

# Table of Contents

## CHAPTER 1. INTRODUCTORY

- § 1:1 Why separate courts of law and equity?
- § 1:2 The ancient judicial writ
- § 1:3 The jury of inquest
- § 1:4 The insufficiencies of the judicial writs
- § 1:5 The necessity of petition to the chancellor
- § 1:6 The original principles upon which the chancellors acted
- § 1:7 The characteristic differences in the development of the procedure in the two courts
- § 1:8 The pleadings in chancery
- § 1:9 Two important special features: The bill of discovery and the decree *in personam*
- § 1:10 Early colonial courts
- § 1:11 The establishment of chancery in the colonies
- § 1:12 Early favorable conditions in Mississippi
- § 1:13 Our first Constitution provided for a separate court of chancery
- § 1:14 Chancellor Kent of New York
- § 1:15 The Constitution of 1832
- § 1:16 Robert A. Hill and the Constitution of 1868–9
- § 1:17 The Constitution of 1890
- § 1:18 Legislation

## CHAPTER 2. JURISDICTION

- § 2:1 The court must have jurisdiction of the subject matter
- § 2:2 Jurisdiction of the subject matter cannot be conferred by consent
- § 2:3 Substantive jurisdiction is a matter of ancient resort and current legislation
- § 2:4 Some of the subjects of equity jurisdiction
- § 2:5 A partial listing of subject matter jurisdiction in the chancery court
- § 2:6 Determining subject matter jurisdiction
- § 2:7 Subject matter jurisdiction
- § 2:8 The importance of the preservation of jurisdictional lines
- § 2:9 Priority jurisdiction
- § 2:10 Personal jurisdiction
- § 2:11 *Forum non conveniens*
- § 2:12 Equity administers complete relief and requires all persons interested to be made parties
- § 2:13 The manner of conferring jurisdiction over the parties
- § 2:14 Jurisdiction is determined by the pleadings
- § 2:15 Jurisdiction is limited by the pleadings

- § 2:16 Jurisdiction must be exercised in conformity to fundamental principles of procedure
- § 2:17 The court of equity is a court of conscience
- § 2:18 Laches
- § 2:19 The maxims
- § 2:20 Equity will not suffer a wrong without a remedy
- § 2:21 Equity delights to do complete justice and not by halves
- § 2:22 Equity acts upon the person
- § 2:23 Equity acts specifically and not by way of compensation
- § 2:24 Equity looks to the intent and will regard substance rather than form
- § 2:25 Equity follows the law
- § 2:26 Equity aids the vigilant and not those who slumber on their rights
- § 2:27 He who comes into equity must come with clean hands
- § 2:28 He who seeks equity must do equity
- § 2:29 When parties are disabled, equity will act for them
- § 2:30 Courts of equity will not tolerate interference with their orders, nor with their officers in the enforcement thereof
- § 2:31 No person bound to act for another can act for himself
- § 2:32 No one should be condemned without a legal chance to be heard
- § 2:33 Tax appeals

### **CHAPTER 3. THE COURT, ITS TERMS AND OFFICERS**

- § 3:1 In our state, permanency of institution has been the general policy with reference to courts
- § 3:2 The county is the judicial unit
- § 3:3 Court terms
- § 3:4 Business in vacation
- § 3:5 The chancellor, his qualifications, and recusal
- § 3:6 The legal standard for recusal
- § 3:7 The duty of the chancellor to hear fully
- § 3:8 Justice shall be administered without delay
- § 3:9 The duty of the chancellor as to a businesslike administration
- § 3:10 The administration of the oath
- § 3:11 The duty respecting good order
- § 3:12 The duty to hear patiently and courteously
- § 3:13 The duty to repress gross or willful wrongs
- § 3:14 The family master
- § 3:15 The attorney
- § 3:16 The duties of the attorney
- § 3:17 The court administrator
- § 3:18 The mediator
- § 3:19 The clerk and his duties
- § 3:20 Signing the minutes
- § 3:21 Electronic filing and transmittal of documents

