



2011 Forum for State Appellate Court Judges

The Jury Trial Implosion: The Decline of Trial by Jury and Its Significance for Appellate Courts

STATE CONSTITUTIONAL PROVISIONS, STATUTES, AND COURT DECISIONS ON TRIAL BY JURY

The following compilation of state provisions governing trial by jury was researched by **Taylor Asen, Yale Law School Class of 2012**. If you know of other relevant state jury trial provisions that might be included in it, please write to Jim Rooks, Executive Director, at jim.rooks@poundinstitute.org.

ALABAMA

Constitution

The Alabama Constitution Article 1, Section 11 states: “the right of trial by jury shall remain inviolate.” The constitutional guarantee doesn’t include equitable claims or claims unknown at common law. *Sanders v. Kirkland & Co.*, 510 So. 2d 138 (Ala. 1987).

Law/Equity Distinction

Purely legal claims, and factual issues relevant to legal and equitable issues, must be decided by the jury. *Wooten v. Ivey*, 877 So.2d 585 (Ala. 2003).

Damage Caps

Cap on non-economic damages violated the right to trial by jury. *Smith v. Schulte*, 671 So.2d 1334, 1342-46 (Ala. 1995).

Jury Fees

\$50 civil jury trial fee, pursuant to §§ 12-19-71(4), 12-19-72(4), was not unconstitutional infringement on right to jury trial in civil case. In a case in which the fee for a jury trial wasn’t paid on time, it was error to refuse to allow the jury trial, where no delay or prejudice to rights of the adverse party would be occasioned. *Proctor v. Garrison*, 571 So. 2d 1208 (Ala. Civ. App. 1990).

Alternative Dispute Resolution

Arbitration clauses contained in contracts subject to Federal Arbitration Act, §§ 2 and 4, which provide for judicial intervention and revocation “upon such grounds as exist at law or in equity,” do not violate public policy or constitute an unenforceable waiver of the right to trial by jury. *Jones v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 604 So.2d 332 (Ala.1991).

ALASKA

Constitution

The Alaska Constitution, Article I, Section 16: “In civil cases where the amount in controversy exceeds two hundred fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law.”

Jury Size

The Alaska Constitution, Article I, Section 16: “The legislature may . . . provide for a jury of not less than six or more than twelve.”

Law/Equity Distinction

- The Alaska Constitution only preserves a jury trial for legal causes of action, not those which are equitable in nature. *Alyssa B. v. State, Dept. of Health and Social Services, Div. of Family & Youth Services* 165 P.3d 605 (Alaska 2007).
- Employment discrimination based on sex is not entirely equitable, and thus there is a right to a jury. *Loomis Electronic Protection, Inc. v. Schaefer*, 549 P.2d 1341 (Alaska 1976).
- Jury trial is not required when injunctive relief is sought by state under the Uniform Land Sales Practices Act, in termination of parental rights, prescriptive easement claims, cases re levying and collecting taxes, foreclosure claims, probate claims.

Damage Caps

Cap on noneconomic damages doesn't violate jury trial right. *L.D.G., Inc. v. Brown*, 211 P.3d 1110 (Alaska 2009).

Unanimity/Non-Unanimity Rules

The Alaska Constitution, Article I, Section 16: “The legislature may make provision for a verdict by not less than three-fourths of the jury”

ARIZONA

Constitution

The Arizona Constitution, Article II, Section 23: “The right of trial by jury shall remain inviolate.”

Statutes

A right to jury by statute for libel, slander and invasion of privacy cases

Jury Proceedings

- Arizona Constitution, Article II, Section 17: A jury is constitutionally required for eminent domain cases.

- Arizona Constitution, Article XVIII, Section 5: “The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury.”

There is a right to trial by jury at common law in the following instances (cited from Debbie Weeks, *Sure You Have a Right to a Jury Trial. You Think. Maybe.* 46-APR Ariz. Att’y 30, 33-34 (2010)):

- Defending in an adversarial proceeding by a bankruptcy trustee, if the charged party is not a claimant in the bankruptcy itself.
- As to reasonable attorney fees, so long as there is a basis for the attorney fee request that is not statutory (thus, no in the case of A.R.S. § 12-341.01 *supra*). *Flieger v. Ash*, 624 P.2d 1295 (Ariz. Ct. App. 1980), *reh’g denied* 1981.
- In civil claims for intentional torts. *Franks v. U.S. Fidelity & Guar. Co.*, 718 P.2d 193 (Ariz. Ct. App. 1985). However, there is much case law regarding various aspects of what issues are for the jury. For instance, in *Hays v. Continental*, 872 P.2d 668 (Ariz. 1994), the Arizona Supreme Court overruled its *Franks* holding to the extent of implying that all intentional torts are recognized at common law.
- When suing the State in a breach of contract action, interpreting A.R.S. § 12-821, which then read, “Persons having claims on contract or for negligence against the state, which have been disallowed, may on the terms and conditions herein contained, bring action thereon against the state, and prosecute the same to final judgment.” *Tanner Co. v. Superior Court*, 601 P.2d 599 (Ariz. 1979). In contrast today, § 821 is a one-year statute of limitation for “[a]ll actions against any public entity or public employee.”
- “An action for breach of contract, compensable in monetary damages, is an action at law and entitles the aggrieved party to trial by jury.” *Tanner*, 601 P.2 at 601.
- Express contractual assumption of risk, *Phelps v. Firebird Raceway, Inc.*, 111 P.3d 1003 (Ariz. 2005), applying ARIZ. CONST. art.18, § 5.
- Release status from incarceration. While the Arizona Supreme Court’s decision in *State v. Hurley*, 741 P.2d 257 (Ariz. 1987), *cert. denied*, 484 U.S. 1028 (1988), would indicate no jury right, *State v. Gross*, 31 P.3d 815 (Ariz. Ct. App. 2001), not addressing the burden of proof, cites to the later *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny in concluding that adding time to the release date is a jury decision.

Non-Jury Proceedings

- No right to jury in cases concerning attorneys fees, the termination of parental rights, civil contempt, garnishment proceedings, child custody hearings, civil traffic hearings, water quality control remedial actions.
- No jury trials in small-claims court. However, jury trials (excluding traffic violation citations) are permitted by demand in justice courts. *Cf.* A.R.S. 22-§ 220.B.

Jury Fees

A.R.S. § 12-332(c): “The court may at any time for good cause shown relieve a person from payment of a jury fee if the court believes that such relief is proper.”

ARKANSAS

Constitution

The Arkansas Constitution, Article II, Section 7: “The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy. As prescribed by law, a jury trial may be waived by the parties in all cases. In all jury trials in civil cases, where nine jurors agree upon a verdict, the verdict shall be returned as the verdict of such jury. Where a verdict is returned by less than twelve jurors, all the jurors consenting to such verdict shall sign the same.” This provision is limited to common law actions at law, *First Nat. Bank of DeWitt v. Cruthis*, 360 Ark. 528, 203 S.W.3d 88 (2005), so the legislature may provide for statutory actions without juries.

Non-Jury Proceedings

- A case concerning the abatement of a public nuisance, *Kirkland v. State*, 72 Ark. 171 (1904), does not necessitate a jury trial.
- Arkansas R. Civ. P. 39(a)(2): There need be no jury if “the court, upon motion or of its own initiative, finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of this State.”

CALIFORNIA

Constitution

Article I, Section 16: “Trial by jury is an inviolate right and shall be secured to all, but in a civil cause three-fourths of the jury may render a verdict.”

Jury Proceedings

- The right to a jury is the right guaranteed at common law in 1850. *Kim v. Yi.*, 42 Cal.Rptr.3d 84 (Cal. App. 2006).
- Article I, Section 19(a): Eminent domain decided by a jury.
- “In actions for the recovery of specific, real, or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, an issue of fact must be tried by a jury, . . . In other cases, issues of fact must be tried by the Court . . .” Code of Civ. Proc., § 592.

Law/Equity Distinction

Jury trial only necessary for legal issues, not equitable issues; where a case raises both, one is entitled to a jury trial on the severable issues. *Robinson v. Puls*, 28 Cal. 2d 664, 171 P.2d 430 (1946).

Jury Fees

West’s Ann.Cal.C.C.P. § 631(b): Each party demanding a jury trial shall deposit advance jury fees with the clerk or judge. The total amount of the advance jury fees may not exceed one hundred fifty dollars (\$150) for each party. The deposit shall be made at least 25 calendar days before the date initially set for trial, except that in unlawful detainer actions the fees shall be deposited at least five days before the date set for trial.

Alternative Dispute Resolution

Medical Injury Compensation Reform Act's (MICRA) malpractice arbitration provision does not violate the state constitutional right to jury trial, in delegating to patients the authority to consent to arbitration on behalf of any heirs pursuing wrongful death actions.

COLORADO

Constitution

The Colorado Constitution, Article 2, Section 23: "The right of trial by jury shall remain inviolate in criminal cases. . . ."

Constitutional Interpretations

Trial by jury in civil actions is not a matter of constitutional right in Colorado. Instead, the right to a jury trial in a civil case is derived from C.R.C.P. 38. *Kaitz v. District Court*, 650 P.2d 553 (Colo.1982).

Jury Size

The Colorado Constitution, Article 2, Section 23: "[A] jury in civil cases in all courts, or in criminal cases in courts not of record, may consist of less than twelve persons, as may be prescribed by law."

Statutes

The Colorado General Assembly may enact statutes providing for trial by jury of factual issues in civil cases. *Kahm v. People*, 83 Colo. 300, 264 P. 718 (1928).

Law/Equity Distinction

- "The right to a trial by jury in civil actions exists only in proceedings that are legal in nature. The complaint fixes the nature of a suit, and if it joins or commingles legal and equitable claims, the court must determine whether the basic thrust of the action is legal or equitable." *Zick v. Krob*, 872 P.2d 1290, 1293 (Colo.App. 1993).
- If a party pleads legal and equitable claims, the court must determine whether the "basic thrust" of the complaint is legal or equitable, and it is this "basic thrust" that ultimately determines the right to a jury trial. *Carder, Inc. v. Cash*, 97 P.3d 174 (Colo.App. 2003).

Rules of Procedure

C.R.C.P. 38(a) provides: "Upon demand, in actions for the recovery of specific real or personal property, with or without damages or for money claimed as due on contract, or as damages for breach of contract, or for injuries to person or property, an issue of fact must be tried by a jury. However, after demand a jury trial may be waived by stipulation of the parties."

Damage Caps

Cap on the total damages recoverable by a malpractice plaintiff and the amount of the total which might be awarded for noneconomic loss and injury does not violate the right to trial by jury. *Scholz v. Metro. Pathologists, P.C.*, 851 P.2d 901, 905-06 (Colo. 1993).

Jury Demands

Rules Civ.Proc., Rule 121(c), Standard § 1-3: Failure of a party to timely file and serve a demand for trial by jury and pay the jury fee shall constitute a waiver of that party's right to trial by jury.

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Alternative Dispute Resolution

State's mandatory arbitration statute, C.R.S. 13-22-402, under which most civil actions seeking money damages of \$50,000 or less, excluding costs and interest, are assigned to mandatory arbitration, did not violate either state constitution or United States Constitution since statute provided for non-binding arbitration with de novo review by trial court. *Firelock Inc. v. District Court In and For the 20th Judicial Dist. of State of Colo.*, 776 P.2d 1090 (Colo. 1989).

CONNECTICUT

Constitution

The Connecticut Constitution, Article I, Section 19: "The right of trial by jury shall remain inviolate, the number of such jurors, which shall not be less than six, to be established by law; but no person shall, for a capital offense, be tried by a jury of less than twelve jurors without his consent."

