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GENERAL LIABILITY LAW

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**GENERAL LIABILITY LAW**

1.1  **NEGLIGENCE – GENERAL**

**Burden of Proof**

Preponderance (Greater Weight) of the Evidence.


**Comparative Negligence**

a) Claim for damages is barred when plaintiff’s negligence is greater than 50%.

b) Plaintiff can collect damages when he is 50% negligent or less.

c) Minors are still subject to apportionment under comparative negligence unless the defendant’s conduct is found to be willful, wanton or intentional. 23 O.S. §§ 13, 14.

**Joint and Several Liability**

Joint liability means that two or more parties may share the accountability or liability for a tort. Several liability means one party’s liability for a tort is separate and distinct from another person’s liability, so the plaintiff can sue one party without suing the other tortfeasors.

Joint and several liability occurs when liability may be apportioned either among two or more parties or to one party or some of the responsible parties. Therefore, if joint and several liability applies, each liable party is individually responsible for the entire obligation. However, the paying party may have a right of contribution and indemnity (which functions like reimbursement) from nonpaying parties.

For actions accruing* after November 1, 2009, if the plaintiff proves any defendant is more than 50% responsible for the plaintiff’s injuries, or the plaintiff proves any defendant acted willfully and wantonly or with reckless disregard and proximately caused the
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

plaintiff’s injuries, then joint and several liability applies and that tortfeasor can be liable for the entire sum. 23 O.S. § 15(B)(amended 2009). Otherwise, the liability for damages caused by two or more tortfeasors is several only and a joint tortfeasor is liable only for the amount of damages allocated to that tortfeasor. 23 O.S. § 15(A).

For actions accruing after November 1, 2011, in any civil action based on fault and not arising out of contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor. 23 O.S. § 15(A)(amended 2011).

* A case accrues when the underlying events are completed such that the plaintiff could first file a suit with a successful result. Big Four Foundry Co. v. Hagens, 172 P.2d 322, 1946 OK 201.

**Statutory Violations**

Negligence *Per Se* -

a) Injury must be caused by the violation of statute or ordinance.

b) Injury is the type intended to be prevented by statute or ordinance.

c) Injured party was within class meant to be protected. Busby v. Quail, 885 P.2d 1326, 1994 OK 63.

**Imputed Negligence**

a) Negligence can be imputed if an agency or joint enterprise relationship exists between the parties. Danner v. Chandler, 233 P.2d 953, 1994 OK 63.


**Vicarious Liability**

Employer is responsible in damages for torts committed by servant while acting in his/her scope of employment and within the scope of his/her authority. Jackson v. Remington Park, Inc., 874 P.2d 814, 1994 OK CIV APP 72.
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

In some cases, employer may be liable even where employee acts for his own benefit and purpose where victim is innocent party.

**Borrowed or Loaned Employee Defense**

The loaned servant doctrine is that one who is general servant to another may be loaned or hired by his master to another for some special service so as to become, as to that service, the servant of such third person. *Leach v. Hall*, 418 P. 2d 650 1966 OK 102.

For the borrowing employer to be liable, he must control the method and manner of the performance of the work by the borrowed employee. *Lawson v. National Steel Erectors Corp.*, 8 P.3d 171, 2000 OK CIV APP 69.

If the lending employer does not surrender full control over the loaned servant, he, as the original master, remains liable for the employee’s negligence while working for the borrowing employer. *Lawson*. However, the lending employer is not liable for the negligent acts of the borrowed employee if the lending employer gives up full control over that employee. *Leach*.

**1.2 IMMUNITIES**

**Intra-Family**


A child may maintain an action against a parent to be compensated up to, but not to exceed, the parent’s liability coverage. *Unah by and through Unah v. Martin*, 676 P.2d 1366, 1984 OK 2. However, the abrogation of parental immunity will not be extended to cases involving negligent supervision short of willful misconduct. *Sixkiller v. Summers*, 680 P.2d 360, 1984 OK 14.
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

**Spousal**


**Governmental – 51 O.S. § 152.1**

The State of Oklahoma follows the doctrine of sovereign immunity. All state employees are immune from liability for torts when acting within the scope of their employment, whether the action is governmental or proprietary.