## TABLE OF CONTENTS

- § 3:22 The sheriff and his duties
- § 3:23 The official court reporter
- § 3:24 The compensation for the court reporter and all other regular officers of the court is fixed by statute

## CHAPTER 4. PARTIES

- § 4:1 Parties, a primary procedural question
- § 4:2 The governing principles
- § 4:3 Statement of the general rule
- § 4:4 What interest is required
- § 4:5 What is meant by subject matter of a civil action
- § 4:6 The property involved is not always the subject matter of the action
- § 4:7 Strict adherence to rule is not always required
- § 4:8 The two classes of parties
- § 4:9 Necessary parties—Proper parties
- § 4:10 Relaxation of the rule as to proper parties
- § 4:11 Proper general practice as to parties
- § 4:12 Cases must be examined in the light of the actual facts
- § 4:13 Actions for specific performance of contracts
- § 4:14 Actions for accounting
- § 4:15 Our law on parties is the same as the general law on the subject
- § 4:16 Who may sue in equity
- § 4:17 Actions are generally by the real parties in interest
- § 4:18 Representative civil action
- § 4:19 Class actions
- § 4:20 Civil actions concerning property of decedents
- § 4:21 Where a decedent was mortgagee
- § 4:22 The plaintiff

## CHAPTER 5. VENUE

- § 5:1 Venue is controlled by statute
- § 5:2 Property actions—Actions *in personam*
- § 5:3 Claims respecting property
- § 5:4 Actual residence as against temporary residence
- § 5:5 Improper venue
- § 5:6 Objections to venue
- § 5:7 Change of venue in jury cases

## CHAPTER 6. THE COMPLAINT

- § 6:1 The complaint; the initial pleading
- § 6:2 The ancient bill and the present practice
- § 6:3 The three essential parts
- § 6:4 The caption, paragraphs, and demand for relief
- § 6:5 Directness and positiveness
- § 6:6 Charging fraud
- § 6:7 Interrogatories and requests for admissions

- § 6:8 The prayer
- § 6:9 The special prayer for relief
- § 6:10 The general prayer
- § 6:11 Subscribing and verifying the pleading
- § 6:12 Exhibits to pleadings
- § 6:13 Exhibits prevail over allegation
- § 6:14 The exhibits must be actually filed or annexed
- § 6:15 Rules respecting complaints are simple and rational
- § 6:16 Scandal and impertinence
- § 6:17 What is not scandalous or impertinent
- § 6:18 Filing and timely serving the complaint
- § 6:19 The Rule 12(b)(6) motion

## CHAPTER 7. THE SUMMONS

- § 7:1 The summons; the original process
- § 7:2 Service of process is essential to jurisdiction
- § 7:3 Formal requisites
- § 7:4 When issued
- § 7:5 By whom served
- § 7:6 How served—Service on individuals
- § 7:7 Service on infants and persons *non compos mentis*
- § 7:8 Service on corporations or governmental entities
- § 7:9 The return
- § 7:10 Due service and return jurisdictional as to infants
- § 7:11 Amendment of return
- § 7:12 Summons by publication
- § 7:13 Requirements of publication statutes must be strictly observed
- § 7:14 Mailing copy of notice
- § 7:15 Proof of publication
- § 7:16 No personal judgment on summons by publication
- § 7:17 Alternative service on persons outside the state by certified mail
- § 7:18 Effect of non-compliance with the rule respecting service and return of summons
- § 7:19 Effect of appearance for purpose of objecting to service or the return
- § 7:20 When appearance does not confer future jurisdiction
- § 7:21 Appearance after judgment on defective summons
- § 7:22 Collateral attack
- § 7:23 How return shown to be untrue
- § 7:24 Effect on judgment when some of the defendants not served
- § 7:25 The service of procedural notices
- § 7:26 Notice in adoption proceedings

## CHAPTER 8. APPEARANCE

- § 8:1 Personal appearance ordinarily not necessary
- § 8:2 Appearance by waiver of service
- § 8:3 Appearance through an attorney

