Volume 17

| CHAPTER 1. MASSACHUSETTS RULES OF CIVIL PROCEDURE | | |
|---|--|--|
| Sec. | | |
| 1.1 | In General | |
| 1.2 | Commencement of the Action | |
| 1.3 | Affirmative Defenses | |
| 1.4 | Degrees of Proof | |
| 1.5 | Harmless Error | |
| 1.6 | Civil Jury Instructions | |
| 1.7 | District Court Rules | |
| | CHAPTER 2. THE CONTRACTUAL OBLIGATION | |
| | A. THE PLAINTIFF'S CASE | |
| | A. THE LEADVIET S CASE | |
| 2.1 | The Basic Elements | |
| 2.2 | The Written Agreement | |
| 2.3 | Construction of the Written Agreement | |
| 2.4 | Construction of Insurance Contracts | |
| 2.5 | By Correspondence | |
| 2.6 | Certainty as to the Terms of the Contract | |
| 2.7 | Delivery of Contract and Communication of Acceptance | |
| 2.8 | Signature | |
| 2.9 | Oral Agreements | |
| 2.10 | Contracts Implied in Fact | |
| 2.11 | Contracts Implied in Law | |
| 2.12 | Promissory Estoppel | |
| 2.13 | Capacity to Contract | |
| 2.14 | Husband and Wife | |
| 2.15 | Consideration | |
| 2.16 | Performance and Breach | |
| 2.17 | Excuses for Non-performance | |
| 2.18 | Partial Performance | |
| 2.19 | Breach by the Defendant | |
| 2.20 | Anticipatory Breach | |
| 2.21 | Conditions Precedent and Exceptions | |

2.22

2.23

 $\begin{array}{c} 2.24 \\ 2.25 \end{array}$

2.26

 $\begin{array}{c} 2.27 \\ 2.28 \end{array}$

Damages

____ Attorney Fees Agency in Contract

Truth in Lending

Partnership by Estoppel

Exceptional Circumstances
Interest

| Sec. | |
|------|--|
| 2.29 | Employment Contracts |
| 2.30 | Third Party Beneficiaries |
| 2.31 | Gestational Carrier Contract |
| | |
| | B. THE DEFENDANT'S CASE |
| 2.41 | Defenses—Form of Denials |
| 2.42 | The General Denial |
| 2.43 | Affirmative Defenses in General |
| 2.44 | Affirmative Defenses—Accord and Satisfaction |
| 2.45 | Arbitration and Award |
| 2.46 | Assumption of the Risk |
| 2.47 | Contributory Negligence |
| 2.48 | Discharge in Bankruptcy |
| 2.49 | Duress |
| 2.50 | Estoppel |
| 2.51 | Consideration—Failure and Illegality |
| 2.52 | Fraud |
| 2.53 | Illegality |
| 2.54 | Contrary to Public Policy |
| 2.55 | Violation of Statute |
| 2.56 | Contracts in Restraint of Marriage |
| 2.57 | Immorality |
| 2.58 | Inducing Fraud or Breach of Trust |
| 2.59 | Contracts in Restraint of Trade |
| 2.60 | Contracts Involving Control of a Corporation |
| 2.61 | Contracts to Influence Legislation |
| 2.62 | Contracts Which Oust a Court of Jurisdiction |
| 2.63 | Compounding Offenses |
| 2.64 | Preventing Competition at a Judicial Sale |
| 2.65 | Sunday Contracts |
| 2.66 | Injury by a Fellow Servant |
| 2.67 | Laches |
| 2.68 | License |
| 2.69 | Payment |
| 2.70 | Release |
| 2.71 | Former Judgment or Res Adjudicata |
| 2.72 | Claim and Issue Preclusion |
| 2.73 | Statute of Frauds |
| 2.74 | Statute of Limitations |
| 2.75 | Disability |
| 2.76 | Absence |
| 2.77 | Death |
| 2.78 | Fraudulent Concealment |
| 2.79 | Inherently Unknowable Breach |
| 2.80 | Acknowledgment |
| 2.81 | Part Payment |
| 2.82 | Tender |
| 2.83 | Waiver |
| 9.94 | Other Defences Satisfaction of the Defendant |

| Sec. 2.85 2.86 2.87 2.88 2.89 2.90 2.91 2.92 2.93 2.94 2.95 2.96 2.97 2.98 2.99 2.100 | Performance in an Unworkmanlike Manner Loose Conversations, Inquiries and Offers to Negotiate Subsequent Agreement Intended Uncertainty Lack of Damage Equitable Defenses Cancellation Fiduciary Capacity—Corporate Capacity—Existence of a Public Way Impossibility Mistake Novation Signature Insanity Infancy Miscellaneous Defenses Survival of Actions in Contract |
|---|---|
| | CHAPTER 3. THE COMMON COUNTS |
| | A. THE PLAINTIFF'S CASE |
| 3.1 3.2 3.3 3.4 3.5 3.6 3.7 3.8 3.9 3.10 3.11 3.12 3.13 | In General Use of the Account Annexed Money Had and Received Money Lent Goods Sold Work—Work and Materials Board or Board and Lodging Carriage of Goods Warehouse Room Hire of Personal Property Insimul Computassent—Account Stated Use and Occupation Rent Under a Sealed Instrument B. THE DEFENDANT'S CASE |
| 3.21 | In General |
| | CHAPTER 4. LABOR AND MATERIALS |
| | A. THE PLAINTIFF'S CASE |
| 4.1 4.2 4.3 4.4 4.5 4.6 | In General Partial Performance of an Express Contract Substantial Performance Good Faith—Intentional Departure—Willful Default Rescission or Termination by Defendant Waiver and Modification |

| Sec. 4.7 4.8 4.9 | Extras Contracts Implied in Fact Damages |
|--|---|
| | B. THE DEFENDANT'S CASE |
| 4.21 4.22 4.23 4.24 4.25 4.26 4.27 | In General Skill and Workmanship, In General Lack of Implied Contract Family Relationship Gratuitous Undertaking Lack of Knowledge Express Contract |
| | CHAPTER 5. MONEY HAD AND RECEIVED |
| | A. THE PLAINTIFF'S CASE |
| 5.1 5.2 5.3 | In General Money Had and Received To the Plaintiff's Use |
| | B. THE DEFENDANT'S CASE |
| 5.11 | In General |
| | CHAPTER 6. NECESSARIES |
| | A. THE PLAINTIFF'S CASE |
| 6.1 6.2 6.3 6.4 6.5 6.6 6.7 | In General Persons Liable Infants and Parents Incompetents and Their Guardians Husband and Wife What Are Necessaries? Damages |
| | B. THE DEFENDANT'S CASE |
| 6.11 6.12 6.13 6.14 | In General Suitable Provision for Support Court Decree Lack of Necessity |
| | CHAPTER 7. USE AND OCCUPATION OF LAND |
| | A. THE PLAINTIFF'S CASE |
| 7.1 | In General |

| | TIBLE OF CONTENTS |
|------|--|
| Sec. | |
| 7.2 | The Contract |
| 7.3 | Occupation |
| 7.4 | Damages |
| 1.4 | Damages |
| | B. THE DEFENDANT'S CASE |
| 711 | I. C |
| 7.11 | In General |
| | CHAPTER 8. ENFORCEMENT OF JUDGMENTS |
| | A. THE PLAINTIFF'S CASE |
| 8.1 | In General |
| 8.2 | Proof of the Judgment |
| 8.3 | Identity of the Parties |
| 8.4 | Postjudgment Interest |
| | B. THE DEFENDANT'S CASE |
| | _, |
| 8.11 | In General |
| 8.12 | Jurisdiction |
| 8.13 | Payment |
| 8.14 | Release |
| 8.15 | Satisfaction |
| 8.16 | Statute of Limitations |
| 8.17 | Set-Off |
| | CHAPTER 9. REAL ESTATE BROKER'S COMMISSION |
| | A. THE PLAINTIFF'S CASE |
| 9.1 | In General |
| 9.2 | Sale Completed |
| 9.3 | The Agreement |
| 9.4 | The Predominating Efficient Cause |
| 9.5 | The Sale |
| 9.6 | Sale Not Completed |
| 9.7 | The Agreement With the Broker |
| 9.8 | Customer Ready, Willing and Able |
| 9.9 | The Binding Contract of Sale |
| 9.10 | Acceptance by the Defendant |
| 9.11 | Exclusive Contracts |
| 9.12 | Damages |
| | B. THE DEFENDANT'S CASE |
| 9.21 | Defendant's Answer |
| 9.22 | Revocation of Offer or Authority |
| 9.23 | Representing Adverse Interests |

