PART I. PRACTICE AND FORMS

Volume 1

CHAPTER 1. EVALUATING PLAINTIFF'S CASE

I. INITIAL HANDLING BY PLAINTIFF'S ATTORNEY

£ 1.1	In managed
§ 1:1	In general
§ 1:2	Duty to investigate
§ 1:3	Defendant's duty to injured persons
§ 1:4	Conducting the meeting with the prospective plaintiff
§ 1:5	Making the preliminary investigation
§ 1:6	—Contacting defendant's present and former employees
§ 1:7	Evaluating the claim
§ 1:8	—Declining employment
§ 1:9	—Accepting employment
§ 1:10	Whom to sue
§ 1:10.10	Piercing the corporate veil
§ 1:11	How to determine where to file suit
§ 1:12	—Personal jurisdiction
§ 1:12.10	—Jurisdiction based on Web site
§ 1:13	—Venue
§ 1:13.50	—Federal subject matter jurisdiction
§ 1:14	—Requirements for federal diversity jurisdiction
§ 1:14.10	—Agreement as to jurisdictional amount
§ 1:14.20	Test to determine jurisdictional amount
§ 1:14.30	Test to determine domicile

II. PREPARING THE COMPLAINT

§	1:15	General	gu	idelines	for	the	complaint
e	1 1 5 1 0	T.T.	1	1.			

§ 1:16	How to plead the	introductory	paragraphs	of the
	complaint			

III. FORMS

§ 1:17	Client	interview	checklist	general	informat	ion
--------	--------	-----------	-----------	---------	----------	-----

- § 1:18 Letter declining employment
- § 1:19 Contingent fee agreement
- § 1:20 Federal diversity allegations
- § 1:21 Introductory paragraphs state court complaint or petition
- § 1:22 Assault and battery by employee—Complaint

CHAPTER 2. HOW TO EVALUATE AND PLEAD A CAUSE OF ACTION FOR INJURIES INSIDE THE BUILDING

I. ACTS OF EMPLOYEES AND THIRD PARTIES

8 2.1	Assault and hattery by employee
0 7 1	ASSAULT AND DALLERY DV EMDIOVEE

- § 2:1.50 —Massage business
- § 2:2 Assault and battery by third party
- § 2:3 Customer injured by fleeing shoplifter
- § 2:4 Lack of crowd control
- § 2:5 The tort of negligent hiring

II. DISPLAYS AND FIXTURES

- § 2:6 Falling display
- § 2:7 Display or fixture protruding into walkway
- § 2:7.10 Wet floor sign

III. DOORS, WINDOWS, AND VESTIBULES

- § 2:8 Malfunction of door
- § 2:8.10 Automatic sliding door
- § 2:9 Walking into glass window or door
- § 2:9.50 Windows and screens
- § 2:10 Water in vestibule
- § 2:11 Fall over floor mat in vestibule area

IV. ESCALATORS AND ELEVATORS

- § 2:12 In general
- § 2:13 Escalator malfunction
- § 2:14 Escalator stop button

TABLE OF CONTENTS

- § 2:15 Falling elevator
- § 2:16 Elevator failing to level with the floor

V. FALSE ARREST, FALSE IMPRISONMENT AND MALICIOUS PROSECUTION

- § 2:17 False arrest and imprisonment
- § 2:18 Malicious prosecution

VI. FIRE

- § 2:19 In general
- § 2:20 Lack of fire protection-sprinklers
- § 2:21 Lack of warnings-alarms
- § 2:22 Improper building design

VII. FLOORS

- § 2:23 Slip and fall due to improper floor treatment
- § 2:24 Slip and fall on foreign substances
- § 2:24.50 Actual or constructive notice
- § 2:25 Slip and fall on liquids
- § 2:25.10 Tracked in snow
- § 2:25.20 Notice provided by appearance of foreign substance
- § 2:26 Uneven surfaces
- § 2:27 Improper lighting
- § 2:27.10 Employee nearby

VIII. STAIRS

- § 2:28 Worn stairs
- § 2:29 Debris on stairs
- § 2:30 Slippery stairs
- § 2:31 Improper stair design

IX. FORMS

- § 2:32 Assault and battery by employee
- § 2:33 Injury to motel guest by third person
- § 2:34 Injury to store customer by third person
- § 2:35 Injury to customer exiting escalator
- § 2:36 Falling display—Res ipsa loquitur
- § 2:37 Fall over platform protruding into walkway
- § 2:38 Injury in revolving door
- § 2:39 Injury from automatic door—Res ipsa loquitur
- § 2:40 Walking into glass wall
- § 2:41 Water in vestibule

§ 2:42	Fall over floormat in vestibule
§ 2:43	Unexpected movement of an escalator
§ 2:44	Stop button pushed
§ 2:45	Falling elevator
§ 2:46	Elevator failing to level with floor
§ 2:47	False arrest
§ 2:48	Malicious prosecution
§ 2:49	Lack of fire protection—Sprinklers
§ 2:50	Lack of warnings—Alarms
§ 2:51	Improper building design—Exit doors
§ 2:52	Use of improper floor treatment on floor
§ 2:53	Foreign substance on floor
§ 2:54	Slip and fall on wet floor
§ 2:55	Uneven surface in aisle
§ 2:56	Improper lighting
§ 2:57	Fall on worn stair
§ 2:58	Debris on stairs
§ 2:59	Fall due to slippery stair
§ 2:60	Improper design of stairway
§ 2:61	Negligent hiring and/or negligent retention

CHAPTER 2A. GARAGE LIABILITY

I. SCOPE

§ 2A:1 In general

II. PREMISES

§ 2A:2	In general
§ 2A:3	Invitee or licensee
§ 2A:4	Oil on floor in back shop
§ 2A:5	Foreign substance on floor, in waiting room
§ 2A:5.50	Fuel spillage
§ 2A:6	Act of employee

III TIRES

§ 2A:7	In general
§ 2A:8	Belt/tread separations
§ 2A:9	Improper repair
§ 2A:10	Bead damage
§ 2A:11	Negligent inspection

IV. FORMS

§ 2A:12 Slip-and-fall in the back shop

§ 2A:13	Spill in waiting room
§ 2A:14	Back over from back shop
§ 2A:15	Puncture repair checklist
§ 2A:16	Improper repair
§ 2A:17	Bead damage
§ 2A:18	Failure to properly inspect

CHAPTER 2B. NURSING HOMES

§	2B:1	Introduction
§	2B:2	Nursing home operator's duty to maintain the premises
§	2B:3	Common law negligence duties and liabilities regarding nursing home residents
§	2B:4	—Res lpsa loquitor
§	2B:5	—Negligence per se
§	2B:6	Classification of claims against nursing home regarding medical malpractice or simple negligence
§	2B:7	Liability of individual nursing home officers and/or administrators
§	2B:8	Statutory liability
§	2B:9	Issues of fiduciary duty regarding nursing home operators
§	2B:10	Breach of contract claims against nursing home operators
§	2B:11	Defenses available to nursing home operator
§	2B:12	Nursing home operators liability for governmental fines and/or penalties

FORMS

Negligence action for injuries against nursing home
operator
Breach of contract action for injuries against nursing home operator
Statutory liability actions for injuries against nursing home operator
Affirmative defenses regarding actions for injuries as against nursing home operators

CHAPTER 3. HOW TO PLEAD A CAUSE OF ACTION FOR INJURIES OUTSIDE THE BUILDING

I. INTRODUCTION

§ 3:1 In general

II. PARKING LOTS

§ 3:2	Snow and/or ice
§ 3:3	Falls over parking bumpers
§ 3:4	Inadequate lighting
§ 3:5	Uneven surface, holes and cracks
§ 3:5.10	Parking lots and roadways

III. SIDEWALKS

§ 3:6	Holes, cracks, and uneven surfaces
§ 3:6.10	One-inch height difference between two sections of
	pavement
§ 3:6.20	Sidewalk lip not dangerous condition
§ 3:6.30	Constructive notice of loose brick and gap
§ 3:7	Snow and ice

IV. FORMS

§ 3:8	Fall on unnatural accumulation of ice
§ 3:9	Fall over parking bumper
§ 3:10	Inadequate lighting of parking lot
§ 3:11	Fall in hole in parking lot
§ 3:12	Fall on uneven sidewalk
§ 3:13	Unnatural accumulation of ice on sidewalk

CHAPTER 3A. INJURIES ON CRUISE SHIPS

I. IN GENERAL

§ 3A:1	Introduction
§ 3A:2	Jurisdiction
§ 3A:2.10	Canal as navigable waterway
§ 3A:2.20	Ticket limitation on filing suit
§ 3A:3	Considerations on where and how to sue
§ 3A:3.10	—Venue—Motion to dismiss
§ 3A:4	Removal
§ 3A:5	Rules of Procedure and Evidence
§ 3A:6	Applicable law on liability
§ 3A:6.10	Punitive damages allowed under maritime law
§ 3A:6.20	Loss-of-consortium damages under maritime law
§ 3A:6.30	No punitive damages on an unseaworthiness claim
§ 3A:6.40	Notice not required in maritime vicarious liability cases

§ 3A:6.40.1	Slip and fall notice required
§ 3A:6.50	An open and obvious danger does not bar
	maritime claim

II. FORMS

§ 3A:7	Notice of filing notice of removal (federal)
§ 3A:8	Notice of removal (federal)
§ 3A:9	Notice of removal when express ad damnum not stated (federal)
§ 3A:10	Notice of filing of removal (state)
§ 3A:11	Notice of removal (state)
§ 3A:12	Assault on ship (admiralty)
§ 3A:13	Fall on stairway (admiralty)
§ 3A:14	Fall due foreign object (admiralty)
§ 3A:15	Fall on threshold (federal, in rem)

CHAPTER 3B. INJURIES AT AMUSEMENT PARKS

I. INTRODUCTION

§ 3B:1 In general

II. DUTIES AND THEORIES OF LIABILITY

§ 3B:2	Standard of care
§ 3B:3	Ordinary care
§ 3B:4	Common carrier
§ 3B:5	Theories of liability

III. SPECIFIC INJURIES

§ 3B:6	Outdoor premises
§ 3B:7	Inside buildings
§ 3B:8	Acts of third parties

IV. DEFENSES

§ 3B:9	Assumption of risk
§ 3B:10	Contributory negligence
§ 3B:10.50	Safety procedures and warnings
§ 3B:11	Unexpected movement of a roller coaster
§ 3B:12	Unexpected sinking of boat on water ride (common carrier)
§ 3B:13	Motion for Judgment on the Pleadings
§ 3B:14	Failure to state a claim

§ 3B:15	Complaint based on strict liability
§ 3B:16	Injury to patron by third person
§ 3B:17	Injury due to patron by employee's failure to act

CHAPTER 3C. INJURIES IN AND AROUND NATIVE AMERICAN CASINOS

I. IN GENERAL

§ 3C:1	Introduction
§ 3C:2	History of tribal courts
§ 3C:3	Sovereign immunity and jurisdiction of tribal
	courts
§ 3C:3.10	Application to individual

II. TRIBAL GAMING

§ 3C:4 History of tribal gaming

III. LAWSUITS—IN GENERAL

§ 3C:5	Choice of law and jurisdictional issues relating to
	compacts and tribal gaming
§ 3C:5.10	Federal court diversity

IV. TORT CLAIMS, PREMISES LIABILITY ACTIONS, AND JURISDICTIONAL ISSUES UNDER TRIBAL-STATE COMPACTS

§ 3C:6	In general
§ 3C:6.10	Giving jurisdiction to state
§ 3C:7	Tribal law precedent—Injuries on or at casinos
§ 3C:8	Slip and fall
§ 3C:9	Injuries entering casinos
§ 3C:10	Failing objects
§ 3C:11	Insufficient lighting
§ 3C:12	Summary

V. FORMS

§ 3C:13	Motion to dismiss for lack of jurisdiction
§ 3C:14	Slip and fall on wet floor
§ 3C:15	Use of improper floor treatment on floor
§ 3C:16	Substance on floor
§ 3C:17	Injury from automatic door—Res ipsa loquitur
§ 3C:18	Fall in parking lot

§ 3C:19	Fall on uneven sidewalk
§ 3C:20	Improper lighting
§ 3C:21	Lack of fire protection—Sprinklers
§ 3C:22	Assault and battery by employee
§ 3C:23	False arrest
§ 3C:24	Injury to casino customer by third person

