

# Table of Contents

## CHAPTER 1. THE ROLE OF THE ATTORNEY

- § 1:1 Role of attorney in trial of case
- § 1:2 The right to counsel
- § 1:3 The right to competent counsel
- § 1:4 Need for counsel to be admitted to practice law
- § 1:5 Waiver of right to counsel
- § 1:6 The right to consult with attorney and others
- § 1:7 General conduct of the attorney
- § 1:8 Contempt by an attorney
- § 1:9 Discipline of an attorney for improper conduct
- § 1:10 Withdrawal of counsel
- § 1:11 Authority of attorney to act for client
- § 1:12 Agreed order allowing withdrawal and substitution of counsel

## CHAPTER 2. THE CONDUCT OF THE TRIAL

- § 2:1 Conduct of the trial, generally
- § 2:2 Presence of parties and counsel
- § 2:3 Conduct of the parties
- § 2:4 Presence of the judge
- § 2:5 Substitution of judges
- § 2:6 General conduct of the judge
- § 2:7 The demeanor of the judge
- § 2:8 Duty to preserve order
- § 2:9 Exclusion of the public
- § 2:10 Publicity before and during trial
- § 2:11 Judge's control of the examination of witnesses
- § 2:12 Limiting the number of witnesses
- § 2:13 Ruling on admissibility of evidence
- § 2:14 Restricting use of admitted evidence
- § 2:15 Exclusion of improper evidence on court's own motion
- § 2:16 Questioning the witnesses by the judge
- § 2:17 Court's witnesses
- § 2:18 Impartial medical experts
- § 2:19 Control of proceedings by pretrial order
- § 2:20 Control of proceedings by stipulation
- § 2:21 Law applicable to cases arising outside Tennessee
- § 2:22 Transcribing the testimony
- § 2:23 Judge as trier of the facts

## CHAPTER 3. MOTIONS DURING TRIAL, DEFAULT, AND DISMISSAL

- § 3:1 Recent cases
- § 3:2 Motions during trial, in general
- § 3:3 Continuances
- § 3:4 Form: Motion for continuance

- § 3:5 —Absence of witness
- § 3:6 —New defense in amended answer
- § 3:7 Voluntary dismissal
- § 3:8 Form: Notice of dismissal by plaintiff
- § 3:9 Form: Motion by defendant that voluntary dismissal be  
with prejudice
- § 3:10 Nolle prosequi
- § 3:11 Involuntary dismissal; summary judgment
- § 3:12 Form: Motion for summary judgment
- § 3:13 —Alternate form
- § 3:14 Default judgment
- § 3:15 Form: Motion for default judgment
- § 3:16 Form: Motion to dismiss for failure to prosecute
- § 3:17 Form: Motion in limine—Prohibiting expected hearsay and  
prejudicial testimony
- § 3:18 Form: Motion to exclude expert witness at trial
- § 3:19 Form: Motion to exclude testimony of undisclosed witness
- § 3:20 Form: Opposition to motion to exclude lay witness evidence
- § 3:21 Form: Motion for attorney's fees and expenses for discovery  
abuse
- § 3:22 Form: Motion for dismissal for failure to comply with order  
of court
- § 3:23 Form: Motion for mistrial
- § 3:24 Form: Motion for judgment in accordance with motion for  
directed verdict
- § 3:25 Form: Motion to dismiss—Failure to join indispensable  
party
- § 3:26 Form: Motion for dismissal for failure to prove case
- § 3:27 Form: Motion for judgment on less than all claims
- § 3:28 Form: Motion for judgment on less than all parties
- § 3:29 Form: Default judgment and order setting hearing on  
damages
- § 3:30 Form: Motion for expenses—Failure to serve subpoena on  
witness
- § 3:31 Form: Motion to dismiss—Lack of jurisdiction over subject  
matter
- § 3:32 —Insufficiency of service of process

## CHAPTER 4. CRIMINAL TRIALS

- § 4:1 Recent cases
- § 4:2 Criminal procedure, in general
- § 4:3 Double jeopardy
- § 4:4 Checklist: Criminal defense motions
- § 4:5 Right to a jury trial
- § 4:6 Consolidation and severance of offenses
- § 4:7 Physical control of defendant during trial
- § 4:8 Defenses in criminal cases
- § 4:9 Checklist: Criminal defense
- § 4:10 Entrapment as a defense
- § 4:11 Insanity as a defense
- § 4:12 Compulsion as a defense

