

TABLE OF CONTENTS

Volume 9

PART I. PLEADINGS

CHAPTER 1. PLAINTIFF'S PETITION

SUBCHAPTER I. GENERAL

- | Sec. | |
|------|---|
| 1.1 | Introductory Comment |
| 1.2 | Plaintiff's Petition—An Example |
| 1.3 | Parts of the Example Petition |
| 1.4 | Amended or Supplemental Petition—Certificate of Service |

SUBCHAPTER II. PARTY ALLEGATIONS

- | | |
|--------|--|
| 1.11 | Several Individual Parties |
| 1.12 | Plaintiffs Are Partners |
| 1.13 | Plaintiff Is a Surviving Partner |
| 1.14 | Defendants Are Partners |
| 1.15 | Trade Names or Assumed Names |
| 1.16 | Plaintiff Is Trustee |
| 1.17 | Minors |
| 1.17.5 | Order Appointing Guardian Ad Litem |
| 1.18 | Domestic Corporations |
| 1.19 | Foreign Corporations |
| 1.20 | Plaintiff Spouses—Joint Management Community Property |
| 1.21 | Plaintiff and Defendant Spouses—Sole Management Community Property or Separate Property |
| 1.22 | Plaintiff Is a National Bank |
| 1.23 | Plaintiff Is Administrator, Executor, or Legal Guardian |
| 1.24 | Defendant Non-resident Subject to Jurisdiction Under the Long-Arm Statute, V.T.C.A., Civil Practice and Remedies Code §17.042–17.045 |
| 1.25 | Defendant Is Transient Person |
| 1.26 | Defendant Is a Resident of Texas but Absent From the State |
| 1.27 | Defendant Is a Party in a Foreign Country |
| 1.28 | Defendants Are Unknown Heirs or Stockholders of Defunct Corporation |
| 1.29 | Defendant Is Joint Stock Company |

SUBCHAPTER III. SAMPLE PETITIONS

Division 1. Automobiles

- | | |
|------|--|
| 1.31 | General Allegations of Negligence—Damage to Automobile |
|------|--|

TABLE OF CONTENTS

Sec.	
1.32	Intersection Collision
1.33	Intersection Collision—Another Form
1.34	Rear-End Collision
1.35	Automobile/Pedestrian Accident Resulting From Violation of City Ordinance
1.36	Action Against Driver for Death of Guest
1.37	Suit for Ordinary and Gross Negligence Against Estate of Deceased Driver
1.38	Automobile Passenger's Action Against Driver's Employer on Respondeat Superior and Negligent Entrustment
1.39	Wrongful Death Action by Surviving Spouse, Children and Parents Against Various Types of Defendants

Division 2. Carriers

1.41	Passenger's Action for Personal Injuries
1.42	Wrongful Death Due to Railroad's Maintenance of an Extra Hazardous Crossing
1.43	Federal Employers' Liability Act
1.44	Federal Safety Appliance Act and Federal Employers' Liability Act
1.45	Personal Injury Action Against Taxi-Cab Company for Negligent Entrustment and Gross Negligence in Rape of Passenger
1.46	Passengers' Action Against Airline

Division 3. Malpractice

1.51	Negligence of Surgeon and Nurse
1.52	Negligence and Res Ipsa Loquitur by Natural Father Against Hospital, County, Surgeon, and Anesthetist for Wrongful Death of Son and Seeking Judgment Against Natural Mother Who Allegedly Abandoned Son
1.53	Negligence of Hospital and Physician
1.54	Negligent Failure to Discover and Remove Foreign Object by Hospital and Physician
1.55	Negligence, Gross Negligence, and Deceptive Trade Practice Action Against Hospital and Physicians Resulting in Retrolental Fibroplasia to Premature Infant
1.56	Negligent Failure to Inform Patient of Risks in Surgical Procedure
1.57	Personal Injury and Loss of Spousal Consortium in Failing to Diagnose Cardiac Tamponade
1.58	Action Against Medical School, Hospital and Residents for Untimely Delivery of Child by Cesarean Section

Division 4. Strict Liability in Tort

1.61	Defective Product
1.62	Defective Manufacture and Design of Metal Lathe Resulting in Personal Injuries

TABLE OF CONTENTS

Sec.	
1.63	Personal Injuries Caused by Defective Cigarette Lighter on Theories of Strict Liability in Tort, Breach of Warranties, and Negligence Against Out of State Corporation and Japanese Corporation Under Long-Arm Statute
1.64	Wrongful Death Due to Defective Gasoline Hose by Surviving Spouse, Children, and Parents of Decedent Bystander on Strict Liability in Tort and Res Ipsa Loquitur Against Manufacturer and Purchaser
1.65	Personal Injuries Against State of Texas Under Texas Tort Claims Act and Manufacturer of Truck for Defective Design in Strict Liability in Tort and Negligence
1.66	Strict Tort Liability, Negligence, Breach of Warranty and Deceptive Trade Practice Violations for Shattering of Glass in Plaintiffs' Residence
1.67	Toxic Tort Litigation on Multiple Theories by Multiple Parties Against Multiple Defendants
1.68	Personal Injury Action Due to Defective Helicopter Rotor Blade
1.69	Action Against Drug Manufacturer Under Sections 402A and 402B
1.70	Wrongful Death and Survival Action by Parents Against Drug Manufacturer and Distributor on Theories of Negligence, Gross Negligence, Strict Tort Liability, Breach of Warranty, Deceptive Trade Practices, Fraud and Conspiracy
1.71	Strict Tort Liability Action Against Airplane Manufacturer and Service Company for Wrongful Death and Survival Seeking Loss of Inheritance, Mental Anguish, and Loss of Society Damages
1.72	Wrongful Death and Survival Action Against Manufacturer and Component Part Supplier for Crash of Military Aircraft

