

# Table of Contents

## Volume 7

### **CHAPTER 1. INTAKE AND EVALUATION**

- § 1:4 Damages
- § 1:6 Forum and venue

### **CHAPTER 2. CLIENT RELATIONS AND FEE AGREEMENT**

- § 2:8 The fee agreement
- § 2:12 Representation terminated—By client
- § 2:13 Representation terminated—By the attorney

### **CHAPTER 5. DISCLOSURE AND DISCOVERY**

- § 5:1 Introduction
- § 5:2 Disclosure requirements—General—State court
- § 5:3 Disclosure requirements—General—Federal court
- § 5:4 Disclosure requirements—Expert witnesses—State court
- § 5:5 Disclosure requirements—Expert witnesses—Federal court
- § 5:6 Disclosure requirements—Sanctions
- § 5:7 Case management—State court
- § 5:8 Case management—Federal court
- § 5:10 Written discovery—Federal courts
- § 5:11 Discovery of insurance information
- § 5:16 Depositions—Rules and procedures

### **CHAPTER 6. TRIAL PREPARATION—AN OVERVIEW**

- § 6:1 Introduction
- § 6:2 The trial notebook

### **CHAPTER 7. EVALUATIONS AND NEGOTIATIONS FOR SETTLEMENT**

- § 7:7 Evaluation of the claims—Interest and costs—Offer of settlement (State Court)
- § 7:9 Evaluation of the claims—Interest and costs—Cost bonds

### **CHAPTER 8. FORUM AND VENUE**

- § 8:2 Subject-matter jurisdiction

- § 8:6 Personal jurisdiction
- § 8:11 Personal jurisdiction—Long-Arm Statute—Tortious Act
- § 8:16 Venue

## **CHAPTER 9. STATUTES OF LIMITATIONS**

- § 9:14 Statutes of limitations—Two year
- § 9:21 Statutes of limitations—Three year—Uninsured and underinsured motorist claims
- § 9:27 Tolling provisions—Equitable estoppel

## **CHAPTER 10. NEGLIGENCE: DUTY**

- § 10:3 Duty—Matter of law
- § 10:5 Duty—Determination of duty
- § 10:6 Duty—Standard of care and duty compared
- § 10:10 Duty—Duty to control conduct of others
- § 10:11 Duty—Duty to protect
- § 10:12 Duty—Control of potentially dangerous activity or instrumentality
- § 10:20 Relationships determine duty—Homebuilder-vendor
- § 10:22 Relationships determine duty—Mental health care professionals
- § 10:23 Relationships determine duty—Hospitals to patients
- § 10:25 Relationships determine duty—Carriers to passengers
- § 10:27 Relationships determine duty—Business proprietor to customer
- § 10:30 Relationships determine duty—Ski areas
- § 10:40 Economic-loss rule

## **CHAPTER 11. NEGLIGENCE: STANDARD OF CARE AND PROOF**

- § 11:4 Degrees of care
- § 11:10 Highest degree of care—Inherently dangerous activities
- § 11:11 Gross negligence and wilful and wanton conduct
- § 11:12 Sudden emergency
- § 11:13 Negligence per se
- § 11:19 Res ipsa loquitur
- § 11:23 Res ipsa loquitur—Procedural effect

## **CHAPTER 12. NEGLIGENCE: CAUSATION**

- § 12:3 Cause
- § 12:4 Cause—Direct causation

## **CHAPTER 13. NEGLIGENCE: DEFENSES**

- § 13:3 Exculpatory agreements
- § 13:9 Contributory negligence
- § 13:24 Assumption of risk
- § 13:33 Statutory defenses in Colorado—Good Samaritan Statutes
- § 13:43 Statutory defenses in Colorado—Other defenses

TABLE OF CONTENTS

**CHAPTER 16. RELATIVE FAULT**

- § 16:3 Apportionment of fault
- § 16:8 Pro-rata (several) liability by statute
- § 16:35 Indemnity

**CHAPTER 17. SURVIVAL AND WRONGFUL DEATH**

- § 17:8 Wrongful-death actions—Who may bring suit
- § 17:13 Wrongful-death actions—Compensatory damages

