Utah

Bodily Injury: Economic damages are not recoverable under non-intentional tort theories absent physical property damage or bodily injury. Liability for economic losses (e.g., diminution in value) can be recovered only according to the contractual obligations between the parties, and cannot be recovered on a pure negligence theory. *HealthBanc Int'l, LLC v. Synergy Worldwide, Inc.*, 2018 UT 61, 435 P.3d 193; *SME Industries v. Thompson, Ventulett, Stainbeck & Assoc.*, 2001 UT 54, 28 P.3d 669*; American Towers v. CCI Mechanical*, 930 P.2d 1182 (Utah 1996); *Snow Flower Homeowners Ass'n v. Snow Flower, Ltd.*, 2001 UT App 207, 31 P.3d 576. However, plaintiffs may recover purely economic losses in cases involving intentional torts such as fraud, business disparagement, and intentional interference with contract. *American Towers v. CCI Mechanical*, 930 P.2d 1182 (Utah 1996).

Liability policy minimum limits are $25,000 per person and $65,000 per accident for bodily injury or death, and $15,000 per accident for property damage; or $80,000 per accident for loss arising from personal injury, death and/or property damage. *UCA* § 31A-22-304.

Loss of consortium is not a cognizable bodily injury for the purposes of minimum liability policies. The wife of a man who was killed in an automobile accident could therefore recover only $25,000 from her insurer, not $50,000. *Progressive Cas. Ins. Co. v. Ewart*, 2007 UT 52, 2007 WL 2033735.

UCA § 31A-22-321 amended Utah's arbitration provision for motor vehicle claims. Plaintiffs must now make a claim for bodily injury in order to request arbitration of third-party claims. Property claims may only be arbitrated if the parties agree in writing. Any request for arbitration must also be submitted within fourteen (14) days of the date on which the complaint was answered.

Settlements With Minors: A parent or guardian may maintain an action for the death or injury of a minor child when such injury or death is caused by the wrongful act of another. *UCA* § 78B-3-102; *Moreno v. Bd. of Educ.*, 926 P.2d 886 (Utah 1996). Such an action must be brought within two years after death, but if the judgment for plaintiff is reversed or if plaintiff fails otherwise than on the merits, a new action may be commenced within one year from such reversal or failure. *UCA* § 78B-2-304; § 78B-2-111; *In re Estate of Garza*, 725 P.2d 1328 (Utah 1986). Damages for wrongful death may include compensatory damages, loss of support, services, society, prospective inheritance, and mental anguish. *Oxendine v. Overturf*, 1999 UT 4, 973 P.2d 417; *Evans v. Oregon Short Line R. Co.*, 108 P. 638 (Utah 1910).

The two-year statute of limitations for a wrongful death claim is tolled by *UCA* § 78B-2-108 if the claimants are minors. *In re Estate of Garza*, 725 P.2d 1328 (Utah 1986).

Absent a relevant, contrary expression intent from the legislature, a parent may not release or waive a minor's prospective claims for negligence. Also, a parent's agreement to indemnify a third party for that party's own negligence is void based upon public policy. By shifting financial responsibility to a minor's parent, such indemnity provisions would allow negligent parties to circumvent the rule voiding waivers signed on behalf of a minor. *Rutherford v. Talisker Canyons Fin., Co., LLC*, 2019 UT 27, 445 P.3d 474; *Hawkins v. Peart*, 2001 UT 94, 37 P.3d 1062. A release of a minor's claims signed by a parent that relate to defined equine and livestock activities may be enforceable if it complies with other statutory requirements. UCA § 78B-4-203.

Disabilities; Minority: If a person entitled to bring an action, other than for the recovery of real property, is at the time the cause of action accrued either under the age of majority or mentally incompetent and without a legal guardian, the statute of limitations may not run during the time the person is underage or incompetent. *UCA* § 78B-2-108. *But see UCA* § 63G-7-401 (governmental immunity); *Smith v. Four Corners Medical Health Center, Inc.,* 2003 UT 23, 70 P.3d 904 (Medical malpractice plaintiff must comply with procedural requirements of UCA § 78B-3-401 et seq.)

A parent or guardian may maintain an action for the death or injury of a minor child. *UCA* § 78B-3-102. The heirs or personal representative of the deceased may maintain an action for the wrongful death of an adult. *UCA* § 78B-3-106.

Personal Injury: Insurers are required to pay for damages and injuries caused by a covered driver while stricken by an unforeseeable paralysis, seizure, or other unconscious condition. *UCA* § 31A-22-303.

A policy of motor vehicle liability coverage may limit coverage to statutory minimum policy limits if the insured motor vehicle is operated by a person who has consumed any alcohol or illegal substance, if the policy or a specifically reduced premium was extended to the insured with a written stipulation that the vehicle would not be operated in this manner. *UCA* § 31A-22-303(7).

The insurance coverage provided by a rental company is secondary to other valid or collectible insurance. *UCA* § 31A-22-314.

Personal Injury Protection / No Fault

Personal injury protection coverage is mandatory and minimum coverage must include medical expenses up to $3000, lost income allowance of 85% of gross income up to $250 per week for 52 consecutive weeks, special damage allowance up to $20 per day for a maximum of 365 days, funeral/ burial/cremation expenses up to $1500, and death benefit of $3000. *UCA* § 31A-22-307(1).

A person who has direct benefit coverage under PIP may not maintain a cause of action for general damages unless he has sustained death, dismemberment, permanent disability, or permanent impairment based upon objective findings, permanent disfigurement, and/or medical expenses in excess of $3000. *UCA* § 31A-22-309(1).

A plaintiff whose medical expenses fail to meet the PIP threshold of $3,000 has the burden of demonstrating a permanent disability or impairment with something more than his say so. The express language of section 31A-22-309(1)(c) requires that any permanent disability or impairment be based on objective findings. *McNair v. Farris*, 944 P.2d 392 (Utah 1997). An objective finding of permanent disability or permanent impairment may be established by a current or past treating physician. *Pinney v. Carrera*, 2019 UT App 12, 438 P.3d 902, *cert. granted,* 440 P.3d 691 (Utah 2019).

The term "disability" under the Act means an inability to work as contrasted with the term "physical impairment," which generally refers to loss of bodily function. *Jones v. Transamerica Ins. Co.*, 592 P.2d 609 (Utah 1979), *overruled on other grounds by Bear River Mutual Ins. Co. v. Wall,* 1999 UT 33, 978 P.2d 460.

A no-fault insurer has no right to subrogation under Utah's no-fault statute, and as a general rule may not seek reimbursement for PIP payments its insured subsequently recovers from the tortfeasor. However, no-fault insurers may obtain reimbursement for PIP payments directly from their insureds' settlement with tortfeasors when it is clear the parties to the settlement intended that settlement amount include PIP reimbursement. Since a tortfeasor is not personally liable for PIP benefits, the settlement between the no-fault insured and the tortfeasor or tortfeasor's insurer is presumed to exclude PIP benefits in the absence of evidence to the contrary. *Bear River Mut. Ins. Co. v. Wall*, 978 P.2d 460 (Utah 1999).

Personal injury protection provisions for lost income and lost household services do not apply to the heirs or estate of a person killed in an automobile accident; they are personal to a living person injured in an automobile accident. *Regal Ins. Co. v. Bott*, 2001 UT 71, 31 P.3d 524; UCA § 31A-22-307(1).

The insurer may issue policies providing greater than the minimum personal injury protection coverages, but the insurer may not require a deductible. *UCA* § 31A-22-307(5), (6).

Minimum coverages extend to the insured, persons related to the insured, and other natural persons whose injuries arise out of an automobile accident involving the automobile identified in the policy, including pedestrians. *UCA* § 31A-22-308.

A set-off for PIP benefits includes benefits a person is entitled to receive under workers compensation or from the military service. *UCA* § 31A-22-309(3).

When an injured person is insured under more than one policy, the PIP policy insuring the motor vehicle in use at the time of the accident is primary. *UCA* § 31A-22-309(4). Non-stacking provisions in the policy are valid and enforceable. *Crowther v. Nationwide Mut. Ins. Co.*, 762 P.2d 1119 (Utah Ct. App. 1988).

Where the insured is or would be legally liable for injuries sustained by another, his insurer must reimburse any insurer or workers compensation fund for no-fault benefits paid to the other. The issue of liability for reimbursement is subject to mandatory, binding arbitration. *UCA* § 31A-22-309(6). *Ohio Casualty Ins. Co. v. Brundage*, 674 P.2d 101 (Utah 1983).

