TABLE OF CONTENTS

VOLUME 10

CHAPTER 1. ROLE OF AND RIGHT TO ATTORNEY

- § 1:01 Attorney and trial of case
- § 1:02 Need for counsel to be admitted to practice law
- § 1:03 General conduct of attorney
- § 1:04 Attorney advertising
- § 1:05 Discipline of attorney for improper conduct
- § 1:06 Substitution of counsel
- § 1:07 Statutory and equitable attorneys' liens
- § 1:08 Attorneys' retaining lien
- § 1:09 Right to counsel, generally
- § 1:10 Right to competent counsel
- § 1:11 Duty of judge to inform of right to counsel
- § 1:12 Waiver of right to counsel—Criminal cases
- § 1:13 ____ Civil cases
- § 1:14 Duty of judge to inquire re validity of waiver
- § 1:15 Right to consult with attorney and others
- § 1:16 Right of witness to counsel
- § 1:17 Court-appointed counsel

CHAPTER 2. CONDUCT OF TRIAL

- § 2:01 Conduct of trial, generally
- § 2:02 Presence of parties—Criminal
- § 2:03 ____ Civil
- § 2:04 Conduct of parties
- § 2:05 Presence of judge
- § 2:06 Substitution of judges during trial
- § 2:07 General conduct of judge
- § 2:08 Recusal of judge
- § 2:09 Demeanor of judge
- § 2:10 Duty of judge to preserve order
- § 2:11 Exclusion of public
- § 2:12 Publicity before and during trial
- § 2:13 Judge's control of examination of witnesses
- § 2:14 Limiting number of witnesses
- § 2:15 Ruling on admissibility of evidence
- § 2:16 Restricting use of admitted evidence
- § 2:17 Exclusion of improper evidence on court's own motion
- § 2:18 Questioning witnesses by judge
- § 2:19 Control of proceedings—By pretrial order
- § 2:20 ____ By stipulation
- § 2:21 Transcribing testimony
- § 2:22 Judge as trier of fact

CHAPTER 3. CONTINUANCES

- § 3:01 Continuances, generally
- § 3:02 Considerations in ruling on motion for continuance
- § 3:03 Absence of party or counsel due to illness or conflict
- § 3:04 Absence of witness or document
- § 3:05 Amendment of pleadings
- § 3:06 Surprise
- § 3:07 Stay of proceedings

CHAPTER 4. MOTIONS DURING TRIAL, DISMISSAL, AND DEFAULT

- § 4:01 Motions, generally
- § 4:02 Voluntary dismissals—Generally
- § 4:03 ____ Actions involving multiple parties and claims
- § 4:04 Considerations in ruling on motions for voluntary dismissals
- § 4:05 Nolle prosequi
- § 4:06 Default judgments—Generally
- § 4:07 ____ Procedure for taking
- § 4:08 ____ Grounds for taking
- § 4:09 _____ Reopening
- § 4:10 Involuntary dismissal, generally
- § 4:11 Lack of jurisdiction
- § 4:12 ____ Issue preclusion
- § 4:13 Failure to state claim upon which relief can be granted
- § 4:14 Summary judgment
- § 4:15 Motions to compel discovery
- § 4:16 Motions in limine
- § 4:17 Failure to prosecute, obey court, or comply with procedure statutes in civil cases
- § 4:18 Miscellaneous civil grounds for dismissal
- § 4:19 Grounds for dismissal in criminal cases
- § 4:20 ____ Ex post facto law
- § 4:21 Reopening dismissed case

CHAPTER 5. CONTEMPT OF COURT

- § 5:01 Power of court to punish for contempt
- § 5:02 Civil and criminal contempt
- § 5:03 Direct and indirect contempt
- § 5:04 Acts constituting contempt—Generally
- § 5:05 ____ Particular statutory provisions
- § 5:06 ____ Miscellaneous conduct
- § 5:07 ____ Disobedience of court orders
- § 5:08 Contempt proceedings, generally
- § 5:09 Specific contempt procedures