Jury Proceedings

The right to trial by jury is permitted by statute in the following civil actions (*see Robert Yules, Trial Practice*, 6 Conn. Prac., Trial Practice 1.1 (2d. ed.)(2009-2010)):

- Appeals from probate involving the validity of a will.
- Appeals from the doings of commissioners on insolvent estates.
- Hearing in damages after default.
- Actions re obscene literature.
- Actions re forcible entry and detainer.
- Actions regarding civil matters involving such an issue of fact as, prior to January 1, 1880, would not present a question properly cognizable in equity.
- Actions to settle title or claim interest in real or personal property.
- Actions seeking a declaration of rights and legal relations.
- Actions for damages for injuries sustained on state highways and sidewalks.
- Actions for damages for injuries caused by defective town roads and bridges.
- Actions for injury or death against a fellow employee if the fellow employee's activity was wilful or malicious or is based on the fellow employee's negligence in the operation of a motor vehicle.

Non-Jury Proceedings

There is no right to a jury in the following cases (*see id.*):

- Legal actions wherein the amount in demand is less than Two Hundred and Fifty Dollars (\$250.00).
- Actions for writ of mandamus.
- Actions for an information in the nature of quo warranto.
- Actions for writ of habeas corpus.
- Actions seeking equitable relief.
- Actions for accounting.

- Actions for writ of ne exeat.
- Actions for dissolution of marriage.
- All other special statutory proceedings which, prior to January 1, 1880, were triable by jury.
- Actions for worker's compensation.
- Actions against the state.
- Actions to establish paternity of a child born out of wedlock.
- Actions for summary process.
- Actions in the nature of a bill of interpleader.
- Actions against the State for discipline or discharge of an employee on account of employee's exercise of certain constitutional rights pursuant to C.G.S.A. § 31-51q.
- Actions against the State on highway and public works contracts.
- Claims brought to arbitrator panels pursuant to Lemon Law II (C.G.S.A. §§ 42-181 to 42-184).
- Actions for environmental enforcement.
- Actions brought under CUTPA (Connecticut Unfair Trade Practices Act).
- Actions against the Commissioners of Public Health and Mental Retardation, pursuant to § 19a-24.
- Mortgage foreclosure actions.
- Actions for inverse condemnation.

Jury Size and Unanimity

The Connecticut Constitution, Article I, Section 19: “. . . the number of such jurors, which shall not be less than six, to be established by law; but no person shall, for a capital offense, be tried by a jury of less than twelve jurors without his consent.”

Jury Fees

Requirement of jury fee doesn't violate jury right. *Robertson v. Apuzzo*, 365 A2d 824 (Conn. 1976).

DELAWARE

Constitution

The Delaware Constitution, Article I, Section 4: “Trial by jury shall be as heretofore.”

Constitutional Interpretations

The constitutional provision is interpreted to mean that trial by jury must be allowed when it was allowed at common law before 1897. *Lacy v. Green*, 428 A.2d 1171, 1175 (Del.Super 1981).

Jury Proceedings

- Breach of contract cases, tort claims. *In re Oakwood Homes Corp.*, 378 B.R. 59 (2007).
- Eviction proceeding, *Hopkins v. Justice of Peace Court No. 1*, 342 A.2d 243 (1975),
- Claims concerning the seizure of money, *State v. Fossett*, 134 A.2d 272 (Del. 1957).

Non-Jury Proceedings

- Breach of fiduciary duty claim, *In re Oakwood Homes Corp.*, 378 B.R. 59 (2007).

- Foreclosure claim, *Money Store/Delaware, Inc. v. Kamara*, 704 A.2d 282 (1997).

Law/Equity Distinction

- Right to jury trial applies to action at law; it does not apply in equity suit. *Park Oil, Inc. v. Getty Refining and Marketing Co.*, 407 A.2d 533 (Del. 1979).
- When a claim is both legal and equitable, a party has a right to a jury for the legal part. *In re Oakwood Homes Corp.*, 378 B.R. 59 (2007).

DISTRICT OF COLUMBIA

Constitution

In Washington D.C., the right to a civil jury is protected by the Seventh Amendment.

Jury Proceedings

Since right to recover possession of real property was right ascertained and protected at common law, any party involved in suit under statutes of District of Columbia establishing summary procedure for recovery of possession of real property is entitled under Seventh Amendment to Constitution to trial by jury. *Pernell v. Southall Realty*, 416 U.S. 363 (1974).

Jury Demands

Failure to serve and file timely jury demand under rule constitutes waiver of Seventh Amendment right to jury trial. *Dominique v. Ralph D. Kaiser Co., Inc.*, 479 A.2d 319 (D.C. 1994).

Jury Fees

Failure to pay required fee constitutes waiver of Seventh Amendment right to jury trial. *Dominique v. Ralph D. Kaiser Co., Inc.*, 479 A.2d 319 (D.C. 1994).

FLORIDA

Constitution

The Florida Constitution, Article I, Section 22: “The right of trial by jury shall be secure to all and remain inviolate.”

Constitutional Interpretations

- The right exists as to those issues that were triable before a jury at common law at the time of the adoption of the state’s first constitution. *Broward County v. La Rosa*, 484 So.2d 1374 (Fla. 4th DCA 1986).
- Courts extend the right “to proceedings of like nature” under the rules of common law. *The Printing House, Inc. v. State, Dept. of Revenue*, 614 So.2d 1119, 1123 (Fla. 1st DCA 1992).

Jury Proceedings

The following actions were tried by a jury at common law, and, therefore, the right to jury trial exists as to these actions today. *See Bill Hoppe, Trial by Court or by Jury*, CIVTP FL-CLE 3-1 (2010):

- Breach of contract.
- Civil theft.
- Defamation.
- Intentional torts.
- Negligence (including professional liability and product liability).

- Replevin or trover.

The right to trial by jury exists for the following causes of action, by Florida statutes. *See id.*:

- Ejectment from lands, F.S. 66.061.
- Relief from “inordinate burdens” on real property rights, F.S. 70.001.
- Eminent domain (the jury determines only the amount of compensation to be paid, while the court decides on the necessity of the taking), F.S. 73.071.
- Dissolution of a writ of garnishment, F.S. 77.08.
- Claims by third persons to garnished property, F.S. 77.16.
- Forcible entry and unlawful detainer, F.S. 82.071.
- Enforcement of certain statutory liens, F.S. 85.011

Non-Jury Proceedings

No right to trial by jury exists regarding the following. *See id.*

- Actions that seek equitable remedies, see *Hughes v. Hannah*, 39 Fla. 365, 22 So. 613 (1897); *Hansard Construction Corp. v. Rite Aid of Florida, Inc.*, 783 So.2d 307 (Fla. 4th DCA 2001).
- Dissolution of marriage proceedings, which are governed by equity, F.S. 61.011; *State ex rel. English v. McCrary*, 328 So.2d 257 (Fla. 1st DCA 1976), *approved* 348 So.2d 293.
- Probate of a will, *Goggin v. Shanley*, 81 So.2d 728 (Fla. 1955); *Alcee v. Tenet Healthsystem Hospitals, Inc.*, 756 So.2d 1092 (Fla. 4th DCA 2000).
- Admiralty cases, 2 FEDERAL DIGEST Admiralty § 80; 2 C.J.S. Admiralty § 190; see MARITIME LAW AND PRACTICE § 1.28 (Fla. Bar CLE 4th ed. 2004). Any party, however, having a cause of action in personam in connection with which there is concurrent jurisdiction in a civil law court may obtain a jury trial by instituting a civil action in a state court or in the federal district court.
- Court-martial cases, Art. I, § 15, Fla. Const.
- Commitment to psychiatric facilities, see F.S. Chapter 394.
- Appointment of a guardian for weak-minded and physically incapacitated persons, *In re Adams’ Estate*, 135 Fla. 139, 185 So. 153 (1939).
- Disbarment, *State ex rel. Kehoe v. McRae*, 49 Fla. 389, 38 So. 605 (1905); see Art. V, § 15, Fla. Const.
- Revocation of a medical license, see F.S. 458.301, 458.331; *Katz v. State Board of Medical Examiners*, 201 So.2d 805 (Fla. 3d DCA 1967).
- Mandamus, *State ex rel. Foster v. Anders*, 135 Fla. 59, 184 So. 515 (1938).
- Partition of property (all controversies between the parties about legal title and right of possession), *Terra Ceia Estates v. Taylor*, 68 Fla. 261, 67 So. 169 (1914); see F.S. 64.011.
- Prevention of conveyances to defraud creditors, *Brownstone, Inc. v. Miami National Bank*, 165 So.2d 262 (Fla. 3d DCA 1964); see F.S. 56.29.

Damage Caps

Florida’s statutory cap on non-economic damages in medical malpractice actions did not violate malpractice plaintiffs’ right to a trial by jury. *M.D. v. U.S.*, 745 F. Supp. 2d 1274 (M.D. Fla. 2010).

Jury Size and Unanimity

The Florida Constitution, Article I, Section 22: “The qualifications and the number of jurors, not fewer than six, shall be fixed by law.”

Jury Fees

A statute governing small claims courts in counties with certain size populations, which provided that a jury trial might be had upon demand of either party by depositing with the judge or his clerk such sum as the judge might fix as reasonable to secure the payment of costs incurred by reason of a jury trial, was valid. *State ex rel. Murphy-McDonald Builders’ Supply Co. v. Parks*, 43 So 2d 347 (Fla. 1949).

GEORGIA

Constitution

The Georgia Constitution, Article VI, Section 16, Paragraph 1: “The right of trial by jury, except where it is otherwise provided in this Constitution, shall remain inviolate.”

Constitutional Interpretations

“The right to trial by a jury, unless extended by statute, applies only to actions proceeding according to the course of the common law, and not to special proceedings of a summary character.” *Hortman v. Georgia Bd. of Dental Examiners*, 105 S.E.2d 732, 735 (Ga. 1958) (citation omitted).

Non-Jury Proceedings

- Cases involving equity, *Department of Transp. v. Gibson*, 303 S.E.2d 19 (Ga. 1983).
- Injunction hearing, *Frantz v. Piccadilly Place Condominium Ass’n, Inc.*, 597 S.E.2d 354 (Ga. 2004).
- Workers compensation claims, *Metropolitan Cas. Ins. Co. of N.Y. v. Huhn*, 142 S.E. 121(Ga. 1928).
- Eminent domain claims, *Department of Transp. v. Gibson*, 303 S.E.2d 19 (Ga. 1983), and
- Claims for back pay under the Georgia Equal Employment for Persons with Disabilities, *Smith v. Milliken & Co.*, 377 S.E.2d 916 (Ga. 1989).

HAWAII

Constitution

The Hawai’i Constitution, Article I, Section 13: “In suits at common law where the value in controversy shall exceed five thousand dollars, the right of trial by jury shall be preserved.”

Jury Proceedings

- Right to jury exists in eminent domain proceedings.
- Even if Hawai’i adopted the “public rights” doctrine and the Legislature could in certain cases abrogate a party’s right to a jury trial by establishing an administrative agency to oversee and rule on an action, employer was still entitled to a jury trial on employees’ claims of sexual discrimination and retaliation filed with the Hawai’i Civil Rights Commission (HCRC) in which employees were seeking legal relief. *SCI Management Corp. v. Sims*, 71 P.3d 389 (Haw. 2003).

- Traditional forms of legal relief, for purposes of determining whether a party in a dispute has a right to a trial by jury, include compensatory and punitive damages. *SCI Management Corp. v. Sims*, 71 P.3d 389 (Haw. 2003).
- Laws, practices, and procedures affecting the right to trial by jury under the Hawai'i Constitution are valid as long as they do not significantly burden or impair the right to ultimately have a jury determine issues of fact. *SCI Management Corp. v. Sims*, 71 P.3d 389 (Haw. 2003).

