

Table of Contents

CHAPTER 1. INITIAL CONSIDERATIONS

- § 1:1 Initial intake
- § 1:2 Scheduling meeting with client
- § 1:3 Meeting with client
- § 1:4 —Letter to client on guidelines for case
- § 1:5 Intake form
- § 1:6 —Form
- § 1:7 Additional intake questions for traumatic brain injury cases—Form
- § 1:8 Gathering information from client
- § 1:9 —Periodic questionnaire to client
- § 1:10 Obtaining photographs of injuries
- § 1:11 Obtaining photographs of area of fall
- § 1:12 Obtaining photographs of vehicle damage
- § 1:13 —Form
- § 1:14 Assessing the case
- § 1:15 Client’s personality
- § 1:16 Social media considerations
- § 1:17 Statute of limitations in New Jersey—In general
- § 1:18 —Computation of time
- § 1:19 —Civil actions for personal injury
- § 1:20 Statute of limitations—Personal injuries to child—
Claim of parent
- § 1:21 —Personal injury to a minor
- § 1:22 —Wrongful death
- § 1:23 —Survivor actions
- § 1:24 —Cause of action belonging to decedent
- § 1:25 —PIP benefits
- § 1:26 —Uninsured/Underinsured Motorist Claims
- § 1:27 —Victims of Crime compensation agency actions
- § 1:28 Tolling the statutes of limitation—N.J.S.A. 2A:14-21
- § 1:29 —The Discovery Rule (The *Lopez* Hearing)
- § 1:30 —The substantial compliance doctrine
- § 1:31 —Equitable tolling
- § 1:32 Ability to prove liability
- § 1:33 Model civil jury charge
- § 1:34 Premises liability—Notice requirement
- § 1:35 —Mode of operation
- § 1:36 Tort Claims Act
- § 1:37 Online portal for state claims effective July 11, 2024
- § 1:38 Tort Claims Act—Form

- § 1:39 Economic considerations
- § 1:40 Limitation on lawsuit (Verbal) v. no limitation on lawsuit (no threshold)
- § 1:41 Determining which threshold applies
- § 1:42 Where the vehicle driven by the defendant is a commercial vehicle the limitation on lawsuit threshold (verbal) does not apply
- § 1:43 Limitation on lawsuit (Verbal) v. no limitation on lawsuit (no threshold)—Letter to client subject to the limitation of lawsuit threshold (verbal threshold) advising of requirements
- § 1:44 Limitation on lawsuit v. no limitation/threshold v. no threshold—Acknowledgment of client knowledge of limitation on lawsuit threshold
- § 1:45 Effect of tort election on immediate family member
- § 1:46 New Jersey’s deemer statute—Tort election of out of state insurance policy
- § 1:47 Explanation of limitation on lawsuit threshold (verbal threshold)
- § 1:48 Uninsured motorist (UM) coverage
- § 1:49 Underinsured motorist (UIM) coverage
- § 1:50 Workers’ compensation claim
- § 1:51 Contingent agreement—Legal fee agreements
- § 1:52 Case Law update
- § 1:53 Contingent agreement—Legal fee agreements—Contingent fee agreement
- § 1:54 Alternate form—Contingent fee agreement
- § 1:55 Contingent agreement—Legal fee agreements—Attorneys’ sharing of fees as referral
- § 1:56 Attorney sharing of fees when two or more firms involved—Quantum meruit
- § 1:57 Pre-suit investigation
- § 1:58 Tortfeasor as defendant in municipal court for traffic ticket
- § 1:59 Medical authorizations—Generally
- § 1:60 —HIPAA authorization to disclose health information
- § 1:61 Obtaining medical records
- § 1:62 Emergency room medical records
- § 1:63 —Form
- § 1:64 Treating physician medical records
- § 1:65 —Form
- § 1:66 Obtaining and examining employment records
- § 1:67 —Authorization for wage and salary information
- § 1:68 —State tax authorization form
- § 1:69 Federal tax authorization—Form
- § 1:70 Obtaining witness statements
- § 1:71 —Form
- § 1:72 Gathering additional materials