Division 5. Insurance

1.81	Medical Payments Coverage Due Under Insured's Automobile Policy
1.82	Fire Loss Alleging Waiver of Insufficient Proof of Loss
1.83	Indemnity Petition Against Automobile Insurance Company for Payment of Judgment and Attorney's Fee, Where Company Has Refused to Defend Main Suit
1.84	Negligence, Gross Negligence, Fraud, Bad Faith, Insurance Code, and DTPA Violations Against Carrier and Agent
1.85	Petition by Judgment Creditors to Enforce Coverage and Collect on Underlying Judgment From Insurance Carrier
1.86	Suit by Named Insured to Enforce Coverage and Obligation of Excess Carrier to Defend Suit in—Underlying Judgment and Damages Resulting From Negligence, Gross Negligence, Bad Faith, Insurance Code and DTPA Violations

Division 6. Miscellaneous Torts

1.101	Ordinary and Punitive Damages for Personal Injuries Against Bank and Repossessor of Automobile
-------	--

TABLE OF CONTENTS

Sec.	
1.102	Negligence and Gross Negligence of Vice Principal for Personal Injuries in Plane Crash
1.103	Battery
1.104	Battery Resulting From Sports Injury
1.105	Wrongful Death by Suicide Resulting From Invasion of Privacy, Defamation, Duress, Economic Coercion, and Conspiracy
1.106	Defamation of Sports Celebrity

Division 7. Premises

1.201	Personal Injuries Resulting From Alleged Premises Defect
1.202	Personal Injuries and Loss of Filial Consortium Against Owner of Swimming Pool
1.203	Action for Wrongful Death of Employee of Independent Contractor at Work Site
1.204	Homeowners' Action Against Builder and Suppliers on Theories of Negligence Breach of Warranty of Habitability and DTPA Violations
1.205	Wrongful Death Action Against Two Counties for Negligent Maintenance of Bridge

CHAPTER 2. CITATION AND RETURN

2.1	Acceptance of Service—Waiver of Citation
2.2	Citation for Personal Service
2.3	Order Authorizing a Person to Serve Process Under Rule 103
2.4	Return of Personal Service—Delivery
2.5	Return of Personal Service—Mailing
2.6	Motion for Substitute Service Under Rule 106
2.7	Order for Substitute Service Under Rule 106
2.8	Return of Substitute Service Under Rule 106
2.9	Citation to Corporation
2.10	Return of Citation to Corporation
2.11	Citation to Unincorporated Joint Stock Company
2.12	Citation to Partners or Partnership
2.13	Return of Citation to Partners or Partnership
2.14	Citation to Defendant Without the State
2.15	Return of Citation to Defendant Without the State
2.16	Affidavit for Citation by Publication—Transient
2.17	Affidavit for Citation by Publication—Residence Unknown
2.18	Affidavit for Citation by Publication—Nonresident or Absent From State
2.19	Affidavit for Citation by Publication—Unknown Heirs or Stockholders of Defunct Corporations
2.20	Affidavit for Citation by Publication—Unknown Owners or Claimants of Interest in Land
2.21	Citation by Publication
2.22	Return of Citation by Publication—Ordinary Suit
2.23	Return of Citation by Publication—Land Suits
2.24	Motion for Service Under Rule 109a

TABLE OF CONTENTS

Sec.	
2.25	Order for Service Under Rule 109a
2.26	Appointment of Counsel to Defend One Cited by Publication
2.27	Delinquent Ad Valorem Taxes—Citation by Personal Service
2.28	Delinquent Ad Valorem Taxes—Citation by Publication or Posting

CHAPTER 3. VOLUNTARY DISMISSALS AND CONFESSED JUDGMENTS

3.1	Dismissal on Non-suit
3.2	Dismissal as to Party
3.3	Dismissal of Case
3.4	Confession of Judgment—Plaintiff's Affidavit
3.5	Confessed Judgment
3.6	Power of Attorney to Confess Judgment
3.7	Confessed Judgment by Attorney

CHAPTER 4. JUDGMENTS BY DEFAULT

4.1	Introductory Comment
4.2	Judgment by Default on Liquidated Demand
4.3	Interlocutory Judgment by Default as to One of Several Defendants
4.4	Judgment by Default—Trial as to Damages Before Court
4.5	Judgment by Default—Trial as to Damages Before Jury
4.6	Judgment Upon Verdict, by Default Against One and Upon Trial of Whole Case as to the Other Defendant
4.7	Judgment of Dismissal as to One Defendant and by Default Against the Other
4.8	Judgment by Default Against One Defendant and Against Plaintiff as to Other Defendant
4.9	Certificate of Address of Defaulting Defendant
4.10	Notice of Default Judgment

CHAPTER 5. DEFENDANT'S ANSWER

5.1	Introductory Comment—Certificate of Service
-----	---

SUBCHAPTER I. SPECIAL APPEARANCE AND MOTION TO QUASH

5.2	Special Appearance for Purpose of Objecting to Jurisdiction of Person or Property of Defendant
5.3	Order Sustaining Objection to Jurisdiction
5.4	Order Overruling Objection to Jurisdiction
5.5	Order Overruling Objection to Jurisdiction, but Sustaining the Motion as a Motion to Quash Citation or Service
5.6	Motion to Quash Citation or Service
5.7	Order Sustaining Motion to Quash

TABLE OF CONTENTS

SUBCHAPTER II. MOTION TO TRANSFER VENUE

Sec.	
5.11	Motion to Transfer Venue
5.12	Affidavit in Support of Motion to Transfer Venue
5.13	Response to Motion to Transfer Venue
5.14	Affidavit Opposing Motion to Transfer Venue
5.15	Notice of Time for Hearing
5.16	Order Denying Motion to Transfer Venue
5.17	Order Sustaining Motion to Transfer Venue
5.18	Order Sustaining Motion to Transfer Venue—Multiple Defendants
5.19	Motion to Transfer Venue for the Convenience of the Parties and Witnesses and in the Interest of Justice
5.20	Motion to Establish Venue for Multiple Plaintiffs or Intervenor

