Index

ABANDONMENT ANSWER OR PLEA—Cont'd Condition subsequent, § 19:37 Modification, § 11:4 Consideration ACCEPTANCE Failure of, § 19:25 Counteroffer, effect of, § 2:20 Want of, § 19:26 Formation of contract, generally, Covenant not to sue, § 19:32 § 2:19 to 2:22 Defenses, generally, § 19:16 to 19:20 Manner of accepting offer, § 2:21 Duress, § 19:22 Silence, effect of, § 2:22 Enforcement ACCORD AND SATISFACTION Inequity of specific enforcement of contract, § 19:20 Discharge of contracts, § 16:2 Mutuality, contract not enforceable ACCOUNTS AND ACCOUNTING due to lack of, § 19:19 Complaint, form, § 19:2 Uncertainty of essential terms, Statute of limitations, § 16:23 contract not enforceable due to, § 19:18 ACCOUNT STATED Foreign statute of limitations, § 19:35 Discharge of contracts, § 16:5 Fraud **ACCRUAL** Generally, § 19:27 Statute of limitations, § 16:18 Statute of frauds, § 19:33 Illegality, § 19:28 **ACT OF GOD** Inequity of specific enforcement of Nonperformance, excuses of, § 10:15 contract, § 19:20 ADHESION CONTRACTS Infancy, § 19:38 Generally, § 1:13 Insanity, defense, § 19:39 Defenses, § 9:19, 9:20 Laches, § 19:29 Mutuality, contract not enforceable **ALLEGATIONS** due to lack of, § 19:19 Pleadings, forms, § 19:5 to 19:12 In pais estoppel, § 19:23 ALTERNATE OR ALTERNATIVE In pari delicto, defense, § 19:21 Jury instructions, breach of contract Payment, § 19:30 issues, § 18:300.01A Performance of contract, § 19:17 ALTERNATIVE PERFORMANCE Prior rescission of contract as Generally, § 10:8 defense, § 19:16 Release, § 19:31 **AMBIGUITY** Rescission Insurance policies, § 5:12 Generally, § 19:40 Interpretation and construction, gen-Prior rescission of contract as erally, **§ 5:6** defense, § 19:16 ANSWER OR PLEA Res judicata, § 19:24 Affirmative defenses, generally, Specific enforcement, inequity of,

§ 19:22 to 19:40

§ 19:20

ANSWER OR PLEA—Cont'd

Statute of frauds, § 19:33
Statute of limitations
Generally, § 19:34
Foreign statute of limitations,
§ 19:35

Subsequent conditions, § 19:37 Uncertainty of essential terms, contract not enforceable due to, § 19:18

Waiver or estoppel Generally, § 19:36 In pais estoppel, § 19:23 Want of consideration, § 19:26

ANTICIPATORY BREACH

Jury instructions, excuse of performance, § 18:302.04

ANTICIPATORY BREACH OR REPUDIATION

Performance and nonperformance, § 10:22

ARBITRATION

Interpretation and construction, enforceability of arbitration clauses, § 5:16

ASSET PURCHASE AGREEMENT

Pleadings, sample form, § 19:44

ASSIGNMENTS

Generally, § 13:1 to 13:11
Credit agreements, § 13:13
Defenses, § 13:8
Formalities of, § 13:2
Future rights, § 13:6
Good faith and fair dealing, interpretation and construction, § 5:14
Insured's rights under policy, § 13:4
Prohibition by contract, § 13:7
Rights, generally, § 13:3, 13:5

ATTORNEYS' FEES

Appeal, § 14:24
Based on contract, damages, § 14:20
Calculation of damages, § 14:23
Damages, generally, § 14:16 to 14:24
Employment contracts, § 17:10
Other grounds, § 14:22

ATTORNEYS' FEES—Cont'd

Prevailing party, § 14:19
Reciprocal right to recover fees, § 14:18
Statutory basis, § 14:17 to 14:19

AT-WILL RELATIONSHIP

Employment contracts, modification of at-will relationship, § 17:2

AVOIDANCE OR AVOIDABILITY

Damages, avoidable consequences, § 14:11

Discharge of contracts, specific

grounds for avoiding effect of release, § 16:7

BANKRUPTCY

Discharge of contracts, § 16:10

BIDS AND BIDDING

Offer, invitation to bid, § 2:17

BILATERAL CONTRACTS

Generally, § 1:5

BREACH OF CONTRACT

Alternatives, § 18:300.01A

Anticipatory breach, § 18:302.04

Default, breach distinguished from, § 10:2

Material breach, § 18:302.03

Pleadings, form, § 19:5

BROKERS

Statute of frauds, employment contracts for real estate brokers, § 3:12

BURDEN OF PROOF

Clear, cogent and convincing standard, § 1:22

Jury instructions, affirmative defenses, § 18:300.02, 18:300.03

Nonperformance, § 10:3

Preponderance standard, § 1:21

BUSINESS COMPULSION

Defenses, § 9:17

CALCULATION

Attorneys' fees, calculation of damages, § 14:23

CANCELLATION

Discharge of contracts, § 16:4

CAPACITY OR INCAPACITY

Formation of contract, generally, § 2:3 to 2:5

Mental capacity, § 2:5 Minors, formation of contract, § 2:4 Physical capacity, § 2:5

CASH PURCHASE PRICE

Pleadings, sample form for option to purchase real property, § 19:42

CAUSATION

Consumer Protection Act, jury instructions, § 18:310.07

CERTAINTY AND DEFINITENESS

Answer, contract not enforceable due to uncertainty of essential terms, § 19:18

Damages, certainty of, § 14:10 Formation of contract, certainty and definiteness of terms, § 2:27

CHOICE OF LAW

Interpretation and construction, § 5:18

CLASSIFICATION

Conditions, § 8:2

CLEAR, COGENT AND CONVINCING STANDARD

Burden of proof, § 1:22

COLLECTIVE BARGAINING

Types of contracts, § 1:15

COMMON LAW

Sources of contract law, § 1:17

COMMUNICATION

Offer, communication of, § 2:14

COMPARISON

Offer compared to preliminary negotiations, § 2:12

COMPENSATORY DAMAGES

Generally, § 14:4 to 14:8 Consequential damages, § 14:8 Expectation damages, § 14:5

