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State Court Protection of Individual Constitutional Rights

RESEARCH COMPILATION

STATE CONSTITUTIONAL PROVISIONS, STATUTES, COURT DECISIONS, AND SCHOLARSHIP ON TRIAL BY JURY AND THE RIGHT TO REMEDY

The jury trial portion of the following compilation was initially researched in 2011 by **Taylor Asen**, now practicing law in Portland, Maine. It was updated and expanded to include right to remedy and other information in 2018 by Rutgers Law School students **Kristin Gummoe, Kelly Peterson, and Brenna Sooy**. The compilation was edited by the Forum Reporter, James E. Rooks, Jr.[1]

[1] We appreciate the recommendations for this compilation that were made in advance of this year's Forum by: Hon. Brent Robert Appel, Iowa Supreme Court; Hon. Rex Armstrong, Oregon Court of Appeals; Prof. Donald Beskind, Duke University School of Law; Hon. Paula A. Brown, Louisiana Court of Appeal, Fourth Circuit; Kathryn H. Clarke, Esq. (Portland, Oregon); Roxanne Conlin, Esq. (Des Moines, Iowa); Hon. Dan Friedman (Maryland Court of Special Appeals); Hon. Noma Gurich (Oklahoma Supreme Court); Hon. Jim Kitchens (Mississippi Supreme Court); Hon. Mark Klingensmith (Fourth District Court of Appeal of Florida); Prof. Justin Long (Wayne State University Law School); Hon. Peter D. O'Connell (Fourth District Court of Appeals of Michigan); Hon. Susan J. Owens, Washington Supreme Court; Robert S. Peck (Center for Constitutional Litigation; Professor Steven D. Schwinn (John Marshall Law School); Hon. Mary W. Sheffield, Missouri Court of Appeals; Prof. Bob Williams (Rutgers Law School); Hon. Gary Witt (Missouri Court of Appeals).

If you know of other relevant state provisions that might be included, please contact the Institute, info@ncji.org, 202-944-2841.

PROTECTION OF INDIVIDUAL RIGHTS BEFORE THE U.S. CONSTITUTION

In addition to the constitutional provisions, statutes, and court rules included in this compilation, at least 18 of America's "fundamental documents" (from the Virginia Charter of 1606 through the Northwest Ordinance of 1787) recognized a right to jury trial in civil cases, or at least mentioned it. In comparison, the due process right was recognized in only 10 such documents. The fundamental documents are reproduced in Perry, Ed., SOURCES OF OUR LIBERTIES: DOCUMENTARY ORIGINS OF INDIVIDUAL LIBERTIES IN THE UNITED STATES CONSTITUTION AND BILL OF RIGHTS (American Bar Foundation 1978). For a brief survey of the early protections of the civil jury trial right, *see* James E. Rooks, Jr., "*In Defence of the Freedom That Is Our Birthright": Sources of Trial by Jury in America*, TRIAL magazine, Sept. 1983.

ALABAMA

RIGHT TO JURY TRIAL

Constitution:

Ala. Const. Art. I, § 11: "The right of trial by jury shall remain inviolate."

Statutes and Court Rules:

- Ala. Code § 31-2A-52(c) Pursuant to its authority under Article XV, Section 271 of the Constitution of Alabama of 1901, the Legislature finds and declares that Article I, Section 11 of the Constitution of Alabama of 1901 does not apply to a court-martial proceeding. Courts-martial existed before the existence of the Constitution, and their existence is recognized in the Constitution. Further, courts-martial are an executive agency belonging to the executive branch, not the judicial branch, and were created by the Legislature pursuant to its authority under Article XV, Section 271, to provide for disciplining the militia.
- AL ST RCP Rule 42(b) Separate trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conductive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by Article 1, Section 11 of the Alabama Constitution of 1901.
- Ala. Code § 12-2-7 (4) To make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts; provided, that such rules shall not abridge, enlarge, or modify the substantive right of any party nor affect the jurisdiction of circuit and district courts or venue of actions therein; and provided further, that the right of trial by jury as at common law and declared by Section 11 of the Constitution of Alabama of 1901 shall be preserved to the parties inviolate.
- Ala. Const. VI, § 150. The supreme court shall make and promulgate rules governing the administration of all courts and rules governing practice and procedure in all courts; provided, however, that such rules shall not abridge, enlarge or modify the substantive right of any party nor affect the jurisdiction of circuit and district courts or venue of actions therein; and provided, further, that the right of trial by jury as at common law and declared by section 11 of the Constitution of Alabama 1901 shall be preserved to the parties inviolate. These rules may be changed by a general act of statewide application.

Court Decisions:

- The constitutional guarantee doesn't include equitable claims or claims unknown at common law. Sanders v. Kirkland & Co., 510 So. 2d 138 (Ala. 1987).
- Purely legal claims, and factual issues relevant to legal and equitable issues, must be decided by the jury. Wootten v. Ivey, 877 So.2d 585 (Ala. 2003).
- The right to a trial by jury is a fundamental right. A jury verdict can only be set aside if the verdict is flawed, thus losing its constitutional protection. Alabama River Grp., Inc. v. Conecuh Timber, Inc., No. 1150040, 2017 WL 4324889, at *24 (Ala. Sept. 29, 2017) (citing National Ins. Ass'n v. Sockwell, 829 So.2d 111, 133 (Ala. 2002) (quoting Hammond v. City of Gadsden, 493 So.2d 1374, 1378–79 (Ala. 1986))).
- Under Rule 42(b), Ala. R. Civ. P. courts can order separate trials for any claim which preserves the inviolate the right of trial by jury. Certain Underwriters at Lloyd's, London v. S. Nat. Gas Co., 142 So. 3d 436, 452 (Ala. 2013).
- County and municipal immunity is constitutional under the right to a jury trial. Immunity existed at common law and was not was not abrogated by the 1901 Constitution. This immunity does not extend beyond county and municipal entities. The $100,000 statutory cap on damages set out in § 11–93–2, Ala.Code 1975 only applies to county and municipal entities. Health Care Auth. for Baptist Health v. Davis, 158 So. 3d 397, 417 (Ala. 2013).
- It is unconstitutional to strike an answer and counter-complaint that included a demand for a trial by jury. There was no indication that the right was waived, therefore the right remains inviolate. Ex parte Sweeney, 104 So. 3d 877, 880 (Ala. 2012).
- There is no right to a jury trial in probate court. Regions Bank v. Kramer, 98 So. 3d 510, 517–18 (Ala. 2012).
- Petitioners timely filed a demand for a jury trial. It was not under the trial court's discretion to deny the petitioners' motion to reset the case for a jury trial. Ex parte L & D Transp., 70 So. 3d 322, 325–26 (Ala. 2011).

RIGHT TO REMEDY

Constitution:

Ala. Const. art. I, § 13: "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay."

Court Decisions:

- County and municipal immunity applying a $100,000 statutory cap on damages set out in § 11–93–2, Ala.Code 1975 is constitutional under § 13. Immunity existed at common law and was not abrogated by the 1901 Constitution. Health Care Auth. for Baptist Health v. Davis, 158 So. 3d 397, 417 (Ala. 2013).
- Ala. Code § 6-5-462, which regulates survival of unfixed tort claims, does not violate Article 1, § 13 because the statute does not abolish a common-law cause of action. Strict review does not apply unless common-law rights are altered or abolished, and it is within the role of the legislature to chose the causes of action included in the statute. Shelton v. Green, No. 1160474, 2017 WL 5185268, at *4 (Ala. Nov. 9, 2017).
- "'[Section 13] of the Constitution provides "that every person, for an injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law." It will be noticed that this provision preserves the right to a remedy for an injury. That means that when a duty has been breached, producing a legal claim for damages, such claimant cannot be denied

the benefit of his claim for the absence of a remedy. But this provision does not undertake to preserve existing duties against legislative change made before the breach occurs.'" United Companies Lending Corp. v. Autrey, 723 So.2d 617, 624 (Ala. 1998) (quoting Pickett v. Matthews, 238 Ala. 542, 545, 192 So. 261, 263 (1939)(emphasis added in Autrey)).

- Jefferson County passed Act No. 2015–226, which levies the local sales and use taxes. However, under Section 71.01(C), a house of the legislature may vote on a non-appropriations bill before the basic annual appropriations bills unless that house takes an extra procedural step of passing a budget isolation resolution ("BIR") by "three-fifths of a quorum present." Petitioners against the sales and use tax argue that the vote on the BIR for H.B. 573, which became Act No. 2015–226, did not comply with § 71.01(C), Ala. Const. of 1901. The legislature passed Act No. 2016–430, codified as § 71.01(G), Ala. Const. 1901 to retroactively validate the BIR underlying the vote. Section 71.01(G) used "clear and express terms" to validate and confirm the procedure used to pass BIRs underlying local bills. Section 71.01(G) can properly be applied retroactively "to cure the argued constitutional deficiency affecting Act No. 2015–226". The amendment did not violate the constitutional right to a remedy under § 13. Jefferson Cty. v. Taxpayers & Citizens of Jefferson Cty., 232 So. 3d 845 (Ala. 2017), cert. denied sub nom. Bennett v. Jefferson Cty., Ala., 138 S. Ct. 284, 199 L. Ed. 2d 127 (2017).
- The Legislature's grant of limited immunity to workers' compensation insurance carriers under § 25-5-11 does not violate § 13 of the Alabama Constitution. Kruszewski v. Liberty Mut. Ins. Co., 653 So. 2d 935, 938 (Ala. 1995).

ALASKA

RIGHT TO JURY TRIAL

Constitution:

- Alaska Const. Art. I, § 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."
- Alaska Const. Art. I, § 16: "The legislature may make provision for a verdict by not less than three-fourths of the jury and, in courts not of record, may provide for a jury of not less than six or more than twelve."

Statutes and Court Rules:

- Alaska Stat. § 09.50.250: sets forth actionable claims against the state
- Alaska Stat. § 09.17.010: Noneconomic damages capped at $400k or life expectancy times $8,000 OR, for personal injury, $1,000,000 or life expectancy times $25,000
- Alaska Stat. § 09.17.020: Punitive damages cap

Court Decisions:

- The Alaska Constitution's incorporation of the common law right to a jury trial applies to statutorily created causes of action to the same extent as it applies to claims arising under the common law. L.D.G., Inc. v. Brown, 211 P.3d 1110, 1115 (Alaska 2009).
- 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/child-in-need-of-aid proceedings, prescriptive easement claims, cases re levying and collecting taxes, foreclosure claims, probate claims, or contractual grievance/reformation procedures.
- Cap on noneconomic damages doesn't violate jury trial right. L.D.G., Inc. v. Brown, 211 P.3d 1110 (Alaska 2009).

ARIZONA

RIGHT TO JURY TRIAL

Constitutional Provision:

- Ariz. Const. Art. II, § 23: "The right of trial by jury shall remain inviolate."
- Ariz. Const., Art. II, § 17: A jury is constitutionally required for eminent domain cases.
- Ariz. Const., Art. XVIII, § 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."

Court Decisions:

- Ariz. Const. Art. II, § 23 does not guarantee the right to an undisturbed jury verdict. Trial court was in its discretion to order a new trial after a remittitur was refused. Soto v. Sacco, 398 P.3d 90, 98 (Ariz. 2017).

Jury trial available:

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)):

- 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.

Jury trial not available:

- 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.

Arizona References:

- Roger C. Henderson, *Tort Reform*, *Separation of Powers and the Arizona Constitutional Convention of 1910*, 35 ARIZ. L. REV. 535 (1993).
- JOHN D. LESHY, THE ARIZONA STATE CONSTITUTION: A REFERENCE GUIDE (1993).
- Debbie Weeks, Sure You Have a Right to a Jury Trial. You Think. Maybe. 46-APR Ariz. Att'y 30 (2010) (available on WestLaw).

ARKANSAS

RIGHT TO JURY TRIAL

Constitution:
Ark. Const. Art. II, § 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."

Statutes and Court Rules:
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."

Court Decisions:

- 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.
- A case concerning the abatement of a public nuisance does not necessitate a jury trial. Kirkland v. State, 72 Ark. 171 (1904).
- Predispute contractual jury waivers are unconstitutional and unenforceable, because no Arkansas statute or Arkansas rule of civil procedure expressly provides for predispute waivers of the right to a jury trial. They are distinguishable from arbitration clauses, which are governed by the Arkansas Code, and therefore serve to waive the right to a jury "in a manner prescribed by law." Tilley v. Malvern Nat'l Bank, 532 S.W.3d 570, 578–79 (Ark. 2017), reh'g denied (Jan. 25, 2018).
- Arbitration clauses are constitutional under the freedom to contract and do not infringe on the constitutional right to trial by jury. GGNSC Holdings, LLC v. Lamb By & Through Williams, S.W.3d 348, 359 (Ark. 2016) (J. Danielson, dissenting).
- There is no constitutional right to a jury trial in an action to quiet title. Nicholson v. Upland Indus. Dev. Co., 422 S.W.3d 108, 114 (Ark. 2012).

RIGHT TO REMEDY

Constitution:
Ark. Const. art. II, § 13: "Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly, and without delay; conformably to the laws."

Court Decisions:

- The court applies a rational-basis test to challenges made under this constitutional provision. Davis v. Parham, 362 Ark. 352, 208 S.W.3d 162 (2005); Adams v. Arthur, 333 Ark. 53, 969 S.W.2d 598 (1998).
- A statute does not violate Article II, Section 13 if the General Assembly's enactment of the statute provides a reasonable means of achieving a permissible public-policy objective. Cent. Oklahoma Pipeline, Inc. v. Hawk Field Servs., LLC, 400 S.W.3d 701, 710 (Ark. 2012)(citing) White v. City of Newport, 326 Ark. 667, 933 S.W.2d 800 (1996).
- State immunity can not be waived pursuant to Ark. Const. Art. 5, § 20. Plaintiffs have a proper venue for remedy against the state concerning violations of the overtime provisions of the Arkansas Minimum Wage Act under Ark. Const. Art. 2, § 13 by filing a claim with the Arkansas Claims Commission. Bd. of Trustees of Univ. of Arkansas v. Andrews, 535 S.W.3d 616, 623 (Ark. 2018).
- Section 17–25–103(d), which regulates contractor licensing requirements and prohibits the enforcement of contracts in violation of the statute, does not violate Article II, section 13 of the Arkansas Constitution. The statute "advances the goal of providing an incentive for contractors to undergo the licensing process to ensure that the standards set by the licensing board are met." Cent. Oklahoma Pipeline, Inc. v. Hawk Field Servs., LLC, 400 S.W.3d 701, 703 (Ark. 2012).

CALIFORNIA

RIGHT TO JURY TRIAL

Constitution:

- Cal Const. Art. I, § 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. . . . In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In [non-appellate civil cases,] the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court."
- Cal. Const. Art I, § 19(a): Eminent domain is decided by a jury.

Statutes and Court Rules:
Cal. Code of Civ. Proc., § 592. "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 . . . ."

Court Decisions:

Jury Proceedings

- The right to a jury is the right guaranteed at common law in 1850. Kim v. Yi., 139 Cal. App. 4th 543 (2006).
- "Common law of 1850" includes written statutes enacted by Parliament. Crouchman v. Superior Court, 755 P.2d 1075 (1988).

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); Kim v. Yi., 139 Cal. App. 4th 543 (2006).

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.

Right to Jury in:

- Action to quiet title. Donahue v. Meister, 25 P. 1096 (1891).
- Debt (equivalent to common law debt action). Sonleitner v. Superior Court of Los Angeles County, 322 P.2d 496 (1958); Grossblatt v. Wright, 239 P.2d 19 (1951).
- Eminent domain. Redondo Beach v. Kumnick, 216 Cal. App. 2d 830 (1963); Art I, § 14; CCP § 631.5.

No Right to Jury in:

- Small claims appeal to superior court. Crouchman v. Superior Court, 755 P.2d 1075 (1988).
- Parental rights. County of Sutter v. Davis, 234 Cal. App. 3d 319 (1991).
- Divorces. Cassidy v. Sullivan, 28 P. 234 (1883).
- Official misconduct trial from Legislature-created office. Woods v. Varnum, 24 P. 843 (1890).
- Disbarment. In re Disbarment of Wharton, 46 P. 172 (1896).
- Appointing guardian. In re Guardianship of Coburn, 131 P. 352 (1913).
- License revocations. Gregory v. Hecke, 238 P. 787 (1925).
- Probate. In re Estate of Escover, 292 P. 167 (1930).
- Tax collection. Sonleitner v. Superior Court of Los Angeles County, 322 P.2d 496 (1958).
- Labor dispute. United Farm Workers Organizing Committee v. Superior Court of Kern County, 265 Cal. App. 2d 212 (1968).

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. See Ruiz v. Oodolsky, 237 P.3d 584 (2010); Viola v. Department of Managed Health Care, 126 Cal. App. 4th 373 (2005).

COLORADO

RIGHT TO JURY TRIAL

Statutes and Court Rules:
C.R.C.P. 38(a) Exercise of Right. Upon the filing of a demand and the simultaneous payment of the requisite jury fee by any party in actions wherein a trial by jury is provided by constitution or by statute, including 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, all issues of fact shall be tried by a jury. The jury fee is not refundable; however, a demanding party may waive that party's demand for trial by jury pursuant to section (e) of this rule.