## TABLE OF CONTENTS

- § 8:4 Attorney cannot appear for infants not served
- § 8:5 Appearance *in propria persona* or *pro se*
- § 8:6 Appearing *gratis*
- § 8:7 Rules respecting appearance same as those at law
- § 8:8 Appearance in the context of default judgments

## CHAPTER 9. TAKING A COMPLAINT AS CONFESSED—DEFAULT JUDGMENTS

- § 9:1 Judgment *pro confesso* and default judgments
- § 9:2 Entry of default
- § 9:3 Obtaining a default judgment
- § 9:4 Setting aside the entry of default or a default judgment
- § 9:5 Damages in cases of default

## CHAPTER 10. DISCLAIMERS

- § 10:1 Office of the disclaimer

## CHAPTER 11. STEPS SOMETIMES TAKEN PRELIMINARY TO DEFENSE

- § 11:1 The motion for security for costs and costs deposit
- § 11:2 Manner of presenting motion for security for costs
- § 11:3 The order for costs and its effect
- § 11:4 When the motion must be made
- § 11:5 How security is given—Who is not required to give
- § 11:6 Taxing of costs
- § 11:7 The bill of particulars
- § 11:8 The motion to strike out
- § 11:9 Further time to answer
- § 11:10 What constitutes good cause for further time

## CHAPTER 12. ANSWERS

- § 12:1 The features of an answer
- § 12:2 Answer not required in certain cases
- § 12:3 When the answer is due
- § 12:4 Affirmative defenses

## CHAPTER 13. COUNTERCLAIMS AND CROSS-CLAIMS

- § 13:1 The principles underlying the counterclaims and cross-claims
- § 13:2 Third-party practice

## CHAPTER 14. AMENDMENTS

- § 14:1 The principles underlying the allowance of amendments
- § 14:2 The current rule on amendments
- § 14:3 Amendments are liberally allowed
- § 14:4 Inexcusable negligence precludes an application to amend

- § 14:5 Amendments largely within the discretion of the court
- § 14:6 Waiver of amendment
- § 14:7 Amendments to conform to proof
- § 14:8 The right to make new answer after amendment
- § 14:9 Limitation of actions: relation-back of amendments under Rule 15(c)

## **CHAPTER 15. MOTIONS**

- § 15:1 The general principle of the motion
- § 15:2 The office of a motion
- § 15:3 The motion docket
- § 15:4 The motion must be in writing—Its form and content
- § 15:5 Brevity—Supporting affidavits
- § 15:6 Notice—Time of service
- § 15:7 Notice of the motion—Service
- § 15:8 When motion must be made—Waiver
- § 15:9 Hearings on motions

## **CHAPTER 16. INTERLOCUTORY PETITIONS AND MOTIONS**

- § 16:1 Interlocutory petitions or motions defined
- § 16:2 The contents of a petition or motion—Notice—Hearing
- § 16:3 The motion to intervene
- § 16:4 Proceedings under a petition or a motion to intervene
- § 16:5 The motion of revivor or for substitution of parties

## **CHAPTER 17. INTERPLEADER**

- § 17:1 Three classes of complaints
- § 17:2 The principle of interpleader
- § 17:3 The historical and modern principles of interpleader

## **CHAPTER 18. COMPLAINT FOR DISCOVERY**

- § 18:1 The complaint for discovery
- § 18:2 Modern use of the complaint for discovery
- § 18:3 Insufficient complaint for discovery
- § 18:4 Answers to the complaint for discovery

## **CHAPTER 19. INJUNCTIONS**

- § 19:1 Actions for extraordinary relief
- § 19:2 The basis of injunction
- § 19:3 The general principles upon which injunction will issue
- § 19:4 The threatened injury must be substantial and irreparable
- § 19:5 Injunction ordinarily draws entire case into equity
- § 19:6 Injunctions to stay proceedings at law
- § 19:7 Injunctions against actions in a foreign jurisdiction
- § 19:8 Prevention of a multiplicity of actions
- § 19:9 Enjoining judgments

