

Alabama Tort Law Guide

General Tort Principles

Pure Contributory Negligence

Recovery is barred by a plaintiff's own negligence — even if that negligence is only 1 percent of the cause of the injury. Contributory negligence is usually a question of fact for the jury and generally will not support a motion for summary judgment. In practice, juries are typically reluctant to apply the pure contributory negligence defense and will reduce the verdict amount to account for the plaintiff's contributory negligence.

Joint and Several Liability

Two or more defendants sued for the same act of omission are jointly and severally liable for the entire amount of any judgment; plaintiff can collect the entire judgment from either defendant.

Contribution and Indemnity

Contribution and indemnity among joint tortfeasors are not allowed. After settlement, the jury award may be set off by the amount of the *pro tanto* settlement.

Claim Survival

Contract claims and all claims filed before the death of a claimant survive in favor of the personal representative. Unfiled personal injury claims do not survive.

Statutes of Limitation

Negligence: Two years

Wrongful Death: Two years from death

Contract: Six years

Libel/Slander: Two years

Warranty: Four years from injury for consumer goods

Claims By Minors: The statute of limitations is tolled until the minor's 19th birthday.

Product Liability: Two years for tort actions. One year from the date of injury or discovery of injury if the defect is latent.

Fraud: Two years from when fraud discovered or there is sufficient information to place plaintiff on constructive notice of fraud.

Medical Malpractice: Two years from act. If not discoverable within two years, six months from discovery. Four year statute of repose from act, but minors under 4 years old have until their 18th birthday to file suit.

Statute of Repose: Actions against architects, engineers and contractors operating pursuant to the direction of an architect or engineer must be commenced within seven years of the date of substantial completion for the project. Prior to Sept. 1, 2011, the statute of repose was 13 years.

Settlement Issues

Settlement of Minor's *Pro Ami* Claim

Settlements involving minors or incompetents must be approved by the court. A guardian *ad litem* will be appointed to protect the interests of the claimant. Court approval of the settlement is required.

Premises Liability

Invitee: A visitor with an invitation who conveys a material or commercial benefit to the premises owner is an invitee. The owner must keep premises in a reasonably safe condition and warn of known hidden dangers.

Licensee: A visitor with an express or implied invitation, but who conveys no material or commercial benefit to the owner is a licensee. The owner must not willfully or wantonly injure the licensee or negligently injure the licensee after discovering they are in peril.

Trespasser: Someone who enters land without permission is a trespasser. Owner must not willfully or wantonly injure the trespasser and must warn of known, hidden dangers after it is discovered the trespasser is in peril.

Open and Obvious: A premises owner owes no duty to warn of open and obvious dangers.

Criminal Acts of Third Party: A premises owner is not liable for the criminal acts of a third person unless the particular criminal conduct is foreseeable.

Product Liability — Alabama Extended Manufacturer's Liability Doctrine (AEMLD)

Elements

(1) Damage or injury to person or property; (2) by a defective and unreasonably dangerous product; (3) sold by someone engaged in the business of selling such products; (4) where the product is expected to and does reach the end user without substantial change. It does not matter whether the seller used reasonable care or whether there is privity of contract.

Defenses

(1) Lack of causal connection (including the common law "sealed container doctrine"); (2) assumption of the risk; (3) product misuse. Additionally, Ala. Code § 6-5-521 limits the liability of "innocent" product sellers. For example, a distributor is only liable if it also manufactured or assembled the final product, exercised substantial control over the designing, testing, manufacturing, packaging or labeling of the product, or altered or modified the product, and the distributors' acts were a substantial factor in causing the injury. The intent of the statute is to protect distributors that are merely conduits of a product.

Auto Liability

Minimum Insurance Limits: 25/50/25

Sudden Emergency: A motorist faced with an emergency situation through no fault of their own is not held to the same standard of care. It is up to the jury to decide whether an emergency existed. This also applies as a response to the contributory negligence defense.

Last Clear Chance (Subsequent Negligence): The person with the “last clear chance” to avoid an accident or injury is the culpable party.

Guest Passenger Statute: A guest passenger in a vehicle can only bring an action against the driver for wantonness. A “guest passenger” is one who rides without making any payment or conferring any material benefit upon the driver.