TABLE OF CONTENTS

§ 1:73	—Letter to municipal court regarding disposition
§ 1:74	—Letter requesting police report
§ 1:75	Letter of representation to insurance company for driver of other car(s) involved in accident
§ 1:76	—Letter to driver
§ 1:77	—Letter to insurance carrier
§ 1:78	Obtaining defendant's insurance policy limits pre-suit
§ 1:79	Letter to insurance carrier for defendant's policy limits—Form
§ 1:80	Letter to client's insurance agent to obtain threshold and coverage information
§ 1:81	—Form
§ 1:82	Letter to Employer/Health Insurance/ ERISA Plan requesting proof that it is a valid, self-insured, fully self-funded Plan—Form
§ 1:83	Letter to client's insurance company notifying of Personal Injury Protection (PIP) claim and requesting PIP application
§ 1:84	—Form
§ 1:85	Preservation of vehicle evidence
§ 1:86	—Form
§ 1:87	Obtaining workers' compensation and state disability claims files
§ 1:88	—Authorization for release of disability information
§ 1:89	—Authorization for release of workers compensation file
§ 1:90	Claims where the plaintiff is deceased
§ 1:91	Letters of administration and prosequendum
§ 1:92	Letter to treating physician requesting narrative report
§ 1:93	—Form
§ 1:94	Bad faith of insurance carrier—Rova Farms
§ 1:95	—Rova Farms letter
§ 1:96	Rejecting the case
§ 1:97	—Form
§ 1:98	What constitutes an attorney-client relationship

CHAPTER

2. SUBSTITUTION-WITHDRAWAL IN CASE

§ 2:1	Substitution and withdrawal of attorney
§ 2:2	Substitution of attorney—Form
§ 2:3	Motion to withdraw as counsel—Form
§ 2:4	—Practice pointer
§ 2:5	Letter to clerk with motion to withdraw—Form
§ 2:6	Filing proof of mailing confirmation
§ 2:7	—Form
§ 2:8	Taking case over from another attorney

- § 2:9 Letter to prior attorney to transfer file—Form
- § 2:10 —Practice pointer
- § 2:11 Letter from client to prior attorney to transfer file—
Form
- § 2:12 Letter to attorney taking over file regarding attorney
lien—Form
- § 2:13 Schedule of hours—Form
- § 2:14 —Practice pointer
- § 2:15 Attorney Lien acceptance
- § 2:16 Letter to adjuster regarding lien—Form
- § 2:17 Notice of attorney lien—Form
- § 2:18 Letter to court to file notice of attorney lien—Form
- § 2:19 Letter to prior attorney regarding missing certification
of services—Form
- § 2:20 Motion to allocate attorneys' fees—Form
- § 2:21 Case law for brief

CHAPTER 3. FILING THE LAWSUIT

- § 3:1 Preparing the lawsuit
- § 3:2 Choosing the correct jurisdiction
- § 3:3 Jurisdiction over nonresidents—Long-Arm Statute—
Due Process requires minimum contacts
- § 3:4 General and specific jurisdiction
- § 3:5 Choosing the correct venue
- § 3:6 Basis for removal to federal court
- § 3:7 Complaint—In general
- § 3:8 The plaintiff(s)
- § 3:9 The defendant(s)
- § 3:10 Advantages of suing all possible defendants
- § 3:11 Real party in interest
- § 3:12 Minors and mentally incapacitated persons
- § 3:13 Caption for minor's complaint—Form
- § 3:14 Certification of parent to attach to minors complaint—
Form
- § 3:15 Partnerships
- § 3:16 Fictitious names—In personam actions
- § 3:17 Corporations
- § 3:18 State of New Jersey
- § 3:19 Joinder of claims
- § 3:20 The purpose of pleadings
- § 3:21 Frivolous litigation—Signing of pleadings
- § 3:22 Pleadings allowed
- § 3:23 Elements of the complaint
- § 3:24 Signing and dating of papers
- § 3:25 Requirements for first pleadings
- § 3:26 Order to delete filed document with personal
identifiers—Form