## TABLE OF CONTENTS

§ 19:10	Injunction will not issue if it is an inadequate remedy
§ 19:11	The classes of injunction
§ 19:12	temporary restraining order
§ 19:13	The preliminary injunction
§ 19:14	The permanent injunction
§ 19:15	Requisites of complaint for injunction
§ 19:16	The issuance of the injunction or temporary restraining order
§ 19:17	Security is essential to a preliminary injunction or temporary restraining order
§ 19:18	The writ of injunction
§ 19:19	Enforcing obedience to the writ
§ 19:20	Motions to dissolve or modify injunctions and temporary restraining orders
§ 19:21	Motions to dissolve may be separate or included with the answer
§ 19:22	Hearing the motion to dissolve
§ 19:23	The hearing on the motion to dissolve may be final
§ 19:24	Many considerations influence the chancellor on motions to dissolve
§ 19:25	Final dismissal
§ 19:26	Damages on injunctions to stay judgments at law
§ 19:27	The statutes are self-executing
§ 19:28	Statutory damages not recoverable by a stranger to the judgment
§ 19:29	Damages on an injunction to stay sales under deeds of trust
§ 19:30	Suggestion of damages required in writing in cases not covered by the statutory damages
§ 19:31	Damages may be recovered in a separate action
§ 19:32	Estimation of damages and attorney's fees; limitation; injunction bond rule
§ 19:33	Amount of attorney's fees in the sound discretion of the chancellor

## CHAPTER 20. RECEIVERS

§ 20:1	The object of the appointment of a receiver
§ 20:2	The general principles upon which the power is exercised
§ 20:3	Statutes conferring enlarged jurisdiction
§ 20:4	Illustrative cases
§ 20:5	There must be a pending suit
§ 20:6	Notice of application must be given—Exception
§ 20:7	Receiver will not be appointed except in a clearly proper case
§ 20:8	Bond may be accepted in lieu of receiver
§ 20:9	Who may appoint and who may be appointed receiver
§ 20:10	The judgment of appointment
§ 20:11	Receiver is subject to orders of the court or chancellor
§ 20:12	The effect of a judgment of receivership
§ 20:13	Procedure in general receivership
§ 20:14	Claims against the estate—Sales of property—Administrative matters

- § 20:15 Removal or discharge of a receiver
- § 20:16 Inventories and accounts
- § 20:17 Compensation of receivers

## **CHAPTER 21. ATTACHMENTS IN CHANCERY AGAINST NONRESIDENTS**

- § 21:1 The statute
- § 21:2 Requisites to jurisdiction
- § 21:3 Who is a nonresident?
- § 21:4 Nature of the demands enforceable by attachments in chancery
- § 21:5 Procedure in attachment actions for levy on land and publication for defendant
- § 21:6 No personal judgment without personal jurisdiction
- § 21:7 Security required before execution of the judgment

## **CHAPTER 22. SEQUESTRATION**

- § 22:1 Present use of sequestration as compared with the ancient practice

## **CHAPTER 23. NE EXEAT**

- § 23:1 When the writ of *ne exeat* is available
- § 23:2 *Ne exeat* is issued with great caution
- § 23:3 Manner of issuance and proceedings thereunder
- § 23:4 Is the writ and the procedure in *ne exeat* constitutional?

## **CHAPTER 24. CONVEYANCES TO DEFRAUD CREDITORS**

- § 24:1 Uniform Fraudulent Transfer Act
- § 24:2 Purpose of the laws
- § 24:3 History and application of the laws
- § 24:4 Requisites of the complaint
- § 24:5 Parties
- § 24:6 What is necessary to sustain the action
- § 24:7 Complaint—Requirements; description of the property
- § 24:8 —Filing; priorities
- § 24:9 Statute of limitations

## **CHAPTER 25. RELATED CIVIL ACTIONS**

- § 25:1 Election between two actions for the same subject matter
- § 25:2 The practice in equity on consolidation of civil actions
- § 25:3 Quasi-consolidation

## **CHAPTER 26. TRANSFER OF ACTIONS**

- § 26:1 The power to transfer
- § 26:2 Reasons for the power
- § 26:3 The constitutional provision