COMPENSATORY DAMAGES

-Cont'd

Reliance damages, § 14:6 Restitution damages, § 14:7

COMPETITION

Specific performance, covenants not to compete, § 15:6

COMPLIANCE

Discharge of contracts, failure to comply with Contractor Registration Act, § 16:14
Statute of frauds, confirmatory writings, § 3:14

COMPULSION

Defenses, business compulsion, § 9:17

CONCURRENT CONDITIONS

Generally, § 8:4

CONDITIONS

Generally, § 8:1 to 8:8
Classification of conditions, § 8:2
Concurrent conditions, § 8:4
Constructive conditions, § 8:7
Definition of condition, § 8:1
Excuse of conditions, § 8:8
Express conditions, § 8:6

CONDITIONS PRECEDENT

Generally, § 8:3

Jury instructions, conditions precedent or conditions current, § 18:302.02
Pleadings, § 19:11

CONDITIONS SUBSEQUENT

Generally, § 8:5 Answer, § 19:37

CONFIRMATORY WRITINGS

Compliance, statute of frauds, § 3:14

CONSEQUENTIAL DAMAGES

Compensatory damages, § 14:8

CONSIDERATION

Failure of, § 19:25

Formation of contract, generally, § 2:23 to 2:26

CONSIDERATION—Cont'd

Jury instructions, § 18:301.04
Legally insufficient, § 2:24
Option contracts, § 2:25
Promise for a promise, § 2:26
Sufficiency or insufficiency, legally insufficient, § 2:24
Want of, § 19:26

CONSOLIDATION OR MERGER

Discharge of contracts, § 16:8

Modification, § 11:5

Parol evidence rule, merger clauses, § 4:4

CONSTRUCTION AND INTERPRETATION

Choice of law, § 5:18

CONSTRUCTION OR INTERPRETATION

Generally, § 5:1 to 5:19
Arbitration clauses, enforceability of, § 5:16

Context rule, § 5:7 Distinctions, § 5:2

Enforceability of arbitration clauses, § 5:16

Express trust, creation of, § 5:17 Implied covenants, § 5:5 Intent of parties, § 5:8

Jury instructions, interpretation of contract, § 18:301.05

Procedural contract provisions, § 5:1 Rules

Construction, rules of, § 5:4
Context rule, § 5:7
Insurance policies, rules of interpretation and construction of,

Interpretation, rules of, § 5:3
Statute of frauds, general principles of construction, § 3:2

Trusts, creation of express trust, § 5:17

CONSTRUCTION WORK

§ 5:9

Offer, revocable and irrevocable, § 2:15

Promissory estoppel, § 6:2

CONSTRUCTION WORK—Cont'd

Revocable and irrevocable offer, § 2:15

Statute of limitations, special rule applicable to claims arising from construction or improvements to real property, § 16:19

CONSTRUCTIVE CONDITIONS

Generally, § 8:7

CONSUMER PROTECTION ACT

Causation, § 18:310.07
Damages, generally, § 14:25 to 14:28
Defense of reasonableness,
§ 18:310.02

Elements of damages, § 14:26 Jury instructions

Generally, § 18:310.00 Causation in, § 18:310.07 Elements of violation of,

§ 18:310.01

Injury in claim, § 18:310.06 Per se violation, § 18:310.03 Reasonableness defense, § 18:310.02

Per se violation

Damages for, § 14:27
Jury instructions, § 18:310.03

Reasonableness defense, jury instructions, § 18:310.02

Remedies, § 14:28

CONSUMERS

Jury instructions, public interest element in consumer disputes, § 18:310.04

CONTEMPORANEOUS AGREEMENTS

Parol evidence rule, § 4:5

CONTEXT RULE

Interpretation and construction, § 5:7

CONTINUATION OR CONTINUITY

Modification or termination of contract for continuing performance, § 11:10

CONTRACT

Defined, § 1:1, 18:301.01

CONTRACTOR REGISTRATION ACT (CRA)

Discharge of contracts, failure to comply with Contractor Registration Act, § 16:14

CONTRACTORS

Compliance, failure to comply with Contractor Registration Act, § 16:14

Discharge of contracts

Compliance, failure to comply with Contractor Registration Act, § 16:14

Notice to prime contractors of public construction project, failure to provide, § 16:15

Notice to prime contractors of public construction project, failure to provide, § 16:15

Pleadings, action against contractors, form, § 19:13

CONTRACTS

Generally, § 1:1 et seq.

CORPORATIONS

Pleadings, sample form for option to purchase real property, § 19:42

COUNTERCLAIMS

Jury instructions, measure of expectation damages, § 18:303.01, 18:303.02

COUNTEROFFER

Acceptance, § 2:20

COVENANTS NOT TO COMPETE

Specific performance, § 15:6

COVENANTS NOT TO SUE

Answer, § 19:32 Discharge of contracts, § 16:6

COVERAGE

Insurance policy coverage, interpretation of, § 5:11

CREDIT AGREEMENTS

Assignments, § 13:13

CURRENT CONDITIONS

Jury instructions, § 18:302.02

DAMAGES

Generally, § 14:1 to 14:28 Avoidable consequences, § 14:11 Certainty of, § 14:10 Counterclaims, measure of expectation damages, § 18:303.01, 18:303.02

