1. Minimum liability limits

Effective January 1, 2010, minimum liability coverage must include $15,000 for bodily injury or death to one person in any one accident; $30,000 for bodily injury or death to two or more persons in any one accident; and $25,000 for damage to property of others in any one accident. La. R.S. 32:900 and La. R.S. 32:861.

Failure to maintain compulsory liability insurance may render the owner of the vehicle who is involved in an automobile accident subject to a forfeiture provision known colloquially as the “No Pay No Play” provision. La. R.S. 32:866. This law states in pertinent part:

A.(1) There shall be no recovery for the first fifteen thousand dollars of bodily injury and no recovery for the first twenty-five thousand dollars of property damage based on any cause or right of action arising out of a motor vehicle accident, for such injury or damages occasioned by an owner or operator of a motor vehicle involved in such accident who fails to own or maintain compulsory motor vehicle liability security.

2. Negligence laws (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc?)

Louisiana is a pure comparative fault state. La. Civ. Code Art. 2323(A) (“In any action for damages…the degree or percentage of fault of all persons causing or contributing to the injury…shall be determined regardless of whether the person is a party to the action or a nonparty…[T]he amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death or loss.”)

The basis for the imposition of liability is Louisiana Civil Code Article 2315 which provides as follows: “Every act whatever of man that causes damage to another
obliges him by whose fault it happened to repair it.” In order to determine whether an individual actor is liable, courts apply the “duty/risk” analysis which requires a plaintiff to prove each of the following five elements:

1) the defendant had a duty to conform his conduct to a specific standard (the duty element); 2) the defendant’s conduct failed to conform to the appropriate standard (the breach element); 3) the defendant’s substandard conduct was a cause-in-fact of the plaintiff’s injuries (the cause-in-fact element); 4) the defendant’s substandard conduct was a legal cause of the plaintiff’s injuries (the scope of liability or scope of protection element); and 5) actual damages (the damages element).


To allocate fault amongst those found to be liable, courts apply the Watson factors. *Watson v. State Farm Fire and Cas. Ins. Co.*, 469 So.2d 967 (La. 1985). These factors include:

1) whether the conduct resulted from inadvertence or involved an awareness of the danger; 2) how great a risk was created by the conduct; 3) the significance of what was sought by the conduct; 4) the capacities of the actor, whether superior or inferior; and 5) any extenuating circumstances which might require the actor to proceed in haste without proper thought.

3. Bodily Injury Statute of Limitations

In civil law, the proper nomenclature is “prescription.” Generally, negligence actions are subject to a prescriptive period of one year. La. Civil Code Art. 3492. This prescriptive period applies to both personal injury actions and actions based on damage to movable and immovable property. This period begins to accrue on the day of injury or damage. *Id.* However, with respect to damage to immovable property, the one year prescriptive period begins to run on the day the owner had actual or constructive knowledge of the damage. La. Civil Code Art. 3493.

4. Property Damage Statute of Limitations

Same as 3 above.

5. Are punitive damages insurable in the jurisdiction?

Louisiana public policy does not preclude coverage for punitive damages. *Creech v. Aetna Casualty & Surety Co.*, 516 So.2d 1168 (La. App. 2 Cir. 1987), writ denied 519 So.2d 128 (La. 1988). Insurance contracts which contain language such as the obligation to pay “all sums” or “all sums which the party is legally responsible to pay” will likely be
construed to require payment of punitive damages, absent limiting language to the contrary. *Id.* at 1171-1172. For example, unless the policy states to the contrary, an insurance carrier may be obligated to pay punitive damages as a result of a drunken driving accident.

6. **Is there an intrafamily immunity defense?**

Spouses may not sue one another except for causes of action based on contract or causes of action relating to matrimonial regimes, the termination thereof, or child support or custody. *La. R.S.* 9:291. However, this spousal immunity does not prevent a spouse from suing an insurer under Louisiana’s direct action statute. *Id.* at cmt. (b).

Effective January 1, 2016, unemancipated minors cannot sue their parents and parents may not sue their minor children. *La. R.S.* 9:571. The direct action statute, *La. R.S.* 22:1269(B)(1)(d), permits the parent or the child who is injured by the other in an offense or quasi-offense by the other to sue the insurer directly.