Court Decisions:

- 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).
- 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).
- Parties are entitled to a jury trial if the action is purely legal in nature. Kaitz v. District Court, 650 P.2d 553 (Colo.1982). If legal and equitable claims are presented in the complaint, the court "must determine whether the basic thrust of the action is equitable or legal in nature." Carder, Inc. v. Cash, 97 P.3d 174, 187 (Colo. App. 2003).

RIGHT TO REMEDY

Constitution:
Colo. Const. art. II, § 6: "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay."

Statutes and Court Rules:

Colo. Rev. Stat. Ann. § 13-20-1002 (West)

(1) The general assembly finds and declares:

(a) The courts of this state are overworked and subject to overloaded dockets;

(b) Section 6 of article II of the Colorado constitution guarantees citizens of this state access to the courts of this state; and

(c) Cases filed by nonresidents of Colorado and having no meaningful relationship to this state are clogging the dockets of the courts and causing delays in cases filed by residents of Colorado.

Colo. Rev. Stat. § 13-16-103

(1) If the judge or justice of any court, including the supreme court, is at any time satisfied that any person is unable to prosecute or defend any civil action or special proceeding because he is a poor person and unable to pay the costs and expenses thereof, the judge or justice, in his discretion, may permit such person to commence and prosecute or defend an action or proceeding without the payment of costs; but, in the event such person prosecutes or defends an action or proceeding successfully, there shall be a judgment entered in his favor for the amount of court costs which he

would have incurred except for the provision of this section, and this judgment shall be first satisfied out of any money paid into court, and such costs shall be paid to the court before any such judgment is satisfied of record.
(2) In determining whether a plaintiff in an action brought pursuant to article 4 of title 14, C.R.S., may be permitted to proceed without the payment of costs, the court shall take into account only those assets to which the plaintiff has direct access. The court shall not consider assets which the plaintiff is unable to directly access even though the plaintiff may have an ownership interest in those assets.

Court Decisions:

- A costs award under Rule 54(d), as applied to Farmers Reservoir and Irrigation Company (FRICO), does not infringe upon a fundamental constitutional right. The right of equal access to courts does not mean a right to engage in cost-free litigation. City & Cty. of Broomfield v. Farmers Reservoir & Irrigation Co., 239 P.3d 1270, 1278 (Colo. 2010).
- "[F]ee shifting statutes do not infringe on the right of access to courts. People ex rel. Danielson v. Plank, 765 P.2d 570, 571 (Colo.1988) (holding that section 37–92–503(1)(b), which awards costs and fees to the state engineer when it issues an order and then applies to the water court to uphold that order, does not deny equal access to courts)." City & Cty. of Broomfield v. Farmers Reservoir & Irrigation Co., 239 P.3d 1270, 1278 (Colo. 2010).
- "A burden on a party's right of access to courts will be upheld as long as it is reasonable." City & Cty. of Broomfield v. Farmers Reservoir & Irrigation Co., 239 P.3d 1270, 1278 (Colo. 2010) See, e.g., Firelock Inc. v. Dist. Court, 776 P.2d 1090, 1095–96 (Colo.1989).

CONNECTICUT

RIGHT TO JURY TRIAL

Constitution:

Conn. Const. Art. I, § 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."

Court Decisions:

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

The Court has consistently held that remittitur should be used only in the rarest of circumstances, based on the right to have factual issues determined by a jury. Munn v. Hotchkiss Sch., 165 A.3d 1167, 1189 (Conn. 2017).

RIGHT TO REMEDY

Constitution:
Conn. Const. art. I, § 10: "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

Court Decisions:

- "It is settled law that this provision restricts the power of the legislature to abolish a legal right existing at common law prior to 1818 without also establishing a "reasonable alternative to the enforcement of that right." Mello v. Big Y Foods, Inc., 826 A.2d 1117, 1124–25 (Conn. 2003) (citing Binette v. Sabo, 244 Conn. 23, 30, 710 A.2d 688 (1998); Moore v. Ganim, 233 Conn. 557, 573-74, 660 A.2d 742 (1995); Kelley Property Development, Inc. v. Lebanon, 226 Conn. 314, 331,

627 A.2d 909 (1993) Gentile v. Altermatt, 363 A.2d 1 (Conn. 1975))." In determining if the alternative is reasonable, the Court will decide whether the benefits under the legislative alternative approximate for the former rights available at common law. Mello v. Big Y Foods, Inc., 826 A.2d 1117, 1124–25 (Conn. 2003).

- Remedies under Workers Compensation laws provided a plaintiff a reasonable alternative to the remedies available by common law product liability theory. Daily v. New Britain Machine Co., 200 Conn. 562, 585, 512 A.2d 893 (1986), see also Sharp v. Mitchell, 209 Conn. 59, 66, 546 A.2d 846 (1988).
- The exclusivity provision in the Workers Compensation Act does not violate Section 10 as applied to the case when it prevents a plaintiff from exercising a right to common-law product liability theory when a particular injury is not covered by the statute. Mello v. Big Y Foods, Inc., 826 A.2d 1117, 1126 (Conn. 2003).

Connecticut References:
Martin B. Margulies, *Connecticut's Misunderstood Remedy Clause*, 14 QUINNIPIAC L. REV. 217 (1994)

DELAWARE

RIGHT TO JURY TRIAL

Constitution:
Del. Const. Art. I, § 4: "Trial by jury shall be as heretofore."

Court Decisions:

- 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).
- A defendant's right to a jury trial requires that they are given the option of accepting an additur or a new trial if they rejected the additur. Rash v. Moczulski, 153 A.3d 719, 721 (Del. 2016), reargument denied (Jan. 12, 2017).

Jury available:

- 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).
- 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).

Jury not available:

- 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).

RIGHT TO REMEDY

Constitution:
Del. Const. art. I, § 9: "All courts shall be open; and every person for an injury done him or her in his or her reputation, person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land, without sale,

denial, or unreasonable delay or expense. Suits may be brought against the State, according to such regulations as shall be made by law."

Court Decisions:

- Article I, § 9 balances the "right of speech and a citizen's ability to seek civil redress for publication of defamatory information. . . . Section 9, in our view, establishes a strong state constitutional basis for remedies to recompense damage to one's reputation. In our view, the protection afforded to reputations by the Delaware Constitution weighs heavily in the balance of the analysis involving constitutionally protected speech." Kanaga v. Gannett Co., Inc., Del.Supr., 687 A.2d 173, 177 (Del. 1996).

FLORIDA

RIGHT TO JURY TRIAL

Constitution:

Fla. Const. Art. I, § 22: "The right of trial by jury shall be secure to all and remain inviolate."

Court Decisions:

- In Florida the constitutional right to jury trial "extends only to determination of 'contested' issues in law actions." Tilton v. Horton, 103 Fla. 497 at 509 (Fla. Nov. 12, 1931) (citing State v. Aetna Casualty and Surety Company, 84 Fla. 123 (Fla. July 22, 1922)).
- "Questions as to the right to a jury trial should be resolved, if at all possible, in favor of the party seeking the jury trial, for that right is fundamentally guaranteed by the U.S. and Florida Constitutions. See U.S. Constitution, Amendments 7 and 14, and Florida Constitution, Article I, Declaration of Rights, § 22." Hollywood, Inc. v. Hollywood, 321 So.2d 65 at 71 (Fla. April 23, 1975).
- The Florida State Supreme Court in Barth v. Florida State Constructors Service, Inc., 327 So.2d 13 (Fla. 1976). cited to a previous decision which concerned the right to a jury trial under the state constitution. In Hightower v. Bigoney, 156 So. 2d 501 (Fla. Jan. 1, 1963) the State Supreme Court stated that ". . . it is settled that one may by affirmative plea or by silence waive his right to a jury trial but when a litigant timely appears . . . and enters a plea for it or claims it in proper manner, that claim and not the chancellor's discretion is the final word and it is the duty of the court to make provision for it because Section 3 [now section 22], Declaration of Rights, guarantees it." Barth, 327 So. 2d at 15 (Fla. Jan 21, 1976).
- In Florida, once a demand for a jury trial has been timely made, it takes affirmative action on the part of a defendant to waive that constitutional right, the filing of a compulsory counterclaim does not constitute the counter-claimant's waiver of the right to a jury trial on the issues raised, provided that the jury trial is timely demanded and that the Petitioner did not waive their constitutional right to a jury trial. Barth, 327 So. 2d at 16 (Fla. Jan. 21, 1976).

RIGHT TO REMEDY

Constitution:

Fla. Const. art. I, § 21: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay."

Court Decisions:

- "[W]here a right of access to the courts for redress for a partiular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. § 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown." Kluger v. White, 281 So.2d 1 at 4 (Fla. July 11, 1973).
- "It is uncontroverted that there currently exists a right to sue on and recover noneconomic damages of any amount and that this right existed at the time the current Florida Constitution was adopted. The right to redress of any injury does not draw any distinction between economic and noneconomic damages nor does article I, section 21 contain any language which would support the proposition that the right is limited, or may be limited, to suits above or below any given figure." Smith v. Dep't of Ins., 507 So.2d 1080 at 1087 (Fla. April 23, 1987).
- "Article I, section 21, of the Florida Constitution, part of our state constitutional 'Declaration of Rights' since 1968, guarantees every person access to the courts and ensures the administration of justice without denial or delay: 'The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.' Art. I, § 21, Fla. Const. (emphasis added). This important state constitutional right has been construed liberally in order to 'guarantee broad accessibility to the courts for resolving disputes.'" Westphal v. City of St. Petersburg, 194 So.3d 311 at 321 (Fla. June 9,2016) (citing Psychiatric Assoc. v. Siegel, 610 So. 2d 419 at 424 (Fla. 1992), receded from on other grounds by Agency for Health Care Admin. v. Associated Indus. of Fla., Inc., 678 So. 2d 1239 (Fla. 1996).

Florida References:

Judith A. Bass, *Article 1, Section 21: Access to Courts in Florida*, 5 FLA. ST. U. L. REV. 871 (1977), https://ir.law.fsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1879&context=lr.

GEORGIA

RIGHT TO JURY TRIAL

Constitution:

Ga. Const. Art. 1, § 1, ¶ XI. Right to trial by jury; number of jurors; selection and compensation of jurors.

(a) The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party. In criminal cases, the defendant shall have a public and speedy trial by an impartial jury; and the jury shall be the judges of the law and the facts.

(b) A trial jury shall consist of 12 persons; but the General Assembly may prescribe any number, not less than six, to constitute a trial jury in courts of limited jurisdiction and in superior courts in misdemeanor cases.

(c) The General Assembly shall provide by law for the selection and compensation of persons to serve as grand jurors and trial jurors.

Court Decisions:

- The Georgia Constitution guarantees a right to jury trial only with respect to cases as to which there existed a right to jury trial at common law or by statute at the time of the adoption of the Georgia Constitution in 1798. Benton v. Georgia Marble CO., 258 Ga. 58 at 66 (365 SE2d 413)(Ga. 1988).
- The initial step in the court's analysis is to examine the right to jury trial under the late eighteenth century English common law. Atlanta Oculoplastic Surgery, P.C. v. Nestlehutt, 286 Ga. 731 at 733 (Ga. 2010) (citing Rouse v. State, 4 Ga. 136 at 145-47 (1848)).
- "There is no state constitutional right to a jury trial with respect to proceedings of statutory origin unknown at the time of the Georgia Constitution was adopted." Benton v. Ga. Marble Co., 258 Ga. 58 at 66 (Ga. 1988) (citing Strange v. Strange, 148 S.E.2d 494 (Ga. 1966)).

RIGHT TO REMEDY

Constitution:
Ga. Const. art. I, § 1, para. 12: "No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state."

Court Decisions:
Under this provision "a layperson does not have the right to represent himself and also be represented by an attorney." Jacobsen v. Haldi, 210 Ga. App. 817 at 818-19 (App. Div. 1993)(citing Seagraves v. State, 259 Ga. 36 at 39 (376 S.E.2d 670)(1989)).

HAWAI'I

RIGHT TO JURY TRIAL

Constitution:
Haw. Const. Art. I, § 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. The legislature may provide for a verdict by not less than three-fourths of the members of the jury."

Court Decisions:

- Statutory cause of action is a suit under common law. Mehau v. Reed, 869 P.2d 1320 (Haw. 1994).
- Right to civil jury trial can be waived expressly or impliedly (actions or conduct), but in absence of clear showing of waiver (express or implied), court must indulge every reasonable presumption against waiver. Lii v. Sida of Hawai'i, 493 P.2d 1032 (Haw. 1972), reh'g denied, 53 Haw. 372 (Haw. 1972), cert. denied, 408 U.S. 930 (1972). See also, Pancakes of Haw., Inc. v. Pomare Properties Corp., 944 P.2d 97 (Ct. App. 1997)).
- The legislature can, in certain cases, abrogate a party's right to a jury trial by establishing an administrative agency to oversee and rule on an action ("public rights" doctrine). Party cannot opt out of administrative proceedings, but may still be entitled to a jury trial re: allegations and damages. SCI Mgmt. 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).

- The test to determine whether a suit is at common law (which invokes right to jury trial) is whether the cause of action seeks legal or equitable relief. Equitable relief = no jury right. 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).
- Laws, practices, and procedures affecting the right to trial by jury are valid as long as they do not significantly burden or impair the right to ultimately have a jury determine issues of fact. Richardson v. Sport Shinko, 880 P.2d 169 (Haw. 1994).
- Federal courts may permit six-member juries in diversity cases. Dashiell v. Keauhou--Kona Co., 487 F.2d 957 (9th Cir. Haw. 1973).
- A statute requiring tort actions (with probable jury awards of >$150,000) to go to nonbinding arbitration first did not violate equal protection. Richardson v. Sport Shinko, 880 P.2d 169 (Haw. 1994).
- Right to jury trial applies to dower claim suits. In re Estate of Lorenzo, 602 P.2d 521 (Haw. 1979).

Jury Trial Not Available:

- No right to a jury for questions of unjust enrichment. Porter v. Hu, 169 P.3d 994 (Haw. 2007).
- Government may constitutionally choose not to allow jury trials in suits against itself. W. C. Peacock & Co. v. Castle, 11 Haw. 10 (1897).
- Right to jury trial, which generally applies to state eminent domain proceedings, doesn't include determination of damages resulting from government's delay in making full payment for property taken. Housing Fin. & Dev. Corp. v. Ferguson, 979 P.2d 1107 (Haw. 1999).
- Paternity action is not a suit at common law, so no constitutional right to a jury trial. Doe v. Roe, 705 P.2d 535 (Haw. 1985), reconsideration denied 753 P.2d 253 (1985).
- No jury trial required for specific performance of lease action. Kimball v. Lincoln, 809 P.2d 1130 (Haw. 1991).

IDAHO

RIGHT TO JURY TRIAL

Constitution:

Idaho Const. Art. I, § 7: "The right of trial by jury shall remain inviolate; but in civil actions, three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, by the consent of all parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions the jury may consist of twelve or of any number less than twelve upon which the parties may agree in open court. Provided, that in cases of misdemeanor and in civil actions within the jurisdiction of any court inferior to the district court, whether such case or action be tried in such inferior court or in district court, the jury shall consist of not more than six."

Court Decisions:

- 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).

- 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).
- 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).
- Terms of an easement are facts incidental to the exercise of right and the related remedies and are equitable in nature. Claims to enforce an easement or seeking a declaration of rights are equitable remedies. Therefore, no right to a jury trial exists to define an easement. Morgan v. New Sweden Irr. Dist., 52, 368 P.3d 990, 995 (Idaho, 2016).
- A party is not entitled to a jury trial on the issue of mutual mistake, because it is a fact to support an equitable remedy of recision. The court is required to make findings of fact and conclusions of law on the equitable theories. Therefore, the court did not err in refusing to permit the party to present evidence in support of that issue during the jury trial. Bolognese v. Forte, 292 P.3d 248, 253 (Idaho, 2012).
- The trial court is not permitted to weigh the evidence to determine if a claim can proceed under section 6–1607 concerning employer liability for employee torts. "[A]llowing the court to re-weigh the evidence would infringe upon the parties' right to a jury trial under Article I, sec. 7, of the Idaho Constitution." Nava v. Rivas-Del Toro, 264 P.3d 960, 965 (Idaho, 2011).

RIGHT TO REMEDY

Constitution:
Idaho Const. art. 1, § 18: "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay, or prejudice."

Court Decisions:
- "We hold that both the refusal to hear a motion and the dismissal of a motion on the ground that a contemnor has not purged contempt violates Article I, § 18, of the Idaho Constitution. . . This provision of our Constitution "admonishes the courts to administer 'right and justice without sale, delay or prejudice.'" (citing Moon v. Bullock, 65 Idaho 594, 603, 151 P.2d 765, 769 (1944)). State Dep't of Health & Welfare v. Slane, 155 Idaho 274, 279, 311 P.3d 286, 291 (Idaho, 2013).
- "Art. 1, § 18 merely admonishes Idaho courts to dispense justice and to secure citizens the rights and remedies afforded by the legislature or by the common law, and did not create any substantive rights." (citing Hawley v. Green, 117 Idaho 498, 500–01, 788 P.2d 1321, 1323–24 (1990)). Venters v. Sorrento Delaware, Inc., 141 Idaho 245, 252, 108 P.3d 392, 399 (2005).
- The Workers Compensation Act, I.C. § 72-451, "bears a rational relationship to the legislative purpose of compensating workers for psychological injuries, disorders, or conditions caused by accidents or occupational diseases." The provision provides a remedy by allowing for compensation of psychological injuries and diseases when the mental injury is accompanied by a physical injury. Therefore, a constitutional protection was not denied when the Industrial Commission denied benefits under the Act to a party without a physical injury to accompany a mental injury. Luttrell v. Clearwater Cty. Sheriff's Office, 140 Idaho 581, 585, 97 P.3d 448, 452 (2004).