Direct damages, measure of, § 18:303.03

Employment contracts, § 17:9 Foreseeability, § 14:9

Interest on money, prejudgment interest, § 14:14

Jury instructions

Breach of contract issues, generally, § 18:300.01

Counterclaims, measure of expectation damages, § 18:303.01, 18:303.02

Direct damages, measure of, § 18:303.03

Expectation damages, measure of, § 18:303.01, 18:303.02

Liquidated damages, measure of, § 18:303.07

Lost profits, measure of damages, § 18:303.04

Mitigation of damages, § 18:303.06

Reliance damages, measure of, § 18:303.05

Restitution, measure of damages, § 18:303.08

Liquidated damages, § 14:13 Liquidated damages, measure of, § 18:303.07

Lost profits, § 18:303.04

Mitigation

Generally, § 14:11

Jury instructions, § 18:303.06

Nominal damages, § 14:3

Offset, § 14:12

Prejudgment interest, § 14:14

Punitive damages, § 14:15

Reliance damages, measure of, § 18:303.05

DAMAGES—Cont'd

Stipulated damages, § 14:13

DEATH AND DEATH ACTIONS

Nonperformance, excuse for, § 10:20

DEBT OF ANOTHER

Statute of frauds, promises to answer for debt of another, § 3:10

DEFAULT

Performance and nonperformance, breach distinguished from default, § 10:2

DEFENSES

Adhesion contracts, § 9:19, 9:20 Assignment, § 13:8

Designment, § 15.0

Business compulsion, § 9:17

Consumer Protection Act, defense of reasonableness, § 18:310.02

Equitable defenses, specific performance, § 15:7

Exculpatory clauses, § 9:20

Forum selection clauses, § 9:21

Ignorance, § 9:1

Influence, undue influence, § 9:18

Jury instructions, § 18:310.02

Public policy, contracts against, § 9:22

Specific performance, equitable defenses, § 15:7

Standardized agreements, § 9:19, 9:20

Third-party beneficiaries, § 12:7 Undue influence, § 9:18

DEFINITIONS AND DISTINCTIONS

Condition, § 8:1

Contract, § 1:1, 18:301.01

Default, breach distinguished from, § 10:2

Intention, § 1:3

Interpretation and construction, § 5:2

Material breach, § 18:302.03

Promise, § 1:2, 18:301.02

Trade or commerce, § 18:310.09

Unfair or deceptive act or practice defined, § 18:310.08

DELAYS

Performance delay, generally, § 10:4 Pleadings, delay in performance with time of the essence, § 19:6

DELEGATION

Assignment, generally, § 13:9 to 13:11

Invalid delegation, effect of, § 13:11 Nondelegable duties, assignment of, § 13:10

DELIVERY

Performance and nonperformance, impossibility of delivery mode, § 10:18

DESCRIPTION OR IDENTIFICATION

Statute of frauds, sufficiency of description in sale of land, § 3:5

DESTRUCTION

Impossibility of destruction of subject matter, § 10:17

DIRECT DAMAGES

Measure of, § 18:303.03

DISCHARGE

Employment contracts, discharge in violation of public policy, § 17:6

DISCHARGE OF CONTRACTS

Generally, § 16:1 to 16:16

Accord and satisfaction, § 16:2

Account stated, § 16:5

Alteration, discharge by operation of law, § 16:9

Avoidance, specific grounds for avoiding effect of release, § 16:7

Bankruptcy, § 16:10

Cancellation, § 16:4

Compliance, failure to comply with Contractor Registration Act, § 16:14

Contractor Registration Act, failure to comply with, § 16:14

Covenant not to sue, § 16:6

Merger, § 16:8

Mutual rescission, § 16:3

DISCHARGE OF CONTRACTS —Cont'd

Notice to prime contractors of public construction project, failure to provide, § 16:15

Novation, § 16:12

Operation of law, discharge by, § 16:9

Payments, partial payments, § 16:22 Performance, § 16:11

Renunciation, § 16:13

Rescission, mutual rescission, § 16:3

Specified by contract, statute of limitations, § 16:28

Surrender, § 16:4

DISCLAIMERS

Employment contracts, § 17:7

DISCOVERY RULE

Statute of limitations, § 16:18

DIVISIBLE AND INDIVISIBLE CONTRACTS

Generally, §:16

DURESS OR COERCION

Generally, § 9:14 to 9:16 Answer, § 19:22 Jury instructions, § 18:301.10 Voidable contracts, § 9:16 Void contracts, § 9:15

ELEMENTS OF ACTIONS

Statute of limitations, accrual of cause of action, § 16:18

EMPLOYEE MANUAL

Implied promises, § 7:4

EMPLOYMENT CONTRACTS

Generally, § 17:1 to 17:10

Attorney fees, § 17:10

At-will relationship, modification of, § 17:2

Damages, § 17:9

Discharge in violation of public policy, § 17:6

Disclaimers, § 17:7

Enforceability of, § 17:7

Estopping termination at will, § 17:5

Express contracts, § 17:3

EMPLOYMENT CONTRACTS

-Cont'd

Formation of, § 17:7

Implied, § 1:10

Implied promises in manual, § 17:4

Modification of at-will relationship, § 17:2

Public policy, discharge in violation of, § 17:6

Real estate brokers, employment contracts for, § 3:12

ENFORCEMENT OR ENFORCEABILITY

Arbitration clauses, § 5:16 Employment contracts, § 17:7

EQUITABLE DEFENSES

Specific performance, § 15:7

EQUITABLE ESTOPPEL

Jury instructions, § 18:302.05

EQUITY

Answer, inequity of specific enforcement of contract, § 19:20

ESTIMATES

Offer, § 2:13

ESTOPPEL

Termination at will, § 17:5

EXCEPTIONS

Partial performance, § 3:16, 3:17

EXCULPATORY CLAUSES

Defense, § 9:20

EXECUTORS OR ADMINISTRATORS

Statute of frauds, promise by executor or administrator, § 3:11

EXECUTORY CONTRACTS

Generally, § 1:6

EXPECTATION DAMAGES

Compensatory damages, § 14:5
Jury instructions, measure of damages, § 18:303.01, 18:303.02
Measure of damages, § 18:303.01