CHAPTER 10. PURCHASE AND SALE OF REAL ESTATE

A. THE PLAINTIFF'S CASE

| 10.1 | In General |
|--|---|
| 10.2 | Tender of Performance |
| 10.3 | Offers to Purchase |
| 10.4 | Defendant's Breach of the Real Estate Agreement |
| 10.5 | Breach of Provisions Relating to Description |
| 10.6 | Breach of Provisions Relating to Price |
| 10.7 | Breach of Provisions Relating to Seller's Title |
| 10.8 | Breach of Provisions Relating to Possession |
| 10.9 | Breach of Provisions Relating to Adjustments |
| 10.10 | Breach of Provisions Relating to Deposit |
| 10.11 | Breach of Provisions Relating to Acceptance of the Deed |
| 10.12 | Breach of Miscellaneous Provisions |
| 10.13 | Option to Buy Land |
| 10.14 | Right of First Refusal |
| 10.15 | Specific Performance |
| 10.16 | Damages |
| 10.10 | Damages |
| | |
| | B. THE DEFENDANT'S CASE |
| 10.01 | I ()1 |
| 10.21 | In General |
| 10.22 | Defective Title |
| 10.23 | Sunday Contracts |
| | |
| | |
| | CHAPTER 11. GUARANTY |
| | |
| | CHAPTER 11. GUARANTY A. THE PLAINTIFF'S CASE |
| 11.1 | |
| 11.1 11.2 | A. THE PLAINTIFF'S CASE |
| | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof |
| 11.2 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation |
| 11.2 11.3 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation |
| 11.2 11.3 11.4 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation — Types of Primary Obligation The Contract of Guaranty |
| 11.2 11.3 11.4 11.5 11.6 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation The Contract of Guaranty Types of Guaranty |
| 11.2 11.3 11.4 11.5 11.6 11.7 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation The Contract of Guaranty Types of Guaranty Consideration |
| 11.2 11.3 11.4 11.5 11.6 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation — Types of Primary Obligation The Contract of Guaranty — Types of Guaranty — Consideration — Notice of Acceptance |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation — Types of Primary Obligation The Contract of Guaranty — Types of Guaranty — Consideration — Notice of Acceptance Default of Principal |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation — Types of Primary Obligation The Contract of Guaranty — Types of Guaranty — Consideration — Notice of Acceptance Default of Principal — Notice of Default |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 11.10 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation — Types of Primary Obligation The Contract of Guaranty — Types of Guaranty — Consideration — Notice of Acceptance Default of Principal |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 11.10 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation The Contract of Guaranty Types of Guaranty Consideration Notice of Acceptance Default of Principal Notice of Default Compliance With the Terms of the Contract and Guaranty |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 11.10 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation — Types of Primary Obligation The Contract of Guaranty — Types of Guaranty — Consideration — Notice of Acceptance Default of Principal — Notice of Default |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 11.10 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation The Contract of Guaranty Types of Guaranty Consideration Notice of Acceptance Default of Principal Notice of Default Compliance With the Terms of the Contract and Guaranty |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 11.10 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation The Contract of Guaranty Types of Guaranty Consideration Notice of Acceptance Default of Principal Notice of Default Compliance With the Terms of the Contract and Guaranty B. THE DEFENDANT'S CASE |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 11.10 11.11 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation The Contract of Guaranty Types of Guaranty Consideration Notice of Acceptance Default of Principal Notice of Default Compliance With the Terms of the Contract and Guaranty B. THE DEFENDANT'S CASE In General Specific Defenses—In General |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 11.10 11.11 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation The Contract of Guaranty Types of Guaranty Consideration Notice of Acceptance Default of Principal Notice of Default Compliance With the Terms of the Contract and Guaranty B. THE DEFENDANT'S CASE In General Specific Defenses—In General Lapse or Termination |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 11.10 11.11 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation The Contract of Guaranty Types of Guaranty Consideration Notice of Acceptance Default of Principal Notice of Default Compliance With the Terms of the Contract and Guaranty B. THE DEFENDANT'S CASE In General Specific Defenses—In General |
| 11.2 11.3 11.4 11.5 11.6 11.7 11.8 11.9 11.10 11.11 11.21 11.22 11.23 11.24 | A. THE PLAINTIFF'S CASE In General Basic Elements of Proof Existence of the Primary Obligation Types of Primary Obligation The Contract of Guaranty Types of Guaranty Consideration Notice of Acceptance Default of Principal Notice of Default Compliance With the Terms of the Contract and Guaranty B. THE DEFENDANT'S CASE In General Specific Defenses—In General Lapse or Termination Discharge |

| | TABLE OF CONTENTS |
|---------------|--|
| Soo | |
| Sec. 11.27 | Statute of Limitations |
| 11.27 | Ultra Vires |
| 11.29 | Contribution and Indemnity |
| 11.23 | Contribution and indemnity |
| | CHAPTER 12. SALES |
| | A. THE PLAINTIFF'S CASE |
| 12.1 | The Uniform Commercial Code |
| 12.2 | Sale of Chattels |
| 12.3 | Sales in General |
| 12.4 | Contract for Sale |
| 12.5 | Offer and Acceptance |
| 12.6 | Consideration |
| 12.7 | Performance |
| 12.8 | Delivery |
| 12.9 | Acceptance |
| 12.10 | Payment |
| 12.11 | Breach by the Defendant |
| 12.12 | Seller's Remedies |
| 12.13 | Seller's Damages |
| 12.14 | Buyer's Remedies |
| 12.15 | Buyer's Damages |
| 12.16 | Conditional Sales and Secured Transactions |
| 12.17 | Risk of Loss |
| 12.18 | Remedies for Fraud |
| 12.19 | Sale of Corporate Assets |
| | B. THE DEFENDANT'S CASE |
| 12.31 | In General |
| 12.32 | Breach of Warranty |
| 12.33 | Statute of Frauds |
| 12.34 | Rightful Rejection |
| 12.35 | Excuse |
| 12.36 | Anticipatory Breach |
| 12.37 | Payment |
| 12.38 | Statute of Limitations |
| | CHAPTER 13. BREACH OF WARRANTY |
| | A. THE PLAINTIFF'S CASE |
| 10.1 | |
| 13.1 | In General |
| 13.2 | Express Warranty |
| 13.3 | Warranty of Title |
| 13.4 | Warranty of Ovelity on Fitness |
| 13.5 | Warranty of Quality or Fitness |
| 13.6 13.7 | Implied Warranty of Merchantability Warranty in Sale by Sample |
| | |

| Sec. 13.8 13.9 13.10 13.11 13.12 13.13 | Exclusion or Modification of Warranties Cumulation and Conflict of Warranties Third Party Beneficiaries Election of Remedies Notice Damages |
|--|--|
| | B. THE DEFENDANT'S CASE |
| 13.21 | In General |
| 13.22 | Exclusion by Express Warranty |
| 13.23 | Caveat Emptor |
| 13.24 | Waiver |
| 13.25 | Statute of Limitations |
| | CHAPTER 14. NEGOTIABLE INSTRUMENTS |
| | A. THE PLAINTIFF'S CASE |
| 14.1 | In General |
| 14.2 | The Uniform Commercial Code |
| 14.3 | Negotiable Instrument Defined |
| 14.4 | Delivery—Transfer and Negotiation |
| 14.5 | Proof of the Defendant's Signature |
| 14.6 | Consideration |
| 14.7 | Holders in Due Course |
| 14.8 | Persons Primarily Liable |
| 14.9 | Obligation of the Maker |
| 14.10 | Obligation of the Drawee or Acceptor |
| 14.11 | Persons Secondarily Liable |
| 14.12 | Presentment and Demand |
| 14.13 | Dishonor and Notice of Dishonor |
| 14.14 | Protest |
| 14.15 | Obligation of the Drawer |
| 14.16 | Obligation of Indorsers |
| 14.17 | Obligation of an Accommodation Party |
| | B. THE DEFENDANT'S CASE |
| 14.21 | In General |
| 14.22 | Failure of Consideration |
| 14.23 | Defenses Against a Party Not a Holder in Due Course |
| 14.24 | Defenses Against Holders in Due Course |
| 14.25 | Discharge |
| 14.26 | Payment or Satisfaction |
| | CHAPTER 15. CONSUMER'S PROTECTION AC |

Т

A. THE PLAINTIFF'S CASE

15.1 In General

| Sec. 15.2 15.3 15.4 15.5 15.6 15.7 15.8 | Section 9 of the Act The Demand Letter Section 11 of the Act Examples of Application of the Statute Damages Attorney's Fees Unfair Settlement Statute |
|---|--|
| | B. THE DEFENDANT'S CASE |
| 15.21 15.22 15.23 | In General Exemptions From the Act Statute of Limitations |
| | CHAPTER 16. BAILMENTS |
| | A. THE PLAINTIFF'S CASE |
| 16.1 16.2 16.3 16.4 16.5 | In General Bailments for the Benefit of the Bailor Bailments for the Benefit of the Bailee Bailments for Mutual Benefit—Bailments for Hire Damages |
| | B. THE DEFENDANT'S CASE |
| 16.11 16.12 16.13 | In General Statute of Limitations Actions Against or by Third Persons |
| | CHAPTER 17. THE OBLIGATION IN TORT |
| | A. THE PLAINTIFF'S CASE |
| 17.1 17.2 17.3 17.4 17.5 17.6 17.7 17.8 17.9 17.10 | In General The Duty to the Plaintiff, In General Breach of Duty, In General Proximate Cause, In General Damage, In General Actions Sounding in Tort Arising From Contracts Actions Sounding in Contract Arising From Torts Agency in Tort Co-tortfeasors Doctrine of Sovereign Immunity—Massachusetts Tort Claims Act Immunity for Official Acts |
| | B. THE DEFENDANT'S CASE |
| 17.21 17.22 | In General Damnum Absque Injuria |