SUBCHAPTER III. FORUM NON CONVENIENS

5.21	Motion to Decline Jurisdiction—Claimant Not a Legal Resident of United States
5.22	Motion to Decline Jurisdiction—Claimant a Legal Resident of United States
5.23	Stipulation to Jurisdiction and Waiver of Certain Defenses
5.24	Response to Motion to Decline Jurisdiction
5.25	Notice of Time for Hearing
5.26	Order Denying Motion to Decline Jurisdiction—Claimant Not a Legal Resident of United States
5.27	Order Denying Motion to Decline Jurisdiction—Claimant a Legal Resident of United States
5.28	Order Granting Motion to Decline Jurisdiction—Claimant Not a Legal Resident of United States
5.29	Order Granting Motion to Decline Jurisdiction—Claimant a Legal Resident of United States

SUBCHAPTER IV. OTHER DILATORY PLEAS

5.31	Introductory Comment
5.32	Fraud on Jurisdiction
5.33	Pendency of Another Suit
5.34	Minority of Plaintiff
5.35	Minority of Defendant
5.36	Nonjoinder of Party

SUBCHAPTER V. SPECIAL EXCEPTIONS

5.41	Special Exception—General Form
5.42	Legal Insufficiency
5.43	Statute of Limitations
5.44	Defect of Parties
5.45	Formal Insufficiency

SUBCHAPTER VI. DENIALS

5.51	General Denial
------	----------------

TABLE OF CONTENTS

Sec.	
5.52	General Denial Except as to Sum Tendered
5.53	General Denial Except as to Certain Admissions
5.54	Special Denial
5.55	Special Denial—Partnership
5.56	Special Denial—Incorporation
5.57	Special Denial—Execution of Written Instrument
5.58	Special Denial—Indorsement or Assignment of Written Instrument
5.59	Special Denial—Sworn Account
5.60	Special Denial—Notice and Proof of Loss or Claim
5.61	Special Denial—Doing Business Under Assumed or Trade Name
5.62	Special Denial—Uninsured Motorist Action
5.63	Sample Answer—General Denial

SUBCHAPTER VII. AFFIRMATIVE DEFENSES

5.71	Introductory Comment
5.72	Accord and Satisfaction
5.73	Arbitration and Award—Contractual Provisions
5.74	Arbitration and Award—Separate Agreement
5.75	Contributory Negligence—General Plea
5.76	Contributory Negligence—Specific Allegations
5.77	Discharge in Bankruptcy
5.78	Duress
5.79	Equitable Estoppel
5.80	Failure of Consideration
5.81	Fraud
5.82	Illegality
5.83	Laches
5.84	License
5.85	Payment
5.86	Release
5.87	Res Judicata
5.88	Statute of Frauds—General
5.89	Statute of Frauds—UCC
5.90	Statute of Limitations
5.91	Waiver
5.92	Usury
5.93	Exceptions in Insurance Policy

CHAPTER 6. OTHER PLEADINGS

SUBCHAPTER I. INTERPLEADER

6.1	Introductory Comment
6.2	Insurance Company Stakeholder Petition
6.3	Insurance Company Petition Denying Liability

SUBCHAPTER II. COUNTER, CROSS, AND THIRD PARTY CLAIMS

6.11	Introductory Comment
------	----------------------

TABLE OF CONTENTS

Sec.	
6.12	Counterclaim—General Form
6.13	Cross-Claim—General Form
6.14	Third Party Practice—Application for Leave to File Cross-Action
6.15	Third Party Practice—Order on Application
6.16	Third Party Complaint—Indemnity Contract

SUBCHAPTER III. INTERVENTION

6.21	Introductory Comment
6.22	Commencement of Petition in Intervention
6.23	Motion to Strike Intervention

SUBCHAPTER IV. SUPPLEMENTAL AND AMENDED PLEADINGS

6.31	Supplemental Petition
6.32	Supplemental Answer
6.33	Amended Original Petition
6.34	Amended Supplemental Petition
6.35	Amended Original Answer
6.36	Amended Supplemental Answer
6.37	Trial Amendment

CHAPTER 7. ORDERS AND JUDGMENTS ON PLEADINGS

7.1	Judgment Nil Dicit
7.2	Order Overruling Special Exception to Petition
7.3	Judgment Overruling Special Exception to Petition When No Further Answer Made by Defendant
7.4	Order Sustaining Special Exception to Petition
7.5	Judgment Sustaining Special Exception to Petition and Dismissing Case After Failure to Amend
7.6	Order Overruling Special Exception to Answer
7.7	Order Sustaining Special Exception to Answer
7.8	Judgment Sustaining Special Exception to Answer When Defendant Does Not Amend

PART II. DISCOVERY, DEPOSITIONS AND RELATED PROCEEDINGS

CHAPTER 8. WRITTEN DISCOVERY

8.1	Introduction
-----	--------------

SUBCHAPTER I. REQUESTS FOR DISCLOSURE

8.2	Request for Disclosure
8.3	Response to Request for Disclosure
8.4	Response to Request for Disclosure Concerning Experts
8.5	Motion to Require Report of Testifying Expert

TABLE OF CONTENTS

SUBCHAPTER II. REQUESTS FOR PRODUCTION AND INSPECTION; REQUESTS AND MOTIONS FOR ENTRY ON PROPERTY

Sec.	
8.11	Request for Production and Inspection to Parties
8.12	Request for Entry Upon Property
8.13	Response to Request for Production and Inspection
8.14	Objection to Request for Production and Inspection
8.15	Request for Hearing on Objection
8.16	Order on Discovery Objection Hearing
8.17	Motion to Compel Production
8.18	Discovery from Nonparties

