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| **Illinois General Liability Summary** | | |
| **Initial Pleadings/Considerations** | | |
| Statute of Limitations | 735 ILCS 5/13-202  735 ILCS 5/13-205  740 ILCS 180/2  735 ILCS 5/13-206  735 ILCS 5/13-205 | Bodily Injury = 2 years  Property Damage = 5 years  Wrongful Death = 2 years  Written Contract = 10 years Oral Contract = 5 years |
| Service of Complaint | Ill. Rules on Civil Proceedings in The Trial Court, Art. II., Rule 102(a)-(b) | Must be served with summons no later than 30 days after issuance of summons. |
| Answer | Ill. Rules on Civil Proceedings in The Trial Court, Art. II. Rule 181(a) | If summons requires an appearance within 30 days of service, an answer or responsive motion shall be filed on or before the last day of the 30 day period. |
| Ill. Rules on Civil Proceedings in The Trial Court, Art. II. Rule 181(b) | If the summons requires appearance on a specified day, an answer or responsive motion shall be due within 10 days of the date of appearance. |
| Default Judgment | 735 ILCS 5/2-1301(d) | May be entered for want of an appearance or failure to plead, but the court may request proof of the allegations of the plaintiff’s pleadings. |
| 735 ILCS 5/2-1301(e) | The court may grant relief from default judgment; upon motion made within 30 days of default, showing any reasonable terms and conditions; or by its own discretion at any time before final order or judgment. |
| Counterclaim | 735 ILCS 5/2-608 | A defendant may plead any claim as a cross claim in any action. |
| Third Party Practice | 735 ILCS 5/2-404 - 405 | Liberal joinder of parties permitted. |
| Crossclaim | 735 ILCS 5/2-608 | Referred to as counterclaim in Illinois. |
| Lien Holders as Necessary Parties | 735 ILCS 5/2-403 | Any action brought by virtue of the subrogation provision of any contract or by virtue of subrogation by operation of law shall be brought either in the name or for the use of the subrogee; and the subrogee shall in his or her pleading on oath, or by his or her affidavit if pleading is not required, allege that he or she is the actual bona fide subrogee and set forth how and when he or she became subrogee. |
| Intervention | 735 ILCS 5/2-408 | Intervention permitted upon timely application as of right to intervene when (1) a statute confers an unconditional right to intervene; (2) where the party’s interest may be inadequately represented and it will be bound by the disposition; (3) when the party is situated to be adversely affected by a disposition.  Permitted upon timely application with the discretion of the court when (1) a statute confers a conditional right; or (2) when a party’s claim or defense and the main action have a question of law or fact in common. |
| 735 ILCS 5/2-408 | Petition to intervene |
| Indemnity | 740 ILCS 35/0.01. Common law. | Contract provisions indemnifying a party for that party’s negligence are prohibited. Courts, however, have upheld indemnity clauses where the clauses are not explicit as to whether the indemnity duty covers the claims arising from the indemnitee’s own negligence. Pierre Condominium Ass’n v. Lincoln Park W. Assocs., LLC, 378 Ill. App. 3d 770 (2007); Virginia Surety Co. v. N. Ins. Co. of New York, 224 Ill. 2d 550 (2007). |
| Pre-Tender Defense Costs | Common Law | Actual notice of a suit from any source without tender by the insured is sufficient to trigger the insured’s right to a defense. Cincinnati Cos. v. West Am. Ins. Co., 701 N.E.2d 499 (Ill. 1998). |
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| **BI Claims/Defenses** |  |  |
| Premises Liability | 740 ILCS 130/2 | The duty owed to entrants is that of reasonable care under the circumstances regarding the state of the premises or acts done or omitted on them. |
| Dog Owner Liability | 510 ILCS 5/16 | The owner of a dog is civilly liable for the full amount of the injury proximately caused by his/her dog. |
| Liquor Liability | 235 ILCS 5/6-21 | Dram shop liability. |
| Contributory Negligence | 735 ILCS 5/2-1116 | Not an outright bar to recovery. Plaintiff > 50% at fault = barred from recovery. Plaintiff 50% or less = damages reduced pro-rata by amount of plaintiff’s negligence. |
| Assumption of Risk | Common Law | Express assumption of risk bars recovery. Duffy v. Midlothian Country Club, 481 N.E.2d 1037 (1st Dist. 1985). Implied assumption of risk limits liability. Clark v. Rogers, 484 N.E.2d 867 (4th Dist. 1985); Gillespie Cmty. Unit Sch. Dist. No. 7 v. Union Pac. R.R. Co., 2015 Ill. App. LEXIS 845 (Nov. 6, 2015). |
| Open and Obvious | Common Law | Generally, a landowner has no duty to warn of open and obvious conditions. Bucheleres v. Chi. Park Dist., 665 N.E.2d 826 (Ill. 1996). |
| Seat Belt Defense | Common Law | Failure to wear a seatbelt cannot be raised as a defense in effort to deduct from the total recovery. Clarkson v. Wright, 483 N.E.2d 268 (Ill. 1985). |
| Product Liability | Common Law | Plaintiff may sue under theory of negligence or strict liability. Coney v. J.L.G., Inc., 454 N.E.2d 197 (Ill. 1983). |
