

Table of Contents

Volume 1

PART I. FEDERAL JURY PRACTICE

CHAPTER 1. TRIAL BY JURY

§ 1:2 Right to a jury trial

§ 1:4 Waiver of jury trial

CHAPTER 2. FAIR TRIAL—FREE PRESS

§ 2:3 News media and public trial

CHAPTER 3. SELECTION OF FEDERAL JURY PANELS

§ 3:8 Discrimination in selection

CHAPTER 4. CHOOSING AND EMPANELING THE JURY

§ 4:10 Alternate jurors

CHAPTER 5. GENERAL CONCERNS IN TRIAL MANAGEMENT

§ 5:2 Joint trials and severance—Criminal cases

§ 5:3 Bifurcation and consolidation—Civil cases

§ 5:21 Mistrial

CHAPTER 6. OPENING STATEMENTS TO CLOSING ARGUMENTS

§ 6:6 Closing arguments

CHAPTER 7. INSTRUCTIONS TO THE JURY

§ 7:1 In general

§ 7:4 Objections to instructions

§ 7:6 Form and delivery of instructions

CHAPTER 8. USE OF SPECIAL VERDICTS AND INTERROGATORIES

§ 8:1 In general

FEDERAL JURY PRACTICE

§ 8:7 Form, sufficiency and construction of special verdict

CHAPTER 9. DELIBERATION TO DISCHARGE

§ 9:10 Post-verdict motions

Volume 1A

PART II. GENERAL INSTRUCTIONS FOR FEDERAL CRIMINAL CASES

CHAPTER 12. BEGINNING OF THE FINAL CHARGE

- § 12:01 Introduction to the final charge—Province of the court and of the jury
- § 12:03 Evidence received in the case—Stipulations, judicial notice, and inferences permitted
- § 12:10 Presumption of innocence, burden of proof, and reasonable doubt

CHAPTER 13. THE OFFENSE CHARGED

- § 13:05 “On or about”—Explained

CHAPTER 14. CONSIDERATION OF THE EVIDENCE BY THE JURY

- § 14:01 Opinion evidence—The expert witness
- § 14:08 Immediate flight or concealment

CHAPTER 15. CREDIBILITY OF WITNESSES

- § 15:01 Credibility of witnesses—Generally
- § 15:05 Credibility of witnesses—Drug or alcohol abuser

CHAPTER 17. MENTAL STATE

- § 17:07 Proof of knowledge or intent
- § 17:09 Deliberate ignorance—Explained

CHAPTER 19. THE DEFENSE

- § 19:01 The theory of the defense—Explained
- § 19:06 The good faith defense—Explained

CHAPTER 20. THE DELIBERATIONS AND THE VERDICT

- § 20:07 Supplemental instructions—Response to questions from the jury

TABLE OF CONTENTS

Volume 2

**PART III. INSTRUCTIONS FOR PARTICULAR FEDERAL
CRIMINAL CASES**

**CHAPTER 27. BRIBERY OF PUBLIC OFFICIALS AND
WITNESSES (18 U.S.C.A. § 201)**

**C. INSTRUCTIONS COMMON TO GIVING OR DEMANDING A
BRIBE (18 U.S.C.A. § 201)**

§ 27:08 “Official act”—Defined

**CHAPTER 31. CONSPIRACY TO COMMIT AN OFFENSE OR
TO DEFRAUD THE UNITED STATES (18 U.S.C.A. § 371)**

§ 31:04 Conspiracy—Existence of an agreement

§ 31:07 “Overt act”—Defined

§ 31:10 Responsibility for substantive offense

CHAPTER 35. ESCAPE AND RESCUE (18 U.S.C.A. § 751(a))

§ 35:03 The essential elements of the offense charged

Volume 2A

CHAPTER 39. FIREARMS (18 U.S.C.A. §§ 922 AND 924)

**B. POSSESSION OR RECEIPT OF A FIREARM (18 U.S.C.A.
§ 922(1))**

§ 39:09 The essential elements of the offense charged

§ 39:12 “Possess”—Defined

§ 39:15 “Knowingly”—Defined

**C. USING OR CARRYING A FIREARM DURING ANY CRIME OF
VIOLENCE OR DRUG TRAFFICKING CRIME (18 U.S.C.A. § 924)**

§ 39:19 “Crime of violence or drug trafficking crime”—Defined

**CHAPTER 40. FRAUD AND FALSE STATEMENTS (18 U.S.C.A.
§ 1001)**

**B. MAKING A FALSE, FICTITIOUS OR FRAUDULENT
STATEMENT (18 U.S.C.A. § 1001(a)(2))**

§ 40:07 The essential elements of the offense charged

CHAPTER 45. HOMICIDE (18 U.S.C.A. § 1111 AND § 1112)