Non-Jury Proceedings

No right to a jury for questions of unjust enrichment. *Porter v. Hu*, 169 P.3d 994 (Haw. 2007).

Law/Equity Distinction

- The test to determine whether a suit is at common law, and thus invokes the right to a jury trial, is whether the cause of action seeks legal or equitable relief. *Porter v. Hu*, 169 P.3d 994 (Haw. 2007).
- Where an action involves claims for both legal and equitable relief, the right to jury trial on the legal claim, including all issues common to both claims, remains intact; the right cannot be abridged by characterizing the legal claim as “incidental” to the equitable relief sought. *SCI Management Corp. v. Sims*, 71 P.3d 389 (Haw. 2003).

Alternative Dispute Resolution

A statute requiring tort actions with probable jury award values of less than \$150,000 to first be submitted to nonbinding arbitration did not violate equal protection. *Richardson v. Sport Shinko*, 880 P.2d 169 (Haw. 1994).

Jury Size and Unanimity

The Hawai'i Constitution, Article I, Section 13: “The legislature may provide for a verdict by not less than three-fourths of the members of the jury.”

IDAHO

Constitution

Article I, Section 7: “The right of trial by jury shall remain inviolate”

Constitutional Interpretations

The state constitutional provision merely preserves right to a trial by jury in cases at common law. *Rudd v. Rudd*, 666 P.2d 639 (1983).

Jury Proceedings

Right to have a jury assess and award noneconomic damages to plaintiffs in personal injury actions existed at the time of the adoption of State Constitution, and thus is constitutionally protected. *Kirkland v. Blaine County Medical Center*, 4 P.3d 1115 (2000).

Law/Equity Distinction

The constitutional right to a jury trial applies only to legal claims and not equitable claims. *Ada County Highway Dist. v. Total Success Investments, LLC*, 179 P.3d 323 (2008). “When legal and equitable issues are joined in a lawsuit the trial court should first decide the equitable issues, and then if any independent (legal) issues remain, those issues may be tried to a jury upon appropriate request.” *Idaho First Nat’l Bank v. Bliss Valley Foods*, 824 P.2d 841, 865 (1991).

ILLINOIS

Constitution

Illinois Constitution, Article I, Section 13: “The right of trial by jury as heretofore enjoyed shall remain inviolate.”

Constitutional Interpretations

The right to a jury is only guaranteed as it existed at common law. *Hoehamer v. Village of Elmwood Park*, 198 N.E. 345 (Ill. 1935).

Statutes

Statutes only give right to jury if the right existed at common law or the statute explicitly gives the right. *Bank of America, N.A. v. Bird*, 911 N.E.2d 1239 (App. 5 Dist. 2009).

Law/Equity Distinction

- No right to jury trial in equity. *Meyers v. Kissner*, (App. 5 Dist. 1993).
- The right to a jury does not depend on whether money damages are sought. *Bublitz v. Wilkins Buick, Mazda, Suzuki, Inc.*, 881 N.E.2d 375 (App. 2 Dis. 2007).

Damage Caps

A statute that placed a \$200 cap on damages a car rental company could recover from driver for negligent damage to rental car did not violate company’s right to jury trial. *Alamo Rent A Car, Inc. v. Ryan*, 643 N.E.2d 1345 (App. 1 Dist. 1994).

Jury Fees

Fee for a jury trial is not constitutional. *Williams v. Gottschalk*, 83 N.E. 141 (Ill. 1907).

Alternative Dispute Resolution

- Mandatory arbitration doesn’t constitute an unconstitutional infringement on the jury trial. *Williams v. Jo-Carroll Energy, Inc.*, 890 N.E.2d 566 (Ill.App. 2008).
- Statute providing that court could provide for arbitration of cases arising out of operation, ownership, maintenance, or use of motor vehicle under certain circumstances was unconstitutional violation of right of trial by jury. *Grace v. Howlett*, 283 N.E.2d 474 (Ill. 1972).

Miscellaneous

Medical review panels violate the right to trial by jury. *Wright v. Central Du Page Hospital Ass’n*, 347 N.E.2d 736 (Ill. 1976).

INDIANA

Constitution

Indiana Constitution, Article I, Section 20: “In all civil cases, the right of trial by jury shall remain inviolate.”

Jury Proceedings

The right to jury trial has been held to exist in the following actions (William F. Harvey and Stephen E. Arthur, 3 Ind. Prac., Rules of Procedure Annotated R 38 (3rd ed.):

- Quiet title (real estate): *Trittippo v. Morgan*, 99 Ind. 269 (1884); *Johnson v. Taylor*, 106 Ind. 89, 5 N.E. 732 (1886); *Michael v. Albright*, 126 Ind. 172, 25 N.E. 902 (1890).
- Suits on bonds, including actions on penal bonds for a breach thereof: *Galway v. State ex rel. Ballow*, 93 Ind. 161 (1884); *Pattee v. State*, 109 Ind. 545, 10 N.E. 421

(1887).

- Actions for partition: *Kitts v. Wilson*, 106 Ind. 147, 5 N.E. 400 (1886).
- Actions in tort: *Terre Haute v. Deckard*, 243 Ind. 289, 183 N.E.2d 815 (1962).
- Bastardy proceedings: *Alley v. State ex rel. Blenzinger*, 76 Ind. 94 (1881).
- Mandamus proceedings: *State ex rel. McCalla v. Burnsville Turnpike Co.*, 97 Ind. 416 (1884).
- Quo Warranto proceedings: *Reynolds v. State ex rel. Titus*, 61 Ind. 392 (1878). The rule making mandamus and quo warranto proceedings triable by jury may be based upon the statutes rather than the Constitution. *Kelly v. Herbst*, 202 Ind. 55, 170 N.E. 853 (1930).

Non-Jury Proceedings

The following are equitable suits and thus no right to a jury exists (*id.*):

- Divorce suits: *Lewis v. Lewis*, 9 Ind. 105 (1857).
- Actions seeking to obtain relief from fraud: *Israel v. Jackson*, 93 Ind. 543 (1884).
- Proceedings to establish lost will: *Wright v. Fultz*, 138 Ind. 594, 38 N.E. 175 (1894).
- Suits to foreclose or cancel liens: *Carmichael v. Adams*, 91 Ind. 526 (1883).
- Action for discharge on restoration of sanity: *State ex rel. Boeldt v. Criminal Court of Marion County*, 236 Ind. 290, 139 N.E.2d 891 (1957).
- Restoration of child to custody of parents: *State ex rel. Bryant v. Warrick Circuit Court*, 232 Ind. 655, 115 N.E.2d 742 (1953).

Law/Equity Distinction

- Trial Rule 38(A): Issues of law and issues of fact in causes that prior to the eighteenth day of June, 1852, were of exclusive equitable jurisdiction shall be tried by the court; issues of fact in all other causes shall be triable as the same are now triable. In case of the joinder of causes of action or defenses which, prior to said date, were of exclusive equitable jurisdiction with causes of action or defenses which, prior to said date, were designated as actions at law and triable by jury—the former shall be triable by the court, and the latter by a jury, unless waived; the trial of both may be at the same time or at different times, as the court may direct.
- “[S]uits for which jurisdiction was exclusively equitable prior to June 18, 1852, are to be tried by the court. Second, issues of fact in all other suits are to be tried ‘as the same are now triable.’” Finally, when both equitable and legal causes of action or defenses are joined in a single case, the equitable causes of action or defenses are to be tried by the court while the legal causes of action or defenses are to be tried by jury.” *Songer v. Civitas Bank*, 771 N.E.2d 61, 64 (Ind. 2002).
- Whenever an essential part of a cause is exclusively of equitable nature, the whole is drawn into equity. *Sikich v. Springmann*, 48 N.E.2d 808 (Ind. 1943).

Damage Caps

Recovery limitations imposed by the Indiana Medical Malpractice Act did not violate constitutional right of trial by jury by removing determination of damages in excess of statutory amount from the jury. *Johnson v. St. Vincent Hosp., Inc.*, 404 N.E.2d 585, 601-02 (Ind. 1980).

IOWA

Constitution

Iowa Constitution, Article I, Section 9: “The right of trial by jury shall remain inviolate”

Constitutional Interpretations

- The right of trial by jury which by this section is to remain inviolate, extends only to those cases where a jury was necessary according to common-law procedure. *State v. Henderson*, 124 N.W. 767 (Iowa 1910).
- Statutory immunity created by Iowa Code § 668.10(1) for the government did not unconstitutionally deny the administrator and his daughter a right to a jury trial. *Phillips v. Waukee*, 467 N.W.2d 218 (Iowa 1991).

Non-Jury Proceedings

One has a right to a jury trial only in legal actions or if a statute so provides. Thus, there is no right to a jury trial under the state civil rights act, *Smith v. ADM*, 456 N.W.2d 378 (Iowa 1990).

Law/Equity Distinction

A party in an equitable action triable by the first method of trying equitable actions cannot, as a matter of right, demand that the issues be tried by a jury. *State for Use of Boone County v. Orwig* (Iowa 1868).

Unanimity/Non-Unanimity Rules

Rule of Civil Procedure allowing nonunanimous jury verdicts does not violate state constitutional provision guarantying right of trial by jury. *Pitcher v. Lakes Amusement Co.*, (Iowa 1975).

Jury Demands

Pursuant to Rule 1.903(1), one must affirmatively demand a jury trial.

Miscellaneous

There is no “complex litigation” exception to the constitutional right to a trial by jury. *Rieff v. Evans*, 672 N.W.2d 728 (Iowa 2003).

KANSAS

Constitution

Kansas Constitution, Bill of Rights Section 5: “The right of trial by jury shall be inviolate.”

Constitutional Interpretations

The right to a jury trial in a civil proceeding in Kansas is not absolute and refers to that right as it existed under the common law. *K.S.A. Const. Bill of Rights, § 5. Jensen Intern., Inc. v. Kelley*, 32 P.3d 1205 (Kan. App. 2001).

Statutes

- The right of trial by jury as declared by section 5 of the bill of rights in the Kansas Constitution, and as given by a statute of the state, shall be preserved to the parties inviolate. Statute 60-238.
- Legislature can modify right to jury trial through its power to change common law, but such power is not absolute and any statutory modification of common law must meet due process requirements and be reasonably necessary in public interest to promote general welfare of people of state. *Kansas Malpractice Victims Coalition v. Bell*, 757 P.2d 251

(Kan. 1988).

Law/Equity Distinction

At common law and under provisions of the State Constitution, a party in a suit in equity is not entitled to a trial by jury as matter of right. *Koerner v. Custom Components, Inc.*, 603 P.2d 628 (Kan. 1979).

Damage Caps

- Caps on recovery and mandatory annuity payments violate the right to jury trial. *Kan. Malpractice Victims Coalition v. Bell*, 757 P.2d 251, 263-64 (Kan. 1988).
- But statutory cap on tort plaintiff's right to receive noneconomic losses in excess of \$250,000 provides sufficient quid pro quo to individual whose damage award exceeds cap, and thus does not violate plaintiff's constitutional right to jury trial. *Samsel v. Wheeler Transp. Serv., Inc.*, 789 P.2d 541, 549-58 (Kan. 1990).

Jury Demands

Any party may demand a trial by jury of any issue triable of right by a jury by: (1) Serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue; and (2) filing the demand as required by K.S.A. 60-205 and amendments thereto. Such demand may be indorsed upon a pleading of the party. Statute 60-238.

Miscellaneous

The parties, in an action in which they are entitled to a jury as of right, may waive a jury, but the court is not obliged to accept such waiver, and may, of its own motion, call a jury to try such cause. *Hill v. Ellis*, 48 P. 204 (Kan, App. 1897).

