CHAPTER 1. THE ETHICS OF TRIAL PRACTICE

§ 1:1	The practice of law	
§ 1:2	Bar discipline	
§ 1:3	The duties of an attorney	

- § 1:4 Attorney competence § 1:5 Client property
- § 1:6 Conflict of interest
- § 1:7 Personal misconduct
- § 1:8 Confidentiality and privilege
- § 1:9 Ethical advocacy—No frivolous advocacy
- § 1:10 —Make reasonable efforts to expedite litigation
- § 1:11 —Candor with the tribunal
- § 1:12 —Treat other attorneys and opposing parties fairly
- § 1:13 —Maintain the impartiality and decorum of the tribunal
- § 1:14 —Restrictions on trial attorney's ability to freely engage in trial publicity
- § 1:15 —An attorney cannot be an advocate and a witness
- § 1:16 —Prosecuting attorneys held to higher ethical standard
- § 1:17 —Advise nonadjudicative tribunal of appearance in a representative capacity

CHAPTER 2. COURTS, JURISDICTION AND VENUE

- § 2:1 The judicial system
- § 2:2 Jurisdiction
- § 2:3 Supreme Judicial Court
- § 2:4 Appeals Court
- § 2:5 Superior Court
- § 2:6 District and Boston Municipal Courts
- § 2:7 Probate and Family Court
- § 2:8 Juvenile Court
- § 2:9 Land Court
- § 2:10 Housing Court
- § 2:11 Venue

CHAPTER 3. PRELIMINARY MATTERS

§ 3:1 Preliminary considerations

§ 3:2	Contingent Fee Agreement, Form A
§ 3:3	Contingent Fee Agreement, Form B
§ 3:4	Client questionnaire
§ 3:5	Attorney worksheet—Client information, claims or defenses
§ 3:6	—Client information, witnesses
§ 3:7	Learning the facts
§ 3:8	Investigation sources
§ 3:9	Investigation
§ 3:10	Investigators
СНА	PTER 4. PLEADINGS
§ 4:1	Pleadings
§ 4:2	Complaints
§ 4:3	Pleading standards
§ 4:4	Answers
§ 4:5	Affirmative defenses generally
§ 4:6	Accord and satisfaction affirmative defense
§ 4:7	Arbitration and award affirmative defense
§ 4:8	Assumption of risk affirmative defense
§ 4:9	Contributory negligence affirmative defense
§ 4:10	Discharge in bankruptcy affirmative defense
§ 4:11	Duress affirmative defense
§ 4:12	Estoppel affirmative defense
§ 4:13	Failure of consideration affirmative defense
§ 4:14	Fraud affirmative defense
§ 4:15	Illegality affirmative defense
§ 4:16	Injury by fellow servant defense
§ 4:17	Laches defense
§ 4:18	License affirmative defense
§ 4:19	Payment defense
§ 4:20	Release defense
§ 4:21	Res judicata defense
§ 4:22	Statute of frauds defense
§ 4:23	Statute of limitations affirmative defense

CHAPTER 5. COMMENCING ACTION

I. INTRODUCTION

- § 5:1 Starting an action
- § 5:2 Starting action before repose

II. TIME STANDARDS AND TRACKING ORDERS

A. IN GENERAL

§ 5:3 Overview of time standards and tracking orders

B. DISTRICT AND BOSTON MUNICIPAL COURTS

- § 5:4 Introduction
- § 5:5 Civil cases
- § 5:6 —Category A
- § 5:7 —Category B
- § 5:8 —Category C
- § 5:9 Criminal cases

C. HOUSING COURT STANDARDS

- § 5:10 Introduction
- § 5:11 The CV-F track
- § 5:12 The CV-A track
- § 5:13 The CV-X track
- § 5:14 The CV-AAP track
- § 5:15 The SC track
- § 5:16 The SP track
- § 5:17 The SU track
- § 5:18 The CR track

D. JUVENILE COURT

- § 5:19 Introduction
- § 5:20 Delinquency or youthful offender proceedings
- § 5:21 CRA proceedings
- § 5:22 Care and protection or termination of parental rights proceedings