## TABLE OF CONTENTS

- § 4:13 Intoxication or drugged condition as a defense
- § 4:14 Use of justifiable force
- § 4:15 Improper conduct of the prosecution
- § 4:16 Form: Motion for initial competency evaluation
- § 4:17 Form: Motion for sanity evaluation
- § 4:18 Form: Notice of expert testimony and insanity defense
- § 4:19 Form: Motion for relief from fine and court costs
- § 4:20 Work release order
- § 4:21 Form: Motion to restrict pretrial publicity
- § 4:22 Form: Motion for a change of venue
- § 4:23 Form: Motion for change of venue—Another form

## **CHAPTER 5. CONTEMPT OF COURT**

- § 5:1 Recent cases
- § 5:2 Power of court to punish for contempt
- § 5:3 Civil and criminal contempt
- § 5:4 Direct and indirect contempt
- § 5:5 Acts constituting direct, criminal contempt
- § 5:6 Procedure in direct, criminal contempt
- § 5:7 Punishment for contempt
- § 5:8 Form: Motion for order to show cause—Contempt
- § 5:9 Form: Motion for contempt for failure to comply with order

## **CHAPTER 6. THE SELECTION OF THE JURY**

- § 6:1 Recent cases
- § 6:2 Right to a fair and impartial jury
- § 6:3 Method of summoning jurors
- § 6:4 Summoning tales jurors
- § 6:5 Grounds for challenging the array
- § 6:6 Discrimination because of sex, race, etc
- § 6:7 Conduct of the voir dire examination
- § 6:8 Hypothetical questions
- § 6:9 Questioning of jurors, generally
- § 6:10 Voir dire—Sample questions
- § 6:11 Questioning of jurors regarding insurance
- § 6:12 Checklist—Areas to cover in business litigation voir dire examination
- § 6:13 Selection of alternate jurors
- § 6:14 Number of peremptory challenges, civil
- § 6:15 Number of peremptory challenges, criminal
- § 6:16 Exemptions from jury service
- § 6:17 Grounds for challenge for cause, statutes
- § 6:18 Grounds for challenge for cause, cases
- § 6:19 Conditional grounds for challenge
- § 6:20 Facts that normally are not grounds for challenge
- § 6:21 Passing upon challenges for cause
- § 6:22 Swearing the jury
- § 6:23 Form: Demand for jury trial of all issues
- § 6:24 Form: Motion to amend complaint to request a jury trial
- § 6:25 Form: Motion to strike jury demand

## **CHAPTER 7. OPENING STATEMENTS**

- § 7:1 Recent cases
- § 7:2 Right to make an opening statement
- § 7:3 Content of opening statement
- § 7:4 Checklist: Opening statement

## **CHAPTER 8. ORDER OF PROOF**

- § 8:1 Right to open and close
- § 8:2 Order of producing testimony
- § 8:3 Rebuttal testimony
- § 8:4 Surrebuttal
- § 8:5 Right to introduce testimony at later stage

## **CHAPTER 9. BURDEN OF PROOF**

- § 9:1 Recent cases
- § 9:2 Burden of proof and burden of going forward
- § 9:3 Prima facie case
- § 9:4 Civil cases, generally
- § 9:5 Claims against estates
- § 9:6 Shifting the burden of proof
- § 9:7 Constructive and resulting trust cases
- § 9:8 Burden of proving fraud
- § 9:9 Bailment cases
- § 9:10 Criminal cases, generally
- § 9:11 Corpus delicti
- § 9:12 Accused's competency
- § 9:13 Alibi
- § 9:14 Identity of accused
- § 9:15 Burden on defendant in criminal cases
- § 9:16 Party having burden of proof in civil cases
- § 9:17 Burden on defendant in civil cases
- § 9:18 Burden of proving negative averments
- § 9:19 Burden of proof in challenging governmental acts

## **CHAPTER 10. PROOF OF FACTS**

- § 10:1 Recent cases
- § 10:2 Situations where proof is excused before trial
- § 10:3 Situations where proof is excused during trial
- § 10:4 Methods of proving facts
- § 10:5 Use of stipulations to excuse proof of facts
- § 10:6 Construction and enforcement of stipulations

## **CHAPTER 11. WITNESSES**

- § 11:1 Recent cases
- § 11:2 Compelling attendance of witnesses
- § 11:3 Habeas corpus ad testificandum
- § 11:4 Witnesses from out of state
- § 11:5 Subpoena for production of documentary evidence
- § 11:6 Influencing or harassing of witness