EXPRESS CONDITIONS

Generally, § 8:6

EXPRESS CONTRACTS

Generally, § 1:8

EXPRESS TRUST

Interpretation and construction, § 5:17

FEDERAL CONSTITUTION

Sources of contract law, § 1:19

FIDUCIARIES

Pleadings, sample form for option to purchase real property, § 19:42

FLEXIBILITY

Promissory estoppel, flexibility of remedy, § 6:3

FOREIGN STATUTE OF LIMITATIONS

Answer, § 19:35

FORESEEABILITY

Damages, § 14:9

FORMALITIES

Assignment, formalities of, § 13:2

FORMATION OF CONTRACT

Certainty and definiteness of terms, § 2:27

Definiteness and certainty of terms, § 2:27

Elements of contract, generally, § 2:2 to 2:10

Employment contracts, § 17:7
Intoxication, effect of, § 2:6
Objective theory of contracts, § 2:1
Terms, definiteness and certainty of, § 2:27

FORUM SELECTION

Defenses, § 9:21

FRAUD AND DECEIT

Generally, § 9:7 to 9:13
Defenses, generally, § 9:7 to 9:13
Effect of misrepresentation, § 9:13
Elements of misrepresentation, § 9:8
to 9:13

FRAUD AND DECEIT—Cont'd

Justifiable reliance on misrepresentation, § 9:12

Material statement, misrepresentation, § 9:10

Parol evidence rule, § 4:7

Untrue statements, § 9:9

Void for fraud provisions of insurance contracts, § 10:21

FRUSTRATION OF PURPOSE

Jury instructions, § 18:302.10

FUTURE RIGHTS

Assignment, § 13:6

GENERAL PRINCIPLES OF CONSTRUCTION

Statute of frauds, § 3:2

GOD, ACT OF

Nonperformance, excuses of, § 10:15

GOOD FAITH AND FAIR DEALING

Assignments, § 5:14

Insurance companies, § 5:15

Interpretation and construction

Generally, § 5:13 to 5:15

Assignments, § 5:14

Insurance companies, § 5:15

Jury instructions, implied duty of good faith and fair dealing, § 18:302.11

GOODS

Statute of limitations, sale of goods, § 16:26

GOVERNMENT AND GOVERNMENTAL BODIES

Contracts

Proprietary vs. governmental capacity, § 5:19

GUARANTY

Generally, § 1:14

HINDRANCE

Performance and nonperformance, hindrance as wrongful, § 10:10

IDENTIFICATION

Statute of frauds, sufficiency of description in sale of land, § 3:5

IGNORANCE

Defense, § 9:1

ILLEGALITY

Answer, § 19:28

ILLNESS

Excuses for nonperformance, § 10:20

IMPLICATION

Indemnity contracts, § 1:12

Jury instructions, implied duty of good faith and fair dealing, § 18:302.11

Mutual assent, implication from circumstances, § 2:9

IMPLIED CONTRACTS

Generally, § 1:9 Employment, § 1:10 Indemnity contracts, § 1:12

IMPLIED INDEMNITY CONTRACTS

Generally, § 1:12

IMPOSSIBILITY OR IMPRACTICABILITY

Jury instructions, excuse of performance, § 18:302.09

Nonperformance, excuses for, § 10:16 to 10:20

Pleadings, impossibility of performance, § 19:7, 19:9

IMPROVEMENTS

Limitation of actions, special rule applicable to claims arising from improvements to real property, § 16:19

INADEQUACY

Specific performance, inadequacy of legal remedies, § 15:4

INCIDENTAL BENEFICIARIES

Third-party beneficiaries, § 12:2

INCLUSION

Statute of frauds, inclusion of sale of land in separate contract, § 3:7

INDEMNITY

Contracts, generally, § 1:11, 1:12 Third-party beneficiaries, promises of indemnity, § 12:3