The auto liability insurer is not entitled to recover no-fault payments it made to its insured out of the proceeds of a settlement with a third-party tortfeasor. *Allstate Ins. Co. v. Anderson,* 608 P.2d 235 (Utah 1980). However, the Act does grant the insurer a limited, equitable right to seek reimbursement in arbitration against the third party's liability insurer. *Allstate Ins. Co. v. Ivie*, 606 P.2d 1197 (Utah 1980); *Christensen v. Farmers Ins. Exchange*, 669 P.2d 1236 (Utah 1983).

Twelve-year-old boy's household chores of taking out the garbage, doing dishes, vacuuming, etc., were not chores for which his family would "reasonably have incurred" expenses within meaning of no-fault statute. *Jamison v. Utah Home Fire Ins. Co.*, 559 P.2d 958 (Utah 1977).

PIP benefits extend to items not covered by workers compensation such as loss of household services and second job wage loss. A provision in an auto insurance policy which prohibited payments or benefits to those covered by workers compensation is invalid. *Neel v. State*, 889 P.2d 922 (Utah 1995).

Medical Payments: Once injuries have been shown, evidence is required to show that the medical expenses accurately reflect the necessary treatment that resulted from the injuries and that the charges are reasonable. *Gorosteita v. Parkinson,* 2000 UT 99, 17 P.3d 1110*; Hansen v. Mountain Fuel Supply Co.*, 858 P.2d 970, 981 (Utah 1993).

Although a physician or insurance representative's testimony may be offered to show that medical bills were necessitated by the accident and were reasonable, such testimony is not required. A plaintiff can testify that the proffered bills were for medical expenses arising from the injuries received from the incident in question, were forwarded for payment to her insurance company, and were paid without objection by the insurance company. The Court held that this testimony was sufficient to lay a foundation for the admission of plaintiff's medical bills. *Stevenett v. Wal-Mart Stores*, 1999 UT App 80, 977 P.2d 508.

Uninsured/ Underinsured Motorist Coverage:

Uninsured Motorist Coverage
Relevant Statute: *UCA* § 31A-22-305

Utah Code Ann. § 31A-22-305 prohibits "interpolicy stacking," which means recovering benefits for a single incident of loss under more than one insurance policy, except in certain circumstances.

An insurer providing uninsured motorist coverage to an insured involved in an accident may intervene in an action to determine the liability of an uninsured motorist. The intervening insurer may be required to provide independent legal counsel to its insured or to reimburse its insured for reasonable legal expenses incurred in defending against the insurer's intervention. *Chatterton v. Walker*, 938 P.2d 255 (Utah 1997).

Receipt of workers compensation benefits precludes claims by employees against their own insurer under underinsured motorists provisions. *Peterson v. Utah Farm Bureau Ins. Co.,* 927 P.2d 192 (Utah Ct. App. 1996). Uninsured motorist coverage may not be reduced by any benefits provided by workers compensation insurance. *UCA* § 31A-22-305(5).

This coverage must be included in the policy unless affirmatively rejected by an express writing to the insurer. However, persons engaged in the business of transportation of people must provide uninsured motorist coverage of at least $25,000 per person and $500,000 per accident. *UCA* § 31A-22-305(5).

When a person claims that a phantom vehicle caused the accident without touching the covered person or vehicle occupied by the covered person, the covered person must show the existence of the other vehicle by clear and convincing evidence, which shall consist of more than the covered person's testimony. *UCA* § 31A-22-305(6).

"Uninsured motor vehicle" includes a vehicle insured for less than the statutory minimum, an unidentified vehicle that left the scene of an accident which the operator caused, and a vehicle where the insurer has been competently declared insolvent. *UCA* § 31A-22-305(2).

The statute does not require the insurer to provide coverage on a vehicle which is owned by the insured but is not specifically named as an insured vehicle. Uninsured coverage was intended to rest with the vehicle and not with the named insured. The uninsured coverage on claimant's car did not extend to cover the claimant during use of a motorcycle that claimant owned but failed to insure. *Clark v. State Farm Mut. Auto. Ins. Co.*, 743 P.2d 1227 (Utah 1987). However, where the policy did not define "unlisted automobile" to include the motorcycle under the exclusion, motorcycle was not an unlisted "automobile." *Bear River Mut. Ins. Co. v. Wright*, 770 P.2d 1019 (Utah Ct. App. 1989).

The terms of the uninsured motorist coverage limiting liability to the statutory minimum were enforced where the insured was injured while riding as a passenger in his insured vehicle that was being driven by an uninsured permissive user. *Wagner v. Farmers Ins. Exchange*, 786 P.2d 763 (Utah Ct. App. 1990), *abrogated on other grounds by Nielsen v. O'Reilly*, 848 P.2d 664 (Utah 1992).

A common law spouse may receive uninsured motorist benefits under a provision allowing coverage for the insured and "family members." *Whyte v. Blair*, 885 P.2d 791 (Utah 1994).

UM policies written after January 1, 2001, must have limits equal the insured's liability limits or the maximum uninsured coverage limits available under the policy, whichever is less. Insured may elect a lower limit or waiver coverage only after their insurer explains the consequences of denying UM coverage and the insured gives a written acknowledgment. *General Security Indemnity Co. of Arizona v. Tipton*, 2007 UT App 109, 158 P.3d 1121.

Uninsured Motorist Property Damage Coverage
Relevant Statute: *UCA* § 31A-22-305.5

Passengers who were injured in automobile accident sought to recover supplementary underinsured motorist (SUM) benefits from their insurer. The statute allowing the stacking of SUM benefits did not apply to automobile policy that was renewed in New York while insureds were still living there. *Travelers/Aetna Ins. Co. v. Wilson*, 2002 UT App 221, 51 P.3d 1288, *cert. denied*, 59 P.3d 603.

Even if the uninsured motorist coverage of the insurance policy does not include a provision for reimbursement of rental vehicle expenses incurred, if the insurer breaches its contractual obligation to promptly pay the insured, the insurer may be liable for actual costs incurred in renting a replacement vehicle. *Castillo v. Atlanta Casualty Co.*, 939 P.2d 1204 (Utah Ct. App. 1997).

Underinsured Motorist Coverage
Relevant Statute: *UCA* § 31A-22-305.3.

The limitations on damages contained in Utah's Survival Statute do not apply to a claim for payment of underinsured motorist coverage benefits by an insured's heirs. *Estate of Dorothy Berkemeir v. Hartford Ins. Co.*, 2004 UT 104, 106 P.3d 700.

UIM policies written after January 1, 2001, must have limits equal the insured's liability limits or the maximum uninsured coverage limits available under the policy, whichever is less. *UCA* § 31A-22-305.3. The insured can waive UIM coverage by signing a document provided by the insurer that explains the coverage and explains what is waived. The insured must file the waiver with the department.

Negligence: "Fault" means any actionable breach of legal duty, act, or omission proximately causing or contributing to injury or damages sustained by a person seeking recovery, including negligence in all its degrees, contributory negligence, assumption of risk, strict liability, breach of express or implied warranty of a product, products liability, and misuse, modification, or abuse of a product. *UCA* § 78B-5-817 et seq. The definition of fault encompasses both negligent and intentional conduct. *Field v. Boyer Co.*, 952 P.2d 1078 (Utah 1998).

Comparative Negligence

Fault to be apportioned under UCA § 78B-5-818 is not limited to negligence but extends to intentional torts. *Graves v. North Eastern Services, Inc.,* 2015 UT 28, 345 P.3d 619.

Utah's Liability Reform Act, which requires the fault of an immune employer who is less than 40% at-fault to be reallocated amongst all other at-fault parties, supersedes the common law doctrine of *respondeat superior* (doctrine holding that employers are vicariously liable for employees' acts committed within the scope of employment). A plaintiff-employee's fault is not combined with nor reallocated to its immune employer's fault for purposes of determining whether the employer is less than 40% at-fault. The immune employer's fault is allocated on a proportional basis to remaining at-fault parties, using the percentages of fault apportioned to each party of the total remaining fault. *Bishop v. GenTec, Inc.*, 2002 UT 36, 48 P.3d 218.
A person seeking recovery may recover from any defendant or group of defendants whose "fault" exceeds his own. If his fault is equal to or greater than the fault of the defendant, then his recovery is barred. *UCA* § 78B-5-818.

The maximum amount for which a defendant may be liable to any person seeking recovery is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that defendant. *UCA* § 78B-5-820.

No defendant is liable to any person seeking recovery for any amount in excess of the proportion of fault attributable to that defendant. The one exception is that if the fault attributed to immune defendants is less than 40%, that percentage will be reduced to zero and the trial court will reallocate this percentage to other parties in proportion to their fault. After reallocation, cumulative fault will equal 100% with those immune being allocated no fault. Therefore, no defendant is entitled to contribution. *UCA* §§ 78B-5-818 to -820.