F. INSTRUCTIONS COMMON TO HOMICIDE

§ 45:16 “Malice aforethought”—Defined

§ 45:18 The lesser included offense

FEDERAL JURY PRACTICE

§ 45:19 Self-defense—Defined

CHAPTER 46. KIDNAPPING (18 U.S.C.A. § 1201(a)(1))

§ 46:03 The essential elements of the offense charged

CHAPTER 47. MAIL, WIRE, AND BANK FRAUD (18 U.S.C.A. §§ 1341, 1343, AND 1344)

B. FRAUD BY WIRE (18 U.S.C.A. § 1343)

§ 47:07 The essential elements of the offense charged

D. INSTRUCTIONS COMMON TO MAIL, WIRE, AND BANK FRAUD

§ 47:13 “Any scheme or artifice to defraud” and “false or fraudulent pretenses, representations or promises”—Defined

§ 47:14 Intent to defraud—Defined

§ 47:16 The good faith defense

Volume 2B

CHAPTER 64. DRUG ABUSE PREVENTION AND CONTROL (21 U.S.C.A. § 841)

A. DISTRIBUTION OF A CONTROLLED SUBSTANCE (21 U.S.C.A. § 841(a)(1))

§ 64:03 The essential elements of the offense charged

B. POSSESSION OF A CONTROLLED SUBSTANCE WITH THE INTENT TO DISTRIBUTE (21 U.S.C.A. § 841(a)(1))

§ 64:07 The essential elements of the offense charged

§ 64:09 “With intent to distribute”—Defined

D. INSTRUCTIONS COMMON TO DRUG ABUSE PREVENTION AND CONTROL

§ 64:13 “A controlled substance”—Defined

§ 64:14 Actual or exact amount of controlled substance need not be proven

§ 64:16 “Good faith” defense for physicians and pharmacists

CHAPTER 66. CONTINUING CRIMINAL ENTERPRISE (21 U.S.C.A. § 848)

§ 66:05 “A continuing series of violations”—Defined

TABLE OF CONTENTS

**PART V. GENERAL INSTRUCTIONS FOR FEDERAL CIVIL
CASES**

**CHAPTER 101. GENERAL PRELIMINARY INSTRUCTIONS AT
BEGINNING OF CIVIL TRIAL**

A. GENERALLY

- § 101:01 Opening instructions
- § 101:02 Order of trial
- § 101:03 Claims and defenses

B. PROVINCE AND CONDUCT OF JURY

- § 101:11 Jury conduct
- § 101:18 Notetaking—Permitted
- § 101:20 Questions by jurors—Permitted

C. ROLE OF JUDGE

- § 101:31 Bench conferences

D. EVIDENCE

- § 101:40 Evidence in the case
- § 101:41 Burden of proof
- § 101:42 Direct and circumstantial evidence
- § 101:43 Credibility of witnesses
- § 101:44 What is not evidence
- § 101:45 Evidence for limited purposes
- § 101:47 Stipulation of fact
- § 101:48 Stipulation of testimony
- § 101:50 Official translation

CHAPTER 102. INSTRUCTIONS DURING A CIVIL TRIAL

A. INSTRUCTIONS BEFORE RECESS

- § 102:01 Cautionary instruction before court recess
- § 102:02 Bench conferences

B. STIPULATIONS

- § 102:10 Stipulated testimony
- § 102:11 Stipulations of fact

C. EVIDENCE

- § 102:20 Judicial notice
- § 102:21 Transcript of audio recording
- § 102:23 Deposition as substantive evidence
- § 102:24 Use of interrogatories
- § 102:25 Use of requests for admission

D. LIMITATIONS ON USE OF EVIDENCE

- § 102:40 Limited purpose evidence

FEDERAL JURY PRACTICE

- § 102:44 Impeachment by conviction of crime
- § 102:45 Stricken testimony
- § 102:46 Cautionary instruction