SUBCHAPTER III. INTERROGATORIES TO PARTIES

8.21	Interrogatories to Parties
8.22	Answers to Interrogatories

SUBCHAPTER IV. REQUESTS FOR ADMISSIONS

8.31	Request for Admissions
8.32	Statement in Response to Request for Admission
8.33	Motion to Determine Sufficiency of Answers
8.34	Application for Order Requiring Payment of Expenses of Proof

CHAPTER 9. DEPOSITIONS

SUBCHAPTER I. DEPOSITIONS IN PENDING CASES

9.1	Agreement Waiving Formalities—Oral Deposition
9.2	Agreement Waiving Formalities—Deposition on Written Questions
9.3	Notice of Intention to Take Oral Deposition
9.4	Notice of Intention to Take Deposition on Written Questions
9.5	Cross-Questions
9.6	Subpoena
9.7	Subpoena—Organization Witness
9.8	Notice of Non-Stenographic Recording
9.9	Motion for Protective Order
9.10	Order for Protection of Parties and Deponents

SUBCHAPTER II. DEPOSITIONS BEFORE SUIT OR TO INVESTIGATE CLAIMS

9.21	Petition to Perpetuate Testimony
9.22	Petition to Take Deposition to Investigate a Potential Claim
9.23	Notice of Petition to Take Deposition
9.24	Notice by Publication
9.25	Order Authorizing Perpetuation of Testimony
9.26	Order Authorizing Taking of Deposition to Investigate Potential Claim

TABLE OF CONTENTS

SUBCHAPTER III.. ENFORCEMENT

- | | |
|-------------|---|
| Sec. | |
| 9.31 | Request for Hearing on Objection or Privilege—Court in Which Action is Pending |
| 9.32 | Request for Hearing on Objection or Privilege—Court in District Where Deposition Taken |
| 9.33 | Application for Order When Witness Refuses to Answer—Court in Which Action Is Pending |
| 9.34 | Application for Order When Witness Refuses to Answer—Court in District Where Deposition Taken |
| 9.35 | Order When Party Witness Fails to Attend |
| 9.36 | Order When Witness Refuses to Answer |
| 9.37 | Order When Party Witness Fails to Comply With Order to Answer |
| 9.38 | Judgment of Contempt in Presence of Court |

CHAPTER 10. MISCELLANEOUS DISCOVERY MATTERS

SUBCHAPTER I. COMPULSORY PHYSICAL OR MENTAL EXAMINATION

- | | |
|------|--|
| 10.1 | Motion for Compulsory Physical or Mental Examination |
| 10.2 | Order Compelling Physical or Mental Examination |

SUBCHAPTER II. PRETRIAL CONFERENCE AND DISCOVERY CONTROL PLANS

- | | |
|-------|-----------------------------------|
| 10.11 | Illustrative Local Pretrial Rules |
| 10.12 | Pretrial Order |
| 10.13 | Illustrative Pretrial Order |
| 10.14 | Discovery Control Plans |

CHAPTER 11. MASTERS IN CHANCERY AND AUDITORS

SUBCHAPTER I. MASTERS IN CHANCERY

- | | |
|------|----------------------------------|
| 11.1 | Motion to Appoint Master |
| 11.2 | Order Appointing a Master |
| 11.3 | Master's Report |
| 11.4 | Objections to Master's Report |
| 11.5 | Order of Reference for Discovery |
| 11.6 | Master's Order |

SUBCHAPTER II. AUDITORS

- | | |
|-------|-----------------------------|
| 11.11 | Motion to Appoint Auditor |
| 11.12 | Order Appointing an Auditor |
| 11.13 | Auditor's Report |

PART III. OTHER PRETRIAL PROCEEDINGS

CHAPTER 12. ALTERNATIVE DISPUTE RESOLUTION

- | | |
|------|--|
| 12.1 | Motion to Refer for Alternative Dispute Resolution |
|------|--|

TABLE OF CONTENTS

Sec.	
12.2	Order of Referral to Mediation
12.3	Objection to Referral for Alternative Dispute Resolution
12.4	Agreement to Mediate
12.5	Stipulation as to Binding Arbitration
12.6	Standing Pretrial Order Regarding Mediation Fees and Procedures
12.7	Motion to Quash Subpoena to Mediator

CHAPTER 13. COSTS IN TRIAL COURT

13.1	Motion for Rule for Costs
13.2	Rule for Costs
13.3	Bond for Costs
13.4	Affidavit of Inability
13.5	Contest of Affidavit of Inability
13.6	Order of Contest of Affidavit of Inability

CHAPTER 14. DEATH OF PARTIES

14.1	Suggestion of Death of Sole Plaintiff
14.2	Record of Suggestion of Death of Sole Plaintiff
14.3	Order Dismissing Suit When Representative Does Not Appear and Prosecute It
14.4	Record of Suggestion of Death of Sole Defendant
14.5	Record of Suggestion of Death of One of Two Plaintiffs or Defendants
14.6	Record of Suggestion of Death of One Who Sues for the Use of Another

CHAPTER 15. JUDGES AND ATTORNEYS

SUBCHAPTER I. DISQUALIFICATION AND RECUSAL OF JUDGES

15.1	Motion for Order of Disqualification or Recusal
15.2	Objection to Assigned Judge
15.3	Record of Selection of Special Judge by Agreement

SUBCHAPTER II. WITHDRAWAL OR SUBSTITUTION OF ATTORNEYS

15.11	Motion to Withdraw as Attorney—With Substitute
15.12	Motion to Withdraw as Attorney—No Substitute
15.13	Order Approving Withdrawal
15.14	Notice of Change of Attorney in Charge