While the Liability Reform Act limits a party's liability to its proportion of fault, this does not prohibit a fact-finder from assigning liability to a party under a claim for strict liability, as indicated by the statute's inclusion of strict liability along with negligence, assumption of risk, breach of express or implied warranty of a product, and products liability as causes of action subject to the Utah Liability Reform Act. *See UCA* § 78B-5-817 and *S. H. ex rel. Robinson v. Bistryski,* 923 P.2d 1376, 1382-83 (Utah 1996) (using Utah Liability Reform Act to apportion liability under Utah's strict liability dog-bite statute and also a negligence theory).

A party may join as a defendant any person other than one immune from suit who may have caused or contributed to the injury or damage, for the purpose of having determined their respective proportions of fault. *UCA* § 78B-5-821. An immune employer may be included on the special verdict form for purposes of apportioning fault. Apportionment of an immune employer's fault does not subject the employer to liability, but ensures that no defendant is held liable to any claimant for an amount of damages in excess of the percentage of fault attributable to that defendant. *UCA* § 78B-5-818; *Dahl v. Kerbs Constr. Corp.* 853 P.2d

887 (Utah 1993). Note, reallocation of fault to persons immune from suit is allowed only in cases where the fault of all parties immune from suit is less than 40 percent. *See UCA* § 78B-5-819. *See also UCA* § 78B-5-818 (providing for the attribution of fault to immune persons when requested by a party).

The court must consider a plaintiff's comparative negligence and comparative assumption of the risk in determining liability for a claim of breach of warranty. *Interwest Construction v. Palmer*, 886 P.2d 92 (Utah Ct. App. 1994), *aff'd in part, vacated in part*, 923 P.2d 1350 (Utah 1996).

Any fault allocated to a person immune from suit is considered only to accurately determine the fault of the person seeking recovery and a defendant and may not subject the person immune from suit to any liability, based on the allocation of fault, in this or any other action. *UCA* § 78B-5-818.

If requested, the trial court must inform the jury of the legal consequences of apportioning to the plaintiff 50% or more of the negligence it finds in a comparative negligence case, if the effect of the instruction will not be to confuse or mislead the jury. *Dixon v. Stewart*, 658 P.2d 591 (Utah 1982).

For purposes of apportioning comparative fault in an action with multiple defendants, a jury may not consider the "fault" of parties who have been dismissed from the lawsuit on the merits of the issue of liability. *Sullivan v. Scoular Grain Co. of Utah*, 853 P.2d 877, 878 (Utah 1993) (superseded by statute on other grounds).

The Utah Liability Reform Act expressly bans suits for contribution. See *National Svc. Indus. Inc.*, 937 P.2d 551 (Utah Ct. App. 1997); *see also UCA* § 78B-5-820 (defendant is not entitled to contribution from any other person).

Where the alleged negligence consists of a failure to act, the injured person must demonstrate the existence of a special relationship which creates a duty to act. *Owens v. Garfield*, 784 P.2d 1187 (Utah 1989). A contractual relationship may give rise to a relationship on which a tort duty is premised. *DCR Inc. v. Peak Alarm Co.*, 663 P.2d 433 (Utah 1983). However, if the contact does not require the performance of the allegedly omitted act, there is no basis for tort liability arising from the contract on account of the omission. *Hill v. Superior Prop. Mgmt. Servs. Inc.,* 2013 UT 60, 321 P.3d 1054.

A person's negligence is not superseded by the negligence of another if the subsequent negligence of the other is foreseeable; superseding cause is generally a jury question. *Williams v. Melby*, 699 P.2d 723 (Utah 1985); *Godesky v. Provo City Corp.*, 690 P.2d 541 (Utah 1984); *Harris v. Utah Transit Auth.*, 671 P.2d 217 (Utah 1983).

The failure to wear a seat belt does not constitute contributory or comparative negligence and may not be introduced as evidence in a civil action on the issue of negligence, injuries or the mitigation of damages. *UCA* § 41-6a-1806. *Whitehead v. American Motors Sales Corp.*, 801 P.2d 920 (Utah 1990) (citing statute).

Statute of Limitations:
Time for Commencement of Actions: Civil actions must be commenced within the prescribed periods, after the cause of action has accrued, except in specific cases where a different limitation is prescribed by statute. *UCA* § 78B-2-102.

Product liability claims are subject to a two-year statute of limitations which runs from the time the plaintiff knew, or in the exercise of reasonable diligence should have known, of the injury, its cause, and the identity of the seller. *UCA* § 78-15-3; *Aragon v. Clover Club Foods, Co.*, 857 P.2d 250 (Utah Ct. App. 1993).

Actions for wrongful death may be brought by the heirs or the personal representative on behalf of the heirs. *UCA* § 78B-3-106; *Haro v. Haro*, 887 P.2d 878 (Utah Ct. App. 1994). A parent or guardian may maintain an action for the death or injury of a minor child when such injury or death is caused by the wrongful act of another. *UCA* § 78B-3-102; *Moreno v. Bd. of Educ.*, 926 P.2d 886 (Utah 1996). Such an action must be brought

within two years after death, but if the judgment for plaintiff is reversed or if plaintiff fails otherwise than on the merits, a new action may be commenced within one year from such reversal or failure. *UCA* § 78B-2-304; § 78B-2-11; *In re Estate of Garza*, 725 P.2d 1328 (Utah 1986).

The two-year statute of limitations for a wrongful death claim is tolled if the claimants are minors. *In re Estate of Garza*, 725 P.2d 1328 (Utah 1986).

Generally, Utah's statutes of limitations apply to actions brought in Utah. *Financial Bancorp. v. Pingree & Dahle*, 880 P.2d 14 (Utah Ct. App. 1994). The statute of limitations begins to run from the day the cause of action arises. Discovery of the claim at a later date will only toll the statute of limitations under limited circumstances. *Williams v. Howard*, 970 P.2d 1282 (Utah 1998).

In *Russell Packard Development Inc. v. Carson,* 2005 UT 14, 108 P.3d 741, the Utah Supreme Court ruled that the "equitable discovery rule" tolls the relevant statutes of limitations where defendants have concealed wrongful acts and plaintiff acted reasonably in filing a complaint after expiration of limitations period.

Time Periods: Time periods for commencement of actions involving other than acquisition of real property are:

Eight Years: An action upon a judgment or decree of any court of the United States or any of its states or territories. *UCA* § 78B-2-311.

Six Years: Actionupon any contract, obligation, or liability founded upon an instrument in writing, except those mentioned in *UCA* § 78B-2-311. *UCA* § 78B-2-309. A cause of action does not accrue upon an anticipatory breach or repudiation of a contract. *Koulis v. Standard Oil Co.*, 746 P.2d 1182 (Utah Ct. App. 1987). "Liability," as used in this section, refers to contract rather than tort actions. *Brigham Young Univ. v. Paulsen Constr. Co.*, 744 P.2d 1370 (Utah 1987). Settlement agreements are governed by rules and statute of limitations applied to general contract actions. *Butcher v. Gilroy*, 744 P.2d 311 (Utah Ct. App. 1987).

Four Years: An action upon a contract, obligation, or liability not founded upon a writing; upon an open account for goods and merchandise; on an open account for services or materials furnished; and for claims under specified sections of the Utah Fraudulent Transfer Act; and for actions for relief not otherwise provided by law. *UCA* § 78B-2-307.. The statute applies to legal malpractice actions from the time the act complained of was or should have been discovered. *Merkley v. Beaslin*, 778 P.2d 16 (Utah Ct. App. 1989). Tort actions not otherwise provided for by statute are embraced by this section. *Thomas v. Union Pac. R.R.*, 1 Utah 235 (1875). This section applies to the tort of reckless misconduct, it being a form of negligence and not an intentional tort. *Matheson v. Pearson*, 619 P.2d 321 (Utah 1980).

Three Years: Actions for waste, trespass or injury to real property; for taking, detaining, or injuring personal property (discovery rule applies to claim involving underground mining); for relief on the ground of fraud or mistake (discovery rule applies); actions for a liability created by the statutes of this state, other than for a penalty or forfeiture, except where a different period is proscribed; actions involving nuclear incidents is governed by *UCA* § 78B-3-603 (discovery rule applies). *UCA* § 78B-2-305.

The statute applies to actions for negligently damaging personal property, *Holm v. B & M Serv. Inc.*, 661 P.2d 951 (Utah 1983), and to actions for injury to real property grounded in tort. *Brigham Young Univ. v. Paulsen Constr. Co.*, 744 P.2d 1370 (Utah 1987). In an action for fraud or one where the cause of action has been concealed, the three-year statute of limitations will not begin to run until discovery. *Attorney Gen. v. Pomeroy*, 73 P.2d 1277 (Utah 1937).

