

District of Columbia Civil Liability Law Summary



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This is a basic outline of District of Columbia law. The information contained herein is intended only as a general guide. The comments are not exhaustive and require explanation or clarification. Please do not rely on these comments as legal advice for any particular case or situation. Please consult an attorney for specific legal advice.

I. District of Columbia Court Structure and Appeals

Superior Court:

The Superior Court is the local court of general jurisdiction over any civil action or other matters brought in the District of Columbia. It is divided into separate judicial divisions including the Civil Division, Crime Victims Compensation Program, Criminal Division, Domestic Violence Unit, Family Court Operations Division, Family Social Services Division, Multi-Door Dispute Resolution Division, Probate Division, Special Operations Division, and Tax Division.

The Civil Division is further divided into 4 main branches: Civil Actions Branch, Quality Review Branch, Landlord and Tenant Branch, and Small Claims and Conciliation Branch (recovery up to \$5,000). The Civil Division is subdivided into three calendar types: Civil I (complex litigation), Civil II (general litigation), and collection and subrogation. Hearing commissioners are assigned to small claims and collection and subrogation cases.

Court of Appeals:

The District of Columbia Court of Appeals is the highest court in the District. The Court of Appeals consists of a chief judge and eight associate judges, who typically hear cases in panels of three judges unless an *en banc* hearing is deemed necessary.

Generally, a party has the right to appeal a final order or judgment of the Superior Court. A Notice of Appeal must be filed within 30 days of the ruling appealed. Permission must be granted to appeal small claims and minor criminal matters. The Court of Appeals also has jurisdiction to review administrative agency orders and decisions.

II. Service and Extensions of Response Time

Service on an individual may always be made by personal service. Non-governmental defendants may also be served by certified or First-Class mail with a return receipt. Sup. Ct. Civ. R. 4. If the individual to be served is under 16, he or she must be served along with the person with whom he or she resides. D.C. Code § 13-332. There are several individuals who may accept service on behalf of a corporation, including the officers, managing or general resident agent, and any other agent authorized to accept service. Sup. Ct. Civ. R. 4(h). Service on the Mayor may be pursued if the corporation has failed to appoint a registered agent or if the registered agent cannot be located. *Id.* Service is permitted against nonresidents under the long-arm statute in a manner prescribed in the jurisdiction in which service is to be made. D.C. Code § 13-421, *et seq.*

An action in which a defendant has not been served within 60 days from the date of issuance of original process will be dismissed without prejudice automatically by the clerk. Thus, filing proof of service within the allotted time is vital. Sup. Ct. Civ. R. 4(m).

Once a defendant is served, an answer or motion must be filed within 21 days. Sup. Ct. Civ. R. 12(a). The 21-day rule applies to individuals served outside of the jurisdiction. An extension may be obtained by filing a motion. Sup. Ct. Civ. R. 6(b).

III. Auto Bodily Injury Claims

Voluntary No-Fault Auto Insurance:

An insurer must offer Personal Injury Protection (“PIP”); the insured’s purchase of PIP benefits is optional. D.C. Code § 31-2404. If PIP is provided, the insured may elect to receive PIP benefits with accompanying lawsuit restrictions or reject the benefits and proceed against the tortfeasor. D.C. Code § 31-2405.

Priority of PIP Benefits:

The insurer responsible for paying PIP benefits is determined in the following order of priority:

- (1) the victim's own PIP insurer; then
- (2) the insurer of the motor vehicle that the victim occupied during the accident.

If two or more insurers are obligated to pay on an equal basis, the insurer against which a claim is first asserted processes and pays the whole claim, and then may pursue subrogation against the other insurer(s). D.C. Code § 31-2407.

Minimum Auto Policy Limits:

An owner of a motor vehicle registered in the District of Columbia must maintain an insurance policy with liability limits of at least \$25,000 per injured person, \$50,000 for all injured persons, and \$10,000 for property damage (\$25,000/\$50,000/\$10,000). D.C. Code § 31-2406(b)-(c).