| Sec. 17.23 17.24 17.25 17.26 17.27 17.28 17.29 17.30 17.31 17.32 | Consent Capacity — Husband and Wife — Parent and Child — Insane Persons — Business Corporations — Charitable Corporations — Municipal Corporations Release — Unknown Injury Rule |
|--|---|
| 17.33 | Statute of Limitations |
| 17.34 | Discovery of Tort |
| 17.35 | Survival of Actions in Tort |
| | CHAPTER 18. NEGLIGENCE |
| | A. THE PLAINTIFF'S CASE |
| 18.1 18.2 | In General The Duty to the Plaintiff |
| 18.3 | Definition of Negligence |
| 18.4 | Proof of Negligence |
| 18.5 | Res Ipsa Loquitur |
| 18.6 | Willful, Wanton and Reckless Misconduct |
| 18.7 | Due Care |
| 18.8 | Bailment for Hire |
| 18.9 | Negligent Hiring or Retention of an Employee |
| 18.10 | Proximate Cause |
| 18.11 | Harm Caused by Third Persons |
| 18.12 | Rescue Doctrine |
| 18.13 | Violation of Statute by the Defendant |
| 18.14 | Damage |
| 18.15 | Pain and Suffering |
| 18.16 | Medical Expenses Diminution of Earning Capacity |
| 18.17 18.18 | Future Damages |
| 18.19 | Interest |
| 18.20 | Consequential Damages |
| 18.21 | Pleading—General and Special Damages |
| | B. THE DEFENDANT'S CASE |
| 18.31 | In General |
| 18.32 | Contributory Negligence |
| 18.33 | Comparative Negligence |
| 18.34 | Assumption of the Risk |
| 18.35 | Infants and Persons Under Disability |
| 18.36 | Imputed Negligence |
| 18.37 | Cause and Condition |
| 18.38 | Violation of Statute by the Plaintiff |

| Sec. 18.39 18.40 | Act of God Statute of Limitations |
|---|---|
| | CHAPTER 19. AUTOMOBILE NEGLIGENCE |
| | A. THE PLAINTIFF'S CASE |
| 19.1 19.2 19.3 19.4 19.5 19.6 19.7 19.8 19.9 19.10 19.11 19.12 19.13 19.14 19.15 19.16 19.17 19.18 19.19 19.20 19.21 19.22 19.23 19.24 19.25 19.26 19.27 19.28 19.29 19.30 | In General No Fault Recovery The Duty to the Plaintiff—In General Duty to Guests Duty to Trespassers Proof of Negligence Loading and Unloading Skidding Drunkenness Mechanical Defects Backing Overtaking and Passing Meeting and Passing Intersections Parked Vehicles Liability Without Contact Violation of Statute by the Defendant Tavern Owners and Bartenders Social Hosts—Intoxicating Liquors Employer Hosts—Intoxicating Liquors Improper Registration Unlicensed or Unfit Person Uninsured and Underinsured Motorists Racing Res Ipsa Loquitur Gross Negligence Deliberate and Complete Inattention Voluntary Incurring of an Obvious Risk Impatience of Reasonable Restraint Persistence in a Negligent Course of Conduct |
| 19.31 19.32 19.33 19.34 | Other Circumstances of Gross Negligence Willful, Wanton and Reckless Conduct Agency Proximate Cause |
| 19.35 | Damages |
| | B. THE DEFENDANT'S CASE |
| 19.41 19.42 19.43 19.44 19.45 | In General Comparative Negligence Cause and Condition Violation of Statute by the Plaintiff Persons in the Street |

| Sec. | |
|----------------|--|
| 19.46 | Coasting Accidents |
| 19.47 | Unlighted Vehicles and Flare Lights |
| 19.48 | Imputed Negligence |
| 19.49 | Surrender of Care |
| 19.50 | Assumption of Risk and Contributory Negligence of Passengers |
| 19.51 | Statute of Limitations |
| | Volume 17A |
| | CHAPTER 20. ACTIONS AGAINST CARRIERS |
| | A. THE PLAINTIFF'S CASE |
| 20.1 | In General |
| 20.2 | The Carrier's Duty to the Plaintiff |
| 20.3 | Status as a Carrier |
| 20.4 | Status as a Passenger |
| 20.5 | Duty to Warn Passengers |
| 20.6 | Proof of Negligence |
| 20.7 | Res Ipsa Loquitur |
| 20.8 | Sudden Stops, Jerks and Jolts |
| 20.9 | Passengers Boarding and Alighting |
| 20.10 | Injury by Third Persons |
| 20.11 | Defective Condition and Foreign Substances |
| 20.12 | Injuries by Doors and Windows |
| 20.13 | Proximate Cause |
| 20.14 | Damage |
| 20.15 | Ejection of Passengers and Trespassers |
| 20.16 | Loss or Damage to Personal Effects |
| | B. THE DEFENDANT'S CASE |
| 20.21 | In General |
| 20.22 | Comparative Negligence of Passenger |
| 20.23 | Grade Crossings |
| 20.24 | Act of God—Inevitable Accident |
| 20.25 | Limitation of Liability |
| | CHAPTER 21. ACTIONS FOR DEATH |
| | A. THE PLAINTIFF'S CASE |
| 21.1 | In General |
| $21.1 \\ 21.2$ | The Death Statutes |
| 21.2 | Representative Capacity |
| 21.3 | Next of Kin |
| 21.4 21.5 | Limitation of Action |
| 21.6 | Counties, Cities and Towns—Defective Ways |
| 21.7 | The General Statute |
| 21.8 | Common Carriers |
| 21.9 | Railroads—Street Railways |

| Sec. 21.10 21.11 21.12 21.13 21.14 21.15 21.16 | Employers Proximate Cause Damages Interest Distribution Conscious Suffering Survival of Actions |
|---|--|
| | B. THE DEFENDANT'S CASE |
| 21.21 21.22 21.23 | In General Contributory or Comparative Negligence Statute of Limitations |
| | CHAPTER 22. DEFECT IN A PUBLIC WAY |
| | A. THE PLAINTIFF'S CASE |
| 22.1 22.2 22.3 22.4 22.5 22.6 22.7 22.8 22.9 22.10 22.11 22.12 22.13 22.14 | In General The Duty of the Defendant—Cities and Towns The Commonwealth Abutters The Plaintiff's Status as a Traveler Defects in the "Way" The Defect Remedial Defect Knowledge of the Defendant Excessive Weight of Vehicle Notice of Injury Snow and Ice Cases Proximate Cause Damage |
| | B. THE DEFENDANT'S CASE |
| 22.21 22.22 22.23 22.24 | In General Contributory Negligence Defective Notice Statute of Limitations |
| C | HAPTER 23. DEFECTS AND FOREIGN SUBSTANCES ON PREMISES |
| | A. THE PLAINTIFF'S CASE |
| 23.1 23.2 23.3 23.4 23.5 | In General The Duty to the Plaintiff Licensees Trespassers Business Invitees |

| Sec. | |
|---|---|
| 23.6 | Social Guests |
| 23.7 | Employees |
| 23.8 | Independent Contractors and Their Employees |
| 23.9 | Persons on the Way |
| 23.10 | Breach of Duty |
| 23.11 | Stores and Shops |
| 23.12 | Places of Amusement |
| 23.13 | Employers—Common Law Liability |
| 23.14 | Employers' Liability Act |
| 23.15 | The Defect |
| 23.16 | Snow and Ice |
| 23.17 | Knowledge of the Defendant |
| 23.18 | Foreign Substances |
| 23.19 | Defendant's Duty to Warn the Plaintiff |
| 23.20 | Proximate Cause |
| 23.21 | Damage |
| 20.21 | Damago |
| | B. THE DEFENDANT'S CASE |
| | B. THE DEFENDANT S CASE |
| 23.31 | In General |
| 23.32 | Contributory and Comparative Negligence |
| 23.33 | Assumption of the Risk |
| | • |
| | |
| CHA | PTER 24. ACTIONS INVOLVING LANDLORD AND TENANT |
| СНА | |
| СНА | PTER 24. ACTIONS INVOLVING LANDLORD AND TENANT A. THE PLAINTIFF'S CASE |
| | A. THE PLAINTIFF'S CASE |
| 24.1 | A. THE PLAINTIFF'S CASE In General |
| 24.1 24.2 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises |
| 24.1 24.2 24.3 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms |
| 24.1 24.2 24.3 24.4 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects |
| 24.1 24.2 24.3 24.4 24.5 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises — Furnished Rooms — Concealed Defects — Structural Defect or Nuisance |
| 24.1 24.2 24.3 24.4 24.5 24.6 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises — Furnished Rooms — Concealed Defects — Structural Defect or Nuisance — Gratuitous Repairs — Agreements to Repair |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 24.11 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways Obstructions and Foreign Substances |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 24.11 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways Obstructions and Foreign Substances Duty to Correct Unsafe Conditions |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 24.11 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways Obstructions and Foreign Substances |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 24.11 24.12 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways Obstructions and Foreign Substances Duty to Correct Unsafe Conditions B. THE DEFENDANT'S CASE |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 24.11 24.12 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways Obstructions and Foreign Substances Duty to Correct Unsafe Conditions B. THE DEFENDANT'S CASE In General |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 24.11 24.12 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways Obstructions and Foreign Substances Duty to Correct Unsafe Conditions B. THE DEFENDANT'S CASE In General Contributory or Comparative Negligence |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 24.11 24.12 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways Obstructions and Foreign Substances Duty to Correct Unsafe Conditions B. THE DEFENDANT'S CASE In General |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 24.11 24.12 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways Obstructions and Foreign Substances Duty to Correct Unsafe Conditions B. THE DEFENDANT'S CASE In General Contributory or Comparative Negligence Assumption of the Risk |
| 24.1 24.2 24.3 24.4 24.5 24.6 24.7 24.8 24.9 24.10 24.11 24.12 | A. THE PLAINTIFF'S CASE In General Injuries on the Demised Premises Furnished Rooms Concealed Defects Structural Defect or Nuisance Gratuitous Repairs Agreements to Repair Injuries on Premises in Exclusive Possession of the Landlord Injuries on Common Passageways Failure to Light Common Passageways Obstructions and Foreign Substances Duty to Correct Unsafe Conditions B. THE DEFENDANT'S CASE In General Contributory or Comparative Negligence |