§	5:10	Burden of proof in contempt proceedings
§	5:11	Defending charge of contempt
		Punishment for contempt—Generally
§	5:13	Summary punishment
		Indemnification
§	5:15	Indictment subsequent to finding of contempt
		TER 6. SELECTION OF JURY
8	6:01	Right to trial by impartial jury
	6:02	Method of summoning and selecting jurors
	6:03	Timely objections to jury
	6:04	Qualifications of jurors
		Exemptions from jury service
	6:06	Challenge to array
		Discrimination in jury selection
		Conduct of voir dire examination
		Voir dire—Questions—Generally
	6:10	Jury questionnaires
	6:11	Sample motion and juror questionnaire
	6:12	Questions about insurance companies
	6:13	Challenge for cause, generally
	6:14	
-	6:15	•
	6:16	Grounds
	6:17	
		Number of peremptory challenges—Civil
	6:19	Criminal
		Jury swearing
		Selection of additional jurors
	6:22	· · · · · · · · · · · · · · · · · · ·
		TER 7. OPENING STATEMENTS
	7:01	- •
	7:02	Right to make
	7:03	Order of presentation
	7:04	<u>-</u>
		Improper conduct and prejudice
	7:06	Use of visual aids in opening statements
	7:07	Objection and waiver
	7:08	Dismissal or directed verdict based on opening statement
	7:09	Strategy
§	7:10	Sample opening
C	HAPT	TER 8. ORDER OF PROOF
§	8:01	Order of proof, generally
§	8:02	Evidence in chief

§	8:03	Rebuttal evidence
§	8:04	Admitting rebuttal evidence in case in chief
§	8:05	Reopening evidence
\mathbf{C}	НАРТ	ER 9. BURDEN OF PROOF
Ş	9:01	Burden of proof and burden of going forward
	9:02	Prima facie case
	9:03	Party with burden—Civil cases
	9:04	Statutory allocation of burden of proof
	9:05	Quantum of evidence in civil cases
	9:06	Burden of proof—Damages
	9:07	Contested wills and claims against estates
	9:08	Constructive trusts
	9:09	Fraud cases
	9:10	Bailment cases
	9:11	Criminal cases—Generally
	9:12	Corpus delicti
		•
		Defendant's burdens
\mathbf{C}	НАРТ	TER 10. PROOF OF FACTS
		Proof of facts, generally
		Situations where proof is excused before trial
		Use of stipulations to excuse proof
		Construction and enforcement of stipulations
	10:05	
-		ER 11. JUDICIAL NOTICE
	11:01	
		Judicial notice—Generally —— Procedural aspects
		Laws and proceedings
		Facts about government and political subdivisions
		Examples of other facts judicially noticed
	11:06	
		ER 12. PRESUMPTIONS
		Presumptions—Generally
		Distinguished from inferences
		Conflicting
		Conclusive
	12:05	
	12:06	
	12:07	
	12:08 12:09	
-		Relating to conduct Relating to marriage
Q	12:10	neialing to marriage

Table of Contents		
8	12.11	Continuation of condition
		Miscellaneous
		Criminal cases—Generally
		Innocence
		Instructions relating to presumptions
		ER 13. RELEVANCY
		Relevancy, generally
		Materiality and relevancy distinguished
		Relevancy conditioned on fact
		Objections to irrelevant evidence
		Exclusion of relevant evidence
		Limitation of numbers of cumulative witnesses
		Relevance—Negotiations, compromise offers, and prepayments
		Subsequent remedial measures and changes
		Prior or subsequent occurrences—Criminal cases
		Similar acts and occurrences
		Prior injury to proof of damage
		Character Character
		Habit and routine practice
		Other crimes, wrongs, or acts
		Negative evidence
		Motions in limine
		Identification of accused
		ER 14. CIRCUMSTANTIAL EVIDENCE
		Circumstantial evidence—Generally
		Versus direct evidence
		Satisfying burden of proof
8	14.04	Proof of state of mind
		Evidence—Similar acts or occurrences
		— Habit or routine practice
		Res ipsa loquitur
		Parol evidence rule
		Inferences
		From failure to produce evidence
		ER 15. OPINION EVIDENCE AND EXPERT
_	ESTIM	
Ş	15:01	Opinion evidence in general
	15:02	Opinion testimony by lay witnesses
	15:03	Opinion on ultimate issue
	15:04	Testimony by experts, generally
	15:05	Qualification of experts
	15:06	Distinction between expert and skilled witnesses
	15:07	Subject matter of expert testimony