E. LAND COURT

- § 5:23 Introduction
- § 5:24 Individual calendar system
- § 5:25 Track designation, assignment and notifications
- § 5:26 —The A track
- § 5:27 —The F track
- § 5:28 —The T track
- § 5:29 —The X track
- § 5:30 Decisions

F. PROBATE COURT

§ 5:31 Introduction

\$ 5:32 \$ 5:33 \$ 5:34 \$ 5:35 \$ 5:36 \$ 5:37	Changing track and rescheduling events Pre-trial conferences and sequential trial days		
G	S. SUPERIOR COURT (CIVIL)		
\$ 5:38 \$ 5:39 \$ 5:40 \$ 5:41 \$ 5:42 \$ 5:43 \$ 5:44 \$ 5:45 \$ 5:46	Case management conference pilot program The individual track The F track The A track The X track Rule 16 conferences		
III.	III. SERVICE OF PROCESS		
§ 5:47 § 5:48 § 5:49	Personal service within the commonwealth		
IV.	ATTACHMENT		
§ 5:50	Attachment, generally		
V. J	OINDER		
§ 5:51 § 5:52 § 5:53 § 5:54 § 5:55	Joinder of claims Joinder of persons Misjoinder and nonjoinder		
VI.	INTERPLEADER		
§ 5:56	Interpleader, generally		
VII.	INTERVENTION		
\$ 5:57 \$ 5:58 \$ 5:59 \$ 5:60	Introduction The right to intervene Permissive intervention Motions to intervene		

VIII. REAL PARTIES IN INTEREST AND SUBSTITUTION THEREFORE

- § 5:61 Introduction
- § 5:62 Substitution
- § 5:63 —Substitution due to party's death
- § 5:64 —Substitution due to party's incompetency or incapacity
- § 5:65 —Substitution due to party's transfer of interest
- § 5:66 —Substitution due to vacating public office

CHAPTER 6. REMOVAL TO FEDERAL COURT

- § 6:1 Beginning the defense of a civil action
- § 6:2 Removal jurisdiction
- § 6:3 Venue on removal
- § 6:4 Time for removal
- § 6:5 Removal notice and procedure
- § 6:6 Correcting removal defect or remanding
- § 6:7 After removal: repleading, jury demand, and process
- § 6:8 Notice of removal form—Federal question
- § 6:9 Cover letter to clerk
- § 6:10 Form for Notice of Filing the Notice of Removal

CHAPTER 7. MOTIONS

- § 7:1 Seven practical rules of motion practice
- § 7:2 Superior Court civil motions
- § 7:3 —Rule 9A: motions and oppositions
- § 7:4 —Rule 9B: certificates of service
- § 7:5 —Rule 9C: discovery discussion required
- § 7:6 —Rule 9D: reconsideration
- § 7:7 —Rule 9E: motions to dismiss and post-trial motions
- § 7:8 —Notice of Motion Form
- § 7:9 —Motions to revoke transfer
- § 7:10 —Judicial review of administrative agency proceedings
- § 7:11 —Motions for trial continuance
- § 7:12 District and Boston Municipal Courts civil motions
- § 7:13 Probate and Family Court civil motions
- § 7:14 Juvenile Court civil motions
- § 7:15 Land Court civil motions
- § 7:16 Housing Court civil motions
- § 7:17 Motions in criminal cases
- § 7:18 —Rule 10: motions for continuance
- § 7:19 —Rule 13: pretrial motions

Dula 25, mations for required finding of not quilter
—Rule 25: motions for required finding of not guilty
Motions for injunctive relief
Rapid action required
Rule 12 motions
—Rule 12(b) motions to dismiss
— —Lack of jurisdiction over the subject matter
— —Lack of jurisdiction over the person
——Improper venue
——Insufficiency of process
— Insufficiency of service of process
— Failure to state a claim upon which relief can be
granted
— —Failure to join a party under Rule 19
——Misnomer of a party
——Pendency of a prior action in a court of the
commonwealth
— —Improper amount of damages
-Rule 12(c) motions for judgment on the pleadings
-Rule 12(e) motions for a more definite statement
—Rule 12(f) motions to strike
Motions to suppress
Summary judgment motions
Motions in limine

CHAPTER 8. DISCOVERY

I. INTRODUCTION

- § 8:1 Origin and development of discovery
- § 8:2 Purposes served by discovery; ethically enforced
- § 8:3 Electronic discovery: notices, conferences, and limitations