25.1 Definition and Scope

| Sec. | |
|-------|--|
| 25.2 | History |
| 25.3 | Landmark Decisions |
| 25.4 | Classes of Plaintiffs |
| 25.5 | Negligence Theory |
| 25.6 | Identity of Defendant |
| 25.7 | Proof of Negligence |
| 25.8 | Res Ipsa Loquitur |
| 25.9 | Duty to Warn |
| 25.10 | Defective Design |
| 25.11 | Proximate Cause |
| 25.12 | Warranty Theory |
| 25.13 | Deceit Theory |
| 25.14 | Strict Liability Theory |
| 25.15 | Food and Beverages |
| 25.16 | Cosmetics and Garments |
| 25.17 | Tobacco |
| 25.18 | Containers and Bottles |
| 25.19 | Mechanical Equipment |
| 25.20 | Inflammable and Inherently Dangerous Substances |
| 25.21 | Damages |
| 25.22 | Plaintiff's Choice of Procedure |
| | |
| | B. THE DEFENDANT'S CASE |
| 25.31 | In General |
| 25.32 | Classes of Defendants |
| 25.33 | Lack of Privity |
| 25.34 | Bulk Supplier Doctrine |
| 25.35 | Sophisticated User Defense |
| 25.36 | Contributory Negligence and Assumption of the Risk |
| 25.37 | Allergies and Peculiar Susceptibility |
| 25.38 | Statute of Limitations |
| | |
| C | HAPTER 26. INTERFERENCE WITH CONTRACT RIGHTS |
| | A. THE PLAINTIFF'S CASE |
| 26.1 | In General |
| 26.2 | Procuring Breach of Contract |
| 26.3 | Procuring Refusal to Contract |
| 26.4 | Interference With Advantageous Business Relations |
| 26.5 | Procuring Refusal to Contract—Malice |
| 26.6 | Unlawful Means |
| 26.7 | Damage |
| | |
| | B. THE DEFENDANT'S CASE |
| 26.11 | In General |
| 26.12 | Justification |
| 26.13 | Competition |
| | |

| | TIBLE OF CONTENTS |
|---|--|
| Sec. 26.14 | Privilege |
| | CHAPTER 27. EMOTIONAL DISTRESS |
| | A. THE PLAINTIFF'S CASE |
| 27.1 27.2 27.3 27.4 | In General Emotional Distress Intentionally Inflicted Emotional Distress Negligently Inflicted Damage |
| | B. THE DEFENDANT'S CASE |
| 27.11 27.12 | In General Statute of Limitations |
| | CHAPTER 28. CIVIL DISCRIMINATION |
| | A. THE PLAINTIFF'S CASE |
| 28.1 28.2 28.3 28.4 28.5 28.6 28.7 28.8 28.9 28.10 | In General Age Discrimination Handicap Discrimination Racial Discrimination Religious Discrimination Sex Discrimination —— Sexual Harassment Damage Statute of Limitations Other Civil Rights Statutes |
| | B. THE DEFENDANT'S CASE |
| 28.21 | In General |
| | CHAPTER 29. DECEIT |
| | A. THE PLAINTIFF'S CASE |
| 29.1 29.2 29.3 29.4 29.5 29.6 | In General The Misrepresentation Intent Knowledge of Its Falsity Action Upon the Misrepresentation Damage |
| | B. THE DEFENDANT'S CASE |
| 29.11 | In General |

| Sec. 29.12 29.13 29.14 29.15 | Waiver The Statute of Frauds Statute of Limitations Inherently Unknowable Deceit |
|--|--|
| | CHAPTER 30. CONSPIRACY |
| | A. THE PLAINTIFF'S CASE |
| 30.1 30.2 30.3 30.4 | In General The Combination Power of Coercion Damage |
| | B. THE DEFENDANT'S CASE |
| 30.11 | In General |
| | CHAPTER 31. CONVERSION |
| | A. THE PLAINTIFF'S CASE |
| 31.1 31.2 31.3 31.4 31.5 31.6 31.7 | In General Trade Secrets Plaintiff's Right to Possession Dominion by the Defendant Demand and Refusal Damage Survival of Actions |
| | B. THE DEFENDANT'S CASE |
| 31.11 31.12 | In General Statute of Limitations |
| | CHAPTER 32. TRESPASS |
| | A. THE PLAINTIFF'S CASE |
| 32.1 32.2 32.3 32.4 | In General Possession of the Plaintiff Unauthorized Entry Damage |
| | B. THE DEFENDANT'S CASE |
| 32.11 32.12 | In General License or Consent |

| 32.13 | Statute of Limitations |
|--|--|
| | CHAPTER 33. WASTE |
| | A. THE PLAINTIFF'S CASE |
| 33.1 | In General |
| | B. THE DEFENDANT'S CASE |
| 33.11 | In General |
| | CHAPTER 34. NUISANCE |
| | A. THE PLAINTIFF'S CASE |
| 34.1 34.2 34.3 34.4 34.5 34.6 | |
| | B. THE DEFENDANT'S CASE |
| | In General Statute of Limitations |
| | CHAPTER 35. WATER RIGHTS |
| | A. THE PLAINTIFF'S CASE |
| 35.1 35.2 35.3 35.4 | In General Water Courses Surface Water Subterranean and Percolating Water |
| | B. THE DEFENDANT'S CASE |
| 35.11 | In General |
| | CHAPTER 36. RIGHTS OF SUPPORT |
| | A. THE PLAINTIFF'S CASE |
| 36.1 | In General |
| | B. THE DEFENDANT'S CASE |
| 36.11 | In General |

XXXVIII

CHAPTER 37. UNFAIR COMPETITION

A. THE PLAINTIFF'S CASE

| 37.1 37.2 37.3 | In General Reputation in the Market Knowledge of the Defendant |
|-------------------------|--|
| 37.4 37.5 | Misleading the Public Damage or Restraint |
| | - |
| | B. THE DEFENDANT'S CASE |
| 37.11 37.12 37.13 | In General Misrepresentations of the Plaintiff Laches |
| | CHAPTER 38. ASSAULT AND BATTERY |
| | A. THE PLAINTIFF'S CASE |
| 38.1 | In General |
| 38.2 | The Overt Act |
| 38.3 38.4 | Intent and Malice Agency |
| 38.5 | Fear of Harm |
| 38.6 | Battery |
| 38.7 | Rape, Sexual Abuse, Sexual Abuse of a Minor |
| 38.8 | Damage |
| | B. THE DEFENDANT'S CASE |
| 38.11 | In General |
| 38.12 | Exercise of Authority or Duty |
| 38.13 | Consent |
| 38.14 | Provocation |
| 38.15 | Self Defense |
| 38.16 | Defense of Property |
| | CHAPTER 39. MALPRACTICE |
| | A. THE PLAINTIFF'S CASE |
| 39.1 | In General |
| 39.2 | The Duty of the Defendant—Physicians and Surgeons |
| 39.3 | Physicians and Surgeons—Health Care Proxy |
| 39.4 | Attorneys |
| 39.5 39.6 | Others Proof of Negligence |
| 39.7 | Lack of Informed Consent |
| 39.8 | Refusal of Medical Treatment |
| 39.9 | Substituted Judgment |
| 39.10 | Proximate Cause |

| Sec. 39.11 39.12 39.13 | Damage Medical Tribunal Contractual Liability |
|--|---|
| 00.10 | B. THE DEFENDANT'S CASE |
| 39.21 39.22 39.23 39.24 39.25 | In General Contributory and Comparative Negligence Statutory Exemptions Statute of Limitations Further Remedial Legislation |
| | CHAPTER 40. MALICIOUS PROSECUTION |
| | A. THE PLAINTIFF'S CASE |
| 40.1 40.2 40.3 40.4 40.5 40.6 40.7 | In General Prosecution Against the Plaintiff Prosecution Instituted by Defendant Malice Prosecution Terminated in Plaintiff's Favor Want of Probable Cause Damage |
| | B. THE DEFENDANT'S CASE |
| 40.11 40.12 40.13 40.14 | In General Probable Cause Advice of Counsel Statute of Limitations |
| | CHAPTER 41. ABUSE OF PROCESS |
| | A. THE PLAINTIFF'S CASE |
| 41.1 | In General |
| | B. THE DEFENDANT'S CASE |
| 41.11 41.12 | In General Statute of Limitations |
| | CHAPTER 42. FALSE IMPRISONMENT |
| | A. THE PLAINTIFF'S CASE |
| 42.1 42.2 42.3 | In General Unlawful Restraint Damage |