§	15:08	Basis of opinion testimony by experts	
§	15:09	Experience or competence in field	
§	15:10	Firsthand knowledge or undisputed facts	
§	15:11	Disclosure of facts underlying expert's opinion	
§	15:12	Reading reports by experts into evidence	
§	15:13	Court-appointed experts	
§	15:14	Weight and sufficiency of expert testimony	
§	15:15	Cross-examination of expert witnesses	
§	15:16	Expert witnesses in criminal trials	
\mathbf{C}	CHAPTER 16. HEARSAY EVIDENCE		

§	16:01	Hearsay, generally
§	16:02	Rationale of hearsay exclusion
§	16:03	Definitions relating to hearsay evidence
§	16:04	Truth of matter asserted
§	16:05	Out-of-court statements which are not hearsay
§	16:06	Oral out-of-court statements as exceptions to hearsay rule—
		Generally
§	16:07	Present sense impressions
§	16:08	Excited utterances
§	16:09	Distinguishing between present sense impression and excited
		utterance
§	16:10	Then-existing state of mind
§	16:11	Statements made for purposes of medical diagnosis or treat-
		ment
§	16:12	Recorded recollection
§	16:13	Records of regularly conducted activity
§	16:14	Absence of entry
§	16:15	Public records and reports
§	16:16	Records of vital statistics
§	16:17	Absence of public record or entry
§	16:18	Records of religious organizations
-	16:19	Marriage, baptismal, and similar certificates
§	16:20	Family records
§	16:21	Records or documents affecting interest in property
§	16:22	Statements in records or documents affecting interest in prop-
		erty
§	16:23	Statements in ancient documents
	16:24	Market quotations and commercial publications
§	16:25	Learned treatises
§	16:26	Reputation—Personal or family history
	16:27	Boundaries or general history
	16:28	Character
§	16:29	Judgments of previous conviction

§	16:30	Judgments as to personal, family, or general history, or boundaries
§	16:31	Unavailability, generally
	16:32	Former testimony
	16:33	Statements—Recent perception
	16:34	Under belief of impending death
	16:35	
	16:36	Personal or family history
	16:37	Hearsay within hearsay
	16:38	Other exceptions
	16:39	Attacking and supporting credibility of declarant
\mathbf{C}	HAPTI	ER 17. DOCUMENTARY EVIDENCE
8	17:01	Documentary evidence in general
	17:02	Authentication, generally
	17:03	Methods of authentication—Direct
	17:04	Comparisons of author's handwriting
	17:05	Circumstantial evidence: distinguishing characteristics
	17:06	Authentication—Public records and reports
	17:07	Ancient documents
	17:08	Evidence produced by process or system
	17:09	Self-authenticating documents
	17:10	Avoiding proof of authenticity
	17:11	Admissibility of authenticated documents
	17:12	Best evidence rule, generally
§	17:13	Admissibility of duplicates
§	17:14	Best evidence rule and use of summaries
§	17:15	Admissibility of summaries of fact
§	17:16	Avoidance of best evidence rule
§	17:17	Admissibility of secondary evidence
§	17:18	Secondary evidence when document relates to collateral issue
§	17:19	Procedure for offering documents in evidence
V	OLUM	E 11
\mathbf{C}	HAPTI	ER 18. ADMISSIONS
§	18:01	Admissions, generally
		Judicial admissions
	18:03	Distinguishing between admissions and statements against
		interest
§	18:04	Admissions by party opponent
	18:05	Vicarious admissions, generally
	18:06	Statements made by persons with authority to speak
	18:07	Admissions—By agent or servant
	18:08	By coconspirators