KENTUCKY

Constitution

Kentucky Constitution Section 7: "The ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution."

Constitutional Interpretations

The Constitution protects the right to jury trial as it was protected at common law; the General Assembly may create a right not recognized at common law and provide no jury. *Kentucky Commission on Human Rights v. Fraser*, 625 S.W.2d 852 (Ky. 1981).

Law/Equity Distinction

- In civil cases, Kentucky law recognizes exceptions to the right to a jury, including causes of action at common law that would have been regarded as arising in equity rather than law; if the nature of the issues presented is essentially equitable, no jury trial is available. *Daniels v. CDB Bell, LLC*, 300 S.W.3d 204 (Ky.App. 2009).
- The rule providing for one form of action known as "civil action" merges ordinary and equitable actions for procedural purposes only; this merger did not abolish substantive distinction between ordinary and equitable actions with regard to the right to jury trial. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 908 S.W.2d 104 (Ky. 1995).

LOUISIANA

Constitution

Louisiana Code of Procedure, Article 1734: “Except as limited by Article 1732, the right of trial by jury is recognized.”

Non-Jury Proceedings

Article 1732: A trial by jury shall not be available in:

- A suit where the amount of no individual petitioner’s cause of action exceeds fifty thousand dollars exclusive of interest and costs.
- A suit on an unconditional obligation to pay a specific sum of money, unless the defense thereto is forgery, fraud, error, want, or failure of consideration.
- A summary, executory, probate, partition, mandamus, habeas corpus, quo warranto, injunction, concursus, workers’ compensation, emancipation, tutorship, interdiction, curatorship, filiation, annulment of marriage, or divorce proceeding.
- A proceeding to determine custody, visitation, alimony, or child support.
- A proceeding to review an action by an administrative or municipal body.
- All cases where a jury trial is specifically denied by law.

Jury Fees

Failure to make cash deposit 30 days before start of trial, as required by LSA-C.C.P. art. 1734.1, warranted trial court’s disallowance of jury trial. *Littleton v. Wal-Mart Stores, Inc.*, 747 So.2d 701 (La.App.3.Cir. 1999). *But see Vincent v. Ray Brandt Dodge*, 652 So.2d 84 (La.App.5.Cir. 1995) (taking the opposite view).

MAINE

Constitution

Maine Constitution, Article I, Section 20: “In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced; the party claiming the right may be heard by himself or herself and with counsel, or either, at the election of the party.”

Jury Proceedings

- Jury right exists except where it didn’t under Maine common law and Massachusetts statutory law at Maine’s founding. *State v. One 1981 Chevrolet Monte Carlo*, 728 A.2d 1259 (Me. 1999).
- Plaintiff has right to jury trial in all civil actions unless it is affirmatively shown that jury trial was unavailable in such a case in 1820. *DesMarais v. Desjardins*, 664 A.2d 840 (Me. 1995).
- The Maine Supreme Judicial Court “presumes” the right to jury trial in civil cases unless it is affirmatively shown that jury trial was unavailable in such a case prior to the adoption of the Maine Constitution. *Kennebec Federal Sav. & Loan Ass’n v. Kueter*, 695 A.2d 1201, 1202 (1997).
- When a new cause of action, unknown at the time the state constitution was adopted, is created by the Legislature or recognized by the court, the constitutional right to a jury trial will depend on the nature of that new cause of action: if the nature of the claim is such that its pre-1820 analogue was not tried to a jury, the new cause of action will

similarly carry no such right; but when a plaintiff seeks damages as full compensation for an injury, the claim is legal and the plaintiff is entitled to a jury trial. *Thermos Co. v. Spence*, 735 A.2d 484 (Me. 1999).

Non-Jury Proceedings

No right to a jury for:

- Action under the Lemon law, 922 A.2d 465 (Me. 2007).
- Civil contempt proceedings, 667 A.2d 602 (Me. 1995).
- Parental right proceeding, *In re Shane T.*, 544 A.2d 1295 (Me. 1988).

Jury Fees

Administrative Order SJC-321, which imposes a \$300 fee in any civil case in which trial by jury is demanded, is constitutional. *Butler v. Supreme Judicial Court*, 611 A.2d 987 (Me. 1992).

MARYLAND

Constitution

- The Maryland Constitution, Declaration of Rights, Article 5(a)(1): “That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury. . . .”
- Article 5(a)(2): “Legislation may be enacted that limits the right to trial by jury in civil proceedings to those proceedings in which the amount in controversy exceeds \$15,000”

Constitutional Interpretations

- “The right to a jury trial exists only to the extent that it has not been abrogated by the Legislature.” *Jackson v. Dackman Co.*, 956 A.2d 861, 872 (Md. App. 2008).
- There is no right to a jury trial in civil proceedings in equity or in administrative proceedings created by statute which were unknown at common law. *Allnutt v. Comptroller of Treasury*, 61 Md. App. 517, 487 A.2d 670 (1985).

Jury Proceedings

- The amount of damages in a breach of contract action is to be determined by a jury, *Goldman, Skeen & Wadler, P.A. v. Cooper, Beckman & Tuerk, L.L.P.*, 712 A.2d 1 (Md. 1998).
- There is a right to jury in a landlord/tenant action, *Martin v. Howard County*, 709 A.2d 125 (Md. 1998).

Non-Jury Proceedings

Absent specific constitutional or statutory provisions mandating a jury trial, the issues in a condemnation case should be tried by the court. *Bouton v. Potomac Edison Co.*, 418 A.2d 1168 (Md. 1980).

Law/Equity Distinction

When there are both legal and equitable issues within one case, the judge must, wherever possible, preserve the jury trial.

Damage Caps

Statutory \$350,000 cap on noneconomic damages in personal injury actions does not violate equal protection or right to jury trial, *Murphy v. Edmonds*, 601 A.2d 102, 116-18 (Md. 1992).

MASSACHUSETTS

Constitution

The Massachusetts Constitution, Part I, Article 15: “In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners’ wages, the legislature shall hereafter find it necessary to alter it.”

Constitutional Interpretations

M.G.L.A. c. 231, § 60B, establishing a procedure for screening malpractice cases, did not violate the right to jury trial.

Jury Proceedings

The legislature may expand the right to jury. *Nei v. Burley*, 446 N.E.2d 674, 677 (Mass. 1983), as it has done in eminent domain cases, and in supplementary process claims

Law/Equity Distinction

- There is no right to a jury trial in an action seeking purely equitable relief because no such right existed at common law at the time the Constitution was adopted. *Parker v. Simpson*, 62 N.E. 401, 405 (Mass. 1902).
- However, recasting a remedy as equitable when it wouldn’t have been considered equitable at common law doesn’t eradicate the right to jury trial. *Rosati v. Boston Pipe Covering, Inc.*, 710 N.E.2d 1052 (Mass. App.Ct. 1999).
- Where legal and equitable issues are in one case, the legal issues are first submitted to a jury and then the related equitable issues are decided by the judge. Howard J. Alperin, 14 Mass. Prac., Summary of Basic Law § 3.151 (4th ed.)

MICHIGAN

Constitution

The Michigan Constitution, Article IV, Section 27: “The right of trial by jury shall remain....”

Law/Equity Distinction

- An equitable controversy should be determined by the court, *Brown v. Kalamazoo Circuit Judge*, 42 N.W. 827 (Mich. 1889), while an action for money damages should be tried by a jury, *ECCO Ltd. v. Balimoy Mfg. Co.*, 446 N.W.2d. 546 (Mich. 1989).
- In cases with both legal and equitable issues, the jury should decide the factual issues relating to the former, the court the factual issues relating to the latter. *Prentis Family Found. v. Barbara Ann Karmanos Cancer Institute*, 698 N.W.2d 900 (Mich.App. 2005).
- The power of the court to decide issues of equity is protected by the state constitution. *Michigan Mut. Liability Co. v. Baker*, 294 N.W. 168 (Mich. 1940).

Jury Demands

The Michigan Constitution, Article IV, Section 27: “The right of trial by jury . . . shall be deemed to be waived in all civil cases unless demanded by one of the parties in such manner as shall be prescribed by law.”

Damage Caps

Statutory cap on noneconomic damages, recoverable in medical malpractice action, M.C.L.A. § 600.1483(1), did not violate right to trial by jury as guaranteed by State Constitution. *Wiley v. Henry Ford Cottage Hosp.*, 668 N.W.2d 402 (Mich. 2003).

Jury Size and Unanimity

- The Michigan Constitution, Article IV, Section 46: “The legislature may authorize a trial by a jury of less than 12 jurors in civil cases.”
- Provision of M.C.L.A. § 600.1352 authorizing trial by six-person jury in civil cases and authorizing reception of verdict upon agreement of five jurors is constitutional. *Fisher v. Hatcher*, 205 N.W.2d 913 (Mich.App. 1973).

Jury Fees

- GCR 1963, 508.4 provides that a jury fee be paid by the close of the pretrial conference
- Once the close of pretrial conference had passed without payment of requisite jury fee, plaintiffs’ entitlement to jury trial becomes a matter of discretion with the trial court. *Bachor v. City of Detroit*, 212 N.W.2d 302 (Mich. App. 1973).

Alternative Dispute Resolution

The Michigan Malpractice Act, M.C.L.A. §§ 600.5040 et seq., which provided that patient could execute agreement to arbitrate any medical malpractice dispute arising from treatment by specific medical provider and provided for a three-member arbitration panel to resolve such disputes consisting of one attorney, one physician or hospital administrator, and one independent party, did not violate the right to jury.

MINNESOTA

Constitution

- The Minnesota Constitution, Article I, Section 4: “The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. A jury trial may be waived by the parties in all cases in the manner prescribed by law.”

Constitutional Interpretations

- The Constitution guarantees that all jury rights in the Territory of Minnesota remain inviolate. *Whallon v. Bancroft*, 4 Minn. 109, 113 (1860).
- Denial of constitutional right to jury trial is reversible error. *Landgraf v. Ellsworth*, 126 N.W.2d 766 (Minn. 1964).
- The Legislature may expand the constitutional right. *Abraham v. County of Hennepin*, 639 N.W.2d 342, 354 (Minn. 2002).

Jury Proceedings

- Right to jury exists in a claim of retaliatory discharge, although the statute didn’t exist at common law, because it is similar to tort, *Abraham v. County of Hennepin*, 639 N.W.2d 342, 354 (Minn. 2002).
- The right exists in attempt to recover value of services under a quasi-contract theory, *Roske v. Ilykanyics*, 45 N.W.2d 769 (Minn. 1951).

Non-Jury Proceedings

No right to jury concerning breach of fiduciary duty, *Commercial Associates, Inc. v. Work Connection, Inc.*, App.2006, 712 N.W.2d 772 (Minn. App.2006), or in compelling the creation of a trust, *Georgopolis v. George*, 54 N.W.2d 137 (Minn. 1952).

Jury Fees

A party who doesn't pay the requisite fee waives his right to a jury trial. *Schweich v. Ziegler, Inc.*, 463 N.W.2d 722 (Minn. 1990).

MISSISSIPPI

Constitution

The Mississippi Constitution, Article III, Section 31: "The right of trial by jury shall remain inviolate"

Constitutional Interpretations

- The language of the Constitution has come to mean that the right is available only in those civil actions where there was a right of trial by jury at common law. *Isaac v. McMorris*, 461 So. 2d 714, 715 (Miss. 1984).
- The legislature may extend the jury right to the chancery courts, but it hasn't done so, *Tillotson v. Anders*, 551 So. 2d 212, 214 n. 2 (Miss. 1989). Chancery courts may use advisory juries if they wish.

