written - 10 years after cause of action accrued, but if payment or new promise to pay has been made in writing within or after the 10 year period, then an action may be commenced within 10 years of the date of such payment or promise to pay. 735 ILCS 5/13-206. Oral - 5 years. 735 ILCS 5/13-205.
Breach Of Warranty, U.C.C.	4 years from tender of delivery, or if future performance, then upon actual or constructive notice of breach. Parties may reduce to not less than 1 year, 810 ILCS 5/2-725.

II. Statutes Of Limitations

Products Liability

2 years from the date a reasonable person should have known of the injury, but no more than 8 years from injury; and no more than 12 years from date product leaves possession of manufacturer, or 10 years from date of first possession by initial owner, whichever period expires earlier. 735 ILCS 5/13-213.

III. Conflicts Rule

Torts

Most significant relationship test. *Kwasniewski v. Schaid*, 607 N.E.2d 214 (Ill. 1992).

Contracts

Most significant relationship test. *Stonewall Ins. Co. v. Argonaut Ins. Co.*, 75 F. Supp. 2d 893 (N.D. Ill. 1999).

IV. Contributory/Comparative Negligence

Comparative Negligence

Bar if plaintiff's negligence is greater than 50% of proximate cause of the injury or of the damages for which recovery is sought; if plaintiff's contributory fault is less than 50%, then damages are diminished in proportion to plaintiff's fault. 735 ILCS 5/2-1116.

V. Contribution And Indemnity

Contribution

Yes, but tortfeasor must have paid more than his pro rata share, and is limited to amount paid in excess of pro rata share. 740 ILCS 100/2.

Indemnity

General - No, a cause of action for active-passive indemnity no longer exists in Illinois, except possibly for those causes of action based on theories of implied indemnity which involve vicarious liability, indemnity in tort cases, or cases alleging "upstream" strict liability. *Hahn v. Norfolk and Western Ry. Co.*, 608 N.E.2d 683, (Ill. Ct. App. 1993), cert denied, 616 N.E.2d 333 (Ill. 1993).

Products Liability – Yes. *Hahn v. Norfolk and Western Ry. Co.*, 608 N.E.2d 683, (Ill. Ct. App. 1993), cert denied, 616 N.E.2d 333 (Ill. 1993).

Vicarious Liability – Yes. *American Nat. Bank and Trust Co., v. Columbus-Cuneo-Caprini Medical Center*, 609 N.E.2d 285 (Ill. 1992).

Construction contract indemnification for negligence - No, against public policy and wholly unenforceable. 740 ILCS 35/1.

VI. Punitive Damages

Pleading Punitive damages may not be alleged in complaint; only permitted by pre-trial motion to amend complaint after hearing. 735 ILCS 5/2-604.1.

Apportionment And Remittitur Court may apportion punitive damages or if it finds jury award to be excessive, may enter a remittitur and a conditional new trial. 735 ILCS 5/2-1207.

Wrongful Death No, only where “strong equitable considerations” existed such as the unavailability of any other remedy. *Froud v. Celotex Corp.*, 456 N.E.2d 131 (Ill. 1983).

Personal Injury Yes. 735 ILCS 5/2-604.1.

Covered By Insurance Directly assessed – No. *Beaver v. Country Mutual Ins. Co.*, 420 N.E.2d 1058 (Ill. Ct. App. 1981). *But see Old Republic Ins. Co. v. Ness, Motley, Loudholt, Richardson & Poole, P.A.*, No. 03V5238 (N.D. Ill. Jan. 11, 2006) (noting that while public policy prohibits insuring punitive damages, a public policy also exists to enforce provisions of policy). Vicariously assessed – Yes. *Scott v. Instant Parking Inc.*, 245 N.E.2d 124 (Ill. Ct. App. 1969).

Amount Payable To The State The trial court may, in its discretion, apportion a punitive damage award among the plaintiff, the plaintiff’s attorney and the State of Illinois Department of Human Services. 735 ILCS 5/2-1207.

VII. Products Liability Law

Strict Tort Liability Yes. *Mikolajczyk v. Ford Motor Co.*, 901 N.E.2d 329 (Ill. 2008).

Comparative Negligence 50% bar applies to strict tort liability; if plaintiff’s contributory responsibility is less than 50%, damages are diminished in proportion to plaintiff’s fault. 735 ILCS 5/2-1116.

Reduction In Amount Of Recovery An amount equal to the sum of (i) 50% of the benefits provided for lost wages or private or governmental disability income programs, which have been paid, or which have become payable to the injured person by any other person, corporation, insurance company or fund in relation to a particular injury, and (ii) 100% of the benefits provided for medical charges, hospital charges, or nursing or caretaking charges, which have been paid, or which have become payable to the injured person by any other person, corporation, insurance company or fund in relation to a particular injury, shall be

VII. Products Liability Law

Reduction In Amount Of Recovery

deducted from any judgment in an action to recover for that injury based on an allegation of negligence or other wrongful act, not including intentional torts, on the part of a licensed hospital or physician; provided, however, that:

1. Application is made within 30 days to reduce the judgment;
2. Such reduction shall not apply to the extent that there is a right of recoupment through subrogation, trust agreement, lien, or otherwise;
3. The reduction shall not reduce the judgment by more than 50% of the total amount of the judgment entered on the verdict;
4. The damages awarded shall be increased by the amount of any insurance premiums or the direct costs paid by the plaintiff for such benefits in the 2 years prior to plaintiff's injury or death or to be paid by the plaintiff in the future for such benefits; and
5. There shall be no reduction for charges paid for medical expenses which were directly attributable to the adjudged negligent acts or omissions of the defendants found liable. 735 ILCS 5/2-1205

In all cases on account of bodily injury or death or physical damage to property, based on negligence, or product liability based on any theory or doctrine, to which Section 2-1205 does not apply, the amount in excess of \$25,000 of the benefits provided for medical charges, hospital charges, or nursing or caretaking charges, which have been paid, or which have become payable by the date of judgment to the injured person by any other insurance company or fund in relation to a particular injury, shall be deducted from any judgment. Provided, however, that:

1. Application is made within 30 days to reduce the judgment;
2. Such reduction shall not apply to the extent that there is a right of recoupment through subrogation, trust agreement, contract, lien, operation of law or otherwise;
3. The reduction shall not reduce the judgment by more than 50% of the total amount of the judgment entered on the verdict; and
4. The damages awarded shall be increased by the amount of any insurance premiums or the direct costs paid by the plaintiff for such benefits in the 2 years prior to plaintiff's injury or death or to be paid by the plaintiff in the future for such benefits. 735 ILCS 5/2-1205.1.

Warranties

Extended to family or household member and guests, assuming it is reasonable to expect that such person may use, consume or be affected by the goods. 810 ILCS 5/2-318.

VIII. Limitations On Award Of Compensatory Damages

Governmental Entity

\$100,000 cap, except for actions arising out of operation of a state vehicle. 705 ILCS 505/8(d).

VIII. Limitations On Award Of Compensatory Damages

Collateral Source Rule Yes. *Muranyi v. Turn Verein Frisch-Auf*, 719 N.E.2d 366 (Ill. Ct. App. 1999). But does not apply in legal malpractice cases. *Sterling Radio Stations, Inc. v. Weinstine*, 765 N.E.2d 56 (Ill. Ct. App. 2002).

DRAM Shop Liability Yes. 235 ILCS 5/6-21.

Health Care Punitive damages are not recoverable in healing art and legal malpractice cases; in all cases, whether in tort, contract or otherwise, in which the plaintiff seeks damages by reason of legal, medical, hospital, or other healing art malpractice, no punitive, exemplary, vindictive or aggravated damages shall be allowed. 735 ILCS 5/2-1115.

Economic Loss Doctrine Yes. *Moorman Mfg. Co. v. National Tank Co.*, 435 N.E.2d 443 (Ill. 1982).

IX. Joint And Several Liability

Limited. 735 ILCS 5/2-1117. Statute applies to actions involving bodily injury, property damage, negligence, or strict product liability. Joint and several liability for past and future medical expenses. A defendant whose fault is less than 25% of plaintiff's fault is severally liable only for all other damages. A defendant whose fault is 25% or greater compared to plaintiff's fault is jointly and severally liable for all other damages.

X. Consumer Fraud Act

Adopted. 815 ILCS 505/1 et seq.

Indiana

I. Wrongful Death

Statute¹	General - Ind. Code § 34-23-1-1. Minor - § 34-23-2-1.
Empowered Plaintiffs	General - Personal representative. § 34-23-1-2. Minor - Parents, legal custodian or guardian. § 34-23-2-1.
Beneficiaries	General. § 34-23-1-2. First Priority - Estate. Second Priority - Spouse, dependent children, dependent next of kin. Third Priority - Person furnishing medical, hospital, and funeral expenses. Fourth Priority - Personal representative. Minor - Parent, custodial parent, or custodial grandparent. § 34-23-2-1.
Damages	Compensatory. § 34-23-1-2. Recoverable Losses General. § 34-23-1-2. Pecuniary losses and expenses. Administration of estate. Minor. § 34-23-2-1. Loss to parent. Expenses incurred. Administration of estate, including reasonable attorney's fees. No ceiling on recovery. § 34-23-1-1.
Survival Of Other Causes Of Action	Yes, except libel, slander, malicious prosecution, false imprisonment, invasion of privacy and personal injuries of deceased party (but may recover damages from personal injuries that result in wrongful death). § 34-9-3-1.

II. Statutes Of Limitations

Personal Injury	2 years. § 34-11-2-4.
Wrongful Death	2 years. § 34-23-1-1.
Property Damage	Real - 6 years. § 34-11-2-7. Personal - 2 years. § 34-11-2-4.

II. Statutes Of Limitations

Contract Written - For contracts written before September 1982 - 10 years; after August 1982 - 6 years. § 34-11-2-8, 34-11-2-9.
 Oral - 6 years. § 34-11-2-7.

U.C.C. Breach Of Warranty 4 years; parties may reduce to not less than 1 year, but may not extend it. § 26-1-2-725.

Products Liability 2 years after the cause of action accrues or 10 years after delivery of the product to initial user, provided that, if action accrues more than 8 but less than 10 years after initial delivery, it may be brought any time within 2 years after accrual. § 34-20-3-1.

III. Conflicts Rule

Torts Modified Lex Loci. Court will consider other contacts and evaluate other factors (such as place where injury occurred, residence or place of business of the parties, place where the relationship is centered) when the place of the tort is insignificant and bears little connection to the legal action. *Big Rivers Elec. Corp., v. Genera/ Electric Co.*, 820 F. Supp. 1123 (S.D. Ind. 1992).

Contracts Most significant contacts. *Bedle v. Kowars*, 796 N.E.2d 300 (Ind. Ct. App. 2003).

IV. Contributory/Comparative Negligence

Modified Contributory Negligence In an action based on fault, any contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery except as provided in § 34-41-2-6. § 34-51-2-5.
 Claim is barred if plaintiff's negligence is greater than the defendant's negligence. § 34-51-2-6.

V. Contribution And Indemnity

Contribution No. § 34-51-2-12.

Indemnity General – Yes. § 34-51-2-12.
 Product Liability – Yes. § 34-20-9-1.
 The fault apportionment process under the Indiana Comparative Fault Act does not give rise to vicarious liability and resulting indemnification rights. *Thomson Consumer Elecs. v. Wabash Valley Refuse Removal*, 658 N.E.2d 92 (Ind. Ct. App. 1995).

VI. Punitive Damages

Standard Of Proof Before a person may recover punitive damages in any civil action, that person must establish, by clear and convincing evidence, all of the facts that are relied upon by that person to support the recovery of punitive damages. § 34-51-3-2. Must establish malice, fraud, gross negligence or oppression. *Eden United, Inc., v Short*, 573 N.E.2d 920 (Ind. Ct. App. 1991).

Limitation Punitive damages award may not be more than the greater of: (1) three times the amount of compensatory damages awarded in the action; or (2) \$50,000. § 34-51-3-4.

Wrongful Death No. *Huff v. White Motor Corp.*, 609 F.2d 286 (7th Cir. 1979).

Personal Injury Yes. § 34-51-3-2.

Covered By Insurance Directly assessed – No. *Norfolk & Ry. V. Hartford Accid. & Indem. Co.*, 420 F. Supp. 92 (N.D. Ind. 1976).
 Vicariously assessed – Yes. *Grant v North River Ins. Co.*, 453 F. Supp. 1361 (N.D. Ind. 1978).

Amount Payable To The State 75%. § 34-51-3-6.

VII. Products Liability Law

Strict Tort Liability

Yes. *TRW Vehicle Safety Systems, Inc. v. Moore*, 936 N.E.2d 201 (Ind. 2010) (“The Product Liability Act thus uses the word “fault” to embrace a wide range of bases for responsibility, including both strict product liability and common law negligence, among others.”).

Affirmative Defenses

Known defect. § 34-20-6-3.

Misuse. § 34-20-6-4.

Modification or alteration. § 34-20-6-5.

Warranties

Extended to family or household member or guest. § 26-1-2-318.

VIII. Limitations On Award Of Compensatory Damages

Governmental Entities

Liability is limited -- Injury or death of one person in any one occurrence - \$300,000 if the cause of action accrued before January 1, 2006, \$500,000 between January 1, 2006 and January 1, 2008, and \$700,000 after January 1, 2008. For injury or death of all persons in that occurrence, \$5 million. No liability for punitive damages. § 34-13-3-4.

Collateral Source Rule

Abrogated by statute. § 34-44-1-2.

DRAM Shop Liability

Yes. § 7.1-5-10-15.

Medical Malpractice Cap

Yes. § 34-18-14-1.

\$500,000 before January 1, 1990; \$750,000 after January 1, 1990; and \$1,250,000 after June 30, 1999.

Health care provider - Not liable for any amount in excess of \$250,000 per occurrence.

Vicariously liable health care provider - Not liable for any amount in excess of \$250,000.

Any excess - Shall be paid from patient’s compensation fund. § 34-18-14-3(c).

Economic Loss Doctrine

In a product liability claim, economic losses are not recoverable in a negligence action premised on the failure of a product to perform as expected unless such failure causes personal injury or physical harm to property other than the product itself. *Interstate Cold Storage, Inc. v. GMC*, 720 N.E.2d 727 (Ind. Ct. App. 1999).

IX. Joint And Several Liability

Limited - Joint liability may be created when acting in concert or independent acts which combine to produce a single injury. Young v. Hoke, 493 N.E.2d 1279 (Ind. Ct. App. 1986).

X. Consumer Fraud Act

Adopted. § 24-5-0.5-3.

Iowa

I. Wrongful Death

Statute¹	Iowa Code § 633.336.
Empowered Plaintiffs	Spouse, child, or parent entitled to recover. § 633.336.
Beneficiaries	<p>§ 633.336.</p> <p>Estate, but recovery not subject to debts of deceased except for amounts to be paid to the Department of Human Services for medical treatment rendered to the deceased.</p> <p>Spouse and children.</p>
Damages	<p>Nature – Compensatory, §§ 633.336 and 613.15, and punitive. <i>Koppinger v. Cullen-Schiltz & Assoc.</i>, 513 F.2d 901 (8th Cir. 1975).</p> <p>Recoverable losses. §§ 633.336 and 613.15.</p> <ul style="list-style-type: none"> a. Pecuniary losses. b. Services. c. Support. d. Physicians' services and hospital expenses. e. Loss of enjoyment of life.
Survival Of Other Causes Of Action	Yes. §§ 611.20, 611.22.

II. Statutes Of Limitations

Personal Injury	2 years. § 614.1(2).
Wrongful Death	2 years. § 614.1(2).
Property Damage	5 years. § 614.1(4).
Contract	<p>Written - 10 years. § 614.1(5).</p> <p>Unwritten - 5 years. § 614.1(4).</p>
Breach Of Warranty, U.C.C.	5 years. <i>Fell v. Kewanee Farm Equipment Co.</i> , A Div. of Allied Products, 457 N.W.2d 911 (Iowa 1990). Parties may reduce to not less than one year, but may not extend it. § 554.2725.
Products Liability	2 years. § 614.1(2).

III. Conflicts Rule

Torts

Most significant relationship test. *Weaver v. Nash International, Inc.*, 562 F. Supp. 860 (S.D. Iowa 1983).

Contracts

Most significant relationship test. *Harlan Feeders v. Grand Laboratory*, 881 F. Supp. 1400 (N.D. Iowa 1995)

IV. Contributory/Comparative Negligence

Comparative Negligence

Unless plaintiff's negligence is greater than defendant's negligence, and damages are diminished in proportion to plaintiff's fault, § 668.3. Fault is defined as one or more acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. Fault also includes unreasonable assumption of risk, misuse, unreasonable failure to avoid injury or mitigate damages. § 668.1.

V. Contribution And Indemnity

Contribution

Available between or among two or more persons who are liable upon the same indivisible claim. § 668.5.

Indemnity

Limited. Permitted for an express contract, vicarious liability, breach of an independent duty of indemnitor to indemnitee, and secondary as opposed to primary liability (active-passive negligence). *Rees v. Dallas County*, 372 N.W.2d 503 (Iowa 1985). Common Liability Rule forecloses indemnity when one of tortfeasors is employer under Workman's Compensation Act. *Rees v. Dallas County*, 372 N.W.2d 503 (Iowa 1985).

Intentional torts – No. *Olan Mills, Inc. v. Linn Photo Co.*, 795 F. Supp. 1423 (N.D. Iowa 1991).

VI. Punitive Damages

Standard Of Proof

Must show by clear and convincing evidence that conduct was directed at claimant. § 668A.1.

Wrongful Death

Yes. *Koppinger v. Cullen-Schiltz & Assoc.*, 513 F.2d 901 (8th Cir. 1975).

Personal Injury

Yes. *Skyline Harverstore Systems, Inc. v. Centennial Ins. Co.*, 331 N.W.2d 106 (Iowa 1983).

VI. Punitive Damages

Covered By Insurance

Directly assessed - Yes. Skyline Harverstore Systems, Inc. v. Centennial Ins. Co., 331 N.W.2d 106 (Iowa 1983).

Vicariously assessed – No case on point.

Amount Payable To The State

An amount not to exceed 25% of the punitive or exemplary damages awarded may be ordered paid to the claimant, with the remainder of the award to be ordered paid into a civil reparations trust fund administered by the state court administrator. § 668A.1.

VII. Products Liability Law

Strict Tort Liability

Limited to original manufacturer when defect results from original design or manufacture, and manufacturer is subject to state's jurisdiction and is not insolvent. § 613.18.

Defenses

State of the art. § 668.12.

Warranties

Extended to persons reasonably expected to use product. § 554.2318.

VIII. Limitations On Damages

Governmental Entity

Municipalities are liable for torts, § 670.2, but are not liable for punitive damages. § 670.4.

Collateral Source Rule

Evidence of past or future payment of medical expenses, rehabilitation and custodial care is admissible to diminish award, unless payment is pursuant to a state or federal program or from assets of claimant or claimant's family. § 668.14.

DRAM Shop

Liability for damages caused by intoxicated person to whom liquor was sold with knowledge of the intoxication. § 123.92.

Health Care Industry/ Providers

Pre-death injuries, if proximately caused by the defendant's negligence, are recoverable in full, and in addition to the amount awarded for lost chance of survival. Mead v. Adrian, 670 N.W.2d 174 (Iowa 2003). Collateral Source Rule applies, except that there is no diminution for payments made by claimants, or from immediate family's assets, in medical malpractice action. § 147.136.

Economic Loss Doctrine

Plaintiffs cannot recover in tort when they have suffered only economic harm. Richards v. Midland Brick Sales, Co., 551 N.W.2d 649 (Iowa 1996).

IX. Joint And Several Liability

Limited. Liability shall not apply to defendants who are found to bear less than fifty percent of the total fault assigned to all parties. § 668.4. Defendants found to bear 50% or more of the fault shall only be jointly and severally liable for economic damages but not for non-economic damage awards. § 668.4.

X. Consumer Fraud Act

The use or employment of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes, whether or not a person has in fact been misled, deceived, or damaged, is an unlawful practice. § 714.16

Kansas

I. Wrongful Death

Statute¹	Kan. Stat. Ann. §§ 60-1901 to 60-1905.
Empowered Plaintiffs	Heir at law. § 60-1902.
Damages	<p>Compensatory, including non-pecuniary. § 60-1903.</p> <p>Recoverable Losses:</p> <ul style="list-style-type: none"> a. Pecuniary losses - any heir at law who has been damaged. § 60-1903. b. Non-pecuniary loss. § 60-1903. c. Medical care. § 60-1903. d. Future pecuniary loss. 60-1903. e. Mental anguish, suffering or bereavement. § 60-1904. f. Loss of society, companionship, comfort or protection. § 60-1904. g. Loss of marital care, attention, advice or counsel. § 60-1904. h. Loss of filial care or attention. § 60-1904. i. Loss of parental care, training, guidance or education. § 60-1904. j. Funeral expense. § 60-1904. <p>Ceiling on recovery - None on pecuniary loss, § 60-1903, but \$250,000 ceiling on non-pecuniary loss. § 60-1903.</p>
Survival Of Other Causes Of Action	Yes, 60-1801, except libel, slander, malicious prosecution, nuisance. § 60-1802.

II. Statutes Of Limitations

Personal Injury	<p>General - 2 years from injury or discovery, not to exceed 10 years from act giving rise to injury. § 60-513.</p> <p>Medical Malpractice - 2 years from injury or discovery, not to exceed 4 years from act giving rise to injury. § 60-513.</p>
Wrongful Death	<p>General - 2 years from injury or discovery, not to exceed 10 years from act giving rise to injury. § 60-513.</p> <p>Medical Malpractice - 2 years from injury or discovery, not to exceed 4 years from act giving rise to injury. § 60-513.</p>
Property Damage	2 years from injury or discovery, not to exceed 10 years from act giving rise to injury. § 60-513.
Contract	<p>Written - 5 years. § 60-511.</p> <p>Oral and Implied - 3 years. § 60-512.</p>

II. Statutes Of Limitations

Breach Of Warranty, U.C.C. 4 years, parties may reduce to not less than 1 year. § 84-2-725.

Products Liability 2 years from injury or discovery, not to exceed 10 years from delivery unless fraud, warranty, latent injury, or exposure to harmful material. § 60-3303.

III. Conflicts Rule

Torts Lex loci delicti. *Dragon v. Vanguard Indus.*, 89 P.3d 908 (Kan. 2004).

Contracts Lex loci contractus. *Dragon v. Vanguard Indus.*, 89 P.3d 908 (Kan. 2004).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence Comparative Negligence, except bar if plaintiff's negligence greater than or equal to defendant's negligence; and damages are diminished in proportion to plaintiff's fault. § 60-258a.

V. Contribution And Indemnity

Contribution No. *Kansas Employees Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 927 P.2d 466 (Kan. 1996).

Indemnity

General - Yes. Where parties are not in pari delicto, party who has been held liable may seek indemnity from a third party who was the real wrongdoer and primarily liable for the injury. *Kansas Employees Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 927 P.2d 466 (Kan. 1996).

Comparative implied indemnity - Where one party settles the plaintiff's entire claim without participation from other joint tortfeasors creating an equitable claim for proportionate share. *Bick v. Peat Marwick and Main*, 799 P.2d 94 (Kan. Ct. App. 1990), petition for review denied (Nov. 13, 1990).

VI. Punitive Damages

Burden Of Proof	Must show by clear and convincing evidence willful conduct, wanton conduct, fraud or malice. § 60-3701.
Pleadings	Punitive damages may not be included in complaint, but must be amended by motion. § 60-3703.
Wrongful Death	Yes. <i>Smith v. Printup</i> , 938 P.2d 1261 (Kan. 1997).
Personal Injury	Yes. <i>Reeves v. Carlson</i> , 969 P.2d 252 (Kan. 1998).
Cap On Punitive / Exemplary Damages	General - determined by court, but not to exceed the lesser of the annual gross income carried by the defendant or \$5,000,000. § 60-3701. Exception - if profitability of defendant's misconduct exceeds or is expected to exceed the cap, the court may award an amount equal to 1 and 1/2 times the amount of profit that the defendant gained or is expected to gain as a result of defendant's misconduct. § 60-3701.
Covered By Insurance	Directly assessed - No. <i>Hartford Accident & Indem. Co. v. American Red Ball Transit Co.</i> , 938 P.2d 1281 (Kan., 1997). Vicariously assessed – Yes. § 40-2115 permits coverage for acts of employees, or those for whom insured may be held vicariously liable, without insured's prior actual knowledge.
Amount Payable To The State	None.
Products Liability	§§ 60-3301 to 60-3307.
Strict Tort Liability	Yes. § 60-3302.
Affirmative Defenses	Useful life, which is rebuttable by clear and convincing evidence. § 60-3303. Complied with governmental standards. § 60-3304. Unreasonable misuse. § 60-3305. Seller's limited immunity. § 60-3306.
Warranties	Extended to person reasonably expected to use product. § 84-2-318.

VII. Limitations On Award Of Compensatory Damages

Governmental Entity	<p>Limited immunity. § 75-6104.</p> <p>Limited liability - \$500,000 for any number of claims arising out of a single occurrence or accident. § 75-6105.</p> <p>Punitive/exemplary damages - no liability for governmental entity, or for governmental employee acting within scope of employment, unless actual fraud or actual malice by employee. § 75-6105.</p>
Collateral Source Rule	<p>Yes. Under the collateral source rule, benefits received by the plaintiff from a source wholly independent of and collateral to the wrongdoer will not diminish the damages otherwise recoverable from the wrongdoer. <i>Hayes Sight & Sound, Inc. v. ONEOK, Inc.</i>, 136 P.3d 428 (Kan. 2006).</p>
DRAM Shop	<p>No. <i>Ling v. Jan's Liquors</i>, 703 P.2d 731 (Kan. 1985).</p>
Health Care Industry/ Providers	<p>Health care providers - Limited liability. § 65-4909.</p> <p>Emergency medical care - Immune from liability, except for damages which result from gross negligence or willful or wanton acts or omissions, § 65-6124, including use of automated external defibrillator by qualified person. § 65-6149a.</p>
Damages For Pain And Suffering	<p>Damages limited to \$250,000. §§ 60-19a01, 60-19a02.</p>
Economic Loss Doctrine Adoption	<p>Yes. <i>Prendiville v. Contemporary Homes, Inc.</i>, 83 P.3d 1257 (Kan. Ct. App. 2004).</p>

VIII. Joint And Several Liability

No, each party shall be liable for that portion of the total amount awarded as damages to the plaintiff in the proportion that the amount of such party's causal negligence bears to the amount of the causal negligence attributed to all parties against whom such recovery is allowed. § 60-258a.

IX. Consumer Fraud Act

Not adopted. Unfair Trade & Consumer Protection. *See* Chapter 50.

Kentucky

I. Wrongful Death

Statute¹	General - Ky. Rev. Stat. Ann. § 411.130; <i>see also</i> § 411.133. Death of a Minor - § 411.135; <i>see also</i> § 411.137.
Empowered Plaintiffs	General - Personal Representative. § 411.130. Minor – Parents. § 411.135.
Beneficiaries	§ 411.130. First Priority - Spouse and children. Second Priority - Parents. Third Priority - Estate, to pay debts. Fourth Priority - Related kin based on Kentucky's law of descent and distribution.
Damages	Nature - Compensatory, § 411.130, and Punitive. § 411.130. Recoverable Losses. §§ 411.130; 411.135. a. Pecuniary Losses. b. Funeral expenses. c. Administration, including attorney's fees. d. Minor - Parents may also recover loss of affection and companionship. e. Loss of consortium. No ceiling on recovery. § 411.130.
Survival Of Other Causes Of Action	Yes, except slander, libel, criminal conversation, and malicious prosecution. § 411.140.

II. Statutes Of Limitations

Personal Injury	1 year. § 413.140.
Wrongful Death	1 year. § 413.140.
Property Damage	Trespass - 5 years. § 413.120. Personal Property - 2 years. § 413.125.
Contract	Written - 15 years. § 413.090. Oral - 5 years. § 413.120.

II. Statutes Of Limitations

Breach Of Warranty, U.C.C. 4 years, parties may reduce to not less than 1 year but may not extend it, § 355.2-725.

Products Liability 5 years. § 413.120.

III. Conflicts Rule

Torts While Kentucky “purports” to follow the most significant contacts rule, it strongly favors the application of its own law whenever there is any significant contact with Kentucky. *Grant v. Bill Walker Pontiac-GMC Inc.*, 523 F.2d 1301 (6th Cir. 1975).

Contracts The law of the state with the greatest interest in the outcome of the litigation should be applied. *Breeding v. Massachusetts Indemnity and Life Insurance Co.*, 633 S.W.2d 717 (Ky. 1982).

IV. Contributory/Comparative Negligence

General Comparative fault. § 411.182

V. Contribution And Indemnity

Contribution Yes, unless the act committed is an intentional tort or involves moral turpitude. § 412.030.

Indemnity Yes, Kentucky common law recognizes the right to indemnity in two primary situations: (1) where the party claiming indemnity has not been guilty of any fault, as where an innocent master was held to respond for the tort of his servant acting within the scope of his employment; or (2) where both parties have been in fault, but not in the same amount, towards the party injured, and the fault of the party from whom indemnity is claimed was the primary and efficient cause of the injury. *Degener v. Hall Contr. Corp.*, 27 S.W.3d 775 (Ky. 2000).

VI. Punitive Damages

General Statutes	Yes. § 411.186.
Wrongful Death	Yes, available in cases of willful acts or gross negligence. § 411.130.
Personal Injury	Yes, for battery with certain weapons. § 411.020.
Covered By Insurance	Directly assessed – Yes, except when arising from intentional act. Continental Ins. Co. v. Hancock, 507 S.W.2d 146 (Ky. 1973). Vicariously assessed – Yes. Continental Ins. Co. v. Hancock, 507 S.W.2d 146 (Ky. 1973).
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. §§ 411.300 to 411.319; 411.321 to 411.329; 411.331 to 411.350. Presumption that product not defective if injury occurred more than 5 years after the date of its original sale to a consumer, or 8 years after its manufacture, but presumption is rebuttable by a preponderance of evidence. § 411.310.
Comparative Negligence	No, if the plaintiff failed to exercise ordinary care in the use of the product and that failure was a substantial cause of the injury to the plaintiff the defendant will not be liable whether or not the defendant was at fault or the product was defective. § 411.320.
Affirmative Defenses	State of the art - if the design, methods of manufacture, and testing of the product are state of the art at the time the design was prepared, it is presumed that the product was not defective unless rebutted by a preponderance of the evidence. § 411.310 Contributory negligence. § 411.320.
Warranties	Extended to family or household member and guest. § 355.2-318.

VIII. Limitations On Award Of Compensatory Damages

Limitation On Awards Against State

Yes. § 44.070.

No collateral claims dependent on loss to another.

No recovery for mental distress, pain and suffering.

\$200,000 cap per claim, excluding interest and costs.

\$350,000 cap per overall accident, to be equitably divided among claimants, with no individual claimant receiving more than \$200,000.

Collateral Source Rule

Yes. “The collateral source rule, as this rule is commonly known, allows the plaintiff to (1) seek recovery for the reasonable value of medical services for an injury, and (2) seek recovery for the reasonable value of medical services without consideration of insurance payments made to the injured party. The collateral source rule has long been followed in Kentucky.” *Baptist Healthcare Systems, Inc. v. Miller*, 177 S.W.3d 676, 682-83 (Ky. 2005).

DRAM Shop

No, except to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol. § 413.241 (statute held unconstitutional to the extent that it prohibits recovery of punitive damages by *Taylor v. King*, 2010 WL 3810797 (Ky. App. Oct 1, 2010) (motion for discretionary review of appellate decision to Kentucky Supreme Court pending)).

Health Care Industry/ Providers

None.

Economic Loss Doctrine

Yes. *Giddings & Lewis, Inc. v. Industrial Park Insurers*, Nos. 2009–SC–000485–DG, 2009–SC–000825–DG, 2011 WL 2436154 (Ky. Jun. 16, 2011).

IX. Joint And Several Liability

No. § 411.182; *Degener v. Hall Contracting Corp.*, 27 S.W.3d 775 (Ky. 2000).

X. Consumer Fraud Act

Adopted. §§ 367.110 to 367.300 (Consumer Protection Act).

Louisiana

I. Wrongful Death

Statutes¹ Wrongful death, La. Civ. Code Ann. art. (“CC”) § 2315.2.
Liability for acts causing damages, CC § 2315.

Empowered Plaintiffs CC § 2315.2.
First Priority - Spouse and children.
Second Priority - Parents.
Third Priority - Siblings.