ILLINOIS

RIGHT TO JURY TRIAL

Constitution:
Ill. Const. Art. I, § 13: "The right of trial by jury as heretofore enjoyed shall remain inviolate."

Court Decisions:

- 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).
- There is 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).
- 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).The right of trial by jury includes the right to demand a 12–member jury. "This court has long interpreted the phrase "as heretofore enjoyed" to mean "the right of a trial by jury as it existed under the common law and as enjoyed at the time of the adoption of the respective Illinois constitutions." Kakos v. Butler, 2016 IL 120377, ¶ 14, 63 N.E.3d 901, 906 (citing People v. Lobb, 17 Ill.2d 287, 298, 161 N.E.2d 325 (1959)).
- The Video Gaming Act, 230 ILCS 40/1, created rights and duties that have no counterpart in law or equity. Therefore, the General Assembly granted exclusive jurisdiction to the Gaming Board over the video game industry and the use agreements that are necessary to engage in the industry. Circuit courts lack subject-matter jurisdiction to determine the validity of the location agreements. J & J Ventures Gaming, LLC v. Wild, Inc., 67 N.E.3d 243, 249, reh'g denied (Ill. 2016).
- 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).

RIGHT TO REMEDY

Constitution:
Ill. Const. art. I, § 12: "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly."

Court Decisions:

- The Illinois Marriage and Dissolution of Marriage Act, which abolished common-law marriage, and the holding in Hewitt v. Hewitt, 77 Ill.2d 49, 31 Ill.Dec. 827, 394 N.E.2d 1204 (1979), precludes unmarried couples from bringing common-law claims against one another to enforce property rights based in an "unmarried, family-like" relationship. The application does not violate Article I, § 12. The court's ruling "acknowledges the legislative intent to provide certain rights and benefits to those who participate in the institution of marriage." Blumenthal v. Brewer, 9 N.E.3d 834, 859, reh'g denied (Ill. 2016).
- An employee whose action is barred by the exclusive remedy provisions of Workers' Compensation Act and the Workers' Occupational Diseases Act rights have not been violated under Article I, § 12, the right to a certain remedy. There is no disparate treatment between classes of individuals beccause all workers are precluded from seeking common-law damages. Folta v. Ferro Eng'g, 2015 IL 118070, ¶ 44, 43 N.E.3d 108, 119 (Ill. 2015).

- Section 9 of the Workers' Occupational Diseases Act does not violate Article 1 Section 12 of the Illinois Constitution despite barring a claims for a particular death benefit due to a previous lump sum settlement. Article I § 12 is merely "'an expression of a philosophy and not a mandate that a "certain remedy" be provided in any specific form.'" Segers v. Indus. Comm'n, 732 N.E.2d 488, 496–97 (Ill. 2000).

INDIANA

RIGHT TO JURY TRIAL

Constitution:
Ind. Const. Art. I, § 20: "In all civil cases, the right of trial by jury shall remain inviolate."

Statutes and Court Rules:
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.

Court Decisions:
- Ind.Code § 34–51–3–2 (2008), a punitive damages cap, and Ind.Code § 34–51–3–4 (2008), an allocation of punitive damages statute, do not infringe upon the right to a jury. The amount of punitive damages is not a finding of fact that implicates Art. I, § 20, of the Indiana Constitution. State v. Doe, 987 N.E.2d 1066, 1071 (Ind. 2013).
- Based on a right to a jury trial and faith in the jury system, evidence of the reduced amounts a healthcare provider accepts as payment in full is admissible in a negligence action, even when the payer is a government healthcare program. Patchett v. Lee, 60 N.E.3d 1025, 1030 (Ind. 2016).
- An action alleging securities fraud seeking money damages is entitled to a jury trial. Cardinal Health Ventures, Inc. v. Scanameo, 85 N.E.3d 637, 642 (Ind. Ct. App. 2017).

Jury Trial Available:

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.):

- Actions in tort: Terre Haute v. Deckard, 243 Ind. 289, 183 N.E.2d 815 (1962)
- Quiet title (real estate): Trittipo 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)
- 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).

Jury Trial Not Available (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).
- "[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). See also Lucas v. U.S. Bank, N.A., 953 N.E.2d 457, 460 (Ind. 2011).
- 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).

RIGHT TO REMEDY

Constitution:

Ind. Const. art. 1, § 12: "All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase, completely, and without denial; speedily, and without delay."

Court Decisions:

- "[T]he Open Courts clause does not prohibit all conditions on access to the courts, but it does prevent the legislature from arbitrarily or unreasonably denying access to the courts." Smith v. Indiana Dep't. of Corr., 883 N.E.2d 802, 808 (Ind. 2008).
- "The right of access presupposes an underlying cause of action to which the right of access attaches and for which the law affords a remedy. The legislature has wide latitude in defining the existence and scope of a cause of action and in prescribing the available remedy." Indiana Code Section 34-12-3-3(2) provides a limited immunity, against firearms sellers for damages claims, but not for claims seeking other relief. Section 34-12-3-3(2) does not violate Article 1, Section 12. KS&E Sports v. Runnels, 72 N.E.3d 892, 906 (Ind. 2017).
- Plaintiffs cannot be barred from pursuing decreased earning capacity claims based on their status as an unauthorized immigrant. Article 1, Section 12 of the Indiana Constitution applies to every person including unauthorized immigrants. Escamilla v. Shiel Sexton Co., Inc., 73 N.E.3d 663, 667 (Ind. 2017).
- The Three Strikes Law, Public Law 80–2004, section 6, which imposes a complete ban on filing based on the plaintiff's prior litigation violates the Open Courts Clause of the Indiana Constitution. Smith v. Indiana Dep't of Correction, 883 N.E.2d 802, 805–06 (Ind. 2008).

IOWA

RIGHT TO JURY TRIAL

Constitution:
Iowa Const. Art. I, § 9: "Right of trial by jury—due /process of law. The right of trial by jury shall remain inviolate; but the general assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law."

Court Decisions:
- The right of trial by jury only extends to cases where a jury was necessary according to common-law procedure. State v. Henderson, 124 N.W. 767 (Iowa 1910).
- Government statutory immunity (created by Iowa Code § 668.10(1)) 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).
- 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). (2nd sentence overruled in McElroy v. State, 703 N.W.2d 385 (Iowa 2005): "For all the foregoing reasons, we overrule Smith and hold a plaintiff seeking money damages under the Iowa Civil Rights Act is entitled to a jury trial."
- A party in an equitable action triable by the first method (i.e., on written evidence) cannot demand that the issues be tried by a jury as a matter of right. State Use of Boone County v. Orwig, 25 Iowa 280 (1868).
- Rule of Civil Procedure allowing nonunanimous jury verdicts does not violate state right of trial by jury. Pitcher v. Lakes Amusement Co., 236 N.W.2d 333 (Iowa 1975).
- There is no "complex litigation" exception to the right to a trial by jury. Rieff v. Evans, 672 N.W.2d 728 (Iowa 2003).
- The due process (Art. 1, § 9) and equal protection (Art. 1, § 1) provisions of the Iowa Constitution are self-executing and support a claim for monetary damages. Godfrey v. State of Iowa, 898 N.W.2d 844 (Iowa 2017).
- Statutory immunity from nuisance claims violates the inalienable rights clause (Art. 1, § 1) of the Iowa Constitution. Gacke v. Pork Xtra, L.L.C., 684 N.W.2d 168 (Iowa 2004).

KANSAS

RIGHT TO JURY TRIAL

Constitution:
Kan. const. Bill of Rights § 5: "The right of trial by jury shall be inviolate."

Statutes and Court Rules:
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. Kan. Stat. Ann. § 60-238.

Court Decisions:

- The right to a jury trial 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).
- 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).
- 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).
- "The test used to determine whether a statute unconstitutionally obstructs the right to jury trial under Section 5 of the Kansas Constitution Bill of Rights is the same adequate substitute remedy analysis used to decide challenges under Section 18. The first step is to determine whether the modification to the right to jury trial or common-law remedy is reasonably necessary in the public interest to promote the public welfare. The second step is to determine whether the legislature substituted an adequate statutory remedy for the modification to the individual right at issue." Miller v. Johnson, 295 Kan. 636, 636, 289 P.3d 1098, 1102 (2012).
- Due to Constitutional protections under § 5, if an appellate court determines that "evidence is such that reasonable minds could reach different conclusions, the [directed] verdict should be reversed." Russell v. May, 306 Kan. 1058, 1081–82, 400 P.3d 647, 664 (2017) (citing Baker v. City of Garden City, 240 Kan. 554, 556, 731 P.2d 278 [1987]).
- An arbitration provision in a class action settlement agreement which requires binding arbitration for disputes arising out of a stipulated settlement does not deprive the class members of their inviolate right to jury trial under Section 5 of the Kansas Constitution. The settlement agreement informed the class that by taking the benefits of the settlement, the members waived their right to a trial and that future disputes would be subject to arbitration. Coulter v. Anadarko Petroleum Corp., 296 Kan. 336, 370–71, 292 P.3d 289, 310 (2013).

RIGHT TO REMEDY

Constitution:

Kan. Const. Bill of Rights, § 18: "All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay."

Statutes and Court Rules:

- Kan. Stat. Ann. § 77-702 (West): On and after January 1, 1996, it is the public policy of the state of Kansas that state agencies, in planning and carrying out governmental actions, anticipate, be sensitive to, and account for the obligations imposed by the fifth and the 14th amendments of the constitution of the United States and section 18 of the bill of rights of the constitution of the state of Kansas. It is the express purpose of this act to reduce the risk of undue or inadvertent burdens on private property rights resulting from certain lawful governmental actions.

Court Decisions:

- "The constitutional guarantee of providing for open courts and insuring a civil remedy for injuries to persons and property is a statement of our philosophy and a general rule which can be used to solve civil conflicts. This right is generally regarded as one of the most sacred and essential constitutional guarantees. However, the guarantee creates no new rights but merely is declaratory of our fundamental principles." State ex rel. Stephan v. O'Keefe, 686 P.2d 171, 178 (Kan. 1984).

- "Kansas does not recognize a separate right to an open court, independent from the recognized right to due process. Section 18 of the Kansas Constitution Bill of Rights only recognizes and guarantees a person's independent right to due process." Bonin v. Vannaman, 261 Kan. 199, 221, 929 P.2d 754, 770 (Kan. 1996).
- If a remedy protected by due process is abrogated or restricted by the legislature, the change is constitutional if it is reasonably necessary, in the public interest to promote the general welfare, and the legislature provides an adequate substitute remedy. Bonin v. Vannaman, 261 Kan. 199, 217, 929 P.2d 754, 768 (Kan. 1996).
- K.S.A.1990 Supp. 40–3403(h) which provides that a health care provider who is qualified for coverage under the fund shall have no vicarious liability or responsibility for any injury or death arising out of the rendering of or the failure to render services by any other health care provider under the fund is constitutional under section 18. Bair v. Peck, 248 Kan. 824, 827, 811 P.2d 1176, 1180 (1991).
- "In enacting its change to the Kansas Workers Compensation Act, the legislature properly exercised its legislative power to grant, limit, and withdraw appellate jurisdiction exercised by the courts. Section 18 of the Kansas Constitution Bill of Rights is not implicated." Gleason v. Samaritan Home, 260 Kan. 970, 971, 926 P.2d 1349, 1353 (Kan. 1996).

KENTUCKY

RIGHT TO JURY TRIAL

Constitution:
Ky. Const. § 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."

Statutes and Court Rules:
Ky. Rev. Stat. Ann. § 406.061 (West): To the extent necessary to conform to federal law, 42 U.S.C. sec. 666(a)(5)(I), except to the extent that it is required under Section 7 of the Constitution of Kentucky, no party shall be entitled to a trial by a jury in a paternity action.

Court Decisions:
- 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).
- 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).
- A limited trial on punitive damages is not unconstitutional under Kentucky Constitution § 7. All claims must not be re-tried in order to evaluate punitive damages. MV Transp., Inc. v. Allgeier, 433 S.W.3d 324, 339 (Ky. 2014).

- In a power of attorney document, the court will infer the power to bind the principal to an arbitration agreement "whenever reasonably consistent with the principal's expressed grant of authority." Kindred Nursing Centers Ltd. P'ship v. Wellner, 533 S.W.3d 189, 194 (Ky. 2017).

RIGHT TO REMEDY

Constitution:

- Ky. Const. Bill of Rights § 14: "All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."
- Ky. Const. § 54 "The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property."
- "The Kentucky Supreme Court has referred to [§ § 14, 54, and 241, concerning recovery for wrongful death] collectively as the 'open courts' provisions." Thomas R. Phillips, The Constitutional Right to a Remedy, 78 NYU L. Rev. 1309, 1311 (2003). See also Abernathy v. Nicholson, 899 S.W.2d 85, 87 (Ky. 1995).

Court Decisions:

- "The right of every individual in society to access a system of justice to redress wrongs is basic and fundamental to our common-law heritage, protected by Sections 14, 54 and 241 of our Kentucky Constitution." O'Bryan v. Hedgespeth, 892 S.W.2d 571, 578 (Ky. 1995).
- An terminable-at-will employee's right to open courts under Section 14 of the Kentucky Constitution is not violated by being fired for filing a lawsuit against the employer, on a matter not related to the employment. Section 14 does not relate to employment rights. "Section 14 is a mandate *to the government* to provide courts open to all for appropriate judicial remedy . . . . [Other] cases applying the protection afforded by Section 14, address statutes limiting or barring access to courts, not the countless pressures that might otherwise constrain the decision to sue." Boykins v. Hous. Auth. of Louisville, 842 S.W.2d 527, 528 (Ky. 1992).

Kentucky References:

- ROBERT M. IRELAND, THE KENTUCKY STATE CONSTITUTION: A REFERENCE GUIDE (1999).
- Thomas P. Lewis, *Jural Rights Under Kentucky's Constitution: Realities Grounded in Myth*, 80 KY. L.J. 953 (1992).

LOUISIANA

RIGHT TO JURY TRIAL

Constitution:

The right to a civil jury trial in Louisiana is derived from statute, not from the state constitution.

Statutes and Court Rules:

- La. Code of Procedure, art. 1731:
  A. Except as limited by Article 1732, the right of trial by jury is recognized.
  B. Except as otherwise provided, the nature and amount of the principal demand shall determine whether any issue in the principal or incidental demand is triable by jury.

C. If the compulsory reconventional demand is triable by a jury, but the principal demand is not, the compulsory reconventional demand may be tried by a jury.

- La. C.C.P. art. 1732: A trial by jury shall not be available in:
  (1) A suit where the amount of no individual petitioner's cause of action exceeds fifty thousand dollars exclusive of interest and costs, except as follows:
  (a) If an individual petitioner stipulates or otherwise judicially admits sixty days or more prior to trial that the amount of the individual petitioner's cause of action does not exceed fifty thousand dollars exclusive of interest and costs, a defendant shall not be entitled to a trial by jury.
  (b) If an individual petitioner stipulates or otherwise judicially admits for the first time less than sixty days prior to trial that the amount of the individual petitioner's cause of action does not exceed fifty thousand dollars exclusive of interest and costs, any other party may retain the right to a trial by jury if that party is entitled to a trial by jury pursuant to this Article and has otherwise complied with the procedural requirements for obtaining a trial by jury.
  (c) Notwithstanding Subsubparagraphs (a) and (b) of this Subparagraph, if, as a result of a compromise or dismissal of one or more claims or parties which occurs less than sixty days prior to trial, an individual petitioner stipulates or otherwise judicially admits that the amount of the individual petitioner's cause of action does not exceed fifty thousand dollars exclusive of interest and costs, a defendant shall not be entitled to a trial by jury.
  (2) 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.
  (3) 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.
  (4) A proceeding to determine custody, visitation, alimony, or child support.
  (5) A proceeding to review an action by an administrative or municipal body.
  (6) All cases where a jury trial is specifically denied by law.

Court Decisions:

- "In Lousiana, the right to a jury trial in a civil case is provided for by statute. La. C.C.P. art. 1731 et seq." Dawson v. Falgout, 215 So.3d 373, 380 (La.App. 2016), writ denied (La. 2017).
- The Louisiana State Constitution has no express provision for a right to trial by jury in civil cases except for expropriation proceedings. Scott v. Am. Tobacco Co., 36 So.3d 1046 (La.App. 2010).
- [A]lthough there is no express state constitutional provision for a trial by jury for civil proceedings, the right to a trial by jury in civil cases in Louisiana is "a basic right and should be protected in the absence of specific authority for its denial." Brewton v. Underwriters, Incs. Co., 848 So.2d 586 at 589 (La. 2003). *See also* Pageau v. Hebert, 760 So.2d 325 (La. 2000); Parker v. Rowan Cos., 628 So.2d 1108 (La. 1991); Duplantis v. U.S. Fid. & Guar. Ins. Corp., 342 So. 2d 1142, 1143 (La. App. 1977).