**Volunteer for Charitable Org. or Not-for-Profit Corp. – 76 O.S. § 31**

Volunteer is generally immune from civil liability if acting in scope of official duties and in good faith. However, volunteer is not entitled to immunity if volunteer is grossly negligent or there is willful or wanton conduct.

Does not apply to the liability that any person may have which arises from the operation of a motor vehicle, watercraft or aircraft.

**1.3 Minors**

**Age of Majority**

18.

**Imputed Liability to Parents for Child’s Acts**

$2,500 limit by statute for criminal or delinquent acts by minors residing at home. 23 O.S. § 10.

Applies to property damage and bodily injury.

Child’s act of negligence alone will not apply against parents merely because of parent-child relationship. 10 O.S. § 20.


**Parents’ Negligence**

Parents’ negligence is not attributable to the child, but may be a basis for a contribution action later. *Strong v. Allen*, 768 P.2d 369, 1989 OK 17.
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

**Standard of Care**

Generally, a child under 7 years old is incapable of negligence. Some children under ten years old may be incapable of negligence, depending on the circumstances. *Martin v. Hartford Underwriters Ins. Co.*, 918 P.2d 49, 1996 OK 55.


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**1.4 CONTRIBUTION**

**Statutory Law**

12 O.S. § 832

**Requirements to Assert a Claim**

A tortfeasor can assert a claim of contribution when he has paid more than his pro rata share of the common liability. The total amount of recovery is limited to the amount paid by the tortfeasor in excess of his pro rata share. 12 O.S. § 832(B).

**Intentional/Willful or Wanton Torts**

A tortfeasor guilty of such conduct has no right to contribution. 12 O.S. § 832(C).

**Time Limitations**

Generally, 2 years. 12 O.S. § 95. Contribution claim may be brought before judgment even though right to contribution has not yet accrued. 12 O.S. § 832(A).

**Does Not Have to Be Brought In Initial Action**

The right of contribution may but does not have to be brought during the initial action. *Oklahoma Gas & Elec. v. District Court*, 784 P.2d 61, 1989 OK 158.

**Good Faith Settlements**

A tortfeasor who enters into a settlement is not entitled to contribution from joint tortfeasor whose liability was not extinguished by such settlement nor for any amount paid in a settlement which is in excess of what was reasonable. 12 O.S. § 832(D).

**Release**

A release does not discharge any other tortfeasor from liability unless the other tortfeasor is specifically named in the Release. Release discharges tortfeasor to whom it is given from all liability for
contribution to other tortfeasor.

**Right to Setoff**

A tortfeasor is allowed to setoff from verdict, the amount of previous settlements with other tortfeasors where claims were part of the same injury giving rise to tortfeasor’s liability. *Creech v. Roberts*, 908 F.2d 75 (1990). Liability of settling tortfeasor must be either admitted or established at trial. *Nichols, et al. v. Mid-Continent Pipe Line Co.*, 933 P.2d 272, 1996 OK 118.

**Effect on Immunities**


### 1.5 INDEMNIFICATION

**Contractual Indemnification**

Indemnification clauses are not favorites of the law, but they are generally enforceable when made at arm’s length without disparity of bargaining power and intent of parties is manifestly plain and unequivocal. *Colorado Mill & Elevator Co. v. Chicago*, 382 F.2d 834, 1967 10CIR 255.

**Anti-Indemnification Statute**

15 O.S. § 422. Indemnity against unlawful act is void.

**Recovery of Costs, Expenses and Attorney Fees**

Under Oklahoma law, an indemnitee may ordinarily recover its attorney’s fees incurred in defending against the indemnified liability, but only so far as those expenses were incurred in good faith and in the exercise of reasonable judgment. *U.S. v. Hardage*, 985 F.2d 1427, 1993 10CIR 168 (applying Oklahoma law).