CHAPTER 16. CHANGE OF VENUE

16.1	Consent to Change of Venue
16.2	Motion for Change of Venue
16.3	Affidavit Attacking Motion
16.4	Order for Change of Venue

TABLE OF CONTENTS

CHAPTER 17. CONTINUANCE

Sec.	
17.1	Consent to Continuance
17.2	Application for Continuance—Want of Testimony
17.3	Application for Continuance—Attendance on Legislature—Party
17.4	Application for Continuance—Attendance on Legislature—Attorney
17.5	Application for Continuance—Religious Holy Day
17.6	Order for Continuance

CHAPTER 18. CONSOLIDATION, SEVERANCE AND SEPARATE TRIAL

18.1	Motion to Consolidate
18.2	Order of Consolidation
18.3	Order for Consolidation of Liability Discovery Matters
18.4	Order for Joint Trial or Hearing
18.5	Motion for Severance
18.6	Order of Severance
18.7	Motion for Separate Trial
18.8	Order for Separate Trial

CHAPTER 19. PRELIMINARY MATTERS PERTAINING TO EVIDENCE

19.1	Notice to Produce a Writing—Secondary Evidence Procedure
19.2	Affidavit for Admission of Evidence Under Texas Rule of Evidence 902
19.3	Motion for Judicial Notice of Law of Another State
19.4	Motion in Limine
19.5	Affidavit Concerning Cost and Necessity of Services—Provider
19.6	Affidavit Concerning Cost and Necessity of Services—Records Custodian
19.7	Affidavit Concerning Business Records

CHAPTER 20. DISMISSAL FOR WANT OF PROSECUTION

20.1	Notice of Intention to Dismiss for Want of Prosecution
20.2	Dismissal for Want of Prosecution
20.3	Motion to Reinstate Cause Dismissed for Want of Prosecution
20.4	Order of Reinstatement

CHAPTER 21. SUMMARY JUDGMENT

21.1	Motion for Summary Judgment
21.2	“No Evidence” Motion for Summary Judgment
21.3	Response to Motion for Summary Judgment
21.4	Affidavit Supporting or Opposing Motion for Summary Judgment
21.5	Summary Judgment

TABLE OF CONTENTS

PART IV. TRIAL

CHAPTER 22. PROCEEDINGS BEFORE AND DURING TRIAL

SUBCHAPTER I. PRELIMINARY MATTERS

Sec.	
22.1	Subpoena for Witness
22.2	Return of Subpoena for Witness
22.3	Affidavit for Attachment of Witness
22.4	Order for Attachment of Witness
22.5	Writ of Attachment of Witness
22.6	Admission in Order to Open and Close
22.7	Request for Jury Trial
22.8	Oath of Inability to Pay Jury Fee
22.9	Order Permitting Withdrawal of Jury Fee

SUBCHAPTER II. TRIAL MOTIONS AND INSTRUCTIONS

22.11	Admonitory Instructions to Jury Panel
22.12	Instructions After Jury Is Selected
22.13	Placing Witnesses Under Rule
22.14	Motion for Mistrial
22.15	Motion for Instructed Verdict

Volume 10

PART IV. TRIAL—Continued

CHAPTER 23. SUBMISSION TO JURY

SUBCHAPTER I. GENERAL

23.1	Court's Charge—Overall Considerations
23.2	Court's Charge Containing Caption and General Requirements

SUBCHAPTER II. OBJECTIONS AND REQUESTS

23.11	Request for Question and Court's Ruling
23.12	Request for Instruction and Court's Ruling
23.13	Objections to Charge

SUBCHAPTER III. AUTOMOBILES

23.21	Hypothetical Facts Upon Which Examples of Court's Charge Are Based
23.22	Charge Based Upon Hypothetical Example—Broad Form Submission With Instruction Placing Burden of Proof
23.23	Charge Based Upon Hypothetical Example Which Includes Negligence Per Se—Broad Form Submission
23.24	Broad Form Infeasible—Liability and Damages Submitted
23.25	Simple Negligence Case—Broad Form Submission

TABLE OF CONTENTS

- Sec.**
23.26 Negligence Case—Broad Form Submission With Settling Tortfeasor

SUBCHAPTER IV. RAILROADS

- 23.31 Passenger Injured in Collision
23.32 Pedestrian Crossing Accident
23.33 Extra Hazardous Crossing—Contributory Negligence Per Se With Instructions on Justification or Excuse
23.34 Federal Employer’s Liability Act With Act of God Instruction

SUBCHAPTER V. MALPRACTICE

- 23.41 Medical Malpractice Negligence Action Resulting in Death—Broad Form Submission
23.42 Failure to Inform Patient of Risks of Surgery
23.43 Informed Consent Form
23.44 Medical Procedure Performed Without Consent—Battery

SUBCHAPTER VI. OWNER/OCCUPIER OF PREMISES

- 23.51 Premises Injury to Invitee—Broad Form

SUBCHAPTER VII. INTENTIONAL TORTS

- 23.61 Question Submitting Intentional Tort Under Wrongful Death Statute With Instruction on Self-Defense
23.62 Battery Question and Instruction on Privilege of Discipline
23.63 Assault Question
23.64 Deceptive Trade Practice Constituting Violation of V.T.C.A., Business & Commerce Code 17.46(b)
23.65 Deceptive Trade Practice Not Constituting Violation of V.T.C.A., Business & Commerce Code 17.46(b)

SUBCHAPTER VIII. STRICT LIABILITY IN TORT

- 23.71 Design Defect and Producing Cause
23.72 Manufacturing Defect and Producing Cause
23.73 Marketing Defect by Failing to Warn

SUBCHAPTER IX. ISSUES AND INSTRUCTIONS ON VARIOUS THEORIES OF RECOVERY AND DEFENSE

- 23.81 Act of God—Instruction—FELA Case
23.82 Act of God—Instruction—Negligence Case
23.83 Borrowed Employee—Question and Instruction
23.84 Borrowed Employee—Question and Instruction—Another Form
23.85 Borrowed Employee—Disjunctive Submission
23.86 Independent Contractor—Issue and Instruction