§	18:09	Made in connection with compromise negotiations and offers to plead
8	18.10	By conduct
		By conduct By silence
		Instructions relating to admissions
		ER 19. REAL AND DEMONSTRATIVE EVIDENCE
8	19:01	Real and demonstrative evidence, generally
	19:02	Laying foundation for demonstrative evidence
	19:03	Displaying personal injuries to jury
	19:04	
	19:05	Blood and breath tests in criminal cases
	19:06	
	19:07	
	19:08	
	19:09	
	19:10	
		Photographs
§	19:12	Motion pictures and video tapes—Generally
§	19:13	Use of video tape
§	19:14	Video deposition strategy
§	19:15	X-rays
§	19:16	Sound recordings
		Moving radar unit results
§	19:18	Laying foundation for photographic evidence
§	19:19	Use of photographic evidence
C	HAPTI	ER 20. VIEW
§	20:01	The view
§	20:02	Right to view
§	20:03	Presence of judge and parties
§	20:04	Jury instructions and review
§	20:05	View by judge
\mathbf{C}	HAPTI	ER 21. COMPETENCY OF WITNESSES
§	21:01	Competency of witnesses, generally
§	21:02	Qualifying witness
	21:03	Oath or affirmation of witness
§	21:04	Objection to competency of witness
§	21:05	Witness's firsthand knowledge
§	21:06	Competency to testify—Judge
	21:07	Juror
-	21:08	Trial counsel
§	21:09	Accomplice

C	HAPT	ER 22. DEAD MAN'S STATUTES
§	22:01	Disqualification under Dead Man's Act, generally
	22:02	Persons disqualified
	22:03	
	22:04	•
§	22:05	Wrongful death cases
§	22:06	Application to incompetence
C	HAPT	ER 23. PRIVILEGED COMMUNICATIONS
§	23:01	Nature of privileged communications
§	23:02	Husband-wife privilege
§	23:03	Attorney-client privilege—Generally
§	23:04	Restrictions upon operation
§	23:05	Waiver
§	23:06	Physician-patient privilege
	23:07	Exceptions
	23:08	Waiver
	23:09	Communications—Clergy
	23:10	School psychologists and deans
	23:11	Privileged reports, votes and records
	23:12	Communications—Journalists
	23:13	Made during examination using honesty-testing device
	23:14	Interpreters assisting language, speaking or hearing-impaired
	23:15	Crime victim compensation proceedings
	23:16	Trade secrets
	23:17	Identity of informers
§	23:18	Concern for safety of witness
		ER 24. SELF-INCRIMINATION
§	24:01	Waiver of right to testify in criminal proceeding
§	24:02	Incriminating testimony, generally
§	24:03	Grounds for asserting privilege
	24:04	Adverse inferences from privilege—Civil
	24:05	Criminal
	24:06	
	24:07	Physical examination of witness and privilege
§	24:08	Compelling incriminating testimony—Immunity
	HAPT	
	VITNES	
	25:01	Credibility of witnesses, generally
	25:02	Impeachment of witnesses, generally
	25:03	Falsus in uno, falsus in omnibus
	25:04	Proof of bias, interest, and corruption
	25:05	Impeachment by evidence of bias, particular instances
	25:06	Prior inconsistent statements, generally
8	25:07	Procedure for admitting inconsistent statements

§ 25:08	Use of impeaching statements as substantive evidence
§ 25:09	Impeachment through inconsistent statements and exclusion- ary rule
§ 25:10	
	Specific instances of conduct
§ 25:12	Rape shield statute
§ 25:13	Proof of prior convictions, generally
§ 25:14	
	Procedure for admitting proof of prior convictions
	Impeachment evidence and collateral issues
	Collateral issues—Improper impeachment
	Failure to call witness as impeachment
CHAP	FER 26. DIRECT EXAMINATION
	Direct examination, generally
	Necessity for personal knowledge
	Firsthand knowledge and hearsay
	Firsthand knowledge and authentication
	Form and content of questions on direct examination
	Leading questions
	Examining adverse parties and witnesses identified with them
	Refreshing witness's memory
	Use of hypnosis Documents used by experts
§ 26:10	· -
3 20.11	able
CHAP'	FER 27. CROSS-EXAMINATION
§ 27:01	Cross-examination—Generally
§ 27:02	
	Scope—Generally
§ 27:04	
	Basis—Adversity
	Hostility
§ 27:07	
	Use of depositions in cross-examinations
§ 27:09	Use of prior inconsistent statements or testimony to impeach witness
§ 27:10	
	ΓER 28. REDIRECT AND RECROSS-EXAMINATION
§ 28:01	
-	Form and content of questions
	Refreshing witness's memory
	Explaining and correcting testimony
	Rehabilitating witness

