NEVADA

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1. Minimum liability limits

Nevada requires motor vehicle liability insurance with the following minimum coverage:
1) $15,000.00 for bodily injury to or death of a person from a motor vehicle accident; 2)
$30,000.00 for bodily injury to or death of more than one person from a motor vehicle accident;
and 3) $10,000.00 for property damage. Nev. Rev. Stat. § 485.3091(1).

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

To prevail on a claim for negligence, “a plaintiff generally must show that: (1) the
defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the
breach was the legal cause of the plaintiff's injury; and (4) the plaintiff suffered damages.”
Corp., 109 Nev. 1096 (1993). Additionally, automobile drivers are charged with a general duty
to operate their vehicle with due care.

Nevada follows the modified comparative negligence theory in that a plaintiff’s award
will be reduced by the percentage of plaintiff’s own negligence. Nev. Rev. Stat. § 41.141(1). A
plaintiff is barred from recovery where his or her negligence is greater than the negligence of the
defendant, i.e. greater than 50 percent. Id.

3. Bodily Injury Statute of Limitations

The statute of limitations for actions to recover damages for injuries to a person or for the
death of a person caused by the wrongful act or neglect of another is two years. Nev. Rev. Stat.
§ 11.190(4)(e).

4. Property Damage Statute of Limitations

The Nevada statute of limitations for taking, detaining, or injuring personal property is
5. **Are punitive damages insurable in the jurisdiction?**

Nevada allows insurers to insure against punitive damages as long as the punitive damages do not arise from a wrongful act of the insured that is committed with the intent to cause injury to another. Nev. Rev. Stat. § 681A.095. The Nevada Supreme Court has held, however, that uninsured motorist coverage can only be used to pay compensatory damages such as bodily injury, and not punitive damages as punitive awards are intended to punish and deter the tortfeasor from their wrongful conduct. *Siggelkow v. Phoenix Ins. Co.*, 109 Nev. 42, 45-46 (1993). Although there are no statutes regarding the insurability of vicariously assessed punitive damages, it would most likely be insurable as Nevada allows for the insurability of directly assessed punitive damages.

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

Nevada abandoned the common law doctrine of intraspousal immunity for claims arising out of motor vehicle accidents in 1974. *Rupert v. Stienne*, 90 Nev. 397, 404 (1974) (abrogating *Kennedy v. Kennedy*, 76 Nev. 302, 305 (1960)). In that same opinion, the Nevada Supreme Court also held that no common-law rule existed regarding parental immunity and thus a child’s right to sue a parent in tort was without restriction or limitation. *Id*. at 405. There is some cause for concern that Nevada still follows, at least in part, the common-law rule that a wife cannot sue her husband for a personal tort because *Rupert* “explicitly” limited its decision to “claims arising out of motor vehicle accidents.” *Id*. at 404. According to the *Rupert* court, “the propriety of further departure from the doctrine [of intraspousal immunity] in other tort situations must await presentation of the issue as those situations may arise.” *Id*. *Rupert* is the most recent Nevada Supreme Court decision regarding intraspousal immunity.

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

Nevada does not have a bodily injury threshold that needs to be met before a lawsuit can be commenced against another party.

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

Nevada public policy precludes an insurer’s subrogation of medical payments. *Maxwell v. Allstate Ins. Cos.*, 102 Nev. 502, 506-07 (1986). The Nevada Supreme Court reasoned that allowing subrogation would ensure the insurer full reimbursement for its medical expense payments regardless of whether the injured person’s tort recovery fully covers his actual expenses. *Id*. at 506. In other words, the injured person might have to compromise his or her claim because of problems with limited coverage carried by the tortfeasor or the injured person could suffer “out-of-pocket” expenses such as lost income or earning power. *Id* at 506-07.

In situations where an insured has received a full and total recovery from the insurer, subrogation of medical payments is allowed because the public policy concern that an insured will receive something less than a full recovery does not arise. *Ellison v. California State Auto. Ass’n*, 106 Nev. 601, 605 (1990).
9. Are there no fault laws in the jurisdiction?


10. Is the customer’s insurance primary?

The primary insurance policy depends on the person operating the motor vehicle. For businesses that are engaged in selling, repairing, servicing, delivering, testing, road testing, parking or storing motor vehicles, those businesses are the primary insurance when the employee or agent is acting within the scope of his employment. If the employee or agent is acting outside the scope of his employment, then the employee or agent’s insurance is primary. Additionally, the customer’s insurance is primary if a mechanic provides him a loaner vehicle. These policies may be modified with a written agreement signed by all applicable insurers. Nev. Rev. Stat. § 690B.025.