**CHAPTER 18. MOTOR-VEHICLE NEGLIGENCE CLAIMS**

- § 18:10 Duty—Sudden emergency
- § 18:14 Rules of the road—Negligence per se
- § 18:17 Causation—Mechanical failure
- § 18:25 Presumption—Res ipsa loquitur
- § 18:30 Vicarious liability—Joint venture
- § 18:35 Evidence—Expert testimony
- § 18:36 Evidence—Expert testimony—Lay opinions
- § 18:38 Negligence other than driving—Negligent entrustment and supervision

**CHAPTER 19. PREMISES LIABILITY**

- § 19:3 Common-law categorizations for duty
- § 19:5 The Premises-Liability Statute—Language and scope
- § 19:6 The Premises-Liability Statute—Duty
- § 19:7 Duty—Statutory categories
- § 19:10 The Premises-Liability Statute—Attractive nuisance
- § 19:12 The Premises-Liability Statute—Additional defenses
- § 19:17 Landowner's liability for criminal acts under Premises-Liability Statute
- § 19:19 Lessee liability
- § 19:22 Ski areas
- § 19:25 Dog-bite claims

**CHAPTER 21. MEDICAL MALPRACTICE**

- § 21:4 Standard of care—Physicians—General
- § 21:7 Standard of care—Implied warranty
- § 21:10 Standard of care—Failure to warn
- § 21:14 Proving standard of care—Res ipsa loquitur
- § 21:24 Causation—Liability to other than patients
- § 21:29 Physicians—Vicarious liability
- § 21:35 Hospital liability for its own negligence
- § 21:42 Defenses—Statutory immunities or standards of care
- § 21:46 Professional review body

**CHAPTER 22. PROFESSIONAL MALPRACTICE (NONMEDICAL)**

- § 22:11 Attorney malpractice—Case-within-a-case framework

- § 22:16 Attorney malpractice—Liability to nonclients—General
- § 22:19 Attorney malpractice—Causation
- § 22:20 Attorney malpractice—Damages
- § 22:21 Attorney malpractice—Fiduciary claim
- § 22:25 Clergy malpractice
- § 22:27 Real estate broker malpractice

## Volume 7A

### CHAPTER 24. PRODUCT LIABILITY

- § 24:9 Negligence—Res ipsa loquitur
- § 24:14 Strict liability under § 402A—Design defect
- § 24:49 Defenses—Other statutory defenses—Preemption

### CHAPTER 25. BREACH OF FIDUCIARY DUTY

- § 25:4 Fiduciary relationship
- § 25:9 Fiduciary duties—Business relationships—Corporate officers and directors
- § 25:12 Fiduciary duties—Business relationships—Real estate brokers
- § 25:13 Fiduciary duties—Homeowners association
- § 25:18 Fiduciary duties—Professional and personal relationships—Insurers and insurance agents

### CHAPTER 26. EMPLOYMENT TORTS

- § 26:1 Practice pointers
- § 26:4 State-actor requirement for § 1983 claim
- § 26:6 Wrongful discharge or retaliatory termination—Generally
- § 26:10 Wrongful discharge or retaliatory termination—Public-policy exception
- § 26:15 Discrimination—Burden of proof
- § 26:18 Discrimination—Race
- § 26:20 Discrimination—Race—Hostile environment
- § 26:26 Discrimination—Sexual harassment—Sexual orientation
- § 26:27 Discrimination—Religion
- § 26:28 Discrimination—Americans with Disabilities Act/Colorado Anti-Discrimination Act
- § 26:30 Discrimination—Retaliation—Generally
- § 26:32 Discrimination—Title VII defenses
- § 26:33 Other state and federal statutory claims and issues—Wage Claim Act
- § 26:40 Other state and federal statutory claims and issues—Family and Medical Leave Act
- § 26:41 Other state and federal statutory claims and issues—Pregnancy Discrimination Act
- § 26:43 Other state and federal statutory claims and issues—Whistleblower statutes

TABLE OF CONTENTS

**CHAPTER 28. GOVERNMENT TORT  
LIABILITY**

- § 28:4 Governmental Immunity Act
- § 28:5 Colorado Governmental Immunity Act—Claims subject to the Act
- § 28:6 Waiver of immunity
- § 28:7 Waiver of immunity—Operation of motor vehicle
- § 28:8 Waiver of immunity—Operation of motor vehicle—Emergency vehicle
- § 28:9 Dangerous condition
- § 28:10 Waiver of immunity—Dangerous condition—Public highway, road or street
- § 28:11 Waiver of immunity—Dangerous condition—Public facility in park or recreation area
- § 28:12 Waiver of immunity—Operation of public sanitation or water facility
- § 28:14.50 Waiver of immunity—Incidents of school violence *[New]*
- § 28:16 Notice
- § 28:24 Limitation on judgments—Occurrence and aggregate
- § 28:30 Public employees—Common-law official immunity
- § 28:34 Suits against the federal government