II. INFORMAL DISCOVERY

- § 8:4 Generally
- § 8:5 Authorizations from client
- § 8:6 Examination of the scene
- § 8:7 Witness interviews
- $\S~8:8$ News media reports
- § 8:9 Medical reports
- § 8:10 Surveillance of opposing party or adverse witness
- § 8:11 Consulting experts
- § 8:12 Problems of informal investigation

III. FORMAL DISCOVERY

A. INTRODUCTION

Methods of discovery
· ·
Frequency and sequence of discovery
Scope
—Insurance coverage
—Work product
—Expert witnesses
—A discretionary trial court decision
Relevancy

B LIMITATIONS ON DISCOVERY

ъ.	LIMITATIONS ON DISCOVERT
	1. Privileged Matters
§ 8:21	Generally
§ 8:22	Allied mental health or human services professional privilege
§ 8:23	Attorney-client privilege
§ 8:24	Domestic violence victims' privilege
§ 8:25	Informer's identity, surveillance location, and protected witness privileges
§ 8:26	Investigatory privilege
§ 8:27	Interpreter, client privilege
§ 8:28	Sign language interpreter, client privilege
§ 8:29	Privilege against self-incrimination
§ 8:30	Medical peer review privilege
§ 8:31	Mediation privilege
§ 8:32	Political voter privilege
§ 8:33	Psychotherapist-patient privilege
§ 8:34	Religious privilege
§ 8:35	Sexual assault counselor, victim privilege
§ 8:36	Social worker-client privilege
§ 8:37	Spousal privilege and disqualification; parent-child disqualification
§ 8:38	State and federal tax return privileges
§ 8:39	Tax return preparer privilege
§ 8:40	Unemployment hearing privilege
	2. Other Limitations on Discovery
§ 8:41	The Lampron-Dwyer protocol
§ 8:42	Protective orders
§ 8:43	Supplementation of discovery responses

C. OBTAINING FORMAL DISCOVERY

4	α .	1 4 •
	Stinii	lations
т.	Dupu	laululls

- § 8:44 Generally
 - 2. Interrogatories
- § 8:45 Asking interrogatories
- § 8:46 Answering interrogatories
 - 3. Requesting production of documents, tangible things and property
- § 8:47 Generally
- § 8:48 Responding to requests for production
- § 8:49 Physical and mental examinations
 - 4. Admissions
- § 8:50 Requesting admissions
- § 8:51 Admitting, denying or objecting to admission requests
 - 5. Discovery depositions
- § 8:52 Generally
- § 8:53 Budgeting
- § 8:54 Planning
- § 8:55 Scheduling
- § 8:56 Taking
- § 8:57 Defending a deponent or against a documents only subpoena
 - 6. Trial depositions
- § 8:58 Perpetuating testimony
 - 7. Obtaining compliance with discovery
- § 8:59 Generally
- § 8:60 Cooperative correction
- § 8:61 Compelling compliance
- § 8:62 Coercing compliance

D. FORMAL DISCOVERY IN CRIMINAL CASES

- § 8:63 Generally
- § 8:64 Procedures for automatic discovery
- § 8:65 —Mandatory discovery for the defendant
- § 8:66 —Reciprocal discovery for the prosecution
- § 8:67 —Staying discovery and sanctioning violations
- § 8:68 —Procedures for commonly arising issues

§ 9:32

§ 9:33

§ 9:34

§ 9:35

§ 8:69 Special procedures § 8:70 —Alibi rule § 8:71 —Raising accused's mental health § 8:72 —License, authority or exemption defenses § 8:73 —Self defense first aggressor § 8:74 Sanctions for noncompliance