## TABLE OF CONTENTS

- § 11:7 Right to interview witnesses
- § 11:8 Right to discover witness to be used at trial
- § 11:9 Right to confer with witness on the stand
- § 11:10 Compensation of witnesses
- § 11:11 Exclusion of witnesses
- § 11:12 Swearing the witness
- § 11:13 Use of interpreter
- § 11:14 Giving testimony on television, radio, or motion picture

## **CHAPTER 12. THE IMPEACHMENT OF WITNESSES**

- § 12:1 Impeachment of witnesses, generally
- § 12:2 Impeachment on collateral issues
- § 12:3 Laying the foundation for impeaching a witness
- § 12:4 Credibility of witnesses, generally
- § 12:5 Particular matters affecting credibility
- § 12:6 Expert testimony as to the credibility of witness

## **CHAPTER 13. THE COMPETENCY OF A WITNESS TO TESTIFY**

- § 13:1 Competency of witness, in general
- § 13:2 Time for objecting to competency
- § 13:3 Competency of a felon to testify
- § 13:4 Competency of a child to testify
- § 13:5 Competency of a spouse to testify for or against other spouse
- § 13:6 Competency of judge, juror, or attorney to testify
- § 13:7 Competency of atheist, deaf mute, or incompetent to testify
- § 13:8 Competency of an accomplice as a witness
- § 13:9 Competency of witnesses omitted from indictment or list of witnesses
- § 13:10 Competency of witnesses omitted from answers to interrogatories
- § 13:11 Competency of private detective or investigator in criminal actions
- § 13:12 Competency of an insane person to testify
- § 13:13 Form: Motion to exclude testimony of witness for lack of personal knowledge of subject matter
- § 13:14 Form: Opposition to motion to exclude lay witness evidence

## **CHAPTER 14. THE DEAD MAN'S ACT**

- § 14:1 Recent cases
- § 14:2 Disqualification under the Dead Man's Act, generally
- § 14:3 Persons entitled to protection of Dead Man's Act
- § 14:4 Persons barred from testifying by Dead Man's Act
- § 14:5 Rules applied in determining incompetency
- § 14:6 Time at which incompetency is determined
- § 14:7 When an incompetent witness may testify
- § 14:8 Statements of deceased partners or joint contractors

§ 14:9 Statements of deceased agents

## CHAPTER 15. EXAMINATION OF WITNESSES

- § 15:1 Recent cases
- § 15:2 Examination of witnesses, in general
- § 15:3 Materiality of questions asked on direct examination
- § 15:4 Relevancy of questions asked on direct examination
- § 15:5 Admissibility of negative evidence
- § 15:6 Relevance of the conduct of a party shortly before an accident
- § 15:7 Competency of questions asked on direct examination
- § 15:8 Form and content of questions on direct examination
- § 15:9 Improper conduct of counsel in examining witnesses
- § 15:10 Leading questions
- § 15:11 Aiding a witness by refreshing memory
- § 15:12 Questions that impeach one's own witness
- § 15:13 Testimony that tends to incriminate the witness
- § 15:14 Necessity for court to warn witness of privilege
- § 15:15 Extent of privilege against self-incrimination
- § 15:16 Invoking the privilege against self-incrimination
- § 15:17 Inspection of person of accused or witness
- § 15:18 Ruling on existence of privilege against self-incrimination
- § 15:19 When privilege against self-incrimination is lost
- § 15:20 Use of lie detector (polygraph) test
- § 15:21 Calling an adverse party or person as a witness
- § 15:22 Manner of examining under adverse witness rule
- § 15:23 Requirements of the witness's answer
- § 15:24 Witness's first-hand knowledge
- § 15:25 Testimony concerning telephone conversations
- § 15:26 Right to confront witnesses

## CHAPTER 16. CROSS-EXAMINATION

- § 16:1 Recent cases
- § 16:2 Right to cross-examine witnesses
- § 16:3 Scope of cross-examination
- § 16:4 Form of questions on cross-examination
- § 16:5 Additional matters proper on cross-examination
- § 16:6 Manner of conducting cross-examination
- § 16:7 Testing the witness's knowledge and accuracy
- § 16:8 Use of prosecution's evidence by defense
- § 16:9 Prior inconsistent statement
- § 16:10 Use of testimony before the grand jury to impeach a witness
- § 16:11 Laying a foundation for prior inconsistent statements
- § 16:12 Impeachment by proof of prior conviction
- § 16:13 Manner of proving prior conviction
- § 16:14 Impeachment by proof of prior specific instances of misconduct not resulting in conviction (prior bad acts)
- § 16:15 Right to recall witness for further cross-examination
- § 16:16 Effect of denial of right to cross-examination

