

# Liability Law Overview

## NEGLIGENCE ACTIONS

Ordinarily, a defendant is liable for all damages that proximately flow as a result of its conduct and which causes a plaintiff injury.

### Comparative Negligence

Under this scheme, the plaintiff cannot recover if his negligence is greater than the defendant's negligence. This theory is not a complete bar to recovery unless the plaintiff's negligence exceeds the defendant's negligence. The amount of the plaintiff's recovery shall be reduced in proportion to the amount of his negligence. If there is more than one defendant, the plaintiff's negligence shall be compared to the combined negligence of all defendants. The fact that the defendant's conduct exceeds ordinary negligence (e.g., gross negligence, reckless) does not preclude the application of comparative negligence.

### Last Clear Chance

A corollary of comparative negligence, this doctrine allows a negligent plaintiff to recover damages if it is shown: 1) the defendant knew (or should have known) that, because of the plaintiff's negligence, the plaintiff was in a predicament from which he could not escape; and 2) the defendant had an opportunity to avoid the injury by due care.

### Allocating Liability

A plaintiff has the right to sue one or all of the tortfeasors for damages. The release of one tortfeasor does not constitute a release of others who contributed to the plaintiff's injuries unless the parties intended such a release or the plaintiff received full satisfaction. There is a right of pro rata contribution among defendants jointly or severally liable in tort.

### Joint and Several Liability

South Carolina Code §15-38-15 states that if two or more defendants act together to cause an indivisible injury to a plaintiff, the individual defendants are not jointly and severally liable if they are found to be less than 50 percent at fault for the damages to

the plaintiff. In other words, a defendant is liable only for the percentage of the damage that he individually caused if he is less than 50 percent at fault, but jointly and severally liable for the total damage to the plaintiff if he is more than 50 percent at fault. The statute directs the jury or judge to specify the total amount of damages; determine the percentage of the plaintiff's fault, if any, and subtract it from the total, and in a separate verdict, specify the percentage of fault attributable to each defendant. Joint and several liability does not apply to a defendant whose conduct is determined to be willful, wanton, reckless, grossly negligent, or intentional.

### Family Purpose Doctrine

Under the family purpose doctrine, the head of a family who owns, furnishes, and maintains a vehicle for the general use and convenience of his family is liable for the negligence of a family member having general authority to operate the vehicle while it is being used.

## PRODUCTS LIABILITY

A plaintiff in a products liability suit might use three different theories of recovery: 1) negligence, 2) strict liability in tort, and 3) warranty. The cause of action, however, must be based on injury caused by a product defect.

### Seller Liability

The seller of defective goods may be liable for physical harm caused to the user or consumer if the seller is engaged in the business of selling such products, and it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold. S.C. Code Ann. §15-73-10.

### Strict Liability

The manufacturer or seller of a product is not strictly liable if it can be shown that: 1) the product was materially altered before it reached the injured user, and 2) such alteration could not have been expected by the manufacturer and seller. S.C. Code

Ann. §15-73-10.

Punitive damages are not allowed in actions for strict products liability. Common law indemnification does not apply among joint tortfeasors in strict liability.

### Plaintiff Responsibilities

In a products liability case under negligence and strict liability, the plaintiff must establish: 1) he was injured by the product, 2) at the time of the accident, the product was in essentially the same condition as when it left the hands of the defendant, and 3) the injury occurred because the product was in a defective condition and unreasonably dangerous to the user. Under a negligence theory, the plaintiff has the additional burden to prove the manufacturer breached its duty to exercise reasonable care to adopt a safe design.

If the user or consumer discovers the defect and is aware of the danger, and nevertheless, proceeds unreasonably to make use of the product and is injured by it, he is barred from recovery. Thus, assumption of risk or knowing misuse of the product by the victim will bar recovery. S.C. Code Ann. §15-73-20.

## PREMISES LIABILITY

### Duties of a Landowner

In South Carolina, different levels of care are owed to different categories of persons. A landowner owes an adult trespasser a very limited duty only to refrain from intentional injury, or from willful or wanton conduct. Licensees or persons who enter land by consent or privilege are owed a higher duty than that given to trespassers. A landowner must use reasonable care to discover and avoid injury in carrying on activities upon the land. A landowner owes the highest duty of care to invitees or persons who enter the premises with expressed or implied permission. A landowner owes an invitee a duty to use due care to discover risks and take safety precautions to warn of or eliminate unreasonable risks.

This overview is intended as a concise summary of South Carolina Liability Law. It is not intended to be all-encompassing and does not cover all situations and exceptions to general rules. To discuss the applicability or interpretation of any provision of the law to a specific situation, please contact an attorney at Hedrick Gardner Kincheloe & Garofalo, L.L.P.

## DAMAGES

### Collateral Source Rule

Plaintiff's damages may not be reduced by benefits received from some other third party source.