CHAPTER 9. PRETRIAL PREPARATION

§ 9:1 Introduction § 9:2 Think appeal § 9:3 Plan to complete the record § 9:4 Plan to object and prepare offer of proof § 9:5 Know the record and prepare to appeal § 9:6 First draft of jury instructions § 9:7 Essential elements and sources of proof § 9:8 Know your client § 9:9 Know your opposition § 9:10 Standards of review Trial court standards of review § 9:11 § 9:12 -Administrative decisions —Arbitration § 9:13 § 9:14 —Attachment § 9:15 -Certiorari —Directed verdict and judgment notwithstanding § 9:16 verdict § 9:17 -Motions to dismiss civil cases § 9:18 —Motion for a preliminary injunction § 9:19 —Zoning decisions § 9:20 -Motion to dismiss criminal cases § 9:21 —Motion to suppress § 9:22 —Required finding of not guilty § 9:23 Appellate standards of review § 9:24 —Findings of fact and conclusion of law § 9:25 —Attorney discipline § 9:26 —Under supervisory power § 9:27 —Interlocutory orders § 9:28 —Required finding of not guilty § 9:29 —Conviction § 9:30 —Ineffective assistance of counsel § 9:31 Using discovery at trial

—Answers to interrogatories

—Admissions made

—Deposition testimony

—Documents and things produced

TRIAL PRACTICE

§ 9:36	—Audio-visual deposition testimony
§ 9:37	—Audio-visual expert witness depositions for trial
§ 9:38	Finding the theory; crafting the theme
§ 9:39	Case evaluation worksheet—Liability analysis
§ 9:40	—Damage analysis
§ 9:41	Case evaluation form—Settlement
§ 9:42	Settlement
§ 9:43	Pretrial memorandum
§ 9:44	Pretrial conference
§ 9:45	Trial brief
§ 9:46	Administrative responsibilities—Preparing trial kit
	subpoenas, etc.
§ 9:47	Preparing witnesses
§ 9:48	Spoliation

§ 14:50	Objections and motions to strike
§ 14:51	—General category
§ 14:52	—Specific category

CHAPTER 15. DAMAGES

I. NATURE AND GROUNDS OF DAMAGES

§ 15:1 Generally

II. PUNITIVE AND MULTIPLE DAMAGES

§ 15:2 Generally

III. COMPENSATORY DAMAGES

A. KEY CHARACTERISTICS

- § 15:3 Generally
- § 15:4 Causation
- § 15:5 Certainty
- § 15:6 Completeness
- § 15:7 Avoidability

B. IN CONTRACT CASES

- § 15:8 Generally
- § 15:9 Expectancy damages
- § 15:10 Reliance damages
- § 15:11 Restitution damages
- § 15:12 Costs and Interest
- § 15:13 Liquidated damages

IV. UCC DAMAGES

- § 15:14 Generally
- § 15:15 Sales
- § 15:16 —Sellers
- § 15:17 —Buyers
- § 15:18 Leases
- § 15:19 —Lessees
- § 15:20 —Lessors

V. EMINENT DOMAIN DAMAGES

A. ELEMENTS OF DAMAGES

§ 15:21 Introduction

§ 15:24	Costs Interest Real estate taxes Relocation
В.	CALCULATION OF FAIR MARKET VALUE
§ 15:29 § 15:30 § 15:31 § 15:32 § 15:33 § 15:34	
VI. T	ORT DAMAGES
A.	PROPERTY DAMAGE
§ 15:37	Generally Personal property Real property
В.	PERSONAL INJURY DAMAGES
§ 15:39 § 15:40 § 15:41 § 15:42 § 15:43 § 15:44	Hospital and medical expenses Impairment of earning capacity Pain and suffering
C.	COSTS AND INTEREST
§ 15:45 § 15:46 § 15:47	Adding costs and interests —Costs —Interest
D.	LEGAL LIMITATIONS ON TORT DAMAGES
§ 15:48 § 15:49 § 15:50 § 15:51	Generally Comparative negligence reduces damages Economic loss doctrine Good Samaritan exemptions

- $\S~15:52$ No fault insurance law limits damages
- § 15:53 Damage caps for charitable institutions
- § 15:54 Damage caps in medical malpractice cases
- § 15:55 Damages caps for state and local government

E. FORMS

- § 15:56 Forms for requesting medical bills and reports
- § 15:57 Form requesting wage verification

VII. LOSS OF CONSORTIUM

- § 15:58 Generally
- § 15:59 Filial consortium
- § 15:60 Parental consortium
- § 15:61 Spousal consortium

VIII. THE COLLATERAL SOURCE RULE

- § 15:62 Generally
- § 15:63 Statutory rule applied in medical malpractice cases