## TABLE OF CONTENTS

- § 26:4 Responsibility of the trial judge respecting jurisdiction
- § 26:5 Exact meaning of the constitutional provision
- § 26:6 The statutes providing for transfer
- § 26:7 The duty of the trial judge to transfer
- § 26:8 Transfers should be made in doubtful cases
- § 26:9 A case is not to be re-transferred
- § 26:10 Equitable issues in the circuit court

## CHAPTER 27. TENDER AND DEPOSIT IN COURT

- § 27:1 The principles respecting tender—Illustrations
- § 27:2 Deposit in court
- § 27:3 When strict tender is not required
- § 27:4 The rule in equity is not always an arbitrary one
- § 27:5 Averments as to tender
- § 27:6 Payment into court and withdrawal of payment

## CHAPTER 28. LIS PENDENS

- § 28:1 The general doctrine as to *lis pendens*
- § 28:2 The statutes
- § 28:3 The scope and effect of the statute

## CHAPTER 29. GUARDIANS AD LITEM AND GUARDIANS GENERALLY

- § 29:1 The duty of the court with respect to persons under legal disability
- § 29:2 Minor's settlements
- § 29:3 Who may be appointed guardian ad litem
- § 29:4 Role of guardian ad litem
- § 29:5 Duties of guardian ad litem
- § 29:6 Circumstances necessitating the appointment of a guardian ad litem
- § 29:7 The guardian ad litem in youth court proceedings
- § 29:8 The chancellor need not defer to the findings of the guardian ad litem
- § 29:9 Substantive admissions against an infant are not allowed
- § 29:10 Fees and costs
- § 29:11 Guardians and conservators

## CHAPTER 30. DISMISSAL OF ACTIONS

- § 30:1 When and how a plaintiff may voluntarily dismiss
- § 30:2 How dismissals are made, costs, and reinstatement
- § 30:3 When involuntary dismissals may be ordered
- § 30:4 Dismissals on the court's own motion
- § 30:5 Dismissals for want of prosecution
- § 30:6 Dismissal with or without prejudice

## CHAPTER 31. THE TRIAL

- § 31:1 The trial in equity is equivalent to the trial at law

- § 31:2 When equity cases are triable
- § 31:3 The case must be ready for trial as to all parties
- § 31:4 Trials and hearings; orders in chambers
- § 31:5 Hearing of default judgments
- § 31:6 There is ordinarily only one final hearing
- § 31:7 Postponements and continuances
- § 31:8 Continuances are not favored
- § 31:9 Entering upon the trial
- § 31:10 The rule of sequestration
- § 31:11 The duty to open and the burden of proof
- § 31:12 Allegations and proof must correspond
- § 31:13 Relief not requested in the pleadings may be granted
- § 31:14 Parties are bound by the admissions of their pleadings
- § 31:15 Importance of careful preparation of the pleadings is emphasized
- § 31:16 Sworn answers and corroborating witnesses
- § 31:17 Pleadings judicially noticed
- § 31:18 The rules of evidence are the same in equity and at law
- § 31:19 General rules as to competency of witnesses
- § 31:20 Lay witness opinion testimony and expert witness testimony
- § 31:21 Order of introduction of evidence
- § 31:22 Rebuttal—*Prima facie* case—Burden of proceeding
- § 31:23 Leading questions—Cross-examination
- § 31:24 Redirect and rebuttal evidence
- § 31:25 Objections to evidence
- § 31:26 The use of affidavits as a substitute for trial testimony
- § 31:27 Repeating objections and continuing objections
- § 31:28 Proffer of excluded evidence
- § 31:29 General objections to evidence are not sufficient
- § 31:30 Reserving a ruling on objection to evidence
- § 31:31 Manner of obtaining ruling when ruling has been reserved
- § 31:32 Motions to exclude evidence
- § 31:33 The proper dispositive motion in chancery court
- § 31:34 Who may raise objections
- § 31:35 Who may plead personal privileges
- § 31:36 Weighing the proof
- § 31:37 The preponderance of the evidence
- § 31:38 Cases where the proof must be clear and convincing or beyond a reasonable doubt
- § 31:39 Presumptions
- § 31:40 Weighing the proof in land title cases
- § 31:41 Plaintiff has no interest; death or separation from office
- § 31:42 The argument of counsel
- § 31:43 Argument should rarely be limited or interrupted
- § 31:44 Opinion of the court and statement of the grounds therefor
- § 31:45 Findings of fact
- § 31:46 Remanding the case for further proof
- § 31:47 The chancellor may call witnesses or propound interrogatories