CHAPTER 3D. PREMISES LIABILITY AND THE FEDERAL TORT CLAIMS ACT

I. FEDERAL TORT CLAIMS ACT

§ 3D:1	Introduction of the Federal Tort Claims Act
§ 3D:2	Filing Claims Under Federal Tort Claim Act
§ 3D:3	When and where to file a claim
§ 3D:4	Who may file claim and what to include in claim
§ 3D:5	Decision by administrative agency and next steps
§ 3D:6	Filing suit in federal court
§ 3D:7	Exceptions to Federal Tort Immunity Act

II. PREMISES LIABILITY ACTIONS UNDER FEDERAL TORT CLAIMS ACT

§ 3D:8	In general
§ 3D:9	Discretionary function exception
§ 3D:10	Slip and fall
§ 3D:10.10	Application of State Statute, FTCA case
§ 3D:11	Ice, snow and rain
§ 3D:12	Defective chairs
§ 3D:13	Elevators or escalators
§ 3D:14	Defective emergency door
§ 3D:15	Uneven sidewalk

III. FORMS

§ 3D:16	Standard Form 95
§ 3D:17	Check list for death claim
§ 3D:18	Check list for personal injury claim
§ 3D:19	Check list for property damage claim
§ 3D:20	—Slip and fall
§ 3D:21	—Rain water in vestibule
§ 3D:22	—Injury due to defective chair
§ 3D:23	—Unexpected movement of an escalator

CHAPTER 3E. SOCIAL HOST LIABILITY

I. INTRODUCTION

§ 3E:1 In General § 3E:2 Scope

II. SOCIAL HOST SETTINGS

§ 3E:3	Fraternity/sorority
§ 3E:4	BYOB
§ 3E:4.10	Pool parties
§ 3E:5	Licensed business establishment
§ 3E:6	Tailgating
§ 3E:7	Company picnics
§ 3E:8	Complaint for injury to a pledge
§ 3E:9	Motion to Dismiss
§ 3E:10	Complaint based on voluntary assumption of a duty
§ 3E:11	Complaint—Hosting a BYOB Party
§ 3E:12	Complaint for supplying alcohol to another in a business establishment
§ 3E:13	Motion to Dismiss in state that has rejected Social Host liability
§ 3E:14	Complaint against tailgater based on negligence
§ 3E:15	Social Host liability for alcohol served at picnic

CHAPTER 3F. ZOOS AND ANIMAL PARKS

I. IN GENERAL

§ 3F:1	Introduction
§ 3F:2	Premises operator's absolute or strict liability for injuries from wild animals
§ 3F:3	Defenses to absolute or strict liability for injuries from wild animals
§ 3F:4	PremiseS operator's negligence based liability for injuries from wild animals
§ 3F:5	Defenses available in negligence actions
§ 3F:6	Premises Operator's Heightened Negligence Standard for Injuries from Wild Animals
§ 3F:7	Sovereign/governmental immunity for wild animal injuries when the premise operator is a governmenta unit
§ 3F:8	Zoo/animal park operator liability for injuries on land unrelated to wild animal attacks

II. FORMS

- § 3F:9 Absolute/strict liability action for injuries from wild animals
- § 3F:10 Negligence action for injuries from wild animals
- § 3F:11 Affirmative defenses regarding actions for injuries from wild animals

CHAPTER 3G. LIABILITY ISSUES RELATED TO FRATERNITIES

I. IN GENERAL

- § 3G:1 Introduction
- § 3G:2 Premises liability-based theories of recovery
- § 3G:3 Liability of local fraternity chapter for injuries to fraternity members or pledges for hazing-related injuries
- § 3G:4 Liability of local chapters for injuries to fraternity members or pledges as a result of voluntary drinking on fraternity premises
- § 3G:5 Liability of local chapters for injuries to third parties caused by chapter members or pledges
- § 3G:6 Liability of national fraternities for hazing-related injuries to local chapter members or pledges emanating from local chapter activities
- § 3G:7 Liability of national fraternities for injuries to third parties caused by chapter members or pledges
- § 3G:8 Defenses

II. FORMS

- § 3G:9 Action against a local chapter for injury to pledge
- § 3G:10 Action against national fraternity for injury to pledge at local chapter
- § 3G:11 Affirmative defenses regarding fraternity claims

CHAPTER 3H. INJURIES AT COLLEGES AND UNIVERSITIES

I. IN GENERAL

- § 3H:1 Introduction
- § 3H:2 The in loco parentis standard
- § 3H:3 Premises liability basis of liability
- § 3H:4 —Cases involving criminal acts of third parties
- § 3H:5 —Cases involving liability for conditions on the premises

§ 3H:6	—Cases involving student activities
§ 3H:7	Liability based on special relationship between college and student
§ 3H:8	Liability based upon an assumed duty of care
§ 3H:9	Breach of contract theory of liability
§ 3H:10	Liability based on fiduciary relationship
§ 3H:11	Defenses—Assumption of the risk
§ 3H:12	—Sovereign immunity
§ 3H:13	—Charitable immunity
§ 3H:14	—Hold harmless agreements

II. FORMS

§ 3H:15	Action against a college for injury to student based
	on special relationship
§ 3H:16	Action against a college for injury to student based
	on assumption of duty of care
§ 3H:17	Affirmative defenses

CHAPTER 3I. SCHOOL LIABILITY REGARDING STUDENT BULLYING AND HARASSMENT

I. IN GENERAL

§ 3I:1	Introduction
§ 3I:2	Negligence based theory of liability
§ 3I:3	Sovereign immunity defense to common law liability
§ 3I:4	42 U.S.C. § 1983 theory of liability
§ 3I:5	Title IX theory of liability

II. FORMS

§ 3I:6	Action against school board based on negligent
	supervising
§ 3I:7	Affirmative defense regarding negligence action against
	the school board
§ 3I:8	Action against school board based on Title IX violation

CHAPTER 3J. CONDOMINIUM ASSOCIATIONS

I. IN GENERAL

§ 3J:1 Introduction § 3J:2 Definitions

xviii

§ 3J:3	Premises Liability Theory Basis of Liability for Personal Injuries Against Condominium Associations
§ 3J:4	Effect of Liability for Personal Injuries Against Condominium Associations Based on Condominium Acts and Condominium Association Declarations, Bylaws, and Regulations
§ 3J:5	Liability for Condition of Common Elements
§ 3J:6	Liability for Criminal Acts of Third Parties
§ 3J:7	Liability for Domestic Animal Attacks
§ 3J:8	Liability of Condominium Associations to Unit Owners
	Concerning Duty to Maintain Common Elements
	Outside the Context of Personal Injuries

II. FORMS

§ 3J:9 Action Against a Condominium Association for Personal Injury Due to Defect on Common Elements § 3J:10 Condominium Association Affirmative Defenses to Action for Personal Injury Due to Defect on Common Elements

CHAPTER 3K. LIABILITY RELATED TO NATIONAL PARKS

I. IN GENERAL

- § 3K:1 Introduction
- § 3K:2 The Federal Tort Claims Act and Liability Thereunder
- § 3K:3 Discretionary Function Exception to Waiver of Sovereign Immunity

II. FORMS

- § 3K:4 Action Against the United States for Injury to National Park Visitor
- § 3K:5 Affirmative Defense of Sovereign Immunity per the Discretionary Function Exception

CHAPTER 3L. LIABILITY RELATED TO PREMISES OWNERS' RIGHT OF EXCLUSION

I. IN GENERAL

- § 3L:1 Introduction
- § 3L:2 The right of exclusion

§ 3L:3 The right of exclusion with malicious purpose
 § 3L:4 The right of exclusion from private businesses open to the public
 § 3L:5 The right of exclusion regarding public safety officials
 § 3L:6 The right of exclusion regarding pipelines and cable lines
 § 3L:7 The right of exclusion from shopping malls regarding constitutionally protected activity
 § 3L:8 The right of exclusion regarding organized labor related activity

II. FORM

§ 3L:9

§ 3L:10 Action against premises owner for tortious interference through exclusion from premises

Limits on methods of exclusion

CHAPTER 3M. RESTAURANT LIABILITY REGARDING FOOD

I. IN GENERAL

§ 3M:1	Introduction
§ 3M:2	General tests to determine liability
§ 3M:3	Application of the Majority Rule Consumer
	Expectation Test
§ 3M:4	Application of the Hybrid Test
§ 3M:5	Causation Issues—Expert testimony
§ 3M:6	Res ipsa loquitor

II. FORM

§ 3M:7 Action Against Restaurant for Negligence and Breach of Warranty

CHAPTER 3N. SWIMMING POOLS

I. IN GENERAL

Duties of swimming pool owners/operators towards
users
Particular swimming pool conditions or features
affecting liability
Open and obvious conditions
Duty or conduct affected by statutes or regulations
Liability related to activities around swimming pools
Issues regarding lifeguards

II. FORMS

§ 3N:7 Action Against Public Swimming Pool Owner/Operator for Negligence Regarding Lifeguards

CHAPTER 4. VIOLENT CRIMES

I. IN GENERAL

§ 4:1	Generally
§ 4:2	What duty is owed to the plaintiff?
§ 4:3	Foreseeability as determined by the prior similar incidents rule
§ 4:4	Foreseeability as determined by the totality of the circumstances
§ 4:5	How the courts determine when security is adequate
§ 4:6	Crimes at or near ATM machines
§ 4:7	Claims related to security guards
§ 4:7.10	Crimes on a cruise ship

II. FORMS

- § 4:8 Assault in parking lot
- § 4:9 Assault at ATM

CHAPTER 5. HOW TO EVALUATE AND PLEAD INJURIES TO SPECTATORS AT SPORTING EVENTS

I. IN GENERAL

§ 5:1	In general
§ 5:2	Baseball
§ 5:2.10	The Baseball Rule
§ 5:2.20	Baseball—Assumption of risk
§ 5:3	Golf
§ 5:4	Football
§ 5:5	Hockey
§ 5:5.10	Injury to person on golf course

II. FORMS

- $\S~5:6~$ Injury to spectator at baseball game
- § 5:7 Injury to person adjacent to golf course
- § 5:8 Patron at hockey game

CHAPTER 5A. SICK BUILDING SYNDROME

I. IN GENERAL

§ 5A:1 In general

II. BIOLOGICAL CONTAMINANTS

- § 5A:2 In general
- § 5A:3 Toxic mold
- § 5A:4 Potential defendants

III. CHEMICAL CONTAMINANTS

- § 5A:5 In general
- § 5A:6 Potential defendants

IV. OTHER CAUSES

§ 5A:7 In general

V. MULTIPLE CHEMICAL SENSITIVITY

- § 5A:8 In general
- § 5A:9 Diagnosis

VI. FORMS

- § 5A:10 Injury from biological contaminant
- § 5A:11 Injury from toxic mold
- § 5A:12 Injury due to contaminants outside a building
- § 5A:13 Injury due to contaminants inside a building

CHAPTER 5B. RECREATIONAL USE STATUTES

I. IN GENERAL

- § 5B:1 Introduction
- § 5B:2 Common provisions
- § 5B:3 Who is an owner
- § 5B:4 Premises covered
- § 5B:5 Fee exception
- § 5B:5.10 Charity events
- § 5B:6 What is recreational use
- § 5B:7 Willful or wanton conduct exception

II. FORMS

§ 5B:8 Complaint for negligent supervision

xxii

TABLE OF CONTENTS

§ 5B:9 Complaint - Plaintiff injured participating in sporting event
 § 5B:10 Defendant's motion for summary judgment based on recreational use statute
 § 5B:11 Complaint based on willful or wanton conduct

CHAPTER 5C. DOMESTIC ANIMALS LIABILITY

I. IN GENERAL

§ 5C:1	Introduction
§ 5C:2	Domestic animals, definition
§ 5C:3	Common law strict liability of owners/keepers/ possessors/harborers for injuries from domestic animals
§ 5C:4	—Definition of keeper/possessor/harborer for purposes of strict liability
§ 5C:5	—Vicious or dangerous propensity necessary for imposition of strict liability for injuries from domestic animals
§ 5C:6	Defenses available in common law strict liability actions
§ 5C:7	Common law negligence-based liability of owners/ keepers/ possessors/harborers for injuries from domestic animals
§ 5C:8	Common law negligence-based liability of owners/ keepers/possessors/ harborers for injuries from domestic animals—Common law negligence standard of care duty based on the plaintiff's status on the land
§ 5C:9	—Common law negligence-based liability related to domestic animals escaping the premises
§ 5C:10	Defenses available in common law negligence actions
§ 5C:11	Liability of premises owner who is not the owner/ keeper/possessor/ or harborer of the domestic animal for injuries caused by same
§ 5C:12	—Circumstances where liability is not extended
§ 5C:13	—Circumstances where liability is extended
§ 5C:14	Statutory liability for injuries/damage caused by domestic animals
§ 5C:15	—Dog bites statutes
§ 5C:16	—Statutory liability issues pertaining to equine/domestic animal activities
§ 5C:17	—Statutory liability issues pertaining to injuries from certain types of domestic animals running at large