Non-Jury Proceedings

- Mississippi Tort Claims Act (MTCA) claimants do not have the right to a jury trial. *Simpson v. City of Pickens*, 761 So.2d 855 (Miss. 2000).
- Similarly, no right to jury trial for injured students suing under Accident Contingent Fund statutes, which limit damages recoverable from state for school bus accidents. *Wells v. Wells* by *Wells v. Panola County Bd. of Educ.*, 645 So.2d 883 (Miss. 1994). This is true whenever the state waives sovereign immunity.
- No right to jury trial in damage assessment for eminent domain cases.

Alternative Dispute Resolution

Enforcement of arbitration agreements doesn't deprive persons of their right to jury trial. *First Family Financial Services, Inc. v. Fairley*, 173 F.Supp.2d 565 (S.D.Miss. 2001).

Jury Size and Unanimity

The Mississippi Constitution, Article III, Section 31: "[T]he legislature may, by enactment, provide that in all civil suits tried in the circuit and chancery court, nine or more jurors may agree on the verdict and return it as the verdict of the jury."

MISSOURI

Constitution

The Missouri Constitution, Article I, Section 22(a): "the right of trial by jury as heretofore enjoyed shall remain inviolate."

Constitutional Interpretations

- This section protects right to jury trial only insofar as it existed at common law. *Spitcaufsky v. Hatten*, 182 S.W.2d 86 (Mo. Sup. 1944).
- The provisions of this section do not prevent the legislature from extending the right of trial by jury and do not prevent it from making matters heretofore tried in equity, triable by a jury, where the cause of action in the first instance was one of law. *Berry v. St. Louis & S.F.R. Co.*, 122 S.W. 1043 (Mo. 1909).

Jury Proceedings

Right to jury exists in the following situations:

- condemnation cases.
- malpractice claims.
- paternity suits.
- actions to establish title by adverse possession.
- proceedings to adjudicate incompetency and appoint a conservator

Claims for punitive or exemplary damages, as well as actual damages, were recognized under the common law in 1820 and are therefore subject to the right of a party to have a jury trial. *Scott v. Blue Springs Ford Sales, Inc.*, 176 S.W.3d 140, 142 (Mo.banc 2005).

Non-Jury Proceedings

The following types of cases are not jury-triable:

- election contests.
- divorce proceedings.
- juvenile court proceedings.
- actions to abate a nuisance.
- probate proceedings.

Jury Size

Civil litigants have a constitutional right to a fair and impartial jury of 12 qualified jurors. *Hudson v. Behring*, 261 S.W.3d 621 (Mo. App. E.D. 2008).

Law/Equity Distinction

- In civil cases, the test is whether the action may be characterized as essentially “legal”—in which a jury trial is available—or “equitable”—in which a jury trial is unavailable. *State ex rel. Duggan v. Kirkwood*, 208 S.W.2d 257 (Mo. 1948).
- The right to a jury trial is a constitutional right, while no similar requirement protects trials by the court; accordingly, the discretion to favor the equitable relief is very narrowly limited and must, whenever possible, be exercised to preserve jury trial. *State ex rel. Leonardi v. Sherry*, 137 S.W.3d 462, 474 (Mo. en banc 2004).

Damage Caps

Statutory cap on noneconomic damages is constitutional. *Adams v. Children’s Mercy Hosp.*, 832 S.W.2d 898, 904-07 (Mo. 1993).

Jury Fees

County rule requiring \$100 deposit for jury trial was unconstitutional. *Parrett v. Integon Life Ins. Co.*, 590 S.W.2d 411 (Mo.App. S.Dist. 1979). See Supreme Court Rule 77.02 (permitting a court to charge appropriate fees).

MONTANA

Constitution

The Montana Constitution, Article II, Section 26: “The right of trial by jury is secured to all and shall remain inviolate.”

Constitutional Interpretations

The Montana Constitution only guarantees the right to jury in cases in which it was guaranteed when the Constitution was adopted. *Buhmann v. State*, 201 P.3d 70 (Mont. 2008).

Law/Equity Distinction

The constitutional guarantee does not apply to suits in equity. *Merchants Fire Assur. Corporation of New York v. Watson*, 64 P.2d 617 (Mont. 1937).

Unanimity/Non-Unanimity Rules

Statute requiring an award of punitive damages to be unanimous as to liability and amount was unconstitutional. *Finstad v. W.R. Grace & Co.*, 8 P.3d 778 (Mont. 2000).

Jury Fees

- Laws requiring prepayment of jury fees for civil cases violated right to jury. *State ex rel. Kennedy v. District Court of Fifth Judicial Dist. in and for Beaverhead County*, 194 P.2d 256 (Mont. 1948).
- A justice court rule and the statute which it implemented, requiring prepayment of jury fees in justice court actions, were unconstitutional. *Hammer v. Justice Court of Lewis & Clark County*, 720 P.2d 281 (Mont. 1986).

Alternative Dispute Resolution

One can knowingly and voluntarily waive one's jury right through an arbitration clause. *Kloss v. Edward D. Jones & Co.*, 54 P.3d 1 (Mont. 2002).

NEBRASKA

Constitution

The Nebraska Constitution, Article I, Section 6: "The right of trial by jury shall remain inviolate, but the Legislature may authorize trial by a jury of a less number than twelve in courts inferior to the District Court, and may by general law authorize a verdict in civil cases in any court by not less than five-sixths of the jury."

Constitutional Interpretations

Constitutional article providing that right of trial by jury shall remain inviolate preserves right to trial by jury as it existed at common law and under statutes in force when Constitution was adopted. *State v. Lynch*, 394 N.W.2d 651 (Neb. 1986).

Law/Equity Distinction

Jury cannot be demanded as matter of right by either party to try any issue arising in cause for equitable relief. *Krumm v. Pillard*, 177 N.W. 171 (Neb. 1920).

Damage Caps

Statutory cap on damages recoverable in medical malpractice action does not violate constitutional right to jury trial. *Gourley ex rel. Gourley v. Nebraska Methodist Health System, Inc.*, 663 N.W.2d 43 (Neb. 2003).

NEVADA

Constitution

The Nevada Constitution, Article I, Section 3: "The right of trial by Jury shall be secured to all and remain inviolate forever; but a Jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law"

Constitutional Interpretations

- Under the state constitution, the right to a jury trial is defined by English common law as modified at the time of the adoption of the constitution. *Awada v. Shuffle Master, Inc.*, 173 P.3d 707 (Nev. 2007).
- Statutory requirement that attorney fees be imposed against medical malpractice claimant

whose claim is rejected before screening panel and who loses at trial does not unconstitutionally restrict right to jury trial by “chilling” access to courts. *Barrett v. Baird*, 908 P.2d 689 (Nev. 1995).

- Medical malpractice screening panel statutes did not violate malpractice plaintiff’s right to jury trial by creating risk that jurors would overvalue panel’s decision without knowing that decision relied on evidence that would be inadmissible at trial. *Barrett v. Baird*, 908 P.2d 689 (Nev. 1995).
- District court’s grant of additur after jury verdict has been rendered does not violate state constitutional guarantee of jury trial. Const. Art. 1, § 3. *Jacobson v. Manfredi by Manfredi*, 679 P.2d 251 (Nev. 1984).

Jury Proceedings

The Nevada constitutional guaranty of trial by jury covers Justice Court civil actions even when small amounts are in controversy. *Aftercare of Clark County v. Justice of Las Vegas Tp. ex rel. County of Clark*, 2004, 82 P.3d 931 (Nev. 2004).

Law/Equity Distinction

- Generally, there is no right to jury trial when restitution is remedy sought. *Ruley v. Nevada Bd. of Prison Com’rs*, 628 F.Supp. 108 (Nev. 1986).
- Constitutional jury trial right did not require the trial court to always proceed first with legal claim. *Awada v. Shuffle Master, Inc.*, 173 P.3d 707 (Nev. 2007).

Jury Size and Unanimity

The Nevada Constitution, Article I, Section 3: “[I]n civil cases, if three fourths of the Jurors agree upon a verdict it shall stand and have the same force and effect as a verdict by the whole Jury, Provided, the Legislature by a law passed by a two thirds vote of all the members elected to each branch thereof may require a unanimous verdict notwithstanding this Provision.”

NEW HAMPSHIRE

Constitution

The New Hampshire Constitution, Part I, Article 20: “In all controversies concerning property, and in all suits between 2 or more persons except those in which another practice is and has been customary and except those in which the value in controversy does not exceed \$1,500 and no title to real estate is involved, the parties have a right to a trial by jury. This method of procedure shall be held sacred unless, in cases arising on the high seas and in cases relating to mariners’ wages, the legislature shall think it necessary to alter it.”

Constitutional Interpretations

The right to a jury extends only to those cases for which the jury trial right existed when the Constitution was adopted in 1784. *State v. Morrill*, 123 N.H. 707, 465 A.2d 882 (N.H. 1983).

Statutes

N.H. Rev. Stat. § 519:17: Whenever a municipal or other corporation or a quasi corporation is a party to an action the parties to such action shall have the same right of trial by jury that any other party has under the constitution.

Jury Proceedings

Right to a jury trial is guaranteed by the Constitution in a partition action, as there was a right to a jury trial in partition actions in 1784. *Gilman v. Lake Sunapee Properties, LLC*, 977 A.2d 483 (N.H. 2009).

Jury Size

No body of less than 12 persons, though they should be by law denoted a jury, would be a “jury” within meaning of State Constitution. *Opinion of the Justices*, 431 A.2d 135 (N.H. 1981).

Law/Equity Distinction

There is no constitutional right to a trial by jury in equity cases. *Lakeman v. LaFrance*, 156 A.2d 123 (N.H. 1959).

NEW JERSEY

Constitution

The New Jersey Constitution, Article I, Paragraph 9: “The right of trial by jury shall remain inviolate.”

Constitutional Interpretations

The Constitution effectively preserves the jury trial as it was in 1776. *Town of Montclair v. Stanoyevich*, 79 A.2d 288 (NJ. 1951).

Jury Proceedings

Right to a jury only in actions at law. *Muise v. GPU, Inc.*, 753 A.2d 116 (App. Div. 2000).

Non-Jury Proceedings

Rule 4:35-2: If there is no right to a jury, the court can use an advisory jury if it wishes.

Law/Equity Distinction

- When claims are predominantly equitable, and the issues and facts are intertwined, the court can adjudicate them without a jury. *Boardwalk Properties, Inc. v. BPHC Acquisition, Inc.*, 602 A.2d 733 (App. Div. 1991).
- Whether the source of the remedy is legal or equitable “remains the most persuasive factor” in determining if there is a right to a jury. *Weinisch v. Sawyer*, 587 A.2d 615, 620 (1991).
- Chancery has continuing jurisdiction over ancillary, yet at times significant, legal claims. *Ebling Brewing Co. v. Heirloom, Inc.*, 1 N.J. 71, 61 A.2d 885 (1948).
- In New Jersey, it is a “settled rule” that equitable issues are tried prior to legal issues. *New Jersey Highway Auth. v. Renner*, 114 A.2d 550, 559-60 (1955).

Miscellaneous

“Whether the action be brought in the Law Division or the Chancery Division, all issues of fact triable as of right by a jury shall be decided by a jury, unless the right to jury trial be waived, expressly or impliedly.” *O’Neil v. Vreeland*, 77 A.2d 899, 904 (1951).

NEW MEXICO

Constitution

The New Mexico Constitution, Article II, Section 12: “The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate.”

Constitutional Interpretations

The Constitution only guarantees the right as it existed before New Mexico became a state. State ex rel. Bliss v. Greenwood, 63 N.M. 156, 315 P.2d 223 (1957).

Jury Size

Rule 1-038(b) NMRA: Unless a party asks for a 12 person jury, s/he gets a 6 person jury.

