1. **Minimum liability limits**

   Twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person; fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident; and twenty-five thousand dollars ($25,000) because of injury to or destruction of property of others in any one accident. 47 O.S. § 7-324(b)(2).

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

   Oklahoma is a modified comparative negligence jurisdiction. 23 O.S. § 13. In all actions hereafter brought, whether arising before or after the effective date of this act, for negligence resulting in personal injuries or wrongful death, or injury to property, contributory negligence shall not bar a recovery, unless any negligence of the person so injured, damaged or killed, is of greater degree than any negligence of the person, firm or corporation causing such damage, or unless any negligence of the person so injured, damaged or killed, is of greater degree than the combined negligence of any persons, firms or corporations causing such damage. *Id.* Where such contributory negligence is shown on the part of the person injured, damaged or killed, the amount of the recovery shall be diminished in proportion to such person's contributory negligence. 23 O.S. § 14.

3. **Bodily Injury Statute of Limitations**

   Two (2) years. 12 O.S. § 95(A)(3).

4. **Property Damage Statute of Limitations**

   Two (2) years. 12 O.S. § 95(A)(3).

5. **Are punitive damages insurable in the jurisdiction?**

   Oklahoma courts adhere to the view that public policy prohibits liability insurance coverage of punitive damages except where the party seeking the benefit of insurance coverage has been held liable for punitive damages solely due to conduct of another, under principles of

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

No, Oklahoma does not recognize an intrafamily immunity defense.

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

No, there is no bodily injury damage threshold in Oklahoma.

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

There is no subrogation on medical pay on resident relatives or insureds. Oklahoma statutory law provides “no provision in an automobile liability policy or endorsement for such coverage effective in this state issued by an insurer on and after the effective date of this act which grants the insurer the right of subrogation for payment of benefits under the expenses for the medical services coverage portion of the policy, to a named insured under the policy, or to any relative of the named insured who is a member of the named insured’s household shall be valid and enforceable; provided, that such policy or endorsement may provide for said insurer's rights of subrogation and set-off upon such payments to any person who is not a named insured under the policy or a relative of the named insured who is a member of the named insured’s household.” 36 O.S. § 6092. PIP is not applicable.

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


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

Yes.

11. **Is there a seat belt defense?**

Yes. 47 O.S. § 12-420 provides that, “Sections 12-416 through 12-420 of this title [dealing with vehicle equipment] may be used in any civil proceeding in this state and the use or nonuse of seat belts shall be submitted into evidence in any civil suit in Oklahoma unless the plaintiff in such suit is a child under sixteen (16) years of age.”

12. **Is there a last clear chance defense?**

13. Is there an assumption of risk defense?


14. Is there a UM requirement?

No. 36 O.S. §§ 3636 (F)(G)(H) & (I).

15. Is there a physical contact requirement?


16. Is there a mandatory ADR requirement?

No. 12 O.S. § 1804(A) provides that, “prior to commencement of any dispute resolution proceedings, the disputing parties shall enter into a written consent which specifies the method by which the parties shall attempt to resolve the issues in dispute.”

17. Are agreements reached at a mediation enforceable?

Typically, yes. Mediation agreements are likely enforceable if the agreement evidences a “meeting of the minds” and the agreement was executed absent a showing of fraud, duress, undue influence or mistake. Coulter v. Carewell Corp. of Oklahoma, 2001 OK CIV APP 36, 21 P.3d 1078 (citing Vela v. Hope Lumber & Supply Co., 1998 OK CIV APP 162, 966 P.2d 1196).

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

A former verdict, report, or decision shall be vacated, and a new trial granted, on the application of an aggrieved party, for any of the following causes, materially affecting the substantial rights of the party: (1) Irregularity in the proceedings of the court, jury, referee, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial; (2) Misconduct of the jury or a prevailing party; (3) Accident or surprise, which ordinary prudence could not have guarded against; (4) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice; (5) Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property; (6) That the verdict, report, or decision is not sustained by sufficient evidence, or is contrary to law; (7) Newly discovered evidence, material for the party applying, which could not, with reasonable diligence, have been discovered and produced at the trial; (8) Error of law occurring at the trial, and objected to by the party making the application; or (9) When, without fault of the complaining party, it becomes impossible to prepare a record for an appeal. 12 O.S. § 651.