CHAPTER 103. INSTRUCTIONS AT CLOSE OF EVIDENCE: DUTIES OF COURT AND JURY

A. GENERALLY

- § 103:02 Use of notes

C. CONSIDERATION OF EVIDENCE

- § 103:30 Evidence in the case
- § 103:35 Official translation

D. JURY PROCEDURES

- § 103:50 Election of foreperson or presiding juror; duty to deliberate; communications with court; cautionary; unanimous verdict; verdict form

CHAPTER 104. INSTRUCTIONS AT CLOSE OF EVIDENCE: BURDEN OF PROOF

A. STANDARD OF PROOF

- § 104:01 Preponderance of the evidence
- § 104:02 Clear and convincing evidence
- § 104:05 Direct and circumstantial evidence

B. INFERENCES AND PRESUMPTIONS

- § 104:25 Failure to call available witness
- § 104:26 Failure to produce available evidence
- § 104:27 Suppression or fabrication of evidence

C. OPINION EVIDENCE

- § 104:40 Expert witness
- § 104:42 Evidence admitted for a limited purpose only

D. MISCELLANEOUS EVIDENCE

- § 104:50 Charts and summaries
- § 104:54 Number of witnesses

E. DISCOVERY MATERIALS

- § 104:72 Answers to interrogatories

CHAPTER 105. INSTRUCTIONS AT CLOSE OF EVIDENCE: CREDIBILITY OF WITNESSES

- § 105:01 Witness credibility
- § 105:02 Use of depositions as evidence
- § 105:05 Impeachment—Conviction of felony

TABLE OF CONTENTS

**CHAPTER 106. INSTRUCTIONS AT CLOSE OF EVIDENCE:
THE VERDICT**

- § 106:01 Duty to deliberate
- § 106:05 Election of foreperson or presiding juror—Special verdict
- § 106:08 Communications between court and jury during jury’s deliberations
- § 106:10 Additional instruction—When jurors fail seasonably to agree

PART VI. INSTRUCTIONS FOR CIVIL DIVERSITY CASES

**CHAPTER 120. CLAIMS FOR INJURIES TO PERSONS:
NEGLIGENCE**

B. DUTY OF CARE

- § 120:10 Ordinary care

**CHAPTER 122. CLAIMS FOR INJURIES TO PERSONS:
PRODUCTS LIABILITY**

A. GENERALLY

- § 122:02 Essential elements of claim

CHAPTER 123. FRAUD AND DECEIT

A. GENERALLY

- § 123:01 Plaintiff’s claim

CHAPTER 126. CONTRACT ACTIONS

A. GENERALLY

- § 126:01 Elements of contract formation

B. DEFENSES

- § 126:10 Excuse from performance

CHAPTER 127. BUSINESS TORTS

A. INTERFERENCE WITH CONTRACTUAL ADVANTAGE

- § 127:01 Interference with prospective advantage—Essential elements

B. TRADE SECRETS

- § 127:10 Essential elements of claim
- § 127:14 Compensatory damages

C. INSURANCE

- § 127:20 Duty of insurer to settle

FEDERAL JURY PRACTICE

Volume 3A

**PART VII. INSTRUCTIONS FOR CIVIL ACTIONS GOVERNED
BY FEDERAL LAW**

CHAPTER 158. PATENT INFRINGEMENT (35 U.S.C.A. §§ 1-376)

A. GENERALLY

§ 158:2 Description of patent claims

B. STATUTES

§ 158:11 Conditions for patentability; novelty

CHAPTER 159. TRADEMARKS (15 U.S.C.A. § 1051 et seq.)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 159:20 Infringement of registered trademark

Volume 3B

**CHAPTER 160. COPYRIGHT INFRINGEMENT (17 U.S.C.A.
§ 101 ET SEQ.)**

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 160:20 Generally

§ 160:22 Ownership of valid copyright

§ 160:24 Authorship and work-made-for-hire

§ 160:27 Accessibility

CHAPTER 162. SECURITIES REGULATION

**C. SECTION 10(b) OF THE SECURITIES EXCHANGE ACT OF
1934 (15 U.S.C.A § 17j)**

3. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

A. PRIMARY VIOLATION—FRAUDULENT ACTS

§ 162:230 Generally

§ 162:231 Misrepresentation or omission of material fact

§ 162:232 Scienter

§ 162:233 Justifiable reliance

§ 162:234 Reliance—Active open market (fraud-on-the-market)