B. THE DEFENDANT'S CASE

| 42.11 | In General |
|-------|--|
| 42.12 | Justification |
| 42.13 | Arrest |
| 42.14 | Waiver and Consent |
| 42.15 | Statute of Limitations |
| | |
| | CHAPTER 43. LIBEL AND SLANDER |
| | A. THE PLAINTIFF'S CASE |
| 43.1 | In General |
| 43.2 | Defamation |
| 43.3 | Innuendos |
| 43.4 | Of or Concerning the Plaintiff |
| 43.5 | Falsity |
| 43.6 | Malice |
| 43.7 | Publication |
| 43.8 | Damages |
| 43.9 | Invasion of Privacy Distinguished |
| | |
| | B. THE DEFENDANT'S CASE |
| 43.21 | In General |
| 43.22 | Mitigation of Damages |
| 43.23 | Retraction |
| 43.24 | Truth |
| 43.25 | Privilege |
| 43.26 | Public Officials, Public Figures and Matters of Public Inter- |
| | est |
| 43.27 | Consent to Publication |
| 43.28 | Statute of Limitations |
| | |
| | CHAPTER 44. LOSS OF CONSORTIUM |
| | A. THE PLAINTIFF'S CASE |
| 44.1 | In General |
| 44.2 | Intentional Loss of Consortium—Alienation of Affection and Criminal Conversation |
| 44.3 | Negligent Loss of Consortium |
| 44.4 | Breach of Warranty Claims |
| 44.5 | Parental Loss of Consortium |
| 44.6 | Loss of Child's Consortium |
| 44.7 | Interference With Parent–Child Relationship |
| 44.8 | Damage |
| | |
| | B. THE DEFENDANT'S CASE |

44.21 In General

| Sec. 44.22 | Statute of Limitations |
|---|--|
| | CHAPTER 45. DAMAGE BY ANIMALS |
| | A. THE PLAINTIFF'S CASE |
| 45.1 45.2 45.3 45.4 | In General Damage by Wild Animals Damage by Domestic Animals Damage by Dogs |
| | B. THE DEFENDANT'S CASE |
| 45.11 | In General |
| | CHAPTER 46. ESCAPE OF DANGEROUS THINGS |
| | A. THE PLAINTIFF'S CASE |
| 46.1 | In General |
| | B. THE DEFENDANT'S CASE |
| 46.11 | In General |
| | CHAPTER 47. COMPLAINTS IN EQUITY |
| | A. THE PLAINTIFF'S CASE |
| 47.1 47.2 47.3 47.4 47.5 47.6 47.7 47.8 47.9 47.10 | In General Complaints Under General Equity Principles Equitable Ownership Particular Relationships Inadequate Legal Remedies Specific Performance Injunctive Relief Against Torts Accident, Mistake and Fraud Mandamus Complaints Based on Substantive Doctrines of Equity Statutory Bills in Equity |
| | B. THE DEFENDANT'S CASE |
| 47.21 47.22 47.23 | In General Laches and Equitable Estoppel Maxims in Equity |
| | CHAPTER 48. ACTIONS IN THE LAND COURT |
| | A. THE PLAINTIFF'S CASE |
| 48.1 | In General |

| Sec. 48.2 48.3 48.4 48.5 48.6 48.7 48.8 48.9 48.10 48.11 48.12 48.13 48.14 | Registration of Title to Land Foreclosure of and Redemption From Tax Titles Actions to Recover Freehold Estates (Writs of Entry) Actions to Try Title Complaints to Determine the Validity of Encumbrances Complaints to Discharge Mortgages Complaints to Establish Authority to Transfer Realty Complaints to Determine the Boundaries of Flats Enforceability of Equitable Restrictions County, City, Town or District Boundaries Validity of Municipal Zoning Ordinances Complaints in Equity Adverse Possession |
|--|--|
| | B. THE DEFENDANT'S CASE |
| 48.21 | In General |
| | CHAPTER 49. REPLEVIN |
| | A. THE PLAINTIFF'S CASE |
| 49.1 49.2 49.3 49.4 49.5 49.6 | In General Property Subject to Replevin Proof of Title and Right to Possession Damage Equitable Replevin Uniform Commercial Code |
| | B. THE DEFENDANT'S CASE |
| 49.11 49.12 | In General Statute of Limitations |
| | CHAPTER 50. EMINENT DOMAIN |
| | A. THE PLAINTIFF'S CASE |
| 50.1 50.2 50.3 50.4 50.5 50.6 50.7 | In General Entitlement to Damages Damages Remaining Property Property Not Taken Interest Attacking Validity of Taking |
| | B. THE DEFENDANT'S CASE |
| 50.11 50.12 | In General Benefits From Taking |

| Sec. 50.13 | Statute of Limitations |
|--|--|
| | CHAPTER 51. SUMMARY PROCESS |
| | A. THE PLAINTIFF'S CASE |
| 51.1 51.2 51.3 51.4 51.5 51.6 | In General Landlord and Tenant Warranty of Habitability Termination of the Relationship Notice to Quit Appeals |
| | B. THE DEFENDANT'S CASE |
| 51.11 51.12 51.13 | In General Rent Withholding and Breach of Warranty of Habitability Stay of Execution |
| СН | IAPTER 52. MASSACHUSETTS RULES OF CRIMINAL PRO- CEDURE |
| 52.1 52.2 52.3 52.4 52.5 | In General Criminal Jury Instructions District Court Rules Dismissal of Criminal Complaints and Indictments General Superintendence Powers of the Supreme Judicial Court |
| | Volume 17B |
| | CHAPTER 53. PROOF OF CRIMES |
| | A. THE COMMONWEALTH'S CASE |
| 53.1 53.2 53.3 53.4 53.5 53.6 | In General Attempts Lesser Included Offenses Intent Agency Accessory Before the Fact |
| 53.7 53.8 53.9 53.10 | Accessory After the Fact Joint Enterprise Abandonment Flight, Hiding, or Disguise—Consciousness of Guilt |
| 53.11 53.12 53.13 | Missing Witnesses at Trial Polygraph Tests Scientific theory or process—The Frye Test |
| 53.14 53.15 53.16 | Degree of Proof Proof of Particular Crimes—In General Abduction |

| Caa | |
|-------------------|---|
| Sec. 53.17 | Abortion |
| | |
| 53.18 | Adultery |
| 53.19 | Arson |
| 53.20 | Assault and Battery |
| 53.21 | Dangerous Weapon |
| 53.22 | Abuse Prevention Act |
| 53.23 | Children Born Out of Wedlock—Paternity |
| 53.24 | Bland |
| 53.25 | Blasphemy |
| 53.26 | Bribery |
| 53.27 | Burglary |
| 53.28 | Carjacking |
| 53.29 | Conspiracy |
| 53.30 | Disorderly Conduct |
| 53.31 | Drugs—Possession, Distribution, Manufacture |
| 53.32 | Eavesdropping |
| 53.33 | Embezzlement |
| 53.34 | Extortion |
| 53.35 | False Pretenses |
| 53.36 | Firearms Violations |
| 53.37 | Forgery |
| 53.38 | Harassment |
| 53.39 | Hazing |
| 53.40 | Home Invasion |
| 53.41 | Homicide—Murder |
| 53.42 | Malice |
| 53.43 | Voluntary Manslaughter |
| 53.44 | Involuntary Manslaughter |
| 53.45 | Vehicular Homicide |
| 53.46 | Incest |
| 53.47 | Intimidation of a witness or juror |
| 53.48 | Kidnapping |
| 53.49 | Larceny |
| 52.50 | Lewdness |
| 53.51 | Libel |
| 53.52 | Mayhem |
| 53.53 | Motor Vehicles—Use Without Authority |
| 53.54 | Driving While Intoxicated |
| 53.55 | Breathalyzer Tests |
| 53.56 | Blood Alcohol Tests |
| 53.57 | Field Sobriety Tests |
| 53.58 | Leaving the Scene of an Accident |
| 53.59 | Operating to Endanger |
| 53.60 | Obscenity |
| 53.61 | Perjury |
| 53.62 | Prostitution |
| 53.63 | Rape |
| 53.64 | Fresh Complaint |
| 53.65 | Rape Shield Statute |
| 53.66 | Receiving Stolen Property |

| Sec. | |
|--------|--|
| 53.67 | Reckless Endangerment to Children |
| 53.68 | Robbery |
| 53.69 | Shoplifting |
| 53.70 | Sodomy |
| 53.71 | Stalking |
| 53.72 | Telephone Offenses |
| 53.73 | Terrorism |
| 53.74 | Threats |
| 53.75 | Treason |
| | B. THE DEFENDANT'S CASE. |
| 53.81 | In General |
| 53.82 | Infancy |
| 53.83 | Criminal Proceedings Against Children and Youthful Offend- |
| | ers |
| 53.84 | Insanity—Lack of Criminal Responsibility |
| 53.85 | Drunkenness and Drug Addiction |
| 53.86 | Duress |
| 53.87 | Self Defense |
| 53.88 | Arrest by a Private Person |
| 53.89 | Accident |
| 53.90 | Consent |
| 53.91 | Alibi |
| 53.92 | Competing Harms—Necessity |
| 53.93 | Double Jeopardy |
| 53.94 | Collateral Estoppel |
| 53.95 | Character of Defendant |
| 53.96 | Motor Vehicle Violations |
| 53.97 | Accord and Satisfaction Doctrine—Assault and Battery and Other |
| | Misdemeanors |
| 53.98 | Appeal of Capital Cases |
| 53.99 | Hypnotically Enhanced Testimony |
| 53.100 | Privileged Records |
| 53.101 | Constitutional Defenses—In General |
| 53.102 | Harmless Error |
| 53.103 | Arrest |
| 53.104 | Illegal Search and Seizure |
| 53.105 | Search Under a Warrant |
| 53.106 | Warrant Requirements |
| 53.107 | Sufficiency of the Affidavit |
| 53.108 | Administrative Searches |
| 53.109 | Probable Cause and Exigent Circumstances |
| 53.110 | Searches Incident to Arrest |
| 53.111 | Threshold Inquiries, "Pat and Frisk" |
| 53.112 | Articles in Plain View |
| 53.113 | Search of Automobiles |
| 53.114 | Stopping Motor Vehicles |
| 53.115 | Consent to Be Searched Other Aspects of Search and Seizure |
| 99.TT0 | Other Aspects of Search and Serzure |