A vehicle owner must also maintain uninsured motorist coverage of at least \$25,000 per injured person, \$50,000 for all injured persons, and \$5,000 for property damage (\$25,000/\$50,000/\$5,000). D.C. Code § 31-2406(f). An insurer must offer underinsured motorist coverage, but the insured's purchase is optional. D.C. Code § 31-2406(c-1).

Loss of Use:

A plaintiff can recover compensation for reasonable time that he/she was kept from using the property. *Gamble v. Smith*, 386 A.2d 692, 694-95 (D.C. 1978).

IV. Substantive Matters

Collateral Source Rule:

Applies in D.C. so that injured person can recover in full from wrongdoer regardless of whether he has been compensated from another source unconnected with Defendant. *Hardi v. Mezzanotte*, 818 A.2d 974, 984 (D.C. 2003).

Negligent Hiring:

Negligent hiring, supervision and/or retention are recognized causes of action. *See, e.g., Phelan v. City of Mount Rainier*, 805 A.2d 930, 936-37 (D.C. 2002).

Premises Liability:

Distinction between status as invitee or licensee has been abolished. In general, duty of care owed is reasonable care under the circumstances. Trespassers are owed no duty except to refrain from willful or wanton injuries or entrapment. *Croce v. Hall*, 657 A.2d 307, 310 (D.C. 1995); *Sandoe v. Lefta Assocs.*, 559 A.2d 732, 742-43 (D.C. 1988).

Emotional Distress:

Plaintiff can recover for negligent infliction of emotional distress if (1) there is physical injury, (2) plaintiff was in the zone of danger and feared for his life, or (3) plaintiff was physically endangered. In the absence of physical injury, emotional injury must be serious and verifiable to recover. *Rice v. District of Columbia*, 774 F. Supp. 2d 25, 33 (D. D.C. 2011); *Jones v. Howard Univ., Inc.*, 589 A.2d 419, 424 (D.C. 1991).

V. Defenses

Compulsory Counterclaims:

A counterclaim is compulsory if it arises out of the same transaction or occurrence that is the subject of the opposing party's claim and does not require the presence of third parties over whom the court cannot acquire jurisdiction. Sup. Ct. Civ. R. 13(a). A counterclaim which is compulsory but is not brought is thereafter barred.

Permissive Counterclaims:

Counterclaims that are not compulsory may be brought against the plaintiff but are not waived if not brought. Permissive counterclaims are limited to those within the court's jurisdiction. Sup. Ct. Civ. R. 13(b).

Substantive Tort Defenses:

Contributory negligence is a complete bar to tort recovery. *Wingfield v. Peoples Drug Store, Inc.*, 379 A.2d 685, 687 (D.C. 1977). An exception exists where the plaintiff was a pedestrian, bicyclist, or other non-motorized user of a public highway involved in a collision with a motor vehicle; in that case, contributory negligence only bars recovery if the plaintiff's negligence (a) proximately caused the injury, and (b) was greater than the aggregated total amount of negligence of all the defendants that proximately caused the plaintiff's injury. D.C. Code § 50-2204.52.

Assumption of risk is also a complete bar to tort recovery. *Dennis v. Jones*, 928 A.2d 672, 676 (D.C. 2007).

Charitable Immunity:

Common law charitable immunity has been abolished. See *President & Directors of Georgetown College v. Hughes*, 130 F.2d 810, 827-28, 76 U.S. App. D.C. 123, 140-41 (D.C. Cir. 1942).

Workers' Compensation:

The District of Columbia Workers' Compensation Act provides the exclusive remedy for an injured worker against an employer unless the employer fails to secure payment of the compensation due. D.C. Code § 32-1504.

Sovereign Immunity:

The District of Columbia waived sovereign immunity for most tort claims provided there is written notice within six (6) months. D.C. Code § 12-309. Immunity has not been waived for discretionary acts of its employees. *Shifrin v. Wilson*, 412 F. Supp. 1282 (D. D.C. 1976). Absent extraordinary circumstances, punitive damages are not recoverable against the District of Columbia. *Smith v. District of Columbia*, 336 A.2d 831 (D.C. 1975).