RIGHT TO REMEDY

Constitution:

La. Const. art. I, § 22: "All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."

Court Decisions:

- "The access to courts clause does not "prohibit legislative restriction of legal remedies." Instead the clause "operates only to provide remedies which are fashioned by the legislature."" M.J. Farms, Ltd. v. Exxon Mobile Corp., 998 So. 2d 16 at 37 (citing Williams v. Kushner, 524 So. 2d 191 at 196 (La. App. 4 Cir. 1988), amended and affirmed, 549 So. 2d 294 (La. 1989)).
- The constitutional guarantee providing for open courts and insuring a remedy for injuries does not warrant a remedy for every single injury; it applies only to those injuries that constitute violations of established law which the courts can properly recognize. Crier v. Whitecloud, 496 So. 2d 305 at 310 (citing Harrison v. Schrader, 569 S.W.2d 822 at 827)(Tenn. 1978)).
- Article I, § 22 is interpreted by the Louisiana Supreme Court "to be a mandate to the judiciary of this state rather than a limitation on the legislature. Article I, § 22 guarantees that the courts will be open to ensure an adequate remedy by due process of law; however, where, as here, a person has no cause of acion that is a vested property right, this constitutional provision affords no substantive relief." Crier v. Whitecloud, 496 So. 2d 305 at 310 (La. 1986).

MAINE

RIGHT TO JURY TRIAL

Constitution:

Me. Const. Art. I, § 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.”

Court Decisions:

- The policy to require attorneys to obtain client-informed consent prior to contractually agreeing to submit malpractice claims to arbitration is rooted in “broad constitutional guarantee of a right to a jury.” Snow v. Bernstein, Shur, Sawyer & Nelson, 176 A.3d 729, 736 (Me. 2017).
- The right to a trial by jury is “the right to have a determination made by the jury on material questions of fact.” Ford Motor Co. v. Darling's, 86 A.3d 35 (Me. 2014) (citing Smith v. Hawthorne, 2006 ME 19, ¶ 20, 892 A.2d 433 (Me. 2006)).
- 10 M.R.S.A. § 1189-B which restricted a jury's function to a determination by clear and convincing evidence as to whether a Board's factual findings were erroneous did not violate Art. 1, § 20. A presumption in favor of a Board’s factual findings does not interfere with the substance of the right to a jury trial. Ford Motor Co. v. Darling's, 86 A.3d 35 (Me. 2014).
- “Superior Court's concurrent jurisdiction pursuant to 18–A M.R.S. § 5–402(3) over suits based on a conservator's misconduct is consistent with the plain language of 18–A M.R.S. § 8–309 as well as the Legislature's intent to promote judicial economy in the probate system and protect the constitutional right to a jury trial.”Estate of Jennings v. Cumming, 82 A.3d 132, 136 (Me. 2013).

Jury Trial Available:

- 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).

Jury Trial Not Available:

- Traffic proceedings including failing to register a vehicle. State v. Chase, 157 A.3d 1291, 1292 (Me. 2017).
- 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).

RIGHT TO REMEDY

Constitution:

Me. Const. art. I, § 19: "Every person, for an injury inflicted on the person or the person's reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay."

Court Decisions:

- "Separate from the open courts protection created in the Maine Constitution, both the Maine and United States Constitutions establish a right of meaningful access to the courts." LeGrand v. York Cty. Judge of Prob., 168 A.3d 783, 793 (Me. 2017) (citing Me. Const. art. I, § § 6–A).
- Referring to Me. Const. art. I, § 19, the Supreme Court stated "this 'open courts' provision 'means the courts must be accessible to all persons alike without discrimination, at times and places designated for their sitting, and afford a speedy remedy for every wrong recognized by law as remediable in a court.' Nader v. Maine Democratic Party, 41 A.3d 551, 559 (Me. 2012) (citing Maine Med. Ctr. v. Cote, 577 A.2d 1173, 1176 (Me.1990)).
- "As the Supreme Court of Maine has concluded, the remedies guarantee forbids legislative limitations 'so unreasonable as to deny meaningful access to the judicial process.'" Thomas R. Phillips, The Constitutional Right to a Remedy, 78 New York University Law Review 1309, 1311 (2003) (quoting Me. Med. Ctr. v. Cote, 577 A.2d 1173, 1176 (Me. 1990)).
- "When a challenge is based on delays in judicial proceedings, we have not held that delays are unconstitutional per se. Rather, the constitutional provision protects only against delays that are so unreasonable as to constitute a de facto denial of meaningful access to the courts."

MARYLAND

RIGHT TO JURY TRIAL

Constitution:
Md. Const., Declaration of Rights, art. 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."

Article 23. Trial by jury. "In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction.The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of $15,000, shall be inviolably preserved."

Court Decisions:
"Although the right to a jury trial is fundamental, parties can contractually waive their right to a jury trial. In order to have a valid waiver of a fundamental right such as the right to a jury trial, however, there ordinarily must exist a 'knowing and intelligent' waiver of the right." Walther v. Sovereign Bank, 386 Md. 412 (App. Div. 2005)(citing, Richardson v. State, 381 Md. 348 at 366 (2004)).

RIGHT TO REMEDY

Constitution:
Md. Const. Decl. of Rights, art. 19: "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land."

Court Decisions:
This constitutional guarantee requires "that state officials not be immune from suit because, as expressed in Md. Const. Decl. Rights art. 19, a plaintiff injured by unconstitutional state action should have a remedy to redress the wrong." Litz v. Md. Dep't of the Env't, 446 Md. 254 at 275 (App. Div. 2016)

Maryland References:

- Dan Friedman, *Applying Federal Constitutional Theory to the Interpretation of State Constitutions: The Ban on Special Laws in Maryland*, 71 MD. L. REV. 411 (2012)
- Dan Friedman, *The History, Development, and Interpretation of the Maryland Declaration of Rights*, 71 TEMP. L. REV. 637 (1998)
- Dan Friedman, Jackson v. Dackman Co.: *The Legislative Modification of Common Law Tort Remedies under Article 19 of the Maryland Declaration of Rights*, 77 MD. L. REV. ____ (forthcoming, 2018)
- Dan Friedman, *Tracing the Lineage—Textual and Conceptual Similarities in Three Revolutionary-Era State Declarations of Rights: Virginia, Maryland, and Delaware*, 33 RUTGERS L.J. 929 (2002).

MASSACHUSETTS

RIGHT TO JURY TRIAL

Constitution:
Mass. Const., part 1, art. 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.”

Court Decisions:

- The right to a jury trial is not applicable in cases where the claim is analogous to any case which was traditionally heard in a court of equity. Dalis v. Buyer Advertsigin, 418 mass. 220 at 223 (Mass. 1994).
- Mass. Const. article 15 provides broad protection to the right to jury trial. Dalis v. Buyer Advertising, 418 Mass. 220 at 226 (Mass. 1994).
- Article 15 preserves the right to a jury trial for traditional contract claims. There is only a narrow exception for cases that fall within the court of equity. Dalis v. Buyer Advertising, 418 Mass. 220 at 228 (Mass. 1994).

RIGHT TO REMEDY

Constitution:
Mass. Const. pt. I, art. 11: “Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.”

Court Decisions:

- ". . . [A]rt. 11 has never been construed to grant any person a vested interest in any rule of law entitling such person to insist that it shall remain unchanged. . . . [C]hanges in prior law are necessary in any ordered society, and to argue that art. 11 prohibits alterations of common law rights . . . flies in the face of all reason and precedent. . . . Article 11 does not preclude the Massachusetts legislature from abolishing a cause of action and it does not compel the Legislature to provide a substitute remedy each time it abrogates a common law right. Black v. Black & Decker Mfg. Co., 389 Mass 35 (Mass. 1983).
- Statutes modifying or abrogating common law rights do not violate article 11." Plummer v. Gillieson, 44 Mass. App. Ct. 578 at 583 (App. Div. 1998).

MICHIGAN

RIGHT TO JURY TRIAL

Constitution:

- Mich. Const., Art. I, § 14: "The right of trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law. In all civil cases tried by 12 jurors a verdict shall be received when 10 jurors agree."
- Mich. Const., Art. IV, § 44: "The legislature may authorize a trial by a jury of less than 12 jurors in civil cases."

Court Decisions:

- Actions for money damages should be tried by a jury, ECCO Ltd. v. Balimoy Mfg. Co., 446 N.W.2d. 546 (Mich. 1989).
- Equitable controversies should be determined by the court. Brown v. Kalamazoo Circuit Judge, 42 N.W. 827 (Mich. 1889) .
- In cases with both [legal and equitable issues], the jury should decide factual issues relating to the legal issues, and the court should decide factual issues relating to the equitable issues. Prentis Family Found. v. Barbara Ann Karmanos Cancer Institute, 698 N.W.2d 900 (Mich.App. 2005).
- The court's power to decide issues of equity is protected by the state constitution. Michigan Mut. Liability Co. v. Baker, 294 N.W. 168 (Mich. 1940).
- Statutory damages caps are constitutional when the cause of action springs from common law. Phillips v. Mirac, Inc., 685 N.W.2d 174 (Mich. 2004).
- Statutory cap on noneconomic damages, recoverable in medical malpractice action, M.C.L.A. § 600.1483(1), didn't violate right to jury trial. Wiley v. Henry Ford Cottage Hosp., 668 N.W.2d 402 (Mich. 2003).
- M.C.L.A. § 600.1352 provision authorizing 6-person jury in civil cases and authorizing verdict by 5 agreeing jurors is constitutional. Fisher v. Hatcher, 205 N.W.2d 913 (Mich.App. 1973).
- Once pretrial conference has closed without payment of jury fee, plaintiffs' entitlement to jury trial is no longer a matter of right, but a matter of the trial court's discretion. Bachor v. City of Detroit, 212 N.W.2d 302 (Mich. App. 1973); Van Sickle v. Kellogg, 19 Mich. 49 (1869).
- Amendment to state law prohibiting prisoners from bringing civil rights suits violated constitutional equal protection provision requiring that legislation protecting civil rights be extended to all—"The Legislature is not permitted to define the persons to whom civil rights are guaranteed; the Equal Protection Clause of the Constitution already answers that question, unequivocally guaranteeing that legislation to protect civil rights must be extended to all, without reservation or limitation."). Does 11-18 v. Dept. of Corrections, 2018 WL 1512432 (Mich. App. 2018) (citing Mich. Const. art. 1, § 2).

Michigan References:

Helen Hershkoff, *The Michigan Constitution, Judicial Rulemaking, and* Erie*-Effects on State Governance*, 60 WAYNE L. REV. 117 (2014).

MINNESOTA

RIGHT TO JURY TRIAL

Constitution:
Minn. Const. Art. I, § 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.”

Court Decisions:

- The Supreme Court of Minnesota has held that Article I Section 4 "does not freeze the right to a jury trial to only those causes of action that existed in 1857." Abraham v. County of Hennepin, 639 N.W.2d 342, 348 (Minn. 2002).
- "A party is therefore constitutionally entitled to a trial by jury 'if a party raising that same theory for relief at the time the Minnesota Constitution was adopted also would have been entitled to a jury trial.'" United Prairie-Bank Mountain Lake v. Haugen Nutrition & Equip. LLC, 813 N.W.2d 49 (Minn. 2012); Schmitz v. United States Steel Corp. 852 N.W.2d 669, 673 (Minn. 2014). *See also* Olson v. Synergistic Techs. Bus. Sys. 628 N.W.2d 142 (Minn. 2001).

RIGHT TO REMEDY

Constitution:
Minn. Const. art. 1 § 8: “Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.”

Court Decisions:
The Minnesota Constitution only protects "remedies for which the legislature has not provided a reasonable substitute." Schermer v. State Farm Fire & Cas. Co., 721 N.W.2d 307 at 316 (Minn. 2006), citing Hickman v. Group Health Plan Inc., 396 N.W. 2d 10 at 14 (Minn. 1986).

MISSISSIPPI

RIGHT TO JURY TRIAL

Constitution:
MISS. CONST. ART. 3, § 31: Trial by jury. The right of trial by jury shall remain inviolate, but the 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.

Court Decisions:

- "There is no violation of the right of trial by jury when judgment is entered summarily in cases where there is no genuine issue of material fact and the moving party is entitlted to judgment as a matter of law. There is no right of trial by jury in such cases." McCalop v. Marascalco, 1998 LEXIS 518 at 7 (Miss. 1998).

- "The right to jury trial guaranteed by Section 31 applies only to those cases in which a jury trial was necessary at common law. At common law . . . suits against the State were not available at all, due to sovereign immunity." Wells by Wells v. Panola County Bd. of Educ., 645 So. 2d 883, 899 (Miss. 1994).
- The Mississippi Supreme Court held that the state constitutional right to trial by jury is guaranteed only in cases in which a jury was required at common law. The Court held that, because the right to sue a school district did not exist at common law, statutes providing a cause of action against a school district did not violate the right to a jury trial by placing a limit on recovery of compensatory damages and providing for a trial before a chancellor. The Court also held that the statutes did not violate the open courts provision or separation of powers doctrine. Wells by Wells v. Panola Cty. Bd. of Educ., 645 So. 2d 883, 899 (Miss. 1994).
- The United States Court of Appeals for the Fifth Circuit rejected a claim that Mississippi's statutory cap on noneconomic damages violated the Mississippi Constitution's separation of powers provision and guarantee of the right to trial by jury. Learmonth v. Sears, Roebuck & Co., 710 F.3d 249 (5th Cir. 2013).
- The Mississippi Supreme Court held that, because the case alleged a claim for equitable relief within the chancery court's exclusive jurisdiction, the constitutional right to trial by jury was not infringed by allowing the case to remain in chancery court, where fact findings are made by a chancellor, not a jury. The Court reversed an order that had transferred the case from chancery court to circuit court for a jury trial. Derr Plantation, Inc. v. Swarek, 14 So. 3d 711 (Miss. 2009).

RIGHT TO REMEDY

Constitution:

- MISS. CONST. ART. 3, § 24: Open courts; remedy for injury. All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay.
- MISS. CONST. ART. 3, §25: Access to courts. No person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or counsel, or both.

Court Decisions:

MISS. CONST. ART. 3, § 24:

- Under Article 3, Sections 24 and 25, of the Mississippi Constitution, "because our courts are open to every person, an alleged undocumented immigrant is not barred from tort recovery solely based on his alleged undocumented status . . . ." McKean v. Yates Engineering Corp., 200 So. 3d 431, 437 (Miss. 2016).
- 24 The Mississippi Supreme Court has held that the remedy clause, Miss. Const. Art. 3, section 24, does not conflict with sovereign immunity in Robinson v. Stewart, 655 So. 2d 866 (Miss 1995). The remedy clause does not require exceptions to sovereign immunity and does not grant an absolute guarantee of a trial. See Wallace v. Town of Raleigh, 815 So. 2d 1203 at 1207 (Miss. 2002).

MISS. CONST. ART. 3, § 25:

- 25 Mississippi access-to-courts provision, Article 3, Section 25, was violated by the removal from the courtroom of a husband during testimony from his wife's daughter from a previous relationship about his alleged sexual abuse of her. Error was deemed to have been harmless because husband failed to explain how he was prejudiced by removal from the courtroom. Miller v. Smith, 229 So. 3d 100 (Miss. 2017).

- 25 Constitutional right to redress in the courts not violated by the dismissal of medical negligence/wrongful death claims based on immunity under the Mississippi Tort Claims Act. Price v. Clark, 21 So. 3d 509 (Miss. 2009).

Mississippi References:

- Mark A. Behrens & Cary Silverman, *Building on the Foundation: Mississippi's Civil Justice Reform Success and A Path Forward*, 34 MISS. C. L. REV. 113 (2015).
- David F. Maron, *Statutory Damage Caps: Analysis of the Scope of Right to Jury Trial and the Constitutionality of Mississippi Statutory Caps on Noneconomic Damages*, 32 MISS. C. L. REV. 109 (2013).

MISSOURI

RIGHT TO JURY TRIAL

Constitution:

Mo. Const. Art. I, § 22(a): "Article I, §22(a). Right of Trial by Jury—Qualification of Jurors—Two-Thirds Verdict. That the right of trial by jury as heretofore enjoyed shall remain inviolate."

Statutes and Court Rules:

V.A.M.S. 510.190 Right of trial by jury--waiver

1. The right of trial by jury as declared by the constitution or as given by a statute shall be preserved to the parties inviolate. In particular, any issue as to whether a release, composition, or discharge of plaintiff's original claim was fraudulently or otherwise wrongfully procured shall be tried by jury unless waived.
2. Parties shall be deemed to have waived trial by jury:
   (1) By failing to appear at the trial;
   (2) By filing with the clerk written consent in person or by attorney;
   (3) By oral consent in court, entered on the minutes;
   (4) By entering into trial before the court without objection.
3. In actions against the state when a statute provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.
4. In actions where an infant or a mentally incapacitated person is a party and where an infant or mentally incapacitated person is represented by a legal representative, trial by jury shall be deemed to be waived under the circumstances set forth in subsection 2.