Even where joint counsel clearly provides the most cost-effective use of legal resources . . . the lawyers still must establish the reasonableness of actual legal expenses in order to include those expenses within the scope of the indemnity. *Id.*

**Right to Implied Indemnity**

The right to indemnity is not limited to cases where there is an express agreement to that effect. It may
arise out of a contractual or a special relationship between the parties. The right rests upon liability due to the fault of another which has been imputed or constructively imposed upon the party seeking indemnification and not based on indemnitee’s own fault. The claim for indemnity may arise from an action either in strict liability in tort, or breach of implied warranty of fitness. Daugherty v. Farmers Coop., 790 P.2d 1118, 1989 OK CIV APP 89.

Implied indemnity can be imputed to the parties where there is a legal relationship making one party responsible for the acts of another party (e.g. employer/employee, principal/agent.)

1.6 PREMISES LIABILITY

Storekeepers have a duty to keep premises safe and warn of known hidden dangers.

There is no duty to warn invitees of open and obvious condition when it is readily observable.

“Naturally occurring” or “natural accumulation” of ice and snow creates no liability. “Natural” may not mean directed by gutters, eaves, downspouts, etc. Buck v. Del City Apartments, Inc., 431 P.2d 360, 1967 OK 81.

Negligence may exist if time lapse exists, or if owner should have known he/she was creating risk to safety.

This duty likely cannot be delegated to those who provide goods or services to the premises owner. Thomas v. E-Z Mart Stores, 102 P.3d 133, 2004 OK 82.

Assault of an Invitee on Insured's Premises by Third Party

Possessor of land is not required, at his peril, to keep premises absolutely safe, but when invitor has knowledge that invitee is in imminent danger, invitor must act reasonably to prevent injury. Taylor v.
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

_Hynson_, 856 P.2d 278, 1993 OK 93.

The possessor of land may know or have reason to know, from past experience, that there is a likelihood of conduct on the part of third persons in general which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual. If the place or character of his business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct on the part of third persons, either generally or at some particular time, he may be under a duty to take precautions against it, and to provide a reasonably sufficient number of servants to afford a reasonable protection. _Bray v. St. John Health Sys._, 187 P.3d 721, 2008 OK 51.

**Assault by Insured’s Employees**

Under Oklahoma law, liability of employer for negligent supervision or hiring of unfit employee is entirely separate and distinct from liability of employer under the doctrine of respondent superior. Tort of negligent hiring and retention is based on the principle that person conducting activity through employee is subject to liability for harm resulting from negligent conduct in employment of improper persons in work involving risk of harm to others. _Magnum Foods, Inc. v. Continental Cas. Co._, 36 F.3d 1491, 1994 10CIR 1091.

Employer would not be held liable for tortious acts of an employee arising from purely personal motives, even if employer allegedly knew employee was likely to act with personal, as opposed to business motives. _Jackson v. Remington Park, Inc._, 874 P.2d 814, 1994 OK CIV APP 72.

**1.7 DRAM SHOP**

**Statutory Citation**

37 O.S. § 537 makes it illegal to sell alcoholic beverages to minors and intoxicated persons.

It is illegal for a common vendor of on-premises consumption of intoxicating beverages to sell such
beverages to one the vendor knows or should know is intoxicated, terming the cause of action “the negligent sale of intoxicating beverages,” which is a breach of the duty created under 37 O.S. § 537. 


Social Hosts are not liable for providing alcoholic beverages to intoxicated persons. Battles v. Cough, 947 P.2d 600, 1997 OK CIV APP 62.

The same rule applies to the sale of 3.2% beer despite the fact that it is not defined as an alcoholic beverage by statute, and that the public offense in such a case is created by 37 O.S. § 241. Mansfield v. Circle K Corp., 877 P.2d 1130, 1994 OK 80.

The purpose of the statute is to protect the unsuspecting public, and vendors generally have no liability for injuries to an adult who voluntarily consumes alcohol to excess; serving such beverages and allowing patron to leave constitutes no breach of duty. Ohio Casualty Ins. Co. v. Todd, 813 P.2d 508, 1991 OK 54.

Specific Defenses

There are no specific defenses to a negligent sale of intoxicating beverages claim, although the usual negligence defenses of no proximate cause (for instance, if the injuries claimed were not foreseeable nor causally connected to the sale of the beverages) and no breach of duty (for instance, if the vendor did in fact use reasonable care in the sale of the beverages), do apply.