7. **Is there a bodily injury damage threshold? If so, what is it?**

There is no bodily/serious injury threshold in Louisiana.

8. **What are the quick rules on Subrogation MP/PIP?**

An insurer that makes payment to its insured may enforce a conventional subrogation agreement contained in its policy; however, subrogation cannot injure the insured, and if he has been paid only in part for his damages, he may exercise his right for what remains due in preference to his insurer. *La. C.C. Art.* 1826 (former Art. 2162), *Southern Farm Bureau Cas. Ins. Co. v. Sonnier*, 406 So.2d 178 (*La.* 1981), *Legendre v. Rodrigue*, 358 So.2d 665 (*La.App. 1st Cir. 1978* writ denied 359 So.2d 1293 (*La.* 1978).

9. **Are there no fault laws in the jurisdiction?**

Louisiana does not recognize “no fault;” however, it does recognize liability without regard to fault, called strict or absolute liability. The imposition of strict or absolute liability is only by statute. For example, parents may be strictly liable for the acts of their non-discerning child, a dog owner may be strictly liable for damages caused by their dog, and a landowner may be absolutely liable for damage caused by blasting or pile driving. *La. Civil Code Arts.* 2318, 2321, & 667 (respectively).

10. **Is the customer’s insurance primary?**

In the context of a loaner or replacement vehicle, the customer’s insurance is primary. *La. R.S.* 22:1291.
11. Is there a seat belt defense?

Failure to wear a seatbelt cannot be used to establish comparative fault or to mitigate damages. La. R.S. 32:295.1(E).

12. Is there a last clear chance defense?

As Louisiana is a pure comparative fault jurisdiction, the concept of last clear chance is relevant when allocating fault but is not a total bar to recovery. Duncan v. Kan. City S. Ry., 773 So.2d 670, 681 (La. 2000).

13. Is there an assumption of risk defense?

Consistent with Louisiana’s pure comparative fault negligence scheme, implied assumption of risk and the awareness of danger is relevant to the allocation of fault amongst parties but not a complete bar to recovery. Murray v. Ramada Inns, Inc., 521 So.2d 1123, 1134 (La. 1988). Nevertheless, if a danger is obvious to all, the condition may not be unreasonably dangerous and no duty may be owed to the plaintiff. Pitre v. Louisiana Tech Univ., 673 So.2d 585, 591 (La. 1996).

14. Is there a UM requirement?

There is no requirement for UM insurance; however, an insured will automatically be provided UM coverage by the force of law in an amount equal to the liability limits unless the insured properly rejects UM coverage or selects lower limits. Rejection of UM and/or selection of lower limits require strict adherence to the relevant statutory requirements. La. R.S. 22:1295. It must be made only in a form provided by the commissioner of insurance and signed by the insured. La. R.S. § 22:1295(1)(a)(ii).

15. Is there a physical contact requirement?

Louisiana allows recovery for emotional distress resulting from property damage, absent physical injury, only in the following four categories of cases:

(1) when the property was damaged by an intentional or illegal act; (2) when the property was damaged by acts giving rise to strict or absolute liability; (3) when the property was damaged by activities amounting to a continuous nuisance; and (4) under circumstances where the owner was present or nearby at the time, or shortly after, the damage occurred and suffered psychic trauma in the nature of or similar to a physical injury as a direct result of the incident itself. Williams v. City of Baton Rouge, 731 So.2d 240 (La. 4/13/99). See also Maraist, Louisiana Tort Law § 7.02[6] (2d ed. 2004).
These claims are distinguishable, however, from those causes of action based on witnessing harm to another by a person uninvolved in an incident (“bystander liability”). La. Civ. Code Art. 2315.6.

16. Is there a mandatory ADR requirement?

Louisiana does not have a mandatory ADR requirement; however, either party may request court ordered mediation. Rule 11.1 of the Uniform Rules states that “[t]he district courts of Louisiana encourage and support the use of alternative dispute resolution to promote resolution of disputes and refer all counsel to the Louisiana Mediation Act, La. R.S. 9:4101, et seq. Additionally, the district courts of Louisiana encourage and support the use of special masters in appropriate circumstances.”