INEQUITY

Answer, inequity of specific enforcement of contract, § 19:20

INFLUENCE

Defense of undue influence, § 9:18

INJURY IN CLAIM

Consumer Protection Act, jury instructions, § 18:310.06

IN PAIS ESTOPPEL

Answer, § 19:23

IN PARI DELICTO

Answer, § 19:21

INSANE OR INCOMPETENT PERSONS

Answer, § 19:39

INSTRUCTIONS TO JURY

Generally, § 18:300.00 to 18:310.09

Alternatives, breach of contract issues, § 18:300.01A

Anticipatory breach, excuse of performance, § 18:302.04

Breach of contract issues, generally, § 18:300.01

Burden of proof, § 18:300.02, 18:300.03

Conditions precedent or conditions current, § 18:302.02

Consent or approval, mutual assent, § 18:301.03

Consideration, § 18:301.04

Consumer disputes, public interest element in, § 18:310.04

Contract defined, § 18:301.01

Counterclaims, measure of expectation damages, § 18:303.01, 18:303.02

Current conditions, § 18:302.02

INSTRUCTIONS TO JURY INSTRUCTIONS TO JURY -Cont'd -Cont'd Defenses, Consumer Protection Act, Material breach defined, § 18:302.03 § 18:310.02 Modification of contract, § 18:301.07 **Definitions** Mutual assent, § 18:301.03 Contract, § 18:301.01 Mutual mistake, § 18:301.08 Material breach, § 18:302.03 Nonperformance of duty, breach of Promise, § 18:301.02 contract, § 18:302.01 Trade or commerce, § 18:310.09 Parol evidence, § 18:301.06 Unfair or deceptive act or practice Performance defined, § 18:310.08 Nonperformance of duty, breach of Duress, § 18:301.10 contract, § 18:302.01 Enforceability Precedent conditions, § 18:302.02 Private disputes, public interest ele-Generally, § 18:301.08 to 18:301.11 ment in, § 18:310.05 Duress, § 18:301.10 Promise defined, § 18:301.02 Mutual mistake, § 18:301.08 Promissory estoppel, § 18:301A.01 Undue influence, § 18:301.11 Public interest Unilateral mistake, § 18:301.09 Consumer disputes, public interest element in, § 18:310.04 Equitable estoppel, elements of, § 18:302.05 Private disputes, public interest element in, § 18:310.05 Evidence Quasi contract, § 18:301A.02 Burden of proof, affirmative defenses, § 18:300.02, 18:300.03 Trade or commerce defined, **§ 18:310.09** Parol evidence, § 18:301.06 Undue influence, § 18:301.11 Excuse of performance Unfair or deceptive act or practice Anticipatory breach, § 18:302.04 defined, § 18:310.08 Estoppel, § 18:302.06 Unilateral mistake, § 18:301.09 Frustration of purpose, Waiver or estoppel § 18:302.10 Equitable estoppel, elements of, Impossibility or impracticability, § 18:302.05 § 18:302.09 Excuse of performance, Interference with contractual performance, § 18:302.08 § 18:302.06, 18:302.07 Promissory estoppel, § 18:301A.01 Waiver, § 18:302.07 Expectation damages, measure of, **INSURANCE** § 18:303.01, 18:303.02 Ambiguities, interpretation and Fair dealing, implied duty of good construction of policies, § 5:12 faith and, § 18:302.11 Coverage, § 5:11 Frustration of purpose, § 18:302.10 Good faith and fair dealing, § 5:15 Implied duty of good faith and fair Interpretation and construction dealing, § 18:302.11 Good faith and fair dealing, § 5:15 Impossibility or impracticability. Interpretation and construction of excuse of performance, policies § 18:302.09 Generally, § 5:9 Interference with contractual perfor-Ambiguities, § 5:12 mance, § 18:302.08 Interpretation of contract, Coverage of policies, interpretation

of, § 5:11

§ 18:301.05

INSURANCE—Cont'd

Interpretation and construction of policies—Cont'd
Rules of interpretation and construction, § 5:9
Rules of interpretation and construction of policies, § 5:10

Void for fraud provisions, § 10:21

INTEGRATION

Parol evidence rule, § 4:3

INTENT

Definition of intention, § 1:3
Interpretation and construction, intent of parties, § 5:8
Third-party beneficiaries, intended

INTENTION

Defined, § 1:3

INTEREST AND USURY

Damages, prejudgment interest, § 14:14

beneficiaries, § 12:2

INTERFERENCE

Contractual relations
Jury instructions, § 18:302.08

INTOXICATION

Formation of contract, effect of intoxication, § 2:6

INVITATION

Offer, invitation to bid, § 2:17

JUDGMENTS AND DECREES

Answer, res judicata, § 19:24 Damages, prejudgment interest, § 14:14

JUSTIFICATION OR EXCUSE

Conditions, excuse of, § 8:8

Misrepresentation, justifiable reliance on, § 9:12

Reliance on misrepresentation as justifiable, § 9:12

Waiver or estoppel, excuse of performance or nonperformance, § 10:11, 10:12, 18:302.06, 18:302.07

LACHES OR DELAY

Answer, § 19:29

LANGUAGE

Statute of frauds, § 3:1, 3:2

LEASES

Pleadings, sample forms, § 19:45, 19:46 Statute of limitations, lease contracts,

LEGALLY INSUFFICIENT

Consideration, § 2:24

§ 16:27

LIQUIDATED DAMAGES AND PENALTIES

Generally, § 14:13 Measure of, § 18:303.07

LONG FORM

Pleadings, leases, § 19:46

LOSS OF PROFITS OR EARNINGS

Damages, measure of, § 18:303.04

MANNER OR MODE

Acceptance of offer, manner of, § 2:21

Performance and nonperformance, impossibility of delivery mode, § 10:18

MARRIAGE

Statute of frauds, § 3:8

MATERIAL BREACH

Defined, § 18:302.03

MATERIAL STATEMENT

Misrepresentation, § 9:10

MISTAKE OR ERROR

Attorneys' fees, appeal and review, § 14:24

Defenses, generally, § 9:23 to 9:25 Parol evidence rule, § 4:8 Pleadings, mutual mistake of fact, § 19:10

MODIFICATION

Generally, § 11:1 to 11:10 Abandonment, § 11:4

MODIFICATION—Cont'd

Continuing performance, modification or termination of contract for, § 11:10

Discharge of contract by operation of law, § 16:9

Employment contracts, modification of at-will relationship, § 17:2

Jury instructions, modification of contract, § 18:301.07

Merger, § 11:5

Oral modifications, § 11:2

Performance, modification or termination of contract for continuing performance, § 11:10

Ratification, § 11:9

Statute of frauds, modification of agreements subject to, § 3:15

Substituted contracts, § 11:3

Termination of contract for continuing performance, § 11:10

Waiver, § 11:8

MONEY HAD AND RECEIVED

Pleadings, form, § 19:3

MUTUAL ASSENT

Formation of contract, generally, § 2:7 to 2:10

Implication from circumstances, § 2:9

Jury instructions, § 18:301.03 Preliminary negotiations, § 2:10 Reasonable person standard, § 2:8

MUTUALITY

Answer, contract not enforceable due to lack of mutuality, § 19:19

Discharge of contracts, mutual rescission, § 16:3

MUTUAL MISTAKE

Generally, § 9:24
Jury instructions, § 18:301.08
Pleadings, mutual mistake of fact, § 19:10

MUTUAL RESCISSION

Discharge of contracts, § 16:3

NEGOTIATIONS

Mutual assent, preliminary negotiations, § 2:10

Offer compared to preliminary negotiations, § 2:12

NOMINAL DAMAGES

Generally, § 14:3

NONDELEGABLE DUTIES

Assignment of, § 13:10

NOTICE OR KNOWLEDGE

Discharge of contracts, failure to provide notice to prime contractors of public construction project, § 16:15