TABLE OF CONTENTS

§ 3:27	Demand for jury trial
§ 3:28	—Form
§ 3:29	Specific allegations
§ 3:30	—Loss of consortium—Form
§ 3:31	—Certification of permanency—Form
§ 3:32	Agency
§ 3:33	Punitive damages-drunk driver
§ 3:34	Complaint for punitive damages against a drunk driver defendant
§ 3:35	Product liability claims—Crashworthiness
§ 3:36	Failure to warn
§ 3:37	Consumer Fraud Act violations
§ 3:38	The medical malpractice complaint
§ 3:39	Sample dram shop/wrongful death count—Form
§ 3:40	Sample products' liability count—Form
§ 3:41	Sample motor vehicle complaint against defendant and employer with multiple passengers and loss of consortium—Form
§ 3:42	Sample trip and fall complaint on commercial property—Form
§ 3:43	Amending a pleading

CHAPTER 4. FILING AND SERVING THE COMPLAINT

§ 4:1	Commencement of action
§ 4:2	Electronic filing
§ 4:3	What to file
§ 4:4	Winning the discovery race; attachments to complaint
§ 4:5	Your complaint is filed. Now what?
§ 4:6	Service of the complaint and summons
§ 4:7	Summons—In general
§ 4:8	—Form
§ 4:9	List of lawyer referral services by county—Form
§ 4:10	Personal service—In personam jurisdiction
§ 4:11	Alternative service
§ 4:12	Service of process by Facebook
§ 4:13	Transmittal letter to Sheriff—Form
§ 4:14	Serving foreign insurance carrier in New Jersey
§ 4:15	Letter to Dept. of Banking & Insurance—Form
§ 4:16	Summons to Dept. of Banking & Insurance—Form
§ 4:17	Letter to sheriff to serve Dept. of Banking & Insurance—Form
§ 4:18	Motion to serve insurance carrier—Form
§ 4:19	Postal inquiry—Form
§ 4:20	Return and proof of service
§ 4:21	Failure to answer the complaint

- § 4:22 Request to enter default—Form
- § 4:23 Letter to defendant that default was entered—Form
- § 4:24 Final Judgment by Default (proof hearing)
- § 4:25 Proof hearing
- § 4:26 Letter requesting proof hearing—Form
- § 4:27 Pleadings submitted with request for proof hearing
- § 4:28 Setting aside default
- § 4:29 Motion to dismiss

CHAPTER 5. DISCOVERY AND MOTIONS

- § 5:1 Pretrial discovery—Generally
- § 5:2 Motions generally
- § 5:3 Timing of discovery
- § 5:4 Timing of production of videotaped surveillance of plaintiff
- § 5:5 Scope of discovery
- § 5:6 E-Discovery
- § 5:7 Time for completion of discovery—R. 4:24-1
- § 5:8 Extension of discovery as result of addition of new parties
- § 5:9 Form—Letter to court for 60-day extension of discovery
- § 5:10 Motion to extend discovery due to continuing medical treatment—Form
- § 5:11 Sending discovery requests that have a purpose
- § 5:12 Drafting techniques for discovery—Written interrogatories
- § 5:13 Uniform interrogatories required by R. 4:17-1
- § 5:14 R.4:17-4—Plaintiff required to provide signed HIPAA forms for all health care providers identified in answers to interrogatories
- § 5:15 Interrogatories Form A (Personal Injury)—Form
- § 5:16 Interrogatories Form A(1) (Medical Malpractice)—Form
- § 5:17 Interrogatories Form A(2) (Product Liability)—Form
- § 5:18 Interrogatories Form B (Property Damage)—Form
- § 5:19 Interrogatories Form C (Personal Injury Answered By Defendant)—Form
- § 5:20 Interrogatories Form C(1) (Auto Cases Answered By Defendant)—Form
- § 5:21 Interrogatories Form C(2) (Fall Down Cases Answered By Defendant)—Form
- § 5:22 Interrogatories Form C(3) (Medical Malpractice Cases Answered By Defendant)—Form
- § 5:23 Interrogatories Form C(4) (Product Liability Cases Answered By Defendant)—Form
- § 5:24 Interrogatories Form D (Property Damage Answered By Defendant)—Form