IX. WRONGFUL DEATH DAMAGES

- § 15:64 Generally
- § 15:65 Beneficiaries
- § 15:66 Damages
- § 15:67 —Actual
- § 15:68 —Compensatory
- § 15:69 —Punitive
- § 15:70 Limitations
- § 15:71 Parties

X. CONTEMPT SANCTIONS

- § 15:72 Generally
- § 15:73 Procedure for summary criminal contempt
- § 15:74 Procedure for non-summary criminal contempt
- § 15:75 Procedure for civil contempt
- § 15:76 Contempt sanctions

CHAPTER 16. CLOSING ARGUMENT

- § 16:1 Introduction to closing argument
- § 16:2 The law and order of closing argument
- § 16:3 Planning and preparing the closing argument
- § 16:4 Structuring the closing argument
- § 16:5 Beginning the closing argument

	Trial Practice
§ 16:6	—Bench trials
§ 16:7	—Jury trials
§ 16:8	Body of the closing argument
§ 16:9	Concluding the closing argument
§ 16:10	Practicing and presenting the closing argument
§ 16:11	Using exhibits during closing argument
§ 16:12	Objecting to a closing argument
CHAF	PTER 17. JURY INSTRUCTIONS
§ 17:1	Jury instructions, generally
§ 17:2	General principles relating to jury instructions
§ 17:3	Duty of court to instruct
§ 17:4	Model jury instructions
§ 17:5	Requesting jury instructions
§ 17:6	Objecting to jury instructions
§ 17:7	Preliminary instructions
§ 17:8	Trial instructions
§ 17:9	—Cautionary instructions
§ 17:10	—Curative instructions
§ 17:11	—Informational instructions
§ 17:12	Overview of final jury instructions
§ 17:13	General final instructions—Beginning
§ 17:14	Specific final instructions—Middle
§ 17:15	Procedural final instructions—End
CHAPTER 18. DELIBERATIONS, FINDINGS,	
AND VERDICTS	
I. JURY DELIBERATIONS	
§ 18:1	Generally

- § 18:2 Introduction
- Discussions with non-jurors § 18:3
- § 18:4 Media reports
- § 18:5 Third party meddling
- § 18:6 Unauthorized views

III. INTERNAL EXTRANEOUS INFLUENCES

II. EXTERNAL EXTRANEOUS INFLUENCES

- § 18:7 Introduction
- § 18:8 Bias
- § 18:9 Excessive experimentation or investigation

§ 18:10 Inattention

IV. ITEMS TAKEN INTO JURY ROOM

§ 18:11 Generally

V. SELECTING, SEPARATING AND USING ALTERNATE JURORS

§ 18:12 Generally

VI. DISCHARGING OR DISMISSING TRIAL JURORS

- § 18:13 Introduction
- § 18:14 Death, illness or inability
- § 18:15 Keeping away unreasonable delay
- § 18:16 Maintaining justice and the public interest
- § 18:17 Preventing extreme hardship

VII. SEQUESTERING THE JURY

§ 18:18 Generally

VIII. RESPONDING TO JURY QUESTIONS AND REQUESTS

§ 18:19 Generally

IX. DELIBERATIONS REACHING DEADLOCK

§ 18:20 Generally

X. VERDICTS

- § 18:21 Introduction
- § 18:22 General verdict
- § 18:23 General verdict accompanied by answers to interrogatories
- § 18:24 Special verdict

XI. FINDINGS BY THE COURT

§ 18:25 Generally

CHAPTER 19. JUDGMENTS, POST-TRIAL LEGAL MANEUVERS AND APPEALS

§ 19:1 Judgments generally

TRIAL PRACTICE

§ 19:2	Entering judgment; starting, stopping and resetting
	the appellate clock
§ 19:3	The principle of finality
§ 19:4	Costs
§ 19:5	Offer of Judgment
§ 19:6	Default judgments
§ 19:7	Overview of post-trial maneuvers
§ 19:8	Motion for judgment notwithstanding the verdict
§ 19:9	Motion to amend or make additional findings
§ 19:10	Motion for a new trial
§ 19:11	Motion for relief from judgment
§ 19:12	Post-judgment motions in criminal cases
§ 19:13	Interlocutory review
§ 19:14	Appeals
§ 19:15	Collecting and enforcing judgments

Table of Laws and Rules

Table of Cases

Index