The "discovery rule," applicable to actions based on fraud or mistake, does not apply to a property vendor's negligence cause of action against a surveyor. *Klinger v. Kightly*, 791 P.2d 868 (Utah 1990). The three-year statute of limitations applies to claims of fraud brought under the Utah blue sky laws (*UCA* § 61-1-22), *Clegg v. Conk*, 507 F.2d 1351 (10th Cir. 1974), *cert. denied*, 422 U.S. 1007 (1975), but the United States Supreme Court has held that the three-year statute of limitations no longer applies to federal claims brought under § 10(b) of the Securities

and Exchange Act of 1934. Actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed, or to enforce a liability created, by law must be brought within three years after discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or the liability accrued. *UCA* § 78B-2-306. In an action for breach of fiduciary duty, it was not necessary for the board of directors to have had all details of the transaction, but only that they have had enough information to be on notice of a possible wrong. *Webb v. R.O.A. Gen., Inc.*, 804 P.2d 547 (Utah Ct. App. 1991).

An action on a written policy or contract of first-party insurance must be commenced within three (3) years after the inception of the loss. *UCA* § 31A-21-313.

Two Years: Causes of action against a political subdivision of the State and its employees, for injury to the personal rights of another. *UCA* § 78B-2-304. Actions for wrongful death and medical malpractice, *see* Death, Wrongful Death and Medical Malpractice/Statute of Limitations; *UCA* § 78B-3-404; Product Liability action, *UCA* § 78B-6-706. Actions against a marshal, sheriff, constable, or other officer for acts or omission of official duty. *UCA* § 78B-2-304.

One Year: Actions for liability created by the statutes of a foreign state; upon a statute for a penalty of forfeiture where the action is given to an individual, or to an individual and the state, except when a different period is proscribed; upon a statute, or upon an undertaking in a criminal action, for a forfeiture or penalty to the state; for libel, slander, false imprisonment, or seduction; against a sheriff or other officer for the escape of a prisoner; against a municipal corporation for damages or injuries to property caused by a mob or riot. *UCA* § 78B-2-302. Applies to the tort of false arrest. *Tolman v. K-Mart Enters.*, 560 P.2d 1127 (Utah 1977).

The one-year statute of limitations for libel did not commence running until the plaintiff knew or had reason to know of the libel. *Allen v. Ortez*, 802 P.2d 1307 (Utah 1990). An action challenging a decision of a county legislature body or executive. *UCA* § 78B-2-303.

Six Months: An action against a tax collector to recover goods seized or damages done to goods seized; for money paid to such officer under protest or seized, and claimed should be refunded. *UCA* § 78B-2-301.

Punitive Damages: Punitive damages may be awarded only if compensatory or general damages are awarded and the plaintiff establishes through clear and convincing evidence that the defendant's conduct was willful and malicious or intentionally fraudulent or manifested a knowing and reckless indifference toward and a disregard of the rights of others. Awarding punitive damages must not merely "vent vindictiveness," give additional compensation to the plaintiff, or give the plaintiff an "in terrorem" weapon in settlement negotiations. *UCA* § 78B-8-201(1)(a). See *Behrens v. Raleigh Hills Hosp.*, 675 P.2d 1179 (Utah 1983); *Gleave v. Denver & R. G. W. R.R.*, 749 P.2d 660 (Utah Ct. App.), *cert. denied*, 765 P.2d 1278 (Utah 1988).

The standards of conduct identified above do not apply to a claim for punitive damages arising out of the operation of a motor vehicle while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs. *UCA* § 78B-8-201(1)(b)(i); *Johnson v. Rogers*, 763 P.2d 771 (Utah 1988) (to recover punitive damages in a drunk driving case, plaintiff must show that defendant acted with knowing and reckless disregard of the rights of others and that the drunken driving contributed to the accident).

Punitive damages not recoverable against a governmental entity. *UCA* § 63G-7-603(1)(a).

Fifty percent of the amount of punitive damages in excess of $50,000 after attorney fees and costs are to be remitted to the state treasurer for deposit into the General Fund. *UCA* § 78B-8-201(3)(a)(ii).

Utah adheres to the more conservative Restatement (Second) of Torts § 909 view of corporate liability for punitive damages. A corporation is only liable for punitive damages if the acts were ratified, authorized, or performed by a managerial agent or principal, or if the managerial agent or principal recklessly hired or

retained the unfit employee who caused injury. This is termed the "complicity" rule. *Johnson v. Rogers*, 763 P.2d 771 (Utah 1988).

Under Utah case law, the following factors are to be considered when awarding punitive damages: (i) the relative wealth of the defendant; (ii) the nature of the alleged misconduct; (iii) the facts and circumstances surrounding each conduct; (iv) the effect thereof on the lives of the plaintiff and others; (v) the probability of future recurrence of the misconduct; (vi) the relationship of the parties; and (vii) the amount of actual damages awarded. *Crookston*, 817 P.2d 789. Evidence of the effect of the defendant's conduct on others may only be used to demonstrate the reprehensibility of the defendant's conduct and not for calculating the appropriate punishment. *Westgate Resorts, Ltd. v. Consumer Prot. Grp., LLC, Appellee*, 2012 UT 55, ¶ 23, 285 P.3d 1219, 1226.

Evidence of a defendant's relative worth is not a prerequisite for punitive damage awards. However, the courts encourage plaintiffs to submit evidence of a defendant's relative worth, or risk losing punitive damages based on excessiveness. *Hall v. Wal-Mart Stores, Inc.*, 959 P.2d 109 (Utah 1998); *Bennett v. Huish,* 2007 UT App 19, 155 P.3d 917.

The United States Supreme Court reversed the Utah Supreme Court's decision in *Campbell v. State Farm Mut. Auto. Ins. Co.*, 2001 UT 89, 65 P.3d 1134, finding that the Utah Supreme Court erred in reinstating the jury's $145 million punitive award, which violated due process. The Court held that under the three guideposts set forth in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996) (degree of reprehensibility of defendant's misconduct; disparity between actual or potential harm suffered by plaintiff and punitive award; and difference between punitive award and civil penalties authorized or imposed in comparable cases), the punitive award of $145 million was neither reasonable nor proportionate to the wrong committed, and was an arbitrary deprivation of the property of State Farm. In reaching this conclusion, the Court held that a State cannot punish a defendant for conduct that may have been lawful where it occurred, nor does a State have a legitimate concern in imposing punitive damages to punish a defendant for unlawful acts committed outside the State's jurisdiction. Moreover, dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages. Last, the wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award. *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513 (2003).

Joint and Several Liability: Utah's legislature abolished joint and several liability and contribution among joint tortfeasors, and enacted the Liability Reform Act of 1986. Tort reform is based on concepts of "fault" and "causation." *UCA* § 78B-5-817 et seq.

The civil liability of a minor is imputed to the adult who signed the minor's driver license application, and that adult is subject to joint and several liability with the minor.. That liability is satisfied, however, by having minimum liability insurance on the minor driver. *UCA* § 53-3-211.

Workers Compensation: Workers compensation statutes are construed liberally in favor of employee coverage when statutory terms reasonably admit such a construction, and are intended to favor substantive rights over technicalities. *Reinsurance Fund v. Labor Comm'n*, 2012 UT 76, ¶ 22, 289 P.3d 572, 579.

The requirement that the accident arise in the course of employment is satisfied if it occurs while the employee is rendering service to his employer, which he was hired to do, at the time and place his employer directed him to render such service. *Walker v. U.S. General, Inc.,* 916 P.2d 903 (Utah 1996). Injuries must be unexpected or unintended to be an accident compensable under workers compensation. *Crapo v. Industrial Comm'n,* 922 P.2d 39 (Utah Ct. App. 1996).

Workers compensation statutes focus on the status of the employment relationship rather than on fault. Those parties who are not part of the employment relationship do not participate in the benefits or burdens of workers compensation. *Kunz v. Beneficial Temporaries,* 921 P.2d 456 (Utah 1996).

Where a general employer loans one of its employees to another employer ("special employer"), a new temporary employment relationship is formed. In determining liability under workers compensation, the court analyzes the

relative right of control maintained by both general and special employers. An employee of a special employer who is injured by a loaned employee may bring a tort action against a general employer. *Kunz v. Beneficial Temporaries,* 921 P.2d 456 (Utah 1996). The loaned employee's claims against the special employer are limited to those provided by workers compensation if (1) the loaned employee has made an express or implied contract with the special employer; (2) the work performed is essentially that of the special employer; and (3) the special employer has the right to control the details of the work. An implied contract will be found if the employee, having a choice whether to accept the assignment, accepts the assignment. *Walker v. U.S. General, Inc.,* 916 P.2d 903 (Utah 1996).