TABLE OF CONTENTS

§ 5:25	Interrogatories Form E—Form
§ 5:26	Certification page
§ 5:27	—Form
§ 5:28	Supplemental interrogatories allowed in certain types of actions
§ 5:29	Privileged or protected information
§ 5:30	Requests for Facebook login and password
§ 5:31	Statement to insurance company: Documents prepared in anticipation of litigation are work product
§ 5:32	Medical malpractice—The Patient Safety Act—Self Critical Analysis
§ 5:33	Subject matter of interrogatories
§ 5:34	Use of interrogatories
§ 5:35	Answers and objections to interrogatories
§ 5:36	Answering Uniform Interrogatories
§ 5:37	Letter demanding better answers to uniform interrogatories—Form
§ 5:38	Failure to provide discovery
§ 5:39	Good faith letter demanding overdue discovery responses—Form
§ 5:40	Motion to compel discovery
§ 5:41	—Form
§ 5:42	Motion to compel defendant’s recorded statement—Form
§ 5:43	Motion to Suppress defendant’s answer for failure to provide answers to discovery and/or compel better answers to discovery and for sanctions—Form
§ 5:44	Protective orders
§ 5:45	Amendment to interrogatory answers
§ 5:46	—Form
§ 5:47	Amendment to interrogatory answers with medical expert report—Form
§ 5:48	Amending interrogatory answers after the discovery end date
§ 5:49	Certification for late discovery amendments—Form
§ 5:50	Motion to bar late amendment to answers to interrogatories
§ 5:51	Dismissal for failure to answer interrogatories pursuant to R. 4:23-5
§ 5:52	Using interrogatories—Products liability cases
§ 5:53	Sample product liability interrogatories to defendant—Form
§ 5:54	Sample nursing home abuse interrogatories to defendant—Form
§ 5:55	Sample Supplemental interrogatories—Motor vehicle accident
§ 5:56	4:18-1. Production of documents, electronically stored

- information, and things and entry upon land for inspection and other purposes; pre-litigation discovery
- § 5:57 Overview of permitted requests and responses to the requests
- § 5:58 Sample request for production to defendant in auto case—Form
- § 5:59 Sample request for production to defendant in dram shop case—Form
- § 5:60 Sample request for production to defendant in sidewalk fall case—Form
- § 5:61 Rider to request with ESI format instructions
- § 5:62 Response to request for production—General form
- § 5:63 —Form with objection to instructions
- § 5:64 Certification of completeness pursuant to Rule 4:18-1(c)—Form
- § 5:65 Subpoena used to obtain records
- § 5:66 Subpoena duces tecum for records only—Form
- § 5:67 Letter to deponent with subpoena duces tecum for records only
- § 5:68 Acknowledgment of service
- § 5:69 Motion to enforce litigants' rights and compel compliance with subpoena—Form
- § 5:70 Requests for admissions
- § 5:71 —Form
- § 5:72 Physical and mental examination of persons
- § 5:73 Preparing the plaintiff for the defense doctor examination
- § 5:74 Attendance at examination by plaintiff's representative—Caselaw Update
- § 5:75 Documentation completed and signed by client at exam
- § 5:76 Pamphlet to client explaining insurance company medical exam
- § 5:77 Failure to appear for independent medical examination (IME)
- § 5:78 Best practices
- § 5:79 Consolidating cases for discovery purposes