Court Decisions:

- The Missouri Supreme Court has interpreted Article I, Section 22(a) of the Missouri Constitution to mean that the right to a jury trial is "beyond the reach of hostile legislation and [is] preserved" as it existed at common law before the state constitution's first adoption in 1820. The phrase "heretofore enjoyed" means that "the constitution protects the right as it existed when the constitution was adopted and does not provide a jury trial for proceedings subsequently created." Dodson v. Ferrara, 491 S.W.3d 542, 553 (Mo. En banc 2016).

- Statutory caps on damage awards did not exist and were not contemplated by the common law when the people of Missouri adopted their constitution in 1820 guaranteeing that the right to trial by jury as heretofore enjoyed shall remain inviolate. The right to trial by jury "heretofore enjoyed" was not subject to legislative limits on damages. Klotz v. St. Anthony's Medical Center 311 S.W.3d 752 (Mo. En banc 2010) (Wolff, J., concurring at 774).
- The Supreme Court of Missouri held that V.A.M.S. § 538.210, a state statute imposing a cap on non-economic damages for medical negligence, violated the Missouri Constitution's right to trial by jury. Watts v. Lester E. Cox Medical Centers, 376 S.W.3d 633 (Mo. 2012).
- A statutory cap on punitive damages violated the right to a trial by jury as guaranteed by the Missouri Constitution. Lewellen v. Franklin, 441 S.W.3d 136 (Mo. banc 2014).
- The constitutional guarantee to a trial by jury attached to a civil action for damages under the Missouri Human Rights Act. The right to a trial by jury, where it applies, is beyond the reach of hostile legislation. State ex rel. Diehl v. O'Malley, 95 S.W.3d 82 (Mo. banc 2003).
- The existence of equitable claims could not alone justify a wholesale denial of a request for a jury trial. Missouri trial courts have jurisdiction to try cases involving requests for equitable relief and damages in one proceeding. State ex rel. Leonardi v. Sherry, 137 S.W.3d 462 (Mo. banc 2004).
- A statutory cap on noneconomic damages violated the right to a trial by jury as guaranteed by the Missouri Constitution. Watts v. Lester E. Cox Med. Centers, 376 S.W.3d 633 (Mo. banc 2012).

RIGHT TO REMEDY

Constitution:
Mo. Const. art. I, § 14: "Open courts—certain remedies—justice without sale, denial or delay.
That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay."

Court Decisions:
- "Put most simply, article I, section 14 prohibits any law that arbitrarily or unreasonably bars individuals or classes of individuals from acessing our courts in order to enforce recognized causes of action for personal injury." Kilmer v. Mun, 17 S.W.3d 545 at 549 (Mo. banc 2000). (The case concerned a statute authorizing a dram shop cause of action only when a liquor licensee had been convicted for providing liquor to an intoxicated person.)
- While the open courts provision does not "itself grant substantive rights but, rather, is a procedural safeguard that ensures a person has access to the courts when that person has a legitimate claim recognized by law." Etling v. Westport Heating & Cooling Servs., 92 S.W.3d 771 at 774 (Mo. banc 2003).
- Statutes that would bar litigants from relief are subject to the open courts provision of the Missouri Constitution, and "may be subject to the constitutional principle of separation of powers." Statutory restrictions on judicial remedies cannot and do not infringe upon the subject matter jurisdiction of the Missouri circuit courts over all civil cases, as granted by the Missouri Constitution. J.C.W. ex rel. Webb v. Wyciskalla, 275 S.W.3d 249 (Mo. banc 2009).

Missouri References:

- Josh Gupta-Kagan, *Where the Judiciary Prosecutes in Front of Itself: Missouri's Unconstitutional Juvenile Court Structure*, 78 Mo. L. Rev. 1245 (2013).
- W. Dudley McCarter, Statutory Cap on Damages in Medical Malpractice Cases Is Unconstitutional, 68 J. Mo. B. 248 (2012).
- Carol J. Miller & Joseph Weidhaas, *Medical Malpractice Noneconomic Caps Unconstitutional*, 69 J. Mo. B. 344 (2013).
- Emily Mace, *Missouri's Statutory Cause of Action for Medical Negligence: Legitimate Application of Legislative Authority or Violation of Constitutional Rights*?, 81 Mo. L. Rev. 899 (2016).
- Judith Resnik, *Constitutional Entitlements to and in Courts: Remedial Rights in an Age of Egalitarianism: The Childress Lecture*, 56 St. Louis U.L.J. 917 (2012).
- Lynsey Russell, *Statutory Caps on Punitive Damages: Are They Infringing on Your Rights? Lewellen v. Franklin, 441 S.W.3d 136 (Mo. 2014) (En Banc),* 80 Mo. L. Rev. 853 (2015).
- Michael A. Wolff, *Is There Life After Concepcion? State Courts, State Law, and the Mandate of Arbitration*, 56 St. Louis U. L.J. 1269 (2012).

MONTANA

RIGHT TO JURY TRIAL

Constitution:
Mont. Const. Art. II, § 26: "The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous."

Court Decisions:
"The right to jury trial encompassed by § 26 embraces only those causes of action in which the right was enjoyed when the constitution was adopted. . . . Section 26 may be constrained in only two ways: (1) it does not apply to purely equitable actions; and (2) it does not apply to those actions at law that did not have the right to a jury trial associated with them prior to the adoption of the 1889 constitution." State v. Chilinski, 385 P.3d 236, 240 (Mont. 2016).

RIGHT TO REMEDY

Constitution:
Mont. Const. art. II, § 16: "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay."

Court Decisions:

- "Art. II, Section 16 must be considered in its entirety, including the second sentence which limits the broad guarantees contained in the first sentence." Raisler v. Burlington N. Ry., 219 Mont. 254 at 261 (Mont. 1985).
- "In order for Art. II, Section 16 to apply, there must hve been an "injury of person, property or character." Femling v. Montana State Univ., 220 Mont. 133 at 138 (Mont. 1986).

NEBRASKA

RIGHT TO JURY TRIAL

Constitution:
Neb. Const. Art. I, § 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.”

Court Decisions:
"The purpose of Article I, § 6 is to preserve the right to a jury trial as it existed at common law and under the statutes in force when the constitution was adopted." State ex rel. Cherry v. Burns, 258 Neb. 216, (Neb. 1999).

RIGHT TO REMEDY

Constitution:
Neb. Const. art. I, § 13: “All courts shall be open, and every person, for any injury done him or her in his or her lands, goods, person, or reputation, shall have a remedy by due course of law and justice administered without denial or delay, except that the Legislature may provide for the enforcement of mediation, binding arbitration agreements, and other forms of dispute resolution which are entered into voluntarily and which are not revocable other than upon such grounds as exist at law or in equity for the revocation of any contract.”

Court Decisions:

- "The requirement of Neb. Const. art. I, § 13, that all courts be open and every person have a remedy by due process of law for any injury to his person, does not mean that limits may not be imposed upon the time within which one must ask courts to act." Colton v. Dewey, 212 Neb. 126 at 129 (Neb. 1982); see also Drainage District v. Chicago, B. & Q. R. Co., 96 Neb. 1 (1914).
- If a common-law right is taken away, nothing needs to be replaced due to the fact the Legislature can eliminate a common-law cause of action entirely. It can also alter the remedy for a cause of action without providing a replacement remedy, or quid pro quo. Gourley v. Neb. Methodist Health Sys., 265 918 at 952 (Neb. 2003).

NEVADA

RIGHT TO JURY TRIAL

Constitution:
Nev. Const. Art. I, § 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; and in 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."

Court Decisions:
- 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).
- Jury trial is a right and must be afforded unless waived in by a method provided by statute. Murrish v. Kennedy, 54 Nev. 159, 10 P.2d 636, 1932 Nev. LEXIS 16 (Nev. 1932).
- 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).
- District court's grant of additur after jury verdict has been rendered does not violate state constitutional guarantee of jury trial. Jacobson v. Manfredi by Manfredi, 679 P.2d 251 (Nev. 1984).
- 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).
- There is no jury trial right for actions filed in small claims court. Cheung v. Eighth Judicial Dist. Court of Nev., 124 P.3d 550 (Nev. 2005).
- Generally, there is no right to jury trial when restitution is the remedy sought. Ruley v. Nevada Bd. of Prison Com'rs, 628 F.Supp. 108 (Nev. 1986).
- State 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).

NEW HAMPSHIRE

RIGHT TO JURY TRIAL

Constitution:
N.H. Const., part 1, art. 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."

Court Decisions:

- The right to a jury trial under the New Hampshire Constitution "is not without limitation; it 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, 712 (N.H. 1983).
- Typically the right to jury trial is determined by a historical test of its use in common law. See Hallahan v. Riley, 94 N.H. 338 (N.H. 1947).
- "To resolve whether a party has a right to trial by jury in a particular action, we generally look to both the nature of the case and the relief sought, and ascertain whether the customary practice included a trial by jury before 1784." Franklin Lodge of Elks v. Marcoux, 149 N.H. 581 (N.H. 2003).

RIGHT TO REMEDY

Constitution:

N.H. Const. pt. I, art. 14: "Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws."

Court Decisions:

- The purpose of this article was to make civil remedies readily available and guard against arbitrary and discriminatory infringements on access to the courts. See State v. Basinow, 117 N.H. 176 (N.H. 1977).
- The Supreme Court of New Hampshire held that the rights guaranteed in part I, article 14 "are necessarily relative." See Sousa v. State, 115 N.H. 340 (N.H. 1975).
- This part of the New Hampshire Constitution does not guarantee that all injured indivdiuals will receive full compensation for their injuries. Hackett v. Perron, 119 N.H. 419 (N.H. 1979).
- The purpose of this provision is "to make civil remedies available and to guard against arbitrary and discriminatory infringements upon access to courts." Huckins v. McSweeney, 166 N.H. 176 at 180 (N.H. 2014) citing Ocasio v. Fed. Express Corp., 162 N.H. 436 at 448 (N.H. 2011).

NEW JERSEY

RIGHT TO JURY TRIAL

Constitution:

NJ Const. Art. I, para. 9: "The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons. The Legislature may provide that in any civil cause a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury."

Court Decisions:

- The Constitution effectively preserves the jury trial as it was in 1776. Town of Montclair v. Stanoyevich, 79 A.2d 288 (N.J. 1951).
- Right to a jury only in actions at law. Muise v. GPU, Inc., 753 A.2d 116 (N.J. App. Div. 2000).
- Rule 4:35-2: If there is no right to a jury, the court can use an advisory jury if it wishes.
- When claims are predominantly equitable and the issues and facts are interwined, the court can adjudicate them without a jury. Boardwalk Properties, Inc. v. BPHC Acquisition, Inc., 602 A.2d 733 (N.J. App. Div. 1991).
- The most persuasive factor in determining if there is a right to jury trial is whether the source of the remedy is legal or equitable. Weinisch v. Sawyer, 587 A.2d 615, 620 (N.J. 1991).
- The court may decide which issues are tried first when some require a jury decision and others a court decision, but the widespread practice is that equitable issues are tried prior to legal issues. New Jersey Highway Auth. v. Renner, 114 A.2d 555 (N.J. 1955).
- Whether the action is brought in the Law Division or the Chancery Division, all issues of fact subject to the right to jury trial shall be decided by a jury, unless the jury trial right is waived, expressly or impliedly. O'Neil v. Vreeland, 77 A.2d 899, 904 (N.J. 1951).
- Trial courts may not sanction parties for failing to comply with a procedural rule by taking away jury trial. Williams v. American Auto Logistics, 140 A.3d 1262 (N.J. 2016).
- Civil jury trial right applies to private-action claims seeking compensatory and punitive damages under the Insurance Fraud Prevention Act, N.J. Stat. Ann. § § 17:33A-1 to 17:33A-30. Allstate New Jersey Ins. Co. v. Lajara, 117 A.3d 1221 (N.J. 2015).
- N.J. Stat. Ann. § 2B:23-17 (which allows parties to stipulate a smaller majority than five-sixths could enter a verdict) is constitutional. LaManna v. Proformance Ins., 876 A.2d 785 (N.J. 2005).
- Right to jury trial applies to fraud and tortious interference causes of action. 500 Columbia Turnpike Assocs. v. Haselmann, 645 A.2d 1210 (N.J. App.Div. 1994).
- Waiver of jury trial in contract must be conspicuous to constitute knowing/voluntary waiver and be enforceable. A non-negotiated jury waiver clause placed inconspicuously in a standard form contract entered into w/o counsel assistance should not be enforced. Fairfield Leasing Corp. v. Techni-Graphics, Inc., 607 A.2d 703 (N.J. Law Div. 1992).

NEW MEXICO

RIGHT TO JURY TRIAL

Constitution:

N.M. Const. Art. II, § 12: "The right of trial by jury as it has heretofore existed shall be secured to all and remain inviolate. In all cases triable in courts inferior to the district court the jury may consist of six. The legislature may provide that verdicts in civil cases may be rendered by less than a unanimous vote of the jury."

Court Decisions:

- Richardson v. Carnegie Library Rest., Inc., 107 N.M. 688, 763 P.2d 1153 (N.M. 1988), overruled on other grounds by Trujillo v. City of Albuequerque, 125 N.M. 721, 965 P.2d 305 (N.M. 1998).
- Litigant only has right to a jury trial in civil cases if the right existed either at common law or by statute at the time of the adoption of New Mexico's constitution. Board of Educ. v. Harrell, 882 P.2d 511 (N.M. 1994).

- Rule 1-038(b) NMRA: party gets 6-person jury unless s/he asks for a 12-person jury.
- 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. II, § 12. State ex rel. Children, Youth and Families Dept. v. T.J., 934 P.2d 293 (N.M. Ct. App. 1997).
- If a case has both equitable and legal claims, trial judge may decide the equitable claims first if they have no disputed fact issues in common with the legal claims (even if deciding the equitable claims results in dismissal of the legal claims). But, if the equitable and legal claims have common issues of fact material to the disposition of both claims, the legal claims must go to a jury before the equitable claims are decided. Blea v. Fields, 120 P.3d 430 (N.M. 2005).
- Constitutional right to jury trial does not preclude the use of reasonable court rules removing the jury trial option if the party does not make demand within the specified time and manner. Carlile v. Continental Oil Co., 468 P.2d 885 (N.M. Ct. App. 1970).
- Ordering remittitur when the jury returns an excessive verdict does not violate the right to a jury trial. Henderson v. Dreyfus, 191 P. 442 (N.M. 1919).
- There is no jury trial right for paternity, divorce, child custody, or child support actions. State ex rel. Human Servs. Dep't v. Aguirre, 797 P.2d 317 (N.M. Ct. App. 1990).
- Counter-claimants also have right to jury trial. Unless the jury trial is waived, legal issues should be tried by juries and equitable issues tried by the court. Evans Fin. Corp. v. Strasser, 664 P.2d 986 (N.M. 1983).
- If the legislature creates a right of action pursuant to a special statutory proceeding, there is no constitutional right to a jury trial unless the statute so provides. Salopek v. Friedman, 308 P.3d 139 (N.M. Ct. App. 2013).

RIGHT TO REMEDY

Court Decisions:
New Mexico recognizes this right by judicial interpretation. Richardson v. Carnegie Library Rest., Inc., 107 N.M. 688, 763 P.2d 1153 (N.M. 1988), *overruled on other grounds* by Trujillo v. City of Albuquerque, 125 N.M. 721, 965 P.2d 305 (N.M. 1998).

NEW YORK

RIGHT TO JURY TRIAL

Constitution:
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."

Statutes and Court Rules:
Pursuant to New York R. Civ. Pro 4101, right to jury trial exists, unless it is waived or reference is directed under NY CPLR § 4317 for the following types of Court Decisions:

- 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.

Court Decisions:

- 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).
- The right to a jury trial is not strictly limited to those instances in which it was actually used in 1894, but also extends to new cases that are analogous to those traditionally tried by a jury. Matter of DES Mkt. Share Litig., 79 N.Y.2d 299, 305 (NY 1992), citing Colon v. Lisk, 153 N.Y. 188, 193; Independent Church of Realization of Word of God v. Board of Assessors, 72 A.D.2d 554).
- 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).

NORTH CAROLINA

RIGHT TO JURY TRIAL

Constitution:

- NC Const. 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."
- NC Const. 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."

Statutes and Court Rules:

N.C. Gen. Stat. Ann. 1A-1, 38

(a) Right preserved.—The right of trial by jury as declared by the Constitution or statutes of North Carolina shall be preserved to the parties inviolate.

(b) Demand.—Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be made in the pleading of the party or endorsed on the pleading.

(c) Demand—Specification of issues.—In his demand, a party may specify the issues which he wishes so tried; otherwise, he shall be deemed to have demanded trial by jury for all the issues so triable. If a party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the last pleading directed to such issues or within 10 days after service of the demand, whichever is later, or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues in the action.

(d) Waiver.—Except in actions wherein jury trial cannot be waived, the failure of a party to serve a demand as required by this rule and file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. A demand for trial by jury as herein provided may not be withdrawn without the consent of the parties who have pleaded or otherwise appear in the action.

(e) Right granted.—The right of trial by jury as to the issue of just compensation shall be granted to the parties involved in any condemnation proceeding brought by bodies politic, corporations or persons which possess the power of eminent domain.

Court Decisions:

- 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).
- 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).