## **CHAPTER 17. REDIRECT AND RECROSS-EXAMINATION**

- § 17:1 Scope of redirect examination
- § 17:2 Form and content of questions on redirect examination
- § 17:3 Refreshing the witness's memory on redirect examination
- § 17:4 Explaining and correcting testimony on redirect examination
- § 17:5 Rehabilitating a witness
- § 17:6 Explaining impeaching answers
- § 17:7 Right of recross-examination

## **CHAPTER 18. PRIVILEGED COMMUNICATIONS**

- § 18:1 Recent cases
- § 18:2 Nature of privileged communications
- § 18:3 Communications between husband and wife
- § 18:4 Requirement for privilege to exist between husband and wife
- § 18:5 Existence of the marital relationship
- § 18:6 Claiming and waiving the privilege
- § 18:7 Privileged communications between attorney and client
- § 18:8 Existence of attorney and client relationship
- § 18:9 Confidential nature of the communication
- § 18:10 Claiming and waiving the attorney-client privilege
- § 18:11 Termination of the attorney-client privilege
- § 18:12 Existence of a physician-patient privilege
- § 18:13 Privileged communications by client to public accountants
- § 18:14 Privileged communications to clergy
- § 18:15 Privileged communications to public officers
- § 18:16 Miscellaneous privileges

## **CHAPTER 19. JUDICIAL NOTICE**

- § 19:1 Proof excused if fact is judicially noticed
- § 19:2 Making a record of facts judicially noticed
- § 19:3 Judicial notice of laws
- § 19:4 Judicial notice of facts concerning the court
- § 19:5 Judicial notice of facts about government, officers, and political subdivisions
- § 19:6 Other facts judicially noticed
- § 19:7 Facts not judicially noticed

## **CHAPTER 20. PRESUMPTIONS**

- § 20:1 Recent cases
- § 20:2 Nature of presumptions
- § 20:3 Irrebuttable presumptions
- § 20:4 Rebuttable presumptions
- § 20:5 Inferences
- § 20:6 Presumption of innocence
- § 20:7 Res ipsa loquitur



- § 20:8 Presumption of death after seven years absence
- § 20:9 Presumption of validity of marriage
- § 20:10 Presumption arising from possession of stolen goods
- § 20:11 Presumptions arising from the conduct of a party
- § 20:12 Presumption of delivery of letters
- § 20:13 Presumption of delivery of a telegram
- § 20:14 Presumptions about individuals
- § 20:15 Presumption of intoxication from alcoholic content of blood
- § 20:16 Presumptions of continuance of a condition
- § 20:17 Presumptions about gifts and services
- § 20:18 Presumptions in tort cases
- § 20:19 Other presumptions created by law

## **CHAPTER 21. REAL AND DEMONSTRATIVE EVIDENCE**

- § 21:1 Real and demonstrative evidence distinguished
- § 21:2 Tangible articles having some bearing on the transaction in question
- § 21:3 Authentication of tangible articles as evidence
- § 21:4 Tangible articles in the same condition
- § 21:5 Connecting tangible articles to the accused
- § 21:6 Admissibility of photographs
- § 21:7 Admissibility of motion pictures
- § 21:8 Admissibility of x-ray photographs
- § 21:9 Admissibility of sound recordings in evidence
- § 21:10 Admissibility of maps, drawings, diagrams and displays
- § 21:11 Admissibility of static models and casts
- § 21:12 Effect of marks or notations on demonstrative evidence
- § 21:13 Displaying personal injuries to the jury
- § 21:14 Blood tests in paternity cases
- § 21:15 Exhibiting child in paternity cases
- § 21:16 Computer animation

## **CHAPTER 22. THE VIEW**

- § 22:1 Right to view the premises
- § 22:2 Request for view
- § 22:3 Conduct of the view
- § 22:4 Nature of the view
- § 22:5 Form: Motion to view accident scene

## **CHAPTER 23. DOCUMENTARY EVIDENCE**

- § 23:1 Recent cases
- § 23:2 General requirements relating to documentary evidence
- § 23:3 Procedure in offering and admitting documents in evidence
- § 23:4 When authentication of documentary evidence is excused
- § 23:5 Authentication of private writings
- § 23:6 Authentication of attested documents
- § 23:7 Authentication of recorded documents
- § 23:8 Other rules relating to the use of private writings