CHAPTER 6. DEPOSITIONS

- § 6:1 Depositions—Generally
- § 6:2 Objective of deposition
- § 6:3 Scope of deposition
- § 6:4 Sequence and timing
- § 6:5 Scheduling a deposition
- § 6:6 Deposition of adverse party entity
- § 6:7 Interpreter
- § 6:8 Letter to opposing counsel that plaintiff requires an interpreter—Form

TABLE OF CONTENTS

§ 6:9	Notice to take deposition—Form
§ 6:10	Notice to take deposition of corporate entity—Form
§ 6:11	Letter to opposing counsel scheduling deposition— Form
§ 6:12	Letter to opposing counsel scheduling videotaped deposition of defendant—Form
§ 6:13	Notice to take videotaped deposition of defendant— Form
§ 6:14	Scheduling deposition of nonparty witness
§ 6:15	Subpoena to witness—Form
§ 6:16	Notice to bring documents
§ 6:17	Notice to take deposition with request to produce documents—Form
§ 6:18	Videotaped depositions
§ 6:19	Notice to take video deposition of medical expert— Form
§ 6:20	Virtual depositions
§ 6:21	Notice to take virtual deposition—Form
§ 6:22	Preparing to take a deposition
§ 6:23	Preparing your client for deposition
§ 6:24	Deposition of your client
§ 6:25	Sample list of activities for client to review
§ 6:26	Trial preparation—Expert depositions
§ 6:27	Record of deposition
§ 6:28	Objections
§ 6:29	Failure of attorney who issued deposition notice to attend or failed to serve witness with subpoena
§ 6:30	Failure of party to appear at deposition
§ 6:31	Motion to compel defendant's appearance at deposition—Form
§ 6:32	Sample deposition questions for defendant in automobile case—Form
§ 6:33	Sample deposition questions for dram shop case— Form
§ 6:34	Sample deposition questions for store manager in fall case—Form
§ 6:35	Sample deposition questions for surveillance investigator—Form
§ 6:36	Sample questions for direct of your medical expert— Form
§ 6:37	Sample deposition questions for biomechanical expert—Form
§ 6:38	Sample deposition questions for defendant dog bite case—Form

CHAPTER 7. EXPERTS

§ 7:1	Need for expert testimony
-------	---------------------------

- § 7:2 When expert testimony is required
- § 7:3 Expert testimony required to establish medical causation of injury/condition
- § 7:4 Expert testimony—An expert cannot opine as to symptom magnification of plaintiff
- § 7:5 When to retain the expert
- § 7:6 Locating and selecting the right expert
- § 7:7 Retaining the expert—What capacity
- § 7:8 Formalizing the employment
- § 7:9 Initial meeting with the expert
- § 7:10 Admissibility of Expert Testimony
- § 7:11 Case Law Update—*Doreen Hayes v. Barbara Delamotte*, 2018 WL 345829, 175 A3d 953 (N.J. 2018)
- § 7:12 Collaboration between attorney and expert is permitted in New Jersey
- § 7:13 The expert report as an adoptive admission
- § 7:14 Disclosure of material provided to attorney and expert
- § 7:15 Scope of the expert's testimony
- § 7:16 Discovery of nontestifying expert—Rule 4:10-2(d)(3)
- § 7:17 No adverse inference for failure to call expert
- § 7:18 Adversary's use of your expert
- § 7:19 Medical malpractice defendant may not use plaintiff's treating doctor for expert testimony
- § 7:20 Court order not required to discover examining physician's report
- § 7:21 Adverse party's informal interviews of a treating physician—*Stempler* interview
- § 7:22 Net opinion
- § 7:23 Analysis to determine admissibility of expert testimony where net opinion is alleged
- § 7:24 Fixing a reasonable fee for experts
- § 7:25 Subpoena for financial records from R. 4:19 examiner
- § 7:26 Use of treating physician as expert
- § 7:27 Use of expert video in summation