11. Is there a seat belt defense?

Nevada requires the use of a seatbelt for any person driving or occupying a motor vehicle. Nev. Rev. Stat. § 484D.495(2). However, a violation of this law cannot be used to show negligence or causation in any civil action or as evidence of negligent or reckless driving. Nev. Rev. Stat. § 484D.495(4)(b).

12. Is there a last clear chance defense?

Nevada’s comparative negligence statute does not allow for a last clear chance defense. *Davies v. Butler*, 95 Nev. 763, 776 (1979). The Nevada Supreme Court held that the use of this defense to assign blame to a plaintiff even though both plaintiff and defendant are negligent is inconsistent with the modern ideas of proximate causation. *Id.*

13. Is there an assumption of risk defense?

Although Nevada has not abolished the assumption of the risk defense, the courts approach this defense by performing an initial duty analysis. *Turner v. Mandalay Sports Entm’t, LLC*, 124 Nev. 213, 220-21 (2008). The trial court must first determine if the defendant’s legal duty encompassed the risk encountered by the plaintiff. *Id.*

14. Is there a UM requirement?

Nevada only requires that uninsured vehicle coverage be offered by the insurer to the insured. Nev. Rev. Stat. § 690B.020(1). The requirement is satisfied if the insured rejects the coverage in writing on a form that describes the coverage that is being rejected. *Id.* The minimum amount of uninsured vehicle coverage that must be offered is $15,000.00 for bodily injury to or death of a person from a motor vehicle accident, and $30,000.00 for bodily injury to or death of more than one person from a motor vehicle accident. Nev. Rev. Stat. § 690B.020(2).
15. **Is there a physical contact requirement?**

   In order for uninsured vehicle coverage to apply, the alleged bodily injury or death must have “resulted from physical contact of the automobile with the named insured or the person claiming under the named insured or with an automobile which the named insured or such a person is occupying…” Nev. Rev. Stat. § 690B.020(3)(f)(1). The physical contact requirement only applies to cases where the owner or operator of the at-fault vehicle is unknown or unidentifiable. *LoMastro v. Am. Family Ins. Group (Estate of LoMastro)*, 124 Nev. 1060, 1075 (2008). The physical contact requirement is inapplicable in situations where the alleged tortfeasor is known because there is no need to protect against fraudulent claims in those situations. *Id.*

16. **Is there a mandatory ADR requirement?**

   Under the Nevada Rules of Civil Procedure, a civil action commenced in a judicial district that includes a county with a population of 100,000 or more, first comes under the purview of the Nevada Arbitration Rules. N.A.R. 2(A). If a plaintiff believes that his case has a value in excess of $50,000.00, the plaintiff must file a request for exemption from the arbitration program. This request must be filed within 20 days after the filing of an answer by the first answering defendant. N.A.R. 5(A). An opposition to a request for exemption from arbitration must be filed within five days of service of the request for exemption. N.A.R. 5(B). The Arbitration Commissioner determines whether the case remains in the mandatory arbitration program. Once exempted from the program, there are no other applicable ADR requirements.

17. **Are agreements reached at mediation enforceable?**

   Agreements reached at mediation are enforceable, but must be memorialized in writing and signed by the party that it is being enforced against. *See e.g. Jones v. Suntrust Mortgage, Inc.*, 274 P.3d 762 (2012). Mediation proceedings are also confidential. “All oral or written communications in a mediation proceeding, other than an executed settlement agreement, shall be confidential and inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.” N.M.R. 11(A).

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

   A new trial may be ordered if the aggrieved party’s rights have been materially affected. ‘The decision to grant or deny a motion for a new trial rests within the sound discretion of the trial court and will not be disturbed on appeal absent palpable abuse.” *Allum v. Valley Bank*, 114 Nev. 1313, 1316 (1998), quoting *Pappas v. State, Dep’t Transp.*, 104 Nev. 572, 574 (1988). The factors a trial court may consider when granting a new trial include: 1) irregularities in the proceedings that prevented the aggrieved party from having a fair trial; 2) misconduct by the jury or prevailing party; 3) accidents or surprises that could not have been guarded against; 4) new evidence that is material to the proceedings that could not have been discovered at the time of trial; 5) jury disregard of the jury instructions; 6) excessive damages awarded due to passion or prejudice; and 7) error in law occurring at the trial that was objected to by the aggrieved party. N.R.C.P. 59(a). Insufficiency of the evidence is not grounds for a new trial. *Fox v. Cusick*, 91 Nev. 218, 219-20 (1975).
19. **Is pre-judgment interest collectable? If so, at what rate?**

In Nevada, prejudgment interest will be calculated from the date of service of the plaintiff’s complaint to the date the judgment is satisfied by the defendant. Pre-judgment interest is calculated at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the commissioner of financial institutions on January 1 or July 1, immediately preceding the date of the judgment, plus two percent. NRS § 17.130 and NRS § 99.040. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied. The most recent prime interest rate for January 2016 is 3.5%. Pre-judgment interest therefore currently accrues at a rate of 5.5%.