In workers compensation cases, generally the substantive law in effect at the time of the employee's injury applies throughout the course of that injury. *Olsen v. Samuel McIntyre Investment Co.,* 956 P.2d 257 (Utah 1998).

An appellate court will confirm the Commissions's findings as long as those findings are based on substantial evidence, even if another conclusion from the evidence is permissible. *Brady v. Labor Comm'n*, 2010 UT App 58U, para. 7, 2010 UT App 58 (cleaned up).

If there is no medical controversy (i.e., conflicting doctor reports), the Commission is not required to refer the case to a medical panel. *Brown & Root Industrial Service v. Industrial Commission of Utah*, 947 P.2d 671 (Utah 1997).

Utah's Workers Compensation Act is compulsory and not permissive and imposes an unconditional obligation on employers to be properly insured. An employer's good faith attempt to obtain coverage is irrelevant, and the employer is liable for benefits paid the employee by the Uninsured Employers Fund. *Thomas A. Paulsen Co. v. Industrial Comm'n*, 770 P.2d 125 (Utah 1989).

The insurer bears a proportionate share of the costs and attorneys' fees incurred in obtaining a recovery against the third party. *Lanier v. Pyne*, 508 P.2d 38 (Utah 1973). However, an insurer has no right to recover out of that part of a wrongful death recovery due to heirs who received no workers compensation benefits. *Oliveras v. Caribou-Four Corners*, 598 P.2d 1320 (Utah 1979).

Disbursements of proceeds recovered in a third-party tort action due to injuries or death arising from a work-related accident is controlled by *UCA* § 34A-2-106(5). Double recovery for injuries or death sustained in conjunction with an accident covered by workers compensation is not permitted. Therefore, a third-party recovery must reimburse the employer or insurer for workers compensation sums already paid as well as offset for future liability of sums owed. However, the employer or insurer must first bear a proportionate share of the expenses for obtaining the recovery. *Esquivel v. Labor Comm'n*, 2000 UT 66, 7 P.3d 777.

Injuries received from fight while intoxicated compensable; trucker claimed he was trying to protect his cargo when he chased men into field, so incident arose out of employment. *Commercial Carriers v. Industrial Comm'n*, 888 P.2d 707 (Utah Ct. App. 1994).

Disability benefits for total permanent disability are not subject to reduction on the basis of the potential for reemployment of the claimant. *Intermountain Slurry Seal v. Labor Comm'n*, 2002 UT App 164, 48 P.3d 252.
Evidence is sufficient for a jury to find that an employer knew or should have known that working conditions could cause employees to develop carpal tunnel syndrome, where a plaintiff-employee presents evidence about the nature of his work and offers expert opinion testimony as to causation. *Brewer v. Denver & Rio Grande Western*, 2001 UT 77, 31 P.3d 557.

In *Ameritemps, Inc. v. Labor Comission,* 2005 UT App 491, ¶25, 128 P.3d 31, 39-40 Aff'd sub nom. *Ameritemps, Inc. v. Utah Labor Commission*, 2007 UT 8, 152 P.3d, the court ruled that Labor Commission's interim order finding that a workers compensation claimant qualified for permanent total disability was a final agency action and therefore could be appealed.

In *Martinez v. Media-Paymaster Plus*, 2005 UT App 308, 117 P.3d 1074, the Court of Appeals held that the Labor Commission erred in placing the burden on Martinez to show that he was not gainfully employed or that he was otherwise not prevented from seeking other work reasonably available. The Court of Appeals stated that if a claimant proves that he has been injured, that he is permanently disabled, and that the workplace accident was the direct cause of the disability, the claimant is presumed by the court to be entitled to permanent disability benefits.

The Utah Supreme Court reversed the holding of the Court of Appeals in *Martinez v. Media-Paymaster Plus.* A workers compensation claimant has the burden of proving that he has suffered total permanent disability in order to receive benefits. *Martinez v. Media-Paymaster Plus,* 2007 UT 42, 117 P.3d 384.

Bad Faith: The court may award reasonable attorneys' fees to a prevailing party if the court determines that a claim or defense was without merit and was not brought or asserted in good faith. *UCA* § 78B-5-825. "Without merit" means frivolous or having no basis in law or fact. Bad faith must be established by one or more of the following conditions: (1) absence of an honest belief in the propriety of the activities in question; (2) intent to take unconscionable advantage of others; or (3) intent or knowledge that the action will hinder, delay, or defraud others. *Baldwin v. Burton*, 850 P.2d 1188 (Utah 1993).

Before an award of attorneys' fees can be made in a declaratory judgment action, the insurer must have acted fraudulently, in bad faith, or have been stubbornly litigious. *American States Ins. Co. v. Walker*, 486 P.2d 1042 (Utah 1971); *Farmers Ins. Exch. v. Call*, 712 P.2d 231 (Utah 1985).

An insurer owes its insured a duty to accept an offer of settlement within the policy limits when there is a substantial likelihood of a judgment being rendered against the insured in excess of those limits. *Campbell v. State Farm Mut. Auto. Ins. Co.*, 840 P.2d 130, 138 (Utah Ct. App. 1992).The insurer has a duty to protect a policyholder's interests as zealously as it would its own from third-party claimants. A bad faith cause of action in tort exists for breach of this fiduciary duty. *Ammerman v. Farmers Ins. Exch.*, 430 P.2d 576, 578 (Utah 1967); *Beck v. Farmers Ins. Exch.*, 701 P.2d 795, 799-800 (Utah 1985); *Campbell v. State Farm Mut. Auto Ins. Co.*, 840 P.2d 130, 138-39 (Utah Ct. App.), *cert. denied*, 853 P.2d 897 (Utah 1992). The test of the insurer's conduct is reasonableness under the circumstances. *Campbell*, 840 P.2d at 138.

An injured third party who obtains a judgment in excess of policy limits has no direct cause of action against the insurer who refused to settle within policy limits. *Ammerman v. Farmers Ins. Exch.*, 430 P.2d 576 (Utah 1967).

There is no duty of good faith and fair dealing imposed upon an insurer running to a third-party claimant seeking to recover against the insured. *Pixton v. State Farm Mut. Auto. Ins. Co.*, 809 P.2d 746 (Utah Ct. App. 1991); *Sperry v. Sperry*, 1999 UT 101, 990 P.2d 381.

A breach of contract (implied obligation to perform the contract in good faith), and not a tort cause of action for bad faith, is recognized in a first-party situation. *Beck v. Farmers Ins. Exch.*, 701 P.2d 795 (Utah 1985); *Gagon v. State Farm Mut. Auto. Ins. Co.*, 746 P.2d 1194 (Utah Ct. App. 1987), *cert. denied*, 771 P.2d 325 (Utah 1988). However, in some cases the acts causing the breach may cause breaches of other duties that may lead to an action in tort independent of the contract. *Beck*, 701 P.2d at 800 n.3.

The implied obligation of good faith performance on the part of the insurer at the very least requires "that the insurer will diligently investigate the facts to enable it to determine whether a claim is valid, will fairly evaluate the claim, and will thereafter act promptly and reasonably in rejecting or settling the claim." *Beck*, 701 P.2d at 801.

A claim for bad faith denial of an insurance claim in the first-party context is eliminated if the evidence creates a legitimate factual issue concerning the validity of the insurance claim. *Campbell v. State Farm Mutual Ins. Co.*, 840 P.2d 130, 138-39 n.16 (Utah Ct. App.), *cert. denied*, 853 P.2d 897 (Utah 1992); *Callioux v. Progressive Ins. Co.*, 745 P.2d 838 (Utah Ct. App. 1987).

Third-party claimant who is not in privity of contract with the insurer has no cause of action against the carrier for breach of the duty to good faith and fair dealing. *Savage v. Educators Ins. Co.*, 874 P.2d 130 (Utah Ct. App. 1994), *aff'd*, 908 P.2d 862 (Utah 1995) (employee not in privity with employer's workers compensation carrier).

The insured is not obliged to pay the amount of the judgment exceeding policy limits as a condition precedent to an action against the insurer for failure to settle the claim within policy limits. *Ammerman v. Farmers Ins. Exch.*, 450 P.2d 460 (Utah 1969).

Although bad faith actions in Utah cannot sound in tort, damages for bad faith breach of the insurance contract include both general and consequential damages. Consequential damages are "those reasonably within the contemplation of, or reasonably foreseeable by, the parties at the time the contract was made." *Horton v. Gem State Mut.*, 794 P.2d 847 (Utah Ct. App. 1990). Consequential damages may include attorneys' fees, but only in the context of insurance contracts and the third-party exception. *Canyon Country Store v. Bracey*, 781 P.2d 414 (Utah 1989); *Collier v. Heinz*, 827 P.2d 982 (Utah Ct. App. 1992).