The District of Columbia has specifically waived sovereign immunity for motor vehicle tort claims. D.C. Code § 2-412. Motor vehicle torts caused by District emergency vehicles are only waived where the emergency vehicle operator was acting with "gross negligence." *Id.*

Under the public duty doctrine, the District is generally immune from liability for acts committed in the performance of public duty function, such as police protection or ambulance dispatch. *Taylor v. District of Columbia*, 776 A.2d 1208, 1214 (D.C. 2001).

Statute of Limitations:

Most civil actions, including suits for negligence, breach of contract, and survival actions, must be brought within three years of the date of the injury or when the plaintiff knew, or with the exercise of due diligence, reasonably should have known of the wrong. D.C. Code § 12-301(8); *Youelstone v. F.D.I.C.*, 910 F. Supp. 2d 213, 224 (D. D.C. 2012). Wrongful death actions are subject to a two-year limitations period. D.C. Code § 16-2702. Intentional torts, such as libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment, are subject to a one-year limitations period. D.C. Code § 12-301(4).

VI. Infant and Family Matters

Infant Claims:

Suit initiated by guardian (parents or appointed individual). *See* Sup. Ct. Civ. R. 17. *See also* D.C. Code § 21-101 (parents are natural guardians of minor children).

Settlements:

A settlement on behalf of a minor child is not valid unless it is approved by the court. D.C. Code § 21-120(a). A guardian of the estate of a minor must be appointed whenever a settlement over \$3,000.00 is executed. D.C. Code § 21-120(b).

Infant Liability:

There is no precise age at which a child can be held legally accountable for his or her actions. The test is whether the minor exercised reasonable care in light of his age, education and training. *Stevens v. Hall*, 391 A.2d 792, 796 (D.C. 1978).

Parental Immunity:

An unemancipated minor can bring claim against his parent in an automobile negligence action. *Rousey v. Rousey*, 528 A.2d 416, 420-21 (D.C. 1987).

Spousal Immunity:

D.C. has abolished spousal immunity. D.C. Code § 46-601.

Loss of Consortium:

Husband or wife can recover for loss of services or consortium of his or her spouse in a simple negligence case. *Stutsman v. Kaiser Found. Health Plan*, 546 A.2d 367, 372 (D.C. 1988). D.C. does not recognize a claim for loss of parent-child consortium. *District of Columbia v. Hawkins*, 782 A.2d 293, 303 (D.C. 2001).

VII. Wrongful Death Actions

Brought by:

Personal representative of the estate. D.C. Code § 16-2702. A personal representative is an executor or administrator of the estate.

Statute of Limitations:

Two years after the date of death. D.C. Code § 16-2702.

Damages:

Damages are for the benefit of the spouse and next of kin. D.C. Code § 16-2701(b). Pecuniary losses recoverable include present value of dependent's share of decedent's anticipated earnings, medical expenses and funeral costs. *Id.* May also recover value of the services lost to the family including loss of care, comfort, education, training, advice and guidance as a result of the death. The statute does not permit recovery for noneconomic loss to the family members (compare to Maryland and Virginia statutes: Md. Code, Ann., Cts. & Jud. Proc. § 3-904; Va. Code Ann., § 8.01-52).

VIII. Survival Actions

Brought by:

The legal representative of the decedent. D.C. Code § 12-101. A legal representative may be any person who, by testamentary act or operation of law, stands in the shoes of the decedent with respect to his/her property.

Damages:

Damages are for the benefit of the estate. Estate is entitled to recover loss of decedent's prospective earnings and noneconomic damages for conscious pain and suffering suffered by the decedent prior to death. The statute does not permit recovery for noneconomic loss to the family members (compare to Maryland and Virginia statutes: Md. Code Ann., Est. & Trusts § 7-401(y); Va. Code Ann., § 8.01-25.).

IX. Insurance Issues

Bad Faith:

There is no statutory basis for an insured to bring a bad faith claim in D.C. *Washington v. Gov't Emp. Ins. Co.*, 769 F. Supp. 383, 386 (D.D.C. 1991). The tort of bad faith failure to settle within policy limits has not been recognized in the District of Columbia in either the first-party or third-party context. *Choharis v. State Farm Fire and Cas. Co.*, 961 A. 2d 1080, 1088 (D.C. 2008). However, every contract contains an implied covenant to act in good faith, and damages may be recovered from its breach as part of a contract action. *Nugent v. Unum Life Ins. Co. of Am.*, 752 F. Supp. 2d 46, 56-57 (D. D.C. 2010). Moreover, the Court in *Chorharis* stated that it has not ruled out the possibility of fiduciary principles in the defense of a claim or third-party settlement situations.