## TABLE OF CONTENTS

§ 23:9	Authentication of statutes
§ 23:10	Authentication of court decisions
§ 23:11	Authentication of court papers and records
§ 23:12	Authentication of records of counties and municipalities
§ 23:13	Authentication of records of corporations or businesses
§ 23:14	Best evidence rule
§ 23:15	Situations calling for “best evidence”
§ 23:16	Situations in which “best evidence” is not required
§ 23:17	Use of secondary evidence
§ 23:18	Where primary evidence is in the control of opponents
§ 23:19	Secondary evidence of bulky records
§ 23:20	Proof of loss of primary evidence
§ 23:21	Secondary evidence of public records
§ 23:22	Copies as primary or secondary evidence
§ 23:23	Nature of secondary evidence to be used
§ 23:24	Establishing the contents of a document by oral evidence
§ 23:25	Authentication of a letter
§ 23:26	Authentication of a telegram
§ 23:27	Authentication of a family bible and church records
§ 23:28	Authentication of annuity and mortality tables
§ 23:29	Authentication of ancient documents
§ 23:30	Authentication of electronically transmitted documents
§ 23:31	Authentication of videotapes and other recordings

## CHAPTER 24. OPINION EVIDENCE

§ 24:1	Requirement that witnesses testify as to facts
§ 24:2	Facts distinguished from opinions
§ 24:3	Admissibility of opinions, in general
§ 24:4	Opinions concerning the ultimate issue
§ 24:5	Opinions on the ultimate issue in negligence cases
§ 24:6	Opinions on the ultimate issue in will cases
§ 24:7	When opinion on the ultimate issue is admissible
§ 24:8	Other limitations on opinion evidence
§ 24:9	Non-expert opinion, in general
§ 24:10	Non-expert opinion, evidence on sanity
§ 24:11	Opinion as to speed
§ 24:12	Stopping distance
§ 24:13	Non-expert opinion on handwriting
§ 24:14	Non-expert opinion on value of personal property
§ 24:15	Non-expert opinion on value of real estate
§ 24:16	Opinions on narcotic addiction
§ 24:17	Matters as to which expert witnesses may or must testify
§ 24:18	Qualifications required of expert witnesses
§ 24:19	Distinctions between expert and skilled witnesses
§ 24:20	Expert testimony on matters of business
§ 24:21	Expert testimony on how an incident occurred
§ 24:22	Expert testimony on value of services
§ 24:23	Expert testimony on value of real estate
§ 24:24	Expert testimony on handwriting
§ 24:25	Questioned documents

- § 24:26 Expert testimony on fingerprints
- § 24:27 Expert testimony on ballistics
- § 24:28 Use of operating models
- § 24:29 Experiments and demonstrations
- § 24:30 Use of computer aids by expert witness
- § 24:31 Checklist: Admissibility of computer-generated evidence
- § 24:32 Test for intoxication
- § 24:33 Electronic speed detection devices
- § 24:34 Miscellaneous scientific tests
- § 24:35 Contents of the hypothetical question
- § 24:36 The hypothetical question asked of a physician or surgeon
- § 24:37 The answer to the hypothetical question
- § 24:38 Cross-examination of the expert witness
- § 24:39 Form: Motion to exclude testimony of expert witness
- § 24:40 Checklist: Checklist of general guidelines for cross-examination of the opposing expert witness
- § 24:41 Checklist: Expert testimony—A letter from lawyer to expert
- § 24:42 Checklist: Preparing the expert
- § 24:43 Checklist: Use of the expert witness at trial

## **CHAPTER 25. HEARSAY EVIDENCE**

- § 25:1 Recent cases
- § 25:2 Admissibility of hearsay evidence
- § 25:3 Definition of hearsay evidence
- § 25:4 Inapplicability of the hearsay rule to certain situations
- § 25:5 Exceptions to the hearsay rule, generally
- § 25:6 Threats
- § 25:7 Dying declarations
- § 25:8 Testimony at former trial
- § 25:9 Establishing the right to use testimony from former trial
- § 25:10 Manner of proving testimony from former trial
- § 25:11 Past recollection recorded
- § 25:12 Admission of writing for past recollection
- § 25:13 Business records
- § 25:14 Requirements for admission of business records
- § 25:15 Computer records
- § 25:16 Official records, generally
- § 25:17 Formal findings of the medical malpractice review board
- § 25:18 Judgments
- § 25:19 Market reports and commercial publications
- § 25:20 Police reports
- § 25:21 Hospital records
- § 25:22 Doctors' reports and scientific records
- § 25:23 Weather reports
- § 25:24 Birth and death certificates
- § 25:25 Subjective and objective symptoms
- § 25:26 Pedigree
- § 25:27 Family records
- § 25:28 Mortality and annuity tables