Damages Compensatory. CC § 2315.
Recoverable Losses. CC § 2315
a. Pecuniary Losses.
b. Consortium.
c. Services.
d. Society.
e. Mental anguish upon viewing injury. CC § 2315.6.
No ceiling on recovery. CC § 2315.

Survival Of Other Causes Of Action Yes. CC § 2315.1.

II. Statutes Of Limitations

Personal Injury 1 year. CC § 3492.

Wrongful Death 1 year. CC § 2315.2.

Property Damage Immovable Property - 1 year. CC § 3493.
Other property - 1 year. CC § 3492.

Contract 10 years. CC § 3499.

Breach Of Warranty, U.C.C. 1 year. *Lanzas v. American Tobacco Co., Inc.*, 46 Fed. Appx. 732 (5th Cir. 2002). Louisiana has not adopted Art. 2 of U.C.C.
La. Prac. Secured Transactions § 1:2 (2010-2011 ed.).

Products Liability 1 year. *Denoux v. Vessel Management Services, Inc.*, 983 So.2d 84 (la. 2008).

III. Conflicts Rule

Torts Apply the law of the state whose policies would be most impaired if its law is not applied to that issue. *Rigdon v. Pittsburgh Tank & Tower Co.*, 682 So.2d 1303 (La. Ct. App. 1996).

Contracts Most significant contacts. *Robinson v. Robinson*, 778 So.2d 1105 (La. 2001).

IV. Contributory/Comparative Negligence

Comparative Negligence Damages shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss. CC § 2323.

V. Contribution And Indemnity

Contribution There is no contribution among joint tortfeasors under CC § 2324(B). However, contribution is available among intentional wrongdoers who conspire to do harm. Contribution from each to the other would be by proportion of fault. CC § 1804, CC § 2324(A).

Indemnity Available. *Dusenberry v. McMoran*, 458 So.2d 183 (La. 1999).

VI. Punitive Damages

Explicit Statute Required CC § 3546; *Dupuis v. Tiger Oil International*, 444 So.2d 1379 (La. Ct. App. 1984).

Wrongful Death No, because not explicitly provided for in statute. *Dupuis v. Tiger Oil International*, 444 So.2d 1379 (La. Ct. App. 1984).

Personal Injury Must disregard public safety wantonly and recklessly.
While intoxicated and operating a motor vehicle. CC § 2315.4.
While committing an act of criminal sexual misconduct against a child. CC § 2315.7.

Covered By Insurance Directly assessed – Yes. *Sharp v. Daigre*, 555 So.2d 136 (La. 1990).
Vicariously assessed – Yes. *Creech v. Aetna Cas. & Sur. Co.*, 516 So.2d 1168 (La. Ct. App. 1987).

VI. Punitive Damages

Amount Payable To The State None.

VII. Products Liability Law

Strict Tort Liability Yes, for manufacturers. La. Rev. Stat. Ann. (“RS”) § 9:2800.51, *et seq.*; *see also* Kelley v. Price-Macemon, Inc., 992 F.2d 1408 (5th Cir. 1993).

Comparative Negligence Yes. CC § 2323.

Affirmative Defenses Alteration, modification, removal of warning. RS § 9:2800.53.
Failure to maintain properly. RS § 9:2800.53.
State of art. RS § 9:2800.59.

Warranties Extended to persons reasonably expected to use product. RS § 9:2800.54

VIII. Limitations On Damages

Governmental Entity Damages for personal injury or wrongful death not to exceed \$500,000. RS 13:5106.

Collateral Source Rule Tortfeasor not entitled to credit for victim’s recovery from collateral sources. Suhor v. Lagasse, 770 So.2d 422 (La. Ct. App. 2000).

Health Care Industry/ Providers The total amount recoverable for all malpractice claims shall not exceed \$500,000, plus interest and costs. RS § 40:1299.42.

Economic Loss Doctrine Not adopted. In re Chinese Manufactured Drywall Products Liability Litigation, 680 F. Supp. 2d 780 (E.D. La. 2010).

IX. Joint And Several Liability

Limited - Joint and several liability if defendants conspire to commit an intentional or willful act. If liability is not in solido, then liability for damages caused by two or more persons shall be a joint and divisible obligation. A joint tortfeasor shall not be liable for more than his degree of fault and shall not be solidarily liable with any other person for damages attributable to the fault of such other person. CC § 2324.

X. Consumer Fraud Act

Not adopted. Louisiana, however, does have a Consumer Protection Act, outlawing unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. RS § 51:1405.

Maine

I. Wrongful Death

Statute¹	Me. Rev. Stat. tit. 18A, § 2-804.
Empowered Plaintiffs	Personal Representative only. Tit. 18A, § 2-804(b).
Beneficiaries	Tit. 18A, § 2-804. First Priority - Surviving spouse and children, one half to each. Second Priority - Heirs.
Damages	Compensatory and Punitive. Tit. 18A, § 2-804. Recoverable Losses. Tit. 18A, § 2-804. a. Pecuniary losses. b. Loss of comfort. c. Loss of society. d. Loss of companionship. e. Emotional distress. f. Medical, surgical, hospital care, and funeral expenses, for the benefit of the estate. Ceiling on recovery - \$500,000 cap for loss of comfort, society and companionship; punitive damages not to exceed \$250,000. Tit. 18A, § 2-804.
Survival Of Other Causes Of Action	Yes, except causes of actions for the recovery of penalties and forfeitures of money under penal statutes do not survive the death of the defendant. Tit. 18A, § 3-817.

II. Statutes Of Limitations

Personal Injury	General - 6 years. Tit. 14, § 752. Actions for assault, battery, false imprisonment, slander and libel - 2 years. Tit. 14, § 753. Healthcare providers and practitioners - 3 years. Tit. 24, § 2902.
Wrongful Death	2 years. Tit. 18A, § 2-804.
Property Damage	6 years. Tit. 14, § 752.
Contract	6 years. Tit. 14, § 752.

II. Statutes Of Limitations

Breach Of Warranty, U.C.C. 4 years; parties may reduce to not less than 1 year. Tit. 11, § 2-725.

Products Liability 6 years. Tit. 14, § 752.

Design Professional 4 years after discovery, but no more than 10 years after substantial completion. Tit. 14, § 752-A.

III. Conflicts Rule

Torts Most significant contacts and relationships. *Holbrook v. Andersen Corp.*, 756 F. Supp. 34 (D. Me. 1991).

Contracts Most significant contacts and relationships. *Flaherty v. Allstate Ins. Co.*, 822 A.2d 1159 (Me. 2003).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence Damages are diminished equitably; if claimant is found by the jury to be equally at fault, the claimant shall not recover. Tit. 14, § 156.

V. Contribution And Indemnity

Contribution Available, but defendant must request that jury use special interrogatories to attribute percentage of fault. Tit. 14, § 156.

Indemnity A joint tortfeasor's right to indemnity can arise in three circumstances: (1) indemnity may be agreed to expressly; (2) a contractual right of indemnification may be implied from the nature of the relationship between the parties; or (3) a tort-based right to indemnity may be found when there is a great disparity in the fault of the parties. *Emery v. Hussey Seating Co.*, 697 A.2d 1284 (Me. 1997).

Contract – Yes, but there must be proof of damage actually suffered to recover on a contract of indemnity. *Howard & Bowie, P.A. v. Collins*, 759 A.2d 707 (Me. 2000).

VI. Punitive Damages

Wrongful Death	Yes, not exceeding \$250,000. Tit. 18A, § 2-804.
Personal Injury	Yes. <i>Foss v. Maine Turnpike Auth.</i> , 309 A.2d 339 (Me. 1973).
Covered By Insurance	Directly assessed – No. <i>Braley v. Berkshire Mut. Ins. Co.</i> , 440 A.2d 359 (Me., 1982). Vicariously assessed - Yes. <i>Concord General Mut. Ins. Co. v. Hills</i> , 345 F. Supp 1090 (D. Me. 1972).
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes, for defective or unreasonably dangerous goods to person who might reasonably be expected to use. Tit. 14, § 221.
Comparative Negligence	No exception to general rule that if claimant is found equally at fault, he cannot recover; and damages are diminished equitably. Tit. 14, § 156.
Warranties	Extended to persons reasonably expected to consume. Tit. 11, § 2-318.

VIII. Limitations On Damages

Governmental Entity	Yes, Maine Tort Claims Act. Tit. 14, § 8101, <i>et seq.</i> Government employee - \$10,000 cap on personal liability while acting within scope of employment. Tit. 14, § 8104-D. Government entity - \$400,000 cap per occurrence. Tit. 14, § 8105. No punitive damages. Tit. 14, § 8105.
Collateral Source Rule	Yes, a plaintiff who has received compensation for his damages from sources independent of the tortfeasor remains entitled to a full recovery. <i>Grover v. Boise Cascade Corp.</i> , 860 A.2d 851 (Me. 2004).
DRAM Shop Liability	Yes. Tit. 28, § 2801, <i>et seq.</i>

VIII. Limitations On Damages

Health Care Industry/ Providers

Health Security Act. Tit. 24, § 2501, *et seq.*

Mandatory pre-litigation screening and mediation panels. Tit. 24, § 2851.

Punitive damages limited to \$250,000 and wrongful death limited to \$500,000. Tit. 18-A, § 2-804.

Economic Loss Doctrine

Yes. *Oceanside at Pine Point v. Peachtree*, 659 A.2d 267 (Me. 1995).

IX. Joint And Several Liability

Yes. Tit. 14, § 156.

X. Consumer Fraud Act

Maine Unfair Trade Practices Act. Tit. 5, § 205-A, *et seq.*

Maryland

I. Wrongful Death

Statute¹	Md. Code Ann., Cts. & Jud. Proc. § 3-904.
Beneficiaries	Wife, husband, parent, and child of the deceased person or, if not, any person related to the deceased person by blood or marriage who was substantially dependent upon the deceased. Cts. & Jud. Proc. § 3-904(a) and (b).
Empowered Plaintiffs	Statutory beneficiaries. <i>Jones v. Prince George's County</i> , 835 A.2d 632 (Md. 2003). Only one action permitted for the death of a person. Cts. & Jud. Proc. § 3-904(f).
Damages	<p>Damages are not limited or restricted by the “pecuniary loss” or “pecuniary benefit” rule but may include damages for mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education where applicable. Cts. & Jud. Proc. § 3-904.</p> <p>Punitive damages are not permitted for wrongful death. <i>Cohen v. Rubin</i>, 460 A2d 1046 (Md. 1983).</p> <p>A personal representative may recover the funeral expenses of the decedent up to \$5,000. Estates & Trusts §§ 7-401(y) (2), 8-106(b).</p> <p>Ceiling on recovery: Cts. & Jud. Proc. § 11-108 sets a limit of \$500,000 on non-economic damages with respect to causes of action arising on or after October 1, 1994, subject to the caveats that (1) the cap amount increases by \$15,000 on October 1 of each year beginning in 1995, and (2) in a wrongful death action in which there are two or more claimants, the total award of non-economic damages may not exceed 150% of the basic limitation. <i>John Crane, Inc. v. Scribner</i>, 800 A.2d 727 (Md. 2002).</p>
Survival Of Other Causes Of Action	<p>Yes, except for slander. Estates and Trusts § 7-401(y).</p> <p>Yes if tortfeasor dies. Cts. & Jud. Proc. § 3-902.</p>

II. Statutes Of Limitations

Personal Injury	<p>3 years. Cts. & Jud. Proc. § 5-101; <i>Reed v. Sweeney</i>, 488 A.2d 1016 (Md. Ct. Spec. App. 1985).</p> <p>An action for damages for an injury arising out of the rendering of or failure to render professional services by a health care provider must be filed within the earlier of 5 years from the time the injury was committed or 3 years from the time the injury was discovered. If the claimant was under 11 years old when the injury was committed, the foregoing time limitations will commence when the claimant reaches 11 years old, except for damages for: (1) an injury to the reproductive system of the claimant; or (2) caused by a foreign object negligently left in the claimant's body. If the claimant was under age 16 when either (1) or (2) were committed, the foregoing time limitations will commence when the claimant reaches age 16. Cts. & Jud. Proc. § 5-109.</p>
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II. Statutes Of Limitations

Wrongful Death

General - 3 years. Cts. & Jud. Proc. § 3-904.

Toxic exposure at workplace during course of employment - 10 years from death or 3 years from discovery of cause, whichever is shorter. Cts. & Jud. Proc. § 3-904.

Property Damage

3 years. Cts. & Jud. Proc. § 5-101; *see also* Bergquist v. Magalski, 552 A.2d 904 (Md. 1989).

Contract

3 years. Cts. & Jud. Proc. § 5-101; Balt. County v. RTKL Assocs., 846 A.2d 433 (Md. 2004).

Breach Of Warranty

4 years; parties may reduce to not less than 1 year. Commercial Law § 2-725.

Products Liability

3 years. Cts. & Jud. Proc. 5-101; *see also* Harig v. Johns- Manville Products Corp., 394 A.2d 299 (Md. 1978). If, however, a cause of action against a manufacturer or seller of a product for personal injury allegedly caused by a defective product arose in a foreign jurisdiction and by the laws of that jurisdiction the cause of action may not be maintained by reason of a lapse of time, an action may not be maintained in Maryland, except in favor of one who is a resident of Maryland. Cts. & Jud. Proc. § 5-115(b). Cts. & Jud. Proc. § 5-115 does not apply to a wrongful death action arising under Maryland law. Cts. & Jud. Proc. § 5-115(c).

III. Conflicts Rules

Torts

Lex loci delecti (the place where the injury was suffered, not the place where the wrongful act took place). In re Sabin Oral Polio Vaccine products liability Litigation, 774 F. Supp. 952 (D. Md. 1991), *aff'd*, 984 F.2d 124 (4th Cir. Md. 1993).

- a. Maryland law applies to torts in flight over the State. Transportation § 5-103.
 - b. If a wrongful act causing death (as opposed to the resulting wrongful death) occurred in another state, the District of Columbia, or a territory of the United States, a Maryland court must apply the substantive law of that jurisdiction, and must also apply Maryland rules of pleading and procedure. Cts. & Jud. Proc. § 3-903.
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Contracts

Lex loci contractus (the place where the last act necessary under the forum's rules of offer and acceptance to give the contract binding effect occurred). Commercial Union Ins. Co. v. Porter Hayden Co., 698 A.2d 1167 (Md. Ct. Spec. App. 1997) (citing Restatement (First) Conflict of Laws § 332).

IV. Contributory/Comparative Negligence

Contributory Negligence Contributory Negligence applies. *Cambell v. Baltimore Gas & Elec. Co.*, 619 A.2d 213 (Md. Ct. Spec. App. 1993), cert. denied, 627 A.2d 538 (Md. 1993).

V. Contribution And Indemnity

Contribution Yes. Cts. & Jud. Proc. § 3-1402.

Indemnity Yes. *Gliedman v. Capital Airlines, Inc.*, 267 F. Supp. 298 (D. Md. 1967); *see* Cts. & Jud. Proc. § 3-1406.

VI. Punitive Damages

Pleading Punitive damages may only be awarded if it is shown by clear and convincing evidence that the defendant demonstrated consciousness of the wrongdoing or conduct characterized by evil motive, intent to injure, ill will, or fraud. *Darcars Motors of Silver Spring, Inc. v. Borzým*, 841 A.2d 828 (Md. 2004); *Owens-Illinois, Inc. v. Zenobia*, 601 A.2d 633 (Md. 1992).

Apportionment/Remittitur Remittitur is permitted if punitive damages are excessive. Maryland common law uses the following principles when analyzing punitive damages: (1) the gravity of the defendant's wrong; (2) the defendant's ability to pay; (3) the deterrence value of the amount awarded under all of the circumstances of the case; (4) the legislative policy reflected in statutes setting criminal fines; (5) compare the award with other final punitive damages awards in the jurisdiction, and particularly with awards in somewhat comparable cases; (6) in a post-verdict proceeding, evidence of other final and satisfied punitive damages awards against the same defendant for the same conduct; (7) whether the separate torts all grew out of a single occurrence or episode if the total amount of punitive damages awarded is based on separate torts; (8) plaintiff's reasonable costs and expenses resulting from the defendant's malicious and tortious conduct, including the expenses of the litigation, which are not covered by the award of compensatory damages; and (9) whether a punitive damages award bears a reasonable relationship to the compensatory damages awarded. *Bowden v. Caldor, Inc.*, 710 A.2d 267 (Md. 1998). In addition, if punitive damages are based on more than one count or there is more than one defendant, the jury should apportion the total amount of punitive damages to the counts and/or defendants upon which it has determined that punitive damages should be awarded. *Bowden v. Caldor, Inc.*, 710 A.2d 267 (Md. 1998); *Embrey v. Holly*, 442 A.2d 966 (Md. 1982).

Wrongful Death No. *Cohen v. Rubin*, 460 A.2d 1046 (Md. 1983).

VI. Punitive Damages

Personal Injury Yes. Cts. & Jud. Proc. § 10-913; *see* Darcars Motors of Silver Spring, Inc. v. Borzym, 841 A.2d 828 (Md. 2004).

Covered By Insurance Directly assessed - Yes. First Nat'l Bank, St. Mary's v. Fidelity & Deposit Co., 389 A.2d 359 (Md. 1978).
Vicariouly assessed – No case on point.

Amount Payable To The State None.

VII. Products Liability Law

Strict Tort Liability Yes. Phipps v. General Motors Corp., 363 A.2d 955 (Md. 1976).

Comparative Negligence No. Cambell v. Baltimore Gas & Elec. Co., 619 A.2d 213 (Md. Ct. Spec. App. 1993), cert. denied, 627 A.2d 538 (Md. 1993); *see also* Phillip Morris, Inc. v. Angeletti, 752 A.2d 200 (Md. 2000).

Affirmative Defenses Sealed container defense. Cts. & Jud. Proc. § 5-405.
Assumption of the risk and contributory negligence. Phillip Morris, Inc. v. Angeletti, 752 A.2d 200 (Md. 2000).
State of the art in a strict liability failure to warn case. ACandS, Inc. v. Asner, 686 A.2d 250 (Md. 1996).
Unavoidably unsafe product. Miles Lab., Inc., Cutter Lab. Div. v. Doe, 556 A.2d 1107 (Md. 1989).
Note: Proof of misuse is a defense in that it negates an essential element of plaintiff's case, but is not an affirmative defense. Ellsworth v. Sherne Lingerie, Inc., 495 A.2d 348 (Md. 1985).

Warranties Extended to family or household member and guest if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. Commercial Law § 2-318.

VIII. Limitations On Award

Governmental Entity	<p>The liability of a local government may not exceed \$200,000 per an individual claim, and \$500,000 per total claims, exclusive of interest, that arise from the same occurrence for damages resulting from tortious acts or omissions. A local government may not be liable for punitive damages, but may indemnify an employee for a judgment for punitive damages entered against the employee subject to the above limits.</p> <p>A local government may not indemnify a police officer for punitive damages under certain circumstances. Cts. & Jud. Proc. § 5-303.</p>
Collateral Source Rule	<p>Yes. Haischer v. CSX Transportation, Inc., 848 A.2d 620 (Md. 2004).</p>
DRAM Shop Liability	<p>No. Gaver v. Harrant, 557 A.2d 210 (Md. 1989).</p>
Health Care Industry/ Providers	<p>No specific limit on liability. Advance payments to be deducted from final award. If advance payments exceed final award, claimant never has to pay anything back. Cts. & Jud. Proc. §3-2A-02.</p>
Economic Loss Doctrine	<p>Yes. Generally, when the failure to exercise due care creates a risk of economic loss only, and not the risk of personal injury, Maryland has required an “intimate nexus” between the parties as a condition to the imposition of tort liability. Cooper v. Berkshire Life Ins. Co., 810 A.2d 1045 (Md. 2002).</p>
Non-Economic Damage	<p>Cts. & Jud. Proc. § 11-108 sets a limit of \$ 500,000 on non-economic damages (which includes pain, suffering, inconvenience, physical impairment, loss of consortium, and other non-pecuniary injury) with respect to causes of action arising on or after October 1, 1994, subject to the caveats that (1) the cap amount increases by \$15,000 on October 1 of each year beginning in 1995, and (2) in a wrongful death action in which there are two or more claimants, the total award of non-economic damages may not exceed 150% of the basic limitation. See John Crane, Inc. v. Scribner, 800 A.2d 727 (Md. 2002).</p>
Form Of Payment; Periodic Payments; Security	<p>The court or the health claims arbitration panel may order that all or part of the future economic damages portion of the award be paid in the form of annuities or other appropriate financial instruments, or that it be paid in periodic or other payments consistent with the needs of the plaintiff, funded in full by the defendant or the defendant’s insurer and equal when paid to the amount of the future economic damages award. Cts. & Jud. Proc. §3-2A-02.. If it is ordered that the award for future economic damages be paid in a form other than a lump sum, the defendant or the defendant’s insurer must provide adequate security for the payment of all future economic damages. Cts. & Jud. Proc. §3-2A-02.</p>

IX. Joint And Several Liability

Yes. *Owens-Illinois, Inc. v. Armstrong*, 604 A.2d 47 (Md. 1992).

X. Consumer Fraud Act

Adopted. Maryland's Consumer Protection Act, Commercial Law, tit. 13 and 14.

Massachusetts

I. Wrongful Death

Statutes¹	Mass. Gen. Laws Ann. ch. 229, §§ 1 through 11.
Empowered Plaintiffs	Executor or administrator. Ch. 229, § 2.
Beneficiaries	Ch. 229, § 1. First Priority - Spouse, children or issue surviving. Second Priority - Next of kin.
Damages	Compensatory damages, and punitive damages with \$5,000 minimum in such case as the decedent's death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the defendant, are available. Ch. 229, § 2. Compensatory damages include: <ul style="list-style-type: none"> a. the fair monetary value of the decedent to the persons entitled to receive the damages recovered, including but not limited to compensation for the loss of the reasonably expected net income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of the decedent to the persons entitled to the damages recovered; b. the reasonable funeral and burial expenses of the decedent; and c. the conscious suffering resulting from the same injury, but any sum so recovered shall be held and disposed of by the executors or administrators as assets of the estate of the deceased. Ch. 229, §§ 2 and 3. No specific ceiling on recovery. Ch. 229, § 2.
Survival Of Other Causes Of Action	Yes. Ch. 228, § 1; Ch. 260, § 10; Ch. 229, § 5A.

II. Statutes Of Limitations

Personal Injury	Generally, 3 years. Ch. 260, § 2A; see also Ch. 260, § 4; Ch. 260, § 4B.
Wrongful Death	3 years from date of death or 3 years from date when executor or administrator knew or should have known of the factual basis for a cause of action. Ch. 229, § 2.
Property Damage	3 years. Ch. 260, § 4; <i>see also</i> Ch. 260, § 4B (automobile hit-and-run); Ch. 21E, § 11A (pollution).

II. Statutes Of Limitations

Contract Written and Oral - 6 years. Ch. 260, § 2.
Action on contract to recover personal injuries - 3 years. Ch. 260, § 2A.

Breach Of Warranty (U.C.C.) 4 years; parties may reduce to not less than 1 year. Ch. 106, § 2-725.

Products Liability 3 years. Ch. 106, § 2-318.

III. Conflicts Rules

Torts Interest analysis. *Pevoski v. Pevoski*, 358 N.E.2d 416 (Mass. 1976); *see Schulhof v. Northeast Cellulose, Inc.*, 545 F. Supp. 1200 (D. Mass. 1982).

Contracts Most significant relationship test. *Nile v. Nile*, 734 N.E.2d 1153 (Mass. 2000) (citing Restatement (Second) Conflict of Laws § 188 (1971)).

IV. Contributory/Comparative Negligence

Comparative Negligence No recovery if plaintiff's negligence greater than sum of all defendants' negligence; and plaintiff's award diminished in proportion to plaintiff's fault. Ch. 231, § 85. (Note: Defense of assumption of the risk abolished by statute. Ch. 231, § 85).

V. Contribution And Indemnity

Contribution Available to joint tortfeasor that has paid more than his pro rata share of the common liability, but only to the extent of the excess payment. Ch. 231B, § 1.
Insurer who pays to discharge liability of its insured tortfeasor becomes subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of its insured's pro rata share of the common liability. Ch. 231B, § 1(d).

Indemnity Yes (common law right). *Thomas v. EDI Specialists, Inc.*, 773 N.E.2d 415 (Mass. 2002). However, where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee will be for indemnity and not contribution, and the indemnity obligor will not be entitled to contribution from the obligee for any portion of his indemnity obligation. Ch. 231B, § 1(e).

VI. Punitive Damages

Standard Only permitted if expressly authorized by statute. *Flesner v. Technical Communications Corp.*, 575 N.E.2d 1107 (Mass. 1991). Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. *Goodrow v. Lane Bryant, Inc.*, 732 N.E.2d 289 (Mass. 2000).

Wrongful Death Yes. Ch. 229, § 2.

Personal Injury No. *Flesner v. Technical Communications Corp.*, 575 N.E.2d 1107 (Mass. 1991); *Belanger v. Saint-Gobain Indus. Ceramics*, No. 95-1767B, 1999 Mass. Super. LEXIS 72 (Mass. Dist. Ct. Feb. 18, 1999); *see also* *Neiss v. Burwen*, 191 N.E. 654 (Mass. 1934).

Insurable Probably not. *See Santos v. Lumbermens Mut. Cas. Co.*, 556 N.E.2d 983 (Mass. 1990) (stating in dicta that “[r]equiring an insurance company to pay punitive damages would . . . not serve to deter wrongdoing or punish the wrongdoer.”); *see also* *CSX Transp., Inc. v. Massachusetts Bay Transp. Authority*, 697 F. Supp. 2d 213 (D. Mass. 2010).

Public Employer No punitive damages for actions of public employees. Ch. 258, § 2.

Remittitur Yes, three main factors should be considered in determining if a punitive damage award is excessive: (1) the degree of reprehensibility of the defendant's conduct, (2) the ratio of the punitive damage award to the actual harm inflicted on the plaintiff, with (3) a comparison of the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct. *Labonte v. Hutchins & Wheeler*, 678 N.E.2d 853 (Mass. 1997).

Apportionment In a wrongful death action, the entire award is to be apportioned -- the punitive damages for death going to the next of kin, and the compensatory damages for personal injuries going to the administrator. *Neiss v. Burwen*, 191 N.E. 654 (Mass. 1934).

VII. Products Liability Law

Strict Tort Liability No, apart from liability for breach of warranty under the Uniform Commercial Code. *Guzman v. MRM/Elgin*, 567 N.E.2d 929 (Mass. 1991).

Comparative Negligence Yes. *Colter v. Barber-Greene Co.*, 525 N.E.2d 1305 (Mass. 1988).

VII. Products Liability Law

Reduction In Amount Of Recovery

Yes. *Colter v. Barber-Greene Co.*, 525 N.E.2d 1305 (Mass. 1988) (remanded to apportion damages because of plaintiff's unreasonable use of product).

Warranties

Lack of privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer, seller, lessor or supplier of goods to recover damages for breach of warranty, express or implied, or for negligence, although the plaintiff did not purchase the goods from the defendant if the plaintiff was a person whom the manufacturer, seller, lessor or supplier might reasonably have expected to use, consume or be affected by the goods. Ch. 106, § 2-318.

VIII. Limitations On Award Of Compensatory Damages

Medical Malpractice

\$500,000 cap for non-economic damages, including pain and suffering, loss of companionship, embarrassment, per occurrence, unless plaintiff(s) suffer substantial impairment or disfigurement or other special circumstances. If two or more plaintiffs have received verdicts or findings of such damages in a total amount, for all plaintiffs claiming damages from a single occurrence, transaction, act of malpractice, or injury which exceeds \$500,000, the amount of such damages recoverable by each plaintiff will be reduced to a percentage of \$500,000 proportionate to that plaintiff's share of the total amount of such damages for all plaintiffs. Such limit shall apply, except in those cases where the aforesaid findings are made, regardless of the number of persons liable jointly or severally for the said damages. Ch. 231, § 60H.

Attorney's fees must meet certain guidelines in medical malpractice cases. Ch. 231, § 60I.

Charities

\$20,000 cap, excluding interest and cost, but no limit if injury arises from activity primarily commercial in nature, even though carried on to obtain revenue to be used for charity. Ch. 231, § 85K. *But see* *Woods Hole Oceanographic Institution*, 233 F. Supp. 2d 198 (D. Mass. 2002) (holding that injury under maritime law not limited by Massachusetts statutory damages cap).

Public Employer

\$100,000 cap for acts committed by public employee within the scope of his employment or office; and public employer is not liable for pre-judgment interest or punitive damages. Ch. 258, § 2.

Economic Loss Doctrine

Yes. *Sebago, Inc. v. Beazer East, Inc.*, 18 F. Supp. 2d 70 (D. Mass. 1998).

Collateral Source Rule

Generally yes, but collateral source income may be admissible if probative of control or the credibility of a particular witness. *Corsetti v. Stone Co.*, 483 N.E.2d 793 (Mass. 1985).

VII. Limitations On Award Of Compensatory Damages

DRAM Shop Liability

Yes. Ch. 138, § 69; *Dhimos v. Cormier*, 509 N.E.2d 1199 (Mass. 1987).

Remittitur/Additur

The allowance of a motion for a new trial based upon an inadequate or excessive award of damages, and the direction of an addition or remittitur, rests in the sound discretion of the judge and the judge's action will be reversed only where the damages awarded were either greatly disproportionate to the injury proved or where it appears to the judicial conscience that otherwise a miscarriage of justice will result. *Loschi v. Massachusetts Port Authority*, 282 N.E.2d 418 (Mass. 1972).

IX. Joint And Several Liability

Yes. *Shantigar Found. v. Bear Mt. Builders*, 804 N.E.2d 324 (Mass. 2004).

X. Consumer Fraud Act

Adopted. Ch. 93A.

Michigan

I. Wrongful Death

Statute¹	Mich. Comp. Laws § 600.2922.
Empowered Plaintiffs	Personal Representative only. § 600.2922(2).
Beneficiaries	<p>§ 600.2922(3).</p> <p>First Priority - Spouse, children, descendants, parents, grandparents, siblings, and if none of these survive, then those to whom the estate would pass under laws of intestate succession. § 600.2922(3)(a).</p> <p>Second Priority - Children of the deceased spouse. § 600.2922(3)(b).</p> <p>Third Priority - Devises under will. § 600.2922(3)(c).</p>
Damages	<p>Compensatory only. § 600.2922.</p> <p>Recoverable Losses. § 600.2922(6).</p> <ul style="list-style-type: none"> a. Pecuniary. b. Medical and hospital. c. Funeral and burial. d. Pain and suffering. e. Loss of financial support. f. Loss of society and companionship. <p>No ceiling on damages in statute.</p>
Survival Of Other Causes Of Action	Yes. § 600.2921.

II. Statutes Of Limitations

Personal Injury	3 years. § 600.5805.
Wrongful Death	<p>General - 3 years after death. § 600.5805(10).</p> <p>Death before statute of limitation has expired - If a person dies before the period of limitations has expired, or within thirty (30) days after it has expired, an action which survives by law may be commenced by personal representative at any time within 2 years after letters of authority are issued, but no action shall be brought more than 3 years after the period of limitations has lapsed. § 600.5852.</p>
Property Damage	3 years. § 600.5805(1).
Contract	6 years. § 600.5807(8).

II. Statutes Of Limitations

Breach Of Warranty, U.C.C. 4 years; parties may reduce the period limitation to not less than 1 year. § 440.2725(1).

Products Liability 3 years, however, if product has been in use for not less than 10 years, the plaintiff, in proving a prima facie case, shall be required to do so without benefit of any presumption. § 600.5805(13).

III. Conflicts Rule

Torts Interest analysis. *Olmstead v. Anderson*, 377 N.W.2d 853 (Mich. Ct. App. 1987).

Torts In Flight Over State Michigan law applies. § 259.177.

Contracts Significant contacts analysis. *Chrysler Corp. v. Skyline Industry Services*, 528 N.W.2d 698 (Mich. 1994).

IV. Contributory/Comparative Negligence

Pure Comparative Negligence Also, any amount found to be uncollectible shall be reallocated proportionally, except that no party shall be required to pay a percentage of any uncollectible amount that exceeds that party's percentage of fault. § 600.6304.

V. Contribution And Indemnity

Contribution Yes, but tortfeasor must have paid more than his pro rata share. § 600.2925(a)(2).

Indemnity Yes, but where there is a right to indemnity, there is no right to contribution. § 600.2925a(7).