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

12 O.S. § 727.1 provides:
E. Except as provided by subsection F of this section [verdicts against political subdivisions], beginning November 1, 2009, if a verdict for damages by reason of personal injuries or injury to personal rights including, but not limited to, injury resulting from bodily restraint, personal insult, defamation, invasion of privacy, injury to personal relations, or detriment due to an act or omission of another is accepted by the trial court, the court in rendering judgment shall add interest on the verdict at a rate prescribed pursuant to subsection I of this section from the date which is twenty-four (24) months after the suit resulting in the judgment was commenced to the earlier of the date the verdict is accepted by the trial court as expressly stated in the judgment, or the date the judgment is filed with the court clerk. No prejudgment interest shall begin to accrue until twenty-four (24) months after the suit resulting in the judgment was commenced. The interest rate for computation of prejudgment interest shall begin with the rate prescribed by subsection I of this section which is in effect for the calendar year which is twenty-four (24) months after the suit resulting in the judgment was commenced. This rate shall be in effect until the end of the calendar year in which interest begins to accrue or until the date judgment is filed, whichever first occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the date the judgment is filed, whichever first occurs, and for each succeeding calendar year thereafter, the prejudgment interest rate shall be the rate in effect for judgments rendered during each calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. After the computation of all prejudgment interest has been completed, the total amount of prejudgment interest shall be added to the amount of the judgment rendered pursuant to the trial of the action, and the total amount of the resulting judgment shall become the amount upon which postjudgment interest is computed pursuant to subsection A of this section.

I. …For purposes of computing prejudgment interest as authorized by this section, interest shall be determined using 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.

K. For purposes of computing prejudgment interest, the provisions of this section shall be applicable to all actions which are filed in the district courts on or after January 1, 2010, for which an award of prejudgment interest is authorized by the provisions of this section.

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

12 O.S. § 727.1 provides:

A(1). Except as otherwise provided by this section, all judgments of courts of record, including costs and attorney fees authorized by statute or otherwise and allowed by the court, shall bear interest at a rate prescribed pursuant to this section.

C. The postjudgment interest authorized by subsection A or subsection B of this section shall accrue from the earlier of the date the judgment is rendered as expressly stated in the judgment, or the date the judgment is filed with the court clerk, and shall initially accrue at the rate in effect for the calendar year during which the judgment is rendered until the end of the calendar year in which the judgment was rendered, or until the judgment is paid, whichever first
occurs. Beginning on January 1 of the next succeeding calendar year until the end of that calendar year, or until the judgment is paid, whichever first occurs, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. For each succeeding calendar year, or part of a calendar year, during which a judgment remains unpaid, the judgment, together with postjudgment interest previously accrued, shall bear interest at the rate in effect for judgments rendered during that calendar year as certified by the Administrative Director of the Courts pursuant to subsection I of this section. A separate computation using the interest rate in effect for judgments as provided by subsection I of this section shall be made for each calendar year, or part of a calendar year, during which the judgment remains unpaid in order to determine the total amount of interest for which the judgment debtor is liable. The postjudgment interest rate for each calendar year or part of a calendar year a judgment remains unpaid shall be multiplied by the original amount of the judgment, including any prejudgment interest, together with postjudgment interest previously accrued. Interest shall accrue on a judgment in the manner prescribed by this subsection until the judgment is satisfied or released.

I. For purposes of computing postjudgment interest as authorized by this section, interest 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 two percent (2%).