## TABLE OF CONTENTS

§ 25:29	Church records and family bibles
§ 25:30	Ancient documents
§ 25:31	Ownership documents
§ 25:32	Res gestae
§ 25:33	Spontaneous declarations
§ 25:34	Examples of admissible spontaneous declarations
§ 25:35	Excited utterances
§ 25:36	Statements of intention
§ 25:37	Declarations against interest
§ 25:38	Pretrial identification of the accused
§ 25:39	Statements in furtherance of a conspiracy
§ 25:40	State of mind
§ 25:41	Financial statements
§ 25:42	Statements made for diagnosis and treatment
§ 25:43	Statements against party who attempted to prevent witness from testifying
§ 25:44	Statements by children
§ 25:45	Statements by children in a criminal trial
§ 25:46	Prior inconsistent statements
§ 25:47	Form: Motion to exclude evidence—Newspaper article

## CHAPTER 26. ADMISSIONS

§ 26:1	Admission by a party opponent
§ 26:2	Admission by agent, employee, or partner of party
§ 26:3	Admissions by others
§ 26:4	Admission to avoid continuance
§ 26:5	Judicial admissions
§ 26:6	Judicial admissions in pleadings
§ 26:7	Admissibility of criminal judgment in subsequent civil suit
§ 26:8	Silence of a party as an admission in civil cases
§ 26:9	Silence of the accused as an admission
§ 26:10	Failure to reply to written statements as an admission
§ 26:11	Flight or escape as an admission
§ 26:12	Misconduct of a party as an admission
§ 26:13	Offers of compromise as admissions
§ 26:14	Actions of a party after an accident as an admission
§ 26:15	Payment of bills of injured person as an admission
§ 26:16	Self-serving statements
§ 26:17	Adoptive admissions
§ 26:18	Form: Motion to withdraw admission

## CHAPTER 27. CONFESSIONS

§ 27:1	Confession distinguished from admission and exculpatory statement
§ 27:2	Requirements of a confession
§ 27:3	Protection of constitutional rights in obtaining a confession
§ 27:4	Voluntariness of a confession
§ 27:5	Determining admissibility of a confession
§ 27:6	Use of silence of accused to impeach
§ 27:7	Corroboration of a confession

- § 27:8 Confessions by others
- § 27:9 Use of entire statement

## **CHAPTER 28. ILLEGALLY OBTAINED EVIDENCE**

- § 28:1 Illegally obtained evidence, in general
- § 28:2 Evidence obtained by eavesdropping
- § 28:3 Prohibition against illegal searches and seizures
- § 28:4 Inevitable discovery of evidence
- § 28:5 Motion to suppress evidence illegally seized
- § 28:6 Standing necessary to invoke the privilege against an unlawful search and seizure
- § 28:7 Search and seizure without a warrant
- § 28:8 Search without a warrant but with consent
- § 28:9 Search of automobile without a warrant
- § 28:10 Search and seizure with a warrant
- § 28:11 Arrest and search based upon an informer's tip

## **CHAPTER 29. ADMISSIBILITY OF OTHER TYPES OF EVIDENCE**

- § 29:1 Recent cases
- § 29:2 Admissibility of circumstantial evidence
- § 29:3 Circumstantial evidence of criminal intent
- § 29:4 Evidence that will prejudice the jury
- § 29:5 Admissibility of evidence on collateral issues
- § 29:6 Admissibility of evidence of similar acts or occurrences
- § 29:7 Proof of habits
- § 29:8 Custom and usage
- § 29:9 Usual method or practice
- § 29:10 Safety codes as a standard of care
- § 29:11 Company safety rules as standard of care
- § 29:12 Code of professional responsibility as standard of care
- § 29:13 Proof of intoxication
- § 29:14 Proof of weight
- § 29:15 Evidence of character and reputation
- § 29:16 Evidence of character (reputation) in criminal cases
- § 29:17 Method of proving character in criminal cases
- § 29:18 Character of victim of assault or homicide
- § 29:19 Proof of character in civil cases
- § 29:20 Reputation for truth and veracity
- § 29:21 Evidence of other crimes
- § 29:22 Race, color, nationality, wealth, or poverty
- § 29:23 Evidence of liability insurance
- § 29:24 Use of discovery depositions
- § 29:25 Exclusion for failure to comply with discovery order
- § 29:26 Self-serving declarations
- § 29:27 Physical and mental examination of parties and others
- § 29:28 Intelligence and psychological tests
- § 29:29 Income tax returns