TABLE OF CONTENTS

Sec.	
23.87	Joint Enterprise—Issue and Instruction
23.88	Railroad Crossing Collision—Negligence Per Se Under V.T.C.A., Transportation Code §471.006 and 545.251 With Justification or Excuse
23.89	New and Independent Cause—Instruction
23.90	Res Ipsa Loquitur—Question and Instruction
23.91	Sole Proximate Cause—Instruction
23.92	Sudden Emergency—Instruction
23.93	Unavoidable Accident
23.94	Dead Man’s Statute—Instruction
23.95	Health Care Liability—Liability Limits—Instruction
23.96	Damages—Injury to Spouse
23.97	Damages—Wrongful Death—Claim of Surviving Parent of Minor Child
23.98	Damages—Wrongful Death—Claim of Surviving Spouse
23.99	Definitions Concerning Exemplary Damages

CHAPTER 24. VERDICT

24.1	General Comments on Verdict
24.2	Instruction Concerning Unresponsive or Conflicting Verdict
24.3	Instructions After Receipt of Verdict

PART V. POST-TRIAL PROCEEDINGS IN TRIAL COURT

CHAPTER 25. JUDGMENTS

25.1	General Comment
25.2	Motion for Judgment on the Verdict
25.3	Motion to Disregard a Finding on a Question
25.4	Motion for Judgment Non Obstante Veredicto
25.5	Judgment on Jury Verdict
25.6	Judgment Disregarding Finding on a Question
25.7	Judgment Non Obstante Veredicto
25.8	Judgment in Nonjury Case
25.9	Notice of Final Judgment or Other Appealable Order

CHAPTER 26. POST-JUDGMENT MOTIONS AND PROCEEDINGS

SUBCHAPTER I. MOTION FOR NEW TRIAL

26.1	Motion for New Trial—Illustration
26.2	Order Overruling Motion for New Trial
26.3	Order Overruling Motion for New Trial After Remittitur
26.4	Remittitur
26.5	Order Granting Motion for New Trial
26.6	Order Granting Partial New Trial
26.7	Motion for New Trial Following Default Judgment
26.8	Motion to Modify, Correct, or Reform Judgment

TABLE OF CONTENTS

SUBCHAPTER II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Sec.

- 26.11 Request for Findings of Fact and Conclusions of Law
- 26.12 Notice of Past Due Findings of Fact and Conclusions of Law
- 26.13 Example of Judge's Findings of Fact and Conclusions of Law
- 26.14 Request for Additional Finding

SUBCHAPTER III. BILLS OF REVIEW

- 26.21 Equitable Bill of Review
- 26.22 Motion for New Trial Following Citation by Publication

PART VI. APPELLATE PROCEDURE

CHAPTER 27. CAPTIONS

- 27.1 Caption—Step Taken in Trial Court
- 27.2 Caption—Step Taken in Court of Civil Appeals
- 27.3 Caption—Step Taken in Supreme Court

CHAPTER 28. PERFECTION OF APPEAL

- 28.1 General Comment

SUBCHAPTER I. NOTICE OF APPEAL

- 28.2 Notice of Appeal
- 28.3 Docketing Statement

SUBCHAPTER II. RESTRICTED APPEAL

- 28.11 Restricted Appeal

SUBCHAPTER III. COSTS AND BONDS TO SUSPEND ENFORCEMENT

DIVISION 1. COSTS

- 28.21 Affidavit of Indigence
- 28.22 Notice of Affidavit of Indigence
- 28.23 Contest of Affidavit of Indigence
- 28.24 Order Setting Contest for Hearing
- 28.25 Order on Approval of Affidavit of Indigence—Party Entirely Unable to Pay
- 28.26 Order on Approval of Affidavit of Indigence—Party Partially Able to Pay
- 28.27 Order Sustaining Contest of Affidavit of Indigence

DIVISION 2. BOND TO SUSPEND ENFORCEMENT

- 28.31 Bond to Suspend Enforcement—General

TABLE OF CONTENTS

Sec.	
28.32	Bond to Suspend Enforcement—Judgment for Recovery of Real or Personal Property
28.33	Order Fixing Amount of Bond—Judgment for Recovery of Interest in Property
28.34	Order Fixing Amount of Bond—Conservatorship or Custody
28.35	Order Fixing Amount of Bond—Judgment in Favor of a Governmental Entity
28.36	Order Fixing Amount of Bond—Other Cases
28.37	Certificate of Clerk as to Cash in Lieu of Bond to Suspend Enforcement
28.38	Agreement Suspending Enforcement

CHAPTER 29. RECORD ON APPEAL

SUBCHAPTER I. BILLS OF EXCEPTION

29.1	Bill of Exception
29.2	Refusal of Bill of Exception
29.3	Bill of Exception by Judge
29.4	Bystanders' Bill of Exception

SUBCHAPTER II. CLERK'S RECORD

29.11	Agreement as to Contents of Clerk's Record
29.12	Appellant's Direction to Clerk for Preparation of Clerk's Record
29.13	Direction by Any Party as to Matter to Be Included in Clerk's Record
29.14	Judge's Order to Include Instrument in Clerk's Record
29.15	Clerk's Record

SUBCHAPTER III. REPORTER'S RECORD

29.21	Stipulation as to Proceedings to Be Included in Reporter's Record
29.22	Request for Reporter's Record
29.23	Designation by Appellant of Portions of Proceedings Desired in Reporter's Record
29.24	Designation by Appellee of Additional Portions of Proceedings Desired in Reporter's Record
29.25	Agreed Statement
29.26	Order to Send up Originals
29.27	Reporter's Record

