Table of Contents

CHAPTER 1. INTRODUCTORY HISTORICAL DEVELOPMENT

- § 1:1 English common law
- § 1:2 English statutory law
- § 1:3 Recognition of common law in the United States
- § 1:4 Recognition of common law in Kentucky
- § 1:5 Early Kentucky statutes
- § 1:6 Kentucky Constitution of 1891
- § 1:7 Postconstitutional statutory development
- § 1:8 Codified rules of evidence

CHAPTER 2. BASIC STATUTORY MATERIAL

- § 2:1 General statutory scheme
- § 2:2 Section 14 of the Kentucky Constitution
- § 2:3 Section 54 of the Kentucky Constitution
- § 2:4 Section 241 of the Kentucky Constitution
- § 2:5 Constitutionality of Kentucky's death actions
- § 2:6 General wrongful death statute
- § 2:7 Wrongful death of a minor statute
- § 2:8 Wrongful death by a deadly weapon
- § 2:9 Survival of decedent's personal injuries which resulted in death
- § 2:10 Loss of consortium survival claim
- § 2:11 Survival of decedent's claims not resulting in death
- § 2:12 Survival of a privacy right
- § 2:13 Sale of alcoholic beverages
- § 2:14 Definition of death

CHAPTER 3. CHOICE OF LAW PROBLEMS

- § 3:1 Kentucky choice of law in tort actions
- § 3:2 Kentucky choice of law in wrongful death actions
- § 3:3 Federal court choice of law in wrongful death actions
- § 3:4 Federal choice of law problems with procedural rules
- § 3:5 Statute of limitation choice of law problem

CHAPTER 4. PROPER PARTY TO BRING THE ACTION

- § 4:1 Introduction to proper party plaintiff
- § 4:2 Section 241 of the Kentucky Constitution
- § 4:3 Personal representative defined
- § 4:4 General wrongful death statute
- § 4:5 Fraud, collusion, or refusal to sue by the personal representative
- § 4:6 Death by a deadly weapon
- § 4:7 Loss of consortium

- § 4:8 Loss of parental consortium
- § 4:9 Wrongful death of a minor
- § 4:10 Death as result of motor vehicle accident
- § 4:11 Survival action by personal representative
- § 4:12 Survival action by other than personal representative

CHAPTER 5. SPECIAL PROCEDURAL PROBLEMS FOR WRONGFUL DEATH AND SURVIVAL ACTIONS

- § 5:1 Jurisdiction for appointment of personal representative
- § 5:2 Jurisdiction for wrongful death and survival claims
- § 5:3 Venue for wrongful death and survival claims
- § 5:4 Initial filing of action
- § 5:5 Action filed by wrong party—Right to intervene
- § 5:6 Defendant's negative averment concerning capacity
- § 5:7 Substitution of parties

CHAPTER 6. BASIS OF CLAIM FOR RELIEF UNDER GENERAL WRONGFUL DEATH STATUTE

- § 6:1 Section 241 of the Kentucky Constitution and KRS 411.130
- § 6:2 Contract actions not allowed
- § 6:3 Negligent acts
- § 6:4 Wrongful acts
- § 6:5 Wilful or gross negligent acts
- § 6:6 Violation of statute
- § 6:7 Acts by agents or servants
- § 6:8 Act in furtherance of a joint enterprise
- § 6:9 Requirement of causation
- § 6:10 Supervening causes
- § 6:11 Injury to an unborn child that results in death
- § 6:12 Death by a deadly weapon
- § 6:13 Death due to medical malpractice
- § 6:14 —Medical review panels
- § 6:15 Suicide
- § 6:16 Sale of alcoholic beverages
- § 6:17 Strict liability for product liability actions

CHAPTER 7. BASIS OF CLAIM FOR RELIEF UNDER SPECIAL WRONGFUL DEATH STATUTES

- § 7:1 Special as distinguished from general wrongful death statutes
- § 7:2 Deadly weapon as cause of death
- § 7:3 Deadly weapon defined
- § 7:4 Careless, wanton, or malicious use of a deadly weapon
- § 7:5 No self-defense in use of deadly weapon
- § 7:6 Minor child death