## TABLE OF CONTENTS

- § 29:30 Computations
- § 29:31 Proof of corporate existence
- § 29:32 Parol evidence
- § 29:33 Admissibility of bloodhound tracking evidence
- § 29:34 Re-enactment of the crime
- § 29:35 Attack upon prior judgment
- § 29:36 Use of safety devices
- § 29:37 Results of surveys or inspections

## CHAPTER 30. OBJECTIONS TO EVIDENCE

- § 30:1 Recent cases
- § 30:2 Right to object to improper testimony
- § 30:3 Need for objection to improper evidence
- § 30:4 Timeliness of the objection
- § 30:5 Stating the grounds for the objection
- § 30:6 Ruling on the objection
- § 30:7 Motion to exclude inadmissible evidence
- § 30:8 Need for formal exceptions
- § 30:9 Offer of proof
- § 30:10 Motion to exclude social media evidence
- § 30:11 Statement of evidence when no transcript available—  
Objection to statement of evidence
- § 30:12 Form: Sample motion to exclude testimony of undisclosed  
witness

## CHAPTER 31. MISTRIAL

- § 31:1 Recent cases
- § 31:2 Nature of a mistrial
- § 31:3 Right to have mistrial declared
- § 31:4 Grounds for declaring mistrial
- § 31:5 Effect of disappearance of admitted exhibits during trial
- § 31:6 Disclosure of liability insurance
- § 31:7 Discharge for inability of jury to arrive at verdict
- § 31:8 Insufficient grounds for declaring a mistrial

## CHAPTER 32. DIRECTED VERDICT

- § 32:1 Right of court to direct verdict
- § 32:2 Procedure in moving for directed verdict
- § 32:3 Determining right to directed verdict
- § 32:4 Directing verdict for variance
- § 32:5 Permitting amendments to conform to evidence
- § 32:6 Negligence and contributory negligence as questions of law  
or fact
- § 32:7 Willful and wanton misconduct, law or fact
- § 32:8 Motion by both parties for directed verdict
- § 32:9 Form: Motion for directed verdict
- § 32:10 Form: Motion for directed verdict at close of plaintiff's  
case—Negligence action
- § 32:11 Motion for directed verdict at close of plaintiff's case—  
Contract action

- § 32:12 Ruling on motion for directed verdict
- § 32:13 Duty of jury to render verdict as directed
- § 32:14 Form: Order granting motion for directed verdict
- § 32:15 Form: Motion for judgment in accordance with motion for directed verdict

## **CHAPTER 33. DAMAGES**

- § 33:1 General principles relating to damages
- § 33:2 Nominal damages
- § 33:3 General and special damages
- § 33:4 Foreseeability of damages
- § 33:5 Speculative, remote, or consequential damages
- § 33:6 Duty to lessen damages
- § 33:7 Liability for exemplary or punitive damages
- § 33:8 Amount of exemplary damages
- § 33:9 Pleading exemplary damages
- § 33:10 Instructions on damages in personal injury cases
- § 33:11 Damages to personal property
- § 33:12 Damages in wrongful death cases
- § 33:13 Damages in breach of contract cases
- § 33:14 Excessive or inadequate damages
- § 33:15 Interest
- § 33:16 Attorney's fees
- § 33:17 Liquidated damages and penalties
- § 33:18 Damages and comparative negligence
- § 33:19 Damages for injuries to real property
- § 33:20 Collateral source rule

## **CHAPTER 34. CLOSING ARGUMENTS**

- § 34:1 Recent cases
- § 34:2 Right to make closing argument
- § 34:3 Court's control of closing arguments
- § 34:4 Right to open and close arguments
- § 34:5 General rules governing closing arguments
- § 34:6 Comments on the court's instructions
- § 34:7 Arguments about damages
- § 34:8 Comments on conduct of the opposition
- § 34:9 Improper remarks of counsel in general
- § 34:10 Improper remarks in criminal cases
- § 34:11 Improper remarks in civil cases
- § 34:12 Remarks in argument about liability insurance
- § 34:13 Use of charts and diagrams in argument
- § 34:14 Correcting improper conduct of counsel