## TABLE OF CONTENTS

§ 31:48 Jury in chancery court

## CHAPTER 32. MASTERS IN CHANCERY

- § 32:1 Historical origins of masters in chancery
- § 32:2 Masters appointed under Rule 53
- § 32:3 Qualifications
- § 32:4 When a matter may be referred to a master
- § 32:5 Proceedings before a master
- § 32:6 Objections to appointment of the master and proceedings before him
- § 32:7 Powers and duties of a master
- § 32:8 Statements of account
- § 32:9 Bond
- § 32:10 The master's report
- § 32:11 Objections to the master's report
- § 32:12 Standards of review
- § 32:13 Compensation of masters

## CHAPTER 33. THE JUDGMENT

- § 33:1 Judgment defined and classified—Must be in writing
- § 33:2 Temporary or interlocutory, final, and supplemental judgments
- § 33:3 Summary judgment
- § 33:4 Fundamental prerequisites to a valid judgment
- § 33:5 The theory of the action
- § 33:6 A final judgment should be complete
- § 33:7 Granting relief on conditions
- § 33:8 Judgment upon multiple claims or involving multiple parties
- § 33:9 Granting relief to a plaintiff against a co-plaintiff
- § 33:10 Consent judgments
- § 33:11 May there be a consent judgment against an infant defendant?
- § 33:12 Offers of judgment
- § 33:13 Ordinarily the state of facts at the institution of the action controls the judgment
- § 33:14 When a judgment becomes operative
- § 33:15 Judgments *nunc pro tunc*
- § 33:16 When and how a judgment is prepared and submitted
- § 33:17 Certainty in judgments
- § 33:18 The parts of a judgment
- § 33:19 Finality of judgments—*Res judicata* and collateral estoppel
- § 33:20 Void Judgments

## CHAPTER 34. CORRECTION OF OR RELIEF FROM JUDGMENTS

- § 34:1 Reopening and rehearing
- § 34:2 The current rules on new trials, correction, and relief from judgments

- § 34:3 Rule for relief from judgment
- § 34:4 The motion for relief from judgment for newly discovered evidence
- § 34:5 Motion for relief from judgment not favored
- § 34:6 Correction of clerical mistakes or entry of unauthorized judgment
- § 34:7 Parties to the motion for relief from judgment
- § 34:8 Independent action for relief from judgment
- § 34:9 Procedure on motion for relief from judgment
- § 34:10 Relief from judgment by independent action
- § 34:11 The court acts upon the intrinsic equity of the particular case

## **CHAPTER 35. ENFORCEMENT OF JUDGMENTS**

- § 35:1 The court has at all times the power to enforce its judgments
- § 35:2 Statutes and rule on execution
- § 35:3 Judicial sales
- § 35:4 Who may be appointed commissioner and who may not purchase
- § 35:5 Sales must be public—Powers of commissioner—Confirmation
- § 35:6 Report of sale and enforcement of purchase
- § 35:7 Objections to sale—Bond to prevent confirmation
- § 35:8 Sales must be fair—Refusing confirmation
- § 35:9 Defenses to the action not allowed on motions to confirm
- § 35:10 When motions to confirm should be made
- § 35:11 Reports and confirmations in vacation
- § 35:12 Judgment for balance due after sale
- § 35:13 Enforcing judgments for personal property
- § 35:14 When personal performance of a judgment may be ordered
- § 35:15 Contempts—Statutes
- § 35:16 The classes of contempts
- § 35:17 Procedure in contempt
- § 35:18 All judgments must be obeyed unless absolutely void
- § 35:19 Defenses in contempt cases
- § 35:20 The sentence in contempt and appeals