Table of Contents

- § 7:7 Unborn child death
- § 7:8 Loss of consortium
- § 7:9 Motor Vehicle Reparations Act claims
- § 7:10 Public service death in line of duty
- § 7:11 Claim for obesity

CHAPTER 8. BASIS OF CLAIM FOR RELIEF IN SURVIVAL OF DECEDENT'S ACTIONS AFTER DEATH

- § 8:1 Survival of actions generally
- § 8:2 Personal injury which caused death
- § 8:3 Personal injuries not the cause of death
- § 8:4 Real property damage
- § 8:5 Personal property damage
- § 8:6 Acts of agents
- § 8:7 Death of wrongdoer prior to action
- § 8:8 Substitution of parties
- § 8:9 Mishandling of a corpse

CHAPTER 9. ACTIONS WHICH DO NOT SURVIVE

- § 9:1 General problems in actions which do not survive
- § 9:2 Slander and libel do not survive
- § 9:3 Criminal conversation does not survive
- § 9:4 Personal injuries as part of malicious prosecution do not survive
- § 9:5 Residents's rights statute
- § 9:6 Dismissal of claim when action does not survive

CHAPTER 10. DEFENSES

- § 10:1 Defenses generally and procedural requirements
- § 10:2 Disproof of plaintiff's case
- § 10:3 Actions exempt from survival statutes
- § 10:4 Child not a minor
- § 10:5 Statute of limitation for wrongful death actions
- § 10:6 Statute of limitation for wrongful death claims resulting from motor vehicle accidents
- § 10:7 Statutes of limitation for survival statutes
- § 10:8 Statute of limitation for loss of consortium
- § 10:9 Statutes of repose
- § 10:10 Limitation period for action against the estate
- § 10:11 Contributing fault of deceased
- § 10:12 Contributing fault of a beneficiary
- § 10:13 Imputed comparative negligence
- § 10:14 Last clear chance
- § 10:15 Assumption of risk is not a defense
- § 10:16 Self-defense
- § 10:17 Defense of others
- § 10:18 Defense of property

	Kentucky Wrongful
§ 10:19	Charitable immunity
§ 10:20	Family immunity
§ 10:21	Surviving spouse remarriage or marital misconduct
§ 10:22	Release
§ 10:23	Res judicata or estoppel
§ 10:24	Workers' compensation recovery
§ 10:25	Insanity
§ 10:26	Immediate death bars loss of consortium recovery
§ 10:27	Lack of jurisdiction, venue, or proper party plaintiff
§ 10:28	Sovereign immunity
СНАЕ	PTER 11. DAMAGES
§ 11:1	Damages generally
§ 11:2	Loss to estate generally
§ 11:3	Deceased adult—Factors affecting loss to estate
§ 11:4	Deceased child—Factors affecting loss to estate
2 11.5	Tables to determine life competence

8 11:1	Damages generally
§ 11:2	Loss to estate generally
§ 11:3	Deceased adult—Factors affecting loss to estate
§ 11:4	Deceased child—Factors affecting loss to estate
§ 11:5	Tables to determine life expectancy
§ 11:6	Motor Vehicle Reparations Act damages
§ 11:7	Loss of consortium
§ 11:8	Loss of services of minor child
§ 11:9	Loss of parental care
§ 11:10	Funeral expenses
§ 11:11	Cost of administration, recovery, and attorney's fees
§ 11:12	Punitive damages
§ 11:13	No recovery for mental suffering of beneficiary
§ 11:14	Survival of deceased's damages
§ 11:15	—Pain and suffering
§ 11:16	Mitigation of damages
§ 11:17	Personal consumption does not reduce damages
§ 11:18	Jury determines damages—Not reversible unless excessive or inadequate

CHAPTER 12. DISTRIBUTION OF AWARD

§ 12:1	Distribution of award
§ 12:2	Distribution under the general wrongful death statute
§ 12:3	Distribution of benefits under the Motor Vehicle
	Reparations Act
§ 12:4	Distribution under the special statutes
§ 12:5	Distribution under survival statute
§ 12:6	Time to determine who is a beneficiary
§ 12:7	Payment of funeral expenses, cost of administration,
	recovery, and attorney's fees
§ 12:8	Payment of creditors generally
§ 12:9	Funds do not pass under will
§ 12:10	Status of adoptive parents
§ 12:11	Contributing or comparative fault of beneficiary
§ 12:12	Marital misconduct
§ 12:13	Marital property settlement
§ 12:14	Simultaneous death of beneficiary and injured party for whom recovery is sought.