II. FORMS

§ 5C:18	Strict liability action against owner, keeper, possessor or harborer of domestic animals for injuries from domestic animals
e FO 10	· ·
§ 5C:19	Negligence action against owner, keeper, possessor or harborer of domestic animal
§ 5C:20	Negligence action against premises owner/possessor for injuries from domestic animals
§ 5C:21	Affirmative defenses regarding actions for injuries from domestic animals

CHAPTER 6. EVALUATING AND ALLEGING DAMAGES AND FILING SUIT

I. NATURE AND EXTENT OF THE INJURY

- § 6:1 Developing the medical evidence begins with your client
- § 6:2 Obtain authorization for medical records
- § 6:3 Reviewing the medical records
- § 6:4 When and why to interview the attending physician

II. DAMAGES

6:5	Out-of-pocket expenses
8 6:6	Evaluation of compensatory damages
6:6.50	Collateral source rule
§ 6:7	Hedonic damages

III. ALLEGATIONS OF INJURY AND DAMAGE

§ 6:8	In general
§ 6:9	Personal injury
§ 6:10	Lost income
§ 6:11	Medical expenses
§ 6:12	Emotional distress
§ 6:13	Death
§ 6:14	Punitive damages
§ 6:14.10	Punitive damage guidelines
§ 6:14.20	Tax consequences of punitive damages

IV. CONCLUDING THE COMPLAINT

§ 6:15	Prayer for relief
§ 6:15.10	Recovery limited to prayer
§ 6:15.50	Prejudgment attachment
§ 6:16	Putting it all together—A complete complaint

8 6.8

§ 6:17	Signing the complaint
§ 6:18	Service of summons

V. FORMS

§ 6:19	Authorization to release records
§ 6:20	Introductory letter to attending physician
§ 6:21	Wage loss verification
§ 6:22	Allegations of personal injury
§ 6:23	Lost income
§ 6:24	Medical expenses
§ 6:25	Infliction of emotional distress
§ 6:26	Damages for death
§ 6:27	Punitive damages
§ 6:28	Prayer for relief
§ 6:29	A complete complaint
§ 6:30	Notice of lawsuit and request for waiver of service of summons
8 6.31	Waiver of service of summons

CHAPTER 6A. PREMISES OWNERS' SCAFFOLD LAW LIABILITY

Introduction
Policy underlying Scaffold Laws
Specific types of work protected under Scaffold Laws
Protection under scaffold laws for undocumented immigrants
Elevation risk requirement
Coverage for accidents involving objects striking workers
Coverage for accidents involving falling workers
Indemnity issues
Owners' exemption
Proximate cause defense
Superseding cause defense
Scaffold Law action against owner regarding falling objects
Scaffold Law action against owner regarding falling worker
Affirmative defenses regarding Scaffold Law claims

CHAPTER 7. INITIAL HANDLING BY DEFENDANT

I. IN GENERAL

§ 7:1	Making a conflict check
§ 7:2	Dealing with your client
§ 7:2.10	Time within which Summons is to be served
§ 7:2.20	Arbitration

II. REMOVAL

xxvi

§ 7:3	In general
§ 7:3.10	Exception to the one year rule
§ 7:3.15	—Exception to 30 day rule
§ 7:3.20	Consent of all defendants
§ 7:3.30	Service on statutory agent
§ 7:3.50	Second removal untimely
§ 7:4	Criteria for removal
§ 7:4.10	—Test for principal place of business
§ 7:4.15	Citizenship of LLC
§ 7:4.20	Principal place of business
§ 7:4.30	Diversity—Fraudulent joinder
§ 7:4.40	Remand—Mandatory forum selection clause
§ 7:4.50	Diversity—Court's obligation to determine
§ 7:4.60	Remand—Appeal allowed
§ 7:5	Time for removal
§ 7:5.10	Exception to removal time limit
§ 7:5.20	Trigger of time for removal
§ 7:5.50	Failure to join in notice of removal
§ 7:5.70	One year limitation time is procedural
§ 7:6	Other factors influencing removal
§ 7:7	Preparing the removal documents
§ 7:8	Removal when express ad damnum not stated
§ 7:8.10	Jurisdictional amount established by settlement letter
§ 7:8.20	Jurisdictional amount from face of complaint
§ 7:8.30	Stating amount in controversy and presumption against removal
§ 7:8.40	Jurisdictional amount from face of complaint—Test for jurisdictional amount
§ 7:9	Improper removal not fatal to final judgment
§ 7:9.10	Curing jurisdictional defect
§ 7:9.20	Fee award after remand
§ 7:9.30	Appeal of remand order

§ 7:9.70 Waiver of improper removal

III. MOTIONS RELATING TO JURISDICTION

§ 7:10	In general
§ 7:11	Motion to dismiss for lack of diversity
§ 7:11.10	—Postremoval joinder of nonadverse defendant
§ 7:11.20	—Alleging residency rather than citizenship
§ 7:11.30	—Diversity jurisdiction—Dual citizenship
§ 7:11.40	—Diversity Jurisdiction—Citizenship of Tribal Corporation
§ 7:11.50	— —Foreign Parties
§ 7:12	Motion to dismiss for lack of jurisdiction amount
§ 7:13	Motions relating to personal jurisdiction and insufficiency of process
§ 7:13.10	Personal jurisdiction motion granted despite motion to transfer
§ 7:13.20	No personal jurisdiction—claim not related to defendant's contacts
§ 7:13.70	—Under some circumstances personal jurisdiction not waived
§ 7:14	Awards of attorneys' fees and costs for improper removal
§ 7:14.10	Awards of attorney's fees and costs for improper removal—Fees awarded when no basis for removal
§ 7:14.20	—Fees for improper removal may not be imposed on the removing attorney

IV. MOTIONS RELATING TO VENUE

§ 7:15	In general
§ 7:15.10	Consideration of affidavits
§ 7:15.20	Forum selection clause
§ 7:16	Motion to transfer in the federal court
§ 7:16.10	Motion to strike jury demand for punitive damage

V. PRELIMINARY INVESTIGATION

- § 7:17 In general
- § 7:18 Handling employees and former employees

VI. FORMS

§ 7:19	Engagement letter
§ 7:20	Notice of filing notice of removal (federal)
§ 7:21	Notice of removal (Federal)
§ 7:22	Notice of filing of removal (state)

§ 7:23	Notice of removal (state)
§ 7:24	Notice of removal when express ad damnum not stated
	(federal)
§ 7:25	Jurisdictional interrogatory
§ 7:26	Jurisdictional amount request for admission
§ 7:27	Notice of removal based on interrogatories or request to admit responses when express ad damnum not stated
§ 7:28	Motion to dismiss—Lack of diversity
§ 7:29	Lack of jurisdictional amount motion
§ 7:30	Dismissal for improper venue
§ 7:31	Transfer pursuant to 28 U.S.C. § 1404(a)
§ 7:32	Letter to employee or former employee

CHAPTER 8. RESPONDING TO THE COMPLAINT

I. INTRODUCTION

§ 8:1 In general

II. MOTIONS DIRECTED TO THE COMPLAINT

§ 8:1.10	Dismissal for lack of subject matter jurisdiction
§ 8:1.20	Requirement of separate order
§ 8:1.30	Preemption by federal law
§ 8:1.50	Motion to dismiss—Preclusive effect of judgment
§ 8:2	Motion for more definite statement
§ 8:3	Motion to dismiss for failure to state a claim upon
	which relief can be granted
§ 8:3.10	—Plausibility required
§ 8:4	Motion to dismiss suit barred by the statute of
	limitations
§ 8:4.10	Denial of voluntary dismissal
§ 8:4.20	Running of tolling statute
§ 8:4.30	Statute of repose
§ 8:4.70	Relation back of an amended complaint
§ 8:5	Motion to dismiss for failure to join a necessary and
	indispensable party
$\S 8:5.10$	Soliciting and adopting of proposed order
§ 8:6	Motion to strike
§ 8:6.50	Motion to dismiss for want of prosecution
§ 8:7	Notice of motion

III. ANSWER TO THE COMPLAINT

§ 8:8 In general

xxviii

IV. AFFIRMATIVE DEFENSES

§ 8:9	In general
§ 8:9.50	Governmental immunity
§ 8:9.60	Charitable immunity
§ 8:10	Contributory conduct of the plaintiff
§ 8:11	Comparative negligence
§ 8:11.50	Assumption of risk
§ 8:12	Release
§ 8:13	Punitive damages
§ 8:14	Shopkeeper's statute
§ 8:14.10	—Independent intervening event—Suicide
§ 8:14.20	Public safety officer's rule

V. COUNTERCLAIM

- § 8:15 In general
- § 8:16 Types of counterclaims

VI. CONCLUSION OF THE ANSWER

- § 8:17 The prayer
- § 8:18 Signature and review

VII. FORMS

- § 8:19 More definite statement
- § 8:20 Failure to state a claim
- § 8:21 Suit barred by the statute of limitations
- § 8:22 Failure to join a necessary and indispensable party
- § 8:23 Motion to strike
- § 8:24 Notice of motion
- § 8:25 Notice and motion
- § 8:26 Answer—Admissions and denials
- § 8:27 Contributory conduct
- § 8:28 Sole proximate cause
- § 8:29 Release
- § 8:30 Punitive damages
- § 8:31 Shopkeepers statute
- § 8:32 Counterclaim

CHAPTER 9. RESPONSE BY PLAINTIFF

I. IN GENERAL

§ 9:1 Motion to remand action to state court

§ 9:2	Motion to remand based on subsequent joinder of non-diverse party
§ 9:3	Motion to strike insufficient defense
§ 9:4	Reply to answer
§ 9:5	Reply to counterclaim
§ 9:6	Amendment of complaint
§ 9:6.10	—Failure to promptly amend
§ 9:6.20	—Relation back of Amended Complaint

II. FORMS

§ 9:7	Motion to remand
§ 9:8	Insufficient defense
§ 9:9	Opposition to motion to remand after joinder of resident defendants following removal
§ 9:10	Stipulation to amend complaint
§ 9:11	Order on stipulation to amend
§ 9:12	Order granting leave to amend
8 9.13	Motion to file amended complaint

CHAPTER 10. CROSS-CLAIMS AND THIRD-PARTY ACTIONS

I. IN GENERAL

§	10:1	Generally
§	10:2	Who should be a third-party defendant
§	10:3	Tender of the defense
§	10:3.10	Notice to manufacturer not required
§	10:4	Contribution from criminals
§	10:5	Notice to an insurance carrier
§	10:5.10	Carrier's duty to defend
§	10:6	Contribution
§	10:6.10	Apportionment
§	10:7	Cross-claim against co-defendant
§	10:8	Allegations of the third-party complaint
§	10:9	Assault and battery by rent-a-cop
§	10:10	Falling display purchased from another
§	10:11	Malfunction of revolving door serviced by another
§	10:12	Improper design of elevator or escalator
§	10:13	Malfunctioning elevator or escalator
§	10:14	Inadequate alarm system—Breach of warranty
8	10:15	Improper design of stairs
8	10:16	Snow and ice in parking lot
_	10:16.10	Snow and ice at public school
		_

II. FORMS

§ 10:17	Summons for third-party defendant
§ 10:18	Motion to join third-party defendant
§ 10:19	Tender letter
§ 10:20	Third-party complaint—Joinder of the criminal
§ 10:21	Letter to insurance carrier
§ 10:22	Letter to third-party advising of tender to carrier
§ 10:23	Reply to carrier concerning defense
§ 10:24	Motion to file counterclaim
§ 10:25	Third-party complaint—Assault by rent-a-cop
§ 10:26	—Falling display
§ 10:27	Improper service or repair by another
§ 10:28	Design of elevator or escalator
§ 10:29	Malfunctioning elevator—Written maintenance contract
§ 10:30	Inadequate alarm system—Breach of warranty
§ 10:31	Improper design of stairs
§ 10:32	Snow and ice in parking lot