The old common law defense that voluntary consumption breaks the causal connection no longer excuses per se liability. The question is left for the jury, the rationale being that the plaintiff’s injuries
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Persons Entitled to Recover

Any party foreseeably subject to be injured as a consequence of the negligent sale of the intoxicating beverages may recover for such injuries as are proximately caused by the negligent sale. *Brigance v. Velvet Dove*, 725 P.2d 300, 1986 OK 41; *Ohio Casualty Ins. Co. v. Todd*, 813 P.2d 508, 1991 OK 54.

A vendor has no liability to an adult that voluntarily consumes alcoholic beverages to excess and sustains injury; in absence of injury to a third party, the act of selling such beverages does not constitute a breach of duty, as the purpose of the statute is to protect the unsuspecting public. *Ohio Casualty Ins. Co. v. Todd*, 813 P.2d 508, 1991 OK 54.

1.8 POLITICAL SUBDIVISIONS

Oklahoma Governmental Tort Claims Act. 51 O.S. § 151.

Damage Limits

Political subdivisions are liable up to $25,000 for any claim for property, $125,000 per claimant for any other loss arising out of an accident, $1,000,000 per occurrence, unless there is a higher amount of insurance coverage. 51 O.S. § 154(A).

Punitive Damages

No award shall include punitive or exemplary damage. 51 O.S. § 154(C).

Notice Requirement

Claimant must first file claim with State or subdivision within 1 year of the date the loss occurs. Otherwise, claim will be barred. 51 O.S. § 156(B).

Suit

A claim is deemed denied if the state or political
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

subdivision fails to approve the claim in its entirety within 90 days. 51 O.S. § 157(A). Tort actions against State or political subdivision must be filed within 180 days after denial of claim. 51 O.S. § 157(B).

Joint and Several Liability

Does not apply. State or political subdivision only liable for its percentage of total negligence. 51 O.S. § 154(G).

Federal Civil Rights Claims

May be available even though state remedy is foreclosed by Act. Note: Statute of Limitations and Statute of Repose do not apply to a governmental entity acting in a governmental capacity to vindicate or enforce a public right.

1.9 STATUTE OF LIMITATIONS

Negligence

2 years, 12 O.S. § 95(A)(3).

Intentional Torts

Assault, battery, malicious prosecution, false imprisonment, 1 year, 12 O.S. § 95(A)(4).

Fraud

2 years from date of discovery. 12 O.S. § 95(A)(3)

Medical Malpractice

2 years from date plaintiff knew or should have known, through the exercise of reasonable diligence, of the wrongful death, injury or condition complained of. Redwine v. Baptist Medical Center of Oklahoma, Inc., 679 P.2d 1293, 1983 OK 55; 76 O.S. § 18.

Professional Liability (Other)

2 years from date of injury or loss or 2 years from date knew or should have known of the negligence.

Products Liability

2 years, 12 O.S. § 95(A)(3), 5 years for breach of contract on sale, 12A O.S. § 2-725.

Defamation

1 year, 12 O.S. § 95(A)(4).

Slander

1 year, 12 O.S. § 95(A)(4).

Libel

1 year, 12 O.S. § 95(A)(4).
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

**Contracts**

- Oral - 3 years, 12 O.S. § 95(A)(2).
- Written - 5 years, 12 O.S. § 95(A)(1).

**Contribution**

Generally 2 years, 12 O.S. § 95(A)(3). Contribution claim may be brought before judgment even though right to contribution has not accrued yet. 12 O.S. § 832(A). However, “for purposes of triggering the statute of limitation, a contribution claim is not deemed to accrue until the judgment against the joint tortfeasors has been rendered.” *Oklahoma Gas & Elec. Co. v. District Court*, 784 P.2d 61, 1989 OK 158.

**Discrimination**

Handicap Discrimination under Oklahoma Law, 25 O.S. § 1901

If a charge of discrimination in employment on the basis of handicap is filed under 25 O.S. §§ 1101 – 1801, and is not resolved within 180 days, plaintiff may bring an action in state court in the county in which the unlawful employment practice is alleged to have been committed.