VI. Punitive Damages

Wrongful Death	No. <i>Burns v. Van Laan</i> , 116 N.W.2d 873 (Mich. 1962).
Personal Injury	Yes. <i>Ray v. City of Detroit Dept. of Street Railways</i> , 242 N.W.2d 494 (Mich. Ct. App. 1976).
Covered By Insurance	Directly assessed – Yes. <i>Ford Motor Co. v. Northbrook Ins. Co.</i> , 838 F.2d 829 (6 th Cir. 1998); <i>Meijer, Inc. v. General Star Indemnity Co.</i> , 826 F. Supp. 241 (W.D. Mich. 1993). Vicariously assessed – No case on point.
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes, in a product liability action brought against a manufacturer or seller for harm allegedly caused by a production defect, the manufacturer or seller is liable if the plaintiff establishes that the product was not reasonably safe at the time the specific unit of the product left the control of the manufacturer or seller. § 600.2946.
Comparative Negligence	Yes. § 600.6304.
Warranties	Extended to family or household member and guests. § 440.2318.
Affirmative Defenses	State of art. § 600.2946(1). User's awareness that product would cause unreasonable risk of personal injury. § 600.2947(3). Misuse. § 600.2947(2).

VIII. Limitations On Damages

Governmental Entity	Not liable for non-economic damages unless the event caused death, serious impairment of body function or permanent serious disfigurement. § 691.1418. No cap on damages.
Collateral Source Rule	Yes, the court shall reduce that portion of the judgment which represents damages paid or payable by a collateral source. § 600.6303.

VIII. Limitations On Damages

DRAM Shop Liability

Yes, right of action by injured person against seller exists if intoxicating beverages sold to minor or visibly intoxicated person and intoxication is found to be proximate cause of damage, injury or death. § 436.1801.

Health Care Industry/ Providers

Yes, in an action for damages alleging medical malpractice, the total amount of damages for noneconomic loss recoverable by all plaintiffs shall not exceed \$280,000 unless the injury falls under a specific exception, in which case damages for noneconomic loss shall not exceed \$500,000. § 600.1483.

Economic Loss Doctrine

Yes, the economic loss doctrine bars tort recovery and limits remedies to those available under the Uniform Commercial Code where a claim for damages arises out of the commercial sale of goods and losses incurred are purely economic. *Frankenmuth Mutual Ins. Co. v. Ace Hardware Corp.*, 899 F. Supp. 348 (W.D. Mich. 1995) (quoting *Neibarger v. Universal Cooperatives, Inc.*, 486 N.W.2d 612 (Mich. 1992)).

IX. Joint And Several Liability

Limited. A defendant that is found liable for an act or omission that causes personal injury, property damage, or wrongful death is jointly and severally liable if the defendant's act or omission is a crime, an element of which is gross negligence, or is one of a class of certain crimes, specified under the statute, involving the use of alcohol or a controlled substance. § 600.6312.

Medical Malpractice

Yes, defendants are jointly and severally liable for medical malpractice claims if plaintiff is without fault. § 600.6304.

X. Consumer Fraud Act

Not adopted. However, the Michigan Consumer Protection Act states that unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful. § 445.903.

Minnesota

I. Wrongful Death

Statute¹	Minn. Stat. § 573.02.
Empowered Plaintiffs	Court Appointed Trustee. § 573.02(3).
Beneficiaries	Surviving spouse and next of kin. § 573.02(1).
Damages	Compensatory damages, § 573.02, and punitive damages, § 549.20, are available. Recoverable Losses. § 573.02(1). a. Pecuniary. b. Funeral expenses. c. Support for dependents. No ceiling on recovery. § 573.02(1).
Survival Of Other Causes Of Action	Yes. §§ 573.01, 573.02.

II. Statutes Of Limitations

Personal Injury	Generally - 2 years. § 541.07(1). Sexual Abuse - An action for damages based on personal injury caused by sexual abuse must be commenced within six years of the time the plaintiff knew or had reason to know that the injury was caused by the sexual abuse. § 541.073.
Wrongful Death	Generally - 3 years from death, but no more than 6 years after act or omission. § 573.02. Intentional Murder – No limitation. § 573.02. Action against health care provider - 4 years. § 541.076.
Property Damage	4 years. § 541.05(a)(3).
Contract	6 years. § 541.05(1).
Breach Of Warranty, U.C.C.	4 years; parties may reduce to not less than 1 year, but may not extend. § 336.2-725.

II. Statutes Of Limitations

Products Liability

4 years. § 541.05(b)(1).

Notice by attorney of possible claim required within 6 months of entering into attorney-client relation with potential claimant. § 604.04.

III. Conflicts Rule

Torts

Interest analysis and better rule of law. *DeRemer v. Pacific Intermountain Exp. Co.*, 353 N.W.2d 694 (Minn. Ct. App. 1984).

Torts in flight over state - Minnesota law. § 360.012(6).

Contracts

“Choice influencing considerations” methodology. *Milbank Mut. Ins. Co. v. United States Fidelity & Guaranty Co.*, 332 N.W.2d 160 (Minn. 1983).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence

If plaintiff’s negligence is greater than defendant’s negligence, no recovery; damages diminished proportionally to fault. § 604.01(1).

V. Contribution And Indemnity

Contribution

§ 604.02

Generally, yes, when 2 or more persons are jointly liable, contribution to awards shall be in proportion to percentage of fault.

Exceptions - The following people are jointly and severally liable for the whole award:

- a. a person whose fault is greater than 50 %;
- b. two or more persons who act in a common scheme or plan; that results in injury;
- c. a person who commits an intentional tort; or
- d. a person whose liability arises under various environmental and public health regulations.

Indemnity

General – Yes. *Allstate Ins. Co., v. Eagle-Picher Industries Inc.*, 410 N.W.2d 324 (Minn. 1987).

Motor vehicle manufacturers - Must indemnify franchised dealers. § 80E.05.

VI. Punitive Damages

Pleadings	Punitive damages are not to be plead in complaint; complaint may be amended upon showing of prima facie evidence in support of motion to amend the pleading to include a claim for punitive damages. § 549.191. Further, if requested, bifurcated trial on the issue of punitive damages permitted. § 549.20(4).
Wrongful Death	Yes. § 573.02.
Personal Injury	Yes. § 549.20; Jensen v. Walsh, 623 N.W.2d 247 (Minn. 2001).
Covered By Insurance	Directly assessed – No. Perl v. St. Paul Fire & Marine Ins. Co., 345 N.W.2d 209 (Minn. 1984). <i>But see</i> Wojciak v. Northern Package Corp., 310 N.W.2d 675 (Minn. 1981) (insurance coverage found valid for a statutory penalty imposed under a workers' compensation statute (§ 176.82) for punitive damages not to exceed three times the amount of any compensation benefit to which the employee is entitled against an employer for a retaliatory discharge; however, in most instances public policy should prohibit a person from insuring himself against misconduct of a character serious enough to warrant punitive damages).
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. § 544.41.
Comparative Negligence	Applicable to strict tort liability. § 604.01(1a).
Affirmative Defenses	Useful life expired. § 604.03(1). Non-Manufacturer (limited liability). § 544.41.
Warranties	Extended to persons reasonably expected to use, consume, or be affected by the goods. § 336.2-318 (U.C.C.).

VIII. Limitations On Award Of Compensatory Damages

Governmental Entity

Punitive Damages - no punitive damages against state. § 3.736(3).

Compensatory Damages - The state's liability for compensatory damages is limited to \$300,000 per claimant for claims arising before August 1, 2007 and \$750,000 per occurrence for claims arising before January 1, 1998, \$300,000 per claimant and \$750,000 per occurrence for claims arising on or after January 1, 1998, and \$300,000 per claim, \$1,000,000 per occurrence for claims arising on or after January 1, 2000 and before January 1, 2008, and \$1,200,000 for claims arising between January 1, 2008 and July 1, 2009, and \$1,500,000 for claims arising after July 1, 2009. A state agency may obtain liability insurance, and to the extent the insurance exceeds the above-noted statutory limits, the state is deemed to have waived its governmental immunity. § 3.736(4). For municipalities, see § 466.04.

Collateral Source Rule

Yes, the court (and not the jury) must reduce the award of damages by the amount of any collateral benefits, offset by payments made by plaintiff or his family to secure those benefits. § 548.251.

Health Care Industry/ Providers

No cap on damages for medical malpractice.

Economic Loss Doctrine

Yes. § 604.101.

IX. Joint And Several Liability

Yes. § 604.02.

X. Consumer Fraud Act

Not adopted. For law on regulation of trade practices, see Chapter 325e.

Mississippi

I. Wrongful Death

Statute¹	Miss. Code Ann. § 11-7-13.
Empowered Plaintiffs	Personal representative, spouse, children, parents, siblings, or all interested parties. § 11-7-13.
Beneficiaries	§ 11-7-13. First Priority - Spouse and children. Second Priority - Parents and siblings. Third Priority - Personal representative.
Damages	Compensatory. § 11-7-13. Recoverable Losses. § 11-7-13. a. Pecuniary. b. Property damage. c. Funeral expenses. d. Medical expenses. e. All other damages of every kind, to any and all interested parties, except for hedonic damages. § 11-1-69. No ceiling on recovery. § 11-7-13.
Survival Of Other Causes Of Action	Yes. §§ 91-7-237, 15-1-55.

II. Statutes Of Limitations

Personal Injury	3 years. § 15-1-49.
Wrongful Death	3 years. § 15-1-49.
Property Damage	3 years. § 15-1-49.
Contract	Written - 3 years. § 15-1-49. Oral - 3 years. § 15-1-29. Contract for sale - 6 years. § 75-2-725.
BREACH OF WARRANTY, U.C.C.	6 years. § 75-2-725.

II. Statutes Of Limitations

Products Liability

General - 3 years. § 15-1-49.

Deficiencies in construction (including injury to property and personal injury) - Within 6 years after acceptance. § 15-1-41.

III. Conflicts Rule

Torts

Most significant relationship, but *lex loci* preferred. Yields to law of another state where other state has a more significant relation to any given issue in the case. *Hanley v Forester*, 903 F.2d 1030 (5th Cir. 1990), reh'g denied, 1990 U.S. App. LEXIS 13976 (5th Cir., Aug. 6, 1990).

Contracts

Most significant relationship test. *Sheppard Pratt Physicians, P.A. v Sakwa*, 725 So.2d 755 (quoting Restatement (Second) Conflict of Laws § 188).

IV. Contributory/Comparative Negligence

Pure Comparative Negligence

Damages diminished in proportion to amount of plaintiff's fault. § 11-7-15.

V. Contribution And Indemnity

Contribution

Yes. § 85-5-7(4) and (6).

Indemnity

Yes, active tortfeasor required to indemnify passive tortfeasor. *Tarver v. U.S.*, 785 F. Supp. 607 (S.D. Miss. 1991).

Where parties are "in pari delicto," *i.e.*, where each is charged with active or affirmative wrongdoing, neither may obtain indemnity from the other. *Reid v. U.S.*, 558 F. Supp. 686 (N.D. Miss. 1983).

VI. Punitive Damages

Pleading/Standard Of Proof

Clear and convincing evidence defendant acted with malice, or gross negligence, which evidences a willful, wanton, or reckless disregard for the safety of others. § 11-1-65.

Apportionment/Remittitur

Court may order additur or remittitur if damages are inadequate or excessive. § 11-1-55.

VI. Punitive Damages

Wrongful Death	Yes. <i>Sandifer Oil Co. v. Dew</i> , 220 Miss. 609, 71 So.2d 752 (1954).
Personal Injury	Yes. “The usual case for punitive damages involves either ‘gross negligence resulting in personal injuries or . . . some flagrant act by a wrongdoer which amount[s] to willful, malicious, or wanton conduct.’” <i>Snow Lake Shore Property Owners Corp. v. Smith</i> , 610 So.2d 357, 362 (Miss. 1992).
Covered By Insurance	Directly assessed - Yes. <i>Shelter Mut. Ins. Co. v. Dale</i> , 914 So.2d 698 (Miss. 2005); <i>Anthony v. Frith</i> , 394 So.2d 867 (Miss. 1981). Vicariouly assessed – No case on point.
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. § 11-1-63.
Comparative Negligence	Pure comparative negligence applies to all actions for personal injury or death to reduce award by proportion of fault attributable to claimant. § 11-7-15.
Reduction In Amount Of Recovery/Affirmative Defenses	§ 11-1-63(d). Knowledge of defect. Appreciation of the danger and conditions. Deliberately and voluntarily chose to expose himself to the danger in such a manner to register assent to the continuance of the dangerous condition.
Warranties	Extended to family or household member and guests. § 75-2-318.

VIII. Limitations On Damages

Government entity limited immunity. § 11-46-15.
 \$50,000 cap - claims on or after July 1, 1993 but before July 1, 1997.
 \$250,000 cap - claims on or after July 1, 1997 but before July 1, 2001.
 \$500,000 cap - claims on or after July 1, 2001.

VIII. Limitations On Damages

Collateral Source Rule	Yes. <i>Busick v. St. John</i> , 856 So.2d 304 (Miss. 2003).
DRAM Shop Liability	Social host or alcoholic permit holder immune from liability. § 67-3-73.
Health Care Industry/ Providers	<p>Emergency care - Immunity, for medical personnel who give emergency medical care, at scene of emergency or during transportation, unless gross negligence or willful and wanton misconduct. § 73-25-37.</p> <p>Charitable medical care - Immunity, for licensed physician, physician's assistant, or certified nurse practitioner. § 73-25-38.</p> <p>Cap on non-economic damages, § 11-1-60:</p> <ol style="list-style-type: none"> \$500,000 for causes of action filed after statute enacted until July 11, 2011. \$750,000 for causes of action filed between July 1, 2011 and July 1, 2017; \$1 million for causes of action filed on or after July 1, 2017.
Volunteers	Immune from liability, unless intentional, willful, wanton reckless, or grossly negligent; or operating motor vehicle, aircraft, or boat. § 95-9-1(3)(a) and (b).
Sports Officials	Immune for claims which arise out of action or inaction relating to officiating duties within confines of athletic facility where athletic contest is being played, and immune for liability from donation of food. § 95-9-3(1).
Cap On Punitive Damages	<p>General - § 11-1-65(3):</p> <ol style="list-style-type: none"> \$20 million for defendant with net worth of \$1 billion or more. \$15 million for defendant with net worth of more than \$750 million but not more than \$1 billion. \$10 million for defendant with net worth of more than \$500 million but not more than \$750 million. \$7.5 million for defendant with net worth of more than \$100 million but not more than \$500 million. \$5 million for defendant with net worth of more than \$50 million but not more than \$100 million. 4% of defendant's net worth for defendant with net worth of \$50 million or less. <p>Exception - Cap does not apply if:</p> <ol style="list-style-type: none"> Defendant convicted of a felony which caused the injury. Defendant under influence of drugs or alcohol (provided they are not prescribed). Employer of employee acting outside scope of employment.

VIII. Limitations On Damages

Economic Loss Doctrine Adoption

Yes. *State Farm Mut. Auto. Ins. Co. v. Ford Motor Co.*, 736 So. 2d 384 (Miss. Ct. App. 1999).

IX. Joint And Several Liability

Limited. Joint and several only to the extent necessary for the person suffering harm to recover 50% of his recoverable damages. § 85-5-7(2).

Intentional Tort

Defendants are held jointly and severally liable notwithstanding right of contribution. § 85-5-7(4).

Damages

§ 85-5-7(5).

Non-economic damages - Several only.

Economic damages -

- a. Fault less than 30% - Several only.
- b. Fault 30% or more - joint and several only to the extent necessary for the person suffering injury, death or loss to recover fifty percent (50%) of his recoverable damages.

X. Consumer Fraud Act

Not adopted. For law on deceptive trade practices, see § 75-24-1, *et seq.*

Missouri

I. Wrongful Death

Statute¹	Mo. Rev Stat. § 537.080.
Empowered Plaintiffs	<p>§ 537.080(1).</p> <p>First Priority - Spouse, children and lineal descendants of deceased child, or parents.</p> <p>Second Priority - Siblings and lineal descendants of deceased sibling.</p> <p>Third Priority - Court appointed plaintiff ad litem.</p>
Damages	<p>Compensatory damages and additional damages for aggravating circumstances. § 537.090.</p> <p>Recoverable Losses. § 537.090.</p> <ul style="list-style-type: none"> a. Pecuniary. b. Funeral expenses. c. Services. d. Consortium. e. Companionship. f. Comfort. g. Instruction. h. Guidance. i. Counsel. j. Training. k. Support. l. Suffering of deceased before death. <p>No ceiling on recovery, but no damages for grief and bereavement are permitted. § 537.090.</p>
Survival Of Other Causes Of Action	Yes. §§ 537.010, 537.020.

II. Statutes Of Limitations

Personal Injury	5 years. § 516.120.
Wrongful Death	3 years. §§ 537.100 and 537.080.
Property Damage	5 years. § 516.120.
Contract	<p>General - 5 years. § 516.120.</p> <p>Written contract for payment of money, or property - 10 years. § 516.110.</p>

II. Statutes Of Limitations

Breach Of Warranty, U.C.C. 4 years; parties may reduce to not less than 1 year but may not extend. § 400.2-725.

Products Liability 5 years. § 516.120.

III. Conflicts Rule

Contracts & Torts Most significant relationship test. *Birnstill v. Home Sav. of Am.*, 907 F.2d 795 (8th Cir. 1990).

Tort In Flight Over State Missouri law applies. § 305.050.

IV. Contributory/Comparative Negligence

General Comparative negligence. *Gustafson v. Benda*, 661 S.W.2d 11 (Mo. 1983).

Product Liability Comparative negligence; damages are diminished in proportion to plaintiffs fault. § 537.765.

V. Contribution And Indemnity

Contribution Yes. § 537.060.

Indemnity General - Where one person has been exposed to liability and compelled to pay damages on account of the negligence of another, the first has a right of action against the other for indemnity so long as the parties are not in *pari delicto*. *Howard v. Wilson Concrete Co.*, 57 F.R.D. 8 (W.D. Mo. 1972).

Party who has settled non-contractual indemnity - The agreement shall discharge the tortfeasor to whom it is given from all liability for contribution or noncontractual indemnity to any other tortfeasor. § 537.060.

VI. Punitive Damages

Bifurcated Trial If requested by parties, separate trial for amount of punitive damages to be awarded. § 510.263.

VI. Punitive Damages

Apportionment / Remittitur	A court may enter a remittitur order or increase the size of a jury's award if the court finds that the jury's verdict either exceeds or fails to provide fair and reasonable compensation for plaintiff's injuries and damages. § 537.068.
Wrongful Death	Missouri courts permit additional damages for aggravating circumstances. § 537.090. See <i>Bennett v. Owens-Corning Fiberglass Corp.</i> , 896 S.W.2d 464 (Mo. 1995) re proper jury instructions for punitive damages award.
Personal Injury	Yes. <i>Morrissey v. Welsh Co.</i> , 821 F.2d 1294 (8th Cir. 1987).
Covered By Insurance	Directly assessed – No. <i>Crull v. Gleb</i> , 382 S.W.2d 17 (Mo. Ct. App. 1964). <i>But see</i> <i>Colson v. Lloyd's of London</i> , 435 S.W.2d 42 (Mo. Ct. App. 1968) (punitive damages insurable where insured is governmental entity). Vicariously assessed – Yes. <i>Ohio Cas. Ins. Co. v. Welfare Fin. Co.</i> , 75 F.2d 58 (8th Cir. 1934), <i>cert. denied</i> , 295 U.S. 734 (1935).
Amount Payable To The State	Missouri has a lien for fifty percent (50%) of any punitive damages award after deducting attorney's fees and other expenses that will be deposited into the state's Tort Victims' Compensation Fund. § 537.675.

VII. Products Liability Law

Strict Tort Liability	Yes. § 537.760.
Comparative Negligence	Contributory fault as complete bar to plaintiff's recovery is now abolished, doctrine of comparative fault to apply. § 537.765.
Affirmative Defense	State of the art. § 537.764.
Warranties	Extended to family or household member and guests. § 400.2-318.

VIII. Limitations On Award Of Compensatory Damages

Governmental Entity	None.
Collateral Source Rule	Yes, <i>Kickham v. Carter</i> , 335 S.W.2d 83 (Mo. 1960), however, rule does not apply to health care workers. §§ 538.205 to 538.230; <i>see also</i> § 490.710 (advance payment or partial payment of damages or of medical expenses and other expenses, predicated on possible tort liability, shall be deducted from any final judgment rendered in favor of an injured person against the payor).
DRAM Shop Liability	No. <i>Coons v. Berry</i> , 304 S.W.3d 215 (Mo. Ct. App. 2009) (“we leave to another day the determination whether a civil claim may be based on a violation of § 311.310.2”).
Health Care Providers	\$350,000 cap on non-economic damages, with cap to be adjusted annually; the cap will be removed beginning in 2012. § 538.210.
Periodic Payments Allowed	Where health care provider prior to the entry of judgment in a medical malpractice action requests such right and total damages exceed \$100,000. § 538.220.
Economic Loss Doctrine	Yes. <i>Four Seasons Group, Inc. v. Thyssenkrupp Elevator Corp.</i> , No. 2:10-CV-C-04004-NKL, 2010 WL 1539815 (W.D. Mo. Apr. 19, 2010).

IX. Joint And Several Liability

Plaintiff Not At Fault	Yes. § 537.067(1).
Plaintiff At Fault	Yes, except any party may within thirty (30) days move for reallocation of any uncollectible amounts. § 537.067(2)(1).
Reallocation	No amount shall be reallocated to any party whose assessed percentage of fault is less than the plaintiff's so as to increase that party's liability to more than a factor of two. § 537.067(2)(4).

X. Consumer Fraud Act

Not adopted.

Montana

I. Wrongful Death

Statute¹	Mont. Code Ann. § 27-1-513.
Empowered Plaintiffs	General - Personal representative. § 27-1-513. Minor - Parents or guardian. § 27-1-512; <i>see also</i> Mont. R. Civ. Proc. 17(c).
Beneficiaries	“Heirs,” as defined by Montana’s statutes of intestate succession. <i>Versland v. Caron Transport</i> , 671 P.2d 583 (Mont. 1983).
Damages	Nature - “[S]uch damages may be given as under all the circumstances of the case may be just.” § 27-1-323. Generally, a wrongful death plaintiff may recover for loss of consortium; loss of comfort and society; and the reasonable value of the contributions in money that the decedent would reasonably have provided for the support, education, training, and care of the heirs during the life expectancies of the decedent and survivors. <i>Payne v. Eighth Judicial Dist. Court</i> , 60 P.3d 469 (2002). Mental anguish damages are recoverable. <i>Dawson v. Hill & Hill Truck Lines</i> , 671 P.2d 589 (Mont. 1983). Punitive damages are recoverable in a wrongful death action. <i>Olsen v. Montana Ore Purchasing Co.</i> , 89 P. 731 (Mont. 1907). Pleadings - Amount of damages may not be included in the pleadings. § 25-4-311. No apparent ceiling on recovery. § 27-1-323.
Survival Of Other Causes Of Action	Yes. § 27-1-501.

II. Statutes Of Limitations

Personal Injury	General - 3 years. § 27-2-204. Libel, slander, assault, battery, false imprisonment, or seduction - 2 years. § 27-2-204(3). Child sexual abuse and ritual abuse of a minor - 3 years after act causing injury or 3 years from actual or constructive discovery thereof. §§ 27-2-217 and 217.
Wrongful Death	3 years. § 27-2-204(2).
Property Damage	2 years. § 27-2-207.
Contract	Written : 8 years. § 27-2-202(1). Oral: 5 years. § 27-2-202(2).

Breach Of Warranty (U.C.C.) 4 years; parties may reduce to not less than one year. § 30-2-725.

Products Liability 3 years. § 27-2-204; Hando v. PPG Indus., 771 P.2d 956 (Mont. 1989).

III. Conflicts Rule

Torts Most significant relationship test. Phillips v. GMC, 995 P.2d 1002 (Mont. 2000) (citing Restatement (Second) Of Conflict of Laws) § 145(1) (1971)).

CONTRACTS Most significant contacts. Phillips v. GMC, 995 P.2d 1002 (Mont. 2000) (citation omitted) (referring to Restatement (Second) of Conflict of Laws) § 188 (1971)).

IV. Contributory/Comparative Negligence

Comparative Negligence If fault of claimant is greater than defendants, it is a bar to recovery; otherwise, damages are diminished in proportion to fault. § 27-1-702.

V. Contribution And Indemnity

Contribution Yes. § 27-1-703.

Indemnity By contract - Yes. §§ 28-11-301 through 317.
Common law indemnity - There is no right between multiple tortfeasors who are in pari delicto to indemnity as a matter of substantive law. Cordier v. Stetson-Ross, Inc., 604 P.2d 86 (Mont. 1979).

VI. Punitive Damages

An award for punitive damages may not exceed \$10 million or 3% of a defendant's net worth, whichever is less, however this limitation does not apply in a class action; punitive damages may not be recovered in any action arising from contract or breach of contract, but this limitation does not prohibit recovery of punitive damages in a products liability action or an action for unfair settlement practices by an insurer. § 27-1-220.

VI. Punitive Damages

Standard Of Proof

Must show actual fraud or actual malice by clear and convincing evidence. A defendant is guilty of actual malice if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and: (a) deliberately proceeds to act in conscious or intentional disregard of the high probability of injury to the plaintiff; or (b) deliberately proceeds to act with indifference to the high probability of injury to the plaintiff. A defendant is guilty of actual fraud if the defendant: (a) makes a representation with knowledge of its falsity; or (b) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury. Actual fraud exists only when the plaintiff has a right to rely upon the representation of the defendant and suffers injury as a result of that reliance. § 27-1-221.

Apportionment/Remittitur

The judge must review a jury award of punitive damages, giving consideration to each of the following factors: (i) nature and reprehensibility of the defendant's wrongdoing; (ii) extent of the defendant's wrongdoing; (iii) intent of the defendant in committing the wrong; (iv) profitability of the defendant's wrongdoing, if applicable; (v) amount of actual damages awarded by the jury; (vi) defendant's net worth; (vii) previous awards of punitive or exemplary damages against the defendant based upon the same wrongful act; (viii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and (ix) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages. If after review the judge determines that the jury award of punitive damages should be increased or decreased, the judge may do so and must clearly state the reasons. § 27-1-221.

Wrongful Death

Yes. *Olsen v. Montana Ore Purchasing Co.*, 89 P. 731 (Mont. 1907).

Personal Injury

Yes. §§ 27-1-220; *Allers v. Willis*, 643 P.2d 592 (Mont. 1982).

Covered By Insurance

Directly assessed – Yes. *Fitzgerald v. Western Firs Ins. Co.*, 679 P.2d 790 (Mont. 1984); *First Bank (NA)-Billings v. Transamerica Ins. Co.*, 679 P.2d 1217 (Mont. 1984).

Vicariously assessed – No case on point.

Amount Payable To The State

None.

VII. Products Liability Law

Strict Tort Liability	Yes. § 27-1-719.
Affirmative Defenses	<p>The user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it. § 27-1-719(5)(a).</p> <p>The product was unreasonably misused by the user or consumer and such misuse caused or contributed to the injury. § 27-1-719(5)(b).</p>
Comparative Negligence	Not a defense except as applied through the two affirmative defenses above in accordance with the principles contained in § 27-1-702. § 27-1-719(5).
Reduction In Amount Of Recovery	Affirmative defenses may mitigate or bar recovery. § 27-1-719(5).
Warranties	Extended to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. § 30-2-318.

VIII. Limitations On Damages

Governmental Entity	Exempt from exemplary or punitive damages. § 2-9-105. The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$ 750,000 for each claim and \$ 1.5 million for each occurrence. § 2-9-108(1). An insurer is not liable for excess damages unless the insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of the limitation stated above, in which case the insurer may not claim the benefits of the limitation specifically waived. § 2-9-108(2).
Collateral Source Rule	Yes, in an action arising from bodily injury or death when the total award against all defendants is in excess of \$50,000 and the plaintiff will be fully compensated for his damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source that does not have a subrogation right. § 27-1-308. Rule applies to insurance payments for plaintiff's damages award as provided in § 27-1-308(2).
DRAM Shop Liability	Yes. § 27-1-710.

VIII. Limitations on Damages

Health Care Industry/ Providers

The Montana Medical Legal Panel Act requires that the panel review all malpractice claims or potential claims against health care providers except those claims subject to a valid arbitration agreement. § 27-6-105. No malpractice claim may be filed in any court against a health care provider before an application is made to the panel and its decision is rendered. § 27-6-701. The panel must decide whether there is: (1) substantial evidence that the acts complained of occurred and that they constitute malpractice; and (2) a reasonable medical probability that the patient was injured thereby. § 27-6-602. The panel's decision is without administrative or judicial authority and is not binding upon any party. § 27-6-606(1). The panel may recommend an award, and approve settlements which approval will be binding on the parties. § 27-6-606(2). If the panel decides (1) and (2) above in the affirmative, the court in which the complaint is filed must, at the request of a party, require the parties to participate in court-supervised, non-binding mediation prior to proceeding. § 27-6-606(3). There is no statutory limit on damages against health care providers for malpractice claims.

Economic Loss Doctrine

No. *Jim's Excavating Serv. v. HKM Assocs.*, 878 P.2d 248 (Mont. 1994).

IX. Joint And Several Liability

Yes. § 27-1-703.

Exception - Any person who is 50% or less negligent is severally liable only, except if that person acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other, and the remaining parties are jointly and severally liable. § 27-1-703(2).

Acting In Concert Or As Agent

A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other. § 27-1-703(3).

Uncollectible Portion

Each party shall contribute proportionately to pay the unpaid portion, but any party found to be 50% or less negligent is liable only up to the percentage of negligence attributed to that party. § 27-1-703(5).

X. Consumer Fraud Act

Adopted. §§ 30-14-101 through 143, and 30-14-201-226.

Nebraska

I. Wrongful Death

Statutes¹	Neb. Rev. Stat. §§ 30-809 through 30-810.
Empowered Plaintiffs	Personal Representative. § 30-810.
Beneficiaries	Spouse and next of kin. § 30-810.
Damages	<p>Pecuniary. § 30-810.</p> <p>Pecuniary losses suffered by decedent's next of kin are recoverable, including the economic value of the society, comfort, and companionship lost by the next of kin. <i>Nelson v. Dolan</i>, 434 N.W.2d 25 (Neb. 1989).</p> <p>No ceiling on recovery. §§ 30-809 through 30-810.</p>
Survival Of Other Causes Of Action	Yes, in addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to real or personal estate, or for any deceit or fraud, also survive. § 25-1401. No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander, malicious prosecution, assault, or assault and battery, or for a nuisance, which will abate by the death of the defendant. § 25-1402.

II. Statutes Of Limitations

Personal Injury/ Property Damage	4 years. § 25-207.
Wrongful Death	2 years. § 30-810.
Contract	<p>Written - 5 years. § 25-205.</p> <p>Oral - 4 years. § 25-206.</p>
Breach Of Warranty, U.C.C.	4 years; parties may reduce to not less than 1 year. § 2-725.
Products Liability	<p>§ 25-224.</p> <p>General - 4 years from injury, but within 10 years of first sale or lease.</p> <p>a. Exception - If product manufactured outside Nebraska, in which case the statute of repose of the state of manufacture will apply, but will not be less than 10 years. If no statute of repose in state of manufacture, limit is 4 years from date of injury.</p>

II. Statutes of Limitations

Products Liability

Asbestos - Any action to recover damages based on injury resulting from exposure to asbestos composed of chrysotile, amosite, crocidolite, tremolite, anthrophyllite, actinolite, or any combination thereof, must be commenced within 4 years after the injured person has been informed of discovery of the injury by competent medical authority and that such injury was caused by exposure to asbestos, or within four years after the discovery of facts which would reasonably lead to such discovery, whichever is earlier.

III. Conflicts Rule

Torts

Interest analysis, as set forth in Restatement (Second) of Conflicts of Law § 146. *Harper v. Silva*, 399 N.W.2d 826 (Neb. 1987).

Contracts

Most significant relationship test set forth in Restatement (Second) of Conflicts of Law § 188 (1971). *Mertz v. Pharmacists Mut. Ins. Co.*, 625 N.W.2d 197 (Neb. 2001).

IV. Contributory/Comparative Negligence

Contributory Negligence § 25-21,185.09.

V. Contribution And Indemnity

Contribution

Yes, among negligent joint-tortfeasors. *Royal Indem. Co. v. Aetna Cas. & Sur. Co.*, 229 N.W.2d 183 (Neb. 1975); *see also* *Northland Ins. Co. v. State*, 492 N.W.2d 866 (Neb. 1992).