20. **Is post-judgment interest collectable? If so, at what rate?**

Nevada law allows for post-judgment interest to accrue as of the date the judgment is entered. *Powers v. United Services Auto. Ass’n*, 114 Nev. 690, 705-706 (1998). Any amount representing future damages draws interest from the time of the entry of the judgment until satisfied. NRS § 17.130(2). The Nevada Supreme Court has held that the purpose of post-judgment interest is to compensate the plaintiff for loss of the use of the money awarded in the judgment. *Id.* at 705, *quoting Air Separation v. Lloyd’s of London*, 45 F.3d 288, 290 (9th Cir. 1995). The Nevada Supreme Court has also held that post-judgment interest is allowed on an award of attorney’s fees. See *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 26 (2006).

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21. **Is there a worker’s compensation exclusive remedy defense?**

Nevada law provides that worker’s compensation is the exclusive remedy against an employer for an employee injured or killed due to an accident arising out of and in the course of his employment. Nev. Rev. Stat. § 616A.020(1). *See also Wood v. Safeway.*, 121 Nev. 724, 732 (2005).

There are some narrow exceptions that allow an injured employee to sue his employer where not allowing a cause of action would defeat the public policy of providing employees with economic security. Specifically, an employee may assert a cause of action against his employer for retaliatory discharge for filing a worker’s compensation claim. *Hansen v. Harrah’s*, 100 Nev. 60, 63-64 (1984). The public policy behind worker’s compensation would be defeated if an employer could fire an employee for filing for worker’s compensation because employees would be forced to choose between their entitlement to industrial compensation or the economic necessity of retaining their jobs. *Id.* at 64. Additionally, worker’s compensation is not an exclusive remedy for tortious constructive discharge, such as demoting an employee following their return from a work injury, based upon the same rationale that it would violate public policy.
22. **Is the doctrine of joint and several liability applicable?**

At common law, where two or more negligent acts combine to proximately cause an indivisible injury, each negligent actor will be jointly and severally liable. *Buck v. Greyhound Lines, Inc.*, 105 Nev. 756, 763 (1989). Each defendant could be potentially liable to the plaintiff for all damages incurred. *Id.*

The Nevada Legislature modified this common law rule for situations where the plaintiff was partly responsible for his own injuries and generally abolished joint and several liability for negligence cases in which comparative negligence is asserted as a defense. N.R.S. § 41.141(4); see also *GES, Inc. v. Corbitt*, 117 Nev. 265, 269-70 (2001). As such, in a negligence case where comparative negligence is asserted as a defense, defendants will be held severally liable for the portion of negligence attributable to them. If a defendant settles with the plaintiff before judgment, the amount of the settlement is not to be considered by the jury, but is to be deducted from the net sum otherwise recoverable by the plaintiff. N.R.S. § 41.141(3).

Nevada has retained joint and several liability for cases alleging the following: (1) strict liability and strict products liability, (2) intentional torts, (3) toxic or hazardous waste, and (4) concerted actions of the defendants.

The Nevada Supreme Court has held that to hold multiple tortfeasors joint and severally liable under the “concerted acts exception” there must have been an agreement between the tortfeasors to engage in conduct that was inherently dangerous or created a substantial risk to the other. *GES, Inc. v. Corbitt*, 117 Nev. at 271. The mere joint negligence, or an agreement to act jointly, does not suffice. *Id.*

23. **Is there a self critical analysis privilege?**

Neither the Nevada Legislature nor the Nevada Supreme Court has recognized a self-critical analysis privilege. Unless self-critical evidence falls under the work product privilege, it is generally discoverable in Nevada, subject to other applicable rules of evidence. However, self-critical evidence is protected in certain limited contexts, such as proceedings and records of medical review committees responsible for evaluation and improvement of the quality of care rendered by hospitals or organizations. See § NRS 49.265(1).

24. **Is accident reconstruction data admissible?**

Accident reconstruction data is admissible pursuant to Nev. Rev. Stat. § 50.275. The data will be admissible as long as it is the product of reliable methodology. *Las Vegas Metro. Police Dep’t v. Yeghiazarian*, 312 P.3d 503, 508 (Nev. 2013), citing *Hallmark v. Eldridge*, 124 Nev. 492, 500 (2008). An expert’s testimony is considered to be based on reliable methodology if it is: (1)
within a recognized field of expertise; (2) testable and has been tested; (3) published and
subjected to peer review; (4) generally accepted in the scientific community; and (5) based more
on particularized facts rather than assumption, conjecture, or generalization. *Id.*

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

    Nevada bars the admission of collateral source payments, such as medical provider
*see also Tri-County Equip. & Leasing, LLC v. Klinke*, 286 P.3d 593, 595 (Nev. 2012). The only
exceptions relate to worker’s compensation claims and claims for medical malpractice.