NOVATION

Discharge of contracts, § 16:12

OBJECTIVE THEORY OF CONTRACTS

Formation of contract, § 2:1

OFFER

Bids and bidding, invitation to bid, § 2:17

Communication, § 2:14

Compared to preliminary negotiations, § 2:12

Construction contracts, revocable and irrevocable offer, § 2:15

Counteroffer, acceptance, § 2:20

Estimates, § 2:13

Formation of contract, generally, § 2:11 to 2:18

Invitation to bid, § 2:17

Negotiations, offer compared to preliminary negotiations, § 2:12

Option contracts, revocable and irrevocable offer, § 2:16

Preliminary negotiations, comparison with, § 2:12

Revocable and irrevocable offer, § 2:15, 2:16

Termination, § 2:18

ONE YEAR

Statute of frauds, contracts not performable within one year, § 3:9

OPERATION OF LAW

Discharge of contracts by, § 16:9

OPTION CONTRACTS

Consideration, § 2:25 Offer, revocable and irrevocable, § 2:16

OPTIONS

Pleadings, option to purchase real property, sample form, § 19:42

ORAL CONTRACTS

Devise, oral contract to, § 3:3 Statute of limitations, § 16:23, 16:25

ORAL MODIFICATIONS

Generally, § 11:2

ORDERS

Pleadings, order granting specific performance, § 19:41

PARI DELICTO

Public policy, parties in pari delicto, § 7:2

PAROL EVIDENCE

Generally, § 4:1 to 4:8

Contemporaneous agreements, § 4:5 Fraud, § 4:7

Integration, § 4:3

Jury instructions, § 18:301.06

Merger clauses, § 4:4

Mistake, **§ 4:8**

Prior agreements, § 4:5

Procedural rule, substantive law or, § 4:2

Subsequent agreements, § 4:6

Substantive law or procedural rule, § 4:2

PARTIES

Intent of parties, interpretation and construction, § 5:8

Public policy, parties in pari delicto, § 7:2

PART OR PARTIAL

Exceptions, partial performance, § 3:16, 3:17

Public policy, partial illegality, § 7:6 Rescission, partial, § 11:7

PART OR PARTIAL—Cont'd

Statute of frauds, partial performance, § 3:16, 3:17

Statute of limitations, partial payments, § 16:22

PAYMENTS

Answer, § 19:30

Mode of payment, impossibility of, § 10:18

Statute of limitations, partial payments, § 16:22

PERFORMANCE AND NONPERFORMANCE

Generally, § 10:1 to 10:23

Act of God, excuses of nonperformance, § 10:15

Answer, performance of contract, § 19:17

Anticipatory repudiation, § 10:22

Burden of proof of nonperformance, § 10:3

Continuing performance, modification or termination of contract for, § 11:10

Death, excuses for nonperformance, § 10:20

Default, breach distinguished from, § 10:2

Delivery mode, impossibility of, § 10:18

Destruction of subject matter, impossibility of, § 10:17

Discharge of contracts, § 16:11

Distinctions, breach distinguished from default, § 10:2

Estoppel, excuses of nonperformance, § 10:12

Excuses

Generally, § 10:9 to 10:20

Act of God, § 10:15

Estoppel, § 10:12

Prevention or hindrance, § 10:10

Public policy violation, § 10:14

Waiver, § 10:11

Waiver or estoppel, § 18:302.06, 18:302.07

Hindrance as wrongful, § 10:10

PERFORMANCE AND

NONPERFORMANCE—Cont'd

Illness, excuses for nonperformance, § 10:20

Material breach, generally, § 10:1 Modification or termination of contract for continuing performance, § 11:10

Partial performance

Generally, § 10:7

Exceptions, § 3:16, 3:17

Payment, impossibility of mode of, § 10:18

Public policy violation, excuses of nonperformance, § 10:14

Repudiation, § 10:23

Subject matter, impossibility of destruction of, § 10:17

Substantial performance, § 10:6

Sufficiency of performance, § 10:5

Termination of contract for continuing performance, § 11:10

Waiver or estoppel, excuse of nonperformance, § 10:11, 18:302.06, 18:302.07

Wrongful prevention or hindrance, § 10:10

PHYSICAL CONDITION OR CAPACITY

Capacity to contract, § 2:5

PLEA AND PLEA NEGOTIATION

Contract, plea agreement as, § 1:1

PLEADINGS

Account, form, § 19:2

Allegations, forms, § 19:5 to 19:12

Asset purchase agreement, sample form, § 19:44

Breach of contract, form, § 19:5

Cash purchase price, sample form for option to purchase real property, § 19:42

Condition precedent, § 19:11

Conditions

Precedent conditions, § 19:11

Waiver of, § 19:12

Contractors, action against, form, § 19:13

PLEADINGS—Cont'd

Corporations, sample form for option to purchase real property, § 19:42

Delay in performance with time of the essence, § 19:6

Fiduciaries, sample form for option to purchase real property, § 19:42

Fraud

Factual allegations, § 19:14

General forms

Breach of contract, § 19:5

Specific performance, § 19:15

Impossibility of performance, § 19:7, 19:9

Leases, sample forms, § 19:45, 19:46

Long form, leases, § 19:46

Mistake or error, mutual mistake of fact, § 19:10

Money had and received, form, § 19:3

Mutual mistake of fact, § 19:10

Option to purchase real property, sample form, § 19:42

Order granting specific performance, § 19:41

Performance

Delay in performance with time of the essence, § 19:6

Impossibility of performance, § 19:7, 19:9

Precedent conditions, § 19:11

Conditions, § 19:11

Promissory note, form, § 19:1

Purchase and sale agreement, sample form, § 19:43

Real property purchase option, sample form, § 19:42

Repudiation of contract, § 19:7 Sales

Purchase and sale agreement, sample form, § 19:43

Real property purchase option, sample form, § 19:42

Sample forms, § 19:42 to 19:46

Short form, leases, § 19:45

Specific performance

Forms, § 19:4, 19:15

PLEADINGS—Cont'd

Specific performance—Cont'd
General form, § 19:15
Order granting, § 19:41
Time of the essence, delay in performance with, § 19:6
Waiver of condition, § 19:12

PREEMPTION BY FEDERAL LAW

Sources of contract law, § 1:20

PREJUDGMENT INTEREST

Damages, § 14:14

PRELIMINARY NEGOTIATIONS

Mutual assent, § 2:10
Offer compared to preliminary negotiations, § 2:12

PREPONDERANCE STANDARD

Burden of proof, § 1:21

PREVAILING PARTY

Attorneys' fees, § 14:19

PREVENTION

Impossibility of performance, prevention by law, § 10:19 Wrongful, prevention as, § 10:10