### Avoidable Consequences Rule

Plaintiff may not recover for the aggravation of his own loss and must avoid or reduce his damages after the defendant has committed a legal wrong.

### Attorney Fees

Attorney fees are not generally awarded in the absence of a statutory, contractual, or equitable basis.

### Punitive Damages

Punitive damages are awarded where the defendant's conduct was reckless, willful, wanton, or malicious. However, the plaintiff must first be awarded actual damages for the injury proximately caused by the wrongful conduct involved. S.C. Code Ann. 15-32-530 provides that an award of punitive damages may not exceed the greater of three times compensatory damages or \$500,000. The cap on punitive damages may be higher or eliminated altogether for certain degrees of fault of categories of wrongdoing.

### Property Damage

An owner of personal property injured by another's tortious conduct can recover the difference between the market value immediately before and the market value immediately after the injury. If there is no market value for the destroyed property, then an owner is entitled to recover the property's actual or reasonable value, or its special value to the owner, excluding

fanciful or sentimental value. In the case of defective products, the proper measure of damages is the difference between the fair market value of the product in its defective condition and its fair market value as warranted. If goods are wholly lost or destroyed, the owner is entitled to their full worth at the time of such loss or destruction.

### Wrongful Death Action

Damages recovered in a wrongful death action are not assets of the decedent's estate; instead, the damages flow to the decedent's beneficiaries. The recovery of damages is limited to the injury resulting from death, and punitive damages may also be awarded.

## STATE TRIAL COURTS

### Magistrate

Small Claims Court may handle civil matters when the amount in controversy does not exceed \$7,500. State agencies or entities, however, are not subject to suit in Magistrate Court even when the amount in controversy does not exceed \$7,500. Appeals from Magistrate Court are heard in Circuit Court.

### Circuit Court

This is the proper jurisdiction to hear a civil dispute between parties when the amount in controversy exceeds \$7,500. Sixteen judicial circuits make up the Circuit Court with certain judges being elected by circuit and others elected at-large. Appeals from Circuit Court are heard in the Court of Appeals.

## Court of Appeals

The Court of Appeals is comprised of one Chief Judge and eight associate judges. S.C. Code Ann. §14-8-10. This court has jurisdiction to hear appeals from the final decisions and orders entered in Circuit Court. Decisions from the Court of Appeals are subject to review by the South Carolina Supreme Court.

## South Carolina Supreme Court

The South Carolina Supreme Court consists of one Chief Justice and four associate justices. A party has the right to appeal a final decision if the final decision is based on an error of law or substantially affects a right. S.C. Code Ann. §14-3-330.

## VENUE

Actions for the recovery of real property and foreclosure of a mortgage of real property must be brought and tried in the county where the property is located. S.C. Code Ann. §15-7-10.

A civil action brought against a resident defendant must be brought and tried in the county where the defendant resides at the time of commencement of the action, or where the most substantial part of the alleged act or omission giving rise to the cause of action occurred. S.C. Code Ann. §15-7-30.

A civil action brought against a non-resident defendant must be brought and tried in the county where the most substantial part of the alleged act or omission giving rise to the cause of action occurred, or where the plaintiff resides at the time the cause of actions arose. S.C. Code Ann. §15-7-30.

## IMPORTANT STATUTES OF LIMITATIONS

### Breach of Contract Action

Action must be commenced within three years from the date of breach. S.C. Code Ann. §15-3-530.

### Negligence Resulting in Personal Injury

Action must be commenced within three years from the date the plaintiff knew or should have known of his cause of action. S.C. Code Ann. §15-3-530 and S.C. Code Ann. §15-3-535.

### Negligence Resulting in Property Damage

Action must be commenced within three years from the date of discovery of the damage. S.C. Code Ann. §15-3-530.

### Injuries Sustained in an Automobile Accident

Action must be commenced within three years from the date of the accident. S.C. Code Ann. §15-3-530.

### Civil Assault/Battery

Action must be commenced within three years from the date of the incident. S.C. Code Ann. §15-3-530.

### Wrongful Death

Action must be commenced within three years from the date of death of the person on account of whose death the action is brought. S.C. Code Ann. §15-3-530 (6).

### Fraud

Action must be commenced within three years from the date the aggrieved party discovered the facts consisting the fraud. S.C. Code Ann. §15-3-530 (7).

### Libel, Slander, or False Imprisonment

Action must be commenced within two years from the date of the incident. §15-3-550.

### Actions Based on Unsafe or Defective Improvements to Real Property

Action must be commenced within eight years after substantial completion of the improvement. §15-3-640.

### Action for Contribution from Joint Tortfeasor

Action must be commenced within one year after a judgment becomes final. S.C. Code Ann. § 15-38-40 (C) & (D).