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

    In Nevada, offers of judgments are governed by Rule 68 of the Nevada Rules of Civil
Procedure. A party may serve a written offer of judgment upon the adverse party anytime, but
no less than 10 days before trial. A single offer of judgment may only be served upon multiple
defendants if there is a single theory of liability linking all of the defendants and the same entity
is given authority to settle the claims. N.R.C.P. 68(c)(2). An offer made to multiple plaintiffs is
similarly valid only if the damages claimed by all of the plaintiffs are derivative and the same
entity is given authority to settle the claims. N.R.C.P. 68(c)(3).

    An offer of judgment must be accepted within ten days from service of the offer.
N.R.C.P. 68(d). Accepted offers may be designated compromise settlements and the court will
allow dismissal of the claim rather than entry of a judgment as long as the terms of the offer were
met. *Id.* An offer that is not accepted within 10 days of the services of the offer is deemed
rejected. N.R.C.P. 68(e). If the offeree rejects the offer and fails to obtain a more favorable
judgment at the time of trial, the offeree cannot recover costs, attorney’s fees, or interest from the
date of the offer. N.R.C.P. 68(f)(1). Additionally, the offeree will be required to pay the
offeror’s post-offer costs, attorney’s fees, and applicable interest on the judgment. N.R.C.P.
68(f)(2). An offer of judgment may also be offered after liability has been determined by verdict
if the amount or extent of the liability remains to be determined by later proceedings. N.R.C.P.
68(h).

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

    Nevada does not recognize a separate tort for first-party or third-party spoliation of
There are, however, potential sanctions for spoliation of evidence. The threshold question is
whether or not the accused was under an obligation to preserve the missing or destroyed
duty to preserve information that is reasonably calculated to lead to the discovery of admissible
evidence, Nevada imposes a duty to preserve evidence once a party is on notice of a potential
legal claim. *Id.*

    Spoliation of evidence is treated differently depending on if the evidence was willfully
suppressed or negligently lost or destroyed. *Id.* at 451. If the evidence was willfully suppressed,
it is presumed to be adverse to the party that suppressed the evidence. Nev. Rev. Stat. § 47.250(3). The burden then shifts to the party who destroyed the evidence to show, by a preponderance of the evidence, that the evidence destroyed was not unfavorable. Bass-Davis v. Davis, supra at 448. Where the evidence is negligently lost or destroyed, the opposing party can only infer that the evidence would have been adverse to the party who negligently lost or destroyed the evidence. Id. at 445.

28. **Are there damages caps in place?**

Nevada does not limit the damages that may be awarded in a negligence action. There are exceptions in cases against political subdivisions (Nev. Rev. Stat. § 41.035) and medical malpractice actions. Nev. Rev. Stat. § 41A.035. See also Tam v. Eighth Judicial Dist. Court, 358 P.3d 234 (Nev. 2015).

29. **Is CSA 2010 data admissible?**

Admissibility is subject to Nevada’s general admissibility rules. CSA 2010 has not been afforded any special considerations. In Nevada, “records, reports, statement or data compilations, in any form, of public officials or agencies are not inadmissible under the hearsay rule.” NRS 51.155.

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

Nevada specifically provides for the discovery of electronically stored information. N.R.C.P. 34. Rule 34(E) provides the applicable procedures for producing electronically stored information.

31. **Is the sudden emergency doctrine recognized in the jurisdiction?**

Nevada recognizes the sudden emergency doctrine. Posas v. Horton, 228 P.3d 457 (Nev. 2010). However, a sudden emergency jury instruction is only appropriate if the proponent can demonstrate that the emergency was created through no negligence of his own, and the emergency directly affected the actor. Id. at 460-61.

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

There are no special rules that limit or prohibit a reptile theory argument. There are form jury instructions that state that a verdict may not be influenced by sympathy, prejudice, or public opinion (Nev. J.I. 1.05) and that the jury must base its decision on the law and evidence, rather than an attorney’s arguments (Nev. J.I. 11.03). Nevada does not allow for “Golden Rule” argument, and it affects the objectivity of the jury. Lioce v. Cohen, 124 Nev. 1, 22 (2008). See also Alexander v. Wal-Mart Stores, Inc. 2013 U.S. Dist. LEXIS 14019, 15 (2013) and Closson v. Bank of Am., N.A. 2012 U.S. Dist. LEXIS 179373, 5-6 (2012).

33. **What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?**

34. Are state judges elected or appointed?