21. **Is there a workers compensation exclusive remedy defense?**

The exclusive remedy defense applies against the employer, but not against third parties. 85A O.S. § 5:

A. The rights and remedies granted to an employee subject to the provisions of the Administrative Workers’ Compensation Act shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone else claiming rights to recovery on behalf of the employee against the employer, or any principal, officer, director, employee, stockholder, partner, or prime contractor of the employer on account of injury, illness, or death. Negligent acts of a co-employee may not be imputed to the employer. No role, capacity, or persona of any employer, principal, officer, director, employee, or stockholder other than that existing in the role of employer of the employee shall be relevant for consideration for purposes of this act, and the remedies and rights provided by this act shall be exclusive regardless of the multiple roles, capacities, or personas the employer may be deemed to have. For the purpose of extending the immunity of this section, any operator or owner of an oil or gas well or other operation for exploring for, drilling for, or producing oil or gas shall be deemed to be an intermediate or principal employer for services performed at a drill site or location with respect to injured or deceased workers whose immediate employer was hired by such operator or owner at the time of the injury or death.

B. Exclusive remedy shall not apply if:
1. An employer fails to secure the payment of compensation due to the employee as required by this act. An injured employee, or his or her legal representative in case death results from the injury, may, at his or her option, elect to claim compensation under this act or to maintain a legal action in court for damages on account of the injury or death; or

2. The injury was caused by an intentional tort committed by the employer. An intentional tort shall exist only when the employee is injured as a result of willful, deliberate, specific intent of the employer to cause such injury. Allegations or proof that the employer had knowledge that the injury was substantially certain to result from the employer's conduct shall not constitute an intentional tort. The employee shall plead facts that show it is at least as likely as it is not that the employer acted with the purpose of injuring the employee. The issue of whether an act is an intentional tort shall be a question of law.

C. The immunity from civil liability described in subsection A of this section shall apply regardless of whether the injured employee is denied compensation or deemed ineligible to receive compensation under this act.

D. If an employer has failed to secure the payment of compensation for his or her injured employee as provided for in this act, an injured employee, or his or her legal representative if death results from the injury, may maintain an action in the district court for damages on account of such injury.

E. The immunity created by the provisions of this section shall not extend to action against another employer, or its employees, on the same job as the injured or deceased worker where such other employer does not stand in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker.

F. The immunity created by the provisions of this section shall not extend to action against another employer, or its employees, on the same job as the injured or deceased worker even though such other employer may be considered as standing in the position of a special master of a loaned servant where such special master neither is the immediate employer of the injured or deceased worker nor stands in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker.

G. This section shall not be construed to abrogate the loaned servant doctrine in any respect other than that described in subsection F of this section. Nothing in this act shall be construed to relieve the employer from any other penalty provided for in this act for failure to secure the payment of compensation under this act.

H. For the purpose of extending the immunity of this section, any architect, professional engineer, or land surveyor shall be deemed an intermediate or principal employer for services performed at or on the site of a construction project, but this immunity shall not extend to the negligent preparation of design plans and specifications.
I. If the employer has failed to secure the payment of compensation as provided in this act or in the case of an intentional tort, the injured employee or his or her legal representative may maintain an action either before the Commission or in the district court, but not both.

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

   There is no joint and several liability. 23 O.S. § 15.

   A. 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.

   B. This section shall not apply to actions brought by or on behalf of the state.

   C. The provisions of this section shall apply to all civil actions based on fault and not arising out of contract that accrue on or after November 1, 2011.

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

   Not explicitly; however, under 12 O.S. § 2407 evidence of subsequent remedial measures is inadmissible to prove negligence or culpability.

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

   Computer animations are admissible. *Tull v. Federal Express Corp.*, 2008 OK Civ App 105, 107 P.3d 495, “a simulation is substantive evidence because it ‘utilizes one or more programs which, after inputting data, use scientific formulas to produce conclusions based on that data regarding issues material to the trial.’”

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

   Oklahoma’s billed versus paid statute, 12 O.S. § 3009.1 sits on rocky ground. The previous version of the billed versus paid statute, enacted in 2011, was held unconstitutional by various district court judges in both Tulsa County and Oklahoma County - the two largest counties in the State. The Legislature enacted a revised statute applicable to all personal injury cases filed after November 1, 2015. The revised version of 12 O.S. § 3009.1 states:

   If no bills have been paid, or no statement acknowledged by the medical provider or sworn testimony as provided in subsections A and B of this section is provided to the opposing party and listed as an exhibit by the final pretrial hearing, then the amount billed shall be admissible at trial subject to the limitations regarding any lien filed in the case.