CHAPTER 8. ARBITRATION AND OFFER OF JUDGMENT

- § 8:1 Arbitrations—Generally
- § 8:2 The proceeding
- § 8:3 Adjournment request
- § 8:4 Failure to appear at the arbitration
- § 8:5 Preparing the arbitration statement
- § 8:6 Preparing arbitration statement—Form
- § 8:7 Preparing your client to testify
- § 8:8 What the award means
- § 8:9 Rejecting arbitration award
- § 8:10 Failure to properly reject the arbitration award

TABLE OF CONTENTS

§ 8:11	Substantial compliance standard and trial de novo
§ 8:12	Practical tip for plaintiff to reject arbitration award
§ 8:13	Rejecting arbitration award—Form
§ 8:14	Confirming the arbitration award
§ 8:15	Failure to timely file motion to confirm arbitration award
§ 8:16	Plaintiff's motion to confirm the arbitration award—Form
§ 8:17	The decision and award of an arbitrator is not subject to appeal
§ 8:18	Binding arbitration
§ 8:19	Offer of judgment—Generally
§ 8:20	Offer of judgment as a settlement tool
§ 8:21	—Plaintiff's offer of judgment to defendant
§ 8:22	—Defendant's offer of judgment to plaintiff
§ 8:23	Time and manner of making and accepting offer of judgment
§ 8:24	Form for accepting defendant's offer of judgment
§ 8:25	Consequences of non-acceptance of claimant's offer of judgment
§ 8:26	Offer of judgment and uninsured motorist claim
§ 8:27	No entitlement to prejudgment interest upon acceptance
§ 8:28	Appellate proceedings covered by offer of judgment
§ 8:29	Consequences of non-acceptance of offer of judgment of party not a claimant
§ 8:30	Defendant entitled to attorney's fees and costs after favorable verdict
§ 8:31	No entitlement to fees or costs if matter dismissed or no caused
§ 8:32	Multiple parties or claims—4:58-4. Multiple Claims; Multiple Parties
§ 8:33	High-Low agreement bars claim for offer of Judgment expenses absent explicit preservation of right in the Agreement
§ 8:34	Effect of new trial
§ 8:35	Application for fee; limitations

CHAPTER 9. PREPARING MATTER FOR TRIAL

§ 9:1	Pretrial
§ 9:2	Right of trial by jury and number of jurors
§ 9:3	Checklist for trial
§ 9:4	Pretrial exchange and necessary documents
§ 9:5	Pretrial exchange—Form
§ 9:6	Motions in limine—Generally
§ 9:7	Procedure and time to file motion

- § 9:8 Dispositive motion on eve of trial is not permitted
- § 9:9 Hearing procedures for motions in limine
- § 9:10 Motion in limine checklist
- § 9:11 Use of motion in limine
- § 9:12 List of common motions in limine for personal injury cases
- § 9:13 Common evidence rules supporting motions in limine
- § 9:14 Excluding plaintiff's criminal convictions at trial
- § 9:15 Motion in limine-sample brief-motor vehicle accident
- § 9:16 Voir dire
- § 9:17 Challenges for cause
- § 9:18 Peremptory challenges
- § 9:19 Motion for directed verdict
- § 9:20 Jury instructions
- § 9:21 Jury instructions sample auto case—Form
- § 9:22 Verdict form
- § 9:23 Model jury interrogatories regarding medical malpractice and preexisting conditions
- § 9:24 Sample auto limitation on lawsuit verdict sheet—Form
- § 9:25 Notice in lieu of subpoena—Appearance of party at trial
- § 9:26 Subpoena to witness
- § 9:27 —Form
- § 9:28 Letter to witness served with trial subpoena
- § 9:29 De bene esse deposition for trial
- § 9:30 Notice De bene esse deposition for trial—Form
- § 9:31 Videotaped depositions for trial
- § 9:32 Expedited trial—Generally
- § 9:33 Consent order for expedited jury trial—Form
- § 9:34 Glossary of medical terms—Form
- § 9:35 Trial objections—Form
- § 9:36 Sample direct questions for family member—Form
- § 9:37 Police officer as a trial witness
- § 9:38 Sample direct questions for police officer—Form
- § 9:39 Sample direct questions for plaintiff in injury case—Form
- § 9:40 Trial notebook
- § 9:41 Case law notebook