| Sec. | |
|--------|---|
| 53.117 | Expectation of Privacy |
| 53.118 | Wiretapping and Electronic Surveillance |
| 53.119 | Right to Counsel |
| 53.120 | Critical Stage |
| 53.121 | Use of Telephone by Accused |
| 53.122 | Guilty Plea |
| 53.123 | Plea Bargaining and Plea Agreement |
| 53.124 | Speedy Indictment, Speedy Trial, Speedy Sentencing |
| | and Speedy Appeal |
| 53.125 | Public Trial |
| 53.126 | Conduct of Trial |
| 53.127 | Recusal |
| 53.128 | Joint Representation |
| 53.129 | Ineffective Assistance of Counsel |
| 53.130 | Failure to Act |
| 53.131 | Tactical Decisions |
| 53.132 | Identification of Accused |
| 53.133 | Suppression of Evidence by the Prosecution |
| 53.134 | Prosecutor's Opening Statement and Closing Argument |
| 53.135 | Defense Counsel's Opening Statement and Closing Argu- |
| | ment |
| 53.136 | Confessions |
| 53.137 | Right to Remain Silent |
| 53.138 | Immunity |
| 53.139 | Interested Adult Rule |
| 53.140 | Excited Utterances |
| 53.141 | Entrapment |
| 53.142 | Selection |
| 53.143 | Grand Jury |
| 53.144 | Waiver |
| 53.145 | Attacking the Verdict |
| 53.146 | Discrimination—Selective Enforcement |
| 53.147 | Prior Recorded Testimony |
| 53.148 | Prior Inconsistent Statements |
| 53.149 | Prior Consistent Statements |
| 53.150 | Past Recollection Recorded |
| 53.151 | Adequacy of Police Investigation |
| 53.152 | Sentencing and Punishment |
| 53.153 | Probation |
| 53.154 | Revocation of Probation |
| 53.155 | Restitution |
| 53.156 | Retroactivity of Rules, Case Law and Statutes |
| 53.157 | Statute of Limitations |

CHAPTER 54. MASSACHUSETTS RULES OF DOMESTIC RELATIONS PRACTICE

54.1 In General

CHAPTER 55. DIVORCE

A. THE PLAINTIFF'S CASE

| | A. THE FLAINTIFF S CASE |
|-------|---|
| 55.1 | In General |
| 55.2 | Proof of Marriage |
| 55.3 | Proof of Domicile |
| 55.4 | Proof of Grounds for Divorce—In General |
| 55.5 | Adultery |
| 55.6 | Impotency |
| 55.7 | Desertion |
| 55.8 | Intoxication |
| 55.9 | Cruelty |
| 55.10 | Domestic Violence |
| 55.11 | Non-support |
| 55.12 | Imprisonment |
| 55.13 | Irretrievable Breakdown |
| 55.14 | Other Incidents of Divorce—In General |
| 55.15 | Alimony |
| 55.16 | Custody |
| 55.17 | Resumption of Prior Name |
| | |
| | B. THE DEFENDANT'S CASE |
| | T. G |
| 55.21 | In General |
| 55.22 | Condonation |
| 55.23 | Connivance |
| 55.24 | Collusion |
| 55.25 | Recrimination |
| 55.26 | Mental Illness |
| | CHAPTER 56. ANNULMENT |
| | A. THE PLAINTIFF'S CASE |
| 56.1 | In General |
| 56.2 | Grounds for Annulment |
| 56.3 | Affirmation of Marriage |
| 50.5 | Annimation of Marriage |
| | B. THE DEFENDANT'S CASE |
| 56.11 | In General |
| | |
| | CHAPTER 57. SEPARATE SUPPORT |
| | A. THE PLAINTIFF'S CASE |
| 57.1 | In General |
| 57.2 | Grounds for Separate Support—In General |
| 57.3 | Failure to Support |
| 57.4 | Desertion |
| 57.5 | Justifiable Cause for Living Apart |
| | O F |

B. THE DEFENDANT'S CASE

| 57.11 | In (| J eneral |
|-------|------|---------------------|
|-------|------|---------------------|

59.2559.26

____ Domestic Law

CHAPTER 58. WILLS

A. THE PLAINTIFF'S CASE

| 58.1 | In General |
|-------|----------------------------------|
| 58.2 | Execution |
| 58.3 | Signature by the Testator |
| 58.4 | Witnesses |
| 58.5 | Knowledge and Intent of Testator |
| 58.6 | Mental Capacity |
| 58.7 | Ademption |
| | B. THE DEFENDANT'S CASE |
| 58.11 | In General |
| 58.12 | Fraud and Undue Influence |
| 58.13 | Revocation |

CHAPTER 59. PRESUMPTIONS AND THE BURDEN OF PROOF

A. BURDEN OF PROOF

| 59.1 | In General |
|-------|--|
| 59.2 | Burden of Pleading |
| 59.3 | Burden of Going Forward With the Evidence |
| 59.4 | Burden of Persuasion |
| 59.5 | Standards of proof |
| | B. JUDICIAL NOTICE |
| 59.11 | In General |
| 59.12 | Facts of Common Knowledge |
| 59.13 | Art and Skill, Management and Conduct of Occupations |
| | Customs and Usages |
| 59.14 | Automobiles |
| 59.15 | Corporations and Associations |
| 59.16 | Course and Laws of Nature |
| 59.17 | Established Laws of Nature |
| 59.18 | Geographical Facts |
| 59.19 | Historical Facts |
| 59.20 | Human Life, Health and Actions |
| 59.21 | Phenomena of Animal and Vegetable Life |
| 59.22 | Qualities and Properties of Matter |
| 59.23 | Scientific Facts and Principles |
| 59.24 | Words, Dates and Values |
| 59.25 | Facts Capable of Certain Verification |

| Sec. | |
|-------|---|
| 59.27 | Federal Law |
| 59.28 | Foreign Law |
| 59.29 | Facts Within the Competence of the Court |
| | C. PRESUMPTIONS |
| 59.41 | In General |
| 59.42 | Conclusive Presumptions |
| 59.43 | Presumptions of Law |
| 59.44 | Prima Facie Evidence |
| 59.45 | Presumptions of Fact |
| 59.46 | Conflicting Presumptions |
| 59.47 | Statutory Presumptions |
| | D. SPECIFIC PRESUMPTIONS |
| | |
| 59.51 | Abandoned Property—Presumption of Abandonment |
| 59.52 | Acceptance of Benefits |
| 59.53 | Accord and Satisfaction—Lapse of Time |
| 59.54 | Acknowledgment—Notary's Certificate as Proof |
| 59.55 | Presumption of Regularity |
| 59.56 | Administrative Agencies—Regulations |
| 59.57 | Administrative Law—Public Bodies—Regularity |
| 59.58 | Adoption—Best Interests of Child |
| 59.59 | Adverse Possession—Presumption of Continuity |
| 59.60 | Presumption of Grant |
| 59.61 | Possession Pursuant to Condition in Deed |
| 59.62 | Claim of Right |
| 59.63 | Use Adverse to Owner |
| 59.64 | Alcohol—Certificate of Chemist of Public Safety Department |
| 59.65 | Alcoholic Beverages—Driver's License as Evidence of Age |
| 59.66 | Alteration of Instruments—Consent of Maker, Time Alteration |
| 59.67 | Animals—Keeper of Dangerous Animals |
| 59.68 | Appeal and Error—Action of Trial Court |
| 59.69 | Arbitration—Presumptions in Favor of Award |
| 59.70 | Arson—Malice |
| 59.71 | Assessment of Land |
| 59.72 | Attorney's Fees |
| 59.73 | Auditor's Findings |
| 59.74 | Banks—Liquidation |
| 59.75 | Bills of Lading |
| 59.76 | Bonds—Negotiation of Stolen Interest Coupons |
| 59.77 | Boundaries—Middle of the Way |
| 59.78 | Buildings—Illegal Placing, Maintenance or Use |
| 59.79 | Burglary—Intent |
| 59.80 | Carriers—Loss of or Injury to Goods |
| 59.81 | Shipment Contracts |
| 59.82 | Checks—Payment Refused by Drawee |
| 59.83 | Child Support Guidelines |
| 59 84 | Coal—Sale of Unfit Coal |

