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 3. PLANNING AND CALENDARING

§ 3:5 Drafting a complaint and filing suit

CHAPTER 5. DISCLOSURE AND DISCOVERY

- § 5:1 Introduction
- § 5:2 Disclosure requirements—General—State court
- $\S~5:3$ 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
- § 6:7 Use of expert witnesses

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

- Subject-matter jurisdiction
- § 8:4 Subject-matter jurisdiction—County courts
- Personal jurisdiction
- § 8:11 Personal jurisdiction—Long-Arm Statute—Tortious Act
- § 8:16 Venue

CHAPTER 9. STATUTES OF LIMITATIONS

- Accrual of action—Generally
- § 9:14 Statutes of limitations—Two year § 9:21 Statutes of limitations—Three year—Uninsured and underinsured motorist claims
- § 9:22 Statutes of limitations—Six year
- § 9:25 Tolling provisions—Persons under disability
- § 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
- § 10:8 Duty—Act or omission
- § 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
- § 10:17 Relationships determine duty—Good Samaritan Statutes
- § 10:18 Relationships determine duty—Landowners
- § 10:20 Relationships determine duty—Homebuilder-vendor
- § 10:21 Relationships determine duty—Liquor vendors and social hosts
- § 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
- § 10:39 Relationships determine duty—Employer's hiring/supervision
- § 10:40 Economic-loss rule

CHAPTER 11. NEGLIGENCE: STANDARD OF CARE AND PROOF

§ 11:4 Degrees of care

Table of Contents

- § 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
- § 12:13 Superseding intervening causes

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

CHAPTER 14. IMPUTED NEGLIGENCE

- § 14:3 Employees, servants, and agents—Existence of master-servant relationship
- § 14:4 Employees, servants, and agents—Course and scope of employment
- § 14:13 Joint venture—Joint business venture

CHAPTER 16. RELATIVE FAULT

- § 16:3 Apportionment of fault
- § 16:8 Pro-rata (several) liability by statute
- § 16:9 Pro-rata liability—Nonparties
- § 16:35 Indemnity

CHAPTER 17. SURVIVAL AND WRONGFUL DEATH

- § 17:3 Survival actions—Statutory provisions
- § 17:4 Survival actions—Compensatory damages recoverable
- § 17:8 Wrongful-death actions—Who may bring suit
- § 17:13 Wrongful-death actions—Compensatory damages
- § 17:21 Death of a party—Probate requirements and deadlines

CHAPTER 18. MOTOR-VEHICLE NEGLIGENCE CLAIMS

- § 18:2 Introduction
- § 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
- § 18:41 Negligence other than driving—Dram shop

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
- § 19:13 Adjacent premises and sidewalks
- § 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
- § 19:26 Exculpatory agreements

CHAPTER 20. LIABILITY FOR ALCOHOLIC BEVERAGES

§ 20:7 The 1986 Act—Proof required

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
- § 21:28 Liability of original tortfeasors for subsequent malpractice
- § 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)

- $\S~22{:}11~$ 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
- § 22:22 Attorney malpractice—Defenses including statute of limitations
- § 22:25 Clergy malpractice
- § 22:27 Real estate broker malpractice

Volume 7A

CHAPTER 24. PRODUCT LIABILITY

- § 24:3 Product or not—Product/service distinction
- § 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
- § 25:17 Fiduciary duties—Professional and personal relationships— Personal representatives—Trustees
- § 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
- § 26:11 Wrongful discharge and retaliatory termination—Constructive discharge
- § 26:15 Discrimination—Burden of proof
- § 26:16 Discrimination—"Adverse employment action"
- § 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

CHAPTER 27. OTHER BUSINESS TORTS

§ 27:3 Interference with contractual relations

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
8 00.10	
§ 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
· ·	
§ 28:29	Public employees and public entities covered by the Act
§ 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
§ 29:22 Conversion—Civil-Theft Statute—Generally
§ 29:23 Conversion—Civil-theft statute—Application
§ 29:36 Civil conspiracy—Elements
§ 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
- § 34:16 Abuse of process—Application

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

- § 37:4 Colorado Consumer Protection Act—Who may bring a claim
- § 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
- § 37:13 Construction Defect Action Reform Act
- § 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
- § 38:25 Amount awarded—Inadequate damages and additur
- § 38:27 Limitations on damages—Noneconomic-loss or injury statutes
- § 38:29 Limitations on damages—Survival actions
- § 38:30 Limitations on damages—Governmental liability
- § 38:32 Limitations on damages—Collateral-source rule

CHAPTER 39. PUNITIVE DAMAGES

- § 39:2 Punitive damages—Statutory basis
- § 39:7 Punitive damages—Limitations on amount
- § 39:8 Punitive damages—Evidence

CHAPTER 40. INTEREST AND COSTS

- § 40:2 Interest—General
- § 40:3 Interest—Personal injury—Prejudgment interest
- § 40:4 Interest—Personal injury—Post-judgment interest
- § 40:5 Interest—Non-personal-injury claims
- § 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
- § 41:23 Setting aside compromise and settlement
- § 41:25 Admission in evidence of settlement offers

CHAPTER 42. SETTLEMENT CONSIDERATIONS WITH PERSONAL INJURIES AND PUBLIC BENEFITS

§ 42:16 The Medicaid claim

CHAPTER 44. INSURABLE RISKS AND CONTRACT PRINCIPLES

§ 44:13 Rules for construction of the policy—Reasonable expectation

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

- § 48:7 Risks insured against—All-risk policy
- § 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

- § 49:4 Definitions—Named insured
- § 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
- § 51:7 Scope of coverage
- § 51:8 Persons insured—Who is covered
- § 51:9 Uninsured and underinsured vehicles defined
- § 51:10 Motor vehicle defined
- § 51:14 Benefits provided
- § 51:18 Set-off and subrogation
- § 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

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
- § 56:4 Cause of action—Duty of good faith and fair dealing
- § 56:8 Third-party coverage—Excess judgment
- § 56:11 First-party bad faith—Different standard of care for tort-based claim
- § 56:12 First party bad faith—Statutory claim
- § 56:14 Standing and privity requirements
- § 56:16 Who is liable
- § 56:18 Cause of action—Statute of limitations
- § 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

Table of Contents

Appendix

Appendix B. Colorado Statutes Affecting Personal Injury Litigation **Table of Laws and Rules Table of Cases Index**