Indemnity

Contractual - Generally, yes. One whose negligence has consisted of mere passive neglect may have indemnity from an active wrongdoer. *Hiway 20 Terminal, Inc. v. Tri-County Agri-Supply, Inc.*, 443 N.W.2d 872 (Neb. 1989). *But see* § 25-21,187 (prohibiting contractual indemnification for negligence for certain construction contracts).

Equitable - Yes. *Hiway 20 Terminal, Inc. v. Tri-County Agri-Supply, Inc.*, 443 N.W.2d 872 (Neb. 1989).

VI. Punitive Damages

No. *Sanford v. Ektelon/Prince Sports Group, Inc.*, No. 8:97CV368, 1999 U.S. Dist. LEXIS 17458, 1999 WL 33537914 (D. Neb. Nov. 5, 1999) (citing Nebraska Constitution Article 7, Section 5).

Wrongful Death

No. See *Tate v. Barry*, 13 N.W.2d 879 (Neb. 1944).

Personal Injury

No. *Lozada v. U.S.*, 140 F.R.D. 404 (D. Neb. 1991), aff'd, 974 F.2d 986 (8th Cir. 1992).

Covered By Insurance

Directly assessed - No case on point.
Vicariouly assessed – No case on point.

VII. Products Liability Law

Strict Tort Liability

Yes. § 25-21,181 (“No product liability action based on the doctrine of strict liability in tort shall be commenced or maintained against any seller or lessor of a product which is alleged to contain or possess a defective condition unreasonably dangerous to the buyer, user, or consumer unless the seller or lessor is also the manufacturer of the product or the part thereof claimed to be defective.”).

Affirmative Defenses

State of the art. § 25-21,182.

Misuse. *Jay v. Moog Auto., Inc.*, 652 N.W.2d 872 (Neb. 2002).

In prescription drug cases (on a case-by-case basis) a defendant may attempt to show that: (1) the product was properly manufactured and contains adequate warnings, (2) the product’s benefits justify its risks, and (3) the product was at the time of manufacture and distribution incapable of being made more safe. *Freeman v. Hoffman-La Roche, Inc.*, 618 N.W.2d 827 (Neb. 2000).

Assumption of the risk. *Jameson v. Liquid Controls Corp.*, 618 N.W.2d 637 (Neb. 2000).

Statute of limitations. *Morris v. Chrysler Corp.*, 303 N.W.2d 500 (Neb. 1981).

Damages

Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established. § 25-1146.

Warranties

A seller’s warranty, whether express or implied, extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. Neb. Rev. Stat. U.C.C. § 2-318.

VIII. Limitations On Damages

Governmental Entities

State Tort Claims Act, §§ 81-8,209 to 81-8,225.

- a. The state is liable in the same manner and to the same extent as a private individual under like circumstances. § 81-8,215.
- b. No portion in excess of \$50,000 of any award or judgment under the State Tort Claims Act will be paid until such award or judgment has been reviewed by the Legislature and specific appropriation made therefor. § 81-8,224.

Political Subdivisions Tort Claims Act

§§ 13-901 to 13-926.

The state is liable in the same manner and to the same extent as a private individual under like circumstances. § 13-908.

Liability insurance insuring against all or any part of the liability which might be incurred under the Political Subdivisions Tort Claims Act and also those claims specifically excepted from the coverage of the Act by section 13-910. The procurement of insurance will constitute a waiver of the defense of governmental immunity as to those exceptions listed in section 13-910 to the extent and only to the extent stated in such policy. § 13-916.

A claim against a political subdivision permitted under the Act is barred unless within 2 years after such claim accrued the claim is made in writing to the governing body. Except as otherwise provided in section 13-919, all suits permitted by the Act are barred unless begun within 2 years after the claim accrued. The time to begin a suit will be extended for a period of 6 months from the date of mailing of notice to the claimant by the governing body as to the final disposition of the claim or from the date of withdrawal of the claim from the governing body under section 13-906 if the time to begin suit would otherwise expire before the end of such period. § 13-919.

- a. A suit against any employee of a political subdivision for money on account of damage to or loss of property or personal injury to or the death of any person caused by any negligent or wrongful act or omission of the employee while acting in the scope of his or her office or employment occurring after May 13, 1987, is barred unless a claim has been submitted in writing to the governing body of the political subdivision within 1 year after such claim accrued in accordance with section 13-905. § 13-920(1). Except as provided in section 13-919, any suit commenced on any claim filed pursuant to this section will be forever barred unless begun within 2 years after the claim accrued. The time to begin suit under this section will be extended for a period of 6 months (a) from the date of mailing of notice to the claimant by the governing body as to the final disposition of the claim or (b) from the date of withdrawal of the claim from the governing body under this section, if the time to begin suit would otherwise expire before the end of such period. § 13-920(2).

The total amount recoverable against any employee for claims filed pursuant to section 13-920 or 13-921 arising out of an occurrence after May 13, 1987, is limited to: (1) \$1 million for any person for any number of claims arising out of a single occurrence; and (2) \$5 million for all claims arising out of a single occurrence. § 13-922.

VIII. Limitations on Damages

Political Subdivisions Tort Claims Act

The total amount recoverable under the Act for claims arising out of an occurrence after November 16, 1985, is limited to: (1) \$1 million for any person for any number of claims arising out of a single occurrence; and (2) \$5 million for all claims arising out of a single occurrence.

If the damages sustained by an innocent third party pursuant to section 13-911 are not fully recoverable from one or more political subdivisions due to the limitations in section 13-926, additional sources for recovery are as follows: First, any offsetting payments specified in subsection (3) of section 13-911 will be reduced to the extent necessary to fully compensate the innocent third party; and second, if such reduction is insufficient to fully compensate the innocent third party, the right of reimbursement granted to the political subdivision in subsection (2) of section 13-911 will be reduced to the extent necessary to fully compensate the innocent third party. § 13-926.

Nebraska Hospital – Medical Liability Act

§§ 44-2801 through 44-2855.

Subject to the requirements of sections 44-2840 to 44-2846, a patient or his representative having a claim under the Nebraska Hospital – Medical Liability Act for bodily injury or death on account of alleged malpractice, professional negligence, failure to provide care, breach of contract, or other claim based upon failure to obtain informed consent for an operation or treatment may file a petition or complaint in any court of law having requisite jurisdiction. No dollar amount or figure can be included in the demand in any malpractice petition or complaint, but the petition will ask for such damages as are reasonable in the premises. § 44-2822.

The total amount recoverable under the Nebraska Hospital – Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient may not exceed (a) \$500,000 for any occurrence on or before December 31, 1984, (b) \$1 million for any occurrence after December 31, 1984, and on or before December 31, 1992, (c) \$1.25 million for any occurrence after December 31, 1992, and on or before December 31, 2003, and (d) \$1.75 million for any occurrence after December 31, 2003. § 44-2825(1). A health care provider qualified under the Act cannot be liable to any patient or his or her representative who is covered by the Act for an amount in excess of \$250,000 for all claims or causes of action arising from any occurrence during the period that the Act is effective with reference to such patient. § 44-2825(2).

Subject to the overall limits from all sources as provided in § 44-2825(1), any amount due from a judgment or settlement which is in excess of the total liability of all liable health care providers will be paid from the Excess Liability Fund pursuant to sections 44-2831 to 44-2833. § 44-2825(3).

- a. The amount paid from the Excess Liability Fund for excess liability when added to the payments by all health care providers may not exceed the maximum amount recoverable pursuant to subsection (1) of section 44-2825. The amount paid from the fund on account of a primary insurance policy issued by the risk manager to a health care provider under sections 44-2837 to 44-2839 may not exceed \$200,000 for any one occurrence covered by such policy under any circumstances. § 44-2832(2).

VIII. Limitations on Damages

Collateral Source Rule Yes. *Huenink v. Collins*, 147 N.W.2d 508 (Neb. 1966).

DRAM Shop Liability No. *Holmes v. Circo*, 244 N.W.2d 65 (Neb. 1976).

Economic Loss Doctrine Yes. *National Crane Corp. v. Ohio Steel Tube Co.*, 332 N.W.2d 39 (Neb. 1983).

IX. Joint And Several Liability

Limited. In an action involving more than one defendant when two or more defendants as part of a common enterprise or plan act in concert and cause harm, the liability of each such defendant for economic and non-economic damages is joint and several. § 25-21,185.10.

In any other action involving more than one defendant, the liability of each defendant for economic damages is joint and several and the liability of each defendant for non-economic damages is several only and cannot be joint. Each defendant is liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of negligence, and a separate judgment must be rendered against that defendant for that amount. § 25-21, 185.10.

X. Consumer Fraud Act

Adopted. Consumer Protection Act, §§ 59-1601 through 59-1623.

Nevada

I. Wrongful Death

Statute¹	Nev. Rev. Stat § 41.085.
Empowered Plaintiffs	Heirs and personal representative. § 41.085.
Damages	Compensatory, § 41.085, and punitive. § 42.005. Recoverable Losses. § 41.085. a. Heirs: i. Grief or sorrow. ii. Loss of probable support. iii. Companionship. iv. Society. v. Comfort and consortium. vi. Damages for pain, suffering or disfigurement of decedent. b. Personal representative on behalf of estate: i. Special damages, such as medical expenses and funeral expenses. ii. Any penalties that decedent would have recovered, had he lived, excluding pain, suffering, or disfigurement. No ceiling on recovery. § 41.085.
Survival Of Other Causes Of Action	Yes. § 41.100.

II. Statutes Of Limitations

Personal Injury	2 years. § 11.190(4)(e).
Wrongful Death	2 years. § 11.190(4)(e).
Property Damage	3 years. § 11.190(3).
Contract	Written - 6 years. § 11.190(1)(b). Oral - 4 years. § 11.190(2)(c).
Breach Of Warranty, U.C.C.	4 years; parties may reduce to not less than 1 year. § 104.2725.
Products Liability And All Other Unprovided For Actions	4 years. § 11.220.

III. Conflicts Rule

Torts Forum law presumptively applies unless non-forum incidents are of greater significance. *Cambridge Filter Corp. v. Int'l Filter, Co., Inc.*, 548 F. Supp. 1301 (1982).

Tort In Flight Over State Nevada law applies. § 493.080.

Contracts Law of the state where the contract is to be performed. *Cambridge Filter Corp. v. Int'l Filter Co., Inc.*, 548 F. Supp. 1301 (1982).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence If plaintiff's negligence greater than sum of defendants' negligence or the plaintiff acted with gross negligence, no recovery; and damages are diminished in proportion to the plaintiff's fault. § 41.141.

V. Contribution And Indemnity

Contribution Available, but tortfeasor must have paid more than his pro rata share. §§ 17.225 to 17.305,
Settlement – No. § 17.225.
Intentional torts – No. § 17.255.

Indemnity Available, but where there is a right to indemnity, there is no right to contribution. § 17.265.
Implied equitable indemnity - Yes, decided on a case-by-case basis, by what is just. *Hydro-Air Equipment, Inc. v. Hyatt Corp.*, 852 F.2d 403 (9th Cir. 1988).

VI. Punitive Damages

Standard Of Proof Clear and convincing evidence that the defendant is guilty of oppression, fraud, or malice. § 42.005

Limitation On Damages Cap at three times the amount of the compensatory damages, if the compensatory damages are \$100,000 or more, or \$300,000 cap if the compensatory damages are less than \$100,000. § 42.005.
Caps do not apply to products liability, toxic torts, bad faith by insurer, and some other exceptions. § 42.005

VI. Punitive Damages

Wrongful Death	Yes. § 42.005.
Personal Injury	Yes. § 42.005; <i>see also</i> § 42.010 (damages arising from operation of a vehicle after the consumption of alcohol).
Covered By Insurance	Directly assessed - Yes, if injury not intended. § 681A.095. Vicariouly assessed – No case on point.
Amount That Goes To State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. <i>Ginnis v. Mapes Hotel Corp.</i> , 470 P.2d 135 (Nev. 1970).
Warranties	Extended to family or household members and guests. § 104.2318.

VIII. Limitations On Award Of Compensatory Damages

Government Employees Or Political Subdivisions	\$75,000 to \$100,000 cap, excluding interest. § 41.035.
Good Samaritan	Immune unless gross negligence. § 41.500. Statute does not apply to health care workers in a licensed facility if the plaintiff is a patient. § 41.505.
Charities	Immune. <i>Bruce v. Young Men's Christian Ass'n.</i> , 277 P. 798 (Nev. 1929).
Collateral Source Rule	Yes, if medical malpractice is established or admitted, the court shall, before the entry of judgment, hold a separate hearing to determine if any expenses incurred by the claimant for medical care, loss of income or other financial loss have been paid or reimbursed as a benefit from a collateral source. § 42.021.
Economic Loss Doctrine	Yes. <i>Calloway v. City of Reno</i> , 993 P.2d 1259 (Nev. 2000).

IX. Joint And Several Liability

Several Liability

Defendants are severally liable for their portion. § 41.141.

Jointly And Several Liability

Yes, only for strict liability, intentional torts, toxic torts, product liability, or concerted acts of the defendants. § 41.141

X. Consumer Fraud Act

Adopted. § 41.600.

New Hampshire

I. Wrongful Death

Statute¹	N.H. Rev. Stat. Ann. §§ 556:12 through 556:15.
Empowered Plaintiffs	Administrator. § 556:12.
Beneficiary	Decedent's estate. § 556:14.
Damages	<p>Only compensatory damages are available. §§ 556:12, 556:15.</p> <p>Recoverable Losses. § 556:12.</p> <ol style="list-style-type: none"> Mental and physical pain suffered by deceased in consequence of the injury up to \$3 million effective Jan. 1, 2012. Reasonable expenses occasioned to the estate by the injury up to \$3 million effective Jan. 1, 2012. Probable duration of his life but for the injury up to \$3 million effective Jan. 1, 2012. Capacity to earn money during his probable working life up to \$3 million effective Jan. 1, 2012. Other elements allowed by law, in the same manner as if the deceased had survived. Surviving spouse: the loss of the comfort, society, and companionship of the deceased. This award cannot exceed \$150,000. Parent/Child: the loss of familial relationship (<i>i.e.</i>, the loss of the comfort, society, affection, guidance, and companionship of the deceased). This award cannot exceed \$50,000 per individual claimant. <p>Ceiling on recovery - Cannot exceed \$50,000 unless the plaintiff's decedent has left either a widow, widower, child, father, mother, or any relative dependent on the plaintiff's decedent, in which event there is no limitation. § 556:13.</p>
Survival Of All Other Causes Of Action	Yes, except those actions for recovery of penalties or forfeiture of money under penal statutes. § 556:15.

II. Statutes Of Limitations

Personal Injury	<p>General (except libel and slander) - 3 years from the act or omission. § 508:4</p> <p>Unknown injuries - 3 years from discovery. § 508:4.</p> <p>Libel and slander - 3 years. § 508:4.</p>
Wrongful Death	6 years. § 556:11.

II. Statutes Of Limitations

Property Damage 3 years. § 508:4.

Contract 3 years. § 508:4; Coyle v. Battles, 782 A.2d 902 (N.H. 2001).

Breach Of Warranty, U.C.C. 4 years; parties may reduce to not less than 1 year. § 382-A:2-725.

Products Liability 3 years from injury or discovery. § 508:4.
Breach of warranty - 4 years. Carll v. McClain Indus., No. Civ. 00-233-M, 2001 U.S. Dist. LEXIS 9188, 2001 WL 716128 (D. N.H. Jun 12, 2001).

III. Conflicts Rules

Torts Balancing test composed of five choice-influencing considerations: (1) the predictability of results; (2) the maintenance of reasonable orderliness and good relationships among the states in the federal system; (3) simplification of the judicial task; (4) advancement of the governmental interest of the forum; and (5) the court's preference for what it regards as the sounder rule of law. Keeton v. Hustler Magazine, 549 A.2d 1187 (N.H. 1988); In Re Wood's Estate, 453 A.2d 1251 (N.H. 1982).

Contracts Place of performance. J.H. Horne & Sons Co. v. Bath Fibre Co., 272 F.2d 8 (1st Cir. 1959).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence Comparative fault will bar the action if greater than that of defendants; if not barred, damages will be reduced in proportion to fault. § 507:7-d.

V. Contribution And Indemnity

Contribution Yes. § 507:7-f.

Indemnity Yes. Morrissette v. Sears, Roebuck & Co., 322 A.2d 7 (N.H. 1974).

VI. Punitive Damages

Punitive Damages	<p>Outlawed and not awarded in any action, unless otherwise provided by statute. § 507:16. Not permitted in personal injury cases. Appeal of Wintle, 781 A.2d 995 (N.H. 2001). However, when the act involved is wonton, malicious or oppressive, the compensatory damages award may reflect the aggravating circumstances (<i>i.e.</i>, enhanced compensatory damages). <i>Panas v. Harakis</i>, 529 A.2d 976 (N.H. 1987).</p> <p>Permitted in 42 U.S.C. § 1983 federal civil rights action. <i>Porter v. City of Manchester</i>, 849 A.2d 103 (N.H. 2004).</p>
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Government Entities	No punitive damages permitted against a governmental unit for bodily injury, personal injury or property damage. § 507-B:4.II.
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Wrongful Death	No. See also <i>Kennett v. Delta Air Lines, Inc.</i> , 560 F.2d 456 (1st Cir. 1977).
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Covered By Insurance	<p>Directly assessed - Yes. <i>Weeks v. St. Paul Fire & Marine Ins. Co.</i>, 673 A.2d 772 (N.H. 1996).</p> <p>Vicariously assessed – No case on point.</p>
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VII. Products Liability Law

Strict Tort Liability	<p>Yes. <i>Vautour v. Body Masters Sports Indus.</i>, 784 A.2d 1178 (N.H. 2001).</p> <p>No strict or absolute liability against governmental unit or public employee. § 507-B:9, III.</p>
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Affirmative Defenses	<p>Discoverability of the risk through state of art evidence. § 507:8-g.</p> <p>Plaintiff's misconduct. <i>Chellman v. Saab-Scania AB</i>, 637 A.2d 148 (N.H. 1993).</p>
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Remittitur	Yes. <i>Daigle v. City of Portsmouth</i> , 534 A.2d 689 (N.H. 1987).
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Warranties	Extended to persons reasonably expected to use product. § 382-A:2-318.
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VIII. Limitations On Award Of Compensatory Damages

Municipal Liability	\$150,000 cap per person and \$500,000 cap per occurrence. § 507-B:4.
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Economic Loss Doctrine	Yes. <i>CMB Constr. Co. v. Weil-Mclain</i> , No. CIV. 90-181-M, 1995 U.S. App. LEXIS 34212, 1994 WL 792589 (1st Cir. 1995).
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VIII. Limitations On Award Of Compensatory Damages

Collateral Source Rule	Yes, if plaintiff is compensated in whole or part for his damages by some source independent from the tortfeasor, he still may make full recovery from the tortfeasor. <i>Clausen v. SEA-3, Inc.</i> , 21 F.3d 1181 (1st Cir. 1994).
DRAM Shop Liability	Yes. § 507-F. Liability does not extend to a social host either by statute or New Hampshire common law. <i>Hickingbotham v. Burke</i> , 662 A.2d 297 (N.H. 1995).
Health Care Providers	Exempted from civil liability for failure to obtain consent for emergency medical care. <i>Planned Parenthood of N. New Eng. v. Heed</i> , 296 F. Supp. 2d 59 (D. N.H. 2003) (citing N.H. Rev. Stat. Ann. § 153-A:18).
Remittitur/Additur	Trial court may disturb a verdict as excessive or inadequate if its amount is conclusively against the weight of evidence and if the verdict is manifestly exorbitant. <i>Transmedia Rest. Co. v. Devereaux</i> , 821 A.2d 983 (N.H. 2003).

IX. Joint And Several Liability

Limited	Several liability only for a party found to be less than 50% at fault, unless parties are found to have knowingly pursued or taken active part in a common plan or design resulting in the harm, in which case joint and several liability applies. § 507:7-e. If the fault of the governmental unit or public employee arising from a pollutant incident is 50% or greater, liability shall be joint and several. Otherwise, governmental units or public employees shall be liable only to the extent that their acts or omissions contributed to the causation of the personal injury, bodily injury, or property damage. § 507-B:9, II.
Uncollectible Amounts	Re-allocated to other defendants according to their percentage of fault, subject to contribution rights. § 507:7-e.
Contribution	Available, only through a separate action, between or among 2 or more persons who are jointly and severally liable upon the same indivisible claim, or otherwise liable for the same injury, death or harm, whether or not judgment has been recovered against all or any of them. § 507:7-f.

X. Consumer Fraud Act

Adopted. Chapter 358-a (permitting private actions and the award of treble damages).

New Jersey

I. Wrongful Death

Statute¹	N.J. Stat. Ann. § 2A:31-1.
Empowered Plaintiffs	Personal Representative only. § 2A:31-2.
Beneficiaries	Those persons who are entitled to take any intestate personal property of the decedent. § 2A:31-4.
Damages	Compensatory only. § 2A:31-5. Recoverable Losses. § 2A:31-5. a. Pecuniary. b. Hospital and medical expenses. c. Funeral expenses. No ceiling on recovery. § 2A:31-5.
Survival Of Other Causes Of Action	Torts to decedent - Yes, for trespass done to person or property (real or personal). § 2A:15-3. Torts committed by decedent - Yes, for conversion or trespass done to person or property (real or personal). § 2A:15-4.

II. Statutes Of Limitations

Personal Injury	General - 2 years. § 2A:14-2. Exceptions: a. 13 years from birth, for action on behalf of a minor for medical malpractice for injuries sustained at birth. § 2A:14-2 (as amended by 2004 NJ Sess. Law Serv. ch.17). b. 10 years, for action for injuries resulting from defective and unsafe condition of an improvement to real property. § 2A:14-1.1.
Wrongful Death	General - 2 years. § 2A:31-3. Exceptions: a. No statute of limitations for action for wrongful death resulting from murder, aggravated manslaughter, or manslaughter for which the defendant has been convicted, found not guilty by reason of insanity, or adjudicated delinquent. § 2A:31-3. b. 10 years, for action for injuries resulting from defective and unsafe condition of an improvement to real property. § 2A:14-1.1.
Property Damage	6 years. § 2A:14-1.

II. Statutes Of Limitations

Contract	General - 6 years. § 2A:14-1.
Breach Of Warranty, U.C.C.	4 years; by agreement may be reduced to not less than one year, but may not be extended. § 12A:2-725.
Products Liability	General - 6 years. § 2A:14-1. Exception - 10 years for damages for injury arising from unsafe condition of improvement to real property. § 2A:14-1.1.

III. Conflicts Rule

Torts	Interest analysis. <i>D’Orio v. West Jersey Health Systems</i> , 797 F. Supp 371 (D. N.J. 1992); <i>see also Mellk v. Sarahson</i> , 229 A.2d 625 (N.J. 1967). Tort in flight over state - New Jersey law applies. § 6:2-9.
Contracts	Most significant relationship to the parties and transaction, as per Restatement (Second) Conflict of Laws (1971). <i>Filenet Corp. v. Chubb Corp.</i> , 735 A.2d 1203 (N.J. Super. Ct. Law. Div. 1997).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence	Bar to recovery if plaintiff’s negligence greater than sum of defendants’ negligence; damages are diminished in proportion to the plaintiff’s fault. § 2A:15-5.1.
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V. Contribution And Indemnity

Contribution	Yes. § 2A:53A-2. Joint tortfeasor must have paid more than his pro rata share, § 2A:53A-3, and Joint Tortfeasor Contribution Law adopted. § 2A:53A-4.
Indemnity	Yes, but where there is a right to indemnity, there is no right to contribution. § 2A:53A-3.

VI. Punitive Damages

Wrongful Death	No. <i>Kern v. Kogan</i> , 226 A.2d 186 (N.J. Super. Ct. App. Div. 1967).
Personal Injury	Yes. <i>Silverman v. King</i> , 589 A.2d 1057 (N.J. Super. Ct. App. Div. 1991). Product Liability - Yes, but punitive damages not available if drug, device, food or food additive which caused the claimant's harm was approved, licensed, or recognized as safe by the FDA under FDCA (21 U.S.C. 301, <i>et seq.</i>) or PHSA (42 U.S.C. 201, <i>et seq.</i>) unless product manufacturer knowingly withheld or misrepresented information required to be submitted under the agency's regulations, which information was material and relevant to the harm in question. § 2A:58C-5.
Covered By Insurance	Directly assessed - No. <i>Johnson & Johnson v. Atena Cas. & Sur. Co.</i> , 667 A.2d 1087 (N.J. App. Div. 1995); <i>Variety Farms v. N.J. Mfrs. Ins. Co.</i> , 410 A.2d 696 (N.J. Super. Ct. App. Div. 1980). Vicariously assessed - No case on point.
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. §§ 2A:58C-1 to 2A:58C-11.
Contributory/Comparative Negligence	"If the determination is made that [product] liability is predicated only upon defendant's negligence, then contributory negligence in its general meaning or conventional sense shall be applied. However, if the jury determines that a defendant's responsibility is based solely on strict [product] liability, then only contributory negligence in the more limited sense may bar or mitigate damages in accordance with the Comparative Negligence Act." <i>Cartel Capital Corp. v. Fireco of New Jersey</i> , 410 A.2d 674 (N.J. 1980).
Affirmative Defenses	§ 2A:58C-3. No recovery if: a. State of art. b. Inherently dangerous product with adequate warnings and instructions. <i>See also</i> § 2A:58C-4.
Warranties	Extended to family or household members and guests if reasonable to expect that such person may use, consume or be affected by the goods. § 12A:2-318.

VIII. Limitations On Damages

Governmental Entity

Public entities generally immune from civil liability. § 59:2-1.

Exceptions:

- a. Public entity is liable for injuries proximately caused by a public employee acting within the scope of his employment, § 59:2-2, unless acts constitute a crime, actual fraud, actual malice, or willful misconduct. § 59:2-10.
- b. Additional limitations in § 59:9-2.

Collateral Source Rule

Duplicate benefits to be deducted from the award. § 2A:15-97.

DRAM Shop Liability

Yes, pursuant to New Jersey Licensed Alcoholic Beverage Server Fair Liability Act, licensed alcohol beverage server or other party responsible for no more than that percentage share of the damages which is equal to the percentage of negligence attributable to the server or other party. § 2A:22A-6.

Healthy Care Industry/ Providers

Charitable Hospital - \$250,000 cap per accident for beneficiaries; no cap for injuries to non-beneficiaries. § 2A:53A-8.

Economic Loss Doctrine Adoption

Yes. *Aioway v. General Marine Indus., L.P.*, 695 A.2d 264 (N.J. 1997).

IX. Joint And Several Liability

Limited. Fault 60% or greater, then jointly and severally liable for all damages; fault less than 60%, then only severally liable for damages attributable to that party's negligence. § 2A:15-5.3.

Exception – In environmental torts, defendants are jointly and severally liable for all damage, except in cases where it is possible to apportion negligence or fault, in which case apportionment must be done in accordance with § 2A:15-5.2. In such case, if plaintiff is unable to collect from any non-settling party due to insolvency, that amount of compensatory damages may be recovered from any other non-settling party in proportion to that person's percentage of fault (unless fault five (5) percent or less, which has already been paid in full). § 2A:15-5.3.

X. Consumer Fraud Act

Adopted. § 56:8-1, *et seq.*

New Mexico

I. Wrongful Death

Statute¹	General. N.M. Stat. Ann. §§ 41-2-1. Death by public conveyance. § 41-2-4.
Beneficiaries	§ 41-2-3. First Priority - Spouse, children, and grandchildren. Second Priority - Parents, if deceased is a minor and unmarried. Third Priority - Siblings. Fourth - Heirs at law.
Empowered Plaintiffs	General - Personal representative only. § 41-2-3. Death by public conveyance. § 41-2-4. a. First Priority - Spouse. b. Second Priority - Children, if no spouse, or if spouse fails to act with six months. c. Third Priority - Parents, if deceased is a minor and unmarried. d. Fourth Priority - Dependent parents or siblings, if deceased is not minor and unmarried. e. Fifth Priority - Personal representative, if all others fail to act within nine months.
Damages	Compensatory and punitive. §§ 41-2-1 to 41-2-4. Recoverable Losses – Pecuniary. §§ 41-2-3; 41-2-4. No ceiling on recovery. §§ 41-2-3; 41-2-4.
Survival Of Other Causes Of Action	Generally – Yes. § 37-2-4. Death of defendant - Actions for libel, slander, malicious prosecution, assault or assault and battery, nuisance or against a justice of the peace for misconduct in office shall not survive the death of the defendant. § 37-2-4. In addition, no punitive damages may be recovered from estate of deceased tortfeasor. <i>State Farm Mutual Automobile Ins. Co., v. Maidment</i> , 761 P.2d 446 (N.M. Ct. App. 1988).

II. Statutes Of Limitations

Personal Injury	3 years. § 37-1-8.
Wrongful Death	3 years. § 41-2-2.

II. Statutes Of Limitations

Property Damage	4 years. § 37-1-4.
Contract	Written - 6 years. § 37-1-3. Oral - 4 years. § 37-1-4.
Breach Of Warranty, U.C.C.	4 years; parties may reduce to not less than 1 year but may not extend it. § 55-2-725.
Products Liability	3 years. § 37-1-8.

III. Conflicts Rule

Torts	Lex Loci. First Nat. Bank in Albuquerque v. Benson, 553 P.2d 1288 (N.M. Ct. App. 1976).
Contracts	Lex Loci. Shope v. State Farm Ins. Co., 925 P.2d 515 (N.M. 1996).

IV. Contributory/Comparative Negligence

Comparative Negligence	§ 41-3A-1(C) (effective on July 1, 1987, this statute replaced the doctrine of joint and several liability with the doctrine of comparative fault, except as (1) to any person or persons who acted with the intention of inflicting injury or damage; (2) to any persons whose relationship to each other would make one person vicariously liable for the acts of the other, but only to that portion of the total liability attributed to those persons; (3) to any persons strictly liable for the manufacture and sale of a defective product, but only to that portion of the total liability attributed to those persons; or (4) to situations not covered by any of the foregoing and having a sound basis in public policy).
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V. Contribution And Indemnity

Contribution	Limited. Only available to tortfeasor who is jointly and severally liable and has paid more than his pro rata share. Uniform Contribution Among Tortfeasors Act, §§ 41-3-1 to 41-3-8. Not available for any tortfeasor who is only severally liable. § 41-3A-1.
Indemnity	Common law indemnity continues. § 41-3-6.

VI. Punitive Damages

Standard Of Proof	Must establish gross negligence, malice or aggravated circumstances. <i>Gray v. Esslinger</i> , 130 P.2d 24 (N.M. 1942), <i>reh'g denied</i> , 131 P.2d 981 (N.M. 1942).
Wrongful Death	General – Yes. §§ 41-2-3; 41-2-4. Deceased Tortfeasor - No recovery from estate of deceased tortfeasor or from insurer. <i>State Farm Mutual Automobile Ins. Co., v. Maidment</i> , 761 P.2d 446 (N.M. Ct. App. 1988).
Personal Injury	Yes. <i>Sutherlin v. Fenenga</i> , 810 P.2d 353 (N.M. Ct. App. 1991).
Covered By Insurance	Directly assessed - Yes. <i>Baker v. Armstrong</i> , 744 P.2d 170 (N.M. 1987); <i>Wolff v. General Cas. Co. of America</i> , 361 P.2d 330 (N.M. 1961). Vicariously assessed – No case on point.
Governmental Entities	No. § 41-4-19(B).
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. <i>Stang v. Herts Corp.</i> , 497 P.2d 732, 83 N.M. 730 (1972), <i>abrogated in part by</i> , <i>Livingston v. Begay</i> , 652 P.2d 734 (N.M. 1982) (holding that lessors of hotel could not be strictly liable for injuries caused by defects in fixtures in hotel room).
Warranties	Extended to family or household members and guests, if reasonably expected that such person may use, consume or be affected by the goods. § 55-2-318.

VIII. Limitations On Award Of Compensatory Damages

Government Entity	\$200,000 cap for damage or destruction of property arising out of single occurrence, \$300,000 cap for all past and future medical and medically related expenses, \$400,000 cap per person for any claims arising out of single occurrence other than property damage or medical claims, and \$750,000 cap for all claims other than property damage or medical claims arising out of single occurrence. § 41-4-19(A). Absolute bar on punitive damages. § 41-4-19(D).
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VIII. Limitations On Award Of Compensatory Damages

GOVERNMENT ENTITY

Note - Trujillo v. City of Albuquerque, 965 P.2d 305 (N.M. 1998) held that the damages cap of § 41-4-19(A) was unconstitutional under a strict scrutiny analysis (applied for reasons of judicial economy and seemingly limited to the facts of this case) but noted that in the future courts should apply a rational relation analysis in testing the constitutionality of the statute.