| Sec. | |
|--------|---|
| 59.85 | Collision—Vessels at Sea |
| 59.86 | Commercial Paper—Contradictory Terms |
| 59.87 | Evidence and Notice of Dishonor |
| 59.88 | Notary's Certificate of Protest |
| 59.89 | Signatures |
| 59.90 | Words of Guaranty |
| 59.91 | Consideration |
| 59.92 | Constitutional Law—Validity of Statute |
| 59.93 | Continuity |
| 59.94 | Contracts—Good Faith |
| 59.95 | Legality |
| 59.96 | Reading and Understanding |
| 59.97 | Words Used |
| 59.98 | Written Agreement |
| 59.99 | Collision of Ships—Contributory Negligence |
| 59.100 | Conversion—Failure to Return Rented or Leased Property |
| 59.101 | Corporations—Books and Records |
| 59.102 | Existence |
| 59.103 | Proxies |
| 59.104 | Courts—Jurisdiction |
| 59.105 | - |
| 59.106 | |
| 59.107 | Remanded Cases |
| 59.108 | Small Claims Procedure |
| 59.109 | Courts Martial—Jurisdiction |
| 59.110 | Criminal Law—Presumptions Generally |
| 59.111 | Appeal—Regularity |
| 59.112 | Appeal—Defendant's Rights |
| 59.113 | Bench Trials |
| 59.114 | Challenges |
| 59.115 | Constitutional Right Violation |
| 59.116 | Failure of Defendant to Testify—Failure to Call a Witness |
| 59.117 | Fetal Experimentation |
| 59.118 | Fetal Experimentation—Consent of Mother |
| 59.119 | Guilty Plea |
| 59.120 | |
| 59.121 | Innocence |
| 59.122 | Jury Tampering |
| 59.123 | |
| 58.124 | Multiple Sentences |
| 59.125 | Natural Consequences of Acts |
| 59.126 | Narcotic Drugs—Prescription as Defense |
| 59.127 | Non-support |
| 59.128 | Peremptory Challenges |
| 59.129 | Prosecutorial Misconduct—Presumption of Prejudice |
| 59.130 | Sanity |
| 59.131 | Searches and Seizures |
| 59.132 | Nighttime Searches |
| 59.133 | Vindictiveness in Sentencing |
| 59.134 | Voluntariness of Confessions |
| | |

| Coo | |
|--------------------|---|
| Sec. 59.135 | Violation of Miranda Pighta |
| 59.136 | Violation of Miranda Rights Waiver of Constitutional Rights |
| 59.137 | Custody Orders |
| 59.137 | Customs and Usages—Presumption of Knowledge |
| 59.139 | Damages—Consequential Damages |
| | Death—Due Care of Decedent |
| 59.140 | |
| 59.141 | Continuance of Life |
| 59.142 | Survivorship |
| 59.143 | Unexplained Absence for Seven Years |
| 59.144 | Deeds—Delivery Execution |
| 59.145 | Execution Measurements |
| 59.146 | |
| 59.147 | Descent and Distribution—Pretermitted Children |
| 59.148 | Destruction of Document |
| 59.149 | Disclosure Statements—Delivery |
| 59.150 | Divorce—Alimony |
| 59.151 | Appeal From Judgment |
| 59.152 | Appeal From Modified Judgment |
| 59.153 | Condonation |
| 59.154 | Filing of a Prior Libel |
| 59.155 | Gross and Confirmed Habits of Intoxication—Continuity |
| 59.156 | Uniform Reciprocal Enforcement of Support Act—Uniform |
| | Interstate Family Support Act |
| 59.157 | Validity of Foreign Decree |
| 58.158 | Docket Entries |
| 59.159 | Dog Bite—Child Under Seven |
| 59.160 | Domicile—Continuity |
| 59.161 | Place of Domicile |
| 59.162 | Drugs—Certificate of Analyst of Public Health Department |
| 59.163 | Due Care |
| 59.164 | Easements—Continuity of Permission |
| 59.165 | Reference in Deed to a Way |
| 59.166 | Right of Access |
| 59.167 | Unexplained Adverse User |
| 59.168 | Elections—Official Returns Prima Facie Correct |
| 59.169 | Presumption Voter Naturalized |
| 59.170 | Embezzlement—Presumption of Debtor and Creditor Relationship |
| 59.171 | Eminent Domain—Presumption of Damage |
| 59.172 | Presumption in Favor of Owner |
| 59.173 | Executions—Recording—Regularity of Proceedings |
| 59.174 | Executors and Administrators—Lack of Heirs of Deceased Person |
| 59.175 | License to Sell Real Estate |
| 59.176 | Payment of Debts |
| 59.177 | Regularity |
| 59.178 | Services to Decedent |
| 59.179 | Failure to Testify or Call Witnesses |
| 59.180 | False Arrest for Larceny—Reasonable Grounds |
| 59.181 | Firearms—Certificate of Ballistics Expert |
| 59.182 | Fish—Possession |
| 59.183 | Food—Certificates of Inspection |

| Sec. | |
|--------|---|
| 59.184 | Fraud |
| 59.185 | Fraudulent Conveyances—Intent |
| 59.186 | Gifts—Acceptance of Benefits |
| 59.187 | Good Will—Sale of Business Assets |
| 59.188 | Guaranty—Date |
| 59.189 | Guardians and Conservators—Competency of Ward |
| 59.190 | Estate Planning |
| 59.191 | Health Care Proxies |
| 59.192 | Homicide—Intent |
| 59.193 | Malice |
| 59.194 | Hotels—Refusal to Pay |
| 59.195 | Husband and Wife—Coercion |
| 59.196 | Gift |
| 59.197 | Liability for Medical Expenses |
| 59.198 | Work and Labor of Married Woman |
| 59.199 | Imprisonment |
| 59.200 | Innocence and Legality |
| 59.201 | Insurance—Delivery of Policy |
| 59.202 | Forcible Entry of Motor Vehicle |
| 59.203 | Fraternal Benefit Societies |
| 59.204 | Lapse and Cancellation of Policy |
| 59.205 | Provisions of Policy |
| 59.206 | Revocation of License of Foreign Company |
| 59.207 | Unclaimed Funds |
| 59.208 | Internal Revenue—Regularity |
| 59.209 | Joint Tenants—Mortgage |
| 59.210 | Ownership |
| 59.211 | Judgments—Payment or Satisfaction |
| 59.212 | Regularity |
| 59.213 | Jurors—Physically Handicapped Persons |
| 59.214 | Juveniles—Transfer Hearings |
| 59.215 | Knowledge of Fact |
| 59.216 | Knowledge of the Law |
| 59.217 | Landlord and Tenant—Constructive Eviction |
| 59.218 | Occupancy Under Assignment of Lease |
| 59.219 | Rent Withholding |
| 59.220 | Reporting Code Violations—Reprisals |
| 59.221 | Larceny—Intent |
| 59.222 | Possession of Recently Stolen Goods |
| 59.223 | Law of Other States |
| 59.224 | Law of Foreign Countries |
| 59.225 | Lead Poisoning—Certificate of Bureau of Institute of Laboratories |
| 59.226 | Legality |
| 59.227 | Legitimacy |
| 59.228 | Lemon Law |
| 59.229 | Libel and Slander—Malice |
| 59.230 | Love of Life and Avoidance of Danger |
| 59.231 | Mailing a Letter |
| 59.232 | Mandamus—Regularity |
| 59.233 | Marriage—Record of Clerk or Consul |
| 00.200 | 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1 |

| Sec. | ** 10.70 |
|--------|--|
| 59.234 | Validity |
| 59.235 | Master and Servant—Assumption of the Risk |
| 59.236 | Servant of Property Owner |
| 59.237 | Medical Treatment—Consent |
| 59.238 | Mental Health—Decree Appointing Guardian |
| 59.239 | Mines and Minerals—Title and Possession of Land |
| 59.240 | Minimum Wages |
| 59.241 | Minors—Employment Certificates |
| 59.242 | Motor Vehicles—Agency Statutes |
| 59.243 | Change of Identification Number |
| 59.244 | Driving After Suspension or Revocation of License—Driving |
| | Under the Influence |
| 59.245 | Driving Under the Influence—Blood Tests |
| 59.246 | Speed |
| 59.247 | Municipal Corporations—Pensions—Heart and Lung Law |
| 59.248 | Validity of Ordinances |
| 59.249 | Negligence—Excavation of Underground Facilities |
| 59.250 | Normality |
| 59.251 | Obscene Books |
| 59.252 | Partnership—Existence of Relationship |
| 59.253 | Patents |
| 59.254 | Paternity |
| 59.255 | Payment—Application |
| 59.256 | Conditions |
| 59.257 | Lapse of Time |
| 59.258 | Note for Pre-existing Debt |
| 59.259 | Receipt for Later Payment |
| 59.260 | Perjury—Falsity of Statement |
| 59.261 | Possession |
| 59.262 | Principal and Agent—Non-existent Principal |
| 59.263 | Notice to Principal |
| 59.264 | Process—Officer's Return of Service |
| 59.265 | Public Officers—Motivation |
| 59.266 | Public Way—Certificate of City Clerk and Others |
| 59.267 | Records—Birth, Marriage and Death |
| 59.268 | Regularity |
| 59.269 | Reliability |
| 59.270 | Res Ipsa Loquitur |
| 59.271 | Sale of Collateral—Deficiency Damages |
| 59.272 | Sale of Securities—Failure to Submit Statement |
| 59.273 | Sales—Alcoholic Beverages |
| 59.274 | Sale on Approval, Sale or Return |
| 59.275 | Unfair Sales Act |
| 59.276 | Sales Tax—Transfer of Motor Vehicle |
| 59.277 | Sealed Instruments—Consideration |
| 59.278 | Separate Support—Uniform Reciprocal Enforcement of Support |
| 55.2.0 | Act—Uniform Interstate Family Support Act |
| 59.279 | Shoplifting—Reasonable Grounds for Belief |
| 59.280 | Signed Documents |
| 59.281 | Skiing Presumptions—Assumption of Risks |
| JU.=UI | |