Law/Equity Distinction

Question of common-law right to jury trial rests essentially on determination of whether the type of case calls for equitable or legal relief. Const. Art. 2, § 12. State ex rel. Children, Youth and Families Dept. v. T.J., 934 P.2d 293 (N.M. 1997).

Jury Demands

- Constitutional guarantee of right of trial by jury does not preclude the adoption of reasonable rules of court providing that a litigant shall not be entitled to a jury trial unless he makes demand within the specified time and manner. Carlile v. Continental Oil Co., 468 P.2d 885 (N.M. 1970).
- While the failure to file a timely request for a jury trial waives the right, the court has discretion under Rule 1-039(A) NMRA to grant a jury trial even if the request is not timely.

Jury Fees

Rule 1-038(c) NMRA: Any party initially demanding a jury of six persons shall, at the time of filing of the jury demand, deposit with the clerk of the court a non-refundable jury fee of one hundred fifty dollars (\$150.00), and after the first day of trial shall deposit one hundred fifty dollars (\$150.00) additional upon commencement of court on each subsequent day the attendance of the jury is required for the trial. Any party initially demanding a jury of twelve persons shall, at the time of filing the jury demand, deposit with the clerk of the court a non-refundable jury fee of three hundred dollars (\$300.00), and after the first day of trial, shall deposit three hundred dollars (\$300.00) additional upon commencement of court upon each subsequent day the attendance of the jury is required for the trial.

Miscellaneous

The remission by the plaintiff of a part of the verdict, at the suggestion of the trial court, followed by a judgment for the sum remaining, does not deprive the defendant of his constitutional right to have the question of damages tried by a jury. Henderson v. Dreyfus, 191 P. 442 (N.M. 1919).

NEW YORK

Constitution

The New York Constitution, Article I, Section 2: “The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate.”

Constitutional Interpretations

The right to trial by jury exists in cases where it existed at common law in 1777 and to which it had been extended by statute in 1894. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State*, 550 N.E.2d 919, 921 (NY 1990).

Jury Proceedings

Pursuant to New York R. Civ. Pro 4101, right to jury trial exists for the following types of cases:

- An action in which a party demands and sets forth facts which would permit a judgment for a sum of money only.
- An action of ejectment; for dower; for waste; for abatement of and damages for a nuisance; to recover a chattel; or for determination of a claim to real property under article fifteen of the real property actions and proceedings law.
- Any other action in which a party is entitled by the constitution or by express provision of law to a trial by jury.

Jury Size

The trial by jury to which this section has reference is a trial by a common-law jury of twelve men. *People v. Cosmos*, 98 N.E. 408 (N.Y. 1912).

Law/Equity Distinction

There is no right to jury trial in an equity action even where the complainant asks money damages as incidental to main relief prayed. *Jamaica Sav. Bank v. M. S. Investing Co.*, 8 N.E.2d 493 (N.Y. 1937).

Alternative Dispute Resolution

- NY arbitration statute does not violate the right to a jury, as that right can be waived. *Berkovitz v. Arbib & Houlberg*, 130 NE 288 (NY 1921).
- New car “lemon law” which required compulsory arbitration of claims once consumer invoked statute did not constitute unconstitutional delegation of judicial authority to arbitrator where legislature had specifically provided for arbitration by impartial arbitrator and judicial review of any awards, nor did law deprive auto manufacturers of right to jury trial where no such fundamental right existed. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State*, 146 A.D.2d 212 (3d Dep't 1989), order aff'd, 550 N.E.2d 919 (N.Y. 1990).

NORTH CAROLINA

Constitution

- The North Carolina Constitution, Article I, Section 25: “In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.”
- Article IV, Section 13: “There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury.”

Constitutional Interpretations

The right exists when it existed by common law or statute at the state's founding. *Kaperonis v. North Carolina State Highway Commission*, 260 N.C. 587, 133 S.E.2d 464 (1963).

Jury Proceedings

In order to determine whether there exists a constitutional right to trial by jury of a particular cause of action, appellate court looks to section of Constitution which ensures that there is right to trial by jury where underlying cause of action existed at time of adoption of 1868 Constitution, regardless of whether action was formerly proceeding in equity. *Kiser v. Kiser*, 385 S.E.2d 487 (N.C. 1989).

Damage Caps

Statute placing a cap on the amount of punitive damages does not violate constitutional right to trial by jury, as right to punitive damages is not in respect to property. *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 594 S.E.2d 1 (N.C. 2004).

Jury Fees

A statutory provision to the effect that no jury trial should be had in an action instituted pursuant thereto unless the costs were advanced was not unreasonable and is upheld. *Better Home Furniture Co. v. Baron*, 91 SE2d 236 (N.C. 1956).

NORTH DAKOTA

Constitution

The North Dakota Constitution, Article I, Section 13: “The right of trial by jury shall be secured to all, and remain inviolate.”

Constitutional Interpretations

The constitution preserves a trial by jury in all cases in which it was a right at common law. *General Elec. Credit Corp. v. Richman*, 338 N.W.2d 814 (N.D. 1983).

Jury Size

N.D.R.Civ P. 38(c): If trial by jury is demanded, the jury must consist of six qualified jurors unless a jury of nine is specifically demanded within the time required for making a jury trial demand under Rule 38(b).

Law/Equity Distinction

Whether a party is entitled to a jury trial depends on whether the case is an action at law or a claim in equity. A party is not entitled to a jury trial on a damage claim that is merely incidental to and dependent on an equitable claim. *Murphy v. Murphy*, 595 N.W.2d 571 (N.D. 1999).

OHIO

Constitution

The Ohio Constitution, Article I, Section 5: “The right of trial by jury shall be inviolate”

Constitutional Interpretations

- Jury right under State Constitution does not guarantee jury trial in all cases, but rather only for those causes of actions for which right existed at common law at time that State Constitution was adopted. *Sorrell v. Thevenir*, 633 N.E.2d 504 (Ohio 1994).
- RC 4121.80(D), which abolishes a plaintiff’s substantive right to a trial by jury in an action based on an alleged intentional tort by an employer, is unconstitutional insofar as it removes the issue of damages from the jury. *Cox v. Stolle Corp.*, 564 N.E.2d 1135 (Ohio App. 1990).

- Ohio sovereign immunity statute was found to violate Ohio constitution’s provisions guaranteeing right to trial by jury. *Estate of Owensby v. City of Cincinnati*, 385 F.Supp.2d 619 (S.D. Ohio 2004).

Jury Proceedings

Issues of fact arising in actions for the recovery of money only, or specific real or personal property, shall be tried by a jury, unless a jury trial is waived or unless all parties consent to a reference under the Rules of Civil Procedure. Ohio R. Civ. Pro 2311.04.

Law/Equity Distinction

No right to jury trial where a legal counterclaim is incidental or ancillary to the equitable nature of the original claim. *Huntington Nat. Bank v. Heritage Inv. Group*, 467 N.E.2d 564 (Ohio App. 1983).

Jury Size

The Ohio Constitution, Article I, Section 5: “[I]n civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.”

Jury Fees

Requirement of local rule of advance deposit as security for cost of jury trial was not waived by clerk in accepting jury demand for filing without making of the deposit; rather, failure of defendant to make the deposit within specified ten-day grace period effectively waived his right to jury trial. *Walters v. Griffith*, 311 N.E.2d 14 (Ohio 1974).

Alternative Dispute Resolution

Compulsory arbitration provision of medical malpractice act, R.C. § 2711.21, violated state constitutional right to trial by jury. *Simon v. St. Elizabeth Medical Center*, 3 Ohio Op. 3d 164, 355 N.E.2d 903 (Ohio C.P. 1976).

OKLAHOMA

Constitution

The Oklahoma Constitution, Article II, Section 19: “The right of trial by jury shall be and remain inviolate.”

Non-Jury Proceedings

- An intervening workers’ compensation insurer had no right to participate in the worker’s jury trial for personal injury, because the insurer’s rights were based only on subrogation, which is an equitable remedy. 7 Okla. Prac., Trial Practice § 3:3 (2009 ed.).
- There is no right to jury trial on the amount of attorneys’ fees awardable to municipal trustees under 11 O.S. § 23-101, which allows a municipality to indemnify its employees for actual damages, fees, and costs. *Id.*

Rules of Procedure

Oklahoma R. Civ. Pro.: 566.1(a): “Where the amount in controversy, as stated in the prayer for relief or an affidavit of a party, or as found by the court where the amount in controversy is questioned by the adverse party, does not exceed One Thousand Five Hundred Dollars (\$1,500.00), the action shall be tried to the court without a jury.”

Law/Equity Distinction

When equitable claim and legal claims are in a single suit, the court *must* submit the legal claim to the jury and *may* submit the equitable claim to the jury. *I.C. Gas Amcana, Inc. v. J.R. Hood*, 855 P.2d 597 (Okla. 1992).

Jury Fees

28 Okl.St. Ann. § 152.1, which provides for a \$349 jury fee, was not unconstitutional. *Barzellone v. Presley*, 126 P.3d 588 (Okla. 2005).

OREGON

Constitution

The Oregon Constitution, Article I, Section 17: “In all civil cases the right of Trial by Jury shall remain inviolate.”

Constitutional Interpretations

The right to a jury trial is guaranteed in those classes of cases in which the right to a jury trial was customary at the time the Oregon Constitution was adopted or in cases of like nature. *Foster v. Miramontes*, 236 P.3d 782 (Or.App. 2010).

Damage Caps

- A cap on damages unconstitutionally took power away from the jury. *Lakin v. Senco Prods., Inc.*, 987 P.2d 463, 468-75 (Or. 1993).
- But caps on wrongful death cases are permitted because this cause of action did not exist at common law. *Clarke ex rel. Clarke v. Oregon Health Sciences University*, 206 Or. App. 610, 138 P.3d 900 (2006).
- The damages cap of Oregon Tort Claims Act (OTCA) did not violate right to jury trial of minor patient who brought medical malpractice action against public hospital; when constitution was enacted, common law did not provide for claims against public body, let alone right to jury trial. *Clarke ex rel. Clarke v. Oregon Health Sciences University*, 138 P.3d 900 (Or. App. 2006).

PENNSYLVANIA

Constitution

The Pennsylvania Constitution, Article I, Section 6: “Trial by jury shall be as heretofore, and the right thereof remain inviolate. The General Assembly may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case.”

Statutes

42 Pa.C.S.A. § 5104(a) General rule.—Except where the right to trial by jury is enlarged by statute, trial by jury shall be as heretofore, and the right thereof shall remain inviolate. Trial by jury may be waived in the manner prescribed by general rules.

Non-Jury Proceedings

Jury trials are not available in proceedings created by statute unless statute so provides, or unless proceeding has a basis in common law. *In re Friedman*, 457 A.2d 983 (Pa.Cmwlth. 1983).

Law/Equity Distinction

- No right to a jury in ordinary equity actions. *Rosenberg v. Rosenberg*, 419 A.2d 167 (Pa.Super 1980).

- The legislature may not, under guise of extending injunction to new situation, interfere with right of jury trial in cases covered by Constitution. *Com. v. Dietz*, 132 A. 572 (1926).

Unanimity/Non-Unanimity Rules

42 Pa.C.S.A. § 5104(b) Civil verdicts. —In any civil case a verdict rendered by at least five-sixths of the jury shall be the verdict of the jury and shall have the same effect as a unanimous verdict of the jury.

Jury Demands and Jury Fees

Act May 5, 1911, P.L. p. 201, § 8, 17 P.S. § 634, relating to trial by jury on request of either party and the payment of the jury fee in advance, is not an abridgement of the right to trial by jury. *Gottschall v. Campbell*, 83 A. 286 (Pa. 1912).