Collateral Source Rule

Yes. McConal Aviation v. Commercial Aviation Ins. Co., 799 P.2d 133 (N.M. 1990); Preferred Builders, S.W., Inc. v. Ghaffari, No. 29,326, 2011 WL 1935479 (N.M. Ct. App. Mar. 31, 2011).

DRAM Shop Liability

\$50,000 cap per person and \$100,000 per occurrence for bodily injury or death and \$20,000 per occurrence for property damage. § 41-11-1.

Medical Malpractice

\$600,000 cap per occurrence, excluding punitive damages, medical care and related benefits. § 41-5-6.

Future medical claims - No monetary damages shall be awarded. § 41-5-6.

Personal liability of health care provider - \$200,000 cap, and any amount exceeding \$200,000 shall be paid from the Patient's Compensation Fund. § 41-5-6.

Economic Loss Doctrine

Yes. Insurance Utah Int'l v. Caterpillar Tractor Co., 775 P.2d 741 (N.M. Ct. App. 1989).

IX. Joint And Several Liability

Several liability is majority rule; however, joint and several liability allowed under § 41-3A-1(c) only to the following:

- a. Intentional torts.
- b. Vicarious liability.
- c. Strict product liability.
- d. Any public policy reason; must have a sound basis.

X. Consumer Fraud Act

Adopted. Trade Practices and Fraud Act, §§ 59-A-16-1 to 59-A-16-30.

New York

I. Wrongful Death

Statute¹	N.Y. Est. Powers & Trusts (“EPTL”) § 5-4.1; <i>see also</i> N.Y. Constitution, Art. 1 § 16.
Empowered Plaintiffs	Personal Representative or when distributees do not participate in the administration of the decedent’s estate under a will appointing an executor because the executor refuses to bring such action, the distributees are entitled to have an administrator appointed to prosecute the action for their benefit. EPTL § 5-4.1.
Beneficiaries	Decedent’s distributees, as delineated in EPTL § 4-1.1. EPTL § 5-4.4(a).
Damages	Compensatory, EPTL § 5-4.3(a), and punitive. EPTL § 5-4.3(b) Recoverable Losses. EPTL §§ 5-4.3. a. Pecuniary. b. Medical aid, nursing, and attention incident to the injury causing death. c. Reasonable funeral expenses of the decedent. d. Interest upon the principal sum recovered by the plaintiff from the date of the decedent’s death. No ceiling on recovery. N.Y. Constitution Art. I § 16; EPTL § 5-4.3.
Survival Of Other Causes Of Action	Yes, both for and against. EPTL § 11-3.2.

II. Statutes Of Limitations

Personal Injury	General - 3 years. N.Y. C.P.L.R. (“CPLR”) § 214. Exceptions: a. Medical, dental or podiatric malpractice – 2 and 1/2 years. CPLR § 214-a. b. Exposure to phenoxy herbicides while serving in the armed forces in Indo-China between 1962 and 1975 - 2 years from discovery, or from date when through the exercise of reasonable diligence the cause of such injury should have been discovered, whichever is later. CPLR § 214-b. c. Blood infusion resulting in HIV or AIDS - 2 years. CPLR § 214-e.
Wrongful Death	General - 2 years. EPTL § 5-4.1. Exception: 2 and 1/2 years for victims of September 11, 2001 terrorist attacks. EPTL § 5-4.1.

II. Statutes Of Limitations

Property Damage 3 years. CPLR § 214.

Contract 6 years. CPLR § 213.

Breach Of Warranty, U.C.C. 4 years; parties may reduce to not less than 1 year, but may not extend it. N.Y. U.C.C. (“UCC”) § 2-725.

Products Liability 3 years. CPLR § 214.

Latent Effects From Exposure 3 years from date of discovery. CPLR § 214-c.

III. Conflicts Rule

Torts Interest analysis. *Babcock v. Jackson*, 191 N.E.2d 279 (N.Y. 1963).

Contracts “Center of gravity” or “grouping of contacts” test. *Auten v. Auten*, 124 N.E.2d 99 (N.Y. 1954).

IV. Contributory/Comparative Negligence

Pure Comparative Negligence Damages are diminished in proportion to plaintiff’s fault. CPLR § 1411.

V. Contribution And Indemnity

Contribution Available between two or more persons subject to liability for the same injury. CPLR §§ 1401 to 1404.

Indemnity Yes, springs from contract, express or implied, in order to avoid unjust enrichment, to prevent one party who has committed no actual wrong from being held vicariously liable for the wrongdoing of another, or to adjust for a great disparity in fault between two liable tortfeasors. *Blais Const. Co., Inc. v. Hanover Square Assoc.-I*, 733 F. Supp. 149 (N.D.N.Y. 1990); *see also* CPLR § 1404.

VI. Punitive Damages

Pleading Must allege and prove malice, which may be established by showing that the acts committed by the defendant were committed recklessly, wantonly, or without regard to the rights of the plaintiff or of people in general. *Hall v. Consolidated Edison Corp.*, 428 N.Y.S.2d 837 (N.Y. Sup. Ct. 1980).

Wrongful Death Yes. EPTL § 5-4.3.

Personal Injury Yes. *Hall v. Consolidated Edison Corp.*, 428 N.Y.S.2d 837 (N.Y. Sup. Ct. 1980).

Covered By Insurance Directly assessed - No. *Soto v. State Farm Ins. Co.*, 635 N.E.2d 1222 (N.Y. 1994).
Vicariouly assessed – No. *Zurich Ins. Co. v. Shearson Lehman Hutton, Inc.*, 642 N.E.2d 1065 (N.Y. 1994).

Amount Payable To The State None.

VII. Products Liability Law

Strict Tort Liability Yes. *McEneaney v. Haywood*, 179 Misc.2d 1035, 687 N.Y.S.2d 547 (N.Y. App. Term 1999).

Affirmative Defense No recovery where plaintiff's misuse of the product at issue was the sole proximate cause of the injury. *Crawford v. Windmere Corp.*, 690 N.Y.S.2d 741 (N.Y. App. Div. 1999).

Warranties Extended to persons reasonably expected to use, consume, or be affected by the goods. UCC § 2-318.

VIII. Limitations On Damages

Governmental Entity General - New York State has waived immunity from liability, provided claimant complies with Court of Claims Act.
Punitive Damages - No punitive damages allowed against governmental entity, though they may be assessed against officers directly if such a finding is justified. *Mroz v. City of Tonawanda*, 999 F. Supp. 436 (W.D.N.Y. 1998).

VIII. Limitations on Damages

Collateral Source Rule

Yes. *Rutzen v. Monroe County Long Term Care Program, Inc.*, 429 N.Y.S.2d 863 (N.Y. Sup. Ct. 1980).

DRAM Shop Liability

General - Right to recover both actual and exemplary damages, without limitation. Dram Shop Act, N.Y. Gen. Oblig. Law (“GOL”) § 11-101.

Intoxication of Minor - For injury to person or property by reason of intoxication or impairment of person under 21 years of age, right of action to recover actual damages against any person who knowingly causes such intoxication. GOL § 11-100.

Health Care Industry/ Providers

Medical and dental malpractice - Periodic payment for future damages when future damages exceed \$250,000. CPLR §§ 5031 to 5039.

Emergency medical services - Immune from liability, unless caused by gross negligence. N.Y. Pub. Health Law (“PHL”) §§ 3000-a, 3013.

Residential health care facilities - Liable for depriving patient of facility of any right or benefit. PHL § 2801-d.

Economic Loss Doctrine

Yes. *Hodgson v. Isolatek Int’l Corp.*, 752 N.Y.S.2d 767 (N.Y. App. Div. 2002).

Periodic Payment

For future damages when they exceed \$250,000:

- a. Medical Malpractice. CPLR §§ 5031 to 5039.
- b. Other. CPLR § 5041 to 5049.

IX. Joint And Several Liability

Non-Economic Loss

Not to exceed the defendant’s equitable share in certain actions, if the defendant is less than 50% at fault or the action is against the state, unless the plaintiff can prove with due diligence that he was unable to obtain jurisdiction over such person. CPLR § 1601.

See CPLR § 1602 for list of exceptions, such as liability for intentional torts, the use, operation or ownership of a motor vehicle or violation of Article 10 of N.Y. Labor Law.

X. Consumer Fraud Act

Not adopted. For deceptive trade practices, see GOL art. 22-A.

North Carolina

I. Wrongful Death

Statute¹	N.C. Gen. Stat § 28A-18-2.
Empowered Plaintiffs	Personal representative or collector. § 28A-18-2.
Beneficiaries	<p>§ 28A-18-2.</p> <p>First Priority - Reimburse estate for any expense incurred in pursuing action.</p> <p>Second Priority - Reimburse attorneys for fees.</p> <p>Third Priority - Debts for burial, hospital and medical expenses incident to the injury resulting in death, not exceeding either of \$4,500 or 50% of the amount of damages after deducting attorneys' fees.</p>
Damages	<p>Both compensatory and punitive damages are recoverable. § 28A-18-2.</p> <p>Losses Recoverable. § 28A-18-2.</p> <ol style="list-style-type: none"> Expenses for care, treatment and hospitalization incident to the injury resulting in death. Pain and suffering of deceased. Funeral expenses. Pecuniary. Expected income. Services, protection, care and assistance. Society, companionship, comfort, guidance, kindly offices, and advice. Punitive damages. Nominal damages. <p>Ceiling on recovery - Burial, medical, and hospital expenses capped at \$4,500 or 50% of award after deduction of attorneys' fees. § 28A-18-2.</p>
Survival Of Other Causes Of Action	Yes, except for libel, slander, false imprisonment or causes of action where the relief could not be enjoyed or granting it would be nugatory after death. § 28A-18-1.

II. Statutes Of Limitations

Personal Injury	<p>General - 3 years. § 1-52(16).</p> <p>Exception - 6 years, if arising out of the defective or unsafe condition of an improvement to real property. § 1-50(5)(b)(3).</p>
Wrongful Death	<p>General - 2 years. § 1-53(4).</p> <p>Exception - 6 years, if arising out of the defective or unsafe condition of an improvement to real property. § 1-50(5).</p>

II. Statutes Of Limitations

Property Damage	3 years. § 1-52.
Contract	General - 3 years. § 1-52(1). Local unit of government - 2 years. § 1-53(1).
Breach Of Warranty, U.C.C.	4 years; parties may reduce to not less than 1 year. § 25-2-725.
Products Liability	6 years from date of initial of purchase. § 1-50(a)(6).
Libel, Slander, Assault & Battery, False Imprisonment	1 year. § 1-54.

III. Conflicts Rule

Torts	General - Lex Loci. Santana, Inc. v. Levi Strauss & Co., 674 F.2d 269 (4th Cir. 1982). Tort in flight over state - North Carolina law applies. § 63-16.
Contracts	Law of the state in which the contract was made governs the rights and obligations of the parties. Kline v. Wheels by Kinney, Inc., 464 F.2d 184 (4th Cir. 1972).

IV. Contributory/Comparative Negligence

Contributory Negligence	Yes, party asserting contributory negligence has burden of proof. § 1-139.
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V. Contribution And Indemnity

Contribution	Yes, Uniform Contribution Among Tortfeasor Act adopted, § 1B-1, <i>et seq.</i> Tortfeasor must have paid more than his pro rata share; no right to contribution for settling tortfeasor, or if tortfeasor commits intentional tort. § 1B-1.
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VI. Punitive Damages

Pleading	Notice pleading applies, and if plaintiff's complaint alleges that plaintiff is seeking punitive damages and that defendant's conduct was willful, wanton, unlawful, culpable and in reckless and total disregard of the foreseeable consequences, it is sufficient. <i>Huff v. Chrismon</i> , 315 S.E.2d 711 (N.C. Ct. App. 1984). Claimant must prove, by clear and convincing evidence, aggravating factor of fraud, malice, or willful and wanton conduct to recover punitive damages. § 1D-15.
Wrongful Death	Yes. § 28A-18-2.
Personal Injury	Yes. <i>Patrick v. Williams</i> , 102 N.C. App. 355 (N.C. Ct. App. 1991) (for intentional conduct, gross, willful or wanton negligence, or recklessness).
Covered By Insurance	<p>Directly assessed – Yes, except when arising from intentional tort. <i>Mazza v. Med. Mut. Ins. Co.</i>, 319 S.E.2d 217 (N.C. 1984) (punitive damage liability for gross negligence insurable); <i>St. Paul Mercury Ins. Co. v. Duke Univ.</i>, 670 F. Supp. 630 (M.D.N.C. 1987), <i>aff'd in part and rev'd in part on other grounds</i>, 849 F.2d 133 (4th Cir. 1988) (punitive damages for intentional torts uninsurable as matter of public policy).</p> <p>Vicariously assessed – Yes. <i>Collins & Aikman Corp. v. Hartford Accid. & Indem. Co.</i>, 436 S.E.2d 243 (N.C. 1993); <i>see also</i> § 1D-15 (punitive damages may not be awarded solely on basis of vicarious liability).</p>
Amount Payable To The State	None.

VII. PRODUCTS LIABILITY LAW

Strict Tort Liability	No. § 99B-1.1.
Breach Of Implied Warranty	Privity not required. § 99B-2.
Affirmative Defenses	<p>Modification or alteration. § 99B-3.</p> <p>Knowledge of danger by claimant. § 99B-4.</p> <p>Claimant's lack of reasonable care. § 99B-4.</p> <p>Sellers' limited liability. § 99B-2.</p>
Warranties	Extended to family or household members or guests, § 25-2-318, also employee of buyer. § 99B 2.

VIII. Limitations On Award Of Compensatory Damages

Government Entity \$1,000,000 cap, less any commercial liability insurance. § 143-299.2.

Collateral Source Rule Yes. *Cates v. Wilson*, 361 S.E.2d 734 (N.C. 1987).

DRAM Shop Liability Yes, damages limited to no more than \$500,000 per occurrence; when all claims arising out of an occurrence exceed \$500,000, each claim shall abate in the proportion it bears to the total of all claims. § 18B-123.

Health Care Industry/ Providers No liability for non-profit first aid or emergency health care treatment, unless injuries caused result of gross negligence, wanton conduct, or intentional wrongdoing on part of person rendering treatment. §§ 90-21.14, 90-21.16.

Punitive Damages Cap on punitive damages - Greater of \$250,000 or three times the amount of compensatory damages. § 1D-25.

Economic Loss Doctrine Adoption Yes. *Moore v. Coachmen Indus.*, 499 S.E.2d 772 (N.C. Ct. App. 1998).

IX. Joint And Several Liability

Yes. Joint Contribution Among Tortfeasors Act, §§ 1B-1 to 1B-4.

X. Consumer Fraud Act

Not adopted. For deceptive trade practices, see N.C. Gen. Stat. ch. 75.

North Dakota

I. Wrongful Death

Statute¹ N.D. Cent. Code §§ 32-21-01 to 32-21-06.

Empowered Plaintiffs § 32-21-03.
 First Priority - Surviving spouse.
 Second Priority - Children.
 Third Priority - Parents.
 Fourth Priority – Grandparents.
 Fifth Priority - Personal representative.
 Sixth Priority - Person who had primary physical custody of the decedent before the wrongful act.

Damages Compensatory, § 32-21-02 (“damages that are proportionate to injury resulting from death”), and punitive. *Puppe by Puppe v. A.C. & S., Inc.*, 733 F. Supp 1355 (D. N.D. 1990).
 No ceiling on recovery. § 32-21-02.

Survival Of Other Causes Of Action Yes, except for breach of promise, alienation of affections, libel and slander. § 28-01-26.1.

II. Statutes Of Limitations

Personal Injury General - 6 years. § 28-01-16.
 Libel, slander, assault, battery or false imprisonment - 2 years. § 28-01-18.

Wrongful Death 2 years from date of death, or, in the case of malpractice, 2 years from the date of the discovery of the malpractice but not more than 6 years from the date of the death unless discovery of the malpractice was prevented by fraudulent conduct. § 28-01-18.

Property Damage 6 years. § 28-01-16.

Contract 6 years. § 28-01-16.

Breach Of Warranty, U.C.C. 4 years; parties may reduce to not less than 1 year but may not extend. § 41-02-104.

Products Liability 6 years. § 28-01-16.

III. Conflicts Rule

Torts Most significant contacts test. *Issendorf v. Olsen*, 194 N.W.2d 750 (N.D. 1972); *see also Kenna v. So-Fro Fabrics*, 18 F.3d 623 (8th Cir. 1994).

Tort In Flight Over State North Dakota law applies. § 2-03-08.

Contracts Most significant contact test. *Daley v. American States Preferred Ins. Co.*, 587 N.W.2d 159 (N.D. 1998).

IV. Contributory/Comparative Negligence

Comparative Negligence Recovery is barred only if the negligence of the plaintiff is greater than the negligence of the defendant or the combined negligence of all defendants, but recovery is reduced by the proportional fault of the plaintiff. § 32-03.2-02.

V. Contribution And Indemnity

Contribution Contribution among tortfeasors is adopted, §§ 32-38-01 to 32-38-04, but joint tortfeasor must have paid more than his pro rata share. § 32-38-01.
Intentional tort – No. § 32-38-01.

Indemnity Yes, but where there is a right to indemnity, there is no right to contribution. § 32-38-01.

VI. Punitive Damages

Standard Of Proof Clear and convincing evidence of oppression, fraud, or malice. § 32-03.2-11.

Pleading In any action for the breach of an obligation not arising from contract, when the defendant has been guilty by clear and convincing evidence of oppression, fraud, or actual malice, the court or jury, in addition to the actual damages, may give damages for the sake of example and by way of punishing the defendant. Upon commencement of the action, the complaint may not seek exemplary damages. After filing the suit, a party may make a motion to amend the pleadings to claim exemplary damages. The motion must allege an applicable legal basis for awarding exemplary damages and must be accompanied by one or more affidavits or deposition testimony showing the factual basis for the claim. The party opposing the motion may respond with affidavit or deposition testimony. If the court finds, after considering all submitted evidence, that there is sufficient evidence to support a finding

VI. Punitive Damages

Pleading	by the trier of fact that a preponderance of the evidence proves oppression, fraud, or actual malice, the court shall grant the moving party permission to amend the pleadings to claim exemplary damages. § 32-03.2-11.
Apportionment/Remittitur	If the jury awards punitive damages in excess of the statutory limitation, the court will reduce such amount so that it is consistent with that limit. § 32-03.2-11.
Limitations	\$250,000 cap or twice the amount of compensation, whichever is greater, but no punitive damages if no compensatory damages. § 32-03.2-11.
Wrongful Death	Yes. Puppe By Puppe v. A.C. & S., Inc., 733 F. Supp. 1355 (D. N.D. 1990).
Personal Injury	Yes. Puppe By Puppe v. A.C. & S., Inc., 733 F. Supp. 1355 (D. N.D. 1990).
Covered By Insurance	Directly assessed - Yes, except for intentional or criminal acts. Nodak Mut. Ins. Co. v. Heim, 559 N.W.2d 846 (N.D. 1997); Hins v. Heer, 259 N.W.2d 38 (N.D. 1977) (punitive damages for intentional acts uninsurable); <i>see</i> Cont. Cas. Co. v. Kinsey, 499 N.W.2d 574 (N.D. 1993) (insurer obligated to pay punitive damages award under liability policy may seek indemnity from insured, who is prohibited by statute from being indemnified for intentional acts, fraud or deceit); <i>see also</i> §§ 9-07-03; 9-07-04; 9-07-06; 9-08-02; 26.1-32-04; 32-03.2-11.
Government Entity	The liability of political subdivisions is limited to a total of \$250,000 per person and \$500,000 for injury to 3 or more persons during any single occurrence regardless of the number of political subdivisions, or employees of such political subdivisions, which are involved in that occurrence; a political subdivision may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages. § 32-12.1-03. Statute also lists certain claims for which political subdivision may not be held liable for.
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. Johnson v. American Motors Corp., 225 N.W.2d 57 (N.D. 1974).
Pleading	If complaint seeks a recovery of less than \$50,000, the actual amount must be stated; if complaint seeks a recovery greater than \$50,000, the pleading must just state that the damages sought are greater than \$50,000. § 28-01.3-02.

VII. Products Liability Law

Affirmative Defenses

Alterations or modification. § 28-01.3-03.

Limited liability of seller. § 28-01.3-04.

Warranties

Extended to person reasonably expected to use, consume, or be affected by the goods. § 41-02-35.

VIII. Limitations On Damages

Government Entities

Compensatory - \$250,000 cap per person and \$500,000 per occurrence. § 32-12.1-03.

Punitive Damages - None permitted. § 32-12.1-03.

Periodic Payment

Court may grant period payments for future economic damages for custodial or institutional care if such are required for more than two years. § 32-03.2-09.

Collateral Source Rule

Yes, award reduced by amount covered by payment from a collateral source. § 32-03.2-06.

DRAM Shop Liability

Yes. § 5-01-06.1.

Health Care Industry/ Providers

None.

Economic Loss Doctrine

Yes. *Hagert v. Hatton Commodities, Inc.*, 350 N.W.2d 591 (N.D. 1994).

IX. Joint And Several Liability

Limited. Several liability only if tortfeasors do not act in concert; joint and several liability available only if tortfeasors act in concert. § 32-03.2-02.

X. Consumer Fraud Act

Adopted. § 51-15-02; *see also* *Jorgenson v. Agway, Inc.*, 627 N.W.2d 391 (N.D. 2001).

Ohio

I. Wrongful Death

Statute¹	Oho Rev. Code Ann. § 2125.01 (West 2004).
Empowered Plaintiffs	Personal Representative only. § 2125.02.
Beneficiaries	Spouse, children, parents, and next of kin. § 2125.02. A parent who abandoned a minor child who is the decedent shall not receive any benefit in a wrongful death action. <i>Id.</i>
Damages	Compensatory damages. § 2125.02. No punitive damages. <i>Robeck v. Ohio</i> , 374 N.E.2d 411 (Ohio 1978). Recoverable losses. § 2125.02 <ul style="list-style-type: none"> a. Reasonable funeral and burial expenses. b. Loss of support from reasonable expected earning capacity. c. Loss of services. d. Loss of society, companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education. e. Loss of prospective inheritance. f. Mental anguish. No specific ceiling on recovery. § 2125.02.
Survival Of Other Causes Of Action	Yes. No action or proceeding pending in any court will abate by the death of either or both of the parties thereto, except actions for libel, slander, malicious prosecution, for a nuisance, or against a judge of a county court for misconduct in office, which will abate by the death of either party. § 2311.21. Also, in addition to the causes of action which survive at common law, causes of action for mesne profits, or injuries to the person or property, or for deceit or fraud, survive. § 2305.21. Punitive damages can be awarded in actions that survive death where conduct was willful, wanton or reckless or intentional. <i>Robeck v. Ohio</i> , 374 N.E.2d 411 (Ohio 1978).

II. Statutes Of Limitations

Personal Injury	2 years. § 2305.10.
Wrongful Death	2 years. § 2125.02.
Property Damage	Personal - 2 years. § 2305.10. Real - 4 years. § 2305.09(E).

II. Statutes Of Limitations

Contracts (Generally)

Written - 15 years. § 2305.06. (Proposed Legislation: 6 years. 2011 Ohio House Bill No. 170).

a. Against State: 5 years. § 126.301.

Oral - 6 years. § 2305.07.

a. Against State: 5 years. § 126.301.

U.C.C. Breach Of Contract Of Sale/Warranty

4 years; parties may reduce to not less than 1 year. § 1302.98.

Products Liability

2 years. § 2305.10; *Cacciacarne v. G.D. Searle & Co.*, 908 F.2d 95 (6th Cir. 1990).

III. Conflicts Rules

Torts

Most significant relationship test contained in Restatement (Second) Conflicts of Law (1971). *Morgan v. Biro Mfg. Co.*, 474 N.E.2d 286 (Ohio 1984).

Contracts

Most significant relationship test. *Nationwide Ins. Co. v. Phelps*, 2004 Ohio App. LEXIS 1046 (Ohio Ct. App. Mar. 8, 2004).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence

The contributory fault of the plaintiff may be asserted as an affirmative defense to a tort claim, except that the contributory fault of the plaintiff may not be asserted as an affirmative defense to an intentional tort claim. § 2315.32. Contributory fault is not a bar to recovery if the contributory fault of the plaintiff was not greater than the combined tortious conduct of all other persons from whom the plaintiff seeks recovery and of all other persons from whom the plaintiff does not seek recovery. § 2315.35. The court will diminish any compensatory damages by an amount that is proportionately equal to the percentage of tortious conduct of the plaintiff. § 2315.33.

V. Contribution And Indemnity

Contribution

Yes, if one or more persons are jointly and severally liable in tort for the same injury or loss to person or property or for the same wrongful death, there may be a right of contribution even though judgment has not been recovered against all or any of them. The right of contribution exists only in favor of a tortfeasor who has paid more than that tortfeasor's proportionate

V. Contribution And Indemnity

Contribution share of the common liability, and that tortfeasor's total recovery is limited to the amount paid by that tortfeasor in excess of that tortfeasor's proportionate share. No tortfeasor may be compelled to make contribution beyond that tortfeasor's own proportionate share of the common liability. There is no right of contribution in favor of any tortfeasor against whom an intentional tort claim has been alleged and established. § 2307.25(A).

Indemnity Yes, but if one tortfeasor is entitled to indemnity, no contribution from the indemnity obligee. § 2307.25(D). Common law indemnity available. Board of Educ. v. URS Co., 1994 Ohio App. LEXIS 4201 (Ohio Ct. App. Sep. 22, 1994).

VI. Punitive Damages

Pleading Must plead an appropriate cause of action in tort to recover punitive damages. Hoskins v. Aetna Life Ins. Co., 452 N.E.2d 1315 (Ohio 1983).

Apportionment/Remittitur Apportionment: Yes. Chandler & Assocs. v. America's Healthcare Alliance, 709 N.E.2d 190 (Ohio Ct. App. 1997).
Remittitur: Yes, there are four criteria necessary for a court to order a remittitur: (1) unliquidated damages are assessed by a jury, (2) the verdict is not influenced by passion or prejudice, (3) the award is excessive; and (4) the plaintiff agrees to the reduction in damages. Dardinger v. Anthem Blue Cross & Blue Shield, 781 N.E.2d 121 (Ohio 2002).

Amount Payable To The State Yes, within court's discretion. Dardinger v. Anthem Blue Cross & Blue Shield, 781 N.E.2d 121 (Ohio 2002).

Wrongful Death No. Rubeck v. Huffman, 374 N.E.2d 411 (Ohio 1978).

Personal Injury Yes. § 2315.21.

Covered By Insurance Directly assessed - No. Casey v. Calhoun, 531 N.E.2d 1348 (Ohio Ct. App. 1987); *see also* § 3937.182 (auto insurance context).
Vicariouly assessed – No case on point.

Products Liability Yes. § 2307.80.

Government Entity No. § 2744.05.

VII. Products Liability Law

Strict Tort Liability

Yes. In order for a party to recover based upon a strict liability in tort theory, it must be proven that: (1) There was, in fact, a defect in the product manufactured and sold by the defendant; (2) such defect existed at the time the product left the hands of the defendant; and (3) the defect was the direct and proximate cause of the plaintiff's injuries or loss. *Temple v. Wean United, Inc.*, 364 N.E.2d 267, 270 (Ohio 1977) (internal quotation marks and citation omitted).

Comparative Negligence

“Ohio is a ‘partial comparative negligence’ jurisdiction, meaning that a defendant will not be liable to a plaintiff whose fault was 50 percent or more.” *Gumins v. Ohio Dept. of Rehab. & Corr.*, No. 10AP-941, 2011 WL 2586355, at *7 (Ohio Ct. App. 10 Dist. Jun. 30, 2011) (internal quotation marks and citation omitted).

Warranties

Extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty. § 1302.31.

VIII. Limitations On Award Of Compensatory Damages

Periodic Payments

Can be ordered by the court under certain circumstances. § 2323.56.

Collateral Source Rule

Yes, except where source of collateral benefits has certain subrogation rights. § 2315.20.

Medical Claims Limitation

No.

Political Subdivision Limitation

No limit on compensatory damages representing actual loss suffered by plaintiff. § 2744.05. However, limit of \$250,000 in favor of any one person for damages not representing the actual losses of plaintiff. § 2744.05(C).

Benefits from collateral sources serve to reduce award. § 2744.05(B)(1).

Judgment against political subdivision can be paid in installments over a period not to exceed 10 years. § 2744.06.

Limitations in this chapter do not apply to various employee actions, actions by sureties, or civil actions based upon alleged violations of federal statutes or the U.S. Constitution against a political subdivision. § 2744.09.

DRAM Shop Act

Yes. § 4399.18.

VIII. Limitations On Award Of Compensatory Damages

Economic Loss Doctrine

Yes. *Foster Wheeler Enviresponse, Inc. v. Franklin County Convention Facilities Authority*, 678 N.E.2d 519 (Ohio 1997).

IX. Joint And Several Liability

Yes. § 2307.22.

X. Consumer Fraud Act

Yes. Consumer Sales Practices. §§ 1345.01 through 1345.13.

Oklahoma

I. Wrongful Death

Statute¹	Okla. Stat. Tit. 12 § 1053.
Empowered Plaintiffs	Personal representative, then widow, then next of kin. Tit. 12 §§ 1053, 1054.
Beneficiaries	Surviving spouse, children, parents, next of kin, and any person or government agency who/that paid medical or burial expenses of decedent. Tit. 12 § 1053.
Damages	<p>Compensatory and punitive or exemplary in nature. Tit. 12 § 1053. Compensatory include medical and burial expenses, loss of consortium and the grief of the surviving spouse, mental pain and anguish suffered by the decedent, pecuniary loss to the survivors, and grief and loss of companionship of the children and parents of the decedent.</p> <p>a. Child - For the death of an unmarried, unemancipated minor child, the damages recoverable shall include medical and burial expense, loss of anticipated services and support, loss of companionship and love of the child, destruction of parent-child relationship and loss of monies expended by parents or guardian in support, maintenance and education of such minor child. Tit. 12 § 1055.</p> <p>No specific ceiling on recovery.</p>
Survival Of Other Causes Of Action	Yes, in addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to the person, or to real or personal estate, or for any deceit or fraud, shall also survive. Tit. 12 § 1051. No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander or malicious prosecution, which shall abate by the death of the defendant. Tit. 12 §§ 1052.

II. Statutes Of Limitations

Personal Injury	<p>2 years. Tit. 12 § 95(3); tit. 76 § 18 (action for damages for injury against any physician, health care provider or hospital licensed under the laws of Oklahoma based in tort arising out of patient care).</p> <p>Action for libel, slander, assault, battery, malicious prosecution, or false imprisonment: 1 year. Tit. 12 § 95(4).</p>
Wrongful Death	2 years. Tit. 12 § 1053 (A); tit. 76 § 18 (action for death against any physician, health care provider or hospital licensed under the laws of Oklahoma arising out of patient care).
Property Damage	2 years. Tit. 12 § 95(3).

II. Statutes Of Limitations

Contracts (Generally)

Written: 5 years. Tit. 12 § 95(1).

Oral: 3 years. Tit. 12 § 95(2).

Action against any physician, health care provider or hospital licensed under the laws of Oklahoma for breach of contract arising out of patient care: 2 years. Tit. 76 § 18.

U.C.C. Breach Of Contract Of Sale/Warranty

5 years; parties may reduce to not less than 1 year. Tit. 12A § 2-725(1).

Products Liability

2 years. Tit. 12 § 95; Kirkland v. General Motors Corp., 521 P.2d 1353 (Okla. 1974).

III. Conflicts Rule

Torts

Most significant relationship test. Brickner v. Gooden, 535 P.2d 632 (Okla. 1974).

Contracts

Generally, the state where the contract was executed, but Oklahoma courts will utilize the materially greater interest approach of Restatement (Second) Of Conflict of Laws § 188 if no effective contractual choice of law applies. Williams v. Shearson Lehman Bros., 917 P.2d 998 (Okla. Ct. App. 1995).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence

If plaintiffs negligence is greater than the combined negligence of all the defendants, no recovery. Tit. 23 § 13.

V. Contribution And Indemnity

Contribution

Yes, provided that the tortfeasor has paid more than his pro rata share. Tit. 12 § 832. There is no contribution for intentional torts.