| *Sophisticated User Defense* | Common Law | Lesser duty to warn a sophisticated party. Werckenthein v. Bucher Petrochemical Co., 618 N.E.2d 902 (1st Dist. 1993). |
| *Plaintiff’s Burden regarding condition of Product* | Common Law | Under both theories of liability, a plaintiff must prove that the product was defective. Korando v. Uniroyal Goodrich Tire Co., 637 N.E.2d 1020 (Ill. 1994). |
| *Misuse/Contributory Negligence* | Common Law | Damages for plaintiff’s injuries are apportioned on basis of relative degree to which defective product and plaintiff’s conduct proximately caused them. Calles v. Scripto-Tokai Corp., 864 N.E.2d 249 (Ill. 2007). |
| Wrongful Death | 740 ILCS 180/2 | Recognized cause of action. Plaintiff may recover for the benefit of the surviving spouse and next of kin of the deceased. |
| Punitive Damages | Common Law | Punitive damages may be awarded if defendant’s culpability, after having paid compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. Int’l Union of Operating Engineers, Local 150 v. Excavating Co., 870 N.E.2d 303 (Ill. 2006). |
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| **Damages/Caps** |  |  |
| Governmental Immunity | 745 ILCS 10/2-204 | Generally, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused. |
| Med. Malpractice | Common Law | Caps on medical malpractice damages are not permitted. Lebron v. Gottlieb Mem. Hosp., 930 N.E.2d 895 (Ill. 2010). |
| Small Claims | Illinois Sup. Ct. Rule 281 | A small claim is a “civil action based on either tort or contract for money not in excess of $10,000, exclusive of interest or costs.” |
| Wrongful Death | Common Law | No cap on economic or non-economic damages. Best v. Taylor Machine Works, 179 Ill.2d 367 (1997). |
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| **Post-Verdict Issues** |  |  |
| Costs | 750 ILCS 5/508 | The court may order any party to pay a reasonable amount for his own or the other party’s costs and attorney’s fees. |
| Pre-Judgment Interest | 815 ILCS 205/1 | 5% interest per annum for all moneys after they become due. |
| Post-Judgment Interest | 815 ILCS 205/2 | 9% interest per annum from the date of the judgment until satisfied. |
| Joint and Several Liability | 735 ILCS 5/2-1117 | Illinois defendants are jointly and severally liable for damages unless that defendant bears less than ¼ of the plaintiff’s own liability. |
| Made Whole Doctrine | Common Law | Not applied in Illinois. In re Estate of Scott, 783 N.E.2d 106 (Ill. 2003). |
| Offer of Judgments/Offer of Settlement | 815 ILCS 505/10a | If a party does not accept an offer for settlement and fails to obtain a judgment in an amount more than the total offer of settlement, that party forfeits and the court may not award any compensation for attorney’s fees and costs incurred after the date of the offer. |
| Contribution | 740 ILCS 100/2 | Right of contribution exists between two or more parties liable for injury or property damage even if there is no judgment against any or all of them. Also applies anytime a plaintiff collects damages inconsistent with jury’s finding of percentage of responsibility. No contribution against parties who settle in good faith. |
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| **Appeals** |  |  |
| Appeals to Court of Appeals | | |
| Final Judgment/Order | Illinois Sup. Ct. Rule 303(a)(1) | Notice of appeal must be filed with the clerk of the circuit court within 30 days after entry of the final judgment appealed from. |
| Non-Final Judgment/Order | Illinois Sup. Ct. Rule 307(a)(7) | Except for motions to vacate and appeals of temporary restraining orders, the appeal must be perfected within 30 days from the entry of the interlocutory order. |
| Appeals to Supreme Court | Illinois Sup. Ct. Rule 315(b)(1) | A party seeking leave to appeal must file the petition for leave in the Supreme Court within 35 days after the entry of such judgment. |
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| **Insurance Issues** |  |  |
| Financial Responsibility Limits | 625 ILCS 5/7-203 | Bodily Injury to one person: 25K; bodily injury to two or more persons: 50K; property damage 20K |
| Uninsured Motorist | 215 ILCS 5/143a | 20K per person; 40K per accident |
| Underinsured Motorist | 215 ILCS 5/143a-2(4) | Equal in amount to uninsured motorist. |
| Resident-Relative Homeowner’s Exclusion |  | Exclusion is permitted. Includes resident relatives of the named insured’s household. Cincinnati Ins. Co. v. Argubright, 151 Ill. App. 3d 324, 331 (1986). However, “resident of the household” has no fixed meaning and the reasonable interpretation of the phrase is determined in a case-by-case considering intent, physical presence, and permanency of abode. Farmers Auto. Ins. Assoc. v. Gitelson, 344 Ill. App. 3d 888 (2003). |
| Bad Faith | Common Law | Every insurance contract has an implied duty of good faith and fair dealing. Cramer v. Ins. Exchange. Agency, 675 N.E.2d 897 (Ill. 1996). An insured has a cause of action if this duty is breached. Haddick v. Valor Ins., 763 N.E.2d 299 (Ill. 2001). |
| No-Fault | 735 ILCS 5/2-1116 | N/A Illinois is a comparative fault state. |