CHAPTER 11. PROFILING AND INTERNET AND WESTLAW RESEARCH (REVISED)

I. PROFILING

§ 11:1 In general

II. THE JUDICIAL PROFILE

- § 11:2 In general
- § 11:3 The mechanics of a profile search
- § 11:4 Rulings on discovery issues
- § 11:5 Rulings on evidentiary issues
- § 11:6 Directed verdict history
- § 11:7 Summary

III. INTERNET AND WESTLAW RESEARCH

- § 11:8 In general
- § 11:9 Search engines
- § 11:10 Indices
- § 11:11 Misc sites

IV. FORMS

§ 11:12 Forms

CHAPTER 12. THE TRIAL BOOK LOOSELEAF SYSTEM (TBLS)

I. USING THE TBLS

- § 12:1 In general
- § 12:2 Description of the TBLS

II. INITIAL PREPARATION OF THE TBLS

- § 12:3 Preparation of the TBLS section on the pleadings
- § 12:4 Method for handling complaint and answer
- § 12:5 Method for adding cross-claims to TBLS

III. FORMS

- § 12:6 Pleadings complaint and answer
- § 12:7 Pleadings cross-claim against—Elevator co

CHAPTER 13. DISCOVERY

I. INTRODUCTION

- § 13:1 In general
- § 13:2 Limitations on breadth of discovery
- § 13:3 Scope of discovery
- § 13:3.50 Discovery for use in litigation in foreign country
- § 13:4 Insurance agreements

II. TRIAL PREPARATION MATERIALS

- § 13:5 In general
- § 13:6 Statements of parties and non-parties
- § 13:7 Waiver of work product immunity

III. ATTORNEY-CLIENT PRIVILEGE

- § 13:8 In general
- § 13:8.10 Application of attorney-client privilege to employee
- § 13:9 Waiver

IV. PROTECTIVE ORDERS

- § 13:10 In general
- § 13:11 Motions for protective orders
- § 13:12 Protective order—Embarrassment
- § 13:13 —Other grounds

xxxii

§ 13:14 Appeal of discovery order

V. DUTY TO SUPPLEMENT DISCOVERY RESPONSES

- § 13:15 In general
- § 13:16 When supplementation is required

VI. DISCOVERY PLAN

§ 13:17	Discovery goals and timing and sequence of discovery
§ 13:18	Discovery conference
§ 13:18.10	Scheduling order
§ 13:19	Required initial disclosures
§ 13:20	Sanctions for failure to disclose

VII. SIGNING OF DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS

§ 13:21	In general
§ 13:22	Extent of the certification
§ 13:23	Sanctions
§ 13:23.10	Sanctions for failure to supplement or adequately respond to interrogatories
§ 13:23.50	Sanction of default judgment
§ 13:23.60	Monetary sanction

VIII. FORMS

§ 13:24	Motion to limit discovery
§ 13:25	Motion for production of witness's statement
§ 13:26	Letter requesting statement
§ 13:27	Protective order
§ 13:28	Time and sequence of discovery
§ 13:29	Checklist for planning conference
§ 13:30	Report to the court of planning conference
§ 13:31	Initial discovery disclosure
§ 13:32	Motion to compel proper discovery disclosure

CHAPTER 14. WRITTEN INTERROGATORIES TO PARTIES

I. INTRODUCTION

§ 14:1 In general

- § 14:2 Limitation on number
- § 14:3 Use of definitions

II. SPECIFIC TYPES OF INTERROGATORIES

- § 14:4 Contention interrogatories
- § 14:5 Expert witness interrogatories
- § 14:6 Consulting expert interrogatories

III. OBJECTIONS TO INTERROGATORIES

- § 14:7 In general
- § 14:8 Scope of interrogatories
- § 14:9 Limitation as to time
- § 14:10 Limitation as to subject matter
- § 14:11 Motion to strike or limit interrogatories

IV. ANSWERS TO INTERROGATORIES

- § 14:12 In general
- § 14:13 Response to expert witness interrogatories
- § 14:14 Option to produce business records

V. MOTION TO COMPEL ANSWER

- § 14:15 Failure to answer
- § 14:16 Evasive or incomplete answer

VI. ADDING ANSWERS TO INTERROGATORIES TO TRIAL BOOK LOOSELEAF SYSTEM (TBLS)

§ 14:17 In general

VII. FORMS

- § 14:18 Motion to serve more interrogatories than permitted by local rule
- § 14:19 Interrogatory definitions definitions pertaining to documents
- § 14:20 Defendant's contention interrogatories
- § 14:21 Plaintiff's contention interrogatories
- § 14:22 Motion to defer answer to interrogatory
- § 14:23 Expert witness interrogatory
- § 14:24 Consulting witness interrogatory
- § 14:25 Objection—Not relevant
- § 14:26 —Reasonable time
- § 14:27 —Interrogatories cumulative or duplicative

xxxiv

§ 14:28	Motion to strike or limit interrogatories
§ 14:29	Verification of answers to interrogatories
§ 14:30	Stipulation to extend time to respond to
	interrogatories
§ 14:31	Motion to extend time to respond to interrogatories
§ 14:32	Failure of interrogatory answer to specify documents
§ 14:33	Evasive answer to interrogatory
§ 14:34	Motion to compel answers to interrogatories
§ 14:35	Sample trial book looseleaf system page for answers
	to interrogatories

CHAPTER 15. PLAINTIFF'S INTERROGATORIES

I. INTRODUCTION

§ 15:1 In general

II. ACTS OF THIRD PARTIES AND EMPLOYEES

- § 15:2 Assault and battery by employee
- § 15:3 Assault and battery by third party
- § 15:4 Lack of crowd control

III. DISPLAYS AND FIXTURES

- § 15:5 Falling display
- § 15:6 Display on fixture protruding into the walkway

IV. DOORS, WINDOWS, AND VESTIBULES

- § 15:7 Malfunction of door
- § 15:8 Walking into glass window or door
- § 15:9 Water in vestibule
- § 15:10 Fall over floor mat in vestibule area
- § 15:11 Escalator malfunction
- § 15:12 Escalator stop button
- § 15:13 Falling elevator
- § 15:14 Elevator failing to level with floor
- § 15:15 False arrest and imprisonment
- § 15:16 Malicious prosecution
- § 15:17 Lack of fire protection—Sprinklers
- § 15:18 Lack of warnings—Alarms
- § 15:19 Improper building design
- § 15:20 Slip and fall due to improper floor treatment
- § 15:21 Slip and fall on foreign substance

PREMISES LIABILITY 3D

§ 15:22 Slip and fall on liquids § 15:23 Uneven surfaces § 15:24 Improper lighting § 15:25 Worn stairs Debris on stairs § 15:26 § 15:27 Slippery stairs § 15:28 Improper stair design § 15:29 Snow and/or ice in parking lot § 15:30 Falls over parking bumpers § 15:31 Inadequate lighting § 15:32 Uneven surfaces, holes, and cracks in parking lots § 15:33 Holes, cracks and uneven surfaces in sidewalks § 15:34 Snow and ice on sidewalks § 15:35 Adding to the trial book looseleaf system (TBLS)

FORMS V.

- § 15:36 Interrogatories—General information § 15:37 Interrogatory on insurance coverage
- § 15:38 Interrogatories—Assault and battery by employee
- § 15:39 —Assault and battery by third party
- § 15:40 —Assault in parking lot
- § 15:41 Assault at or near automatic teller machine
- § 15:42 Interrogatories—Lack of crowd control
- § 15:43 —Falling display
- § 15:44 —Display or fixture protruding into walkway
- § 15:45 -Malfunction of door
- -Walking into glass window or door § 15:46
- § 15:47 —Water in vestibule
- -Fall over floor mat in vestibule area § 15:48
- § 15:49 -Escalator malfunction
- § 15:50 —Escalator stop button
- § 15:51 -Falling elevator
- § 15:52 -Elevator failing to level with floor
- § 15:53 —False arrest and imprisonment
- -Malicious prosecution § 15:54
- § 15:55 —Lack of fire sprinklers
- § 15:56 -Lack of alarms
- § 15:57 Improper building design—Exit doors
- § 15:58 Interrogatories—Slip and fall due to improper floor treatment
- —Slip and fall on foreign substances § 15:59
- § 15:60 —Slip and fall on liquids
- —Uneven surfaces § 15:61
- § 15:62 —Improper lighting

xxxvi

§ 15:63 -Worn stairs § 15:64 —Slippery stairs § 15:65 —Improper stair design § 15:66 -Removal of snow and/or ice from parking lot § 15:67 —Artificial accumulation of ice § 15:68 —Fall on ice due to improper design of parking lot § 15:69 —Fall over parking lot bumper —Inadequate lighting § 15:70 § 15:71 —Holes and cracks in parking lots -Sidewalks ownership, control or purpose § 15:72 § 15:73 -Snow and ice on sidewalks § 15:74 Defendant's answers to interrogatories

CHAPTER 16. DEFENDANT'S INTERROGATORIES

I. INTRODUCTION

- § 16:1 In general
- § 16:2 General questions and facts and circumstances surrounding the occurrence
- § 16:3 Allegations of the complaint

II. INJURIES

- § 16:4 Nature and extent of injuries received
- § 16:5 Prior and subsequent injuries

III. DAMAGES

- § 16:6 Lost income
- § 16:7 Prior and subsequent employment
- § 16:8 Medical care and treatment
- § 16:9 Medical expense
- § 16:10 Other damages
- § 16:11 Adding to the trial book looseleaf system (TBLS)

IV. FORMS

- § 16:12 General interrogatories
- § 16:13 Facts and circumstances surrounding the accident
- § 16:14 Allegations of the complaint
- § 16:15 Nature and extent of injuries received
- § 16:16 Prior and subsequent injuries
- § 16:17 Lost income or earning capacity
- § 16:18 Prior and subsequent employment

- § 16:19 Medical care and treatment
- § 16:20 Medical expense
- § 16:21 Plaintiff's answers to interrogatories

CHAPTER 17. REQUESTS TO PRODUCE OR TO INSPECT

I. INTRODUCTION

- § 17:1 In general
- § 17:2 Request for production of documents
- § 17:3 Production of electronically stored information—In general
- § 17:4 —Access to an opponent's computers under Rule 34
- § 17:5 —Apportionment of costs of production
- § 17:6 —Producing both a hard copy and electronic data
- § 17:7 Request for production of tangible things
- § 17:8 Request to enter on property to inspect

II. RESPONSE

- § 17:9 In general
- § 17:10 Response to request for production of documents
- $\S~17{:}10.10$ Appeal of decision adverse to attorney-client privilege
- § 17:11 Documents used to prepare for deposition
- § 17:12 How documents are to be produced
- § 17:13 Response to request for production of things
- § 17:13.10 Delay of production pending deposition
- § 17:14 Response to request to enter on property
- § 17:15 Handling objections and failure to respond
- § 17:16 2013 Amendments to Fed. R. Civ. Pro 45 Subpoenas for records to non-parties
- § 17:17 Adding to the trial book looseleaf system (TBLS)

III. FORMS

- § 17:18 Requests for documents by plaintiff
- § 17:19 Request for documents by defendant
- § 17:20 Request for production of objects
- § 17:21 Request to enter on property to inspect
- § 17:22 Response to request for production of documents
- § 17:23 Response to request to produce floor dressing
- § 17:24 Response to request to enter on property
- § 17:25 Letter requesting production
- § 17:26 Motion to compel production of documents
- § 17:27 Documents to the trial book looseleaf system (TBLS)

xxxviii

CHAPTER 18. PHYSICAL AND MENTAL EXAMINATIONS

I. IN GENERAL

0 10 1	G 11
§ 18:1	Generally
§ 18:2	Should there be an examination
§ 18:3	Examination by agreement
§ 18:4	Motion for examination
§ 18:5	Objection to examination
§ 18:6	Request for report of examination
§ 18:7	Motion to require report
§ 18:8	Selection and preparation of the examiner
§ 18:9	Preparing the plaintiff for an examination

II. FORMS

§ 18:10	Letter from plaintiff's attorney confirming agreement
	for physical examination
§ 18:11	Motion for physical examination of the plaintiff
§ 18:12	Order for plaintiff to submit to physical examination
§ 18:13	Objection to person designated to examine plaintiff
§ 18:14	Letter requesting medical report
§ 18:15	Motion to require report of examination