Negligent Entrustment: The owner of a vehicle may be liable for the acts of a driver if: (1) the driver was incompetent, inexperienced or reckless; (2) the owner knew or should have known of the driver’s incompetence; (3) the vehicle was entrusted; (4) the entrustment created a risk of harm to the plaintiff; and (5) the injuries were caused by the negligence entrustment.

Uninsured Motorist (UM) and Underinsured Motorist (UIM) Coverage

Stacking

“Stacking” UM coverages is allowed — up to three vehicles per policy. The limitation does not apply to separate policies. Passengers may stack under the vehicle owner’s multi-vehicle policy. However, stacking of separate policies that list vehicles not involved in the accident is only allowed where the passenger is a named insured or resident relative.

Damages

UM coverage covers bodily injury, including punitive damages.

Setoff of or Underlying Coverages

Generally, an insurer cannot offset “med pay” against UM payments.

Opting Out

A plaintiff must either name their UM carrier as a defendant or give it notice of the claim. If the insurer is a party in the lawsuit, it has the option to participate in trial or to “opt out” and be bound by the verdict. If the insurer opts out, no mention of the insurer is allowed at trial.

Fronting

If a tortfeasor reaches a settlement agreement with the plaintiff, the plaintiff must provide notice to their UM carrier and allow it a “reasonable time” to deny the claim, consent to the settlement and waive subrogation, or advance (or “front”) the amount of the settlement to the plaintiff to preserve subrogation.

Phantom Vehicle

Phantom vehicle is presumed to be uninsured. Physical contact is not required. The claimant’s testimony is sufficient proof of the existence of a phantom vehicle.

Rejection of UM/UIM Coverage

All motor vehicle liability policies must contain uninsured/underinsured coverage unless the named insured rejects UM coverage in writing.

Damages

Collateral Source Rule

Alabama allows some evidence of collateral source payments. Evidence the plaintiff’s medical or hospital expenses were or will be paid by health insurance is admissible. If that evidence is admitted, the plaintiff is entitled to introduce evidence of their obligation to reimburse the healthcare insurer and evidence of the cost of obtaining the health insurance coverage.

Punitive Damages

The plaintiff must prove the defendant consciously or deliberately engaged in oppression, fraud, wantonness or malice to recover punitive damages.

Punitive Cap

In actions for physical injury, a punitive damage award cannot exceed three times compensatory damages or \$1.5 million, whichever is greater. In actions not involving physical injury, punitive damages cannot exceed three times compensatory damages or \$500,000, whichever is greater. In cases involving a small business (net worth of \$2 million or less at the time of the occurrence), where physical injury is not alleged, punitive damages cannot exceed \$50,000 or 10 percent of the business’s net worth, whichever is greater. Punitive damages are not recoverable against municipalities. The cap on punitive damages does not apply to actions for wrongful death or intentional torts resulting in bodily injury.

Mental Anguish

Damages for mental anguish can be awarded where plaintiff also suffered physical injury. Where there was no physical injury, Alabama courts apply the “zone of danger” test and limit recovery to plaintiffs placed in immediate risk of physical harm. Further, an award of damages for mental anguish is not allowed in breach of contract actions, except in limited situations, such as for a breach of contract relating to habitability of a home, sale of a vehicle or the handling of human remains. The jury has wide discretion in setting the amount of the mental anguish award.

Property Damage

The measure of damages is the difference between the reasonable market value of the property immediately before and after damage.

Wrongful Death

The only damages recoverable in a wrongful death action are punitive damages. The punitive award is not designed to compensate, but rather to punish the wrongdoer and deter others from similar wrongdoing.

Disclaimer: No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. This information is distributed for information purposes only and is not to be construed as having the effect of law or regulation or for the provision of legal advice or services.

Alabama Coverage & Commercial Litigation

Partners

F. Lane Finch, Jr.	205.314.2403	lane.finch@swiftcurrie.com
Brian C. Richardson	205.314.2404	brian.richardson@swiftcurrie.com
Brandon J. Clapp	205.314.2406	brandon.clapp@swiftcurrie.com
Murray S. Flint	205.314.2407	murray.flint@swiftcurrie.com

For a complete listing of Swift Currie attorneys, visit www.swiftcurrie.com.