§ 12:15 Who determines distribution

CHAPTER 13. SPECIAL EVIDENCE PROBLEMS

§ 13:1	Evidence generally
§ 13:2	Proof of earning capacity
§ 13:3	Life expectancy tables
§ 13:4	Photographs of scene
§ 13:5	Condition of body after death
§ 13:6	Beneficiaries present in the courtroom
§ 13:7	Argument of counsel
§ 13:8	Collateral source of payment
§ 13:9	Dying declaration exception to hearsay rule
§ 13:10	Admission by decedent as exception to hearsay rule
§ 13:11	Expert testimony
§ 13:12	Workers' compensation settlements
§ 13:13	Spoliation of evidence
§ 13:14	Presumptions and death
§ 13:15	Evidence of financial condition of defendant

CHAPTER 14. DEATH IN THE WORKPLACE

§ 14:1	Effect of workers' compensation on wrongful death actions
§ 14:2	Broad coverage of employees
§ 14:3	Exempt employees
§ 14:4	Employee's rejection of coverage
§ 14:5	Exclusive remedy
§ 14:6	In the course of and arising out of employment
§ 14:7	Employer misconduct that causes death of employee
§ 14:8	Employee misconduct
§ 14:9	Suicide
§ 14:10	Death benefits
§ 14:11	Other possible benefits
§ 14:12	Procedure

APPENDIX A

CONSTITUTION OF KENTUCKY(SELECTED PROVISIONS)

BILL OF RIGHTS

Ky Const § 14 Right of judicial remedy for injury; speedy trial

THE LEGISLATIVE DEPARTMENT

§ 14:13 Special death statute

Ky Const § 54 No restriction on recovery for injury or death

GENERAL PROVISIONS

Ky Const § 241 Recovery for wrongful death

KENTUCKY REVISED STATUTES(SELECTED PROVISIONS)

CHAPTER 2 CITIZENSHIP, EMBLEMS, HOLIDAYS, AND TIME

2.015 Age of majority; exceptions

CHAPTER 16 STATE POLICE

STATE POLICE RETIREMENT SYSTEM

16.601 Death in the line of duty; payments to surviving spouse, dependent children, and designated beneficiaries; election; receipt of benefits under KRS 16.578 pending final determination

CHAPTER 23A CIRCUIT COURT

23A.010 Jurisdiction of Circuit Court; court of record and of continuous session

CHAPTER 24A DISTRICT COURT

24A.120 Civil and probate jurisdiction

CHAPTER 61 GENERAL PROVISIONS AS TO OFFICES AND OFFICERS; SOCIAL SECURITY FOR PUBLIC EMPLOYEES; EMPLOYEES RETIREMENT SYSTEM

61.315 Benefits payable on death of certain peace officers, firefighters, correctional officers, jailers, school resource officers, members of a state National Guard or Reserve component, and emergency medical services personnel; administrative regulations; estates to be exempted from probate fees; funds allotted to a self-insuring account; presumption that firefighter's death from cancer resulted from act in the line of duty under certain conditions

CHAPTER 244 ALCOHOLIC BEVERAGES; PROHIBITIONS, RESTRICTIONS, AND REGULATIONS

ALCOHOLIC BEVERAGES GENERALLY

244.080 Retail sales to certain persons prohibited; affirmative defense in prosecution for selling to a minor

CHAPTER 304 INSURANCE CODE

SUBTITLE 39 MOTOR VEHICLE REPARATIONS ACT

304.39-010	Policy and purpose
304.39-020	Definitions for subtitle
304.39-040	Obligation to pay basic reparation benefits; requirement of
	option for motorcycle coverage in liability contracts;
	exclusion of motorcycle operator or passenger who has not
	purchased optional coverage
304.39-060	Acceptance or rejection of partial abolition of tort liability;
	exceptions
304.39-230	Limitations of actions