No action shall be maintainable more than two years after a timely filing of a charge with the Oklahoma Human Rights Commission.

Federal claims under the ADA - 90 days after EEOC’s right to sue letter.

**Construction Defect (Statute of Repose)**

Under 12 O.S. § 109, in an action claiming:

- a) deficiency in design, planning, supervision, or observation of construction or construction of an improvement to real property,
- b) injury to property, real or personal, arising out of the deficiency, or
- c) injury to a person or for wrongful death arising out of the deficiency, the suit must be brought within 10 years from date of substantial completion of building or improvement.

**Persons Under**

12 O.S. § 96. Generally, persons under any legal
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Disability

Disability are entitled to bring action within one (1) year after such disability is removed. Exceptions:

- An action for personal injury to a minor under the age of twelve (12) arising from medical malpractice must be brought by the minor's parent or guardian within seven (7) years of infliction of the injury, provided a minor twelve (12) years of age and older must bring such action within one (1) year after attaining majority, but in no event less than two (2) years from the date of infliction of the injury.

- An action for personal injury arising from medical malpractice to a person adjudged incompetent must be brought by the incompetent person's guardian within seven (7) years of infliction of the injury, provided an incompetent who has been adjudged competent must bring such action within one (1) year after the adjudication of such competency, but in no event less than two (2) years from the date of infliction of the injury.

Minors

Minor may bring action for injuries within one (1) year of arriving at majority, but in no event less than two (2) years from date of infliction of the injury. 12 O.S. § 96.

1.10 DAMAGES RECOVERABLE IN PERSONAL INJURY CLAIMS

Damages recoverable are:

- Medical Expenses
- Pain and Suffering
- Disability
- Disfigurement
- Aggravation of Pre-existing Condition
- Future Physical Impairment
- Loss of Consortium (includes Loss of Affection)
- Impaired Earning Capacity
- Emotional Distress - See below

Physical Injury Requirement

Negligent Act

No recovery for mental suffering which is not produced by, connected with or the result of physical suffering or injury to the person enduring the mental
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**Negligent** infliction of emotional distress is not an independent tort. To recover as an element of damages, a plaintiff must establish: (1) a duty on the part of the defendant to protect the plaintiff from injury; (2) a failure of the defendant to perform the duty; (3) a physical injury to the plaintiff resulting from the failure. *Kraszewski v. Baptist Medical*, 916 P.2d 241, 1996 OK 141.

**Intentional Acts**

Intentional infliction of emotional distress is an independent tort. For plaintiff to recover on his claim for intentional infliction of emotional distress, he must prove that: (1) defendant's actions in the setting in which they occurred were so extreme and outrageous as to go beyond all possible bounds of decency and would be considered atrocious and utterly intolerable in a civilized society; and (2) defendant intentionally or recklessly caused severe emotional distress to plaintiff beyond that which a reasonable person could be expected to endure.

Oklahoma does not recognize a bystander theory of recovery for negligent infliction of emotional distress.

To recover for intentional infliction of emotional distress resulting from an injury to another person: (1) plaintiff must be directly, physically involved in incident; (2) plaintiff must have been damaged from viewing injury to another; (3) family or other close personal relationship must exist between plaintiff and injured party. *Kraszewski v. Baptist Medical*, 916 P.2d 241, 1996 OK 141.

**Statutory Limits on Amount of Recovery**

No statutory limits on amount of recovery.

**1.11 WRONGFUL DEATH**

**Statutory Citations**

12 O.S. §§ 1053, 1054, 1055
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

**Elements of Claim**

When the death of one is caused by the wrongful act of another, the personal representative may maintain an action against the latter. The action must be commenced within two years.

**Beneficiaries of Action**

Surviving spouse of decedent, children of decedent, parents of decedent, and next of kin which includes “siblings of decent.”

**Statutory Limits on Amount of Recovery**

No statutory limits on amount of recovery.