Indemnity

Yes, but where there is a right to indemnity, there is no right to contribution. Tit. 12 § 832; Tit. 15, ch. 10 (contractual indemnity); National Union Fire Ins. Co. v. A.A.R. Western Skyways, Inc., 748 P.2d 52 (Okla. 1989) (equitable indemnity).

VI. Punitive Damages

Pleading	Clear and convincing evidence of recklessness; or intentional conduct with malice. The following factors must also be considered by the jury: (1) the seriousness of the hazard to the public arising from the defendant's misconduct; (2) the profitability of the misconduct to the defendant; (3) the duration of the misconduct and any concealment of it; (4) The degree of the defendant's awareness of the hazard and of its excessiveness; (5) the attitude and conduct of the defendant upon discovery of the misconduct or hazard; (6) in the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and (7) the financial condition of the defendant. Tit. 23 § 9.1.
Limitation	Depending on the conduct of the defendant, either: (1) \$100,000 or the amount of compensatory damages awarded; (2) \$500,000, twice the amount of compensatory damages awarded, or the increased financial benefit derived by the defendant as a direct result of the conduct causing the injury to the plaintiff and other persons or entities; or (3) any amount the jury deems appropriate without regard to the foregoing limitations (if the jury finds that the defendant acted intentionally with malice and the court finds, on the record and out of the presence of the jury, that there is evidence beyond a reasonable doubt that the defendant acted intentionally and with malice and engaged in conduct life-threatening to humans). Tit. 23 § 9.1.
Wrongful Death	Yes. Tit. 12 § 1053.
Personal Injury	Yes. Tit. 23 § 9.
Covered By Insurance	Directly assessed – No. <i>Dayton Hudson Corp. v. American Mut. Liability Ins. Co.</i> , 621 P.2d 1155 (Okla. 1980). Vicariously assessed – Yes. <i>Dayton Hudson Corp. v. American Mut. Liability Ins. Co.</i> , 621 P.2d 1155 (Okla. 1980).
Amount Payable To The State	None.

VII. Products Liability Law

Strict Liability	Yes, but Oklahoma calls it “Manufacturer’s Product Liability.” <i>Clark v. Mazda Motor Corp.</i> , 68 P.3d 207 (Okla. 2003).
Warranties	A seller’s warranty, whether express or implied, extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. Tit. 12A § 2-318.

VIII. Limitations On Award Of Compensatory Damages

State Or Political Subdivisions

Government Tort Claims Act. Tit. 51, ch. 5.

Property Loss: Limit of \$25,000 for any claim or to any claimant who has more than one claim for loss of property arising out of a single act, accident, or occurrence. Tit. 51 § 154.A.1.

Other Losses: Generally, a limit of \$125,000 to any claimant for a claim for any other loss arising out of a single act, accident, or occurrence. Tit. 51 § 154.A.2.

- a. The limit of liability for the state or any city or county with a population of 300,000 or more according to the latest federal Decennial Census cannot exceed \$175,000. Tit. 51 § 154.A.2. Except however, the limits of liability for the University Hospitals and State Mental Health Hospitals operated by the Department of Mental Health and Substance Abuse Services for claims arising from medical negligence is \$200,000.
- b. For claims arising from medical negligence by any licensed physician, osteopathic physician or certified nurse-midwife rendering prenatal, delivery or infant care services from September 1, 1991, through June 30, 1996, who is considered an employee of the State, the limit of liability is \$200,000. Tit. 51 § 154.A.2.

Per Occurrence or act: \$1,000,000 limit. Tit. 51 § 154.A.3

The total liability of the state and its political subdivisions on any claim within the scope of The Governmental Tort Claims Act arising out of wrongful criminal felony conviction resulting in imprisonment cannot exceed \$175,000. Tit. 51 § 154.B.4.

No exemplary or punitive damages. Tit. 51 § 154.C.

The total liability of resident physicians and interns while participating in a graduate medical education program of the University of Oklahoma College of Medicine, its affiliated institutions and the Oklahoma College of Osteopathic Medicine and Surgery cannot exceed \$100,000. Tit. 51 § 154.E.

The liability of the state or political subdivision under The Governmental Tort Claims Act shall be several from that of any other person or entity, and the state or political subdivision shall only be liable for that percentage of total damages that corresponds to its percentage of total negligence. Tit. 51 § 154.G.

Collateral Source Rule

Yes. Tit. 84 § 45 (worker's compensation); Porter v. Manes, 347 P.2d 210 (Okla. 1959).

DRAM Shop Liability

Yes. McGee v. Alexander, 37 P.3d 800 (Okla. 2001).

Health Care Industry Providers

The Managed Health Care Reform and Accountability Act Good Samaritan Act. Tit. 76 § 5.

For claims arising from medical negligence by any licensed physician, osteopathic physician or certified nurse-midwife rendering prenatal, delivery or infant care services from September 1, 1991, through June 30, 1996, who is considered an employee of

VIII. Limitations On Award Of Compensatory Damages

Health Care Industry Providers

the State, the limit of liability is \$200,000. Tit. 51 § 154.A.2.

The limits of liability for the University Hospitals and State Mental Health Hospitals operated by the Department of Mental Health and Substance Abuse Services for claims arising from medical negligence is \$200,000. Tit. 51 § 154.A.2.

The total liability of resident physicians and interns while participating in a graduate medical education program of the University of Oklahoma College of Medicine, its affiliated institutions and the Oklahoma College of Osteopathic Medicine and Surgery cannot exceed \$100,000. Tit. 51 § 154.E.

Economic Loss Doctrine

No authority.

Remittitur/Additur

Before a verdict may be set aside as excessive, it must appear to be so excessive as to strike mankind, at first blush, as being beyond all measure unreasonable and outrageous, showing the jury to have been actuated by passion, partiality, prejudice or corruption. *Currens v. Hampton*, 939 P.2d 1138 (Okla. 1997).

IX. Joint And Several Liability

Yes. *Berry v. Empire Indem. Ins. Co.*, 634 P.2d 718 (Okla. 1981); *see, e.g., Johnson v. Ford Motor Co.*, 45 P.3d 86, 92 (Okla. 2002).

X. Consumer Fraud Act

Yes. Oklahoma Consumer Protection Act. Tit. 15, ch. 20.

Oregon

I. Wrongful Death

Statute¹	§ 30.020.
Empowered Plaintiffs	General - Personal Representative only. § 30.020. Minor – Custodial Parents. § 30.010.
Beneficiaries	Spouse, children, parents and other who inherit under intestate law, step-children, step-parents. § 30.020.
Damages	Compensatory and punitive damages are available. § 30.020. Recoverable Losses. § 30.020 <ul style="list-style-type: none"> a. Doctor's services, hospital services, nursing services, medical services, burial services, and memorial services. b. Compensation for decedent's disability, pain, suffering, and loss of income during period between injury and death. c. Pecuniary loss to estate. d. Pecuniary loss, loss of society, companionship, and services for spouse, children, step-children, step-parents and parents. No ceiling on recovery. § 30.020. Comparative fault of decedent and/or personal representative reduces award. § 31.600.
Survival Of Other Causes Of Action	Yes. §§ 30.075, 30.080.

II. Statutes Of Limitations

Personal Injury	2 years. § 12.110.
Wrongful Death	3 years from discovery of injury causing death, but no more than 3 years after death or unless another longer period for commencing an action under an applicable statute. § 30.020.
Property Damage	6 years. § 12.080.
Contracts (Generally)	6 years. § 12.080.
U.C.C. Breach Of Contract Of Sale/Warranty	4 years; parties may reduce to not less than 1 year. § 72.7250.

II. Statutes Of Limitations

Products Liability	General - 2 years from date on which death, injury or damage occurs, but not later than 8 years after first purchase of product. § 30.905. Asbestos - 2 years from actual or constructive discovery. § 30.907. Breast Implant - 2 years from actual or constructive discovery. § 30.908.
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Statute Of Ultimate Repose	Yes, 10 years. § 12.115.
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III. Conflicts Rule

Torts	Most significant relationship. <i>Dabbs v. Silver Eagle Mfr. Co., Inc.</i> , 779 P.2d 1104 (Ore. App. 1989).
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Contracts	Most significant relationship combined with interest analysis. <i>Stricklin v. Soued</i> , 936 P.2d 398 (Ore. App. 1997).
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IV. Contributory/Comparative Negligence

Modified Comparative Negligence	If plaintiffs negligence greater than negligence of all the defendants, no recovery; damages are diminished in proportion to plaintiff's fault. § 31.600.
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V. Contribution And Indemnity

Contribution	Available, but joint tortfeasor must have paid more than his pro rata share, and no contribution for intentional torts. § 31.800.
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Indemnity	Available, but where there is a right to indemnity, there is no right to contribution. § 31.800.
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VI. Punitive Damages

Standard Of Proof	Clear and convincing evidence. § 31.730. The rational juror inquiry remains the standard of post-verdict judicial review of punitive damages in Oregon for excessiveness under the U.S. Constitution, and the set of nonexclusive guideposts in <i>BMW of North America v. Gore</i> are factors that the reviewing court should consider as part of the state review. <i>Parrott v. Carr Chevrolet, Inc.</i> , 17 P.3d 473 (Or. 2001)
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VI. Punitive Damages

Wrongful Death	Yes. § 30.020.
Personal Injury	Yes, if the jury finds defendant engaged in wanton misconduct -- conduct amounting to deliberate disregard of the rights of others. <i>Joachim v. Crater Lake Lodge, Inc.</i> , 617 P.2d 632 (Or. Ct. App. 1980).
Covered By Insurance	Directly assessed - Yes. <i>Harrell v. Travelers Ind. Co.</i> , 567 P.2d 1013 (Or. 1977). Vicariously assessed – Yes. <i>Harrell v. Travelers Ind. Co.</i> , 567 P.2d 1013 (Or. 1977).
Products Liability	Need clear and convincing evidence of wanton disregard for safety. § 30.925; § 31.730.
Public Bodies And Their Officers	Yes. § 30.270 prohibited punitive damages against public bodies and their officers, but this statute was repealed in 2009.
Amount Payable to the State	Sixty percent shall be paid to the Criminal Injuries Compensation Account of the Department of Justice Crime Victims' Assistance Section. § 31.735.

VII. Products Liability Law

Strict Tort Liability	For product sold in an unreasonably dangerous condition. § 30.920.
Affirmative Defenses	Presumption that product not unreasonably dangerous. § 30.910. Alteration or modification. § 30.915.
Warranties	Extended to family or household members or guests. § 72.3180.

VIII. Limitations On Award Of Compensatory Damages

Non-Economic Damages	No. <i>Lakin v. Senco Prods., Inc.</i> , 987 P.2d 463 (Or. 1999).
Collateral Source Rule	Court may deduct amount received from other sources, with certain exceptions. § 31.580. (Proposed legislation: To change the word 'may' in statute to 'shall.' 2011 Oregon Senate Bill 87).

VIII. Limitations On Award Of Compensatory Damages

Public Bodies And Its Officers

No. § 30.270 provided limitations on award of compensatory damages against public bodies and their officers, but statute was repealed in 2009.

Health Care

No person may maintain an action for damages against a health care provider who voluntarily provides to a charitable corporation, as defined in § 128.620, any assistance, services or advice directly related to the charitable purposes of the corporation if the assistance, services or advice are within the scope of the license of the health care provider. § 30.792.

Economic Loss Doctrine

Yes. Under Oregon law, one ordinarily is not liable for negligently causing a stranger's purely economic loss without injuring his person or property. For a plaintiff to recover in those circumstances, he would have to show some source of duty outside the common law of negligence, such as a special relationship or status that imposed a duty on the defendant beyond the common-law negligence standard. *Harris v. Suniga*, 180 P.3d 12, 15-16 (Or. 2008) (citations omitted).

IX. Joint And Several Liability

Limited

Several liability only for non-economic damages. § 31.610. If defendant less than 25% at fault, several liability for economic damages. § 31.610. (Proposed legislation to remove this section from § 31.610. 2011 Oregon Senate Bill No. 283).

Joint and several liability if defendant greater than 25% at fault for economic damages - but if defendant's fault is less than the plaintiffs fault, the defendant is only liable for his percentage. § 31.610.

Hazardous Waste, And Pollution

Joint and several liability. § 31.610.

X. Consumer Fraud Act

Yes. § 646.638.

Pennsylvania

I. Wrongful Death

Statute¹	42 Pa. Cons. Stat. § 8301 (2004).
Empowered Plaintiffs	First: Spouse, children, or parents of deceased. 42 Pa. Cons. Stat. § 8301(b). Second: Personal representative (only entitled to recover Special Damages). 42 Pa. Cons. Stat. § 8301(d).
Beneficiaries	Spouse, children, parents or personal representative (when appropriate). 42 Pa. Cons. Stat. § 8301(b). (Proposed legislation to add Stepchildren. 2011 Penn. Senate Bill No. 466).
Damages	Compensatory, if no recovery for the same damages claimed in the wrongful death action was obtained by the injured individual during his lifetime and any prior actions for the same injuries are consolidated with the wrongful death claim so as to avoid a duplicate recovery. 42 Pa. Cons. Stat. § 8301(a). Special Damages: reasonable hospital, nursing, medical, funeral expenses and expenses of administration necessitated by reason of injuries causing death. 42 Pa. Cons. Stat. § 8301(c).
Survival Of Other Causes Of Action	Yes. 42 Pa. Cons. Stat. § 8301(a).

II. Statutes Of Limitations

Personal Injury	2 years. 42 Pa. Cons. Stat. § 5524(2).
Wrongful Death	2 years. 42 Pa. Cons. Stat. § 5524(2).
Property Damage	2 years. 42 Pa. Cons. Stat. § 5524(3).
Contracts (Generally)	4 years. 42 Pa. Cons. Stat. § 5525.
U.C.C. Breach Of Contract Of Sale/Warranty	4 years for purchasers; parties may reduce to not less than 1 year. 13 Pa. Cons. Stat. § 2725. 2 years for non-purchasers. <i>Sransky v. American Isuzu Motors, Inc.</i> , 829 F. Supp. 788 (E.D. Pa. 1993).
Products Liability	2 years. <i>Hahn v. Atlantic Richfield Co.</i> , 625 F.2d 1095 (3d Cir. 1980) (citing 42 Pa. Cons. Stat. § 5524(2)).

III. Conflicts Rule

Torts Most significant relationship and interest analysis. *Kunreuther v. Outboard Marine Corp.*, 715 F. Supp. 1304 (E.D. Pa. 1989).

Contracts Most significant relationship and interest analysis. *Guy v. Liederbach*, 501 Pa. 47, 459 A.2d 744 (1983).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence No recovery if plaintiff's negligence is greater than the combined negligence of defendants; damages are diminished in proportion to the plaintiff's fault. 42 Pa. Cons. Stat. § 7102. (Proposed legislation to repeal § 7102. 2011 Penn. Senate Bill No. 500).

V. Contribution And Indemnity

Contribution Yes. Uniform Contribution Among Tortfeasors Act, 42 Pa. Cons. Stat. §§ 8321 to 8327, but joint tortfeasor must have paid more than his pro rata share. 42 Pa. Cons. Stat. § 8324.

Indemnity Common law indemnity applies. 42 Pa. Cons. Stat. § 8323.

VI. Punitive Damages

Wrongful Death No. *Harvey v. Hassinger*, 461 A.2d 814 (Pa. Super. Ct. 1983).

Personal Injury Yes. *Trotman v. Mecchella*, 618 A.2d 982 (Pa. Super. Ct. 1992).

Covered By Insurance Directly assessed - No. *Martin v. Johns-Mansville Corp.*, 508 Pa. 154, 494 A.2d 1088 (Pa. 1985).
Vicariously assessed – Yes. *Pennbank v. St. Paul Fire & Marine Ins. Co.* 669 F. Supp. 122 (W.D. Pa. 1987).

VII. Products Liability Law

Strict Tort Liability *Phillips v. Cricket Lighters*, 841 A.2d 1000 (Pa. 2003).

VII. Products Liability Law

Warranties

Extended to family or household members and guests, where reasonable to expect that such person may use, consume or be affected by the goods. 13 Pa. Cons. Stat. § 2318.

VIII. Limitations On Damages

Governmental Entity

Limited sovereign immunity. 42 Pa. Cons. Stat. §§ 8521-8522. If the Commonwealth is a party defendant - \$250,000 cap per plaintiff and \$1 million in the aggregate. 42 Pa. Cons. Stat. § 8528.

Collateral Sources Rule

Medical malpractice action where claimant seeks past medical expenses and lost earnings. 40 Pa. Cons. Stat. § 1303.508.

Health Care Industry/ Providers

Punitive damages against individual physicians shall not exceed 200% of compensatory damages, except in cases of intentional misconduct. 40 Pa. Cons. Stat. § 1303.505(d). (Proposed legislation may change the wording of 'individual physicians' within § 1303.505(d) to 'a health care provider.' 2011 Penn. House Bill 1620).

Economic Loss Doctrine

Yes, the economic loss doctrine precludes recovery for economic losses in a tort action where the plaintiff has suffered no physical damage or damage to property, however, it does not apply to intentional tort claims. *Oppenheimer v. York Intern.*, No. 4348, 2002 WL 31409949 (Pa. Com. Pl. Oct. 25, 2002).

IX. Joint And Several Liability

Yes

Parties who are joint tortfeasors are jointly and severally liable for the plaintiff's injuries, and as a result the plaintiff may look to any such defendant for full compensation for his injuries. 42 Pa. Cons. Stat. § 7102(b). (Proposed legislation to repeal § 7102. 2011 Penn. Senate Bill No. 500).

X. Consumer Fraud Act

The Pennsylvania Unfair Trade Practices and Consumer Protection Law outlaws unfair and deceptive trade practices. 73 Pa. Cons. Stat. § 201-3.

Puerto Rico

I. Wrongful Death

Statute¹	P.R. Laws Ann. tit. 31 § 5141.
Empowered Plaintiffs	Puerto Rico case law has traditionally held that those related to a deceased victim by blood ties or by love and affection are deemed to suffer moral damages. Accordingly, they may file an independent cause of action against the person causing the unlawful death of a loved one. <i>Garcia v. Municipality of Orocovis</i> , 356 F. Supp. 2d 87, 90 (D. P.R. 2005).
Beneficiaries	The law of Puerto Rico permits an award for beneficiaries' pain and suffering. <i>Bonn v. Puerto Rico Int'l Airlines, Inc.</i> , 518 F.2d 89, 91 (1st Cir. 1975).
Damages	Damages in wrongful death action for pecuniary loss, loss of society, and companionship, loss of services, and mental or moral suffering are recoverable. <i>Santa v. United States</i> , 252 F. Supp. 615, 622 (D. P.R. 1966).
Survival Of Other Causes Of Action	Puerto Rico does not have a survivorship statute dealing with tort cases in general. <i>Rivera v. Medina</i> , 963 F. Supp. 78, 84 (D. P.R. 1997). However, Puerto Rico law provides for the survivorship of tort actions. <i>Marrero Artache v. Autoridad de Energia Electrica</i> , 924 F. Supp. 346, 348 (D.P.R. 1996). Only highly personal rights – usufruct, <i>patria potestas</i> , support, tutorship, and certain labor and service contracts – that require the natural existence of the person to continue the action do not survive. <i>Rivera</i> , 963 F. Supp. at 84.

II. Statutes Of Limitations

Personal Injury	1 year. 31 L.P.R.A. § 5298.
Wrongful Death	1 year. 31 L.P.R.A. § 5298.
Property Damage	1 year. 31 L.P.R.A. § 5298.
Contracts (Generally)	15 years. 31 L.P.R.A. § 5294. <i>Caribbean Mushroom Co., Inc. v. Gov't Dev. Bank for Puerto Rico</i> , 102 F.3d 1307 (1st Cir. 1996).
U.C.C. Breach Of Contract Of Sale/Warranty	3 years. Article 946 of the Puerto Rico Commerce Code.
Products Liability	6 months for breach of implied warranty. <i>Ramos Santiago v. Wellcraft Marine Corp.</i> , 93 F. Supp. 2d 112, 116 (D. P.R. 2000). 1 year for strict products liability. 31 L.P.R.A. § 5141; <i>see Rodriguez v. Suzuki Motor Corp.</i> , 570 F.3d 402, 411 (1st Cir. 2009).

III. Conflicts Rule

Torts

The law of the place of the tort (*lex loci delicti*) is to apply. De Vane v. United States, 259 F. Supp. 18, 20 (D. P.R. 1966).

Contracts

“The Supreme Court [Supreme Court of The Commonwealth of Puerto Rico] adopted the so-called ‘points of contact test’, according to which the law of the state having the most contacts with the contract of insurance governs any determination of the rights of the parties.” Gonzalez y Camejo v. Sun Life Assur. Co. of Canada, 313 F. Supp. 1011, 1013 (D. P.R. 1970).

IV. Contributory/Comparative Negligence

Comparative Negligence

Puerto Rico is a comparative negligence jurisdiction. The negligence of a plaintiff will not bar a tort-based claim but rather that the relief awarded shall be reduced proportionate to the degree of plaintiff’s negligence. Rivera Santiago v. United States, CIV. 08-1266 (RLA), 2009 WL 702235 (D. P.R. Mar. 11, 2009) (citing 31 P.R.L.A. § 5141).

V. Contribution And Indemnity

Contribution

Yes. However, “the right of contribution does not accrue before judgment is satisfied, an alleged joint tortfeasor defendant may at the outset of litigation implead all who by their concurrent negligence might be liable to him for contribution.” Corning Glass Works v. Puerto Rico Water Res. Auth., Inc., 396 F.2d 421, 423 (1st Cir. 1968).

Indemnity

Indemnity for losses and damages includes not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize, reserving the provisions contained in the following sections.. 31 L.P.R.A. § 3023.

VI. Punitive Damages

Generally

“The law of Puerto Rico does not, as a general rule, recognize or permit the recovery of punitive damages.” NPR, Inc. v. Am. Int’l Ins. Co. of Puerto Rico, 242 F. Supp. 2d 121, 127 (D. P.R. 2003); *see also* Marina Ind., Inc. v. Brown Boveri Corp., O-80-354, 1983 WL 204219 (P.R. Mar. 18, 1983) (“said type of damages do not exist in this jurisdiction”).

Covered By Insurance

Directly assessed - No case on point.
Vicariouly assessed – No case on point.

VII. Products Liability Law

Strict Tort Liability

Strict liability is found nowhere in Puerto Rico's Civil Code. In adopting the strict liability doctrine, the Puerto Rico courts have relied upon United States common law product liability principles to fill a gap in our body of laws. In particular, the Puerto Rico Supreme Court has consistently relied upon the precedent of the California Supreme Court for its strict liability jurisprudence. *Isla Nena Air Services, Inc. v. Cessna Aircraft Co.*, 449 F.3d 85, 92 (1st Cir. 2006).

Warranties

Application of strict products liability, whether for alleged design defects or breach of implied warranty, to those "in the business of" manufacturing or selling the product at issue. *Acosta-Mestre v. Hilton Int'l of Puerto Rico, Inc.*, 156 F.3d 49, 55 (1st Cir. 1998). Puerto Rico case law reveals an inclination to impose liability for economic losses on all parties in the distribution chain when a consumer product is defective. *Simonet v. SmithKline Beecham Corp.*, 506 F. Supp. 2d 77, 87-88 (D. P.R. 2007).

VIII. Limitations On Damages

Governmental Entity

Limited sovereign immunity. 32 L.P.R.A. § 3077. A breach of contract action against the Commonwealth is capped at \$75,000. *Fresenius Med. Care Cardiovascular Res., Inc. v. Puerto Rico & Caribbean Cardiovascular Ctr. Corp.*, 322 F.3d 56, 64 (1st Cir. 2003).

Collateral Sources Rule

The collateral source rule permits double recovery primarily where the extra benefit comes from insurance for which the plaintiff could easily have paid or from private generosity aimed at benefiting the victim rather than a wrongdoer. *Villarini-Garcia v. Hosp. del Maestro*, 112 F.3d 5, 8 (1st Cir. 1997); *see, e.g.*, 31 L.P.R.A. § 5143.

Health Care Industry/ Providers

Not applicable.

Economic Loss Doctrine

Yes. Puerto Rico applies the economic loss rule under which a party may not recover in tort even when the harm to the product itself occurs through an abrupt, accident-like event. *Isla Nena Air Services, Inc. v. Cessna Aircraft Co.*, 449 F.3d 85, 87 (1st Cir. 2006) (quotation marks and internal citation omitted).

IX. Joint And Several Liability

Yes. In Puerto Rico, joint tortfeasors are jointly and severally liable to a claimant for the entire sum of the damages caused by them. *Wojciechowicz v. United States*, 474 F. Supp. 2d 291, 295 (D. P.R. 2007) (citing 31 L.P.R.A. § 3109).

X. Consumer Fraud Act

Puerto Rico has no specific consumer protection statute that provides a private right of action for consumer fraud. *Simonet v. SmithKline Beecham Corp.*, 506 F. Supp. 2d 77, 91 (D. P.R. 2007).

Rhode Island

I. Wrongful Death

Statute¹	R.I. Gen. Laws § 10-7-1.
Empowered Plaintiffs	<p>Personal Representative (executor or administrator). § 10-7-2.</p> <p>Beneficiaries - If no executor or administrator, or if no action brought within six (6) months of death. § 10-7-3.</p> <p>Action for loss of consortium, society and companionship - Person sustaining the loss. § 10-7-1.2.</p>
Beneficiaries	<p>§ 10-7-2.</p> <p>First Priority – Husband or Widow and children.</p> <p>Second Priority - Next of kin.</p> <p>Action for loss of consortium, society and companionship - Person sustaining the loss. § 10-7-1.2</p> <p>(Proposed legislation may add provision regarding distribution among the parents of a deceased child who are divorced, separated, living apart, or were never married. 2011 R.I. House Bill No. 5181).</p>
Damages	<p>Compensatory damages are available. § 10-7-1, et seq.</p> <p>Recoverable Losses.</p> <ol style="list-style-type: none"> Pecuniary losses - Measured as net loss to estate. § 10-7-1.1. Loss of consortium. § 10-7-1.2. Loss of society and companionship. § 10-7-1.2. Hospital, medical, and other expense incurred as result of injury causing death, including diminution of earning power until time of death. § 10-7-5. Pain and suffering. § 10-7-7. <p>No ceiling on recovery, but minimum recovery of \$250,000. § 10-7-2.</p>
Survival Of Other Causes Of Action Against Person Liable	Yes. §§ 10-7-4, 10-7-8. Punitive damages prohibited. § 9-1-8.

II. Statutes Of Limitations

Personal Injury	3 years. § 9-1-14(b).
Wrongful Death	3 years from death or discovery. § 10-7-2.

II. Statutes Of Limitations

Property Damage	10 years. § 9-1-13(a) (“Except as otherwise specially provided, all civil actions shall be commenced within ten (10) years next after the cause of action shall accrue, and not after.”).
Contracts (Generally)	4 years. U.C.C. § 6A-2-725.
U.C.C. Breach Of Contract Of Sale/Warranty	4 years; parties may reduce to not less than 1 year. U.C.C. § 6A-2-725(1).
Products Liability	§ 9-1-13(b), which established 10 statute of repose for product liability actions in Rhode Island, held to be in violation of Rhode Island Constitution. <i>Kennedy v. Cumberland Eng’g Co.</i> , 471 A.2d 195 (R.I. 1984).

III. Conflicts Rule

Torts	Interest weighing. <i>Turcotte v. Ford Motor Co.</i> , 494 F.2d 173 (1 st Cir. 1974).
Contracts	Governed by the laws of the state or country in which they are made, unless made with a view to performance in another state or country, in which case they will be governed by the law of such state or country. <i>Matarese v. Calise</i> , 111 R.I. 551 (1973).

IV. Contributory/Comparative Negligence

Pure Comparative Negligence	Damages are diminished in proportion to the plaintiff’s fault. § 9-20-4.
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V. Contribution And Indemnity

Contribution	§ 10-6-1 et seq. (“Uniform Contribution Among Tortfeasors Act”), but joint tortfeasor is not entitled to a final judgment for contribution until he has discharged common liability or has paid more than his pro rata share thereof. § 10-6-4.
Indemnity	Available under common law. § 10-6-9 (“This chapter does not impair any right of indemnity under existing law.”).

VI. Punitive Damages

Wrongful Death	No. <i>Simeone v. Charron</i> , 762 A.2d 442 (R.I. 2000).
Personal Injury	Yes. <i>Sherman v. McDermott</i> , 329 A.2d 195 (R.I. 1974).
Covered By Insurance	Directly assessed - No. <i>Allen v. Simmons</i> , 533 A.2d 541 (R.I. 1987). <i>But see</i> <i>Morrell v. Lalonde</i> , 120 A. 435 (R.I. 1923). Vicariouly assessed – No case on point.
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Yes. <i>Parrillo v. Giroux, Inc.</i> , 426 A.2d 1313 (R.I. 1981).
Comparative Negligence	Yes. <i>Fiske v. MacGregor</i> , 464 A.2d 719 (R.I. 1983).
Reduction In Amount Of Recovery	Yes, reduced by percentage plaintiff found to be negligent. <i>Fiske v. MacGregor</i> , 464 A.2d 719 (R.I. 1983).
Warranties	Extended to any person reasonably expected to use product. U.C.C. § 6A-2-318.

VIII. Limitations On Award Of Compensatory Damages

Governmental Entity	State or Subdivision - \$100,000 cap, except when State engaged in proprietary capacity or when State agrees to indemnify Federal government or any agency thereof. § 9-31-2. City, Town and Fire District - \$100,000 cap, except when engaged in proprietary function. § 9-31-3. General Assembly, however, by special act may exceed cap. § 9-31-4.
Collateral Source Rule	Yes. <i>Gelsomino v. Mendonca</i> , 723 A.2d 300 (R.I. 1999).
DRAM Shop	No limitation on damages. § 3-14-8.

VIII. Limitations On Award Of Compensatory Damages

Health Care Industry/ Providers

No limit on damages.

Economic Loss Doctrine Adoption

Yes. Boston Inv. Property #1 State v. E.W. Burman, Inc., 658 A.2d 515 (R.I. 1995).

IX. Joint And Several Liability

Yes. § 10-6-1 et seq.

X. Consumer Fraud Act

Not Adopted

For law on deceptive trade practices, see § 6-13-1, et seq.

South Carolina

I. Wrongful Death

Statute¹	S.C. Code Ann. § 15-51-10.
Empowered Plaintiffs	Executor or administrator only. § 15-51-20.
Beneficiaries	<p>§ 15-51-20.</p> <p>First Priority – Husband or Wife and children.</p> <p>Second Priority - Parents.</p> <p>Third Priority - Heirs.</p>
Damages	<p>Compensatory and punitive damages available. §§ 15-51-40, 10-1954.</p> <p>Recoverable Losses</p> <p>a. Statute - Whatever the jury thinks is proportionate to the injury resulting from such death. § 15-51-40.</p> <p>b. Common Law - Self v. Goodrich, 387 S.E.2d 713, 300 S.C. 349 (S.C. App., 1989). Elements include: (1) pecuniary loss; (2) mental shock and suffering; (3) wounded feelings; (4) grief and sorrow; (5) loss of companionship; and (6) deprivation of the use and comfort of the decedent's society, including the loss of his or her experience, knowledge, and judgment in managing his or her affairs and the affairs of his or her beneficiaries.</p> <p>No ceiling on recovery. § 15-51-40.</p>
Survival Of Other Causes Of Action	Yes. § 15-5-90.

II. Statutes Of Limitations

Personal Injury	3 years if action arose after 04/05/88; 6 years if action arose before 04/05/88. § 15-3-530.
Wrongful Death	3 years if action arose after 04/05/88; 6 years if action arose before 04/05/88. § 15-3-530.
Property Damage	3 years if action arose after 04/05/88; 6 years if action arose before 04/05/88. § 15-3-530.
Contracts (Generally)	3 years if action arose after 04/05/88; 6 years if action arose before 04/05/88. § 15-3-530.

II. Statutes Of Limitations

U.C.C. Breach Of Contract Of Sale/Warranty 6 years. § 36-2-725.

Products Liability 3 years if action arose after 04/05/88; 6 years if action arose before 04/05/88. § 15-3-530.

III. Conflicts Rules

Torts Lex Loci. Thornton v. Cessna Aircraft Co., 886 F.2d 85 (4th Cir., 1989); Bravis v. Dunbar, 449 S.E.2d 495 (S.C. App. 1994).
Tort in flight over state - South Carolina law applies. § 55-3-80.