CHAPTER 342 WORKERS' COMPENSATION

342.0011	Definitions for chapter
342.0011	Definitions for chapter
342.0015 342.012	Application of 1996 (1st Extra. Sess.) Ky. Acts ch. 1 Business owners; election to be included as employees; qualified
342.012	partners and members, nonqualified partners and members,
	and limited liability company defined; provision of partnership
	agreement or articles of organization upon request
342.020	Medical treatment at expense of employer; duration of
	employer's obligation; continuation of benefits; selection of
	physician and hospital; payment; managed health care system; artificial members and braces; waiver of privilege; disclosure of
	interest in referrals; urine drug screenings; pharmacist
	services and procedures
342.035	Administrative regulations; medical fee schedule; review and
	updating; action for excess fees; effect of failure to submit to or follow surgical or medical treatment or advice; certification to
	commissioner; audit; utilization review; report; copies of
	records; practice parameters and evidence-based guidelines;
	formulary; medical fee schedule for registered nurse first
240.075	assistants
342.075 342.165	Determination of dependency Increase or decrease in compensation for failure to comply with
042.100	safety law; compensation not payable if employee falsely
	represents physical condition or medical history at time of
	employment
342.230	Appointment, qualifications, terms, and duties of administrative
	law judges; exemption from classified service; removal provisions; vacancies; chief administrative law judge
342.270	Application for resolution of claim; joinder; assignment to
042.210	administrative law judge; administrative regulations for
	procedures for resolution of claims
342.275	Benefit review by administrative law judge; determination;
	procedures; deadline
342.285	Appeal to Workers' Compensation Board; remanding claim to administrative law judge
342.290	Review by Court of Appeals
342.316	Liability of employer and previous employers for occupational
012.010	disease; claims procedure; administrative regulations; time
	limitations on claims; determination of liable employer; audit;
	amount of compensation; effect of concluded coal workers'
240 610	pneumoconiosis claim
342.610	Liability for compensation; contractor and subcontractor; limitation of liability if employee intended to kill or injure self
	or another; illegal substances; employer's intention to produce
	injury or death; builder's proof of coverage required for
	issuance of building permit; notice required to be posted by
342.640	employers
342.650	Coverage of employees Exemptions of particular classes of employees from coverage
342.660	Voluntary coverage
342.680	Presumptions in the case of death or of physical or mental
-	inability to testify
342.690	Exclusiveness of liability

342.730 Determination of income benefits for disability; survivors' rights; termination; offsets; notification of return to work; professional athletes
 342.750 Income benefits for death; additional lump-sum payment for deaths occurring within four years of injury

CHAPTER 391 DESCENT AND DISTRIBUTION

391.030 Descent of personal property; exemption for surviving spouse and children; withdrawal of money from bank by surviving spouse 391.170 Commercial rights to use of names and likenesses of public figures

CHAPTER 395 PERSONAL REPRESENTATIVES

395.001	Definition of "fiduciary"
395.005	Who may be appointed as fiduciary
395.005	Who may be appointed as fiduciary
395.010	Administration must be within ten years after death
395.012	Right to file demand for notice of action regarding estate
395.015	Applications for appointment of personal representative
395.016	Notice of hearing of application
395.020	Executor not to act until will probated; exception
395.030	Jurisdiction of administration of intestate's estate
395.040	Administrator; persons entitled to be appointed; discovery of will
395.050	Administrator with will annexed; appointment; functions
395.060	Continuation of administration when powers of representatives
	cease
395.070	Executor of executor cannot administer estate of first testator
395.080	When minor may be executor
395.100	Appointment of debtor does not extinguish debt
395.105	Fiduciary must have letters of appointment; general duties; when appointment effective
395.110	Copy of order effectual as probate or letters
395.120	Oaths of representatives
395.130	Bond, when required; cost of corporate surety paid from estate
395.140	Bond; persons not to be surety on; recording of
395.145	Attorney for fiduciary
395.150	Compensation of representatives
395.155	Computation of personal representative's commission
395.160	Removal of representatives
395.170	Nonresident representatives; bond; actions by
395.190	Time for distribution of estate
395.195	Transactions authorized for personal representative; exceptions
395.240	Sale of choses in action; compromise of claims
395.278	When party may revive action and limitation