RIGHT TO REMEDY

Constitution:

N.C. Const. art. I, § 18: "All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay."

Court Decisions:

- The North Carolina Constitution Article 1, Section 18 confers standing on those who have suffered harm. Willowmere Cmty. Ass'n, Inc. v. City of Charlotte, 809 S.E.2d 558, 561 (N.C. 2018) (citing Mangum v. Raleigh Bd. of Adjustment, 669 S.E.2d 279, 281 (2008)).
- Governor had standing to challenge constitutionality of legislation created by State Board of Elections and Ethics Enforcement that cause him harm. Cooper v. Berger, 809 S.E.2d 98, 105 (2018).
- Under N.C. Const. art. I, § 18, taxpayers have standing to challenge as unlawful or unconstitutional government expenditures and are entitled to seek equitable relief in the form of a declaratory judgment under the North Carolina Uniform Declaratory Judgment Act (NCUDJA). Goldston v. State, 637 S.E.2d 876, 878 (2006).
- North Carolina's statutory limitation on punitive damages does not violate the Open Courts Clause of the North Carolina Constitution. N.C.G.S. § 1D–25 does not violate the North Carolina Constitution and applies to limit the recovery of each plaintiff. Rhyne v. K-Mart Corp., 594 S.E.2d 1, 18 (2004).
- "Although plaintiff may have some additional remedy in the federal courts, the courts of North Carolina cannot fail to provide a forum to determine a valid cause of action. N.C. Const. art. I, sec. 18 (1984) (open courts clause)." Coman v. Thomas Mfg. Co.,381 S.E.2d 445, 446 (NC 1989).

NORTH DAKOTA

RIGHT TO JURY TRIAL

Constitution:

ND Const. Article I, Section 13: "The right of trial by jury shall be secured to all, and remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right

of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases, provided that the jury consists of at least six members. All verdicts must be unanimous."

Statutes and Court Rules:
ND R ADMIN AR 9 App., Standards Relating to Juror Use and Management, 17(b): Juries in civil cases shall consist of six persons unless any party makes a timely written demand for a jury of nine.
(c) A unanimous decision shall be required for a verdict in all cases heard by a jury, except in civil cases, in which the parties may stipulate to less than a unanimous verdict.

Court Decisions:

- "N.D.C.C. § 32–12.1–03(2) does not preclude a jury from determining damages; rather, the damage cap limits the amount of recovery ultimately allowed against a political subdivision. We conclude the damage cap in N.D.C.C. § 32–12.1–03(2) does not violate the jury trial provisions of N.D. Const. art. I, § 13."Larimore Pub. Sch. Dist. No. 44 v. Aamodt, 908 N.W.2d 442, 455 (ND 2018).
- 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).
- 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).
- Courts examine the right of trial by jury as of 1889, the year our state adopted its constitution in interpreting the application of art. I, § 13 to violations of municipal ordinances. City of Bismarck v. Fettig, 601 N.W.2d 247 (ND 1999).

RIGHT TO REMEDY

Constitution:
N.D. Const. art. I, § 9: All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

Court Decisions:

- "[W]e have consistently recognized that N.D. Const. art. I, § 9 guarantees an important substantive right of access to courts for redress of wrongs, but is not absolute and does not guarantee a remedy for every claimed wrong." Larimore Pub. Sch. Dist. No. 44 v. Aamodt, 908 N.W.2d 442, 451 (ND 2018).
- N.D.C.C. Section 27–10–01.4, does not authorize a claim for compensatory remedial contempt sanctions against the State or state employees. A person who requests compensatory remedial contempt sanctions against the state or a state employee must comply with the requirements of N.D.C.C. ch. 32–12.2. State v. New Holland, 869 N.W.2d 136, 141–42 (ND 2015).
- The State has immunity for the exercise of discretionary acts in its official capacity. N.D.C.C. § 32–12.2–02(3) does not violate individual rights under N.D. Const. art. I, § 9. The statue provides that neither the state nor a state employee may be held liable for a claim resulting from a decision to refuse to grant a license. Kouba v. State, 687 N.W.2d 466, 471 (ND 2004).
- The Supreme Court rejected an argument that "workers' rights to benefits have become so eroded that workers compensation benefits no longer constitute the necessary quid pro quo

justifying the forced relinquishment of her access to the courts under N.D. Const. art. I, § 9." Eagle v. N. Dakota Workers Comp. Bureau, 583 N.W.2d 97, 101 (ND 1998).
- Statutory provisions immunizing a ski facility operator from liability for inherent risks of skiing absolved a ski facility operator from liability in some instances, but are not a bar to access to the courts under N.D. Const. art. I, § 9. Bouchard v. Johnson, 555 N.W.2d 81, 89 (N.D. 1996).

OHIO

RIGHT TO JURY TRIAL

Constitution:
Ohio Const. Art. I, § 5: "The right of trial by jury shall be inviolate . . . ."

Statutes and Court Rules:
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.

Court Decisions:
- The right to a jury under Article I, Section 5 does not guarantee jury trial in all cases, but only for causes of actions which the right existed at common law at time that the 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).
- The Supreme Court found that R.C. 2315.18(B)(2), which imposed a limit on non-economic damages, did not violate the state constitutional right to a jury trial. A court may alter an award of damages as a matter of law "[s]o long as the fact-finding process is not intruded upon and the resulting findings of fact are not ignored or replaced by another body's findings." Simpkins v. Grace Brethren Church of Delaware, Ohio, 149 Ohio St. 3d 307, 313 (2016) (quoting Arbino v. Johnson & Johnson, 880 N.E.2d 420, at ¶ 34 (Ohio 2007)).
- Without publishing an opinion, the Ohio Supreme Court held that the right to a jury trial may not be impaired, but it 'may be subject to moderate and reasonable regulation.' Lindsley v. Roe, 964 N.E.2d 1063, 1072 (OH. 2011).
- The court found that reasonable regulation included "Local court rules, requiring an advance deposit as security for the costs of a jury trial and providing that the failure of a party to advance such deposit constitutes a waiver of the right to a trial by jury." (citing Skiadas v. Finkbeiner, 2007-Ohio-3956). Lindsley v. Roe, 957 N.E.2d 300 (Ohio 2011).
- Without publishing an opinion, the Ohio Supreme Court held that the Public Utilities Commission of Ohio (PUCO) could have exclusive jurisdiction over a claim. The trial court's dismissal of the case was appropriate, because plaintiffs did not show that there was or is a common law right to a jury trial in a case against a public utility that has allegedly violated its obligation to the public. Flex Techs. v. Am. Elec. Power Co., 2015-Ohio-3456, ¶ 21, 41 N.E.3d 174, 179 (Oh. Ct. App. 5th. 2015), Flex Techs. v. Am. Elec. Power Co., 45 N.E.3d 244 (Ohio 2016).

RIGHT TO REMEDY

Constitution:
Ohio Const. art. I, § 16: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

Statutes and Court Rules:
R.C. 2315.18(B)(2) limits the amount of compensatory damages for noneconomic loss that is recoverable in a tort action the greater of two hundred fifty thousand dollars or an amount that is equal to three times the economic loss, as determined by the trier of fact, of the plaintiff in that tort action to a maximum of three hundred fifty thousand dollars for each plaintiff in that tort action or a maximum of five hundred thousand dollars for each occurrence that is the basis of that tort action.

Court Decisions:
- Article I, § 16 has the equivalent of the due process clause of under the United States Constitution. Michael J. DeBoer, The Right to Remedy by Due Course of Law—A Historical Exploration and an Appeal for Reconsideration, 6 Faulkner L. Rev. 135, 196 (2014) (citing Arbino v. Johnson & Johnson, 880 N.E.2d 420, 433 (Ohio 2007) ("We have recognized [Article I, § 16, the 'due course of law' provision,] as the equivalent of the 'due process of law' protections in the United States Constitution.").
- State ex rel. Heller v. Miller, 399 N.E.2d 66, 67 (Ohio 1980) ("When read in conjunction with Sections 1, 2 and 19, [Article I] Section 16 is the equivalent to the Fourteenth Amendment's due process clause.")
- R.C. 2315.18(B)(2), which imposed a limit on non-economic damages, did not violate the state constitutional right to remedy because it did not wholly foreclose relief to the plaintiff and other economic damages are meaningful remedies. Simpkins v. Grace Brethren Church of Delaware, Ohio, 149 Ohio St. 3d 307, 315 (2016).
- The right to a remedy only protects causes of action that the General Assembly identifies and for the period of time it determines. Ruther v. Kaiser, N.E.2d 291, ¶ 12 (Ohio 2012).
- R.C. 2305.113(C) is constitutional because the party has a reasonable amount of time to bring a vested cause of action, and the legislature has a rational basis for the limitation. Antoon v. Cleveland Clinic Found., N.E.3d 974, 982 (Ohio 2016).
- Ohio's law governing asbestos litigation claims, particularly the requirement of R.C. 2307.91(Z)(2) that a competent medical authority be a medical doctor who "is actually treating or has treated the exposed person and has or had a doctor-patient relationship with the person," does not deny a constitutional right to a remedy when the case is administratively dismissed. Renfrow v. Norfolk S. Ry. Co.,18 N.E.3d 1173, 1182 (Ohio 2014).

OKLAHOMA

RIGHT TO JURY TRIAL

Constitution:
Okla. Const. Art. II, § 19: "The right of trial by jury shall be and remain inviolate, except in civil cases wherein the amount in controversy does not exceed One Thousand Five Hundred Dollars ($1,500.00), or

in criminal cases wherein punishment for the offense charged is by fine only, not exceeding One Thousand Five Hundred Dollars ($1,500.00). Provided, however, that the Legislature may provide for jury trial in cases involving lesser amounts. Juries for the trial of civil cases, involving more than Ten Thousand Dollars ($10,000.00), and felony criminal cases shall consist of twelve (12) persons. All other juries shall consist of six (6) persons. However, in all cases the parties may agree on a lesser number of jurors than provided herein.

In all criminal cases where imprisonment for more than six (6) months is authorized, the entire number of jurors must concur to render a verdict. In all other cases three-fourths (3/4) of the whole number of jurors concurring shall have power to render a verdict. When a verdict is rendered by less than the whole number of jurors, the verdict shall be signed by each juror concurring therein.

Court Decisions:
Lee v. Bueno, 381 P.3d 736 (Okla. 2016).

RIGHT TO REMEDY

Constitution:
Okla. Const. art. II, § 6: "Courts of justice open - Remedies for wrongs - Sale, denial or delay.
The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice."

Court Decisions:
- Article 2 section 6 operates as a mandate to the judiciary rather than a limitation on the Legislature. It is intended to guarantee that the judicairy would be open and available for the resolution of disputes, but it does not gurantee that any particular set of events would result in court awarded relief. See Lee v. Bueno, 2016 OK 97, 381 P.3d 736; citing Rollings v. Thermodyne Industries, Inc., 1996 OK 6, ¶9 (1996).
- Article 2 section 6 guarantees that the courts are open to all on the same terms without prejudice. Id.
- John v. Saint Francis Hospital, 405 P.3d 681 (Okla. 2017).
- Gibby v. Hobby Lobby Stores Inc., 404 P.3d 44 (Okla. 2017).
- Graham v. D & K Oilfield Servs., 404 P.3d 863 (Okla. 2017).
- Lee v. Bueno, 381 P.3d 736 (Okla. 2016).

PROHIBITION OF SPECIAL LEGISLATION

Constitution:
Article 5, § 46. Local and special laws on certain subjects prohibited. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing:
- The creation, extension, or impairing of liens;
- Regulating the affairs of counties, cities, towns, wards, or school districts;
- Changing the names of persons or places;
- Authorizing the laying out, opening, altering, or maintaining of roads, highways, streets, or alleys;

- Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other state;
- Vacating roads, town plats, streets, or alleys;
- Relating to cemeteries, graveyards, or public grounds not owned by the State;
- Authorizing the adoption or legitimation of children;
- Locating or changing county seats;
- Incorporating cities, towns, or villages, or changing their charters;
- For the opening and conducting of elections, or fixing or changing the places of voting;
- Granting divorces;
- Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;
- Changing the law of descent or succession;
- Regulating the practice or jurisdiction of, or changing the rules of evidence in judicial proceedings or inquiry before the courts, justices of the peace, sheriffs, commissioners, arbitrators, or other tribunals, or providing or changing the methods for the collection of debts, or the enforcement of judgments or prescribing the effect of judicial sales of real estate;
- Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, or constables;
- Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;
- Fixing the rate of interest;
- Affecting the estates of minors, or persons under disability;
- Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;
- Exempting property from taxation;
- Declaring any named person of age;
- Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from due performance of his official duties, or his securities from liability;
- Giving effect to informal or invalid wills or deeds;
- Summoning or impaneling grand or petit juries;
- For limitation of civil or criminal actions;
- For incorporating railroads or other works of internal improvements;
- Providing for change of venue in civil and criminal cases.

Court Decisions:

- Lee v. Bueno, 381 P.3d 736 (Okla. 2016).
- Wall v. Marouk, 302 P.3d 775 (Okla. 2013).

Oklahoma References:

DANNY M. ADKISON & LISA MCNAIR PALMER, THE OKLAHOMA STATE CONSTITUTION: A REFERENCE GUIDE (2001).

OREGON

RIGHT TO JURY TRIAL

Constitution:

- Or. Const. Art. I, § 17: "In all civil cases the right of Trial by Jury shall remain inviolate."
- Or. Const. Art. VII, sec. 3: "Trial by jury; record on appeal; entry of judgment. In actions at law, where the value in controversy shall exceed $750, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict."

Court Decisions:

- Article 1 Section 17 guarantees a jury trial in civil actions for which the common law provided a jury trial when the Oregon Constitution was drafted in 1857, and that means that all issues of fact in those cases must be tried by a jury. Lawson v. Hoke, 339 Ore. 253 (Ore. 2005).
- This article is not a source of law that creates or retains a substantive claim or a theory of recovery in favor or any party. All it does is guarantee a jury trial in civil action which provided a jury trial in 1857. Lawson v. Hoke, 339 Ore. 253 (Ore. 2005).

RIGHT TO REMEDY

Constitution:

Or. Const. art. I, § 10: "No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation."

Oregon References:

- Kathryn H. Clarke, *Foreword: Fundamental Rights or Paper Tigers?*, 96 OR. L. REV. 480 (2018).
- Nadia Dahab*, Oregon's History on Caps and the Outlook After* Horton, 96 OR. L. REV. 621 (2018).
- Travis Eiva, Susan Marmaduke, W. Eugene Hallman, Hon. David Schuman, *The Remedy Clause, Reexamination of Verdicts, and Separation of Powers Principles*, 96 OR. L. REV. 707 (2018).
- Travis Eiva, *The Constitutional Authority of Oregon Juries: Drawing the Line on Legislative Encroachment*, 96 OR. L. REV. 599 (2018).
- W. Eugene Hallman, *After* Horton*—Damages Caps and the Remedy Clause*, 96 OR. L. REV. 585 (2018).
- Susan Marmaduke, Horton*: The Remedy Clause and the Right to Jury Trial Provisions of the Oregon Constitution*, 96 OR. L. REV. 561 (2018).
- Robert S. Peck, Hon. Christine Durham, Hon. Michael Wolff, Paula Hannaford-Agor, *The Jury Trial Right,* 96 OR. L. REV. 691 (2018).
- David Schuman, *Oregon's Remedy Guarantee: Article I, Section 10 of the Oregon Constitution*, 65 OR. L. REV. 35 (1986).
- Hon. David Schuman, *Setting the Stage,* 96 OR. L. REV. 673 (2018).

PENNSYLVANIA

RIGHT TO JURY TRIAL

Constitution:
Pa. Const. Art. I, § 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."

Court Decisions:
- Generally Article I, Section 6 "does not require an absolutely unfettered right to trial by jury." Parker v. Children's Hospital, 483 Pa. 106 (Pa. 1978).
- The Pennsylvania Supreme Court held that the constitutional provision "was not to contract the power to furnish modes of civil procedure in courts of justice, but to secure the right of trial by jury in its accustomed form before rights of person or property shall be finally decided." Zauflik v. Pennsbury Sch. Dist., 629 Pa. 1, 62 (Pa. 2014).

RIGHT TO REMEDY

Constitution:
Pa. Const. art. I, § 11: "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct."

Court Decisions:
- Article I, § 11 can be invoked only with respect to a legal injury. Jackman v. Rosenbaum Co., 263 Pa. 158 (1919), aff'd 260 U.S. 22 (1922).
- Article I, § 11 does not prevent the Legislature from extinguishing a cause of action in all instances. It does prevent the Legislature from denying an injured party the right to seek relief from the courts for a legal injury by vesting that right solely in a third party who has the absolute discretion to choose whether to do so. Masloff v. Port Auth., 531 Pa. 416 at 425 (Pa. 1992).

Pennsylvania References:
- Comment, Jason Bologna, *An Abuse of Power: How the Pennsylvania Supreme Court Uses Article V, Section 10(C) of the Pennsylvania Constitution to Dominate Procedural Lawmaking, and Why Pennsylvania Should Amend this Constitutional Provision*, 71 TEMP. L. REV. 711 (1998).
- Donald Marritz, *Making Equality Matter (Again): The Prohibition Against Special Laws in the Pennsylvania Constitution*, 3 WIDENER J. PUB. L. 161 (1993).