## **CHAPTER 36. APPEALS AND STANDARDS OF REVIEW**

- § 36:1 The Supreme Court has no original jurisdiction
- § 36:2 Rules governing appeals
- § 36:3 Chancellor's findings of fact not reversible unless manifestly wrong
- § 36:4 The rule as to chancellor's findings on questions of law
- § 36:5 Appeals determined solely on the record made in the trial court
- § 36:6 Questions not raised in the trial court are not considered on appeal
- § 36:7 Final judgment rule

## TABLE OF CONTENTS

- § 36:8 Interlocutory appeals
- § 36:9 Appeals must be taken within the time allowed
- § 36:10 What jurisdiction remains in the trial court
- § 36:11 Appeal from administrative agency to chancery court

## CHAPTER 37. PROCEEDINGS AFTER REMAND

- § 37:1 The mandate and its effect
- § 37:2 Mandate is not entered on the minutes of the trial court
- § 37:3 The effect of a judgment of affirmance
- § 37:4 Damages on appeal
- § 37:5 The chancery court enforces the final judgment of the appellate court
- § 37:6 Final judgment of the appellate court must be accepted by the trial court as final
- § 37:7 Effect of a reversal and remand
- § 37:8 Amendments after reversal and remand
- § 37:9 Doctrine of the law of the case and exceptions
- § 37:10 Amendments after remand

## CHAPTER 38. DOMESTIC RELATIONS

- § 38:1 Divorce
- § 38:2 Jurisdiction and venue
- § 38:3 Procedural rules
- § 38:4 Grounds for divorce
- § 38:5 Habitual cruel and inhuman treatment
- § 38:6 Defenses to fault-based grounds for divorce
- § 38:7 Irreconcilable differences
- § 38:8 Revocation of divorce
- § 38:9 Effect of the death of a spouse on a divorce proceeding
- § 38:10 Equitable distribution
- § 38:11 General principles of equitable distribution
- § 38:12 Alimony
- § 38:13 Types of alimony
- § 38:14 General principles regarding alimony
- § 38:15 Child custody
- § 38:16 General principles regarding child custody
- § 38:17 Modification of child custody decrees
- § 38:18 The natural parent presumption
- § 38:19 The Uniform Child Custody Jurisdiction and Enforcement Act
- § 38:20 Paternity
- § 38:21 Child support
- § 38:22 Calculating child support
- § 38:23 The child support withholding statute
- § 38:24 Modification of child support decrees generally
- § 38:25 General principles regarding modification of child support
- § 38:26 Expedited modification of child support decrees
- § 38:27 Claiming child as a dependent for tax purposes

- § 38:28 Enforcement of child support orders
- § 38:29 Enforcement of interstate child support orders
- § 38:30 Visitation
- § 38:31 Grandparents' visitation
- § 38:32 Adoption
- § 38:33 Who may adopt
- § 38:34 The petition for adoption
- § 38:35 Jurisdiction and venue
- § 38:36 Parties to the adoption proceeding
- § 38:37 Contested adoptions
- § 38:38 Investigation, interlocutory decree and appeal
- § 38:39 The waiting period
- § 38:40 The final decree
- § 38:41 Registration of foreign adoptions
- § 38:42 Termination of parental rights
- § 38:43 Jurisdiction and venue
- § 38:44 Voluntary termination of parental rights
- § 38:45 Involuntary termination of parental rights
- § 38:46 Grounds for termination of parental rights
- § 38:47 Procedures
- § 38:48 Right of indigent parents to appointed counsel
- § 38:49 Separate maintenance
- § 38:50 Annulment
- § 38:51 Attorney's fees
- § 38:52 Appeals
- § 38:53 The Rule 81 summons
- § 38:54 Same-sex couples
- § 38:55 Uniform Interstate Enforcement of Domestic Violence Protection Orders Act
- § 38:56 Protection from Domestic Abuse Law
- § 38:57 Tender years Rule in divorce proceedings