17. Are agreements reached at mediation enforceable?

Louisiana law defines a compromise as “an agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent in the manner which they agree on, and which every one of them prefers to the hope of gaining, balanced by the danger of losing.” In order to be enforceable, the agreement must be either reduced to writing or recited in open court and capable of being transcribed from the record of the proceeding. La. Civil Code Art. 3071.

18. What is the standard of review for a new trial?

Louisiana’s peremptory (mandatory) grounds for a new trial are: 1) a verdict clearly contrary to the law or evidence; 2) newly discovered, material evidence that could not have been discovered with due diligence; and 3) jury bribery or other impartiality such that justice has not been done. La. Code of Civil Proc. Art. 1972. Alternatively, a motion for a new trial may be granted when there exist good grounds therefor. La. Code Civil Proc. Art. 1973. Pursuant to vast discretionary authority, a trial judge may grant a new trial when a judgment would result in a “miscarriage of justice” or for other grounds provided an articulable reason is provided by the trial court. Horton v. Mayeaux, 931 So.2d 338, 343-344 (La. 2006). On appeal, the applicable standard of review in ruling on a motion for new trial is whether the trial court abused its discretion. Martin v. Heritage Manor South Nursing Home, 2000-1023 (La. 4/3/01), 784 So.2d 627.

19. Is pre-judgment interest collectable? If so, at what rate?

La. Code of Civil Proc. Art. 1921 provides: “the court shall award interest in the judgment as prayed for or provided by law.” Interest shall attach from date of judicial demand, on all judgments, sounding in damages, "ex delicto.” La. R.S. § 13:4203. Thus, legal interest accrues from the date of judicial demand until paid. Johnson v. Hamilton Med. Group, 921 So.2d 1183, 1189 (La. App. 3 Cir. 2006). Applicable interest rates are set each year. A judicial interest calculator is available at https://www.lsba.org/newintcalc.htm
20. Is post judgment interest collectable? If so, at what rate?

See 19 above.

21. Is there a workers compensation exclusive remedy defense?

When an employee suffers an injury during the course and scope of his employment, the exclusive remedy of the employee lies in the workmen's compensation law. La. R.S. 23:1032. This act, however, does not apply to intentional torts.

22. Is the doctrine of joint and several liability applicable?

Louisiana Civil Code Article 2324 states that “[h]e who conspires with another person to commit an intentional or willful act is answerable in solido with that person for the damage caused; otherwise, liability for damages caused by two or more persons is a joint and divisible obligation. A joint tortfeasor is not liable for more than his degree of fault. La. Civ. Code Art. 2323-2324.

23. Is there a self critical analysis privilege?

Louisiana does not recognize the self critical analysis privilege; however, it generally follows the federal evidentiary rules regarding subsequent remedial measures.

24. Is accident reconstruction data admissible?

Generally, accident reconstruction data may be admissible, but courts limit evidence regarding the force of impact. Arceneaux v. Howard, 633 So.2d 207, 210 (La. App. 1 Cir. 1993), writ denied, 634 So.2d 833 (La. 1994).

EDR or blackbox data is evaluated under the Daubert standard. Laborde v. Shelter Mut. Ins. Co., 11-00956 (La.App. 3 Cir. 10/27/11) 80 So. 3d rev’d 82 So.3d 1237 (2012).

25. What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?

Louisiana uses a “benefit of the bargain” approach to the collateral source rule, meaning evidence of medical expense write-offs is generally inadmissible to reduce a plaintiff’s recovery if the plaintiff has paid some consideration for the benefit of the written off amount. Bozeman v. State, 879 So.2d 692, 705-706 (La. 2004); Griffin v. La. Sheriff’s Auto Risk Ass’n, 802 So.2d 691, 715 (La. App. 1 Cir. 2001), writ denied, 801 So.2d 376 (La. 2001). Thus, the entire amount of medical bills is recoverable and contractual write-offs obtained by an insurance company are not admissible to reduce the plaintiff’s recovery. Conversely, Medicaid write-offs are admissible to limit recovery as participants do not provide consideration for any benefits. Bozeman, supra at 705-706. Also, write-offs or discounts negotiated by an attorney are admissible to limit a plaintiff’s