Volume 2

CHAPTER 19. DEPOSITIONS

I. INTRODUCTION

§ 19:1	In general
§ 19:2	Presumptive limit on depositions
§ 19:3	Time limit for depositions
§ 19:4	Methods of taking oral depositions
§ 19:5	Depositions by telephone or other remote electronic
	means
§ 19:6	Conduct at depositions
§ 19:7	Instructing witness not to answer

II. ORAL DEPOSITION OF A PARTY

§ 19:8	In general
§ 19:9	Notice
8 19.10	Denosition of a representative

- § 19:11 Oral depositions of non-parties
- § 19:12 Subpoena for non-party
- § 19:13 Subpoena duces tecum
- § 19:14 A deposition of a witness in a foreign country

III. MOTIONS RELATING TO DEPOSITIONS

- § 19:15 Motion to quash notice of deposition
- § 19:16 Motion to limit examination
- § 19:17 Motions to compel
- § 19:18 Motion to terminate deposition
- § 19:19 Mechanics of an oral deposition
- § 19:20 Changes and signing by the witness

IV. DEPOSITIONS ON WRITTEN QUESTIONS

- § 19:21 In general
- § 19:22 Procedure
- § 19:23 Objections

V. USE OF DEPOSITIONS

- § 19:24 In general
- § 19:25 Impeachment
- § 19:26 Substantive evidence
- § 19:27 Reading other parts of the deposition

VI. FORMS

- § 19:28 Stipulation for videotape deposition
- § 19:29 Motion for videotape deposition
- § 19:30 Stipulation to take deposition by telephone
- § 19:31 Motion for telephone deposition
- § 19:32 Notice of deposition of a party
- § 19:33 Notice for corporate representative
- § 19:34 Notice of deposition of a non-party
- § 19:35 Subpoena in a civil case
- § 19:36 Motion to compel production by non-party
- § 19:37 Motion to quash notice of deposition
- § 19:38 Motion to limit scope of deposition examination
- § 19:39 Motion to compel deposition of a party
- § 19:40 Notice for deposition upon written questions
- § 19:41 Outline for impeachment by deposition
- § 19:42 Motion for leave to take deposition in excess of ten
- § 19:43 Motion to quash notice to take deposition over the allowed number

§ 19:44 Stipulation to take deposition by satellite television § 19:45 Motion for satellite television deposition § 19:46 Order for satellite deposition § 19:47 Stipulation to take deposition before foreign official § 19:48 Motion for subpoena to take deposition of a U.S. resident residing in a foreign country Affidavit in support of motion for subpoena to take § 19:49 deposition of a U.S. resident residing in a foreign § 19:50 Motion for additional time for deposition

CHAPTER 20. PREPARATION FOR DEPOSITIONS

I. INTRODUCTION

§ 20:1 In general§ 20:2 Attorney preparation§ 20:3 Deposition outline

II. PREPARATION OF THE DEPONENT

§ 20:4 In general § 20:5 Tell the truth § 20:6 Do not volunteer § 20:7 Listen and understand the question § 20:8 Do not guess § 20:9 Take your time § 20:10 Avoid "always" or "never" § 20:11 Do not explain thought processes § 20:12 Conversations § 20:13 Reference to documents not marked as exhibits Supplying additional information § 20:14 § 20:15 Refreshing recollection § 20:16 Do not argue § 20:17 The examiner is not your friend

CHAPTER 21. TAKING THE DEPOSITION

I. DEPOSITION OF THE PLAINTIFF

§ 21:1 In general
§ 21:2 Medical
§ 21:3 Personal history
§ 21:4 Before occurrence

- § 21:5 After occurrence
- § 21:6 Damages

II. OCCURRENCES

- § 21:7 In general
- § 21:8 Foreign substances
- § 21:9 Plaintiff's contributory conduct

III. ADDING TO THE TRIAL BOOK LOOSELEAF SYSTEM (TBLS)

- § 21:10 In general
- § 21:11 Deposition synopses
- § 21:12 Subject matter breakdown

IV. FORMS

- § 21:13 Outline plaintiff's deposition—Medical
- § 21:14 —Personal history
- § 21:15 —Before occurrence
- § 21:16 —After occurrence
- § 21:17 —Damages
- § 21:18 Deposition of plaintiff—Occurrence
- § 21:19 Deposition of the plaintiff—Foreign substance
- § 21:20 —Contributory conduct
- § 21:21 Deposition of plaintiff
- § 21:21.10 Deposition of minor

CHAPTER 21A. DISCOVERY OF ELECTRONIC DATA

I. INTRODUCTION

- § 21A:1 In general
- § 21A:2 E-Discovery definitions
- § 21A:3 Use of consultants

II. PRESERVATION OF DATA

- § 21A:4 Notice letter
- § 21A:5 Preservation letter to client

III. DISCOVERY

- § 21A:6 In general
- § 21A:7 Discovery plan

§ 21A:8	Interrogatories
§ 21A:9	Request to produce
§ 21A:10	Depositions re: electronic data

IV. SANCTIONS

§ 21A:11	In general
§ 21A:12	The courts
§ 21A:13	Bad faith
§ 21A:14	Prejudice

V. FORMS

§ 21A:15	Checklist for retention of e-discovery consultant by propounding party
§ 21A:16	Checklist for retention of e-discovery consultant by responding party
§ 21A:17	Preservation letter
§ 21A:18	Preservation letter to client
§ 21A:19	Proposed changes to Federal Rules of Civil Procedure
§ 21A:20	Electronic data interrogatories
§ 21A:21	Request for production of electronic data

CHAPTER 22. ADMISSIONS

I. INTRODUCTION

§ 22:1	In general
§ 22:2	Request for admission
§ 22:3	Statements or opinions of fact
$\S 22:4$	Mixed questions of law and fact
§ 22:5	Genuineness of documents

II. RESPONDING TO REQUEST FOR ADMISSION

§ 22:6	In general
§ 22:7	Response by objection
§ 22:8	Response by answer
§ 22:9	Sufficiency of answers or objections

III. EFFECT OF ADMISSION

§ 22:10	In general
§ 22:11	Withdrawal or amendment of an admission
8 99.11 10	Test for withdrawal or amendment of admission

IV. OTHER ADMISSIONS

§ 22:12 Admission by party opponent

§ 22:12.10	—Exclusion under Rule 403
§ 22:12.20	Definition of agent or servant
§ 22:12.30	Adoptive admission
§ 22:13	Admissions not admissible
§ 22:14	Former testimony
§ 22:15	Statements against interest
§ 22:16	Translation of statements
§ 22:17	Adding admissions to the trial book looseleaf
	system (TBLS)

V. FORMS

§ 22:18	Request for admission of fact
§ 22:19	Request for admission relating law to fact
§ 22:20	Request to admit genuineness of documents
§ 22:21	Answer to request for admission
§ 22:22	Motion to determine sufficiency of answers to request
	to admit

CHAPTER 23. EXPERTS BEFORE TRIAL

I. INTRODUCTION

§ 23:1 In general
§ 23:2 Experts—Daubert codified in rule 702
§ 23:3 Limitation on lay opinion testimony
§ 23:4 Premises liability experts

II. OBTAINING AN EXPERT

§ 23:5 Sources for experts
§ 23:6 The selection process
§ 23:7 Defendant—Inside versus outside expert

III. WORKING WITH THE EXPERT

§ 23:8	Establishing the expert's role
§ 23:9	Obtaining the opinion
§ 23:10	Expert's report
§ 23:10.10	—Content of expert's report
§ 23:10.20	—2010 Rule 26 amendments concerning experts report
§ 23:11	Failure to comply with requirement for expert
	report

IV. EXPERT DISCOVERY

§ 23:12 In general

xliv

§ 23:13	Employees as consulting experts
§ 23:14	Depositions of testifying experts
§ 23:15	Deposing the technical expert
§ 23:16	Deposing the medical expert

V. ADDING EXPERT DISCOVERY TO THE TRIAL BOOK LOOSELEAF SYSTEM (TBLS)

§ 23:17 Depositions

§ 23:18 Subject matter breakdown

VI. FORMS

§ 23:19	Motion for expert deposition
§ 23:20	Motion for expert fees and expenses
§ 23:21	Motion for production of expert's file
§ 23:22	Checklist for deposition of technical expert
§ 23:23	Checklist for deposition of medical expert
§ 23:24	Letter to expert
§ 23:25	Transmittal of expert witness report
§ 23:26	Motion to require adequate expert report
§ 23:27	Motion to require proper list of expert's testimony

CHAPTER 24. MOTIONS BEFORE TRIAL

I. EARLY MOTIONS

§ 24:1	Motion for judgment on the pleadings
§ 24:1.30	Size of briefs
§ 24:2	Motion for default judgment
§ 24:2.50	Motion for voluntary dismissal
§ 24:3	Motion for preliminary hearing on certain defenses

II. MOTION FOR SUMMARY JUDGMENT

§ 24:4	In general
§ 24:4.10	Use of legal jargon
§ 24:5	Test for summary judgment

III. MECHANICS OF A MOTION FOR SUMMARY JUDGMENT

§ 24:6	In general
§ 24:6.10	Admission of party opponent
§ 24:6.20	Deficiency of response to motion
8 24.7	Affidavits

§ 24:7.10	Insufficient affidavit for discovery
§ 24:8	Not necessary to depose opposing expert
§ 24:9	Local rules
§ 24:9.10	Failure to Follow Local Rule
§ 24:10	Contradicting deposition testimony
§ 24:10.10	Consideration of expert testimony

IV. RULINGS ON MOTIONS FOR SUMMARY JUDGMENT

§ 24:11	Granting the motion
§ 24:12	Basis for summary judgment order
§ 24:13	Credibility of plaintiff
§ 24:14	Order concerning material facts
§ 24:15	Expert testing not always necessary
§ 24:15.10	Motion for reconsideration—Attorneys' fees

V. OTHER MOTIONS

§ 24:16	Offer of judgment
§ 24:16.10	Must be specific
§ 24:17	Offer of judgment to multiple defendants
§ 24:18	Motion to exclude witnesses
§ 24:19	Rule 11 Sanctions
§ 24:19.10	Sanctions for baseless counterclaim
§ 24:19.20	Rule 11 applied to amended complaint
§ 24:19.30	Rule 45(c)(1) Sanctions
§ 24:19.40	28 U.S.C.A. § 1927 Sanctions
§ 24:19.50	Sanction amount limited

VI. FORMS

xlvi

§ 24:20	Motion for judgment on the pleadings
§ 24:21	Motion for preliminary hearing
§ 24:22	Motion for summary judgment (expert)
§ 24:23	Motion for summary judgment (based on deposition)
§ 24:24	Affidavit in support of motion for summary judgment
§ 24:24.50	—Interlocutory appeal certification
§ 24:25	Motion to continue summary judgment motion to take deposition
§ 24:26	Affidavit supporting motion to continue summary judgment
§ 24:27	Offer of judgment
§ 24:28	Offer of judgment to multiple parties

§ 24:29 Motion to exclude witnesses

CHAPTER 24A. PRETRIAL EXPERT MOTIONS

I. DAUBERT MOTIONS

§ 24A:1	In general
§ 24A:1.10	Gatekeeper's duty
§ 24A:1.20	—Hearing required
§ 24A:1.21	Gatekeeper's duty—Abdication
§ 24A:1.30	Expert credentials can support methodology
§ 24A:1.40	Assault on gatekeeper
§ 24A:1.50	Gatekeeper violated duty
§ 24A:1.60	"Fit" is question for court
§ 24A:1.70	Daubert inquiry is flexible
§ 24A:2	Experts for Daubert hearing
§ 24A:2.21	Exception to hearing requirement
§ 24A:2.50	Bio-mechanic opinion on medical causation barred
§ 24A:3	Application of Daubert to non-scientific opinion
§ 24A:3.10	Warnings expert
§ 24A:4	The role of the expert at the Daubert hearing
§ 24A:5	Standard of review of Daubert order
§ 24A:5.10	Standard of review of <i>DAUBERT</i> order—Expert witness cannot request review
§ 24A:5.20	Reviewing court has authority to make <i>Daubert</i> findings

II. THE FRYE TEST

§ 24A:6	In general
§ 24A:6.10	The Frye test requires expert testimony be based on new
	or novel scientific principle or discovery