   The effect of the revised language is undermined.
26. **What is the jurisdiction’s rule on offers of judgment?**

12 O.S. § 1101 provides: The defendant, in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff or his attorney an offer, in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer and give notice thereof to the defendant or his attorney, within five days after the offer was served, the offer, and an affidavit that the notice of acceptance was delivered within the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer, verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

A different statute, 12 O.S. § 1101.1, applies in personal injury, wrongful discharge, and wrongful death actions.

12 O.S. § 1106 permits an offer to confess judgment in part in an action for recovery of money.

In property damage cases, the defendant may serve a written offer of judgment within 10 days after being served with summons.

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

A litigant who is on notice that documents and information in its possession are relevant to litigation or potential litigation, or is reasonably calculated to lead to the discovery of admissible evidence, has a duty to preserve such evidence. *Barnett v. Simmons*, 197 P.3d 12, 2008 OK 100. 12 O.S. § 3237(B)(2) contains no requirement of willfulness. Section 3237(B)(2) states that if a party has failed to obey an order of the court, the court may enter orders that are just. Willfulness or bad faith, or intentional conduct, goes to the severity of the sanctions to be imposed for spoliation, and the most severe sanctions, such as dismissal of the case, should be imposed only where the party's conduct is intentional, willful or in bad faith. *Id.*

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

No. The statute which limited non-economic damages, 23 O.S. § 61.2, was held to be unconstitutional, based on *Douglas v. Cox Ret. Props.*, 2013 OK 37, 302 P.3d 789. There are, however, statutory caps on punitive damages. 23 O.S. § 9.1.

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

Unknown at this time; however, as the Oklahoma rules of evidence parallel the federal rules, CSA data is subject to character and hearsay objections. Of note, the Oklahoma Department of Safety has taken a position distinct from many states regarding the permissive amending of citations related to CDL drivers. Some Oklahoma prosecuting attorneys believe
they are prohibited from amending citations issued to CDL holders related to non-moving violations. As such citations factor into CSA scores it is imperative to amend these charges whenever possible. However, an amended citation may be more difficult to obtain in some Oklahoma counties.

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

    No. Oklahoma’s Code of Civil Procedure specifically provides for the discovery of electronically-stored information. Clearly mirroring the Federal Rules of Civil Procedure, the Code addresses issues including the identification of “not reasonably accessible” information, the format of production, and sanctions for the loss of ESI resulting from the routine, good-faith operation of an electronic information system.

    Sanctions are available for the spoliation of electronic media if it results in prejudice to the opposing party, without regard to whether the spoliation was willful. *Barnett v. Simmons*, 2008 OK 100, 197 P.3d 12. Under 12 O.S. § 3237(G), “Absent exceptional circumstances, a court may not impose sanctions on a party for failure to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.”

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

    Yes, but not as a total bar to a defendant’s liability. In *Anderson v. Jennings*, 1991 OK Civ App 33, 813 P.2d 539, 541, the court stated: “Oklahoma does recognize the doctrine of ‘sudden emergency’ or ‘sudden peril’ as it has been called, and it has been, on occasion, referred to as a separate ‘defense.’” *Lilly v. Scott*, 598 P.2d 279 (Okla.App.1979). On the other hand, as stated by the *Lilly* Court, the majority of other jurisdictions more accurately hold that an emergency situation is a standard of conduct modifying circumstance available to ameliorate the effects of what otherwise would be considered poor judgment on the part of a party charged with negligence.

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

    Juries cannot be asked to put themselves in the shoes of the parties or their families. A Golden Rule appeal “is universally recognized as improper because it encourages the jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence…” *Blevins v. Cessna Aircraft Co.*, 728 F.2d 1576, 1580 (10th Cir. 1984). Opposing counsel must interpose a timely objection, because use of a Golden Rule argument may not be plain error. *Id.* (“Although the remarks of plaintiff’s counsel were improper, defendant failed to make a timely objection. We conclude that the remarks do not amount to plain error requiring reversal in the absence of an objection, particularly because of the proper instructions given the jury on the law it should apply in determining liability and damages.”). However, even where a timely objection is interposed, the use of a Golden Rule argument may not be so prejudicial as to require a new trial.