RHODE ISLAND

RIGHT TO JURY TRIAL

Constitution:
R.I. Const. Art. I, § 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."

Statutes and Court Rules:
R.I. Gen. Laws § 9-10-11.1: Juries in civil cases shall be composed of six (6) persons and such alternate jurors as may be called pursuant to § 9-10-13.

Court Decisions:
- Jury trial right applies to claims that were triable by jury when the constitution went into effect. Any such claim must be submitted to a jury upon a party's demand for one. Connor v. Sullivan, 826 A.2d 953 (R.I. 2003).
- A jury trial is not required by the law of the land in all civil cases. State Bd. of Health v. Roy, 48 A. 802 (R.I. 1901).
- Jury trial is not matter of right in equity case. Bellini v. Neas, 146 A. 634 (R.I. 1929).
- Employers have a constitutional right to a jury trial regarding unlawful employment practice charges brought against them. Claim under Fair Employment Practices Act was found to be a hybrid claim outside public-rights doctrine, but within a party's constitutional right to jury trial. FUD's, Inc. v. State, 727 A.2d 692 (R.I. 1999).

RIGHT TO REMEDY

Constitution:
R.I. Const. Art. I, § 5: "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws."

Court Decisions:
- The provisions of G.S. 1872, ch. 195, § § 26 and 27 [§ 9-22-3 and former § 9-22-2], which required security for costs from plaintiffs resident in the state, as well as nonresidents, did not violate the right to remedy because such a statute operates as a safeguard against vexatious prosecution and to require security for costs is not a purchasing of justice. Conley v. Woonsocket Inst. for Sav., 11 R.I. 147 (1875).
- Mayor's actions in discharging members of board of canvassers and registration for malfeasance, conducting a hearing and refusing to reinstate them, was not unconstitutional because such removal did not constitute any injury to person or property. Molloy v. Collins, 18 A.2d 639 (R.I. 1941).
- The exclusive remedy provision of the Worker's Compensation Act (§ 28-29-20) does not violate the First Amendment right to petition the government for the redress of grievances, the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment, or this section. Boucher v. McGovern, 639 A.2d 1369 (R.I. 1994).

- Legislature's failure to provide a remedy against state officials who fail to inform crime victims of their rights (as required by § 12-28-3) does not violate the right to remedy. Bandoni v. State of Rhode Island, 715 A.2d 580 (R.I. 1998).
- Negligent performance of a sterilization procedure which results in the birth of a child is a tort for which recovery may be allowed. Emerson v. Magendantz, 689 A.2d 409 (R.I. 1997).
- Right to remedy is violated by a statute exempting legislators from the process of courts during the legislative session. Lemoine v. Martineau, 342 A.2d 616 (R.I. 1975).
- Statutes of limitations do not violate the right to remedy. Young v. Park, 359 A.2d 697 (R.I. 1976).
- Statute requiring claims for damages involving injury-causing products be commenced within 10 years of product purchase violates right to remedy. Kennedy v. Cumberland Eng'g Co., 471 A.2d 195 (R.I. 1984).
- Statute requiring claimants who bring actions in tort against constructors of improvements to real property do so within 10 years of the substantial completion of the improvement does not violate the right to remedy. Walsh v. Gowing, 494 A.2d 543 (R.I. 1985).
- Limitation on medical malpractice actions in § 9-1-14.1 places a reasonable limit on the parties' right to have their claims adjudicated by the courts and does not violate the right to remedy. Dowd v. Rayner, 655 A.2d 679 (R.I. 1995).
- The notice requirement in § 24-5-14 does not amount to an unconstitutional denial of access to the courts. Notice requirements that are imposed only on victims of governmental tortfeasors are rationally based and constitutionally valid. Hareld v. Napolitano, 615 A.2d 1015 (R.I. 1992).

SOUTH CAROLINA

RIGHT TO JURY TRIAL

Constitution:

S.C. Const. Art. I, § 14: “The right of trial by jury shall be preserved inviolate.”

Court Decisions:

- "Article I, Section 14, of the South Carolina Constitution, which preserves the right of trial by jury, shall be preserved only in those cases in which the parties were entitled to it under the law or practice existing at the time of the adoption of the constitution." Pelfrey v. Bank of Greer, 270 S.C. 691 (S.C. 1978), citing State v. Gibbes, 109 S.C. 135.
- When looking to see whether the right to jury trial exists, the "pertinent inquiry is whether, at the time of the adoption of the Constitution of 1868, either party to a stockholder's derivative action had the right, under the existing law or practice, to demand a jury trial of the factual issues." Id. at 694.

RIGHT TO REMEDY

Constitution:

S.C. Const. art. I, § 9: “All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained.”

SOUTH DAKOTA

RIGHT TO JURY TRIAL

Constitution:
S.D. Const. Art. VI, § 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."

Statutes and Court Rules:
S.D. Codified Laws § 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.

Court Decisions:

- 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).
- 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).
- No right to jury trial where the pleadings seek equitable relief or where the legal relief is incidental. If the action is at law, either party has a right to a jury trial. First W. Bank v. Livestock Yards Co., 466 N.W.2d 853 (S.D. 1991).
- 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).
- Right to jury trial applies for damages claim resulting from undue influence on intestate person. Nizielski v. Tvinnereim, 453 N.W.2d 831 (S.D. 1990).
- Nothing in S.D. Codified Laws § 16-19-64, nor in S.D. Const. art. VI, § 6 and its explanatory case, suggested an attorney with a discipline case against him/her was entitled to a jury trial in the action. In re Discipline of Hopewell, 507 N.W.2d 911 (S.D. 1993).
- Unemployment claims are special administrative proceedings not protected by the constitutional guarantee to a jury trial. Carr v. South Dakota Dep't of Labor, Unemployment Ins. Div., 355 N.W.2d 10 (S.D. 1984).

RIGHT TO REMEDY

Constitution:
S.D. Const. art. VI, § 20: "All courts shall be open, and every man for an injury done him in his property, person or reputation, shall have remedy by due course of law, and right and justice, administered without denial or delay."

Statutes and Court Rules:
S.D. Codified Laws § 21-5-1: availability of action for wrongful death.

Court Decisions:

- Neither S.D. Consolidated Laws § 35-11-1 (injuries caused by intoxicated person) nor S.D. Consolidated Laws § 35-4-78 violate the open courts provision. The remedy constitutionally guaranteed by the open courts provision must be one that is legally cognizable, and the legislature has the power to define the circumstances under which a remedy is legally cognizable and those under which it is not. Wegleitner v. Sattler, 582 N.W.2d 688 (S.D. 1998).
- South Dakota's "open courts" provision is a guarantee that the courts shall be open and afford a remedy for wrongs recognized by the laws of the land. Where a cause of action is implied or exists at common law without statutory abrogation, a plaintiff has a right to litigate and the courts will fashion a remedy. S.D. Const. art. VI, § 20 provides a right of access to the courts for causes of action recognized by common law or statute; it does not create rights of action. Green v. Siegel, Barnett & Schutz, 557 N.W.2d 396 (S.D. 1996).

TENNESSEE

RIGHT TO JURY TRIAL

Constitution:
Tenn. Const. Art. I, § 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."

Statutes and Court Rules:
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."

Court Decisions:

- 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).
- Tenn. Const. art. I, § 6 protects the right of trial by jury only as it existed at common law. Marler v. Wear, 96 S.W. 447 (Tenn. 1906).
- Any errors affecting the constitutional right to jury trial will result in such prejudice that automatic reversal is required. State v. Bobo, 814 S.W.2d 353 (Tenn. 1991).
- 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).
- Right to jury trial entitles litigant to have all of the issues of fact submitted to the same jury at the same time. Winters v. Floyd, 367 S.W.2d 288 (Tenn. Ct. App. 1962).

RIGHT TO REMEDY

Constitution:
Tenn. Const. art. I, § 17: "That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice

administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct."

Statutes and Court Rules:

- Tenn. Code Ann. § 29-20-201 et seq. regulates governmental tort liability.
- Tenn. Code Ann. § 29-39-102: non-economic damages in civil cases capped at $750,000.
- Tenn. Code Ann. § 29-39-104: punitive damages in civil cases capped at 2 times the total amount of compensatory damages awarded, or $500,000.

Court Decisions:

- Tenn. Const. art. I, § 17 is a mandate to the judiciary, and is not intended as a limitation on the legislative branch of the government. Scott v. Nashville Bridge Co., 223 S.W. 844 (Tenn. 1919).
- Under the Tenn. Const. art. I, § 17, the state of Tennessee has sovereign immunity from claims against it unless the state legislature expressly waives that immunity. Henderson v. Southwest Tenn. Cmty. College, 282 F. Supp. 2d 804 (W.D. Tenn. 2003).
- Suits against state employees acting in their official capacities are deemed to be suits against the state itself, and the state may only be sued "in such manner and in such courts as the legislature may by law direct;" thus, the state is immune from suit in a state court unless the legislature provides to the contrary. Simmons v. Gath Baptist Church, 109 S.W.3d 370 (Tenn. App. 2003).
- Tennessee does not recognize the enforcement of implied contract claims against the state. Woolsey v. Hunt, 932 F.2d 555 (6th Cir. Tenn. 1991).
- Tenn. Const. art. I, § 17 does not create a clear and unambiguous public policy exception to the employment at will doctrine. The constitution only limits governmental actions; private entities are not so bound. Even if the constitution did apply to private entities, Tenn. Const. art. I, § 17 does not clearly and unambiguously create a public policy which would prevent the discharge of at-will employees who sue their employers. Deiters v. Home Depot U.S.A., Inc., 842 F. Supp. 1023 (M.D. Tenn. 1993).
- State action is required before there can be a violation of the open courts and right to a remedy clauses, Tenn. Const. art. I, § 17, because those provisions limit the actions of the government, but not private entities; the statutes authorizing and regulating private foreclosure sales do not violate Tenn. Const. art. I, § 17. CitiMortgage, Inc. v. Drake, 410 S.W.3d 797 (Tenn. Ct. App. 2013).
- The phrase "an injury done him" means a legal injury, that is, a violation of his legal rights in some way, or a violation of law that affects him adversely. Barnes v. Kyle, 306 S.W.2d 1 (Tenn. 1957).
- Fact that court refused to allow complainant to prosecute suit as assignee did not deprive complainant of remedy in due course of law where cause of action was not assignable and bill did not state cause of action. Dillingham v. Tri-State Ins. Co., 381 S.W.2d 914 (Tenn. 1964).
- Ten-year ceiling in products liability actions in § 29-28-103 did not violate open court provisions of constitution. Stutts v. Ford Motor Co., 574 F. Supp. 100 (M.D. Tenn. 1983).

Tennessee References:

William C. Koch, Jr., *Reopening Tennessee's Open Courts Clause: A Historical Reconsideration of Article 1, Section 17 of the Tennessee Constitution*, 27 U. MEM. L. REV. 333 (1997).

TEXAS

RIGHT TO JURY TRIAL

Constitution:

- Tex. Const. Art. I, § 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.”
- Tex. Const. Art. V, § 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.”

Court Decisions:

- "Under the provisions of our State Constitution, and especially under the provisions that "the right of trial by jury shall remain inviolate," which language has formed a part of every Constitution of this State and of the Constitution of the Republic of Texas as well, and many Constitutions of our sister States, with a well established import and meaning, the defendant in error clearly was entitled to a trial by jury, in the full constitutional sense, if that practice prevailed in this State, according to then existing laws, at the time of the adoption of said provisions as portions of our present State Constitution of 1876." White v. White, 108 Tex. 570 at 581 (Tex. 1917).
- "Article V, section 10 protects the right to have a jury resolve fact questions in all ‘causes’ brought in the district courts." Texas Workers' Compensation Comm'n v. Garcia, 893 S.W.2d 504 at 526 (Tex. 1995) (citing State v. Credit Bureau of Laredo, Inc., 530 S.W.2d 288 (Tex. 1975); see also Tolle v. Tolle, 101 Tex. 33 (Tex. 1907)).
- "Access to a jury need not be provided at the intitial adjudication, so long as ‘the right to appeal and the jury trial on appeal are secured.’" Id. (citing Cockrill v. Cox, 65 Tex. 669 at 674 (Tex. 1886)).
- Patel v. Texas Department of Licensing and Regulation, 469 S.W.3d 69 (Tex. 2015) (“Redundant remedies” doctrine did not require dismissal of direct legal challenge to regulatory system which, petitioners argued, violated due course of law.)

RIGHT TO REMEDY

Constitution:

Tex. Const. art. 1, § 13: “That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct.”

Court Decisions:

- "Among other protections, this provision mandates ‘that the legislature may not abrogate the right to assert a well-established common-law cause of action unless the reason for its action outweighs the litigants' constitutional right of redress.’" Oncor Elec. Delivery CO. LLC v.

Chaparral Energy, LLC, 2018 Tex. LEXIS 345 at 19 (Tex. 2018) (citing Trinity RIver Auth. v. URS Consultants, Inc., 889 S.W.2d 259 at 261 (Tex. 1994).

- This means that any legislative action that withdraws common-law remedies for "well-established common-law causes of action for injuries to one's 'lands, goods, person or reputation' is sustained only when it is reasonable in substituting other remedies." Id. (citing Trintiy River Auth. at 262).

Texas References:
Stephen Daniels and Joanne Martin, *Damage Caps and Access to Justice: Lessons from Texas*, 96 OR. L. REV. 635 (2018).

UTAH

RIGHT TO JURY TRIAL

Constitution:
Utah Const. Art I, § 10: "In capital cases the right of trial by jury shall remain inviolate. In capital cases the jury shall consist of twelve persons, and in all other felony cases, the jury shall consist of no fewer than eight persons. In other 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 criminal cases the verdict shall be unanimous. In civil cases three-fourths of the jurors may find a verdict. A jury in civil cases shall be waived unless demanded."

Statutes and Court Rules:
U.C.A. Ann. § 78B-1-104: A trial jury in a civil case at law consists of eight persons, except that the jury shall be four persons in a civil case for damages of less than $20,000, exclusive of costs, interest, and attorney fees."

Court Decisions:

- 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 Ct. App. 2008).
- In general, parties bringing legal claims have a right to jury trial while parties bringing equitable claims do not. Goldberg v. Jay Timmons & Associates, 896 P.2d 1241 (Utah Ct. App. 1995).
- When legal and equitable issues turn on same operative facts, jury must decide legal issue first; the jury's factual determination then binds the trial court in its determination of the parallel equitable issue. Const. Art. 1, § 10. Zions First Nat. Bank v. Rocky Mountain Irrigation, Inc., 795 P.2d 658 (Utah 1990).
- Statutes which imposed a limit on amount person could claim against uninsured government entity because of injury or death were unconstitutional under State Constitution as applied to a 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 Ct. App. 1997).

- Where application for jury trial was not timely filed (with no excuses explaining the failure), there was no abuse of discretion by the court in denying the belated request for a jury trial. Board of Educ. v. West, 186 P. 114 (Utah 1919).
- The court may, on its own motion, order a jury trial, even though both parties expressly waive a jury. Ogden Valley Trout & Resort Co. v. Lewis, 125 P. 687 (Utah 1912).
- No right to jury trial in tax cases. Jensen v. State Tax Comm'n, 835 P.2d 965 (Utah 1992).
- No right to jury trial in termination of parental rights cases. T.R.B. v. State, 933 P.2d 397 (Utah Ct. App. 1997).

RIGHT TO REMEDY

Constitution:
Utah Const. Art. I, § 11: "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party."

Court Decisions:
- Right to remedy provision does not create new rights, or give new remedies where none otherwise are given. It prevents the state legislature from closing the courts to any person who has a legal right which is enforceable in accordance with some known remedy. Where no right of action is given or no remedy exists, under either the common law or some statute, this section creates none. Brown v. Wightman, 151 P. 366 (Utah 1915), superseded by statute as stated in Madsen v. Borthick, 658 P.2d 627 (Utah 1983).
- Right to apply to courts for remedy is a substantial right and will not be waived by contract except through unequivocal language. Bracken v. Dahle, 251 P. 16 (Utah 1926).
- Sovereign immunity is not unconstitutional under this section. Madsen v. Borthick, 658 P.2d 627 (Utah 1983).
- Parties who agreed to resolve disputes by arbitration were not deprived of their right to remedy when the arbitrator removed them as members and as a manager of a limited liability company. Duke v. Graham, 158 P.3d 540 (Utah 2007).
- A right of action exists for any injury or damage to private property, and neither the legislature nor municipalities can interfere with that right. Lewis v. Pingree Nat'l Bank, 151 P. 558 (Utah 1915).
- Subsection 78-12-25(3), which provides a four-year statute of limitations on "an action for relief not otherwise provided by law," does not violate this section. McHenry v. Utah Valley Hosp., 724 F. Supp. 835 (Utah 1989), aff'd, 927 F.2d 1125 (10th Cir.), cert. denied, 502 U.S. 894 (1991).
- Section 58-13-2, which affords immunity to a physician giving emergency medical care at the scene of an emergency, if the physician is under no preexisting duty to do so, does not violate this section. Hirpa v. IHC Hosps., Inc., 948 P.2d 785 (Utah 1997).
- The former architects and builders statute of repose (§ 78-12-25.5) was unconstitutional under this section because it did not provide an injured person with an effective and reasonable alternative remedy for vindication of his or her constitutional interest, and abrogation of the remedy was arbitrary and unreasonable. Sun Valley Water Beds of Utah, Inc. v. Herm Hughes & Son, 782 P.2d 188 (Utah1989).
- The no-fault statute, § 31A-22-309 (limitations, exclusions, and conditions to personal injury protection), satisfies right to remedy provision because it not only provides a tort victim with a

reasonable and alternative remedy, but also eliminates a clear social or economic evil. Warren v. Melville, 937 P.2d 556 (Utah Ct. App. 1997).