| Sec. | |
|--------|--|
| 59.282 | Speeding |
| 59.283 | Sperm Cells—Certificate of Chemist of Public Safety Department |
| 59.284 | Statutes—Construction |
| 59.285 | Preemption and Presumption of Federal Statutes |
| 59.286 | Validity |
| 59.287 | Words Used |
| 59.288 | Suicide |
| 59.289 | Taxation—Alcoholic Beverages |
| 59.290 | Cigarette Taxes |
| 59.291 | Tax Bills and Notices |
| 59.292 | Tax Deeds |
| 59.293 | Tenancy at Will—Acceptance of Rent |
| 59.294 | Theaters and Shows—Existence of Defect |
| 59.295 | Trade Regulations—Unfair Competition |
| 59.296 | Trusts—Resulting Trusts |
| 59.297 | Truth in Lending—Delivery of Disclosure Statement |
| 59.298 | Uniform Commercial Code—Presumption Defined |
| 59.299 | Third Party Documents |
| 59.300 | Use Tax |
| 59.301 | Warehousemen—Negligence |
| 59.302 | Wills—Intention to Avoid Intestacy |
| 59.303 | Issue and Children. |
| 59.304 | Pretermitted Children |
| 59.305 | Revocation |
| 59.306 | Sanity of Testator |
| 59.307 | Signature of Deceased Witness |
| 59.308 | Testator's Knowledge of Contents |
| 59.309 | Undue Influence |
| 59.310 | Validity of Execution |
| 59.311 | Words Used |
| 59.312 | Wills and Trusts—Powers of Appointment |
| 59.313 | Work and Labor—Family Relationship |
| 59.314 | Workers' Compensation |
| 59.315 | Dependency |
| 59.316 | Employee Unable to Testify |
| 59.317 | Employees |
| 59.318 | Employee's Earning Capacity |
| 59.319 | Employees at Least Sixty-Five Years of Age |
| 59.320 | Injury Out of Employment |
| 59.321 | Report of Impartial Physician |
| 59.322 | Zoning—Board of Appeals Interpretation of its Own By-Laws |
| 59.323 | Persons Aggrieved |
| 59.324 | Presumption of Validity of Ordinances |
| 59.325 | Regularity of Decisions |
| | S V |

Volume 17C

CHAPTER 60. MOTIONS

A. CIVIL MOTIONS

60.1 Civil Motions in General

| Sec. | |
|-------|---|
| 60.2 | Amend or Alter a Judgment |
| 60.3 | Amend Findings or Make Additional Findings |
| 60.4 | Amend Pleadings—In General |
| 60.5 | Adding Allegations to State a Claim |
| 60.6 | Correcting Misnomer |
| 60.7 | Adding or Dropping a Party |
| 60.8 | Changing Capacity of a Party |
| 60.9 | Changing Damages or Relief Requested |
| 60.10 | Changing Theory of Claim or Defense |
| 60.11 | Stating Additional Claim or Defense |
| 60.12 | To Conform to the Evidence |
| 60.13 | Amend Process or Proof of Service |
| 60.14 | Audio-Visual Testimony |
| 60.15 | Bring in Third Party |
| 60.16 | Continuance |
| 60.17 | Directed Verdict |
| 60.18 | Discovery—In General |
| 60.19 | Compel Discovery |
| 60.20 | Physical or Mental Examination |
| 60.21 | Terminate or Limit Examination |
| 60.22 | —— Perpetuate Testimony Pending Appeal |
| 60.23 | Protective Orders |
| 60.24 | Dismiss—In General |
| 60.25 | Lack of Jurisdiction Over Subject Matter |
| 60.26 | Lack of Jurisdiction Over the Person |
| 60.27 | Improper Venue |
| 60.28 | Insufficiency of Process |
| 60.29 | Insufficiency of Service of Process |
| 60.30 | Failure to Prosecute |
| 60.31 | Failure to State a Claim Upon Which Relief Can Be Granted |
| 60.32 | Failure to Join a Party Under Rule 19 |
| 60.33 | Misnomer of a Party |
| 60.34 | Pendency of a Prior Action in a Court of the Commonwealth |
| 60.35 | Not the Real Party in Interest |
| 60.36 | Voluntary Dismissal |
| 60.37 | Forum Non Conveniens |
| 60.38 | Fraud on the Court |
| 60.39 | Anti–SLAPP Statute |
| 60.40 | Enforce Liability of Surety |
| 60.41 | Enlargement of Time |
| 60.42 | Extend or Reduce Time for Argument |
| 60.43 | Intervene |
| 60.44 | Joinder of Parties |
| 60.45 | Judgment on the Pleadings |
| 60.46 | Judgment Notwithstanding the Verdict |
| 60.47 | Jury Trial |
| 60.48 | Masters |
| 60.49 | More Definite Statement |
| 60.50 | New Trial |
| 60.51 | Relief From Judgment or Order |

| Sec. | |
|---------|---|
| 60.52 | Remove Default or Default Judgment |
| 60.53 | Speedy Trial |
| 60.54 | Strike |
| 60.55 | Appearance of Attorney |
| 60.56 | Substitution of Parties |
| 60.57 | Summary Judgment |
| 60.58 | Supplemental Pleadings |
| 60.59 | Vacate Appearance of Attorney |
| 60.60 | Withdraw Appearance |
| | |
| | B. CRIMINAL MOTIONS |
| 60.71 | Criminal Motions in General |
| 60.72 | Bill of Particulars |
| 60.73 | Change of Counsel |
| 60.74 | Change of Venue |
| 60.75 | Continuances |
| 60.76 | Depositions |
| 60.77 | Directed Verdict |
| 60.78 | Discovery |
| 60.79 | Dismiss |
| 60.80 | Dismiss the Venire |
| 60.81 | Enlargement of Time |
| 60.82 | Expert Assistance |
| 60.83 | Jurors—Challenge for Cause |
| 60.84 | Challenging the Array |
| 60.85 | In Limine |
| 60.86 | Mistrial |
| 60.87 | New Trial |
| 60.88 | Post Conviction Relief |
| 60.89 | Pretrial Motions |
| 60.90 | Production of Statements and Reports of Witnesses for Impeach ment |
| 60.91 | Required Finding of Not Guilty |
| 60.92 | Revise or Revoke Sentence |
| 60.93 | Sequestration of Witnesses |
| 60.94 | Severance |
| 60.95 | Speedy Trial |
| 60.96 | Stay of Execution |
| 60.97 | Suppress |
| 60.98 | Transfer of Cases |
| 60.99 | Unlawful Restraint |
| | CHAPTER 61. ATTORNEY FEES |
| 61.1 | In General |
| 61.2 | Probate Matters |
| 61.3 | Appointed or Assigned Counsel |
| 61.4 | Civil Rights |
| 61.5 | Consumer Protection |
| J = . J | |

| Sec. | |
|-------|---|
| 61.6 | Contempt—Civil Contempt |
| 61.7 | Support and Custody Orders |
| 61.8 | Contracts for Fees |
| 61.9 | Insurance Contracts |
| 61.10 | Divorce |
| 61.11 | Indemnity Contracts |
| 61.12 | Insubstantial, Frivolous and Bad Faith Claims or Defenses |
| 61.13 | Landlord and Tenant |
| 61.14 | Minimum Wages |
| 61.15 | Overtime Compensation |
| 61.16 | Personal Data—Fair Information Practices Act |
| 61.17 | Public Contracts |
| 61.18 | Sanctions |
| 61.19 | Teacher Reinstatement |
| 61.20 | Tax Foreclosures |
| 61.21 | Violation of a Custody Order of Another State |
| 61.22 | Workers' Compensation |
| 61.23 | Small Claims Cases |
| 61.24 | Lien for Attorney's Fees |
| | CHAPTER 62. CUSTODY OF MINORS |
| | |
| | A. THE PLAINTIFF'S CASE |
| 62.1 | In General |
| 62.2 | Guardianship |
| 62.3 | Care and Protection of Children |
| 62.4 | Adoption—Dispensing With Consent |
| 62.5 | Wrongful Adoption |
| | B. THE DEFENDANT'S CASE |
| CO 11 | |
| 62.11 | In General |
| | CHAPTER 63. CRIMINAL AND CIVIL CONTEMPT |
| | A. THE PLAINTIFF'S CASE |
| 63.1 | In General |
| | |
| 63.3 | Criminal Contempt Civil Contempt |
| 00.0 | Civil Contempt |
| | B. THE DEFENDANT'S CASE |
| 63.11 | In General |
| | CHAPTER 64. JUDGE'S DISCRETION |
| 0.4.1 | |
| 64.1 | In General |
| 64.2 | Before Trial—Civil |

| Sec. 64.3 Criminal 64.4 During Trial—Civil 64.5 Criminal 64.6 After Trial—Civil 64.7 Criminal | |
|--|------|
| CHAPTER 65. ZONING VARIANCES | |
| A. THE PLAINTIFF'S CASE | |
| 65.1 In General 65.2 Land and Structures 65.3 Lack of Effect on Zoning District 65.4 Hardship 65.5 Detriment to the Public Good 65.6 Intent or Purpose of Zoning Ordinances 65.7 Judicial Review | |
| B. THE DEFENDANT'S CASE | |
| 65.11 In General 65.12 Statute of Limitations for Zoning Violations | |
| | Page |
| Table of Laws and Rules | |
| Table of Cases Index | |