## **CHAPTER 35. INSTRUCTIONS**

- § 35:1 Recent cases
- § 35:2 Purpose of instructions
- § 35:3 General requirements for jury instructions
- § 35:4 Power and duty of court
- § 35:5 Writing out requests for instructions

## TABLE OF CONTENTS

§ 35:6	Time for tendering instructions
§ 35:7	Jury instructions—Before voir dire
§ 35:8	—After voir dire and before trial
§ 35:9	Requests covered by instructions given
§ 35:10	Modification of requests
§ 35:11	Objections to instructions
§ 35:12	Form: Objections to instructions
§ 35:13	—Another form
§ 35:14	Number of instructions
§ 35:15	Cautionary instructions
§ 35:16	Instructions on the issues
§ 35:17	Peremptory instructions
§ 35:18	Slanted or argumentative instructions
§ 35:19	Other rules applicable to instructions
§ 35:20	Special rules relating to instructions in criminal cases
§ 35:21	Correcting erroneous instructions
§ 35:22	Disposition of instructions
§ 35:23	Instructions—Credibility of witness
§ 35:24	Form: Instructions—Credibility of witness—Alternative instruction
§ 35:25	Checklist: Criminal jury charge checklist
§ 35:26	Form: Jury instruction to be given after opening statements and before the presentation of evidence
§ 35:27	Form: Use of juror notes
§ 35:28	Form: Juror questions

## CHAPTER 36. CONDUCT OF THE JURY

§ 36:1	Recent cases
§ 36:2	General conduct of the jury and those dealing with it
§ 36:3	Conduct of jurors during the trial
§ 36:4	Communications with jurors before and during the trial
§ 36:5	Jurors reading newspaper accounts of the trial
§ 36:6	Separation of jury during trial
§ 36:7	Items taken by jury to jury room
§ 36:8	Control of jury during deliberations
§ 36:9	Manner of conducting deliberations
§ 36:10	Rules governing arrival at a verdict
§ 36:11	Communications with jurors during deliberations
§ 36:12	Eavesdropping on deliberations
§ 36:13	Improper conduct of jurors
§ 36:14	Treatment of improper conduct of jurors

## CHAPTER 37. THE VERDICT

§ 37:1	General provisions relating to verdicts
§ 37:2	Objections to the form of the verdict
§ 37:3	Revising or amending verdicts
§ 37:4	Power of court to have jury reconsider defective verdict
§ 37:5	Construction of general verdicts
§ 37:6	Special verdicts
§ 37:7	Impeachment of verdict



- § 37:8 Preliminary jury instructions (to be given to the jury only  
after the jury is sworn)
- § 37:9 Impeachment by matters extrinsic to verdict
- § 37:10 Mistake or clerical error in verdict
- § 37:11 Sealed verdicts
- § 37:12 Polling the jurors
- § 37:13 Form: Motion for submission of special verdict
- § 37:14 Form: Special verdict—Sample questions for breach of  
contract action

## CHAPTER 38. THE JUDGMENT

- § 38:1 Recent cases
- § 38:2 Entry of the judgment
- § 38:3 Duty of clerk to enter judgment
- § 38:4 Effect of entry of judgment
- § 38:5 Amount of the judgment
- § 38:6 Inclusion of interest in judgment
- § 38:7 Allowance of court costs
- § 38:8 Arrest of judgment and judgment notwithstanding the  
verdict
- § 38:9 Form: Motion for judgment notwithstanding verdict—  
Defendant
- § 38:10 Form: Motion for new trial defendant
- § 38:11 Discretionary costs
- § 38:12 Form: Motion for entry of final judgment
- § 38:13 Form: Motion for relief from final judgment—Excusable  
neglect
- § 38:14 —Fraud
- § 38:15 Form: Judgment with findings of fact and conclusions of  
law
- § 38:16 Motion to alter or amend judgment
- § 38:17 Form: Motion to correct error in final judgment
- § 38:18 Form: Final judgment—Jury trial
- § 38:19 Form: Withdrawal or vacation of appearance-checklist of  
matters to be considered when drafting motion to open or  
vacate judgment
- § 38:20 Form: Motion to vacate judgment
- § 38:21 —Another form

### Table of Laws and Rules

### Table of Cases

### Index