CHAPTER 30. PROCEEDINGS IN THE COURT OF APPEALS

SUBCHAPTER I. PRELIMINARY MOTIONS

30.1	Notification to Clerk Accompanying Filing Fee
30.2	Affidavit in Lieu of Paying Fee
30.3	Motion to Withdraw Record
30.4	Motion Relating to Informalities in Record

TABLE OF CONTENTS

Sec.	
30.5	Motion to Dismiss for Want of Jurisdiction
30.6	Motion to Postpone Argument
30.7	Motion to Advance Appeal From Interlocutory Order

SUBCHAPTER II. AFFIRMANCE, REVERSAL, OR DISMISSAL ON MOTION

30.11	Agreed Motion to Dismiss Cause
30.12	Agreed Motion to Reverse
30.13	Agreed Motion to Dismiss Appeal
30.14	Motion by Appellant to Dismiss Appeal

SUBCHAPTER III. BRIEFS TO FINAL DISPOSITION

30.21	Motion for Extension of Time to File Brief
30.22	Appellant's Brief—Cover Sheet
30.23	Appellant's Brief—Identity of Parties and Counsel
30.24	Appellant's Brief—Table of Contents
30.25	Appellant's Brief—Index of Authorities
30.26	Appellant's Brief—Statement of the Case
30.27	Appellant's Brief—Issues Presented
30.28	Appellant's Brief—Statement of Facts
30.29	Appellant's Brief—Summary of the Argument
30.30	Appellant's Brief—Argument
30.31	Appellant's Brief—Prayer for Relief
30.32	Appellant's Brief—Certificate of Service
30.33	Appellant's Brief—Appendix
30.34	Appellee's Brief—General Discussion
30.35	Appellee's Brief—Cross-Points
30.36	Motion to Amend Brief
30.37	Motion for Affirmance with Damages
30.38	Remittitur
30.39	Motion for Rehearing

CHAPTER 31. TRANSFER TO THE SUPREME COURT

SUBCHAPTER I. PETITION FOR REVIEW

31.1	Motion for Extension of Time to File Petition for Review
31.2	Notification to Clerk Accompanying Filing Fee
31.3	Petition for Review—Cover Sheet
31.4	Petition for Review—Identity of Parties and Counsel
31.5	Petition for Review—Table of Contents and Index of Authorities
31.6	Petition for Review—Statement of the Case
31.7	Petition for Review—Statement of Jurisdiction
31.8	Petition for Review—Issues Presented
31.9	Petition for Review—Statement of Facts
31.10	Petition for Review—Summary of the Argument
31.11	Petition for Review—Argument
31.12	Petition for Review—Prayer and Certificate of Service

TABLE OF CONTENTS

Sec.

- 31.13 Petition for Review—Appendix
- 31.14 Brief in the Supreme Court

SUBCHAPTER II. DIRECT APPEAL

- 31.21 Procedure for Direct Appeal

CHAPTER 32. PROCEEDINGS IN THE SUPREME COURT

- 32.1 Notification to Clerk Accompanying Filing Fee
- 32.2 Affidavit in Lieu of Paying Fee
- 32.3 Respondent's Brief
- 32.4 Amicus Curiae Brief

PART VII. SPECIAL PROCEEDINGS

CHAPTER 33. PROCEEDINGS IN JUSTICE COURTS

- 33.1 Introductory Comment

SUBCHAPTER I. TRIAL PROCEEDINGS

- 33.2 Bond of Justice of the Peace
- 33.3 Caption
- 33.4 Citation
- 33.5 Motion to Transfer Venue
- 33.6 Affidavit for Change of Venue
- 33.7 Agreement to Change Venue
- 33.8 Order Changing Venue on Affidavit
- 33.9 Order Changing Venue on Consent
- 33.10 Subpoena
- 33.11 Oath of Jurors
- 33.12 Judgment for Plaintiff in Case Tried by Judge
- 33.13 Judgment for Plaintiff Upon Verdict of Jury
- 33.14 Judgment for Plaintiff for the Recovery of Specific Property
- 33.15 Small Claims Court Affidavit

SUBCHAPTER II. APPEAL

- 33.21 Appeal Bond—Defendant Appealing
- 33.22 Appeal Bond—Plaintiff Appealing
- 33.23 Affidavit of Inability to Pay Costs
- 33.24 Certificate on Transcript
- 33.25 Certificate of Cost Bill

SUBCHAPTER III. CERTIORARI

- 33.31 Application for Certiorari—Defendant
- 33.32 Application for Certiorari—Plaintiff

TABLE OF CONTENTS

Sec.

- 33.33 Order for Writ
- 33.34 Bond
- 33.35 Writ of Certiorari
- 33.36 Motion to Dismiss Writ
- 33.37 Order of Dismissal

CHAPTER 34. INJUNCTIONS

- 34.1 Introductory Comment
- 34.2 Petition for Injunction
- 34.3 Order of Judge Granting Temporary Restraining Order
- 34.4 Bond for Temporary Injunction or Restraining Order
- 34.5 Writ for Temporary Restraining Order
- 34.6 Order Extending Temporary Restraining Order
- 34.7 Motion to Dissolve or Modify Temporary Restraining Order
- 34.8 Order Setting Hearing on Temporary Injunction
- 34.9 Notice of Hearing on Temporary Injunction
- 34.10 Order Granting Temporary Injunction
- 34.11 Writ of Temporary Injunction
- 34.12 Bond on Dissolution
- 34.13 Affidavit Upon Disobedience of an Injunction
- 34.14 Order of Judge for Attachment
- 34.15 Writ of Attachment for Disobeying an Injunction
- 34.16 Return on Attachment
- 34.17 Order for Notice to Show Cause
- 34.18 Notice to Show Cause
- 34.19 Judgment Perpetuating Injunction
- 34.20 Judgment Perpetuating Injunction and on Bond on Dissolution