PREVENTION BY LAW

Impossibility of performance, § 10:19

PRIOR AGREEMENTS

Parol evidence rule, § 4:5

PRIOR MATTERS

Answer, prior rescission of contract as defense, § 19:16
Parol evidence rule, prior agreements, § 4:5

PRIVATE DISPUTES

Jury instructions, public interest element in private disputes, § 18:310.05

PROCEDURAL MATTERS

Interpretation and construction, procedural contract provisions, § 5:1

Parol evidence rule, substantive law or procedural rule, § 4:2

PROCEDURAL MATTERS

-Cont'd

Unconscionability, § 9:6

PROHIBITION

Assignment, prohibition by contract, § 13:7
Impossibility, prohibition or prevention by law, § 10:19

PROMISE

Consideration, promise for a promise, § 2:26
Defined, § 1:2, 18:301.02

Jury instructions, promise defined,

PROMISE FOR A PROMISE

Consideration, § 2:26

§ 18:301.02

PROMISSORY ESTOPPEL

Generally, § 6:1 to 6:3 Construction contracts, § 6:2 Flexibility of remedy, § 6:3 Jury instructions, § 18:301A.01 Remedy, flexibility of, § 6:3

PUBLIC POLICY

Generally, § 7:1 to 7:6

Defenses, § 9:22

Employment contracts, discharge in violation of public policy, § 17:6

Excuses of nonperformance, public

policy violation, § 10:14

Illegality

Effect of, § 7:5
Partial illegality, § 7:6
Partial illegality, § 7:6
Partial illegality, § 7:6
Parties in particular delicto, § 7:2
Statutory violations, § 7:3

PUNITIVE DAMAGES

Generally, § 7:1

Generally, § 14:15

PURCHASE AND SALE AGREEMENT

Pleadings, sample form, § 19:43

QUASI CONTRACTS

Jury instructions, § 18:301A.02

QUESTIONS OF LAW OR FACT

Unconscionability, § 9:3

RATIFICATION

Modification, § 11:9

REAL ESTATE AGENTS AND BROKERS

Statute of frauds, employment contracts for real estate brokers, § 3:12

REAL PROPERTY

Description in sale of land, sufficiency of, § 3:5

Employment contracts for real estate brokers, § 3:12

Pleadings, real property purchase option, sample form, § 19:42

Statute of limitations, special rule applicable to claims arising from construction or improvements to real property, § 16:19

REASONABLE OR REASONABLENESS

Consumer Protection Act, defense of reasonableness, § 18:310.02

Mutual assent, reasonable person standard, § 2:8

RECIPROCITY

Attorneys' fees, reciprocal right to recover, § 14:18

REGISTRATION

Contractor Registration Act, failure to comply with, § 16:14

RELEASE OR DISCHARGE

Generally, § 16:6

Answer, § 19:31

Avoiding effect of release, specific grounds for, § 16:7

RELIANCE

Compensatory damages, § 14:6 Damages, measure of reliance damages, § 18:303.05

RELIANCE—Cont'd

Fraud and misrepresentation, generally, § 9:11

Justifiable reliance on misrepresentation, § 9:12

Statute of frauds exceptions, § 3:18

REMEDIES

Consumer Protection Act, § 14:28 Promissory estoppel, flexibility of remedy, § 6:3

Specific performance, inadequacy of legal remedies, § 15:4

Third-party beneficiaries, remedies defenses, § 12:7

RENUNCIATION OR REPUDIATION

Discharge of contracts, § 16:13

REPUDIATION

Generally, § 10:23

Anticipatory repudiation, § 10:22

Performance and nonperformance, § 10:23

Pleadings, § 19:7

RESCISSION

Generally, § 11:6

Discharge of contracts, mutual rescission, § 16:3

Partial rescission, § 11:7

Prior rescission of contract as defense, § 19:16

RES JUDICATA AND COLLATERAL ESTOPPEL

Answer, § 19:24

RESTATEMENT OF CONTRACTS

Sources of contract law, § 1:18 Unconscionability, application of Restatement, § 9:5