III. OTHER EXPERT MOTIONS

§ 24A:7	To par expert for lack of qualifications
§ 24A:7.10	Sanction for late expert reports
§ 24A:8	To exclude opinion of negligence, unreasonably dangerous, etc
§ 24A:8.10	Late designation of expert
§ 24A:8.50	Motion based on failure to file report
§ 24A:9	Checklist for criteria to bar expert testimony at Daubert hearing
§ 24A:10	Motion to bar expert testimony (Daubert hearing)
§ 24A:11	Letter to opposing counsel re expert to testify at Daubert hearing

§ 24A:12	Motion to strike designation of expert Rule 104(a)
	hearing
§ 24A:13	Motion to bar expert testimony as speculative
	(Daubert hearing)
§ 24A:14	Frye motion to exclude expert testimony
§ 24A:15	Motion to bar expert for lack of qualification
§ 24A:16	Motion in limine to bar expert testimony on
	negligence

CHAPTER 24B. MOTIONS IN LIMINE

I. INTRODUCTION

§ 24B:1 In General

II. TO EXCLUDE CUMULATIVE EVIDENCE

- § 24B:2 In General
- § 24B:3 Photographs
- § 24B:4 Number of Witnesses

III. OTHER MOTIONS

- § 24B:5 Day in the Life Video or CD§ 24B:6 Prior accidents
- § 24B:7 Former Testimony
- § 24B:8 Motion to bifurcate liability from damages
- § 24B:9 Insurance
- § 24B:10 Motion for pre-trial hearing on motions in limine concerning evidentiary matters
- § 24B:11 Motion in limine to exclude numerous photographs
- § 24B:12 Motion to exclude cumulative testimony
- § 24B:13 Motion in limine to exclude day in life video
- § 24B:14 Motion to exclude evidence of other accidents
- § 24B:15 Motion to exclude former testimony
- § 24B:16 Motion to bifurcate liability from damages
- § 24B:17 Insurance

CHAPTER 25. PRETRIAL CONFERENCE

I. INTRODUCTION

- § 25:1 In general
- § 25:2 Scheduling and planning conference
- § 25:3 Attendance of parties

II. DISCRETIONARY PRETRIAL CONFERENCE

§ 25:4 In general

xlviii

§ 25:5	Motion for pretrial conference
§ 25:6	Subject matter
§ 25:7	Identifification of witness and documents
§ 25:8	Settlement possibilities
§ 25:9	Tax on personal injury awards
§ 25:10	Release of all claims
§ 25:10.10	Production of settlement agreement
§ 25:11	Vacating an order of dismissal after settlement
§ 25:11.10	After dismissal court cannot enforce settlement agreement
§ 25:11.20	—Retention of jurisdiction—Order necessary

III. FINAL PRETRIAL CONFERENCE

- § 25:12 In general
- § 25:13 Contents of the final pretrial order
- § 25:14 Modification of final pretrial order

IV. SANCTIONS RELATING TO PRETRIAL CONFERENCES

- § 25:15 In general
- § 25:16 Scope of sanctions

V. ADDING TO THE TRIAL BOOK LOOSELEAF SYSTEM (TBLS)

- § 25:17 In general
- § 25:18 Final pretrial order

VI. FORMS

- § 25:19 Stipulation to extend scheduling order
 § 25:20 Motion to extend time provided in scheduling order
 § 25:21 Motion for pretrial conference
- § 25:22 Motion to limit witness and exhibit list
- § 25:23 Typical pretrial order
- § 25:24 Motion to modify final pretrial order
- § 25:25 Motion for sanctions for violation of pretrial order
- § 25:26 Schedule
- § 25:27 Pretrial orders
- § 25:28 Motion to reopen order of dismissal

CHAPTER 26. TRIAL PREPARATION

I. INTRODUCTION

§ 26:1 In general

II. PRELIMINARY TRIAL PREPARATION

- § 26:2 Determining your trial plan
- § 26:3 Witness outline
- § 26:4 Planning your exhibits
- § 26:5 Planning objections to opponents exhibits

III. PREPARATION OF EXHIBITS

- § 26:6 Photographs
- § 26:7 Charts and drawings
- § 26:8 Documents
- § 26:9 Models
- § 26:10 Computer generated exhibits
- § 26:11 Videotapes and Power Point Programs

IV. FINAL TRIAL PREPARATION

- § 26:12 Preparation of witness examination
- § 26:12.10 Compelling appearance of a party or party's officer
- § 26:13 Order of proof

V. TRIAL BRIEFS

- § 26:14 In general
- § 26:15 Contents
- § 26:16 Citation of authority

VI. MOTIONS FOR DIRECTED VERDICT

- § 26:17 In general
- § 26:17.10 Premature grant of motion
- § 26:18 Preparation of the motions

VII. FORMS

- § 26:19 Witness outline
- § 26:20 Exhibit list
- § 26:21 Plaintiff's cross
- § 26:22 Defendant's motion for directed verdict at the close of plaintiff's case
- § 26:23 Third-party defendant's motion for directed verdict at the close of third-party plaintiff's case
- § 26:24 Motion for directed verdict by plaintiff at the close of all of the evidence
- § 26:25 Motion by defendant for directed verdict at the close of all of the evidence

CHAPTER 26A. TRIAL CONSULTANTS

I. INTRODUCTION

- § 26A:1 In general
- § 26A:2 Work product privilege

II. MOCK JURIES

- § 26A:3 In general
- § 26A:4 Observing the deliberations

III. FOCUS GROUPS

- § 26A:5 In General
- § 26A:6 Concept focus group
- § 26A:7 Structured focus group

IV. DEPOSITIONS AND TRIALS

- § 26A:8 For depositions
- § 26A:9 At Trial

V. JURY SELECTION

- § 26A:10 Voir Dire
- § 26A:11 Selection of Jurors

VI. SHADOW JURY

§ 26A:12 In General

VII. FORMS

- § 26A:13 Motion to Quash Trial Consultants Deposition
- § 26A:14 Outline Of Mock Jury Presentation
- § 26A:15 Notes on Mock Jury Deliberation

CHAPTER 27. JURY SELECTION

I. INTRODUCTION

- § 27:1 In general
- § 27:2 Alternate jurors
- § 27:3 Preparing a statement of the case

II. MECHANICS OF JURY SELECTION

§ 27:4 Who asks the questions

- § 27:5 Voir dire by counsel
- § 27:6 Seating the jury

III. UNDERSTANDING WHAT INFLUENCES JURORS

- § 27:7 In general
- § 27:8 Juror preconceptions
- § 27:8.10 Importance of opening statement

IV. EVALUATING JURORS

- § 27:9 Observing the prospective jurors
- § 27:10 Criteria for selection of jurors
- § 27:11 Juror research

V. VOIR DIRE QUESTIONS

- § 27:12 In general
- § 27:13 Lawsuits and claims
- § 27:14 Knowledge of parties or attorneys
- § 27:15 Injuries and health
- § 27:16 Relating to the verdict
- § 27:17 Typical plaintiff's questions
- § 27:18 Typical defendant's questions
- § 27:19 Impartial, fair juror
- § 27:20 Recording information

VI. CHALLENGES

- § 27:21 Challenges for cause
- § 27:21.10 The difference between juror's belief and bias
- § 27:22 Peremptory challenges
- § 27:23 Technique for exercising challenges
- § 27:23.10 Juror's Misconduct

VII. NOTE TAKING BY JURORS

- § 27:24 In general
- § 27:25 Watch the note takers
- § 27:25.50 Questioning of witnesses by jurors

VIII. FORMS

- § 27:26 Statement of the case
- § 27:27 General voir dire questions
- § 27:28 Lawsuits and claims

- § 27:29 Knowledge of parties and attorneys
- § 27:30 Injuries and health
- § 27:31 Relating to verdict—Plaintiff
- § 27:32 —Defendant
- § 27:33 Typical plaintiff's questions
- § 27:34 Typical defendant's questions
- § 27:35 Impartial, fair juror

APPENDIX 27-1. Trials and Deliberations: Inside the Jury Room 2nd Edition

CHAPTER 28. OPENING STATEMENTS

I. INTRODUCTION

- § 28:1 In general
- § 28:2 Setting the stage
- § 28:3 Telling your story
- § 28:4 Organization

II. MAKING AN OPENING STATEMENT

- § 28:5 Introduction
- § 28:6 Theme
- § 28:7 Facts of occurrence

III. INJURY

- § 28:8 Injury—Plaintiff
- § 28:9 —Defendant

IV. DAMAGES

- § 28:10 Damages—Plaintiff
- § 28:11 —Defendant

V. PUTTING IT ALL TOGETHER

- § 28:12 Preparation of the opening statement
- § 28:13 The trial run

VI. FORMS

§ 28:14 Opening statement evaluation

CHAPTER 29. PREPARING WITNESSES

I. INTRODUCTION

§ 29:1 In general

§ 29:2 Attorney preparation

II. PREPARING A WITNESS FOR DIRECT EXAMINATION

§ 29:3	General instructions
§ 29:4	Technique
§ 29:5	Introduction of documents and photographs
§ 29:6	The outline of the examination
§ 29:7	Use of interpreter
§ 29:8	Rehearsal
§ 29:9	How to handle objections

III. PREPARING A WITNESS FOR CROSS-EXAMINATION

§ 29:10	Anticipating cross-examination
§ 29:11	General instructions
§ 29:12	How to handle impeachment
§ 29:13	Questions by court
§ 29:14	How to handle documents and photographs

IV. PLAINTIFF'S CASE

§ 29:15	In general
§ 29:16	Demonstrating due care
§ 29:17	Liability testimony
§ 29:18	Injury and damages

V. DEFENDANT'S CASE

§ 29:19	In general
§ 29:20	Order of witnesses
§ 29:21	Testimony of defendant's representatives

VI. FORMS

§ 29:22	Witness preparation checklist
§ 29:23	Witness preparation—How to handle objections
§ 29:24	—Cross-examination
$\S 29:25$	—Impeachment
§ 29:26	Witness preparation checklist for documents and photographs
$\S 29:27$	Introducing the plaintiff
§ 29:28	Plaintiff testimony outline—Injury and damage

liv

CHAPTER 30. CROSS-EXAMINATION

I. INTRODUCTION

§ 30:1 In general

II. IMPEACHMENT

§ 30:2	In general
§ 30:3	Use of deposition
§ 30:4	Use of a written statement
§ 30:4.10	Use of tax return
§ 30:5	Conviction of crime

III. PREPARING CROSS-EXAMINATION

§ 30:6	Making an outline
§ 30:7	The order of questions
§ 30:8	Preparation of additional cross during direct

IV. CONDUCTING CROSS-EXAMINATION

§ 30:9	In general
§ 30:10	Handling the difficult witness
§ 30:11	Use simple language
§ 30:12	Stay in control
§ 30:13	Know the answer to the question you ask
8 30.14	Put the witness in a "ves" mode

V. CAN'T LOSE QUESTIONS

§ 30:15	Interests or bias
§ 30:16	Who have you talked to about this case
§ 30:17	Demonstrating inherent improbabilities
§ 30:18	Refreshing recollection

VI. REDIRECT EXAMINATION

§ 30:19	In general
§ 30:20	Technique

VII. FORMS

§ 30:21	Impeachment by deposition
§ 30:22	Using a written statement to impeach
§ 30:23	Refreshing memory

CHAPTER 31. EXPERT TESTIMONY

I. INTRODUCTION

- § 31:1 In general § 31:2 Use of opposing party's expert
- § 31:2.50 —Refusal to allow substitute expert

II. SCOPE OF EXPERT TESTIMONY

- § 31:3 In general
- § 31:4 Opinion on ultimate issue

III. QUALIFICATIONS

- § 31:5 Direct examination on qualifications
- § 31:6 Objections to qualifications
- § 31:7 Objection based on nature of opinion offered

IV. VOIR DIRE ON QUALIFICATIONS

- § 31:8 In general
- § 31:9 Credentials
- § 31:10 Professional witness

V. DIRECT EXAMINATION OF THE EXPERT

- § 31:11 Preparation
- § 31:12 Content
- § 31:13 A learned treatise need not be in printed format
- § 31:14 Examination of medical witnesses
- § 31:15 Examination of technical expert

VI. PRESENTATION OF THE EXPERT'S OPINION

- § 31:16 In general
- § 31:17 Inadmissible evidence on which an expert's opinion relies cannot be disclosed to the jury
- § 31:18 Use of a hypothetical question
- § 31:19 Objections to hypothetical questions
- § 31:20 Opinion without a hypothetical question