CHAPTER 35. CONTEMPT

- 35.1 Introductory Comment
- 35.2 Judgment of Contempt in Presence of Court
- 35.3 Motion for Release on Personal Recognizance
- 35.4 An Affidavit or Complaint
- 35.5 Order for Notice to Show Cause
- 35.6 Notice to Show Cause
- 35.7 Order for Attachment
- 35.8 Writ of Attachment
- 35.9 Final Judgment for Past Contempt
- 35.10 Commitment

CHAPTER 36. TRESPASS TO TRY TITLE

- 36.1 Introductory Comment
- 36.2 Petition
- 36.3 Disclaimer
- 36.4 Answer—Not Guilty
- 36.5 Claim for Improvements
- 36.6 Removal of Improvements

TABLE OF CONTENTS

Sec.	
36.7	Cross Action Against Warrantor
36.8	Three Years' Limitation
36.9	Five Years' Limitation
36.10	Ten Years' Limitation
36.11	Twenty-Five Years' Limitation
36.12	Twenty-Five Years' Limitation as Prima Facie Proof of Title
36.13	Demand for Abstract of Title
36.14	Notice of Filing Copies to Prove Common Source
36.15	Agreement of Common Source
36.16	Appointment of Surveyor
36.17	Judgment for Plaintiff
36.18	Judgment for Plaintiff When Successful Claim for Improvements
36.19	Judgment for Defendant
36.20	Writ of Possession
36.21	A Petition in Suit to Remove Cloud From Title

CHAPTER 37. PARTITION OF REAL ESTATE

37.1	Petition for Partition
37.2	Affidavit for Citation to Unknown Owner or to Party Whose Residence Is Unknown
37.3	Order Appointing Attorney When Citation by Publication
37.4	Determination That Property Is Susceptible of Partition in Kind
37.5	Order of Sale of Property Incapable of Partition in Kind
37.6	Appointment of Surveyor
37.7	Writ of Partition
37.8	Return of Writ
37.9	Report of Commissioners
37.10	Objection to Commissioners' Report
37.11	Final Decree Confirming Partition
37.12	Order Rejecting Commissioners' Report

CHAPTER 38. EMINENT DOMAIN—CONDEMNATION

38.1	Introductory Comment
------	----------------------

SUBCHAPTER I. GENERAL

38.2	Plaintiff's Statement
38.3	Notice of Lis Pendens
38.4	Order Appointing Commissioners
38.5	Oath of Commissioners
38.6	Order Setting Hearing Before Commissioners
38.7	Notice of Hearing
38.8	Waiver of Notice of Hearing
38.9	Award of Commissioners
38.10	Statement of Costs
38.11	Notice of Deposit
38.12	Application to Withdraw Deposit
38.13	Order Allowing Withdrawal of Award

TABLE OF CONTENTS

Sec.	
38.14	Plaintiff's Additional Deposit Bond
38.15	Plaintiff's Cost Bond
38.16	Objections to Award of Commissioners
38.17	Alternative Cross Bill for Condemnation
38.18	Judgment—No Objection Filed
38.19	Plaintiff's Motion in Limine
38.20	Submission to Jury
38.21	Judgment on Jury Verdict—For Plaintiff
38.22	Judgment for Defendant Owner
38.23	Application for Writ of Possession
38.24	Order for Possession

SUBCHAPTER II. CHARGE TO JURY

38.31	General Considerations
38.32	The Court's Charge

DIVISION 1. QUESTIONS

38.33	Necessity for Taking
38.34	Total Taking of Fee Estate
38.35	Total Taking of Improved Property
38.36	Partial Taking of Fee Estate
38.37	Partial Taking—Alternate Form
38.38	Partial Taking—Alternate Form
38.39	Partial Taking—Conditional Submission as to Damages to Remainder
38.40	Partial Taking—Structure Being Bisected and Parties Agree That Condemnor May Enter Upon Remainder to Remove Balance of Structure
38.41	Permanent Easement
38.42	Total Taking of Leasehold Interest
38.43	Leasehold Interest and Improvements
38.44	Total Taking of Both Lessor's and Lessee's Interests
38.45	Partial Taking of Both Lessor's and Lessee's Interests
38.46	Moving Expenses

DIVISION 2. DEFINITIONS AND INSTRUCTIONS

38.51	Definition of Market Value
38.52	Definition of Market Value—Alternate Form
38.53	Instruction on Land and Improvements
38.54	Instruction on Extent of Use by Condemnor
38.55	Instruction to Disregard Enhancement Due to Project for Which Property is Being Acquired

CHAPTER 39. QUO WARRANTO

39.1	Introductory Comment
39.2	A Petition and Information (Contested Election)

TABLE OF CONTENTS

Sec.	
39.3	An Order Granting Leave to File Information
39.4	A Final Judgment

CHAPTER 40. LOST JUDGMENTS AND RECORDS

40.1	Application to Supply Lost Judgment or Record
40.2	Citation Upon Application to Supply Lost Judgment or Record
40.3	Judgment Supplying Lost Judgment or Record

CHAPTER 41. ORIGINAL PROCEEDINGS IN THE APPELLATE COURTS

41.1	Introductory Comment
41.2	Petition in Original Proceedings
41.3	Writ of Habeas Corpus
41.4	Bond

CHAPTER 42. REMOVAL

42.1	Introductory Comment
42.2	Notice of Removal Grounded on Diversity of Citizenship—Action Between Natural Persons
42.3	Notice of Removal Grounded on Diversity of Citizenship—Action Between Natural Persons and Corporation
42.4	Notice of Removal Grounded on Federal Question
42.5	Notice of Filing of Notice of Removal

	Page
Table of Statutes	495
Table of Court Rules	501
Index	509

*