Contracts South Carolina courts apply substantive law of the place where contract at issue was formed and this rule applies where contract's formation, interpretation, or validity is at issue; however, where performance is at issue, law of place of performance governs. Lister v. Nations Bank of Delaware, N.A., 494 S.E. 2d 449 (S.C. App. 1997).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence No recovery if plaintiff's negligence is greater than defendants' negligence, effective July 1, 1991. Nelson v. Concrete Supply Co., 399 S.E.2d 783 (S.C., 1991).

V. Contribution And Indemnity

Contribution Yes, Uniform Contribution Among Tortfeasors Act adopted, §§ 15-38-10 to 15-38-70, but joint tortfeasor must have paid more than his pro rata share, and no contribution for intentional torts. § 15-38-20.

Indemnity Yes, § 15-38-20, but where there is a right to indemnity, there is no right to contribution.

VI. Punitive Damages

Standard of Proof Clear and convincing evidence. § 15-33-135. (Proposed legislation to repeal § 15-33-135. S.C. House Bill No. 3375).

VI. Punitive Damages

Wrongful Death	Yes. § 15-51-40.
Personal Injury	Yes. <i>Oliver v. Columbia, N.& L.R. Co.</i> , 43 S.E. 307 (1902).
Covered By Insurance	Directly assessed - Yes. <i>South Carolina State Budget & Control Bd. V. Prince</i> , 403 S.E.2d 643 (S.C. 1991). Vicariously assessed – Yes. <i>Glen Falls Indem. Co. v. Atlantic Bldg. Corp.</i> , 199 F.2d 60 (4 th Cir. 1952).
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	For seller of an unreasonably dangerous product. § 15-73-10. Affirmative defenses - Unreasonable use when aware of defect. § 15-73-20.
Warranties	Extended to any person expected to use product. § 36-2-318.

VIII. Limitations On Damages

Governmental Entity	§ 15-78-120 Per person and per occurrence- \$250,000 cap. Total occurrence - \$500,000 cap. Doctor or dentist employed by state - \$1,000,000 cap. No punitive damages or pre-judgment interest. (Proposed legislation: (1) to add: “that a person may recover the actual amount of his economic damages;” (2) reduce non-economic damages to \$50,000 per occurrence; (3) change the word ‘doctor’ to ‘physician;’ and (4) the limit for physician or dentist employed by the state to \$350,000. 2011 So. Car. Senate Bill No. 772).
Health Care Industry/ Providers	None.
Economic Loss Doctrine	Yes. <i>Koontz v. Thomas</i> , 511 S.E.2d 407 (S.C. App., 1999).

IX. Joint And Several Liability

Yes, Uniform Contribution Among Tortfeasors Act adopted. §§ 15-38-10 to 15-38-70.

X. Consumer Fraud Act

Adopted

South Carolina Consumer Protection Code. § 37-1-102.

South Dakota

I. Wrongful Death

Statute¹	S.D. Codified Laws § 21-5-1.
Empowered Plaintiffs	Personal representatives. § 21-5-5.
Beneficiaries	§ 21-5-5. First Priority – Wife of Husband or children. Second Priority - Parents or next of kin.
Damages	Compensatory damages only. § 21-5-7. Recoverable Losses - In every action, the jury may give such damages as may think proportion to the pecuniary injury resulting from such death. § 21-5-7. No ceiling on recovery. § 21-5-7.
Survival Of Other Causes Of Action	Yes. § 15-4-1.

II. Statutes Of Limitations

Personal Injury	3 years. § 15-2-14.
Wrongful Death	3 years after date of death. § 21-5-3.
Property Damage	6 years. § 15-2-13.
Contracts (Generally)	6 years. § 15-2-13.
U.C.C. Breach Of Contract Of Sale/Warranty	4 years. § 57A-2-725
Products Liability	3 years from the date when the personal injury, death or property damage occurred, became known or should have become known to the injured party. § 15-2-12.2.

III. Conflicts Rule

Torts

Most significant relationship test. *Chambers v. Dakotah Charter*, 488 N.W.2d 63 (S.D. 2003).

Tort In Flight Over State

South Dakota law applies. § 50-13-8.

Contracts

South Dakota follows the most significant relationship test of the Restatement (Second) of Conflict of Laws in contract actions. *Dunes Hospitality, L.L.C. v. Country Kitchen Int'l, Inc.*, 623 N.W.2d 484 (S.D. 2001).

IV. Contributory/Comparative Negligence

Comparative Negligence

No bar to recovery if plaintiff's contributory negligence is slight when compared to the defendants' negligence, but damages are diminished in proportion to plaintiff's fault. § 20-9-2.

V. Contribution And Indemnity

Contribution

Yes, Uniform Contribution Among Tortfeasors Act adopted, §§ 15-8-11 to 15-8-22. A joint tortfeasor is not entitled to contribution until he has discharged the common liability through payment or has paid more than his pro rata share. § 15-8-13.

Indemnity

Indemnity at common law not impaired by joint tortfeasor provisions. § 15-8-19.

VI. Punitive Damages

Statute

The general damages remedy does not include exemplary or penal damages nor interest on any damages unless expressly provided by statute. § 21-1-4.

Standard Of Proof

Clear and convincing evidence of willful, wanton or malicious conduct. § 21-1-4.1.

Wrongful Death

No. *Bethel v. Janis*, 597 F. Supp. 56 (D. S.D. 1984).

Personal Injury

Yes. § 21-3-2 (Punitive damages for breach of non-contractual obligation are in discretion of jury).

VI. Punitive Damages

Covered By Insurance Directly assessed - No. Fort Pierre v. United Fire & Casualty Co., 463 N.W.2d 845 (S.D. 1990).
 Vicariously assessed – No case on point.

Amount Payable To The State None.

Excessiveness Standard Five factors analyzed in determining whether punitive damages are appropriate or excessive: (1) the amount of the compensatory damages; (2) the nature and enormity of the wrong; (3) the intent of the wrongdoer; (4) the wrongdoer's financial condition; and (5) all of the circumstances attendant to the wrongdoer's actions. Roth v. Farner-Bocken Co., 667 N.W.2d 651 (S.D. 2003).

VII. Products Liability Law

Strict Tort Liability Yes. §§ 20-9-9 - 20-9-10.

Affirmative Defenses Alteration or modification. § 20-9-10.

Warranties Extended to person reasonably expected to use, consume, or be affected by the goods. § 57A-2-318.

VIII. Limitations On Damages

State Sovereign immunity waived to the extent liability insurance is purchased. § 21-32-16.

Public Entity Sovereign immunity waived to the extent liability insurance is purchased. § 21-32A-1.

Collateral Source Rule Evidence of insurance from collateral source admissible in health care malpractice cases. § 21-3-12.

DRAM Shop The consumption of alcoholic beverages, rather than the serving of alcoholic beverages, is the proximate cause of any injury inflicted upon another by an intoxicated person. § 35-11-1; *see also* Wegleitner v. Sattler, 582 N.W.2d 688 (S.D. 1998) (holding that § 35-11-1 does not violate South Dakota's constitution).

VIII. Limitations On Damages

Medical Malpractice \$500,000 cap. § 21-3-11.

Periodic Payment Available upon request for claims against health care workers. §§ 21-3A-1 - 21-3A-2.

Good Samaritan Immunity Yes, as to any physician, surgeon, osteopath, registered nurse, or licensed nurse who, in good faith, renders emergency care at the scene of the emergency. §§ 20-9-3 - 20-9-4.1.

Economic Loss Doctrine Not adopted.

IX. Joint And Several Liability

Limitations Any defendant who is less than 50% at fault, may not be jointly and severally liable for more than twice the percentage of fault allocated to him. § 15-8-15.1.

X. Consumer Fraud Act

Not Adopted

Tennessee

I. Wrongful Death

Statutes¹	Tenn. Code Ann. §§ 20-5-101 to 20-5-120.
Empowered Plaintiffs	<p>General, § 20-5-106</p> <p>a. First Priority - Surviving Spouse.</p> <p>b. Second Priority - Children, next of kin; or personal representative for the benefit of the surviving spouse or next of kin.</p> <p>Death of Spouse, § 20-5-110 -- Surviving spouse, administrator, or next of kin.</p>
Beneficiaries	<p>General - Spouse, next of kin, parents. § 20-5-106.</p> <p>Death of Spouse - Spouse and children. § 20-5-110.</p>
Damages	<p>Both compensatory, § 20-5-113, and punitive damages are available. <i>Pratt v. Duck</i>, 191 S.W.2d 562 (Tenn. App. 1945).</p> <p>Recoverable Losses. § 20-5-113</p> <p>a. Mental and physical suffering.</p> <p>b. Loss of time.</p> <p>c. Expense resulting from personal injuries.</p> <p>d. Pecuniary loss to the beneficiaries. No ceiling on recovery, § 20-5-113.</p> <p>e. Loss of consortium. <i>Smith v. Pfizer, Inc.</i>, No. 3:05-0444, 2010 WL 1754443 (M.D. Tenn. Apr. 30, 2010).</p>
Survival Of Other Causes Of Action	Yes, except actions for wrongs affecting the character of the plaintiffs decedent. § 20-5-102. NOTE: for revival, see §§ 20-5-104, 20-5-105.

II. Statutes Of Limitations

Personal Injury	1 year. § 28-3-104.
Wrongful Death	1 year. § 28-3-104.
Property Damage	3 years. § 28-3-105.
Contracts (Generally)	6 years. § 28-3-109.
U.C.C. Breach Of Contract Of Sale/Warranty	4 years; parties may reduce to not less than 1 year. § 47-2-725.

II. Statutes Of Limitations

Products Liability

Generally, must be brought within period fixed in §§ 28-3-104, 28-3-105, 28-3-202, and 47-2-725, but no more than 6 years from injury, and no more than 10 years from purchase or within 1 year after the expiration of its useful life, whichever is shorter, except in case of injury to minors whose action must be brought within 1 year after attaining age of majority. § 29-28-103.

Asbestos, human implantation - statute of limitations does not apply. § 29-28-103.

Silicone gel breast implants - no more than 25 years from implantation and not more than 4 years from discovery. § 29-28-103.

III. Conflicts Rule

Torts

Most significant relationship, as set forth in the Restatement (Second) Conflicts of Law. *Hataway v. McKinley*, 830 S.W.2d 53 (Tenn. 1992).

Tort in flight over state - Tennessee law applies. § 42-1-107.

Contracts

Lex loci contractus. *Messer Griesheim Indus. v. Cryotech of Kingsport, Inc.*, 131 S.W.3d 457 (Tenn. App. 2003).

IV. Contributory/Comparative Negligence

Modified Comparative Negligence

Bar if plaintiff's negligence is greater than the aggregate of the defendants' negligence, and damages are diminished in proportion to plaintiff's fault. § 20-1-119; *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992).

V. Contribution And Indemnity

Contribution

Yes, Uniform Contribution Among Tortfeasors Act adopted, §§ 29-11-101 to 29-11-106, but joint tortfeasor must have paid more than his pro rata share, and no contribution for intentional torts. § 29-11-102.

Indemnity

Yes, but where there is a right to indemnity, there is no right to contribution. § 29-11-102.

VI. Punitive Damages

Apportionment	Yes. <i>Huckeby v. Spangler</i> , 563 S.W.2d 555 (Tenn., 1978); Remittitur- Yes. § 20-10-103.
Wrongful Death	Yes. <i>Pratt v. Duck</i> , 191 S.W.2d 562 (Tenn. App. 1945).
Personal Injury	Yes. <i>Huckeby v. Spangler</i> , 563 S.W.2d 555 (Tenn. 1978).
Covered By Insurance	Directly assessed – Yes, except when arising from intentional wrong. <i>Lazenby v. Universal Underwriters Ins. Co.</i> , 383 S.W.2d 1 (Tenn. 1964); <i>Richards Mfg. Co. v. Great Am. Ins. Co.</i> , 773 S.W.2d 916 (Tenn. Ct. App. 1988). Vicariously assessed – Yes. <i>General Cas. Co. of Am. v. Woodby</i> , 238 F.2d 452 (6 th Cir. 1956).
Amount Payable To The State	None.

VII. Products Liability Law

Strict Tort Liability	Negligence, breach of warranty (express or implied), breach of or failure to discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation concealment or non-disclosure, whether negligent or innocent. § 29-28-102, <i>see also</i> Tennessee Products Liability Act, §§ 29-28-101 to 29-28-108.
Affirmative Defenses	a. Compliance with governmental standards. § 29-28-104. b. State of art. § 29-28-105. c. Seller's limited liability. § 29-28-106. d. Alternation or abnormal use. § 29-28-108.
Warranties	Extended to family or household members or guests. § 47-2-318.

VIII. Limitations On Damages

Governmental Entity	State immune from suit. § 20-13-102.
Collateral Source Rule	Yes, common law does not apply to contract actions. <i>Safeco Ins. Co. of Am. v. City of White House</i> , 191 F.3d 675 (6 th Cir. 1999).

VIII. Limitations On Damages

Remittitur/Additur

Both are available. §§ 20-10-101, 20-10-102.

DRAM Shop

The consumption of alcoholic beverages, rather than the sale, is the proximate cause of injuries inflicted by an intoxicated person, § 57-10-101, unless a jury of 12 determines beyond a reasonable doubt that the sale was the proximate cause of the injury or death, and that the sale was to a person known to be under age or obviously intoxicated. § 57-10-102.

Health Care Industry/ Providers

None.

Economic Loss Doctrine Adopted

Yes, in product liability cases. *Ritter v. Custom Chemicides*, 912 S.W.2d 128 (Tenn. 1995).

IX. Joint And Several Liability

No. *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn., 1992) (rehearing denied); *see also* Uniform Contribution Among Tortfeasors Act, §§ 29-11-101 to 29-11-106.

X. Consumer Fraud Act

Adopted

§§ 47-18-101 to 47-18-125.

Texas

I. Wrongful Death

Statute¹	Tex. Civ. Prac. & Rem. Code Ann. §§ 71.001 to 71.051.
Empowered Plaintiffs	<p>§ 71.004.²</p> <p>First Priority - Spouse, children or parents.</p> <p>Second Priority - If no relative took action within 3 months of death of individual, executor or administrator shall initiate and prosecute such an action unless all of the individuals in first priority request that he not do so.</p>
Beneficiaries	§ 71.004 - spouse, children or parents.
Damages	<p>Compensatory, § 71.010, and punitive, CP&R § 71.009 (when death is caused by the willful act or omission or gross negligence of the defendant).</p> <p>Recoverable Losses</p> <ol style="list-style-type: none"> Statute - Jury may award damages in an amount proportionate to the injury. § 71.010. Common Law - Measure of damages for loss of pecuniary benefit includes: for adults, pecuniary losses less expenses; and for children, the amount that a deceased parent would have reasonably contributed to their children's nurture, care, education, and moral and mental training, <i>Murray v. Templeton</i>, 576 S.W.2d 138 (Tx. Civ. App. 1978).
Survival of Other Causes of Action	Yes. § 71.021.

II. Statutes Of Limitations

Personal Injury	2 years. § 16.003.
Wrongful Death	2 years. § 16.003.
Property Damage	2 years. § 16.003.
Contracts (Generally)	Other Contracts - 4 years, § 16.051; parties may reduce to not less than 2 years. § 16.070.
U.C.C. Breach Of Contract Of Sale/Warranty	4 years; parties may reduce to not less than 1 year. Tex. Bus. & Com. Code Ann. § 2.725.

II. Statutes Of Limitations

Products Liability

15 years from date of sale or useful life as represented by the manufacturer or seller, whichever is longer. § 16.012.

Deceptive Trade Practices Act (DTPA)

Within 2 years of deceptive act or 2 years after consumer discovered or should have discovered deceptive act. The period may be extended for 180 days if plaintiff proves that failure to timely commence the action was caused by the defendant(s) knowingly engaging in conduct designed to induce plaintiff to refrain from or postpone commencing the action. Tex. Bus. & Com. Code Ann. § 17.565. (Warranty claims may be brought under the DTPA.).

III. Conflicts Rule

Torts

Most significant relationship test, as set forth in the Restatement (Second) of Conflicts. *Thomas v. N.A. Chase Manhattan Bank*, 994 F.2d 236, remanded after appeal, 1 F.3d 320 (5th Cir. 1993).

Contracts

Most significant relationship test, as set forth in the Restatement (Second) of Conflicts. *Henry Schein v. Stromboe*, 102 S.W.3d 675, 696 (Tex. 2002).

IV. Contributory/Comparative Negligence

Comparative Negligence

Barred if plaintiff's negligence is greater than 50%. § 33.001. Damages are diminished in proportion to plaintiff's fault. § 33.012.

V. Contribution And Indemnity

Contribution

Available, § 33.015, but tortfeasor must have paid more than his pro rata share, in which case he or she has a right to contribution for the overpayment against each other liable defendant to the extent that the other liable defendant has not paid the percentage of the damages found by the trier of fact equal to that other defendant's percentage of responsibility.

Indemnity

Contract - Yes, so long as intent to indemnify is expressed in specific terms. *Hardy v. Gulf Oil Corp.*, 949 F.2d 826 (5th Cir. 1992).

Common law among joint tortfeasors - No, unless products liability action, to protect an innocent retailer in chain of distribution, or negligence action to protect party who is purely vicariously liable. *Hardy v. Gulf Oil Corp.*, 949 F.2d 826 (5th Cir. 1992).

V. Contribution And Indemnity

Indemnity

Express Negligence Doctrine

- a. Provides that parties seeking to indemnify the indemnitee from the consequences of its own negligence must express that intent in specific terms and must be stated within the four corners of the contract. *Ethyl Corp. v. Daniel Constr. Co.*, 725 S.W.2d, 707 (Tex. 1987).
- b. The language of an indemnity agreement must be very specific in its terms. Indemnity agreements which do not contain the word “negligence” are unenforceable. *Adams Resources Exploration Corp. v. Resource Drilling, Inc.*, 761 S.W.2d 63 (Tex. App. 1988).
- c. If an agreement is ambiguous as to indemnity, the contract will be construed against indemnification. *Monsanto Co. v. Owens-Corning Fiberglass Corp.*, 764 S.W.2d 293 (Tex. App. 1988).

Products Liability

A manufacturer must indemnify and hold harmless a seller against loss arising out of a products action, except for loss caused by seller’s negligence, intentional misconduct or other act or omission. § 82.002.

VI. Punitive Damages

Limitation

They may not exceed the greater of either \$200,000 or two times the amount of economic damages, plus an amount equal to any non-economic damages found by the jury, not to exceed \$750,000. § 41.008

NOTE - this limitation does not apply if the damages are based on knowing and intentional conduct described as a felony in the sections of the Penal Code listed in § 41.008.

Standard of Proof

Claimant must show by clear and convincing evidence that the injury results from fraud, malice or gross negligence. § 41.003.

Wrongful Death

Yes, when death is caused by defendant’s willful act, omission, or gross negligence. § 71.009

Personal Injury

Yes. § 41.003. Does not apply to the DTPA § 41.002(d).

Treble damage are recoverable under DTPA. *Gulf Ins. Co. v. Burns Motors*, 22 S.W.3d 417 (Tex. 2000) (to recover treble damages court must find that conduct was committed knowingly).

Covered By Insurance

Directly assessed – Yes, except when arising from intentional wrong. *Fairfield Ins. Co. v. Stephens Martin Paving, L.P.*, 246 S.W.3d 653 (Tex. 2008); *Ridgway v. Gulf Life Ins. Co.*, 578 F.2d 1026 (5th Cir. 1978).

Vicariously assessed – Yes. *American Home Assur. Co. v. Safeway Steel Prods. Co.*, 743 S.W.2d 693 (Tex. Ct. App. 1987).

VI. Punitive Damages

Amount Payable to the State None.

VII. Products Liability Law

Strict Tort Liability Applicable to manufacturer. § 82.001.
 Manufacturer must indemnify seller except for loss attributable to seller's conduct. § 82.002.

Affirmative Defense Inherently unsafe product. § 82.004.

Warranties Determined on a case-by-case basis. Tex. Bus. & Com. Code Ann. § 2.318.

VIII. Limitations On Award Of Compensatory Damages

Local Government \$100,000 cap per person, \$300,000 cap per occurrence, and \$100,000 cap for property damage. § 101.023(b).

Municipality \$250,000 cap per person, \$500,000 cap per occurrence, and \$100,000 cap for property damage. § 101.023(c).

State \$250,000 cap per person, \$500,00 cap per occurrence, and \$100,000 cap for property damage. § 101.23(a).

Collateral Source Rule The collateral source rule is not codified in the Texas Code but is recognized by Texas case law. *Lee v. Lee*, 47 S.W.3d 767 (Tex. App. 2001).

DRAM Shop No limitations. Tex. Alco. Bev. Code Ann. §§ 2.01 to 2.03.

Health Care Industry/ Providers LIMITATION ON NON-ECONOMIC DAMAGES - \$250,000 cap per person for judgment against a health care provider or physician (other than a health care institution) or a single health care institution or \$500,000 cap person for judgment against multiple health care institutions. § 74.301.
 EMERGENCY SERVICE ORGANIZATION - \$100,000 cap per person, \$300,000 cap per occurrence, and \$100,000 cap for property damage. § 101.023(d).

VIII. Limitations On Award Of Compensatory Damages

Health Care Industry/ Providers

- a. NOTE - an emergency medical services provider qualifies as an emergency service organization so long as it is operated by its members and is exempt from state taxes by virtue of being listed as an exempt organization under §§ 151.310 or 11.083. § 101.001.

VOLUNTEER HEALTH CARE PROVIDER AT CHARITABLE ORGANIZATION - immune from civil liability so long as the volunteer commits the act or omission in the course of providing health care services to the patient; the services provided are within the scope of the license of the volunteer; and before the volunteer provides such health care services, the patient or patient's representative signs a written statement acknowledging that the volunteer is performing health care services without the expectation of compensation and that there is a limitation on recovery of damages in exchange for receiving the health care services. § 84.004(c).

Charitable Immunity

Charitable Immunity and Liability Act of 1987. §§ 84.001 to 84.008.

Liability of employee of non-hospital charity is limited to money damages of \$500,000 per person, \$1,000,000 per occurrence and \$100,000 for injury or destruction to property. § 84.005.

Charitable organization liability limited to money damages of \$500,000 per person, \$1,000,000 per occurrence and \$100,000 for injury or destruction to property. § 84.006.

Volunteers of charitable organizations are immune from civil liability so long as if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within the organization. § 84.004.

- a. LIMITATION - this immunity does not apply where an injury is caused by act or omission arising from the use of any motor driven equipment, including an airplane, to the extent insurance is required by § 601. § 84.004.
-

Economic Loss Doctrine

Not adopted by statute but recognized by case law. *Indelco, Inc. v. Hanson Indus. N. America--Grove Worldwide*, 967 S.W.2d 931, 932 (Tex. App. 1998).

IX. Joint And Several Liability

Limited

§ 33.013(b). Defendant will only be joint and severally liable for injury to the plaintiff if:

The percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or

The defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct described in certain provisions of the Texas Penal Code, and in so doing proximately caused the damages legally recoverable by the claimant.

X. Consumer Fraud Act

Adopted

Deceptive Trade Practices Act. Tex. Bus. & Com. Code Ann. §§ 17.01 to 17.885.

Utah

I. Wrongful Death

Statutes¹	General, Utah Code Ann. § 78B-3-106. Death of Child, suit by parent or guardian, § 78B-3-102.
Empowered Plaintiffs	General - Personal Representative, heirs, or guardian (if applicable). § 78B-3-106. Decedent's estate cannot bring and maintain a wrongful death action. Estate of Haro v. Haro, 887 P.2d 878 (Utah Ct. App. 1994). Death of Minor - Parent or guardian. § 78B-3-102.
Beneficiaries	Heirs. § 78B-3-106.
Damages	Compensatory (pecuniary and non-pecuniary) and punitive. § 78B-3-106; Berhrens v. Raleigh Hill Hosp. Inc., 675 P.2d 1179 (Utah 1989). Recoverable Losses <ul style="list-style-type: none"> a. Statute - Damages may be given as under all the circumstances of the case be just. § 78B-3-106. b. Case Law - Financial support furnished by deceased to his or her family, the loss of affection, counsel and advice, the loss of deceased's care and solicitude for the welfare of his or her family and the loss of the comfort and pleasure the family of the deceased would have received. Oxendine v. Overturf, 973 P.2d 417 (Utah 1999). Limits on Recovery: There can be no statutory limits on amounts recoverable in an action to recover damages for injuries resulting from wrongful death, except in cases where compensation for injuries resulting in death is provided for by law. Utah Const., Art. XVI, § 5.
Survival Of Other Causes Of Action	Yes, for special and general damages arising out of injury to decedent prior to death. § 78B-3-107.

II. Statutes Of Limitations

Personal Injury	4 years. § 78B-2-307; Jenkins v. Percival, 962 P.2d 796, 804 n.3 (Utah 1998).
Wrongful Death	2 years. § 78B-2-304.
Property Damage	3 years. § 78B-2-307.
Contracts (Generally)	Written - 6 years. § 78B-2-309. Oral - 4 years. § 78B-2-307.

II. Statutes Of Limitations

U.C.C. Breach Of Contract Of Sale/Warranty

4 years; parties cannot extend period and may reduce to not less than 1 year. § 70A-2-725.

Products Liability

2 years from actual or constructive discovery of both harm and cause. § 78B-6-706.

DRAM Shop Liability

2 years. § 32A-14a-102.

III. Conflicts Rules

Torts

The most significant relationship test for torts set forth in Restatement (Second) Conflict of Laws § 145 (1971). *Waddoups v. Amalgamated Sugar Co.*, 54 P.3d 1054 (Utah 2002).

Contracts

The most significant relationship test for contracts set forth in Restatement (Second) Conflict of Laws § 188 (1971). *American Nat'l Fire Ins. Co. v. Farmers Ins. Exch.*, 927 P.2d 186 (Utah 1996).

IV. Contributory/Comparative Negligence

Comparative Negligence

The fault of a person seeking recovery may not alone bar recovery by that person. § 78B-5-818.

Maximum amount for which a defendant may be liable is the percentage or proportion of damages equivalent to the percentage or proportion of fault attributed to the defendant. § 78B-5-820.

Joint And Several Liability

Several Liability Only. A person seeking recovery may recover from any defendant or group of defendants whose fault, combined with the fault of persons immune from suit and nonparties to whom fault is allocated, exceeds the fault of the person seeking recovery. § 78B-5-818.

No defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributed to that defendant. § 78B-5-818.

V. Contribution And Indemnity

Contribution

A defendant cannot seek contribution from any other person, except by statute or contract. §§ 78B-5-820 and 78B-5-823.

V. Contribution And Indemnity

Indemnity

Yes, as permitted by statute or contract. §78B-5-823.

Any clause in a sales contract or collateral document that requires a purchaser or end user of a product to indemnify, hold harmless, or defend a manufacturer of a product is contrary to public policy and void and unenforceable if a defect in the design or manufacturing of the product causes an injury or death. § 78B-6-707.

VI. Punitive Damages

Pleading

Punitive damages may be awarded only if compensatory or general damages are awarded and it is established by clear and convincing evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others. These limitations, standards of evidence, and standards of conduct do not apply to any claim for punitive damages arising out of the tortfeasor's operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs. § 78B-8-201.

Where the punitive damages are well below \$100,000, punitive damage awards beyond a 3 to 1 ratio to actual damages have seldom been upheld, and where the award is in excess of \$100,000, courts are inclined to overturn awards having ratios of less than 3 to 1. *Crookston v. Fire Ins. Exch.*, 817 P.2d 789 (Utah 1991).

A nine-to-one ratio between compensatory and punitive damages served Utah's legitimate goals of deterrence and retribution within the limits of due process. *Campbell v. State Farm Mut. Auto. Ins. Co.*, 2004 Utah LEXIS 62 (Utah Apr. 23, 2004) (unpublished opinion).

Drugs manufactured -- Punitive damages may not be awarded if a drug causing the claimant's harm: (a) received premarket approval or licensure by the Federal Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, or the Public Health Service Act; or (b) is generally recognized as safe and effective under conditions established by the Federal Food and Drug Administration and applicable regulations, including packaging and labeling regulations. This limitation on liability for punitive damages does not apply if it is shown by clear and convincing evidence that the drug manufacturer knowingly withheld or misrepresented information required to be submitted to the Federal Food and Drug Administration under its regulations, which information was material and relevant to the claimant's harm. § 78B-8-203.

Wrongful Death

Yes. *Berhrens v. Raleigh Hill Hosp. Inc.*, 675 P.2d 1179 (Utah 1989).

Personal Injury

Yes. § 78B-8-201.

VI. Punitive Damages

Covered By Insurance

Directly assessed - No. § 31A-20-101.
Vicariously assessed – No. § 31A-20-101.

Amount Payable To The State

In any judgment where punitive damages are awarded and paid, 50% of the amount of the punitive damages in excess of \$20,000 shall, after an allowable deduction for the payment of attorneys' fees and costs, be remitted to the state treasurer for deposit into the General Fund. § 78B-8-201.

VII. Products Liability Law

Strict Tort Liability

Adopted. Hooper v. General Motors Corp., 260 P.2d 549 (Utah 1953). No dollar amount shall be specified in complaint. § 78B-6-704.

Affirmative Defenses

Subsequent alteration or modification after sale. § 78B-6-705.
There is a rebuttable presumption that a product is free from any defect or defective condition where the alleged defect in the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were in conformity with government standards established for that industry which were in existence at the time the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were adopted. § 78B-6-703.

Warranties

Extended to third-persons reasonably expected to use product. § 70A-2-318.

VIII. Limitations On Award Of Compensatory Damages

Medical Malpractice

Caps on non-economic damages: (1) for a cause of action arising before July 1, 2001, \$250,000; (2) for a cause of action arising on or after July 1, 2001 and before July 1, 2002, the limitation is adjusted for inflation to \$400,000 (for a cause of action arising on or after July 1, 2002, and before May 15, 2010, the \$400,000 limitation shall be adjusted for inflation as provided in statute); (3) for a cause of action arising on or after May 15, 2010, \$450,000. § 78B-3-410. These caps do not apply to punitive damages. *Id.*

Periodic Payments - In any malpractice action against a health care provider the court shall, at the request of any party, order that future damages which equal or exceed \$100,000, less amounts payable for attorney's fees and other costs which are due at the time of judgment, shall be paid by periodic payments rather than by a lump sum payment. § 78B-3-414. Judgment debtor must post sufficient security.

VIII. Limitations On Award Of Compensatory Damages

Medical Malpractice

Collateral Source Rule - For medical malpractice, the court shall reduce the amount of the award by the total of all amounts paid to the plaintiff from all collateral sources which are available to him, however, no reduction may be made for collateral sources for which a subrogation right exists as provided in this section nor shall there be a reduction for any collateral payment not included in the award of damages. § 78B-3-405.

DRAM Shop Liability

Yes. Any and all injury and damages, except punitive damages. § 32B-15-201.

Liability does not apply to a general food store or other establishment licensed to sell beer at retail for off-premise consumption. § 32B-15-202.

Government immune. § 32B-15-203

Contribution permitted. § 32B-15-302.

Governmental Entity

\$583,900 for one person in any one occurrence. \$233,600 for property damage in any one occurrence. \$2,000,000 limit to the aggregate amount of individual awards that may be awarded in relation to a single occurrence. § 63G-7-604.

These limits of liability do not apply when a governmental entity has taken or damaged private property for public use without just compensation. *Id.*

Economic Loss Rule

Yes. *SME Indus., Inc. v. Thompson, Ventulett, Stainback & Assocs., Inc.*, 28 P.3d 669 (Utah 2001).

IX. Joint And Several Liability

No. Defendant only liable for his proportionate share of the fault. § 78B-5-818; *National Serv. Indus. v. B.W. Norton Mfg. Co.*, 937 P.2d 551 (Utah Ct. App. 1997).

X. Consumer Fraud Act

Not Adopted

Vermont

I. Wrongful Death

Statute¹	Vt. Stat. Ann. tit. 14, § 1491.
Empowered Plaintiffs	Personal Representative only. Title 14, § 1492.
Beneficiaries	Spouse and next of kin. Title 14, § 1492.
Damages	<p>Compensatory damages. Title 14, § 1492.</p> <p>Recoverable Losses. Title 14, § 1492</p> <p>a. Pecuniary losses.</p> <p>b. Minors, Pecuniary losses include the following:</p> <ol style="list-style-type: none"> i. Loss of love. ii. Companionship. iii. Destruction of parent-child relationship. No ceiling on recovery. Title 14, § 1492. <p>Mental Anguish for Loss of Child, Harnett v. Union Mutual Fire Insurance Co., 569 A.2d 486 (Vt. 1989).</p>
Survival Of Other Causes Of Action	Yes. Title 14, §§ 1451 to 1453.