26. What is the jurisdiction’s rule on offers of judgment?

La. Civil Code Art. 970 governs offers of judgment. Generally, this offer must be in writing and served on the opposing party more than 30 days prior to trial. If the final judgment awarded to the plaintiff is at least 25% less than the offer made by the defendant or if the judgment obtained against the defendant is at least 25% greater than the amount of the offer made by the plaintiff, the offeree must pay the offeror’s costs, exclusive of attorney fees, incurred after the offer was made.

27. What is the jurisdiction’s rule on spoliation of evidence?

Louisiana applies the “adverse inference rule.” Pursuant to this rule, “when a litigant destroys, conceals, or fails to produce evidence within his or her control, it gives rise to an adverse presumption that had the evidence been produced, it would have been detrimental to the litigants case.” Allstate Ins. Co. v. Ford Motor Co., 772 So.2d 339, 342-343 (La. App. 3 Cir. 2000). Nevertheless, this inference is not appropriate when a reasonable explanation exists for failure to produce the evidence. Id.

28. Are there damage caps in place?

Generally, there are no personal injury damages caps. However, there is a $500,000 cap on general damages against the state or its political subdivisions pursuant to the Louisiana “Governmental Claims Act.” La. R.S. 13:5106(B)(1). Similarly, medical malpractice damages against a qualified health care provider are capped at $500,000 per patient, excluding future medicals. La. R.S. 40:1299.43.

29. Is CSA 2010 data admissible?

There are no reported cases addressing the issue of the admissibility of CSA 2010 safety data.

30. Briefly, does the jurisdiction have any unique rules on electronic discovery?

In 2007, the Louisiana legislature amended articles 1424, 1425, 1460, 1461, and 1462 of the Code of Civil Procedure (dealing with the general discovery) to clarify its application to discovery of electronically stored information. Later, in 2009, further revisions went into effect concerning electronically stored information. These rules pertain to subpoena duces tecum; the loss of information as a result of routine, good faith operation of an electronic information system; and the relevance of electronically stored information to a scheduling conference. La. C.C.P. Art. 1354, 1471(B), & 1551(6) (respectively). Many of these rules are modeled after the Federal Rules of Civil Procedure.
31. Is the sudden emergency doctrine recognized?

The sudden emergency doctrine is available to a person who finds himself in a position of imminent peril and does not have sufficient time to consider and weigh all of the best means available to avoid the impending danger. *Hickman v. So. Pac. Trans. Co.*, 262 So.2d 385 (1972). The doctrine is not limited to situations where the person claiming the defense is in immediate peril; rather, it is the unanticipated hazard which is the foundation for invoking the doctrine. *Armstrong v. Firemen's Fund Ins. Co.*, 558 So.2d 646 (La. App. 1 Cir.) writ denied 560 So.2d 30 (La. 1990).

32. Are there any rules prohibiting or limiting the use of the reptile theory at trial?

There are no specific rules prohibiting the use of the reptile theory at trial. Instead, the propriety of an argument is determined based upon the facts of the particular matter, the conduct and atmosphere of that particular trial and the arguments of opposing counsel.” *Luquette v. Bouillion*, 184 So.2d 766 (La.App. 3 Cir. 1966) and *Bourque v. Gulf Marine Transp., Inc.*, 480 So.2d 337 (La.App. 3 Cir. 1985). That said, great latitude is permitted in argument before a civil jury. *Temple v. Liberty Mutual Insurance Company*, 316 So.2d 783 (La.App. 1 Cir. 1975), rev’d on other grounds, 330 So.2d 891 (La. 1976).

