

appellate highlights

ARIZONA SUPREME COURT CRIMINAL MATTERS—**Waiver of right to counsel involuntary after trial court refused to appoint new counsel** when deep, irreconcilable conflict with appointed counsel existed. *State v. Moody*, CR 96-0191-AP, 11/12/98...**Admission of murder victim’s “in life” photo** must be relevant and may be harmless error; biases of potential jurors did not taint panel; defendant failed to show organic brain damage in mitigation. *State v. Doerr*, CR-96-0679-AP, 11/12/98...**Cumulative error doctrine, not generally approved, applies to claim that prosecutorial misconduct denied defendant a fair trial**; misconduct in cross-examination and rebuttal and comment on defendant’s failure to testify required reversal. *State v. Hughes*, CR-97-0238-PR, 11/19/98

ARIZONA COURT OF APPEALS CIVIL MATTERS—**UCATA does not violate constitutional ban on laws limiting damages in personal injury cases** where non-party at fault is plaintiff’s employer and she is eligible for workers’ comp benefits, **nor does UCATA apportion damages according to causation** rather than comparative negligence. *Larsen v. Nissan*, 2 CA-CV 97-0181, 10/29/98...**Sales of membership interests in limited liability companies are securities** within the Arizona securities laws. *Nutek Info. Sys. v. ACC*, 1 CA-CV 97-0590, 11/5/98...**Memorandum of Understanding** between developer and city **was not binding absent evidence of intent to be bound** and developer could not state claim for breach of implied covenant of good faith or promissory estoppel. *Johnson Int’l v. Phoenix*, 1 CA-CV 97-0215, 11/9/98...**One who claimed insanity but was convicted of premeditated murder cannot deny in a civil case that the murder was an intentional act** within the meaning of an insurance policy. *Western Ag. Ins. v. Brown*, 1 CA-CV 97-0464, 11/10/98...**A.R.S. § 12-302(E) applies to an inmate in an ADOC facility and entitles him to defer filing fees**. *Inzunza-Ortega v. Sup. Ct.*, 1 CA-Sa 98-0120, 11/10/98... **Homeowners’ association has affirmative duty to enforce CC&Rs** that prevent landowner from blocking drainage from neighbor’s land. *Gfeller v. Scottsdale*, 1 CA-CV 98-0010, 11/17/98...**Supplier who is neither competitor nor consumer may sue manufacturer for restraint of trade; antitrust violation requires proof of restricted output and supracompetitive prices** or of a market, dominant share, barriers to entry, and lack of capacity by others; **agent who cancels contract at principal’s direction is not liable for tortious interference**; in breach of supply contract, **supplier cannot recover damages for lost value of the business but may recover lost profits**. *Pasco Inds. v. Talco Recycling et al.*, 1 CA-CV 96-0114, 96-0584 (Cons), 11/27/98

ARIZONA COURT OF APPEALS CRIMINAL MATTERS—**Defendant’s involvement in auto accident alone is not an exigent circumstance justifying warrantless taking of his blood**. *State v. Flannigan*, 1 CA-CR 97-0763, 11/3/98...**Defendant who violates conditions of release by absconding** and who fails to contact his lawyer or to appear at trial **waives right to be present for trial**. *State v. Holm*, 2 CA-CR 97-0549, 11/4/98...**A.R.S. §13-805(A) entitles victim of theft to judgment** for amount of restitution unpaid at end of defendant’s probation. *FDIC v. Colosi (Korzuch)*, 1 CA-SA 98-0274, 11/19/98...**Defendant charged with aggravated DUI cannot keep jury from learning of his suspended license** and prior convictions by admitting them before trial. *State v. Galati (Petersen)*, 1 CA-SA 98-0143, 11/10/98...When **police** arrest a person for DUI and allow her to call her attorney, they **must also give her the telephone number at which her attorney may call back**. *State v. Sanders*, 1 CA-CR 97-0739, 11/24/98...**Without exigent circumstances or a warrant, police cannot enter accused’s home to arrest him for domestic violence**. *State v. King*, 1 CA-CR 97-0424, 11/24/98

ARIZONA COURT OF APPEALS TAX MATTERS—**A.R.S. § 42-221.01 allowing revaluation of new construction nine months after the valuation date does not violate equal protection** or uniformity clauses of the constitution. *Magellan v. Maricopa County*, 1 CA-CV 98-0025, 11/19/98

ARIZONA COURT OF APPEALS JUVENILE MATTERS—**Juvenile judge may set reasonable deadline for filing of restitution claims** after considering the interests of both the victim and juvenile. *In re Frank H.*, 1 CA-JV 98-0055, 11/3/98...**Juvenile court may, under A.R.S. § 8-291.01(D), dismiss without prejudice proceedings against a normal 11-year-old, incompetent because he is too young** to understand the proceedings or consult with an attorney. *In re Charles B.*, 1 CA-JV 98-0138, 11/17/98...**Juvenile’s designation as a repeat felony juvenile offender and placement on intensive probation** as required by § 8-241 when his first offense occurred before the statute’s effective date did not violate the *ex post facto* clause. *In re Jerry B.*, 1 CA-JV 98-0153, 11/27/98