§	28:06	Explaining impeaching answers
§	28:07	Recross-examination
C	HAPTI	ER 29. OBJECTIONS TO EVIDENCE
§	29:01	Objections to evidence—Generally
	29:02	
	29:03	
	29:04	_
§	29:05	Motion to strike inadmissible evidence
§	29:06	Ruling on objections
§	29:07	Offer of proof
C	HAPTI	ER 30. ILLEGALLY OBTAINED EVIDENCE
§	30:01	Illegally obtained evidence, generally
§	30:02	Stop and frisk
	30:03	
		Plain view doctrine
§	30:05	Warrantless searches
	30:06	
§	30:07	Showing of probable cause as basis for issuance
	30:08	
	30:09	
§	30:10	Effect of granting motion to suppress and use of illegally obtained evidence
§	30:11	Scope of inquiry where issuance of warrant is challenged
§	30:12	Motion to suppress evidence
§	30:13	Search of motor vehicles
	30:14	Standing
	30:15	Execution of search warrant
§	30:16	Procedural aspects relative to issuance of search warrant
C	HAPTI	ER 31. CONFESSIONS
		Definition of confession
§	31:02	· · ·
	31:03	Voluntariness of confession
	31:04	Hearing on voluntariness—Goodchild hearing
	31:05	Custodial confessions— <i>Miranda</i> rule
	31:06	Indigent representation—Waiver of counsel
	31:07	Burden of proving voluntariness
	31:08	Inducements
	31:09	Threats and fear
-	31:10	Length of detention prior to confession
§	31:11	Effect of confession—Corroboration
C	HAPTI	ER 32. MISTRIAL
§	32:01	Grounds for mistrial, generally
§	32:02	Timing of motion

	32:03	•
	32:04	Result when mistrial is granted
Ş	32:05	Mitigating prejudice to avoid mistrial
C	HAPTI	ER 33. MOTIONS AFTER VERDICT
§	33:01	Generally
	33:02	Grounds for new trial
	33:03	Newly discovered evidence
	33:04	Right to withdraw plea
§	33:05	Review of order for new trial
C	HAPTI	ER 34. CLOSING ARGUMENTS
	34:01	Closing arguments—Generally
§	34:02	Right to make
§	34:03	Scope
§	34:04	Use of charts
§	34:05	Appeals to prejudice and sympathy
§	34:06	Commenting on matters not in evidence
	34:07	Arguing damages
	34:08	Attacks upon parties, their witnesses, or attorneys
	34:09	Objecting to improper argument
	34:10	Curing improper argument
§	34:11	Rules applicable in criminal cases
C	HAPTI	ER 35. INSTRUCTIONS
§	35:01	Generally
§	35:02	Timing of instructing jury
§	35:03	Form and content of instructions
§	35:04	Requesting and submitting instructions
§	35:05	Objections to instructions
§	35:06	Relating instructions to evidence
§	35:07	Rules applicable in criminal cases
C	HAPTI	ER 36. CONDUCT AND VERDICT OF JURY
	36:01	Conduct of jury, generally
	36:02	Verdict, generally
	36:03	Form of special verdict
-	36:04	Form of verdict in products liability
	36:05	Omission of proper questions
	36:06	Inclusion of improper questions
	36:07	Failure to answer questions on special verdict
	36:08	Inconsistent special verdicts
	36:09	Setting verdict aside, generally
_	36:10	Perverse verdict
8	36:11	Five-sixths requirement

TABLE OF CONTENTS

§ 36:12 Quotient verdicts § 36:13 Impeaching verdict § 36:14 Polling jury § 36:15 Criminal sentencing **CHAPTER 37. JUDGMENTS**

- § 37:01 Generally
- § 37:02 Interlocutory judgment
- § 37:03 Procedural aspects of taking judgment
- § 37:04 Costs, generally
- § 37:05 Procedure for taxation of costs
- § 37:06 Items of costs and disbursements, generally
- § 37:07 Attorneys' fees as costs
- § 37:08 Costs in multiple party actions
- § 37:09 Settlements and assessment of costs
- § 37:10 Criminal plea agreements

Table of Cases

Table of Laws and Rules

Index