Alternative Dispute Resolution

Section of the Health Care Services Malpractice Act, 40 P.S. §§ 1301.101 et seq, giving health care arbitration panels original exclusive jurisdiction over medical malpractice claims is an unconstitutional infringement on the right to a jury. *Mattos v. Thompson*, 421 A.2d 190 (Pa. 1980).

Miscellaneous

There is no right to a jury trial in actions brought pursuant to the Pennsylvania Human Relations Act (PHRA). *Murphy v. Cartex Corp.*, 546 A2d 1217 (Pa. Super. 1998).

RHODE ISLAND

Constitution

The Constitution of Rhode Island, Article I, Section 15: “The right of trial by jury shall remain inviolate. In civil cases the general assembly may fix the size of the petit jury at less than twelve but not less than six.”

Constitutional Interpretations

Any claims that could have been litigated in an action at law on date constitution went into effect must be submitted to a jury upon demand of a party. *Connor v. Sullivan*, 826 A.2d 953 (R.I. 2003).

Jury Size

Juries in civil cases shall be composed of six (6) persons and such alternate jurors as may be called pursuant to § 9-10-13.

Law/Equity Distinction

Jury trial is not matter of right in equity case. *Bellini v. Neas*, 146 A. 634(R.I. 1929).

SOUTH CAROLINA

Constitution

The Constitution of South Carolina, Article I, Section 14: “The right of trial by jury shall be preserved inviolate.”

Constitutional Interpretations

- The constitutional right is based upon the jury right in 1868. *C. W. Matthews Contracting Co., Inc. v. South Carolina Tax Commission*, 267 S.C. 548, 230 S.E.2d 223 (1976).

- The legislature may not abrogate the right to a jury trial simply by designating a proceeding as a civil action without a jury. *Mims Amusement Co. v. South Carolina Law Enforcement Div.*, 621 S.E.2d 344 (S.C. 2005).

Jury Proceedings

- In statutory actions, there is a right to a jury trial if the constitution mandates it or if the statute allows it
- Pursuant to SC R. Civ. Pro 38(a), an action for recovery of money only, or for specific real or personal property, must be tried by a jury absent a waiver.

Law/Equity Distinction

Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Bateman v. Rouse*, 596 S.E.2d 386 (S.C.App. 2004).

Damage Caps

Statutory limitation on recovery under the state’s Tort Claims Act did not violate fundamental right to trial by jury. *Wright v. Colleton County Sch. Dist.*, 391 S.E.2d 564 (S.C. 1990).

SOUTH DAKOTA

Constitution

The Constitution of South Dakota, Article VI, Section 6: “The right of trial by jury shall remain inviolate and shall extend to all cases at law without regard to the amount in controversy, but the Legislature may provide for a jury of less than twelve in any court not a court of record and for the decision of civil cases by three-fourths of the jury in any court.”

Constitutional Interpretations

South Dakota’s constitutional right to jury trial extends to all cases where such right existed at common law. *State v. Page*, 709 N.W.2d 739 (S.D. 2006).

Jury Size

§ 15-6-48: The parties may stipulate that the jury shall consist of any number less than twelve or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Law/Equity Distinction

When a case presents a request for both equitable and legal relief, the proper course of action is for the trial court to bifurcate the issues and try the equitable claims to the court and the legal claims to a jury. *Mundhenke v. Holm*, 787 N.W.2d 302 (S.D. 2010).

Damage Caps

One million dollar statutory damages cap applicable in medical malpractice actions, SDCL 21-3-11, does not violate state constitutional right to jury trial,. *Knowles v. United States*, 544 N.W.2d 183, 202-03 (S.D. 1996).

TENNESSEE

Constitution

The Constitution of Tennessee, Article I, Section 6: “That the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors.”

Non-Jury Proceedings

Fact that trial by jury was not available under enforcement provisions of statutes creating Human Rights Commission, T.C.A. §§ 4-21-301 to 4-21-311, did not render them unconstitutional. *Plasti-Line, Inc. v. Tennessee Human Rights Com’n*, 746 S.W.2d 691 (Tenn. 1988).

Law/Equity Distinction

The right to a jury applied to actions at law but not to suits of an inherently equitable nature. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920 (Tenn. 1998). However, a statutory right to a jury in suits of an inherently equitable nature is provided by T.C.A. § 21-1-103: “Either party to a suit in chancery is entitled, upon application, to a jury to try and determine any material fact in dispute, save in cases involving complicated accounting, as to such accounting and those elsewhere excepted by law or by this code, and all the issues of fact in any proper cases, shall be submitted to one (1) jury.”

TEXAS

Constitution

- The Constitution of Texas, Article I, Section 15: “The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.”
- Article V, Section 10: “In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.” This right extends except in proceedings that are not considered “causes,” such as a habeas proceeding or a contempt proceeding, *Ex parte Werblud*, 536 S.W.2d 542, 545-47 (Tex. 1976).

Constitutional Interpretations

Any right to a jury trial that existed at the time of the adoption of the constitution is confirmed. *White v. White*, 196 S.W. 508 (Tex. 1917).

Statutes

Jury rights conferred by statute:

- Tex. R. Disciplinary P. 3.06 (attorney discipline action).
- Tex. Fam. Code Ann. § 105.002(c)(1) (entitling a party to a jury verdict on issues of the appointment of a managing conservator, joint managing conservators, or possessory conservators, and the determination of the child’s primary residence).
- The Family Code entitles a juvenile to a jury trial at a delinquency adjudication hearing. Tex. Fam. Code Ann. § 54.03(b)(6).

Law/Equity Distinction

- In Texas, ever since the first state constitution of 1845, a party is not deprived of a jury trial in a suit of an equitable nature. *San Jacinto Oil Co. v. Culbertson*, 100 T. 462, 101 S.W. 197 (1907).
- While the jury decides the underlying factual issues in an equitable case, “equitable principles and the relief afforded by equity continue to be applied by the court itself.... [a] jury . . . does not decide the issue of expedience, necessity or propriety of equitable relief.” *Alamo Title Co. v. San Antonio Bar Ass’n*, 360 S.W.2d 814, 816 (Tex. Civ. App.—Waco 1962).

Damage Caps

\$500,000 cap on total medical malpractice damages violates right to jury trial. *Lucas v. United States*, 757 S.W.2d 687, 690-92 (Tex. 1988).

Jury Fees

Texas Rule of Civil Procedure, 216(b): “Unless otherwise provided by law, a fee of ten dollars if in the district court and five dollars if in the county court must be deposited with the clerk of the court within the time for making a written request for a jury trial. The clerk shall promptly enter a notation of the payment of such fee upon the court's docket sheet.”

UTAH

Constitution

The Constitution of Utah, Article I, Section 10: “. . . In [non-capital] cases, the Legislature shall establish the number of jurors by statute, but in no event shall a jury consist of fewer than four persons. . . . In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded.”

Constitutional Interpretations

The right to a jury trial extends only to actions that were triable to juries when the Constitution was adopted. *Buck v. Robinson*, 177 P.3d 648 (Utah 2008).

Non-Jury Proceedings

No jury in a small claims case U.C.A. 1953 § 78B-1-104.

Jury Size and Unanimity

- The Constitution of Utah, Article I, Section 10: “. . . In [non-capital] cases, the Legislature shall establish the number of jurors by statute, but in no event shall a jury consist of fewer than four persons. . . . In civil cases three-fourths of the jurors may find a verdict.”
- Civil jury is 8 persons. U.C.A. 1953 § 78B-1-104.

Jury Demands

The Constitution of Utah, Article I, Section 10: “. . . A jury in civil cases shall be waived unless demanded.”

Law/Equity Distinction

- In general, parties bringing legal claims have right to jury trial while parties bringing equitable claims do not. *Goldberg v. Jay Timmons & Associates*, 896 P.2d 1241 (1995).
- When legal and equitable issues turn on same operative facts, State Constitution requires that jury must decide legal issue first; jury’s factual determination then binds trial court in

its determination of parallel equitable issue. Const. Art. 1, § 10. *Zions First Nat. Bank v. Rocky Mountain Irrigation, Inc.*, 795 P.2d 658 (Utah 1990).

Damage Caps

- Statutes which imposed limit on amount person could claim against uninsured government entity because of injury or death were unconstitutional under State Constitution as applied to university hospital. *Condemarin v. Univ. Hosp.*, 775 P.2d 348, 365-66 (Utah 1989).
- A statutory cap on non-economic damages in medical malpractice cases did not violate the plaintiff's right to a jury trial. *Judd v. Drezga*, 103 P.3d 135 (Utah 2004).
- A statutory damage cap that reduced plaintiff motorist's judgment against county in personal injury action arising out of automobile collision did not violate state constitutional right to trial by jury. *Hart v. Salt Lake County Com'n*, 945 P.2d 125 (Utah 1997).

VERMONT

Constitution

- The Constitution of Vermont, Chapter I, Article 12: "That when any issue in fact, proper for the cognizance of a jury is joined in a court of law, the parties have a right to trial by jury, which ought to be held sacred."
- Chapter II, Article 38: Trials of issues, proper for the cognizance of a Jury as established by law or by judicial rules adopted by the Supreme Court not inconsistent with law, in the Supreme Court, the Superior Court and other subordinate courts, shall be by Jury, except where parties otherwise agree; and great care ought to be taken to prevent corruption or partiality in the choice and return, or appointment of Juries.

Constitutional Interpretations

State constitution guarantees the right to jury trial to the extent that it existed at common law at the time of the adoption of the constitution. *State v. Irving Oil Corp.*, 955 A.2d 1098 (Vt. 2008).

Jury Proceedings

Parties claiming legal damages under the Fair Employment Practices Act (FEPA) are entitled to trial by jury pursuant to article of the Vermont Constitution, but not if asking for only equitable relief. *Hodgdon v. Mt. Mansfield Co., Inc.*, 624 A.2d 1122 (Vt. 1992).

Law/Equity Distinction

Entitlement to jury trial is dependent upon relief requested; if relief requested is equitable, no right to jury trial exists. *In re Estate of Gorton*, 706 A.2d 947 (Vt. 1997).

VIRGINIA

Constitution

The Constitution of Virginia, Article I, Section 11: "That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five."

Law/Equity Distinction

The marked distinction between law and chancery, a product of the English legal system, continues to exist in the Commonwealth. *Love v. Kenneth Hammersley Motors Inc.*, 2002, 556 S.E.2d 764 (Va. 2002).

Damage Caps

- Jury's fact-finding function extends to assessment of damages. *Supinger v. Stakes*, 1998, 495 S.E.2d 813 (Va. 1998).
- A statute limiting the total damages recoverable for any injury to, or death of, a patient in a medical malpractice action did not violate the state constitutional right to trial by jury, the court held in *Etheridge v. Medical Center Hospitals* (1989) 376 SE2d 525 (Va. 1989).
- \$1 million limit on recoveries in medical malpractice actions did not violate the right to jury trial, special legislation, or separation of powers provisions of state constitutions, nor the takings, due process, or equal protection provisions of the state or federal constitutions. *Pulliam v. Coastal Emergency Serv. of Richmond, Inc.*, 509 S.E.2d 307, 315-17 (Va. 1999).

WASHINGTON

Constitution

The Constitution of Washington, Article I, Section 21: "The right of trial by jury shall remain inviolate"

Constitutional Interpretations

If a proceeding was unknown at common law, a party has no right to a jury trial. *State, Dept. of Social and Health Services, Office of Support Enforcement v. Gerlack*, 25 Wash. App. 541, 612 P.2d 382 (Div. 1 1980) (cause of action for wrongful service of copy of writ of garnishment was unknown at common law).