- Former § 78-14-7.1 (renumbered as § 78B-3-410) does not violate right to remedy section; the legislature did not overstep its constitutional bounds when it determined that the increasing cost of health care is a crisis and that a damages cap is a reasonable, nonarbitrary remedy. Judd ex rel. Montgomery v. Drezga, 103 P.3d 135 (Utah 2004).
- Utah temporary total disability compensation statute was not a statute of limitation. The statute did not abrogate a previously existing remedy and so was not subject to challenge under the Open Courts Clause; the Utah Workers' Compensation Act, Utah Code Ann. § 34A-2-101 et seq., as a whole was an adequate substitute remedy for the loss of an injured employee's common law tort claim. Petersen v. Utah Labor Comm'n, 853 Utah Adv. 63 (2017).
- Because the Utah Wrongful Life Act, § § 78-11-23 to 78-11-25 (now § 78B-3-109), did not abrogate an existing legal remedy, the legislation is a constitutional exercise of legislative authority that does not violate this section. Wood v. Univ. of Utah Med. Ctr., 67 P.3d 436 (Utah 2002), cert. denied, 540 U.S. 946 (2003).
- Acts that are core governmental functions or are unique to government are outside the protection of right to remedy provision. In an action against a county building official and county for injuries based on negligent building inspection and fraudulent issuance of building permit, the defendants' acts were core governmental functions within the scope of the exceptions to waiver of immunity. DeBry v. Noble, 889 P.2d 428 (Utah 1995).
- The regulation of boxing is a uniquely governmental activity and, therefore, a legislative grant of governmental immunity for licensing boxers does not violate this section. Moss v. Pete Suazo Utah Ath. Comm'n, 175 P.3d 1042 (Utah 2007).
- Right to remedy constitutional provision is implicated only if a statute denies a person the right to sue the state when the state performs a nongovernmental function. The University of Utah performs a governmental function under the test developed in Standiford v. Salt Lake City Corp., 605 P.2d 1230 (1980), and has immunity under statute immunizing government entities from suit from injuries arising out of an assault or battery; thus, the immunity act was not unconstitutional as applied to a person who was injured when assaulted and struck by an employee of the University. Wright v. University of Utah, 876 P.2d 380 (Utah Ct. App. 1994), cert. denied, 883 P.2d 1359 (Utah 1994).

Utah References:

- Nora Brunelle, Recent Developments: *Utah's Immunity Act Constitutionally Limits Aggregate Damages in Personal Injury Suits Against the State*, 2005 UTAH L. REV. 1376
- Kent R. Hart, Note, *Court Rulemaking in Utah Following the 1985 Revision of the Utah Constitution*, 1992 UTAH L. REV. 153 (1992).

VERMONT

RIGHT TO JURY TRIAL

Constitution:

Vt. Const. Ch. I, art. 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."

Court Decisions:

- This constitutional provision guarantees the right to the types of controversies that would have been tried to a jury at the time of the adoption of constitution. Fila v. Spruce Mt. Inn, 2005 VT 77, ¶12 (VT 2005).
- Entitlement to a jury trial is dependent on the relief requested. If the relief requested is equitable, no right to a jury trial esists. Merchants Bank v. Thibodeau, 143 VT 132 at 134 (VT 1983).
- When the relief requested is legal then the right to a jury trial attaches. LeBlanc v. Snelgrove, 2015 VT 112, § 37 (VT. 2015).
- When looking to invoke this right, the party must demand a jury trial pursant to Vermont's procedural rules. Bloomer v. Gibson, 2006 VT 104, ¶9 (VT 2006).

RIGHT TO REMEDY

Constitution:
Vt. Const. ch. I, art. 4: "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; comformably to the laws."

Court Decisions:

- Article 4 does "not create substantive rights, it does ensure access to the judicial process." Shields v. Gerhart, 163 Vt. 219 at 223 (VT 1995) citing Levinsky v. Diamond, 151 Vt. 178 at 197 (Vt. 1989).
- Article 4 is "the equivalent to the federal Due Process Clause." Quensel v. Town of Middlebury, 167 Vt. 252at 258 (Vt. 1997).
- Article 4 "'does not create substantive rights' but rather 'ensures access to the judicial process'" Flint v. Department of Labor, 2017 VT 89, ¶18 (Vt. 2017) citing Sheilds v. Gerhart, 163 Vt. at 223 (Vt. 1989).

VIRGINIA

RIGHT TO JURY TRIAL

Constitution:
Va. Const. Art. I, § 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."

Court Decisions:

- Constitution guarantees right to jury trial as it existed when the constitution was adopted. Bowman v. Virginia State Entomologist, 105 S.E. 141 (Va. 1920).
- No right to jury trial in case where there was no right to jury trial when the Constitution was adopted. Stanardsville Volunteer Fire Co. v. Berry, 331 S.E.2d 466 (Va. 1985).

- No jury trial right for suits in chancery. 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., 556 S.E.2d 764 (Va. 2002).
- Jury's fact-finding function extends to assessment of damages. Supinger v. Stakes, 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. Etheridge v. Medical Center Hospitals, 376 SE2d 525 (Va. 1989).
- A statutory medical malpractice damages cap does not violate the right to jury trial. Pulliam v. Coastal Emergency Serv. Of Richmond, Inc., 509 S.E.2d 307(Va. 1999).
- Plaintiffs are entitled to jury trial on punitive damage claim. O'Brien v. Snow, 210 S.E.2d 165 (Va. 1974).
- Debtor has a state constitutional and statutory right to have the issue of awarding attorney fees submitted to a jury. Lee v. Mulford, 269 Va. 562, 611 S.E.2d 349, 2005 Va. LEXIS 40 (2005).
- Waiver of right to jury trial was limited to first trial. Longshoreman who brought negligence claim against a boat owner was entitled to demand a jury trial in the proceeding held upon remand. Heinrich Schepers GmbH & Co., KG v. Whitaker, 702 S.E.2d 573 (Va. 2010).
- Plaintiff is entitled to withdraw consent to special three-person jury prior to trial. Painter v. Fred Whitaker Co., 369 S.E.2d 191 (Va. 1988).

WASHINGTON

RIGHT TO JURY TRIAL

Constitution:
Wash. Const. Art. I, § 21: "The right of trial by jury shall remain inviolate, but the 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."

Court Decisions:
- In civil actions, right to jury trial exists where action is purely legal in nature, but not where action is purely equitable in nature. King Aircraft Sales v. Lane, 846 P.2d 550 (Wash. Ct. App. 1993).
- The constitutional right to a jury trial in a civil action remains inviolate if the action would have been triable to a jury when the state constitution was adopted. Bainter v. United Pacific Ins. Co., 748 P.2d 260 (Wash. Ct. App. 1988).
- 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).
- There is no right to jury trial in most family law matters, including marriage dissolution. RCWA 26.09.010.
- There is no right to jury trial in contempt proceedings; jury available only when the sanctions are punitive in nature. 15 Wash. Prac., Civil Procedure § 43:12 (2d ed.).

- 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).
- Defendant in a small claims proceeding does not have the right to a jury trial. Wings of the World, Inc. v. Small Claims Court, 987 P.2d 642 (Wash. Ct. App. 1999).
- One is entitled to a jury trial on contested issues in an unlawful detainer action, including the ultimate issue of possession, but not to a jury trial on the initial right of possession pending the lawsuit. Meadow Park Garden Assoc. v. Canley, 773 P.2d 875 (Wash. Ct. App. 1989).
- The Washington Supreme Court of Washington struck down, as violating both separation of powers and the plaintiff's right of access to the courts, RCW 7.70.150, which required medical malpractice plaintiffs to file certificates of merit prior to filing a claim or accessing discovery. Putman v. Wenatchee Valley Med. Ctr., P.S., 216 P.3d 374 (2009).
- The court also struck down Washington's anti-SLAPP statute, RCW 4.24.525, as violating the right of trial by jury for non-frivolous claims by requiring a trial judge to make the factual determination of whether a plaintiff established, by clear and convincing evidence, a "probability" of prevailing on a claim. Davis v. Cox, 351 P.3d 862, 874 (2015).

Statutes and Court Rules:

- The legislature has provided for a jury of six in district court unless the parties agree upon fewer. RCWA 12.12.030.
- CR 38 states the right to jury is waived if a party fails to serve a demand as required, to file it as required, or doesn't pay the necessary jury fee.
- CR 38: demand for jury trial may not be withdrawn without consent of the parties.
- 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.

WEST VIRGINIA

RIGHT TO JURY TRIAL

Constitution:

W. Va. Const. Art III, § 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."

Court Decisions:

- Constitution preserved right to jury trial in cases in which it existed at common law. State by State Rd. Comm'n v. Boggess, 126 S.E.2d 26 (W. Va. 1962).
- 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 as to the discrimination issue and damages in a sex discrimination case, but not the injunction issue. Perilli v. Board of Educ. of Monongalia County, 387 S.E.2d 315, 317 (W. Va. 1989).

- "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 (W. Va. 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 (W. Va. 1898).
- The right to jury trial must be asserted by demand. State by State Rd. Comm'n v. Boggess, 126 S.E.2d 26 (W. Va. 1962).
- 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).
- 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 (W. Va. 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).

RIGHT TO REMEDY

Constitution:
W. Va. Const. art. III, § 17: "The courts of this State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay."

Court Decisions:
- Implied right of action may arise from the right to remedy section language providing that "[t]he courts of this State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy to due course of law." Hurley v. Allied Chem. Corp., 262 S.E.2d 757 (W. Va. 1980).
- When legislation substantially impairs vested rights or severely limits existing procedural remedies permitting court adjudication, the legislation will be upheld under the remedy provision if (1) a reasonably effective alternative remedy is provided by the legislation or (2) if no such alternative remedy is provided, the purpose of the alteration or repeal of the existing cause of action or remedy is to eliminate or curtail a clear social or economic problem, and the alteration or repeal of the existing cause of action or remedy is a reasonable method of achieving such purpose. Lewis v. Canaan Valley Resorts, 408 S.E.2d 634 (W. Va. 1991); O'Dell v. Town of Gauley Bridge, 425 S.E.2d 551 (W. Va. 1992).
- Subdivision (a)(11) of § 29-12A-5, giving political subdivisions immunity from tort liability in suits by injured persons whose claims are covered by workers' compensation or employer's liability laws, does not violate § 17's "certain remedy" provision. O'Dell v. Town of Gauley Bridge, 425 S.E.2d 551 (W. Va. 1992).

- Section 55-7B-8, which provides a $1,000,000 limit or "cap" on noneconomic damages in a medical professional liability action, is constitutional. It does not violate the state constitutional "certain remedy" provision. Robinson v. Charleston Area Medical Ctr., 414 S.E.2d 877 (W. Va. 1991).

WISCONSIN

RIGHT TO JURY TRIAL

Constitution:
Wis. Const. Art. I, § 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. Provided, however, that the 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."

Statutes and Court Rules:
- 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.
- W.S.A. § 805.09: 10 of 12 jurors may enter a judgment in a civil case.

Court Decisions:
- 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 (Wis. App. 2006).
- 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 (Wis. 2009).
- 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 (Wis. 2009).
- The right to a trial by jury doesn't extend to equitable actions, Neff v. Barber, 162 N.W. 667, 668 (Wis. 1917), but rather only secures jury where allowed at common law. Green Spring Farms v. Spring Green Farm Associates Ltd. Partnership, 492 N.W.2d 392 (Wis. App. 1992).
- 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 (Wis. 2006).
- Compensation statutes result in there being no common law tort action against an employer. Absent a case at law, there is no right to a jury trial under Wis. Const. art. I, § 5. Worker's compensation acts may constitutionally serve as a substitute for the right to trial by jury. Oliver v. Travelers Ins. Co., 309 N.W.2d 383 (Wis. Ct. App. 1981).
- 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 (Wis. 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 (Wis. 1981).
- 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 grounds that they are excessive. Lucas v. State Farm Mut. Auto. Ins. Co., 117 N.W.2d 660 (Wis. 1962).
- Injured worker had no state constitutional right to a jury trial on a statutory tort claim against a third party, which differs significantly from a common law negligence claim. Adams v. Northland Equip. Co., 850 N.W.2d 272 (Wis. 2014).
- Right to a jury trial guaranteed by Wis. Const. art. I, § 5 is not contingent upon the amount of damages at stake in a given case or the burden the litigation might place upon the court system. Leverence v. PFS Corp., 532 N.W.2d 735 (Wis. 1995).

RIGHT TO REMEDY

Constitution:
Wis. Const. art. I, § 9: "Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws."

Court Decisions:

- Wis. Const. art. I, § 9 guarantees the right of every person to have a remedy for injuries negligently inflicted upon them, and does not limit its protection to citizens or aliens lawfully admitted. Arteaga v. Literski, 265 N.W.2d 148 (Wis. 1978).
- Wis. Const. art. I, § 9 provides that every person is entitled to a certain remedy in the laws for all injuries and wrongs; it confers no legal rights, but addresses the right to have access to the courts and to obtain justice on the basis of the law as it exists. Pearson v. President, University of Wisconsin System, 406 N.W.2d 171 (Wis. Ct. App. 1987).
- Wis. Const. art. I, § 9 did not confer a legal right or claim, but merely guaranteed to every litigant a day in court. Here, it did not provide a right to injunctive relief to landowners to stop the City from depositing materials into a millpond on the landowners' property. Shanak v. City of Waupaca, 518 N.W.2d 310 (Wis. Ct. App. 1994).
- Statute will not violate right to remedy simply because the remedy provided is not the remedy desired. Wis. Stat. § 138.06(7) does not violate Wis. Const. art. I, § 9 because a claimant may sue for triple the amount due plus reasonable attorney's fees; while § 138.06(7) did not provide the remedy borrowers who paid usurious interest desired, it was a "certain remedy." Wiener v. J. C. Penney Co., 222 N.W.2d 149 (Wis. 1974).
- Right to a remedy provision is not fundamental. Challenge to the constitutionality of noneconomic damages cap in Wis. Stat. § 655.017 and Wis. Stat. § 893.55(4)(d) was thus subject to a rational basis review; as the limitation did not rationally serve the goals established by the legislature, the limitation was unconstitutional. Ferdon v. Wis. Patients Comp. Fund, 701 N.W.2d 440 (Wis. 2005).
- State has sovereign immunity and may not be sued unless legislature expressly waives immunity. Mayhugh v. State, 867 N.W.2d 754 (Wis. 2015).

WYOMING

RIGHT TO JURY TRIAL

Constitution:
Wyo. Const., Art 1 § 9: "Trial by jury inviolate. The right of trial by jury shall remain inviolate in criminal cases. 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. . . ."

Statutes and Court Rules:
Wyoming Rues of Civil Procedure, Rule 38: Right to a Jury Trial; Demand. (a) Right preserved. 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, must 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.

RIGHT TO REMEDY

Constitution:
Wyo. Const., Art. I, § 8: "All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct."

Court Decisions:
- The right to access to the courts is a fundamental right, requiring strict scrutiny analysis. Mills v. Reynolds, 837 P.2d 48 (Wyo. 1992).
- The fact that litigation may be costly does not make it unavailable. Kerper v. Kerper, 819 P.2d 407 (Wyo. 1991).
- Suit against state requires legislative consent. No suit may be maintained against the state until the legislature makes provision for such filing. Biscar v. University of Wyoming Bd. of Trustees, 605 P.2d 374 (Wyo. 1980).
- To test whether a state agency/employee may be liable to suit, without state consent, ask if agency/employee was engaged in governmental function. If activity was undertaken at direction of legislature, or involves legislative or judicial discretion, it's governmental. If the activity has historically been done by a private corporation, or if it generates fees, it's proprietary and may be open to suit. Biscar v. University of Wyoming Bd. of Trustees, 605 P.2d 374 (Wyo. 1980).
- Wyoming has never given its consent to be sued for tort. Price v. State Highway Comm'n, 167 P.2d 309 (Wyo. 1946).
- Any change regarding suits against the state must be effected by the legislature rather than by the courts. Williams v. Eaton, 443 F.2d 422 (10th Cir. Wyo. 1971).
- Wyo. Const. Art. 1, § 8 did not change the common-law rule that a wrongful death action abates on the death of the wrongdoer. Mull v. Wienbarg, 212 P.2d 380 (Wyo. 1949).
- The two-year condition precedent of the wrongful death statute, § 1-38-102(d), does not violate the open courts provision. Robinson v. Pacificorp, 10 P.3d 1133 (Wyo. 2000).
- The University of Wyoming, together with its officers, enjoys sovereign immunity since a suit against the university or these officers is a suit against the state. Biscar v. University of Wyoming Bd. of Trustees, 605 P.2d 374 (Wyo. 1980).

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