After a denial of coverage by an insurer, the insured may enter into a reasonable settlement with a third party without prejudicing its rights against the insurer. *Gibbs M. Smith, Inc. v. United States Fidelity & Guaranty Co.,* 949 P.2d 337 (Utah 1997).

The knowledge of a corporation's agent, acting within the scope of his authority, may be imputed to the corporation for the purpose of determining whether attorney fees should be awarded under this section. *Wardley Better Homes & Gardens v. Cannon*, 2002 UT 99, 61 P.3d 1009.

When an insured brings extra-contractual claims against an insurer, such as a claim for a bad-faith denial of coverage, the existence of an "appraisal" clause in the insurance contract does not mean that the prescribed appraisal process should settle the dispute. Rather, absent an arbitration clause, the insured has the right to a full and fair opportunity to litigate the bad faith claim in court. *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, 44 P.3d 663.

If an insurer acts reasonably in denying a claim, then the insurer did not contravene the covenant of good faith and fair dealing. The denial of a claim is reasonable if the insured's claim is fairly debatable. An insurer is not required to affirmatively plead a fairly debatable defense in its answer. Denying benefits under an insurance policy in reliance on an expert's report, such as a doctor's report, even if the expert's opinion is provided in exchange for remuneration, is not a bad faith denial because the expert's report creates a legitimate factual question regarding the validity of an insured's claim for benefits, making the insured's claim at least fairly debatable. *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, 56 P.3d 524.

In *Christiansen v. Farmer's Ins. Exchange,* 2005 UT 21, 116 P.3d 259, the Utah Supreme Court ruled that a showing of breach of insurance contract is not a prerequisite for pursuing discovery related to a bad faith claim.

Alcohol: Utah's Dramshop Liability Act, *UCA* § 31B-15-201 et seq., imposes strict liability on persons, employers, and establishments that provide alcohol to any individual under age 21 or who is intoxicated and who, as a result of the alcohol provided, causes injury or death to a third person. In such situations, the injured third person of the person's heirs have a cause of action against the provider of the alcoholic beverage. For actions arising after January 1, 2010, total damages under the Act are limited to $1,000,000 per individual and $2,000,000 in the aggregate to all persons per occurrence. [The limits for actions arising prior to January 1, 2010 are 500,000 and $1,000,000 respectively.] The state and its agencies and employees are immune from liability under the Act.

In *Red Flame, Inc. v. Martinez*, 2000 UT 22, 996 P.2d 540, the Utah Supreme Court held that the Utah Liability Reform Act, which abolished joint and several liability, applies to the strict liability of the Dramshop Liability Act.

Only "third persons" may recover under the Dramshop Act, not the intoxicated person. *Horton v. Royal Order of the Sun*, 821 P.2d 1167 (Utah 1991). The term "third person" does not include the claims by the spouse, child, or parent of the intoxicated person for injury or death to the intoxicated person. *Richardson v. Matador Steak House, Inc.*, 948 P.2d 347 (Utah 1997). *See also Miller v. Gastronomy, Inc.*, 2005 UT App 80, 110 P.3d 144 (Utah does not recognize a common law first-party action or wrongful death action brought by heirs against Dramshops for injuries suffered by intoxicated persons).

Other changes in the Act, effective January 1, 1998, include: no distinction is made between liquor and alcoholic beverages with less than 4% alcohol; the Act will not apply to private hosts of social functions, unless those served are under 21 years of age; general food stores and other stores selling beer for off-premises consumption are expressly exempt from Dramshop actions; and, an employer may not terminate an employee as a result of the employee having exercised his or her independent judgment to refuse to provide alcohol to a person pursuant to the Act.

Some question remains whether the Dramshop Act has superseded common law theories of liability and whether the statutory limits apply to such theories.

The statutory prohibition on drinking alcoholic beverages and having open alcoholic beverage containers in motor vehicles, *see UCA* § 41-6a-526(1) & (2), does not apply to passengers in motorboats. *UCA* § 41-6a-526(4)(c).

A person may not operate or be in actual physical control of a vehicle within this state if the person: (1) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .05 grams or greater at the time of the test; (2) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or (3) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation or actual physical control. *UCA* § 41-6a-502. The amounts reflected in this statute have been changed effective December 30, 2018 (down from 0.8 grams).

A finding that the defendant was driving while under the influence alone is insufficient to submit the issue of punitive damages to a jury. Punitive damages are recoverable against a drunken driver where the driver acted with actual malice or a reckless disregard of the rights and safety of others, and his drunken driving was a cause of the accident. *Johnson v. Rogers*, 763 P.2d 771 (Utah 1988); *Biswell v. Duncan*, 742 P.2d 80 (Utah Ct. App. 1987). *See also UCA* § 78B-8-201(1)(b)(i). Breathalyzer test reading .27 was sufficient to sustain the court's finding that the defendant had operated his vehicle in a willful and wanton disregard for the safety of others. *Ellefsen v. Roberts*, 526 P.2d 912 (Utah 1974).

UCA § 32B-4-209 permits state store employees, beer retailers, and certain others to detain other citizens, if the employees or retailers have reason to believe that the citizen is an intoxicated minor, a minor attempting to buy alcohol, an intoxicated person attempting to buy alcohol, or an interdicted person possessing or attempting to buy alcohol. For the detention to be lawful, however, the person must be in the facility where liquor or beer is sold. The person is not in the facility if he or she is actually in the parking lot of the facility, or on neighboring property. *Eddy v. Albertson's, Inc.*, 2001 UT 88, 34 P.3d 781.

The standards of conduct identified above do not apply to a claim for punitive damages arising out of the operation of a motor vehicle while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs. *Johnson v. Rogers*, 763 P.2d 771 (Utah 1988) (to recover punitive damages in a drunk driving case, plaintiff must show that defendant acted with knowing and reckless disregard of the rights of others and that the drunken driving contributed to the accident).

To date, Utah Law states that a policy of motor vehicle liability coverage may limit coverage to statutory minimum policy limits if the insured motor vehicle is operated by a person who has consumed any alcohol or illegal substance, if the policy or a specifically reduced premium was extended to the insured with a written stipulation that the vehicle would not be operated in this manner. *UCA* § 31A-22-303(7) (2010).

However, during the 2020 legislative session, the Utah legislature adopted amendments to this provision, to become effective January 1, 2020, which requires a finding of guilt regarding driving under the influence before policy coverage is reduced. The amendments also allow extension of the coverage change to the insured's spouse or other permissible users of the vehicle. 2020 Utah Laws H.B. 159.

The legal drinking age in Utah is 21.

Intra Family and Spousal Immunity: Parent-child immunity and spousal immunity probably do not exist in Utah. Parent-child immunity has never been recognized by the State of Utah. *Bishop v. Nielsen*, 632 P.2d 864 (Utah 1981); *Farmers Ins. Exch. v. Call*, 712 P.2d 231 (Utah 1985). In *Bishop v. Nielsen*, 632 P.2d 864 (Utah 1981), the court ruled that even if the doctrine were followed in Utah, it would not prevent the joinder of the plaintiff's daughter as a third-party defendant. In *Farmers Ins. Exch. v. Call*, 712 P.2d 231 (Utah 1985), the court acknowledged that the doctrine has never been established by the legislature and does not exist in Utah. More importantly, the court held that the household or family exclusion often found in automobile liability policies is void to the extent of coverage required by the financial responsibility laws. (The exclusion has been enforced above that limit.) In this context the court noted that it did not consider the threat of intra-family collusion to be a valid rationale for that exclusion. *State Farm Mut. Auto. Ins. Co. v. Mastbaum*, 748 P.2d 1042 (Utah 1987) has since confirmed that the household exclusion is valid over and above the statutory minimum required by the No-Fault Insurance Act. *See* Motor Vehicle Insurance, Personal Injury Protection/No Fault, Section II. 2.2.

In *Stoker v. Stoker*, 616 P.2d 590 (Utah 1980), the court ruled that the doctrine of interspousal tort immunity did not bar a wife's action for intentionally caused personal injuries. Since that decision, there has been some question whether the doctrine, which previously had been followed, was repudiated in negligence actions as well.

In *State Farm Mut. Auto. Ins. Co. v. Mastbaum*, 748 P.2d 1042 (Utah 1987), a dissenting judge indicated that *Stoker v. Stoker*, 616 P.2d 590 (Utah 1980) eliminated the doctrine of interspousal tort immunity. *See also Laney v. Fairview City*, 2002 UT 79, 57 P.3d 1007 (concurring and dissenting opinion noting that the Supreme Court "determined that the legislature had completely abolished the antiquated doctrine of Interspousal Tort Immunity"). Other courts have been less definite. *See Forsman v. Forsman*, 779 P.2d 218 (Utah 1989); *Noble v. Noble*, 761 P.2d 1369 (Utah 1988); *see also Lucero v. Valdez*, 884 P.2d 199 (Ariz. Ct. App. 1994) (reviewing Utah case law on interspousal immunity).