**CHAPTER 29. INTENTIONAL TORTS AND  
DEFENSES**

- § 29:12 Trespass
- § 29:19 Conversion
- § 29:37 Civil conspiracy—Parties and wrongful acts

**CHAPTER 30. FRAUD AND  
MISREPRESENTATION**

- § 30:1 Practice pointers
- § 30:12 Reliance—Justifiable reliance
- § 30:15 Knowledge of defendant
- § 30:16 Duty to disclose
- § 30:26 Pleading fraud with particularity

**CHAPTER 32. DEFAMATION**

- § 32:2 Defamation—In general
- § 32:3 Defamation—Fact vs. opinion
- § 32:5 Interpretation of statements
- § 32:19 Public vs. private plaintiffs distinguished
- § 32:20 Public vs. private plaintiffs distinguished—Actual malice and reckless disregard
- § 32:21 Public vs. private plaintiffs distinguished—Burden of proof
- § 32:39 Additional defenses—Truth
- § 32:41 Additional defenses—Statutory immunities

## **CHAPTER 34. MISUSE OF LEGAL PROCEDURE**

§ 34:15 Abuse of process—Defined

## **CHAPTER 35. STRICT LIABILITY**

§ 35:3 Animals

## **CHAPTER 36. ANIMALS**

§ 36:5 Dog bites—Statutory liability

§ 36:7 The Premises-Liability Statute

§ 36:8 Trespass by livestock

## **CHAPTER 37. STATUTORY TORTS**

§ 37:6 Colorado Consumer Protection Act—Deceptive trade practices

§ 37:7 Colorado Consumer Protection Act—Intent

§ 37:9 Colorado Consumer Protection Act—Public impact

§ 37:11 Colorado Consumer Protection Act—Statute of limitations

§ 37:14 CDARA—Notice of claim process

§ 37:18 Construction Defect Action Reform Act—Express warranty

§ 37:19 Construction Defect Action Reform Act—Limitation of actions

§ 37:22 Mechanic's lien statute—Lien statement

§ 37:27 Mechanic's lien statute—Excessive lien

§ 37:33 Trust fund statute—For construction funds disbursed

# **Volume 8**

## **CHAPTER 38. DAMAGES**

§ 38:2 Damages—In general

§ 38:3 Elements of damages—Introduction

§ 38:5 Elements of damages—Loss of profits or anticipated future earnings

§ 38:6 Elements of damages—Loss of earning capacity

§ 38:8 Elements of damages—Pain and suffering—When compensable

§ 38:9 Elements of damages—Pain and suffering—Argument permitted

§ 38:15 Medical expenses

§ 38:20 Apportionment of damages—Preexisting conditions

§ 38:27 Limitations on damages—Noneconomic-loss or injury statutes

§ 38:30 Limitations on damages—Governmental liability

§ 38:32 Limitations on damages—Collateral-source rule

§ 38:44 Attorney fees

## **CHAPTER 39. PUNITIVE DAMAGES**

§ 39:2 Punitive damages—Statutory basis

§ 39:7 Punitive damages—Limitations on amount

TABLE OF CONTENTS

**CHAPTER 40. INTEREST AND COSTS**

- § 40:2 Interest—General
- § 40:3 Interest—Personal injury—Prejudgment interest
- § 40:4 Interest—Personal injury—Post-judgment interest
- § 40:8 Interest—Appealed personal-injury judgments

**CHAPTER 41. SETTLEMENT,  
SUBROGATION AND SET-OFF**

- § 41:4 Consideration
- § 41:12 Subrogation—State statutes
- § 41:15 Liens—Attorneys
- § 41:16 Liens—Medical and hospital
- § 41:22 Enforcing settlement agreements