VII. OBJECTIONS TO OPINION TESTIMONY

- § 31:21 Opinion not helpful
- § 31:22 Warnings
- § 31:22.10 —Preclusive effect of judgment
- § 31:23 Legal conclusion

§ 31:24	Inadequate basis
§ 31:25	Underlying data not trustworthy
§ 31:25.70	—Reliance on Google
§ 31:26	Lost earnings based on improper assumptions
§ 31:27	Experts reliance does not make document admissible
§ 31:28	Damage award reversed in slip and fall case based on unreliable medical expert testimony
§ 31:28.10	New trial for deceptive payments to experts

VIII. CROSS-EXAMINATION ON OPINION TESTIMONY

§ 31:29	In general
§ 31:30	Rules for expert cross-examination
§ 31:31	Federal regulations

IX. FORMS

§ 31:32	Expert witness qualifications
§ 31:33	Motion in limine to exclude expert testimony for lack
	of qualification
§ 31:34	Expert—Preparation for direct testimony
§ 31:35	Foundation for learned treatises
§ 31:36	Factual testimony of attending physician
§ 31:37	Factual testimony of non-treating attending physician
	called by defendant
§ 31:38	Factual testimony of a technical expert
§ 31:39	Hypothetical question—Medical expert
§ 31:40	Hypothetical question for technical expert
§ 31:41	Medical expert opinion
§ 31:42	Technical expert opinion

CHAPTER 32. INTRODUCTION OF EVIDENCE

I. INTRODUCTION

§ 32:1	In general
§ 32:2	Judicial notice

II. TESTIMONIAL FOUNDATIONS

§ 32:3	Habit or routine practice
§ 32:4	Character for truthfulness or untruthfulness
8 32.5	Talanhona conversations

§ 32:6	Identification of a voice
§ 32:7	Polygraph evidence
§ 32:7.10	Excited utterance

III. DOCUMENTARY FOUNDATION

§ 32:8	In general
§ 32:9	Business records
§ 32:9.10	—Computer generated summary as business record
§ 32:9.20	Past recollection recorded
§ 32:9.30	Authentication of business records
§ 32:10	Absence of entry in business records
§ 32:11	Public records and reports
§ 32:11.10	Trustworthy determination
§ 32:12	Records of vital statistics
§ 32:13	Absence of public record or entry
§ 32:14	Ancient document
§ 32:15	Handwriting
§ 32:15.10	Self authenticating handwriting
§ 32:16	Summaries of records
§ 32:17	Summary of documents in evidence

IV. OTHER EVIDENTIARY CONSIDERATIONS

§ 32:18	Prior and subsequent accidents
§ 32:18.10	Pre-injury safety measures
§ 32:18.20	Evidence of no prior accidents
§ 32:18.30	Safety standards
§ 32:18.40	Lack of prior claims
§ 32:19	Blood alcohol test results
§ 32:19.10	Smell of alcohol
§ 32:20	Drug test results
§ 32:21	Experiments and demonstrations
§ 32:21.10	Past recollection recorded
§ 32:21.20	Photographs
§ 32:22	Offers of proof
§ 32:23	Evidence relating to in limine rulings
§ 32:24	Remainder of writings
§ 32:24.10	Exclusion of evidence
§ 32:24.20	Spoliation of evidence
§ 32:24.30	Failure to question witness

V. FORMS

§ 32:25 Request to take judicial notice

§ 32:26 Foundation for routine practice testimony

TABLE OF CONTENTS

§ 32:27	Foundation for testimony concerning character for untruthfulness
§ 32:28	Foundation for telephone conversation
§ 32:29	Foundation for voice identification
§ 32:30	Foundation for contents of a writing
§ 32:31	Foundation for business record
§ 32:32	Foundation for reproduction of business record
§ 32:33	Absence of entry in business records
§ 32:34	Proof of absence of marriage record
§ 32:35	Notice of use of summary of records
§ 32:36	Offer of proof
8 32.37	Foundation for past recollection recorded

CHAPTER 33. OBJECTIONS TO EVIDENCE

I. INTRODUCTION

§ 33:1	In general
§ 33:2	Renewing an objection
§ 33:3	Form of the objection
§ 33:4	Motions to strike
§ 33:5	Motions for mistrial
§ 33:6	Making the record

II. SPECIFIC OBJECTIONS

Relevance
Prejudicial
Confusion or delay
Subsequent remedial measures
Subsequent remedial measures by non-party
Liability insurance
Compromise
Payment of medical expenses
Payment of wages
Privileges
Form of questions
Questions by trial judge

III. HEARSAY OBJECTIONS

§ 33:16	In general
§ 33:17	Objections to accident history
§ 33:18	Objections to former testimony

IV. FORMS

§ 33:19 Checklist for objections relating to relevance

CHAPTER 34. JURY INSTRUCTIONS AND VERDICT FORMS

I. JURY INSTRUCTIONS

8	34:1	In	genera

- § 34:2 Preliminary instructions before trial
- § 34:3 Preparation

II. SPECIFIC INSTRUCTIONS

§ 34:4	Basic or "boilerplate" instructions
§ 34:4.50	Pertaining to causation
§ 34:5	Pertaining to evidence
§ 34:6	Pertaining to damages
§ 34:6.10	Punitive damages

III. MECHANICS FOR INSTRUCTIONS

- § 34:7 Court's action on instructions
- § 34:8 Time of instruction
- § 34:9 Objections

IV. VERDICT FORMS

- § 34:10 General verdict
- § 34:11 Special verdict
- § 34:12 Interrogatories to the jury

V. FORMS

§ 34:13	Checklist for preliminary instructions
§ 34:14	Checklist of instructions pertaining to witnesses and evidence
§ 34:14.50	Instruction as to spoliation
§ 34:15	Checklist for instructions pertaining to damages
§ 34:16	General verdict for plaintiff
§ 34:17	General verdict for defendant
§ 34:18	General verdict on liability with special verdict or damages
§ 34:19	Interrogatories on contributory conduct of the plaintiff

CHAPTER 35. CLOSING ARGUMENT

I. INTRODUCTION

- § 35:1 In general § 35:2 Preparation
- § 35:2.10 Recalling dismissed jury for further deliberations

II. ANATOMY OF THE CLOSING ARGUMENT

- § 35:3 In general
- § 35:4 Introduction
- § 35:5 Liability—Both sides
- § 35:6 —Plaintiff
- —Defendant § 35:7
- § 35:8 Injury—Plaintiff
- § 35:9 —Defendant
- § 35:10 Damages—Plaintiff
- Per diem argument § 35:10.10
- Damages—Defendant § 35:11
- § 35:12 The close
- § 35:13 **Objections**
- § 35:13.10 —Improper argument

III. THE ART OF PERSUASION

- § 35:14 In general
- § 35:15 Presentation and delivery
- Conclusion § 35:16

IV. FORMS

- § 35:17 Standard closing pleas—Plaintiff
- § 35:18 —Defendant
- § 35:19 Plaintiff
- § 35:20 Defendant
- § 35:21 Defendant's step approach to damages

ERROR IN JURY'S VERDICT

§ 35:22 Recalling jury

PART II. PREMISES LIABILITY LAW

CHAPTER 36. NEGLIGENCE REQUIREMENT

I. ON-PREMISES INJURIES

§ 36:1	Generally
§ 36:2	Premises owner/occupant not insurer
§ 36:2.10	Predecessor owner
§ 36:3	Strict liability
§ 36:4	—Dangerous instrumentalities
§ 36:4.50	Negligence per se
§ 36:5	Foreseeability requirement
§ 36:6	Notice requirement
§ 36:6.10	Control requirement
§ 36:7	Res ipsa loquitur
§ 36:7.10	Res ipsa not applicable to alternate theories
§ 36:8	Res ipsa loquitur—Event ordinarily caused by negligence
§ 36:9	—Exclusive control requirement
§ 36:10	— — Divided or joint control
§ 36:11	Plaintiff's duty of care
§ 36:12	Duty to keep lookout
§ 36:13	Distractions
§ 36:13.10	—Cellphone
§ 36:14	Right to rely on owner
§ 36:14.05	—Requirement of ownership interest
§ 36:14.10	Real estate agents
§ 36:14.20	Auctioneers
§ 36:14.30	Assumption of risk
§ 36:14.40	Elevation-related dangers
§ 36:14.50	Insect bites

II. OFF-PREMISES INJURIES

Highway visual obstructions
Highway flood waters
Off-road dangers to travelers
—Utility poles
Adjoining public walks
Ocean beach conditions
Bordering bodies of water
Off-premises crime

TABLE OF CONTENTS

§ 36:21.10	Off-premises harm caused by natural conditions of
	premises
§ 36:21.20	Off-premises harm caused by excavation on
	premises
§ 36:22	Tree or limb falls
§ 36:22.10	Overhanging tree branches
§ 36:23	Tree roots raising sidewalk
§ 36:24	Animal attacks

CHAPTER 37. INVITEES AND LICENSEES

§ 37:1	Who are invitees
§ 37:2	—Purpose of visit
§ 37:3	—Economic benefit test
§ 37:4	—Mutual benefit test
§ 37:5	What is invitation
§ 37:6	Permission is not invitation
§ 37:7	Sufferance is not invitation
§ 37:8	Area of invitation
§ 37:9	Exceeding scope of invitation
§ 37:10	Time limits of invitation
§ 37:11	Who is licensee
§ 37:12	—License requirement
§ 37:13	Invited licensees
§ 37:14	Bare licensees
§ 37:15	Uninvited licensees
§ 37:16	Licensee's visitors
§ 37:17	Burden of proof for invitee or licensee

§ 37:18 Invitee-licensee distinction abolished

CHAPTER 38. DUTY TO INJURED PERSONS

§ 38:1	Duty to keep premises in reasonably safe condition
§ 38:2	—As to licensees
§ 38:3	Duty to inspect
§ 38:3.10	Acceptance doctrine
§ 38:4	Duty to warn
§ 38:4.10	—Not necessary to warn in Spanish
§ 38:5	—As to licensees
§ 38:6	—Sufficiency of warning
§ 38:6.10	Adequacy as a matter of law
§ 38:7	Duty to warn—Landowner unaware of entrant
§ 38:8	—Changed conditions
§ 38:8.10	—School trips
§ 38:9	Warning alone as due care

§ 38:9.10	Warnings—Discretionary function exception
§ 38:9.50	Design defects
§ 38:10	Defects unknown to landowner
§ 38:10.10	Trivial defects
§ 38:11	Obvious dangers
§ 38:11.05	Optical illusions
§ 38:11.10	Inherently dangerous conditions
§ 38:11.20	Unreasonably hazardous conditions
§ 38:11.30	Zip lines
§ 38:11.40	Covid-19
§ 38:12	Active negligence
§ 38:13	Rescue situations
§ 38:14	Wilful or wanton injuries
§ 38:15	Concealed dangers, traps, and pitfalls
§ 38:16	Conducting dangerous activities
§ 38:17	Errant motor vehicles
§ 38:18	Keeping animals

CHAPTER 39. PERSONS ON PREMISES

I. BUSINESS VISITORS

§ 39:1 § 39:2	Business invitee status Duty of care owed to business invitees
§ 39:2.10	Caveat emptor
§ 39:3	Sales representatives
§ 39:3.50	Utility workers
§ 39:4	Pickup and delivery persons
§ 39:5	Employment applicants
§ 39:6	Employees' visitors
§ 39:7	Independent contractors and their employees
§ 39:7.10	Liability of contractors
§ 39:8	Visitors for own convenience
§ 39:9	Tourists
§ 39:9.10	Garage/lawn sale shoppers
§ 39:9.20	Volunteers

II. PUBLIC SAFETY OFFICERS

\$ 39:10 \$ 39:11 \$ 39:12 \$ 39:13 \$ 39:14	Police officers —Inherent police risks Firefighters Firefighters' rule —Application to firefighters
§ 39:14 § 39:15	—Application to firefighters—Application to police officers

lxiv

§ 39:15.10	—Application to animal control officers
§ 39:16	Assumption of risk
§ 39:17	Statutory violations

III. SOCIAL GUESTS

§ 39:18	Guest as invitee
§ 39:19	Guest as licensee
§ 39:20	Task-performing guests
§ 39:20.10	Insurance Adjuster
§ 39:21	Business social guests
§ 39:22	Ordinary negligence