II. Statutes Of Limitations

Personal Injury	3 years. Title 12, § 512.
Wrongful Death	2 years, but if tortfeasor is absent from state, action may be commenced 2 years from his return. Title 14, § 1492.
Property Damage	<p>Personal - 3 years. Title 12, § 512.</p> <p>Realty - 6 years. Title 12, § 511.</p>
Contracts (Generally)	6 years. Title 12, § 511.
U.C.C. Breach Of Contract Of Sale/Warranty	4 years; parties may reduce to not less than 1 year. Title 9A, § 2-725.
Products Liability	6 years. Title 12, § 511.

III. Conflicts Rule

Torts The most significant relationship to the occurrence and the parties. *Amiot v. Ames*, 693 A.2d 675 (Vt. 1997).

Tort In Flight Over State Vermont law applies. Title 5, § 405.

Contracts Most significant relationship test. *McKinnon v. F.H. Morgan & Co.*, 750 A.2d 1026 (Vt. 2000).

IV. Contributory/Comparative Negligence

Comparative Negligence Bar if plaintiff is more at fault than combined defendants, but if plaintiff's negligence is less than or equal to combined negligence of all the defendants, damages are diminished in proportion to the plaintiff's fault. Title 12, § 1036.

V. Contribution And Indemnity

Contribution No. *Murray v. J & B Int'l. Trucks Inc.*, 508 A.2d 1351 (Vt. 1986).

Indemnity

Active joint tortfeasors - No, unless explicit agreement to indemnify by which the parties create a legal relationship. *Foucher v. First Vermont Bank & Trust*, 821 F. Supp 916 (D. Vt. 1993).

Passive joint tortfeasor - Yes, may be indemnified by active tortfeasor. *Foucher v. First Vermont Bank & Trust*, 821 F. Supp. 916 (D. Vt. 1993).

VI. Punitive Damages

Wrongful Death No authority.

Personal Injury Yes. *Earl v. Tupper*, 45 Vt. 275 (1873).

Covered By Insurance Directly assessed - Yes. *American Prot. Ins. Co. v. McMahan*, 562 A.2d 462 (1989); *State v. Glen Falls Ins. Co.*, 404 A.2d 101 (Vt. 1979).

Vicariously assessed – No case on point.

Amount Payable to the State None.

VII. Products Liability Law

Strict Tort Liability	Yes. <i>Zaleskie v. Joyce</i> , 333 A.2d 110 (Vt. 1975).
Comparative Negligence	Modified comparative negligence. Title 12, § 1036.
Warranties	Extended to person reasonably expected to use product. Title 9A, § 2-318.

VIII. Limitations On Award Of Compensatory Damages

Government	Limitations set forth in Title 12, § 5601 Effective July 1, 2011 - \$500,000 cap per person, and \$2,000,000 cap per occurrence.
Municipal Corporations	Limited to amount of insurance coverage. Title 29, § 1404.
Collateral Source Rule	The “collateral source rule” allows a plaintiff full recovery against a tortfeasor even where he is otherwise compensated by a source independent of the tortfeasor. <i>Coty v. Ramsey Assocs.</i> , 546 A.2d 196 (Vt. 1988)
DRAM Shop Act	Title 7, § 501-502 (right of action against seller of intoxication liquor to minor or one who is intoxicated who later injures another).
Economic Loss Doctrine	Yes. <i>Springfield Hydroelectric Co. v. Copp</i> , 779 A.2d 67 (Vt. 2001).

IX. Joint And Several Liability

No, defendant only liable for his proportionate share. Title 12, § 1036.

X. Consumer Fraud Act

Adopted	Title 9, § 2451.
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Virginia

I. Wrongful Death

Statute¹

Va. Code Ann. § 8.01-50.

Empowered Plaintiffs

Generally, Personal Representative only. § 8.01-50.

Minor. § 8.01-50

- a. First Priority - Custodial parent; parent may waive right to qualify in favor of any other person designated by the parent.
- b. Second Priority - Personal Representative, if custodial parent fails to act within 30 days.

Beneficiaries

§ 8.01-53.

First Priority - Surviving spouse, children of the deceased and children of any deceased child of the deceased.

Second Priority - Parents, siblings, any dependent relative who is a member of the decedent's household and is also a member of the same household as the decedent. § 8.01-53.

Third Priority - If there are no children, then surviving spouse and parents. § 8.01-54.

Damages

Compensatory and punitive damages are available. § 8.01-52.

Recoverable Losses. § 8.01-52.

- a. Sorrow.
- b. Mental anguish.
- c. Solace which may include society, companionship, comfort, guidance, kindly offices and advice.
- d. Loss of income.
- e. Loss of services, protection, care, and assistance.
- f. Care, treatment and hospitalization incurred from injury resulting in death.
- g. Reasonable funeral expenses.

No ceiling on recovery. § 8.01-52.

Survival Of Other Causes Of Action

Yes, except no punitive damages may be awarded from the estate of a deceased tortfeasor, and an existing action for personal injury that eventually led to the claimant's death must be amended to a wrongful death action. § 8.01-25.

II. Statutes Of Limitations

Personal Injury

2 years. § 8.01-243.

II. Statutes Of Limitations

Wrongful Death 2 years. § 8.01-244.

Property Damage 5 years. § 8.01-243.

Contracts (Generally) Written - 5 years. § 8.01-246.
Unwritten, express or implied - 3 years. § 8.01-246.
(Proposed legislation would provide for inverse condemnation claim within 5 years. 2010 Va. House Bill 2500).

U.C.C. Breach Of Contract Of Sale/Warranty 4 years; parties may reduce to not less than 1 year. § 8.2-725.

Products Liability 2 years. § 8.01-243.

III. Conflicts Rule

Torts Lex loci. *Ryder Truck Rental, Inc. v. UTF Carriers, Inc.*, 790 F. Supp. 637 (W.D. Va. 1992).

Contracts The law of the state where the contract was entered into and executed will be applied. *Sheath v. Conair Corp.*, 35 Va. Cir. 127 (Va. Cir. Ct. 1994).

IV. Contributory/Comparative Negligence

Contributory Negligence *Artrip v. E.E. Berry Equipment Co.*, 397 S.E.2d 821 (Va. 1990).

V. Contribution And Indemnity

Contribution Yes, unless tort involves moral turpitude. § 8.01-34.

Indemnity Where a party is only a technical wrongdoer, that party, if ordered to pay damages on a tort claim, is entitled to indemnity from the actual wrongdoer. *McLaughlin v. Siegel*, 185 S.E. 873 (1936).

VI. Punitive Damages

Limitation	Virginia limits punitive damages to \$350,000. § 8.01-38.1. This cap is constitutional. Wackenhut Applied Technologies Center, Inc. v. Sygnatron Protection Systems, Inc., 979 F.2d 980 (4th Cir. 1992).
Wrongful Death	Yes. § 8.01-52.
Personal Injury	Yes. Huffman v. Love, 427 S.E.2d 357 (Va. 1993).
Covered By Insurance	Directly assessed - Yes, except when arising from intentional act. § 38.2-227. Vicariouly assessed – Virginia does not permit the vicarious imposition of punitive damages. Dalton v. Johnson, 129 S.E.2d 647 (Va. 1963).
Amount Payable To The State	None.

VII. Products Liability Law

Strict Liability	Yes as to manufacturer and seller liable if plaintiff is person who might reasonably be expected to consume goods. § 8.2-318.
Warranties	Extended to persons reasonably expected to use, consume or be affected by the goods. § 8.2-318.

VIII. Limitations On Damages

As to Commonwealth of Virginia. § 8.01-195.3.

Actions accruing prior to July 1, 1988 - \$25,000 cap or maximum insurance coverage, whichever is greater.

Actions accruing after July 1, 1988 - \$75,000 cap or maximum insurance coverage, whichever is greater.

Actions accruing after July 1, 1993 - \$100,000 cap or maximum insurance coverage, whichever is greater.

Actions accruing after July 1, 2011 - \$1,000,000 cap or maximum insurance coverage, whichever is greater.

VIII. Limitations On Damages

Health Care Industry/ Providers

For claims arising out of acts or omissions prior to August 1, 1999, the total amount recoverable for any injury to, or death of, a patient shall not exceed the limitation on recovery set forth in this statute as it was in effect when the act or acts occurred.

For acts of malpractice on or after August 1, 1999, the amount shall not exceed varying amounts \$1.5 - \$2.95 million, depending on the year in which the act occurred.

For any acts of malpractice on or after July 1, 2031, the amount shall not exceed \$3 Million. § 8.01-581.15.

Economic Loss Doctrine

Absent privity of contract, the economic loss doctrine precludes the recovery of damages based purely on economic loss. *Gerald M. Moore & Son, Inc. v. Drewry*, 467 S.E.2d 811 (Va. 1996).

IX. Joint And Several Liability

Yes. § 8.01-443.

X. Consumer Fraud Act

Not Adopted

Virginia's Consumer Protection Act outlaws fraudulent practices in connection with consumer protections. § 59.1-200.

Washington

I. Wrongful Death

Statutes¹	General. Wash. Rev. Code § 4.20.010. Minor. § 4.24.010.
Empowered Plaintiffs	Generally -- Personal Representative only. § 4.20.010. Death of Minor -- Parents only. § 4.24.010.
Beneficiaries	§ 4.20.020. a. First Priority – Wife, Husband, State Registered Domestic Partner, and children (including Stepchildren). b. Second Priority – Parents or siblings, who are dependent on deceased for support and who reside in the United States. Minor – Parents. § 4.24.010.
Damages	Compensatory only. § 4.20.020. Recoverable Losses a. General i. Statutes a. Pecuniary - damages that are just under all circumstances. § 4.20.020. b. Pain and suffering, anxiety, emotional distress, or humiliation personal to and suffered by deceased. §§ 4.20.060, 4.20.046. ii. Common Law - Pecuniary interest includes monetary contributions, loss of services such as love, affection, care companionship, society, and consortium. <i>Bowers v. Fibreboard Corp.</i> , 832 P.2d 523 (1992). b. Minor. § 4.24.010 i. Medical, hospital, and medication expenses. ii. Loss of services and support. iii. Loss of love and companionship. iv. Injury to parent-child relationship. No ceiling on recovery. §§ 4.20.020, 4.24.010.
Survival Of Other Causes Of Action	Yes. § 4.20.046.

II. Statutes Of Limitations

Personal Injury	3 years. § 4.16.080.
Wrongful Death	3 years. § 4.16.080.
Property Damage	3 years. § 4.16.080.
Contracts (Generally)	Written - 6 years. § 4.16.040. Oral - 3 years. § 4.16.080.
U.C.C. Breach of Contract of Sale/Warranty	4 years; parties may reduce to not less than 1 year, but may not extend beyond 4 years. § 62A.2-725.
Products Liability	General - 3 years from actual or constructive discovery of harm and its cause. § 7.72.060. Useful safe life - No liability after expiration of “useful safe life” (presumed to expire after 12 years), unless express warranty that product may be utilized safely for longer period, intentional misrepresentation by seller, or if harm caused by exposure. § 7.72.060.

III. Conflicts Rule

Tort	Most significant relationship (two-step test). <i>Haberman v. Washington Public Power Supply System</i> , 744 P.2d 1032 (1988).
Contract	Most significant relationship. Five contacts to be considered: (1) place of contracting; (2) place of negotiation; (3) place of performance; (4) location of subject matter of contract; and (5) domicile, residence, nationality, place of incorporation, and place of business of the parties. <i>Fluke Corp. v. Hartford Accident & Indem. Co.</i> , 34 P.3d 809 (Wash. 2001) (citing Restatement (Second) Conflict of Laws § 188).

IV. Contributory/Comparative Negligence

Pure Comparative Negligence	Damages are diminished in proportion to the plaintiff's fault. § 4.22.005.
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V. Contribution And Indemnity

Contribution Yes. § 4.22.040.

INDEMNITY No, provided that the right of indemnity between active and passive tortfeasors is not abolished in those cases to which a right of contribution by virtue of RCW 4.22.920(2) does not apply. § 4.22.040.

VI. Punitive Damages

Pleading Allowed only when expressly authorized by the Legislature by statute. *Winchester v. Stein*, 959 P.2d 1077 (Wash. 1998). See particular statutes for pleading requirements.

Wrongful Death No. *Shoemaker v. Pang*, No. 47242-9-I, 2001 Wash. App. LEXIS 362, 2001 WL 181061 (Wash. Ct. App. Feb. 26, 2001).

Personal Injury No. *Kommavongsa v. Haskell*, 67 P.3d 1068 (Wash. 2003).

Covered By Insurance Directly assessed – Yes. *Fluke Corp. v. Hartford Accident & Indem. Co.*, 34 P.3d 809 (Wash. 2001).
Vicariouly assessed – No case on point.

Amount Payable To The State None.

VII. Products Liability Law

Strict Tort Liability Yes. § 7.72.030.

Affirmative Defenses Industry custom; state of art; and compliance with governmental standards. §§ 7.72.030, 7.72.050.
Useful life. § 7.72.060
Limited liability of non-manufacturing seller. § 7.72.040.

Warranties Extended to family or household members, or guests, if it is reasonable to expect that such person may use, consume, or be affected by the goods and is injured in person by breach of warranty. § 62A.2-318.

VIII. Limitations On Damages

Governmental Entity	Liable for damages arising out of tortious conduct, whether acting in governmental or proprietary capacity, to same extent as if it were a private person or corporation. § 4.92.090.
Collateral Source Rule	Yes. <i>Cox v. Spangler</i> , 5 P.3d 1265 (Wash. 2000).
Health Care Industry/ Providers	No general limitation. § 7.70.010, et seq. Cause of action for damages arising from injury occurring as a result of health care provided after July 1, 1993 subject to mandatory mediation prior to trial. § 7.70.100.
Economic Loss Doctrine	Yes. <i>Berschauer/Phillips Constr. Co. v. Seattle Sch.</i> Dist. No. 1, 881 P.2d 986 (Wash. 1994).
Periodic Payments	Upon request, for all or a portion of future economic damages in excess of \$100,000. § 4.56.260.

IX. Joint And Several Liability

Generally	Severally liable only. § 4.22.070.
Exceptions	Per § 4.22.070, the following are both jointly and severally liable: (1) defendant acted in concert or as an agent; (2) plaintiff was not negligent; (3) hazardous waste actions; (4) tortious interference with contract or business relationship; (5) manufacture and marketing of fungible product in generic form. (Proposed legislation to remove second exception. 2011 Wash. Senate Bill No. 5605).

X. Consumer Fraud Act

Not Adopted	Unfair Business Practices - Consumer Protection. §§ 19.86.010 – 19.86.920.
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West Virginia

I. Wrongful Death

Statute¹	W. Va. Code § 55-7-5.
Empowered Plaintiffs	Personal Representative only. § 55-7-6(a).
Beneficiaries	<p>§ 55-7-6(b).</p> <p>First Priority - Spouse, children (including adopted children and stepchildren), siblings, parents, and any persons who were financially dependent on deceased at time of death.</p> <p>Second Priority - If no beneficiaries, then distribute according to the will of deceased.</p> <p>Third Priority - If no will, then distribute in a accord with the laws of descent.</p>
Damages	<p>Both compensatory, § 55-7-6, and punitive. <i>Bond v. City of Huntington</i>, 276 S.E.2d 539 (W. Va. 1981).</p> <p>Recoverable Losses. § 55-7-6(c)(1) (“The verdict of the jury shall include, but may not be limited to, damages for the following: (A) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent; (B) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection, care and assistance provided by the decedent; (C) expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death; and (D) reasonable funeral expenses.”).</p> <p>No ceiling on recovery. § 55-7-6.</p>
Survival Of Other Causes Of Action	Yes. § 55-7-8a.

II. Statutes Of Limitations

Personal Injury	2 years. § 55-2-12.
Wrongful Death	2 years. § 55-7-6.
Property Damage	2 years. § 55-2-12.
Contracts (Generally)	<p>Written - 10 years. § 55-2-6.</p> <p>Oral - 5 years. § 55-2-6.</p>

II. Statutes Of Limitations

U.C.C. Breach Of Contract Of Sale/Warranty 4 years; parties may reduce to not less than 1 year, but may not extend beyond 4 years. § 46-2-725.

Products Liability 2 years. § 55-2-12.

III. Conflicts Rule

Torts Lex Loci. Perkins v. Doe, 350 S.E.2d 711 (W. Va. 1986).

Contracts Lex Loci (the state where the contract was formed) unless another state has a more significant relationship to the transaction; or application of the law of the state in which the contract was formed results in a conflict of public policy. Cannelton Indus. v. Aetna Casualty & Sur. Co. of Am., 460 S.E.2d 1 (W. Va. 1994).

IV. Contributory/Comparative Negligence

Comparative Negligence If plaintiff's negligence is equal to or greater than 50%, plaintiff is barred from recovery. Bradley v. Appalachian Power Co., 256 S.E.2d 879 (W. Va. 1979).

V. Contribution And Indemnity

Contribution Yes. § 55-7-13.

Indemnity Contract – Yes. Perrine v. E.I. du Pont de Nemours and Co., 694 S.E.2d 815, 840-41 (W. Va. 2010).
Yes. Goldring v. Ashland Oil & Ref. Co., 59 F.R.D. 487 (N.D. W. Va. 1973).

VI. Punitive Damages

Government Entities No. § 29-12A-7.

Wrongful Death Yes. Bond v. City of Huntington, 276 S.E.2d 539 (W. Va. 1981).

Personal Injury Yes, for damages that arise from gross, reckless or wanton negligence but not for intentional acts. *Hensley v. Erie Ins. Co.*, 283 S.E.2d 227 (W. Va. 1981).

Covered By Insurance Directly assessed - Yes. *Hensley v. Erie Ins. Co.*, 283 S.E.2d 227 (W. Va. 1981); *see also* *Perry v. Melton*, 171 W. Va. 397 (W. Va. 1982).
Vicariously assessed – No case on point.

Amount Payable To The State None.

VII. Products Liability Law

Strict Tort Liability *Morningstar v. Black & Decker Mfr. Co.*, 253 S.E.2d 666 (W. Va. 1979).

Comparative Negligence Yes, but if plaintiff's negligence is equal to or greater than 50%, plaintiff is barred from recovery. *Bradley v. Appalachian Power Co.*, 256 S.E. 879 (W. Va. 1979).

Warranties Extended to family, household members, or guests, if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of warranty. § 46-2-318.

VIII. Limitations on Award of Compensatory Damages

Governmental Entities Immune from liability for punitive damages and \$500,000 cap on non-economic damages. § 29-12A-7.

Collateral Source Rule West Virginia recognizes the collateral source rule in all personal injury actions. *Ratlief v. Yokum*, 280 S.E.2d 584 (W. Va. 1981).

DRAM Shop Act Yes. *Anderson v. Moulder*, 394 S.E.2d 61 (W. Va. 1990).

Medical Malpractice \$1,000,000 cap on non-economic damages. § 55-7B-8.

VIII. Limitations on Award of Compensatory Damages

Economic Loss Doctrine	Yes, except where a “special relationship” between the plaintiff and defendant is shown. <i>White v. AAMG Const. Lending Center</i> , 700 S.E.2d 791, 798 (W.Va. 2010) (“In West Virginia, the general rule holds that when a lender breaches its contract with a borrower causing economic loss (but no property damage or personal injuries), the borrower’s primary remedy is to pursue a breach of contract action against the lender. However, where the lender and borrower have a “special relationship” that extends beyond the contract, the borrower may recover tort-type damages. In other words, our law allows a negligence claim for purely economic losses when then there is evidence of a ‘special relationship’ between the plaintiff and the defendant.”) (citation omitted).
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IX. Joint And Several Liability

General	Yes. <i>Kodym v. Frazier</i> , 412 S.E.2d 219 (W. Va. 1991).
Governmental Entities	Limited -- joint and several liability for all defendants whose negligence is greater than 25%, but only several liability for those defendants whose liability is less than 25%. §§ 29-12A-7, 29-12A-8.
Medical Malpractice	Limited -- joint and several liability for all defendants whose negligence is greater than 25%, but only several liability for those defendants whose liability is less than 25%. § 55-7B-9.

X. Consumer Fraud Act

Adopted	West Virginia Consumer Credit And Protection Act. §§ 46 A-1 to 46 A-8.
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Wisconsin

I. Wrongful Death

Statute¹	Wis. Stat. § 895.03.
Empowered Plaintiffs	Personal representative or by the person to whom the amount recovered belongs. § 895.04.
Beneficiaries	<p>§ 895.04</p> <p>First Priority - Minor children.</p> <p>Second Priority – Spouse or Domestic Partner.</p> <p>Third Priority - Lineal heirs, as determined by § 852.01, if no spouse.</p> <p>Fourth Priority - Siblings, if no lineal heirs.</p>
Damages	<p>Compensatory. § 895.04.</p> <p>Recoverable Losses. § 895.04.</p> <p>a. Pecuniary loss.</p> <p>b. Medical expenses.</p> <p>c. Funeral expenses, including cost of cemetery lot grave marker and care of lot.</p> <p>d. Loss of Society.</p> <p>e. Companionship.</p> <p>Ceiling on recovery - \$350,000 cap on adults and \$500,000 cap on deceased minors for loss of society and companionship, and funeral expenses. § 895.04.</p>
Survival Of Other Causes Of Action	Yes. § 895.01.

II. Statutes Of Limitations

Personal Injury	3 years. § 893.54.
Wrongful Death	3 years. § 893.54.
Property Damage	6 years. § 893.52.
Contracts (Generally)	6 years. § 893.43.

II. Statutes Of Limitations

U.C.C. Breach Of Contract Of Sale/Warranty 6 years; parties may reduce to not less than 1 year. § 402.725.

Products Liability 3 years. § 893.54.

III. Conflicts Rule

Torts General - Center of Gravity. § 893.07; *Guertin v. Harbour Assure. Co. of Bermuda, Ltd.*, 400 N.W.2d 56 (Wis. Ct. App. 1986), *aff'd*, 415 N.W.2d 831 (Wis. 1987).
Tort in flight over state - Wisconsin law applies. § 114.07.

Contracts Most significant relationship test. *American Std. Ins. Co. v. Cleveland*, 369 N.W.2d 168 (Wis. Ct. App. 1985).

IV. Contributory/Comparative Negligence

Comparative Negligence Damages are diminished in proportion to plaintiff's fault, unless plaintiff's negligence is greater than defendant's negligence, in which case recovery is barred. § 895.045.

V. Contribution And Indemnity

Contribution Yes. §§ 885.285, 893.92, *see also* §§ 113.01 to 113.11.

Indemnity Implied Indemnity - Yes, unless parties are joint tortfeasors. *Fuller v. Riedel*, 464 N.W.2d 97 (Wis. Ct. App. 1990).
Intentional Tortfeasor - Yes, if party seeking indemnity is only a negligent tortfeasor. *Fleming v. Threshermen's Mut. Ins. Co.*, 388 N.W.2d 908 (Wis. 1986).

VI. Punitive Damages

Pleading

Courts do not award punitive damages simply on the basis of the pleadings but require some form of inquiry beyond the pleadings. *Apex Elecs. Corp. v. Gee*, 577 N.W.2d 23 (Wis. 1998) (evidence submitted needs to show that defendant acted maliciously toward plaintiff or in an intentional disregard of plaintiff's rights, and due process concerns raised if punitive damage award inflicts a penalty or burden on tortfeasor that is disproportionate to wrongdoing or exceeds what is necessary to serve purposes of punitive damages -- to punish wrongdoer and to deter wrongdoer and others from engaging in similar conduct).

Apportionment/Remittitur

To determine whether a punitive damages award is excessive the Wisconsin courts consider: (1) the grievousness of the acts; (2) the degree of malicious intent; (3) whether the award bears a reasonable relationship to the award of compensatory damages; (4) the potential damage that might have been caused by the acts; (5) the ratio of the award to civil or criminal penalties that could be imposed for comparable misconduct, and (6) the wealth of the wrongdoer. *Trinity Evangelical Lutheran Church v. Tower Ins. Co.*, 661 N.W.2d 789 (Wis. 2003).

Wrongful Death

No. *Wangen v. Ford Motor Co.*, 294 N.W.2d 437 (Wis. 1980).

Personal Injury

Yes. *Brown v. Maxey*, 369 N.W.2d 677 (Wis. 1985).

Covered By Insurance

Directly assessed - Yes. *Brown v. Maxey*, 369 N.W.2d 677 (Wis. 1985).
Vicariouly assessed – No case on point.

Amount Payable To The State

None.

VII. Products Liability Law

Strict Tort Liability

Yes. *Dippel v. Sciano*, 155 N.W.2d 55 (Wis. 1967).

Comparative Negligence

Yes, each person found to be causally negligent whose percentage of negligence is less than 51% is limited to the percentage of the total causal negligence attributed to that person; a person found to be causally negligent whose percentage of negligence is 51% or more is jointly and severally liable for the damages allowed. § 895.045.

Warranties

Extended to family and household members or guests, if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of warranty. § 402.318.

VIII. Limitations On Damages

Governmental Entity	No limit.
Collateral Source Rule	Common law collateral source rule applies unless subrogation is present, in which case collateral source rule prohibition does not apply. <i>Lambert v. Wensch</i> , 399 N.W.2d 369 (Wis. 1987)
Health Care Industry/ Providers	Medical Malpractice - \$350,000 cap on non-economic damages, adjusted annually. §§ 655.017 and 893.55(4)(d).
Economic Loss Doctrine Adoption	Yes. <i>Digicorp, Inc. v. Ameritech Corp.</i> , 662 N.W.2d 652 (Wis. 2003).

IX. Joint And Several Liability

Yes, but only for proportionate fault. *McDonough v. Van Eerden*, 650 F. Supp. 78 (E.D. Wis. 1986).

X. Consumer Fraud Act

Adopted	§ 422.503.
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Wyoming

I. Wrongful Death

Statutes¹	Wyo. Stat. Ann. §§ 1-38-101 to 1-38-102.
Empowered Plaintiffs	Personal Representative only. § 1-38-102(a).
Beneficiaries	All persons permitted to take pursuant to Wyoming's intestacy statute, § 1-38-101 (which includes grandfather, grandmother, uncles, aunts and their descendents), and the distribution of proceeds are governed by § 1-38-102(c). <i>Butler v. Halstead</i> , 770 P.2d 698 (Wyo. 1989).
Damages	Compensatory (including damages for loss of probable future companionship, society and comfort), pecuniary and exemplary. § 1-38-102(c). No recovery for mental anguish. <i>Knowles v. Corkill</i> , 51 P.3d 859 (Wyo. 2002). No ceiling on recovery, Wyoming Const. art. 10, § 4.
Survival Of Other Causes Of Action	All actions survive except libel, slander, malicious prosecution, assault, assault and battery, nuisance, or against a justice of the peace for misconduct, which abate upon the death of either party. § 1-4-102. However, in actions for personal injury damages, if the person entitled thereto dies recovery is limited to damages for wrongful death. § 1-4-101.

II. Statutes Of Limitations

Personal Injury	4 years. § 1-3-105(a)(iv).
Wrongful Death	2 years. § 1-38-102(d).
Property Damage	4 years. § 1-3-105(a)(iv).
Contracts (Generally)	Written - 10 years. § 1-3-105(a)(i). Oral - 8 years. § 1-3-105(a)(ii).
U.C.C. Breach Of Contract Of Sale/Warranty	4 years; parties may reduce to not less than 1 year. § 34.1-2-725.
Products Liability	4 years. § 1-3-105(a)(iv); <i>Nowotny v. L & B Contract Indus.</i> , 933 P.2d 452 (Wyo. 1997).

III. Conflicts Rule

Torts Lex loci delecti. Archuleta v. Valencia, 871 P.2d 198 (Wyo. 1994).

Contracts Look at the following factors: (1) place of execution; (2) place of delivery; (3) place of performance; (4) place of negotiation; (5) place of breach; and (6) place where the subject matter of the contract is located. BHP Petroleum v. Texaco Exploration & Prod., 1 P.3d 1253 (Wyo. 2000).

IV. Contributory/Comparative Negligence

Comparative Negligence Contributory fault does not bar claimant if claimant's negligence is not more than 50% of the total fault of all actors; damages are diminished in proportion to fault. § 1-1-109.

V. Contribution And Indemnity

Contribution No. § 1-1-109 (each defendant only liable for his percentage of fault); Schneider Nat'l v. Holland Hitch Co., 843 P.2d 561 (Wyo. 1992).

Indemnity Yes. Schneider Nat. Inc. v. Holland Hitch Co., 843 P.2d 576 (Wyo. 1992).

VI. Punitive Damages

Government Entity No. § 1-39-118(d).

Wrongful Death Yes. § 1-38-102(c).

Personal Injury Yes. Town of Jackson v. Shaw, 569 P.2d 1246 (Wyo. 1977).

Covered By Insurance Directly assessed - Yes. Sinclair Oil Corp. v. Columbia Cas. Co., 682 P.2d 975 (Wyo. 1984).
Vicariouly assessed - Yes. Sinclair Oil Corp. v. Columbia Cas. Co., 682 P.2d 975 (Wyo. 1984).

Remittitur Yes, when amount of punitive damages shocks the court's collective judicial conscience. Farmers Ins. Exch. v. Shirley, 958 P.2d 1040 n.2 (Wyo. 1998); Cates v. Eddy, 669 P.2d 912 (Wyo. 1983).

VI. Punative Damages

Pleading

Punitive damages are to be awarded only for conduct involving some element of outrage, similar to that usually found in crime. *Weaver v. Mitchell*, 715 P.2d 1361 (Wyo. 1986) (citing Restatement (Second) of Torts § 908, cmt. b (1979)).

VII. Products Liability Law

Strict Tort Liability

Yes. *McLaughlin v. Michelin Tire Corp.*, 778 P.2d 59 (Wyo. 1989); *Caterpillar Tractor Co. v. Beck*, 593 P.2d 871 (Wyo. 1979).

Warranties

Extended to any person who may reasonably be expected to use, consume, or be affected by the goods and who is injured by breach of the warranty. § 34.1 2 318.

VIII. Limitations On Award Of Compensatory Damages

Health Care Worker Employed By State

\$1,000,000 cap per claimant and occurrence. § 1-39-110.

Government Entity

\$250,000 cap per person and \$500,000 cap per occurrence, but if insurance coverage is greater than cap, then greater limits apply to claims brought under federal law. § 1-39-118(a). If a governmental entity has insurance coverage either exceeding the limits of liability as stated in this section or covering liability which is not authorized by this act, the governmental entity's liability is extended to the coverage. § 1-39-118(b)(i). If, however, a governmental entity acquires coverage in an amount greater than the limits specified in § 1-39-118 for the purpose of protecting itself against potential losses under a federal law and if the purpose of the coverage is stated as a part of or by an amendment to the insurance policy, the increased limits shall be applicable only to claims brought under the federal law. § 1-39-118(b)(ii).

Collateral Source Rule

Yes. *Banks v. Crowner*, 694 P.2d 101 (Wyo. 1985).

DRAM Shop Statute

No legal liability for legal provision of alcohol. § 12-8-301; *Greenwalt v. Ram Restaurant Corp. of Wyoming*, 71 P.3d 717, 743 (Wyo. 2003) (Kite, J., dissenting) (“liquor vendors have complete immunity from civil liability unless they furnish alcohol in violation of Title 12. That is, liquor vendors are immune unless they furnish alcohol in a drive-in area to minors or intoxicated persons, otherwise furnish liquor to a minor, or violate some other provision of Title 12. * * * [L]iquor vendors who furnish alcohol to intoxicated persons inside a liquor establishment are immune from liability for injuries occurring after the intoxicated person leaves the establishment-no matter what the circumstances.”).

VIII. Limitations On Award Of Compensatory Damages

Economic Loss Doctrine

Yes. *Rissler & McMurry Co. v. Sheridan Area Water Supply*, 929 P.2d 1228, 1235 n.1 (Wyo. 1996).

New Trial

The court can order a new trial if the amount of the verdict is “improper or irregular.” *Smith v. Blair*, 521 P.2d 581 (Wyo. 1974).

IX. Joint And Several Liability

No, each defendant is only liable to the extent of its proportion of fault. § 1-1-109(e).

X. Consumer Fraud Act

Adopted

Wyoming Consumer Protection Act, § 40-12-101 et seq.

Notes

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