In spite of the “broad latitude” afforded counsel, Louisiana courts recognize a prohibition against making the “Golden Rule” argument in closing argument. For example, in *Duerden v. PBR Offshore Marine Corp.*, 471 So.2d 1111 (La.App. 3 Cir. 1985), writ denied 476 So. 2d 355 (La.1985), the plaintiff asserted as error the defense counsel's use of the "Golden Rule Argument." The objectionable part of defendant's argument was as follows:

. . . Common sense tells you, ladies and gentlemen, that if a floor is wet and you just finished soaking it down you don't sit there and go back in there. You wait until it dries. And he didn't do that. And if that's not contributory negligence I don't know what is. I put the water there; I slip and fall in it. If somebody does that on your property, they put something slippery and they slip and fall in it, do you become automatically responsible just because they did something wrong? No. The court is going to look to . . .

*Id.* at 1114. The *Duerden* court relied upon the United States Fifth Circuit Court of Appeals’ decision in *Burrage v. Harrell*, 537 F.2d 837 (5th Cir. 1976) (“The rationale for prohibiting such an argument is that the jury's sympathy will be unfairly aroused, resulting in a disproportionate award of damages.”) The *Duerden* court then concluded that defense counsel's arguments were directed to the reasonableness of some action.
taken by the plaintiff rather than directed to the issue of damages and thus found no prejudicial error in the defendants' use of a Golden Rule argument in the context within which it was used. *Duerden*, 471 So.2d at 1114.

Conversely, in *Boutte v. Winn-Dixie Inc.*, 95-1123, p. 12 (La.App. 3 Cir. 4/17/1996), 674 So.2d 299, 306, in closing Winn-Dixie suggested that a finding of liability on its part would cause the cost of goods for its consumers, including the jurors, to rise. The plaintiff objected on the basis of the Golden Rule prohibition. On appeal, the court agreed with plaintiff, stating that "[a]lthough a litigant is afforded some license in closing argument, here Winn-Dixie, by deliberately resorting to local prejudice and unsupported generalities, clearly crossed its bounds...Since its counsel's 'testimony' was not given under oath or subject to cross-examination, it should not have been allowed."

In *Tingle v. Am. Home Assur. Co.*, 40 So.3d 1169, 1175-1176 (La.App. 3 Cir. 2010), the appellants contended that Plaintiffs' counsel violated the Golden Rule prohibition by asking the jury to put themselves in the Plaintiffs' shoes, by appealing to local prejudice, and by emphasizing that the Defendant was an out-of-state trucker thereby impermissibly attempting to "home cook" the out-of-state Defendants. The *Tingle* court held that the closing argument was not particularly inflammatory and that the trial court cured any potential prejudice by instructing the jury not to base its award on emotion. *Id.*

33. What are the jurisdictional limits of the jurisdiction’s civil courts, i.e. small claims, district court, superior court?

At the trial level, the court of general jurisdiction is the district court, which, with some exceptions, has unrestricted trial court jurisdiction within its basic geographical limit, the parish. (In Orleans Parish, the district court is divided into civil and criminal district courts, which function separately.)

The principal trial courts of limited jurisdiction in Louisiana are the city courts. There are 46 city courts outside Orleans Parish; their jurisdiction in civil cases, concurrent with that of the district courts, ranges from $5,000 to $25,000.

In Orleans Parish, the limited jurisdiction courts are divided into separate courts similar to the civil and criminal district courts. The first and second city courts handle civil cases, and the municipal court handles criminal cases, with the exception of traffic violations, which are handled by a separate traffic court.

The parish court, a relatively new limited jurisdiction court, began operation in Jefferson Parish in 1964. In 1966, an additional parish court was created in Jefferson Parish and the Parish Court for the Parish of Ascension was created in 1976. Essentially, they are similar in jurisdiction to city courts outside Orleans Parish. Between them, the First and Second Parish Courts for the Parish of Jefferson have parishwide jurisdiction, one on the East Bank of the Mississippi and the other on the West Bank. The Parish Court of Ascension Parish also has parishwide jurisdiction.
Other courts of limited jurisdiction in Louisiana are justice of the peace courts, which have no criminal jurisdiction and civil jurisdiction concurrent with district courts up to $2,000. There are also small claims courts (which have been established as a division in some city courts) with civil jurisdiction up to $3,000.

34. Are state judges elected or appointed?

Judges are elected for 6 year terms.