§ 162:237 Projections and forecasts

TABLE OF CONTENTS

CHAPTER 164. BANKRUPTCY (28 U.S.C.A. § 157(e))

D. FRAUDULENT TRANSFERS AND OBLIGATIONS

6. DEFENSES

§ 164:263 Ponzi scheme

CHAPTER 165. UNLAWFUL POLICE CONDUCT (42 U.S.C.A. § 1983)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 165:20 Generally
§ 165:21 Unlawful arrest
§ 165:22 Unreasonable search
§ 165:23 Excessive force
§ 165:24 Deadly force
§ 165:27 Failure to train

CHAPTER 166. PRISONERS: CRUEL AND UNUSUAL PUNISHMENTS, DENIAL OF MEDICAL CARE, AND DENIAL OF ACCESS TO COURTS

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIMS

§ 166:21 Denial of medical care
§ 166:22 Conditions of confinement—Failure to protect from attack [*Retitled*]
§ 166:23 Excessive force

CHAPTER 168. PUBLIC EMPLOYEES (42 U.S.C.A. § 1983)

A. FIRST AMENDMENT

3. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 168:20 Speech activity concerning subject of public concern
§ 168:21 Political activity

B. DUE PROCESS

3. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 168:100 Generally

5. CAUSATION

§ 168:120 Generally

FEDERAL JURY PRACTICE

Volume 3C

CHAPTER 169. HOUSING DISCRIMINATION (42 U.S.C.A. §§ 1981, 1982) FAIR HOUSING ACT (42 U.S.C.A. §§ 3601–3619, 3631)

C. FAIR HOUSING ACT

3. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 169:181 Disparate impact

CHAPTER 170. RACIAL DISCRIMINATION IN EMPLOYMENT (42 U.S.C.A. § 1981)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIMS

§ 170:22 Pretext

§ 170:24 Retaliation

CHAPTER 171. DISCRIMINATION IN EMPLOYMENT (42 U.S.C.A. §§ 1981A & 2000E)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 171:20 Disparate treatment

§ 171:21 Harassment—Supervisor—Tangible employment action

§ 171:23 Harassment—Hostile environment—Co-worker

§ 171:24 Disparate impact

§ 171:25 Retaliation

CHAPTER 172. DISABLED EMPLOYEES AMERICANS WITH DISABILITIES ACT (42 U.S.C.A. §§ 12111–12117)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 172:20 Disparate treatment

§ 172:21 Reasonable accommodation

§ 172:22 Hostile environment—Supervisor

§ 172:23 Hostile environment—Co-worker

§ 172:24 Retaliation

F. DEFENSES

§ 172:62 Direct threat to health or safety of plaintiff or others

CHAPTER 173. AGE DISCRIMINATION IN EMPLOYMENT (29 U.S.C.A. §§ 621–634)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIMS

§ 173:20 Disparate treatment

§ 173:21 Disparate impact

§ 173:22 Hostile environment

TABLE OF CONTENTS

§ 173:23 Retaliation

CHAPTER 174. EQUAL PAY ACT (29 U.S.C.A. § 206(d))

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 174:20 Generally

§ 174:23 Retaliation

CHAPTER 175. FAIR LABOR STANDARDS ACT (29 U.S.C.A. §§ 201–219)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 175:20 Generally

§ 175:21 Retaliation

D. DEFINITIONS

§ 175:36 Don

§ 175:37 Doff

CHAPTER 177. SEX DISCRIMINATION IN FEDERALLY ASSISTED EDUCATION PROGRAMS TITLE IX OF THE EDUCATION AMENDMENTS ACT OF 1972 (20 U.S.C.A. §§ 1681–1688)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 177:21 Harassment—Student-on-student

CHAPTER 178. FALSE CLAIMS ACT (31 U.S.C.A. §§ 3729–3733)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 178:20 Generally

F. DEFENSES

§ 178:50 Generally

G. DAMAGES

§ 178:60 Generally

CHAPTER 179. FAMILY AND MEDICAL LEAVE ACT (31 U.S.C.A. §§ 2601–2654)

C. ESSENTIAL ELEMENTS OF PLAINTIFF'S CLAIM

§ 179:26 Interference with leave rights

§ 179:27 Retaliation for opposing actions violating FMLA *[Retitled]*

F. DEFENSES

§ 179:54 Honest belief

Table of Laws and Rules

FEDERAL JURY PRACTICE

Table of Cases