**Specific Elements of Damage Recoverable**

12 O.S. § 1053 - Wrongful Death
1) Medical and Burial Expenses.
2) Loss of consortium and grief of surviving spouse, distributed to surviving spouse and children.
3) Mental pain and anguish suffered by decedent, distributed to surviving spouse.
4) Pecuniary loss to survivors which inures to surviving spouse and children, if any, or next of kin.
5) Grief and loss of companionship of children and parents of decedent, distributed to them according to their grief and loss of companionship.
6) Punitive damages may be recovered against the person proximately causing the wrongful death, distributed to the surviving spouse and children, if any, or next of kin.

12 O.S. § 1054 - Action for Death; Who May Sue.

When no personal representative has been appointed, the action provided in the subsection may be brought by the widow, or where there is no widow, by the next of kin of such deceased. “Next of kin” includes siblings. In Clark v. Jones, 658 P.2d 1147, 1983 OK 10, the Supreme Court, held that loss of love, affection and companionship, occasioned by death of unemancipated minor, do not constitute elements of damage that may be
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

recovered by surviving sibling in wrongful death.

12 O.S. § 1055 - Death of an Unemancipated, Unmarried, Minor Child
1) Medical and Burial Expenses.
2) Loss of anticipated services and support.
3) Loss of companionship and love of the child.
4) Destruction of the parent child relationship.
5) Loss of monies expended by parents or guardian in support, maintenance and education of such minor child in such amount as may be just.

1.12 SURVIVAL ACTIONS

Statutory Provisions: 12 O.S. §§ 1051 - 52

Causes of action which survive and may be brought notwithstanding the death of the person entitled or liable to the same:
1) those which survived at common law
2) mesne profits
3) an injury to the person
4) an injury to real or personal estate
5) any deceit or fraud

Causes of action for libel, slander or malicious prosecution do not survive the death of the plaintiff and abates on death of defendant.

Punitive Damages

Where defendant in a tort action dies after commencement of the action and before trial, his executors or administrators may not be held liable for exemplary damages. Morrise v. Barton, 190 P.2d 451, 1947 OK 260.

1.13 PUNITIVE DAMAGES

Statutory Citation

23 O.S. § 9.1 - Applies to actions for breach of obligation not arising from contract.

Three categories:
1) Defendant guilty of reckless disregard for rights of others or insurer recklessly disregarded its duty to deal fairly and act in good faith. Jury may award $100,000 or amount of actual damages (whichever is greater).
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2) Defendant or insurer acted intentionally, and with malice. Jury may award $500,000 or twice amount of actual damage or the increased financial benefit derived by the defendant or insurer as a direct result of the conduct causing the injury to the plaintiff and other persons or entities (whichever is greatest).

3) Defendant or insurer acted intentionally and with malice and the judge finds beyond a reasonable doubt that defendant or insurer acted intentionally and with malice and engaged in conduct life-threatening humans. Jury may award any amount.

**Burden of Proof**

Clear and convincing evidence.

**Insurability**


**Discovery**

Defendant’s financial information is discoverable pre-trial (the trial judge no longer has to make a prior determination that punitive damages are warranted, but judge does have to weigh the interests of both parties and the documents may be produced in judge’s chambers rather than made public record). *YWCA v. Melson*, 944 P.2d 304, 1997 OK 81.

### 1.14 ATTORNEY FEES

**Bodily Injuries**

Not recoverable generally for bodily injury claims. However, see “Offer of Judgment” below.

**Property Damage**

Recoverable by prevailing party in action for negligent or willful injury to property. 12 O.S. § 940(A).

To endeavor to prevent plaintiff from recovering attorney fees, defendant may make a formal offer of judgment under 12 O.S. § 940(B). If plaintiff recovers less than amount of offer at trial, no fees, court costs, or interest will be awarded to plaintiff. If plaintiff
recover a judgment for more than the offer, then plaintiff is entitled to attorney fees, court costs and interest, if defendant prevails at trial (total defendant's verdict), then defendant will be awarded attorney fees.

**Action Against Insurer**

Recoverable by the prevailing party in a first party action against insurer. Statute does not apply to uninsured motorist coverage. 36 O.S. § 3629. Statute provides that the prevailing party is the insurer in those cases where judgment does not exceed written offer of settlement. In all other judgments the insured shall be the prevailing party.