CHAPTER 40. CHILDREN

§ 40:1	Child invitees
§ 40:2	—Duty to warn
§ 40:2.10	Day care centers
§ 40:3	Child social guests
§ 40:4	Child trespassers
§ 40:5	Attractive nuisances
§ 40:6	—Attractiveness
§ 40:7	—Landowner's notice of danger
§ 40:8	—Child's failure to realize danger
§ 40:9	—Utility of instrumentality
§ 40:10	—Places and conditions
§ 40:11	—Trees and shrubs
§ 40:12	—Water
§ 40:13	Child's contributory negligence
§ 40:13.10	Child's assumption of risk
§ 40:14	Res ipsa loquitur
§ 40:15	Parental supervision

Volume 3

CHAPTER 41. LANDLORD LIABILITY

§ 41:1	Negligence
§ 41:2	Strict liability
§ 41:3	Tenant's visitors
§ 41:4	—Tenant negligence
§ 41:5	—Injury from tenant activity
§ 41:6	—Creating dangerous condition
§ 41:7	—Social guests
§ 41:8	—Public purpose exception

§ 41:9	—Agreement to repair or negligent repairs
§ 41:10	—Statutory violations
§ 41:11	Common areas
§ 41:12	—Control requirement
§ 41:13	—Notice requirement
§ 41:14	—Liability to third persons
§ 41:15	—Post-leasing changes
§ 41:16	Amusements
§ 41:17	Unhealthy conditions
§ 41:18	Lead paint poisoning
§ 41:19	Criminal attacks
§ 41:20	—Facilitating criminal attack
§ 41:21	Tenants' dogs
§ 41:22	Tenant's horse
§ 41:23	Smoke alarms
§ 41:23.10	Skylights and similar roof openings

CHAPTER 42. TRESPASSERS

- § 42:1 Trespasser defined
- § 42:2 Duty of care
- § 42:3 —Gross negligence
- § 42:4 Wilful, wanton, or reckless conduct rule
- § 42:5 Spring guns and traps
- § 42:6 Dog attacks
- § 42:7 Discovered trespassers
- $\S~42:8~~$ Anticipated trespassers
- § 42:9 Ejection of trespassers

CHAPTER 43. VIOLENT CRIMES GENERALLY

§ 43:1	General nonliability for criminal conduct
§ 43:1.10	Foreseeability as no basis for liability
§ 43:2	Foreseeable criminal conduct
§ 43:3	—Requirement of special relationship
§ 43:3.50	——Churches
§ 43:4	—Probability of criminal activity
§ 43:5	Prior similar incidents establishing foreseeability
§ 43:6	—Remoteness
§ 43:7	—Dissimilar crimes
§ 43:8	—Off-premises crimes
§ 43:9	Deterrent power requirement
§ 43:10	Totality of circumstances test
§ 43:11	Assassinations
§ 43:12	Drive-by shootings

§ 43:12.10	Purse-snatchings
§ 43:12.20	Mass shootings
§ 43:13	Premises conducive to crime
§ 43:14	Cash/valuables on premises
§ 43:15	Permitting criminal activity
§ 43:16	—Security personnel
§ 43:17	—Traffic security
§ 43:18	—Failure to warn of robbery potential
§ 43:19	Negligent security force
§ 43:20	—Firing shots at fleeing criminals
§ 43:21	—Failure to intervene during assault
§ 43:21.10	Special event security requirements
§ 43:22	Negligent gun storage
§ 43:23	Fault allocation in negligent security cases
§ 43:24	Security contractors
§ 43:25	Hate crimes

CHAPTER 44. VIOLENT CRIMES BY TYPE AND LOCATION

§ 44:1	Amusements
§ 44:2	ATM machines
§ 44:2.10	Night depositories
§ 44:3	Breach of assumed duty to provide security
§ 44:4	Missing or defective locks
§ 44:5	Bank robbery injuries
§ 44:6	Dwelling
§ 44:7	Medical facilities
§ 44:8	Parking facilities
§ 44:9	Parks and playgrounds
§ 44:10	Service stations
§ 44:11	Residences
§ 44:12	—Duty to warn
§ 44:13	—Party violence
§ 44:14	Stores
§ 44:15	—Parking lot assaults
§ 44:16	—Convenience stores
§ 44:17	Store robbery injuries
§ 44:18	Shopping centers
§ 44:19	Trailer parks
§ 44:20	Vacant buildings
§ 44:21	Schools
§ 44:22	Homeless shelters
§ 44:23	Hotels and motels
§ 44:24	Nightclubs, tayerns, and restaurants

§ 44:25	Workplaces
§ 44:26	Condominiums
§ 44:27	Transit stations

CHAPTER 45. ACTS BY THIRD PARTIES

§ 45:1	Amusements
§ 45:2	Associations and clubs
§ 45:3	Escalators
§ 45:4	Hotels and restaurants
§ 45:4.10	—Injury by patron's dog
§ 45:5	Shoplifting pursuits
§ 45:6	Stores and shopping centers
§ 45:7	Crowds
§ 45:8	Transportation
§ 45:8.10	Residences
§ 45:8.20	Interstate service plaza contractors

CHAPTER 46. ELEVATORS AND ESCALATORS

I. ELEVATORS

§ 46:1	Passengers
§ 46:2	Elevator doors
§ 46:3	Failure to level at floor
§ 46:4	Abrupt stop, drop or movement
§ 46:5	Elevator shaft falls
§ 46:6	—Entrants
§ 46:7	—Deliberately stepping into elevator
§ 46:8	—Falling into elevator shaft

II. ESCALATORS

§ 46:9	General duty of care
§ 46:10	—Children
§ 46:11	Caught in mechanism
§ 46:12	Res ipsa loquitur

CHAPTER 47. DOORS AND ENTRANCES

§ 47:1	General duty of care
§ 47:2	Thresholds
§ 47:3	Doormats
§ 47:4	Automatic doors
§ 47:5	Glass door on wall panels

lxviii

§ 47:6 Revolving doors § 47:7 Overhead doors § 47:8 Use of wrong doorway § 47:9 Door defenses § 47:10 —Types of doors § 47:11 -Opening wrong door § 47:12 Tracked in water—Care required § 47:13 —Duty to use anti-slip material § 47:14 Landlord liability § 47:15 Automobile service stations § 47:16 Hotels and restaurants § 47:17 Stores and shopping centers § 47:18 —Automatic doors —Tracked in water § 47:19 § 47:20 Transportation and storage facilities § 47:21 Hospitals

CHAPTER 48. FLOORS AND AISLES

Landlord liability § 48:1 -Slippery floor § 48:2 —Obstructions § 48:3 § 48:4 —Defective floor coverings § 48:4.10 —Intoxicated resident § 48:5 Associations and clubs § 48:6 Automobile service stations § 48:7 Government property § 48:8 Hotels and restaurants -Slip and fall on foreign substance § 48:9 § 48:10 Hospitals § 48:11 Residences -Floor spills § 48:12 § 48:13 -Floor coverings § 48:13.10 —Floor drop offs § 48:14 Nursing homes § 48:15 Store freezers

CHAPTER 49. STORE AND SHOPPING CENTER FLOORS AND AISLES

§ 49:1	Spill notice requirement
§ 49:2	—Mode of operation rule
§ 49:3	Equipment drips
§ 49:4	Customer consumption debris
§ 49:5	Produce spills
§ 49:6	Beauty and drug spills

§ 49:7	Soap and cleaner product spills
§ 49:8	Meat spills
§ 49:9	Floor defects
§ 49:10	Floor coverings
§ 49:11	Floor obstacles
§ 49:12	Washing and cleaning wetness
§ 49:13	Wax or polish slipperiness
§ 49:13.10	Gravel areas
§ 49:14	Floor defenses
§ 49:15	—Wet or slippery floors
§ 49:16	—Obstacles
§ 49:16.10	Storm in progress
§ 49:16.20	Rain on store floor
§ 49:17	Falling merchandise
§ 49:17.10	Falling displays
§ 49:18	Water spills
§ 49:19	Maintenance contractors

CHAPTER 50. STAIRS

<u> </u>	
§ 50:1	Riser and tread defects and variations
§ 50:2	Railings
§ 50:3	Slipperiness
§ 50:4	Automobile service stations
§ 50:5	Hotel and restaurant
§ 50:6	—Railings
§ 50:7	Residences
§ 50:8	—Outside steps
§ 50:9	Shopping centers
§ 50:10	Stores
§ 50:11	Stair defenses
§ 50:12	—Darkness
§ 50:13	—Availability of light
§ 50:14	—Manner of proceeding
§ 50:15	—Choice of routes
§ 50:15.50	—Use of stairs prohibited
§ 50:15.60	—Sovereign immunity
§ 50:16	Slippery matter on stairs
§ 50:17	Tenant liability

CHAPTER 51. PARKING LOTS

- § 51:1 In general § 51:2 Landlord liability
- § 51:3 Hotels and restaurants
- § 51:4 —Vehicular injuries

- § 51:5 Public schools
- § 51:6 Shopping centers
- § 51:7 Stores
- § 51:8 Hospitals

CHAPTER 52. ICE AND SNOW

- § 52:1 Natural accumulation rule
- § 52:2 —Hidden dangers
- § 52:3 Artificial accumulation
- § 52:4 Negligent removal
- § 52:5 —Sand and salt
- § 52:6 Time for removal
- § 52:7 Snow removal contractors
- § 52:8 Precipitation discharges
- § 52:9 Reasonable care rule
- § 52:9.10 Massachusetts Rule
- § 52:10 Hills and ridges doctrine
- § 52:11 Entrant status
- § 52:12 Lack of illumination
- § 52:13 Landlord liability
- § 52:14 Tenant liability
- § 52:14.10 Condominium association
- § 52:15 Residences
- § 52:16 Store and shopping center parking lots
- § 52:17 Shopping center sidewalks and steps
- § 52:18 Store sidewalks and steps
- § 52:19 Commercial parking lots
- § 52:20 Black ice

CHAPTER 53. SIDEWALKS

- § 53:1 Landlord liability
- § 53:2 Tenant liability
- § 53:2.30 Municipal liability
- § 53:2.50 Height differential
- § 53:3 Parks and playgrounds
- § 53:4 Hotels and restaurants
- § 53:5 Public schools
- § 53:6 Residences
- § 53:7 Stores
- § 53:8 Roads
- § 53:9 Driveways
- § 53:10 Transit stations

CHAPTER 54. SPORTING EVENTS

I. IN GENERAL

§ 54:1	General duty of care
§ 54:2	Entrant status
§ 54:3	General premises
§ 54:4	Safety statute violation or compliance
§ 54:5	Concessionaire negligence
§ 54:6	Participant liability
§ 54:7	Baseball and softball
§ 54:8	Baseball—Duty to screen
§ 54:9	Basketball
§ 54:10	Boxing or wrestling
§ 54:10.50	Bicycling and motorcycling
§ 54:11	Football
§ 54:11.10	Soccer
§ 54:12	Golfer
§ 54:13	Hockey
§ 54:14	Racetracks
§ 54:14.10	Skiing and snowboarding
§ 54:14.20	Trampolines
§ 54:14.30	Skateboarding
§ 54:14.40	Rodeo

II. RECREATIONAL USE STATUTES

§ 54:15	Generally
§ 54:16	Owners covered
§ 54:17	—Government bodies
§ 54:18	Premises covered
§ 54:19	—Public lands
§ 54:20	—Commercial property
§ 54:21	—Accessibility to public
§ 54:22	—True outdoors
§ 54:23	—Unimproved land
§ 54:24	—Large tracts of open and vacant land
§ 54:25	—Agricultural, range, mining, forest or similar
	land
§ 54:26	Entrant's status
§ 54:27	—Fee payers
§ 54:28	Activities covered
§ 54:29	—Child play
§ 54:30	—Water sports
§ 54:31	—Walking or hiking

lxxii

TABLE OF CONTENTS

§ 54:31.50	Hunting
§ 54:32	Activities covered—Sedentary activities
§ 54:33	—Vehicular activities
§ 54:34	—Rescue attempts
§ 54:35	Ordinary negligence
§ 54:36	—Known dangerous artificial latent conditions
§ 54:37	—Negligent performance of voluntary undertaking
§ 54:38	—Active negligence
§ 54:39	—Third-person tortfeasors
§ 54:40	—Wild animal injuries
§ 54:41	Wilful or malicious conduct
§ 54:42	—Failure to guard or warn
§ 54:43	—Maintaining dangerous condition
§ 54:44	—Failure to exclude or supervise

Table of Laws and Rules

Table of Cases

Index