**CHAPTER 42. SETTLEMENT  
CONSIDERATIONS WITH PERSONAL  
INJURIES AND PUBLIC BENEFITS**

- § 42:16 The Medicaid claim

**CHAPTER 45. FORMATION OF INSURANCE  
CONTRACTS**

- § 45:23 Right to renew coverage

**CHAPTER 46. AVOIDANCE AND  
CANCELLATION**

- § 46:3 Cancellation by insurer—Statutory regulation

**CHAPTER 47. WAIVER AND ESTOPPEL**

- § 47:8 Implied waiver or estoppel
- § 47:21 Defenses subject to waiver and estoppel—In general

**CHAPTER 48. LIABILITY COVERAGE IN  
GENERAL**

- § 48:17 Other coverage available—Excess insurance—Umbrella insurance
- § 48:21 Standing to sue
- § 48:27 Insurer's duties when coverage invoked—Duty to defend
- § 48:32 Declaratory judgment action
- § 48:36 Denial of coverage

**CHAPTER 49. STANDARD DEFINITIONS,  
CONDITIONS AND EXCLUSIONS**

- § 49:5 Definitions—Insured
- § 49:9 Conditions—Notice—Notice of claim
- § 49:11 Conditions—Duty to cooperate

- § 49:16 Voluntary payments and consent-to-settle clause
- § 49:17 Exclusions

## **CHAPTER 50. AUTO INSURANCE— LIABILITY, MEDICAL PAYMENTS AND PHYSICAL DAMAGE**

- § 50:6 Optional coverages—Medical payments
- § 50:15 Persons covered
- § 50:17 Conduct covered—“Use of the motor vehicle”

## **CHAPTER 51. AUTO INSURANCE— UNINSURED MOTORIST**

- § 51:1 Practice pointers
- § 51:2 The statute
- § 51:3 Statute of limitations
- § 51:4 Rules of construction
- § 51:5 Rules of construction—“Use” of vehicle
- § 51:8 Persons insured—Who is covered
- § 51:9 Uninsured and underinsured vehicles defined
- § 51:14 Benefits provided
- § 51:19 Set-off and subrogation—Workers’-compensation benefits
- § 51:21 Claims procedure

## **CHAPTER 52. HOMEOWNER’S INSURANCE**

- § 52:5 Persons covered

## **CHAPTER 53. COMMERCIAL GENERAL LIABILITY INSURANCE**

- § 53:2 CGL policies—Forms and format
- § 53:6 Definitions—Persons insured
- § 53:9 Definitions—Occurrence and intentional acts
- § 53:14 Duty to defend
- § 53:17 Exclusions—Automobile, watercraft, and aircraft
- § 53:19 Exclusions—Pollution
- § 53:22 Exclusions—Property damage—Definition and exclusions
- § 53:26 Policies issued to construction professionals—Special rules

## **CHAPTER 54. PROFESSIONAL-LIABILITY (MALPRACTICE) INSURANCE**

- § 54:9 Medical-malpractice insurance—Statutory minimum limits

TABLE OF CONTENTS

**Volume 8A**

**CHAPTER 55. WORKERS' COMPENSATION  
IN PERSONAL INJURY CLAIMS**

- § 55:7 Suing the employer—Injury and the course or scope of employment
- § 55:14 Independent contractors vs. statutory employer
- § 55:15 Statutory employer—Property owner
- § 55:17 Subrogation—Assignment and direct action

**CHAPTER 56. INSURANCE—BAD FAITH**

- § 56:2 The bad faith tort—Historical development
- § 56:12 First party bad faith—Statutory claim
- § 56:14 Standing and privity requirements
- § 56:16 Who is liable
- § 56:32 Alternative claims—Negligence of broker or agent

**CHAPTER 57. LIFE INSURANCE**

- § 57:11 Payment of premiums

**CHAPTER 58. HEALTH AND ACCIDENT  
INSURANCE**

- § 58:7 Preexisting conditions and waiting periods
- § 58:17 ERISA issues—General description of ERISA

**CHAPTER 59. INSURANCE ON PROPERTY**

- § 59:8 What risks are insured—Weather and acts of nature
- § 59:11 What risks are insured—Exclusions
- § 59:25 Actual value vs. replacement cost
- § 59:28 Restrictions on the right to sue—ADR clauses

**Appendix**

Appendix B. Colorado Statutes Affecting Personal Injury Litigation

**Table of Laws and Rules**

**Table of Cases**

**Index**