Non-Jury Proceedings

No jury trial:

- In most family law matters, including marriage dissolution. RCWA 26.09.010
- In restitution action following a criminal case. *State v. Mark*, 36 675 P.2d 1250 (Wash. 1984).
- In contempt proceedings, jury available only when the sanctions are punitive in nature. § 43:12.

Jury Size and Unanimity

- The Constitution of Washington, Article I, Section 21: "[T]he legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto."
- The legislature has provided for a jury of six in district court unless the parties agree upon a lesser number. RCWA 12.12.030.

Damage Caps

Statutory limit on non-economic damages in personal injury and wrongful death actions violated the state right to trial by jury. *Sofie v. Fibreboard Corp.*, 771 P.2d 711, 715-28 (Wash. 1989).

Jury Demands

Though the right to a jury trial is waived if a jury is not requested within the time allowed by CR 38, the court may allow a jury trial notwithstanding the failure to comply with CR 38.

Jury Fees

CR 38 also states that the right to jury is waived if a party doesn't pay the necessary jury fee.

WEST VIRGINIA

Constitution

The Constitution of West Virginia, Article III, Section 13: "In suits at common law, where the value in controversy exceeds twenty dollars exclusive of interest and costs, the right of trial by jury, if required by either party, shall be preserved; and in such suit in a court of limited jurisdiction a jury shall consist of six persons. No fact tried by a jury shall be otherwise reexamined in any case than according to the rule of court or law."

Constitutional Interpretations

Question in determining whether State Constitution provides right to jury trial is not whether cause of action existed at time of enactment of jury trial amendment, but whether nature of injury and related relief would have merited jury trial at that time. Thus, teacher had a right to a jury in a sex discrimination case. *Perilli v. Board of Educ. of Monongalia County*, 387 S.E.2d 315, 317 (1989).

Law/Equity Distinction

- "Essentially, the right to a jury trial applies where the legal remedy of damages is full and adequate and can do complete justice between the parties." *Realmark Developments, Inc. v. Ranson*, 2003, 588 S.E.2d 150, 153 (2003).
- The right to a jury trial cannot be defeated by giving equity exclusive jurisdiction over the action in which the right applies. *Cecil v. Clark*, 30 S.E. 216 (1898).

Damage Caps

- In *Robinson v. Charleston Area Medical Ctr., Inc.* 414 SE2d 877 (W. Va. 1991), the court held that W. Va. Code § 55-7B-8, a statute limiting the amount of noneconomic damages recoverable by a plaintiff in a malpractice action, did not violate the right to jury.
- Under West Virginia law, as predicted by the district court, "The statutory cap on noneconomic loss awards in medical malpractice cases limited individual health care provider's liability for occurrence of medical practice to \$1 million, but did not limit total amount plaintiff could recover from multiple health care providers. *Daniel v. Beaver*, 300 F. Supp. 2d 436 (S.D. W. Va. 2004).

Miscellaneous

- Human Rights Commission had authority to award gender-based discrimination employment claimant \$400 in back pay pursuant to the Code, 5-11-10; however, Commission did not have authority to award \$7,500 in compensatory damages for mental anguish, as such award violated state constitutional jury trial provision. *Bishop Coal Co. v. Salyers*, 380 S.E.2d 238 (1989).
- A "no-fault" automobile insurance plan using a "pure threshold" approach would be unconstitutional in that it would deny an injured motorist the right to trial by jury. 55 W.Va. Op. Atty. Gen. 82, 1973 WL 159145 (March 30, 1973).

WISCONSIN

Constitution

The Constitution of Wisconsin, Article I, Section 5: “The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy; but a jury trial may be waived by the parties in all cases in the manner prescribed by law.”

Constitutional Interpretations

Class-action process permitted by rule governing class actions does not trump a defendant’s jury-trial right under state constitution. In re Wal Mart Employee Litigation, 711 N.W.2d 694 (Wisc. App. 2006).

Statutes

- W.S.A. 805.01 preserves the right to jury trial, but the notes explicitly leave it to the courts to determine when the jury trial is and is not mandated.
- Unless it is constrained by the state constitution, the legislature is free to choose whether a statutory cause of action is subject to a jury trial. Harvot v. Solo Cup Co., 768 N.W.2d 176 (Wisc. 2009).

Non-Jury Proceedings

Employee had no state constitutional right to a jury trial in action against employer seeking damages for alleged violations of Wisconsin Family or Medical Leave Act (WFMLA). Harvot v. Solo Cup Co., 768 N.W.2d 176 (Wisc. 2009).

Law/Equity Distinction

The right to a trial by jury doesn’t extend to equitable actions, Neff v. Barber, 162 N.W. 667, 668 (Wisc. 1917), but rather only secures jury where allowed at common law: Green Spring Farms v. Spring Green Farm Associates Ltd. Partnership, 172 Wis. 2d 28, 492 N.W.2d 392 (Wisc. Ct. App. 1992).

Damage Caps

The cap on noneconomic damages in wrongful death cases is constitutional, but it does not apply to predeath noneconomic damages when a victim of medical malpractice dies. Bartholomew v. Wisconsin Patients Compensation Fund and Compcare Health Services Ins. Corp., 717 N.W.2d 216 (Wisc. 2006).

Unanimity/Non-Unanimity Rules

- The Constitution of Wisconsin, Article I, Section 5: “. . . [T]he legislature may, from time to time, by statute provide that a valid verdict, in civil cases, may be based on the votes of a specified number of the jury, not less than five-sixths thereof.”
- W.S.A. § 805.09: 10 of 12 jurors may enter a judgment in a civil case.

Jury Fees

- Pursuant to W.S.A. 814.61(4), failure to pay jury fee within time limits set forth in local rules and scheduling order resulted in waiver of right to jury trial action. Phelps v. Physicians Ins. Co. of Wisconsin, Inc., 698 N.W.2d 643 (Wisc. 2005).
- St.1979, § 799.21, requiring additional suit tax and clerk’s fee of \$19 when demand for jury trial is made, was not unconstitutional as unreasonable fee which impaired right to jury trial. Portage County v. Steinpreis, 312 N.W.2d 731 (Wisc. 1981).

Miscellaneous

A plaintiff's right to a trial by jury in a personal injury case is not violated by action of a court in setting aside a jury verdict or in reducing damages found by a jury on ground that they are excessive. *Lucas v. State Farm Mut. Auto. Ins. Co.*, 117 N.W.2d 660 (Wisc. 1962).

WYOMING

Constitution

The Constitution of Wyoming, Article I, Section 9: "The right of trial by jury shall remain inviolate in criminal cases."

Constitutional Interpretations

"It is so well settled as to require no reference to authorities that when the Constitution secures to litigants the right of trial by jury the legislature has no power to deny or impair such right." *First Nat'l Bank of Rock Springs v. Foster*, 61 P. 466, 466 (Wyo. 1900).

Law/Equity Distinction

When mixed issues of law and equity are present, look to the primary nature of the action considered in its entirety. *Hyatt Bros., Inc. ex rel. Hyatt v. Hyatt*, 769 P.2d 329 (1989).

Jury Proceedings

R. Civ. Pro. 38(a): "Issues of law must be tried by the court, unless referred as hereinafter provided; and issues of fact arising in actions for the recovery of money only, or specific real or personal property, shall be tried by a jury unless a jury trial be waived, or a reference be ordered. All other issues of fact shall be tried by the court, subject to its power to order any issue to be tried by a jury, or referred."

Jury Size

The Constitution of Wyoming, Article I, Section 9: ". . . A jury in civil cases and in criminal cases where the charge is a misdemeanor may consist of less than twelve (12) persons but not less than six (6), as may be prescribed by law."

Unanimity/Non-Unanimity Rules

A statute authorizing verdicts upon a three-fourths vote was unconstitutional. *First Nat. Bank of Rock Springs v. Foster*, 61 P. 466 (Wyo. 1900).

Jury Fees

R. Civ. Pro. 38(b)(2): "All demands for trial by jury in district courts shall be accompanied by a deposit of \$50.00, if a six person jury is demanded, or \$150.00, if a twelve person jury is demanded."

Miscellaneous

In the general election of 2004, the electorate rejected a constitutional amendment that would have allowed the Legislature to limit the right of a citizen to have a jury decide how much is necessary to compensate for the wrongful negligence of a medical provider.

TAYLOR ASEN

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EDUCATION

Yale Law School, New Haven, CT

J.D., expected May 2012

Activities: Managing Editor, Yale Human Rights & Development Law Journal
Co-Chair, Civil Justice Committee, Yale Law Chapter of ACS

Columbia University, New York, NY

M.A., English and Comparative Literature, May 2007

George Washington University, Washington, DC

B.A., *summa cum laude*, English, May 2006

Honors: University Honors Program, Phi Beta Kappa,
E.K. Cutter Prize for Excellence in English

EXPERIENCE

Veterans Legal Services Clinic, New Haven, CT

September 2010 – Present

Clinic Member

Representing several veterans in disability benefits cases, including a woman raped in the military and suffering from PTSD. Litigating FOIA requests in Federal Court on behalf of non-profits attempting to gather data regarding rape in the military. Drafting legislation providing remedies for sexually assaulted service members.

Outten & Golden LLP, New York, NY

May 2011 – Present

Legal Intern

Researching and writing memos on a variety of issues for a Title VII case concerning the refusal to hire persons with criminal records. Reviewing discovery in a wage and hour suit against a convenience store. Researching in preparation for class certification in a case regarding the failure to pay exotic dancers minimum wage and the confiscation their tips. Co-authoring an article on social networking and employment law.

LGBT Litigation Project, New Haven, CT

January 2010 – May 2011

Co-Director and Clinic Member

Worked with organizations to create new student projects. Supervised an employment discrimination project. Participated in defense of a man arrested while protesting Don't Ask, Don't Tell. Researched how transgender persons denied coverage can sue their insurers. Lobbied Congress to make it easier for gay Iraqis to seek asylum.

The Legal Aid Society, Civil Law Reform Unit, New York, NY

May 2010 – August 2010

Legal Intern

Drafted declarations on behalf of both disabled people and immigrants unfairly deprived of public benefits. Wrote several memoranda, including one on whether New York's automated sanctioning system violates the due process rights of welfare recipients. Assisted class members seeking to take part in a settlement.

Cuneo Gilbert & LaDuca, LLP, Washington, DC

September 2008 – August 2009

Legal Assistant

Reviewed documents, summarized depositions, researched legal issues and performed a variety of other tasks in consumer fraud, antitrust, civil rights, employment, and corporate governance cases.

Weitz & Luxenberg, PC, New York, NY

June 2007 – September 2008

Legal Assistant

Helped prepare for the first trial regarding the drug Celebrex in the nation. Reviewed documents and prepared lawyers for depositions of Pfizer officers. Participated in Plaintiffs' Steering Committee strategy sessions.

RELEVANT PUBLICATIONS

Broke, USA, 13 Yale Hum. Rts. & Dev. L. J. __ (2011) (with Nicholas Serafin) (book review) (forthcoming).

Vaughn Walker's Personal Life Didn't Decide Prop 8, The Recorder (May 6, 2011) (with Grant Bermann).

How a Gay Man's Harmless Political Expression May Lead to Prison Time, The Huffington Post (October 6, 2010) (with Jeffrey Gurrola, Ramya Kasturi, and Lawrence Kornreich).

The Gay Iraqi Crisis, Foreign Policy: The Middle East Channel (June 18, 2010) (with Zach Strassburger).

Wyeth: The Plaintiff's Perspective, 28 L.J.N's Product Liability Law & Strategy 10 (2009) (with Lawrence Goldhirsch).

Shielding Physicians from Malpractice Suits is Wrong Tactic, The Huffington Post (June 15, 2009).