There is no clear rule concerning when a child is old enough to have a duty of due care. A child is expected to exercise that degree of care which would ordinarily be observed by children of the same age, intelligence, and experience under similar circumstances. *Donohue v. Rolando*, 400 P.2d 12 (Utah 1965). A child participating in an adult activity, however, is held to the same standard of care as an adult. *Summerill v. Shipley*, 890 P.2d 1042 (Utah Ct. App. 1995).

One has an insurable interest in another person, for persons closely related by blood or by law if they have a "substantial interest engendered by love and affection." One has an insurable interest in property or liability if he has a "lawful and substantial economic interest in the nonoccurrence of the event insured against." *UCA* § 31A-21-104. In *National Farmers Union Property & Casualty Co. v. Thompson*, 286 P.2d 249 (Utah 1955), the Utah Supreme Court concluded that a person having such interest in property that he may derive pecuniary benefit from the property's continued existence or suffer pecuniary loss from its destruction has a substantial economic interest such that he or she can enforce an insurance policy.

An innocent coinsured is not necessarily precluded from recovering on a fire insurance policy because a coinsured, her husband, intentionally destroyed the property. *Error v. Western Home Ins. Co.*, 762 P.2d 1077 (Utah 1988). If, however, the insurance policy contains an unambiguous exclusion for intentional acts, an innocent spouse may be precluded from recovery under the policy. *Utah Farm Bureau Ins. Co. v. Crook*, 1999 UT 47, 980 P.2d 685.

Despite a divorce decree that awarded the home to the wife and a restraining order prohibiting the husband from returning to the home, the husband had an insurable interest in the home, albeit minimal. *Error v. Western Home Ins. Co.*, 762 P.2d 1077 (Utah 1988).

Seat Belt Defense: The driver of a motor vehicle shall wear a safety belt. *UCA* § 41-6a-1803. The driver shall provide for the protection of each person younger than eight years old by using a child-restraint device for each person in the manner prescribed by the manufacturer of the device. *UCA* § 41-6a-1803. The driver shall provide for the protection of those eight years to sixteen years old by using the proper restraint device to restrain each person or by causing a safety belt to be secured on each person. *UCA* § 41-6a-1803.

A safety belt is not required if the vehicle was built before July 1, 1966, if a physician has provided written verification that the passenger is unable to wear it, the vehicle is not required to have safety belts, or if all seats are otherwise occupied. *UCA* § 41-6a-1804.

A person who violates *UCA* § 41-6a-1803 is guilty of an infraction and shall be fined $45.00; all but $15.00 of it is waived if an approved two-hour course is completed. *UCA* § 41-6a-1805.

The failure to wear a seat belt does not constitute contributory or comparative negligence and may not be introduced as evidence in a civil action on the issue of negligence, injuries or the mitigation of damages. *UCA* § 41-6a-1806. *Whitehead v. American Motors Sales Corp.*, 801 P.2d 920 (Utah 1990) (citing statute).

Premises Liability: Utah follows the premises liability rule, in the Restatement (Second) of Torts, that a possessor of land is subject to liability for physical harm caused to his invitees (including employees) by a condition on the land if, but only if, he: (1) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees; (2) should expect that they will not discover or realize the danger, or will fail to protect themselves against it; and (3) fails to exercise reasonable care to protect them against the danger.

However, a possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness, with the fact that the invitee is entitled to make use of public land, or of the facilities of a public utility, taken as a factor of importance when determining whether the possessor should anticipate harm from a known or obvious danger.

Utah has adopted the Retained Control Doctrine, which precludes the assignment of liability to a general contractor for injuries sustained by a subcontractor where the general contractor does not exercise control over the manner or method of the work. General supervision is not enough to overcome this rule.

Rental Coverage: Providers of ski equipment, for either rental or purchase, have a duty of care commensurate with the standards of the industry to install and adjust the bindings, considering factors such as the experience level of the skier. A breach of that duty would constitute negligence. *Meese v. Brigham Young University*, 639 P.2d 720 (Utah 1981).

In 1990, the Utah legislature enacted the Utah Fit Premises Act, *UCA* § 57-22-1 et seq. This Act pertains only to residential rental units. Under the Act a landlord may not rent residential properties until they are safe, sanitary, and fit for human occupancy as defined by the Act. While a landlord may evict for any legal reason or for no reason at all, he is not free to evict in retaliation for his tenant's report of housing code violations to the authorities. *Building Monitoring Sys. v. Paxton*, 905 P.2d 1215 (Utah 1995).

The Utah Court of Appeals ruled that *UCA* § 31A-22-314 does not relieve rental car companies of their obligation to provide minimum insurance under Utah's Financial Responsibility of Motor Vehicles Owners and Operators Act, even when other valid and collectible coverage exists. *Li v. Zhang*, 2005 UT App 246, 120 P.3d 30.

Car rental companies are required to maintain the statutory minimum required insurance coverage for all vehicles in the case that the renter does not have other valid or collectible insurance. *UCA* § 31A-22-314.
Releases: To be enforceable, a release "must at a minimum be unambiguous, explicit and unequivocal." *Simonson v. Travis*, 728 P.2d 999 (Utah 1986).

A defendant is not discharged by release unless the release identifies the defendant with specificity. *Child v. Newsom*, 892 P.2d 9 (Utah 1995). The contrary holding in *Krauss v. Utah State Depart. of Transp.*, 852 P.2d 1014 (Utah Ct. App. 1993) is overruled.

Thornock v. Jensen, 950 P.2d 441 (Utah Ct. App. 1997), citing to *Child v. Newsom*, indicates that Utah courts will narrowly apply releases which attempt to discharge defendants not listed by name. With this in mind, releasors should take care to list each releasee by name and not rely solely on boiler-plate release language.
A release can be challenged on the same grounds as any contract can, such as fraud, mutual mistake, unilateral mistake, and duress. *Horgan v. Industrial Design Corp.*, 657 P.2d 751 (Utah 1982).

In *Campbell v. Stagg*, 596 P.2d 1037 (Utah 1979), a release was set aside for mutual mistake where both parties entered into the agreement based on a physician's statements that the plaintiff's injuries were minor when they were not.

Emotional distress does not amount to duress and economic necessity alone is insufficient to invalidate a signed release. *Berube v. Fashion Centre*, 771 P.2d 1033 (Utah 1989).

That an unknown consequence of a known injury arises following the execution of a release is no basis to set aside or otherwise challenge the release. *Blackhurst v. Transamerica Ins. Co.*, 699 P.2d 688 (Utah 1985).
The basis for challenging a release must be set forth in the complaint. *Norton v. Blackham*, 669 P.2d 857 (Utah 1983).

Under Utah's Liability Reform Act, a release given by a person seeking recovery to one or more defendants does not discharge any other defendant unless the release so provides. *UCA* § 78B-5-822.
Any release of liability or settlement agreement entered into within15 days from the date of occurrence causing physical injury to any person or entered into prior to discharge from any hospital is voidable by the injured person. *UCA* § 78B-5-812.

The court upheld a wrongful death action dismissal on the basis of a hold-harmless agreement in the construction contract. The court also rejected the argument that the agreement's bar of an action by the widow of a home buyer killed on the construction site violated public policy. *Russ v. Woodside Homes*, 905 P.2d 901 (Utah Ct. App. 1995).

A parent may not release a minor's prospective claims for negligence. A parent's agreement to indemnify a third party for that party's own negligence is void based upon the public policy that by shifting financial responsibility to a minor's parent, such indemnity provisions would allow negligent parties to circumvent the rule voiding waivers signed on behalf of a minor. *Hawkins v. Peart*, 2001 UT 94, 37 P.3d 1062. The holding in *Hawkins v. Peart* was recognized as superseded by statute in *Penununi v. Sundance Partners, Ltd.* with regard to cases involving Utah's statutory limitations on liability involving equine and livestock activities that allow a parent or guardian to sign a release of liability for their minor child relating to specified inherent risks of equine and livestock activities. *Penununi v. Sundance Partners, Ltd.*, 2013 UT 22, 301 P.3d 984.

A defendant employee can release his employer from liability for damages resulting from the employee's acts within the scope of employment. If the employee is a defendant but the defendant's employer is not, the plaintiff's release of the defendant employee and "any and all other persons, firms or corporations, whether herein named or referred to or not," has the effect of releasing the defendant's employer from liability. *Peterson v. Coca-Cola, Inc.*, 2002 UT 42, 48 P.3d 941.