**Offer of Judgment**

12 O.S. § 1101.1.

a) For personal injury, wrongful death and certain civil rights cases where plaintiff demands in a pleading or in trial proceedings more than $100,000 or where defendant makes offer of judgment more than $100,000.

b) At any time prior to 10 days before trial, defendant may file with the court an offer of judgment, which may be either accepted or rejected by the plaintiff. The plaintiff may also file a counteroffer. If the defendant's final offer is rejected and the judgment awarded is less than the final offer, the defendant is entitled to recover reasonable litigation costs and attorney fees from the date of filing of the final offer. If plaintiff's counteroffer is rejected and judgment is for more than the plaintiff's counteroffer, then the plaintiff is entitled to recover reasonable litigation costs and attorney fees.

c) In other civil actions for recovery of money or property, there is no threshold limit.

### 1.15 INTEREST

**Postjudgment Interest Generally**

Postjudgment interest accrues from the earlier of (1) the date judgment is rendered as expressly stated in the judgment or (2) the date judgment is filed. 12 O.S. § 727.1(C).
Postjudgment Interest Costs and Attorney Fees

Awards of costs and attorney fees bear interest from the earlier of (1) the date the judgment or order is pronounced if expressly stated in the judgment or order or (2) the date the judgment or order is filed. 12 O.S. § 727.1(A)(2).

Postjudgment Interest Judgments Against State or Political Subdivision

A judgment against the state or political subdivision bears postjudgment interest. However, a judgment against the state or political subdivision is limited to $125,000 (pursuant to the Governmental Tort Claims Act) and the accrual of interest cannot cause the judgment to exceed that limit. 12 O.S. § 727.1(B).

Postjudgment Interest Rate

Interest rate shall be the prime rate, as listed in the first edition of the Wall Street Journal published for each calendar year and as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day following publication in January of each year, plus 2%. 12 O.S. § 727.1(I). Postjudgment interest rates are:

- 2010 5.25%
- 2011 5.25%

Prejudgment Interest Generally

Prejudgment interest accrues only on verdicts involving personal injury actions or actions for injuries to personal rights. Prejudgment interest does not accrue during the first two years after commencement of the suit. Prejudgment interest begins accruing 24 months after the date on which the action was filed. 12 O.S. § 727.1(E).

Prejudgment Interest Judgment Against State or Political Subdivision

On verdicts involving personal injury actions or actions for injuries to personal rights against the state or a political subdivision prejudgment interest accrues from the date the suit is commenced. As with postjudgment interest, the accrual of prejudgment interest cannot cause the judgment to exceed the statutory limit of $125,000 for judgments against the state or a political subdivision. 12 O.S. § 727.1(F).
Overview does not provide an authoritative or exhaustive guide to a particular fact situation. The following are only general statements of Oklahoma law.

**Prejudgment Interest Rate**

For actions filed after January 1, 2010, prejudgment interest accrues at a rate equal to the average United States Treasury Bill rate of the preceding calendar year as certified to the Administrative Director of the Courts by the State Treasurer on the first regular business day in January of each year. 12 O.S. § 727.1(1). Prejudgment interest rates are:

- 2010 14%
- 2011 13%

1.16 **LIENS**

**Attorney Lien**

An attorney is entitled to a lien upon his client's cause of action or counterclaim. The attorney lien shall attach to any verdict, report, decision, finding or judgment in the client's favor. 5 O.S. § 6.

**Hospital Lien**

Must be filed with County Clerk on the Mechanic's and Materialman's Lien Docket where hospital is located prior to the payment of any money to the claimant. Hospital must send notice of filing the lien to alleged liable party prior to payment, insurer, if known, the claimant and claimant's attorney. Action for payment of lien must be brought within one year after the hospital becomes aware of final judgment, settlement or compromise of the claim asserted. 42 O.S. § 44.

**Physician Lien**

Must be filed with the County Clerk on mechanic's and materialman's lien docket where the physician's primary office is located prior to the payment of any money to the claimant. The physician must send notice of filing the lien to allege liability party prior to payment, insurer, if known, the claimant and the claimant’s attorney. Action for payment of lien must be brought within one year after the hospital becomes aware of final judgment, settlement or compromise of the claim asserted. 42 O.S. § 46.