## **CHAPTER 39. COMMENTARY ON SUBJECT MATTER JURISDICTION**

- § 39:1 The rule regarding subject matter jurisdiction should be changed
- § 39:2 The "clean-up" rule has blurred the distinction between legal and equity jurisdiction

## **CHAPTER 40. FRAUD AND THE STATUTE OF FRAUDS**

- § 40:1 Fraud claims
- § 40:2 Statute of frauds
- § 40:3 Statute of frauds—Conveyances of land

## **CHAPTER 41. RESTITUTION, REFORMATION, ESTOPPEL, AND EQUITY JURISDICTION**

- § 41:1 The remedy of restitution

## TABLE OF CONTENTS

- § 41:2 Assumpsit and the origins of restitution
- § 41:3 Restitution and equity jurisdiction
- § 41:4 Legal restitutionary remedies
- § 41:5 Unjust enrichment
- § 41:6 Quantum meruit
- § 41:7 The equitable accounting
- § 41:8 An accounting to obtain discovery
- § 41:9 Where accounts are extremely complex or mutual
- § 41:10 Fiduciaries are required to account for profits
- § 41:11 The constructive and resulting trusts
- § 41:12 Reformation
- § 41:13 Estoppel
- § 41:14 Equitable liens

## CHAPTER 42. BILL OF PEACE

- § 42:1 The bill of peace still exists; remedy
- § 42:2 The bill of peace and punitive damages

## CHAPTER 43. ARBITRATION

- § 43:1 Arbitration
- § 43:2 Validity of arbitration agreement
- § 43:3 Scope of arbitration agreements
- § 43:4 Defenses to arbitration
- § 43:5 Right of nonsignatories to arbitration agreement
- § 43:6 Waiver of right to arbitrate
- § 43:7 Vacating arbitration award
- § 43:8 Appeals
- § 43:9 Discovery deadline and practice in chancery court

## CHAPTER 44. PROPERTY LAW

- § 44:1 Estates in property
- § 44:2 —The fees simple
- § 44:3 —The fee tail
- § 44:4 —The life estate
- § 44:5 Conveyance of land
- § 44:6 Actions involving title to lands
- § 44:7 Actions to cancel clouds on title
- § 44:8 Adverse possession
- § 44:9 —The statute
- § 44:10 —The elements
- § 44:11 ——Possession
- § 44:12 ——Under claim of ownership
- § 44:13 ——Actual or hostile
- § 44:14 ——Open, notorious, and visible
- § 44:15 ——Continuous and uninterrupted for a period of ten years
- § 44:16 ——Exclusive
- § 44:17 ——Peaceful
- § 44:18 —Claiming adverse possession against a cotenant

- § 44:19 —Claiming adverse possession through agents
- § 44:20 —Reclaiming land through adverse possession
- § 44:21 Easements
- § 44:22 —Creation
- § 44:23 —Express
- § 44:24 —Implied
- § 44:25 —Prescriptive
- § 44:26 —Statutory
- § 44:27 —Interpretation and construction
- § 44:28 —Scope
- § 44:29 —Abandonment
- § 44:30 —Money damages for interference with an easement
- § 44:31 Foreclosure—Mortgages
- § 44:32 —Vendors' liens
- § 44:33 —Several holders of parts of the same debt
- § 44:34 —Actions to redeem
- § 44:35 Reformation of deeds
- § 44:36 Rescission of land contracts
- § 44:37 Partition of real property
- § 44:38 Homeowners associations

## **CHAPTER 45. OTHER CASES OF INTEREST**

- § 45:1 Mississippi Slayer's Statute
- § 45:2 The wrongful death statute controls over testamentary provisions
- § 45:3 Wrongful death litigation and the role of the chancery court
- § 45:4 Mandatory reporting of child abuse
- § 45:5 Joinder
- § 45:6 A chose of action is subject to a writ of execution
- § 45:7 Shareholder derivative actions
- § 45:8 Dead bodies
- § 45:9 Confidential relationship among spouses does not create presumption of undue influence
- § 45:10 Tolling agreement void

### **Table of Laws and Rules**

### **Table of Cases**

### **Index**