    For example, in *Lance v. Smith*, 306 P.2d 298 (Okla. 1957), plaintiff’s counsel requested the jury apply the Golden Rule. After an objection by the defense, the trial court admonished the
jury that they would be controlled only by the evidence that came from the witness stand and nothing further. *Id.* at 302. On appeal, the Oklahoma Supreme Court agreed that the plaintiff’s counsel’s invocation of the Golden Rule was improper. However, the plaintiff’s Golden Rule argument, “while not to be condoned,” did not call for reversal of the verdict for the plaintiff, because it appeared to the court that “the jury was not influenced thereby and apparently followed directions of court not to consider such improper argument.”

Likewise, in *Hudman v. State*, 89 Okla. Crim. 160, the prosecutor read an American Bar Journal article about the duties of jurors in his closing argument. The duties included in the article provided that as a juror, “I must apply the Golden Rule by putting myself impartially in the place of the plaintiff and of the defendant, remembering that although I am a juror today passing upon the rights of others, tomorrow I may be a litigant whose rights other jurors shall pass upon.” *Id.* at 183. The Oklahoma Court of Criminal Appeals observed that reading such an article should be avoided, but there was no reversible error in allowing it. *Id.*

The Oklahoma Rules of Evidence governing the relevancy of evidence and its admissibility are nearly identical to their federal counterparts. *Compare* 12 O.S. §§ 2401 – 2403 *with* Fed. R. Civ. P. 401 – 403. Sections 2401 - 2403 may be used to preclude the use of Reptile Theory arguments at trial. For example, many plaintiffs’ lawyers using the Reptile system will attempt to define the duty owed by the defendant as one “to avoid needlessly endangering the public.” A motion in limine can be used to successfully foreclose the use of such arguments at trial.

First, the existence of a duty and its scope are legal questions to be decided by the judge. *Wofford v. Eastern State Hosp.*, 795 P.2d 516, 519 (Okla. 1990). Therefore, questions to witnesses such as “Wouldn’t you agree that Defendant had a duty to needlessly avoid endangering the public?” are irrelevant and improperly ask a witness to opine on a duty - a legal question which should be defined in the Court’s instructions to the jury. Moreover, the duty in most cases is much narrower than the one argued for by plaintiff’s counsel (e.g., the duty will be to act reasonably under the circumstances, not to do everything possible to ensure the safety of the public).

Second, to the extent that Reptile Theory arguments have some limited probative value, they can be excluded if their “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, [or] misleading the jury…” 12 O.S. § 2403. Because the Reptile system is intended to persuade jurors to render verdicts based on primitive fear instincts rather than rational thought, many Reptile arguments “mislead the jury” and result in substantial prejudice. Therefore, such arguments are properly excluded under Section 2403.

Finally, plaintiffs’ attorneys will often attempt to point to previous acts of the defendant to invoke the fear of the jury and inflame its passions. 12 O.S. § 2404 prohibits evidence of other wrongs or acts “to prove the character of a person in order to show action in conformity therewith.” Therefore, prior negligent acts of the defendant are generally inadmissible and can be excluded through the use of Section 2404.
The best way to use Sections 2401 – 2404 to exclude Reptile Theory arguments is through the use of a Motion in Limine. Consequently, defense counsel must carefully examine plaintiff’s counsel’s discovery requests and deposition questions to anticipate which arguments plaintiff’s counsel is likely to attempt at trial. A successful Motion in Limine will confine the scope of the issues to be tried and limit the questioning to the actual duty of care owed by the defendant - not the overly broad duty the plaintiff would like to impose.

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

Oklahoma District Courts are courts of general jurisdiction. However, Oklahoma law authorizes small claims courts in which the jurisdictional limit for actions for the recovery of money based on contract or tort, including subrogation claims, but excluding libel or slander, in which the amount sought to be recovered, exclusive of attorney fees and other court costs is $7,500.

34. Are state judges elected or appointed?

Oklahoma district court judges are elected to serve four year-terms. Special judges are appointed by the district judges and serve at their pleasure. Vacancies during a term are filled by gubernatorial appointment. Judicial elections are non-partisan.