CHAPTER 411 RIGHTS OF ACTION AND SURVIVAL OF ACTIONS

411.010	Action for assault; battery; provocation as a defense or in
	mitigation of punitive damages
411.130	Action for wrongful death; personal representative to prosecute;
	distribution of amount recovered
411.133	Joinder of wrongful death and personal injury actions

Table of Contents

411.135	Damages in action for wrongful death of minor
411.137	Limitation on right to recover for wrongful death of child if parent
	has abandoned care and maintenance
411.140	What action shall survive
411.145	Damages for loss of consortium
411.150	Action by surviving spouse or child of person killed with deadly
	weapon
411.182	Allocation of fault in tort actions; award of damages; effect of
	release
411.184	Definitions; punitive damages; proof of punitive damages
411.186	Assessment of punitive damages
411.188	Notification of parties holding subrogation rights; collateral source payments and subrogation rights admissible
411.190	Obligations of owner to persons using land for recreation
DDADIIC	OR LIADITION ACOR

PRODUCT LIABILITY ACT

411.300	Definitions
411.310	Presumptions in product liability actions
411.320	Circumstances under which defendant is liable

COMMONSENSE CONSUMPTION ACT

411.600	Definitions	
411.610	Immunity from liability for condition arising due to long-term	
	consumption of food; exceptions	
411.620	Required contents of complaint; substantive status of pleadings	
411.630	Stay of discovery and other proceedings during pendency of	
	motion to dismiss; exceptions; treatment of documents and	
	other tangible objects during pendency of stay of discovery	
411.640	Affected claims	

CHAPTER 413 LIMITATION OF ACTIONS

ACTIONS OTHER THAN THOSE RELATING TO REAL PROPERTY

413.135	Action for damages arising out of injury
413.137	Action for damages for injury or illness suffered as a result of
	female genital mutilation
413.140	Actions to be brought within one year
413.170	Limitations of actions in KRS 413.090 to 413.160 do not run until removal of disability or death
413 180	Action by or against personal representative under KRS 413.090
110.100	to 413.160
413.241	Legislative finding; limitation on liability of licensed sellers or
	servers of intoxicating beverages; liability of intoxicated person

CHAPTER 446 CONSTRUCTION OF STATUTES

446.070 Penalty no bar to civil recovery

DETERMINATION OF DEATH

446.400 Determination of death; minimal conditions to be met

CHAPTER 452 VENUE AND CHANGE OF VENUE

ORIGINAL VENUE IN CIVIL ACTIONS

- 452.450 Where tort or contract action against corporation must be brought
- Where action against common carrier upon contract to carry property or for tort must be brought
- 452.460 Where action for injury to person, property or character must be brought

CHAPTER 454 MISCELLANEOUS CIVIL PRACTICE PROVISIONS

- 454.040 Trespass, joint or several damages for
- 454.210 Personal jurisdiction of courts over nonresident; process, how served; fee; venue
- 454.210 Personal jurisdiction of courts over nonresident; process, how served; fee; venue

CHAPTER 500 GENERAL PROVISIONS

500.080 Definitions for Kentucky Penal Code

CHAPTER 503 GENERAL PRINCIPLES OF JUSTIFICATION

- 503.050 Use of physical force in self-protection; admissibility of evidence of prior acts of domestic violence and abuse
- 503.055 Use of defensive force regarding dwelling, residence, or occupied vehicle; exceptions
- 503.060 Improper use of physical force in self-protection
- 503.070 Protection of another
- 503.080 Protection of property
- 503.085 Justification and criminal and civil immunity for use of permitted force; exceptions
- 503.120 Justification; general provisions

Table of Laws and Rules

Table of Cases

Index