

ARIZONA SUPREME COURT CIVIL MATTERS—Husband may sue for loss of consortium damages based solely on emotional/psychological injury to his wife. *Barnes v. Outlaw*, CV- 96-0616-PR, 9/17/98....When plaintiffs claim **inducement to forbear filing suit**, court must determine **if defendant intended to and actually caused forbearance, if forbearance was reasonable, and if plaintiffs brought suit reasonably soon after inducement ended**; no evidence showed “unsound mind” tolled the limitations period; discovery rule did not delay cause of action’s accrual when plaintiffs knew “what” and “who.” *Nolde v. Frankie*, CV-97-0276-PR, 9/17/98....Under the Victim’s Bill of Rights, **one who witnesses a crime and at the same time is a victim of the same perpetrator cannot be compelled to grant a pretrial defense interview, but one who is merely a witness on one occasion and a victim on another occasion may be so compelled** as to the witnessed crime. *Champlin v. Sargeant*, CV-97-0181-PR, 9/24/98

ARIZONA SUPREME COURT INDUSTRIAL COMMISSION MATTERS—A.R.S. § 23-901(5)(d) governing volunteer firefighters does not supersede Wiley rule that concurrent wages should be combined to determine average monthly wage. *Lowry v. Ind’l Comm’n*, CV-97-0416-PR, 8/24/98

ARIZONA COURT OF APPEALS CIVIL MATTERS —Plaintiff’s opening statement did not open the door to evidence of his prior fraudulent misconduct and admission of character evidence was reversible error; fairness test applied to implied waiver of attorney-client privilege; prenuptial agreement abrogating community property shields husband’s separate property from wife’s debt for tort liability. *Elia v. Pifer*, 1 CA-CV 97-0386, 9/3/98 **A “fairly debatable” insurance claim is an absolute defense to a bad faith action** even if the insurer engages in improper general claims practices. *Zilisch v. State Farm*, 1 CA-CV 96-0610, 9/8/98....**When insurance policy precluded coverage for fire if any insured caused the loss, court properly refused “innocent insured” instruction**, but court erred by allowing defendant to decide whether plaintiff could have additional trial time. *Brown v. U.S. Fidelity*, 1 CA-CV 97-0350, 9/10/98....**Presumptions of intoxication cannot be applied to a charge of driving under the influence without relation-back testimony**, contrary to *Gallow* and *Guerra*. *State v. Klausner*, 1 CA-CR 97-0379, 9/10/98....**After one spouse makes prima facie showing of waste of community asset, burden to rebut the showing shifts to the other spouse**. *Gutierrez v. Gutierrez*, 1 CA-CV 97-0420, 9/15/98....**A.R.S. § 12-1511 contains no deadline for party to seek confirmation of arbitration award**; error to create 90-day deadline but not to deny attorney’s fees when requesting party fails to allege appeal is groundless, not in good faith, and constitutes harassment. *Fisher v. Nat’l Gen. Ins.*, 1 CA-CV 97-0563, 9/17/98....**Trial court may reinstate over defendant’s objection an action dismissed without prejudice for lack of prosecution; court’s immediate order to arbitrate did not abrogate right to appeal from reinstatement**. *Johnson v. Elson*, 1 CA-CV 97-0628, 9/24/98....**Hospital breached its bylaws by suspending a doctor’s ER-call without a hearing** but is immune from damages suit under A.R.S. §36-445.02; **the anti-abrogation clause applies to tort but not contract claims**. *Samaritan v. Superior Court*, 1 CA-SA 97-0386, 9/24/98....**Jurors in a criminal case tried in justice court need not be residents of that justice court precinct** but only of the county in which the justice court is located. *State v. Johnson/Hickling*, 1 CA-CV 97-0272, 9/29/98....**Inverse condemnation action accrues when access to property is cut off**; city’s later abandonment of plan to create access does not trigger new cause of action. *DeAlfy Props. v. Pima County*, 2 CA-CV 97-0050, 7/16/98

ARIZONA COURT OF APPEALS CRIMINAL MATTERS—Aggravating factors considered under A.R.S. § 13-702.01(A) may include factors listed in catch-all provision of section 13-702(C)(15) if similar and appropriate to the ends of justice. *State v. Soto-Perez*, 2 CA-CR 97-0506-PR, 7/28/98....**Defendant in aggravated DUI is**

denied due process when breath test was not scientifically reliable; waiver of alternate test is not knowing, intelligent or voluntary. *State v. Sanchez*, 2 CA-CR 97-0524, 7/30/98....**Ordinance prohibiting use or possession of firearms in city parks is constitutional,** is not preempted by state law, and is consistent with intent to allow local regulation for safety purposes. *Tucson v. Rineer*, 2 CA-CR 97-0407, 8/27/98....**When a possession of marijuana for sale charge is incidental to a transportation of marijuana for sale charge, possession is a lesser-included offense,** and double jeopardy bars convicting the defendant of both. *State v. Chabolla-Hinojosa*, 1 CA-CR 98-0125, 9/3/98....**Real estate broker may be convicted of fraudulent schemes even though he is not required to make full disclosure under civil law** and the victim did not rely on the misrepresentation. *State v. Proctor*, 2 CA-CR 96-0414, 0417, 9/8/98....**Present sense impression and residual exceptions allowed evidence that victim called a friend to say defendant was at her home;** jury commissioner's **pre-screening of venire** did not violate Sixth Amendment. *State v. Wooten*, 1 CA-CR 96-0579, 9/4/98....**Defendant committed aggravated assault by biting police officer effecting an arrest without probable cause** if arrest was good faith performance of official duties. *State v. Yoshida*, 1 CA-CR 97-0658, 9/22/98

ARIZONA COURT OF APPEALS TAX MATTERS—A subsidiary with no employees and no business location, revenue, bank account or records was not in the business of leasing property for purposes of city excise tax. *Construction Dev. v. Phoenix*, 1 CA-TX 97-0015, 9/15/98....**A.R.S. §42-129(A) does not require DOR to refund taxes wrongfully collected on federal retiree's pension benefits if those retirees made no refund claims.** *McNutt v. Dept. of Revenue*, 1 CA-TX 97-0024, 9/15/98....**Recording deed restriction for unfinished golf course is not enough to subject it to property tax valuation method in A.R.S. §42-146.** *Phxaz Ltd. v. Maricopa County*, 1 CA-TX 98-0001, 1 CA-CV 98-0119, 9/24/98

ARIZONA COURT OF APPEALS JUVENILE MATTERS—Juvenile may be adjudicated for aggravated assault on juvenile probation officer if juvenile knew or had reason to know that officer is an officer of the court or peace officer who possesses power to arrest. *In re David H.*, 2 CA-JV 97-0095, 8/25/98