RESTITUTION AND IMPLIED CONTRACTS

Compensatory damages, § 14:7 Measure of damages, § 18:303.08

REVOCATION OR SUSPENSION

Offer, § 2:15, 2:16

SALES

Contract for sale of goods, statute of limitations, § 16:26

Limitation of actions, sale of goods, § 16:26

SAMPLE FORMS

Pleadings, § 19:42 to 19:46

SATISFACTION

Statute of frauds, § 3:19

SEPARATE CONTRACT

Statute of frauds, inclusion of sale of land in separate contract, § 3:7

SERVICE CONTRACTS

Specific performance, § 15:5

SHORT FORM

Pleadings, leases, § 19:45

SILENCE

Acceptance, effect of silence, § 2:22

SOURCES OF CONTRACT LAW

Common law, § 1:17

Federal constitution, § 1:19

Preemption by federal law, § 1:20

Restatement of Contracts, § 1:18

State constitutions, § 1:19

Uniform Commercial Code, § 1:17

SPECIFICITY

Answer, inequity of specific enforcement, § 19:20

Statute of limitations, specified by contract, § 16:28

SPECIFIC PERFORMANCE

Generally, § 15:1 to 15:7

Competition, covenants not to compete, § 15:6

Covenants not to compete, § 15:6

Defenses, equitable defenses, § 15:7

Equitable defenses, § 15:7

Inadequacy of legal remedies, § 15:4

Injunctions, generally, § 15:1

Remedies, inadequacy of legal remedies, § 15:4

Service contracts, § 15:5

STANDARDS

Defenses, standardized agreements, § 9:19, 9:20

Mutual assent, reasonable person standard, § 2:8

STATE CONSTITUTIONS

Sources of contract law, § 1:19

STATUTE OF FRAUDS

Generally, § 3:1 to 3:19

Answer, § 19:33

Compliance, confirmatory writings, § 3:14

Confirmatory writings, compliance with statute, § 3:14

Construction, general principles of, § 3:2

Debt of another, promises to answer for, § 3:10

Description in sale of land, sufficiency of, § 3:5

Employment of real estate brokers, contracts for, § 3:12

Estoppel, exceptions, § 3:18

Exceptions

Estoppel, § 3:18

Partial performance, § 3:16, 3:17

Performance, § 3:16, 3:17

Reliance, § 3:18

Sale of land, § 3:17

Executor or administrator, promise by, § 3:11

General principles of construction, § 3:2

Inclusion of sale of land in separate contract, § 3:7

Land sales, generally, § 3:4 to 3:7

Language, statutory, § 3:1, 3:2

Marriage, § 3:8

Modification of agreements subject to, § 3:15

One year, contracts not performable within, § 3:9

Partial performance, exceptions, § 3:16, 3:17

Performance

Exceptions, § 3:16, 3:17

One year, contracts not performable within, § 3:9

STATUTE OF FRAUDS—Cont'd

Real estate brokers, contracts for employment of, § 3:12 Reliance, exceptions, § 3:18 Sale of land, generally, § 3:4 to 3:7 Satisfaction of statute, § 3:19 Separate contract, inclusion of sale of land in, § 3:7 Sufficiency of description in sale of land, § 3:5

STATUTE OF LIMITATIONS Generally, § 16:16 to 16:28 Accounts receivable, § 16:24 Accrual of cause of action, § 16:18 Cause of action, accrual of, § 16:18 Construction or improvements to real property, special rule applicable to claims arising from, § 16:19 Discovery rule, § 16:18 Goods, sale of, § 16:26 Improvements to real property, special rule applicable to claims arising from, § 16:19 Lease contracts, § 16:27

Oral contracts, § 16:23, 16:25 Partial payments, § 16:22 Payments, partial payments, § 16:22

Real property construction or improvements, special rule applicable to claims arising from, § 16:19

Sale of goods, **§ 16:26** Specification by contract, § 16:28 Statute of repose distinguished, § 16:17 Tolling, § 16:20

Written contracts, § 16:21, 16:25

STATUTE OF REPOSE

Statute of limitations distinguished, § 16:17

STATUTES

Attorneys' fees, statutory basis, § 14:17 to 14:19 Public policy, statutory violations, § 7:3

STIPULATED DAMAGES

Generally, § 14:13

SUBJECT MATTER

Performance and nonperformance, impossibility of destruction of subject matter, § 10:17

SUBSEQUENT ACTS OR MATTERS

Parol evidence rule, subsequent agreements, § 4:6

SUBSTANTIAL PERFORMANCE

Generally, § 10:6

SUBSTANTIVE UNCONSCIONABILITY

Generally, § 9:6

SUBSTITUTED CONTRACTS

Modification, § 11:3

SUFFICIENCY

Consideration, legally insufficient, § 2:24

Performance, sufficiency of, § 10:5 Specific performance, inadequacy of legal remedies, § 15:4 Statute of frauds, sufficiency of description in sale of land, § 3:5

SURRENDER

Discharge of contracts, § 16:4

TERMINATION OR EXPIRATION

Continuing performance, termination of contract for, § 11:10 Offer, § 2:18

TERMS

Formation of contract, certainty and definiteness of terms, § 2:27 Formation of contract, definiteness and certainty of terms, § 2:27

THIRD-PARTY BENEFICIARIES

Generally, § 12:1 to 12:7 Defenses, § 12:7 Incidental beneficiaries, § 12:2 Indemnity, promises of, § 12:3 Intended beneficiaries, § 12:2 Promisor, rights of promisee against, § 12:6 Remedies defenses, § 12:7

Rights, generally, § 12:5

INDEX

THIRD-PARTY BENEFICIARIES —Cont'd

Vesting of third-party rights, § 12:4

TIME OF THE ESSENCE

Pleadings, delay in performance with time of the essence, § 19:6

TOLLING

Statute of limitations, § 16:20

TRADE OR COMMERCE

Defined, § 18:310.09

TRUSTS

Interpretation and construction, creation of express trust, § 5:17

UNCONSCIONABILITY

Generally, § 9:2 to 9:6
Procedural, § 9:6
Questions of law or fact, § 9:3
Restatement of Contracts, application
of, § 9:5

Substantive, § 9:6 Uniform Commercial Code, application of, § 9:4

UNDUE INFLUENCE

Defenses, § 9:18
Jury instructions, § 18:301.11

UNFAIR OR DECEPTIVE ACT OR PRACTICE

Defined, § 18:310.08

UNIFORM COMMERCIAL CODE

Sources of contract law, § 1:17 Unconscionability, application of UCC, § 9:4

UNILATERAL CONTRACTS

Generally, § 1:4

UNILATERAL MISTAKE

Generally, § 9:25
Jury instructions, § 18:301.09

UNTRUE STATEMENTS

Generally, § 9:9

VALIDITY

Delegation, effect of invalid, § 13:11

VESTING

Third-party beneficiaries rights, vesting of, § 12:4

VOID AND VOIDABLE CONTRACTS

Generally, § 1:7
Duress, § 9:15, 9:16
Insurance contracts, § 10:21

WAIVER OR ESTOPPEL

Equitable estoppel, elements of, § 18:302.05

Excuse of performance or nonperformance, § 10:11, 10:12, 18:302.06, 18:302.07

Modification, waiver, § 11:8
Performance or nonperformance,
excuse of, § 10:11, 18:302.06,

18:302.07 Pleadings, waiver of condition,

Statute of frauds, exceptions, § 3:18

WANT OF CONSIDERATION

Answer, § 19:26

§ 19:12

WRITTEN CONTRACTS

Statute of limitations, § 16:21, 16:25

WRONGFUL PREVENTION OR HINDRANCE

Performance and nonperformance, § 10:10