An insurer's inadvertent but unjustified failure to defend or settle does give rise to a breach of contract claim but nothing more. *Gray v. Grain Dealers Mutual Ins. Co.*, 684 F. Supp. 1108, 1113 (D. D.C. 1988). Damages include the "adjudicated amount of the claim" plus the insured's defense costs in the underlying suit, attorney's fees incurred in a declaratory judgment action to determine the duty to defend, and any additional loss traceable to the breach. It does not appear that D.C. has been called upon to determine the carrier's liability "for judgments in excess of its insured's policy limits when the judgment results, in whole or in part, from some culpable act or omission of the carrier." *Id.* at 1112.

Cancellation/Non-Renewal:

Cancellation of auto policies permitted only for failure to pay premium and suspension or revocation of registration or license. See D.C. Code § 31-2409 for notice requirements.

Duty to Defend:

An insurer's duty to defend is measured by comparing the policy it issued with the complaint filed in the underlying case. The court examines the complaint for all plausible claims encompassed within the complaint and to ascertain whether the allegations of the complaint state a cause of action within the policy coverage and give fair notice to the insurer that the insured is being sued upon an occurrence which gives rise to a duty to defend under the terms of the policy. The obligation to defend is not affected by facts ascertained before suit or developed in the process of litigation or by the ultimate outcome of the suit. *Stevens v. United General Title Ins. Co.*, 801 A.2d 61, 67 (D.C. 2002).

X. Damages

Noneconomic Damages:

There is no limitation on the recovery of noneconomic damages in D.C.

Punitive Damages:

Punitive damages are not recoverable where only ordinary negligence is shown. To recover punitive damages, the plaintiff must prove by clear and convincing evidence that the defendant's tortious act was accompanied by conduct and a state of mind evincing malice or its equivalent. *Croley v. Republican Nat. Committee*, 759 A.2d 682 (D.C. 2000).

XI. Settlement Matters

Liens:

Must satisfy hospital lien where notified in writing. D.C. Code §40-202. Any person who makes payment to the patient or his attorneys without satisfying the lien is liable for amount of lien for one year. D.C. Code § 40-203.

Workers' Compensation Lien:

Statutory lien if the employee does not commence an action against liable third party. D.C. Code § 32-1535(b). In any event, D.C. does recognize an equitable lien to preclude double recovery. *See Travelers Ins. Co. v. Hayden*, 418 A.2d 1078, 1082-83 (D.C. 1980).

Interpleader:

Action for interpleader allows a person holding money or property to join two or more defendants who claim or may claim to be entitled to the property in a single suit to obtain a determination as to the rights of the various claimants. *See Sup. Ct. Civ. R. 22.*

Offers of Judgment:

At any time more than 10 days prior to trial, defendant may serve offer to allow judgment to be taken in a specified amount with the costs then accrued. If the judgment finally obtained is not more favorable than the offer, the plaintiff must pay the costs incurred after making the offer. *See Sup. Ct. Civ. R. 68.*

Prejudgment/Post-Judgment Interest:

Prejudgment interest can be awarded in actions to recover a liquidated debt at rate set by the contract. D.C. Code § 15-108. Post-judgment interest is recoverable in both tort and contract cases. D.C. Code § 15-109. Absent contractual provision to the contrary, the court cannot award interest greater than 70% of the rate of interest set by the Secretary of Treasury. D.C. Code § 28-3302.

Effect of Release:

Can release one defendant and proceed against remaining defendants. Nonsettling defendant is entitled to *pro tanto* (dollar for dollar) credit for amount paid by settling defendants who are not joint tortfeasors. A *pro rata* credit is applied if settling defendant was joint tortfeasor. *George Washington Univ. v. Bier*, 946 A.2d 372, 375 (D.C. 2008); *Paul v. Bier*, 758 A.2d 40, 47-48 (D.C. 2000).