Wrongful Death: Actions for wrongful death may be brought by the heirs or the personal representative on behalf of the heirs. *UCA* § 78B-3-106. A parent or guardian may maintain an action for the death or injury of a minor child when such injury or death is caused by the wrongful act or neglect of another. *UCA* § 78B-3-102; *Moreno v. Bd. of Educ.*, 926 P.2d 886 (Utah 1996). Such an action must be brought within two years after death, but if the judgment for plaintiff is reversed or if plaintiff fails otherwise than on the merits, a new action may be commenced within one year from such reversal or failure. § 78B-2-304; § 78B-2-111; *In re Estate of Garza*, 725 P.2d 1328 (Utah 1986). Damages for wrongful death may include compensatory damages, loss of support, services, society, prospective inheritance, and mental anguish. *Oxendine v. Overturf*, 1999 UT 4, 973 P.2d 417; *Evans v. Oregon Short Line R. Co.*, 108 P. 638 (Utah 1910).

Survival actions are allowed in some circumstances. If the decedent died as a result of the wrongful act, a claim for special and general damages of the decedent survives, under *UCA* § 78B-3-107 (1)(a).
Decedent's brothers and sisters could not recover their losses because they were not "heirs," as defined by the Utah Uniform Probate Code. *Kelson v. Salt Lake County*, 784 P.2d 1152 (Utah 1989). "Heirs" are defined for purposes of the wrongful death act in *UCA* § 78B-3-105.

In a wrongful death action for a child's death, recoverable damages include loss for intangible injuries such as loss of security, love, companionship, protection, and affection. A mother's ability to bear additional children is a material factor in considering damages. However, the mother was not entitled to income she lost by devoting her full time to rearing the deceased child. *Jones v. Carvell*, 641 P.2d 105 (Utah 1982).
The estate of a deceased person may not bring a wrongful death action; however, a mere lack of capacity makes a wrongful death case voidable, not void, and when faced with this defect, the proper remedy is substitution. *Estate of Faucheaux v. City of Provo*, 2019 UT 41, ¶ 29, 449 P.3d 112, 119 (overruling *Haro v. Haro*, 887 P.2d 878 (Utah Ct. App. 1994).

Grandparents cannot maintain wrongful death action for death of an unborn grandchild because they were not parents or guardians under *UCA* § 78B-3-102. *State Farm v. Clyde*, 920 P.2d 1183 (Utah 1996).
A guardian of a deceased ward may not maintain a wrongful death action on his or her own behalf but must instead maintain the action on behalf of the deceased ward's heirs. *Moreno v. Bd. of Educ.*, 926 P.2d 886 (Utah 1996).

The two-year statute of limitations for a wrongful death claim is tolled by *UCA* § 78B-2-108 if the claimants are minors. *In re Estate of Garza*, 725 P.2d 1328 (Utah 1986).

No Fault: A no-fault insurer has no right to subrogation under Utah's no-fault statute, and as a general rule may not seek reimbursement for PIP payments its insured subsequently recovers from the tortfeasor. However, no-fault insurers may obtain reimbursement for PIP payments directly from their insureds' settlement with tortfeasors when it is clear the parties to the settlement intended that settlement amount include PIP reimbursement. Since a tortfeasor is not personally liable for PIP benefits, the settlement between the no-fault insured and the tortfeasor or tortfeasor's insurer is presumed to exclude PIP benefits in the absence of evidence to the contrary. *Bear River Mut. Ins. Co. v. Wall*, 937 P.2d 1282 (Utah Ct. App. 1997) (cert. granted).

Where the insured is or would be legally liable for injuries sustained by another, his insurer must reimburse any insurer or workers compensation fund for no-fault benefits paid to the other. The issue of liability for reimbursement is subject to mandatory, binding arbitration. *UCA* § 31A-22-309(6). *Ohio Casualty Ins. Co. v. Brundage*, 674 P.2d 101 (Utah 1983).

The auto liability insurer is not entitled to recover no-fault payments it made to its insured out of the proceeds of a settlement with a third-party tortfeasor. *Allstate Ins. Co. v. Anderson,* 608 P.2d 235 (Utah 1980). However, the Act does grant the insurer a limited, equitable right to seek reimbursement in arbitration against the third party's liability insurer. *Allstate Ins. Co. v. Ivie*, 606 P.2d 1197 (Utah 1980); *Christensen v. Farmers Ins. Exchange*, 669 P.2d 1236 (Utah 1983).

An insurance company cannot create an exclusion which would prevent a resident family member of the insured from recovering statutorily required no-fault benefits under the insured's motor vehicle policy. *State Farm Mut. Auto. Ins. Co. v. Mastbaum*, 748 P.2d 1042 (Utah 1987); *McCaffery on Behalf of McCaffery v. Grow*, 787 P.2d 901 (Utah Ct. App. 1990).

The tort immunity created by *UCA* § 31A-22-309(1) (no-fault threshold) does not extend to a person who fails to have the security in effect at the time of an accident, and the owner is personally liable for payment of no-fault benefits. *UCA* § 41-12A-304.

UCA § 31A-22-302 identifies components of the operators' required security as liability coverage, no-fault coverage (except for motorcycles, trailers and semitrailers, which may be offered first party medical coverage), uninsured motorist coverage unless affirmatively waived, and underinsured motorist coverage unless affirmatively waived. If the insured requests, coverage must also include property damage protection. *UCA* § 31A-22-305.5.

The No-Fault Insurance Act does not confer on the no-fault insurer the right of subrogation to funds received by its insured for personal injuries in a subsequent legal action. The insurer has a limited, equitable right to seek reimbursement in an arbitration proceeding against the liability insurer. *Allstate Ins. Co. v. Ivie*, 606 P.2d 1197 (Utah 1980).

Liens:
Generally: Liens are afforded by statute for: mechanics and materialmen to real property, UCA §§§ 38–1a–101 to 38-1b–203; care and feeding of animals, §§ 38-2-1; hotels, §§ 38-2-2; repairs of personal property, §§ 38-2-3; services rendered by laundries and shoe repair shops, §§ 38-2-3.1; attorneys, §§ 38-2-7; lessors, §§§ 38-3-1 to -8; hospitals, which attaches to a judgment, settlement, or compromise, §§§ 38-7-1 to -8; self-storage facilities, §§§ 38-8-1 to -5; mechanics' and materialmen to oil, gas and mining properties, §§§ 38-10-101 to -115; docketed judgments, §§ 78B-5-202 and §§ 38-5-1; child support, §§ 62A-11-312.5; and taxes of various types.
Hospital Liens: A hospital may file a lien upon a judgment, damages, and a settlement as a compromise in certain accident cases. UCA § 38-7-1. Any person, firm, or corporation, including an insurer, who pays a party or his attorney compensation for injuries, without paying the hospital lien, shall be liable to the hospital for the amount the hospital was entitled to receive. UCA §§ 38-7-1 to §-8.

Permissive Use: Utah law requires that all motor vehicle policies insure any "person using any named motor vehicle with the express or implied permission of the named insured" *UCA* § 31A-22-303(1)(a)(ii)(a). Utah case law does not make clear which party will hold the initial burden of proving whether a "user" has been given the consent or permission of the vehicle owner.

It is clear that mere ownership of a motor vehicle does not, in and of itself, subject the owner to liability for the negligence of an operator. "As a general rule, ownership of a motor vehicle does not alone subject the owner to liability for the negligence of permissive users." *Lane v. Messer*, 731 P.2d 488, 491 (Utah 1986) (citing 60A C.J.S. Motor Vehicles § 428).

There are some notable exceptions to this general rule. An owner may be liable for the negligence of the operator if the owner negligently entrusts the vehicle to an operator that the owner "knows or in the exercise of reasonable care should have known to be an incompetent, careless, reckless, or inexperienced driver or an intoxicated driver." *Lane v. Messer*, 731 P.2d 488, 491 (Utah 1986). Also, if an employee is the operator of his or her employer's motor vehicle, the employee's negligence may be imputed to the employer under the doctrine of respondeat superior. *Saltas v. Affleck*, 102 P.2d 493, 494 (Utah 1940); 43 Tort Trial & Ins. Prac. Law Journal 71, "Vicarious Liability for Negligence of a Vehicle's Driver," Fall 2007, pp. 75-77.

Notably, in Utah, the statute does not limit permissive users to those who are given permission to drive or "operate" a vehicle, passengers may also be permissive users. *Speros v Fricke*, 2004 UT 69, ¶ 35. In *Speros*, the Utah Supreme Court held that an invited passenger, who caused an accident by grabbing the steering wheel from the driver, was considered a permissive user, and covered under the insurance policy. 2004 UT

69 at ¶ 40 (finding that a "user" is different from an "operator" because the term "operator" has been defined in the statute and was deliberately not used in this subsection.)