CHAPTER 10. LIENS

- § 10:1 Liens, subrogation, and reimbursement in personal injury claims
- § 10:2 Medical bills owed by client—Motor Vehicle Accident
- § 10:3 —Letter of protection with client authorization
- § 10:4 Request copy of medical billing ledger—Form
- § 10:5 Presenting and proving medical bills in excess of PIP Policy limits at trial

TABLE OF CONTENTS

§ 10:6	Health insurance liens
§ 10:7	Health insurance inquiry letter—Form
§ 10:8	Health insurance/benefit plans entitlement to subrogation and reimbursement
§ 10:9	Medicaid liens
§ 10:10	Negotiating the Medicaid lien
§ 10:11	Form letter to Medicaid for reduction of lien
§ 10:12	Medicare liens
§ 10:13	Medicare consent to release information—Form
§ 10:14	Medicare proof of representation form—Form
§ 10:15	Workers' compensation liens
§ 10:16	Welfare liens
§ 10:17	Letter to welfare department for lien—Form
§ 10:18	Child support owed by plaintiff
§ 10:19	Letter to child support office regarding money owed by plaintiff

CHAPTER 11. PREMISES LIABILITY

§ 11:1	Introduction
§ 11:2	Elements plaintiff must prove
§ 11:3	Duty of care
§ 11:4	Notice requirement
§ 11:5	Elements of the mode of operation rule
§ 11:6	Mode of operation
§ 11:7	When mode of operation does not apply
§ 11:8	Commercial vs. residential
§ 11:9	Sidewalk abutting vacant commercial lots
§ 11:10	Apartment vs. condo association
§ 11:11	Vacation rental property
§ 11:12	Religious, Charitable, or nonprofit organization
§ 11:13	Public landlord or property
§ 11:14	Res ipsa loquitur
§ 11:15	Res ipsa loquitur and role of expert
§ 11:16	Res ipsa loquitur and its role in directed verdicts
§ 11:17	Samples cases involving res ipsa loquitur
§ 11:18	Comparative fault
§ 11:19	Determining owner of property
§ 11:20	Locating defendant's insurance information
§ 11:21	Who is responsible for the incident
§ 11:22	Tort Claims Act
§ 11:23	Palpably unreasonable under Tort Claims Act
§ 11:24	Tort Claims Act related to liability for roadways
§ 11:25	Filing a complaint
§ 11:26	Landlord vs. tenant responsibility to clear snow and ice
§ 11:27	Public entity immunity

- § 11:28 Hired snow removal company
- § 11:29 Ongoing storm rule—Exceptions to the rule
- § 11:30 How a jury assesses reasonableness
- § 11:31 Obtain a weather report

CHAPTER 12. DOG BITE

- § 12:1 Strict liability—N.J.S.A. 4:19-16
- § 12:2 Elements plaintiff must prove under N.J.S.A. 4:19-16
- § 12:3 Independent contractor at dog boarding facility
- § 12:4 Plaintiff's skin does not need to be broken
- § 12:5 Invitee vs. trespasser
- § 12:6 Determining whether a duty is owed
- § 12:7 Dogs with vicious propensities
- § 12:8 Overly aggressive play
- § 12:9 Negligence of plaintiff
- § 12:10 Comparative Negligence Act
- § 12:11 Damages
- § 12:12 A picture is worth a thousand words
- § 12:13 Negligent infliction of emotional distress
- § 12:14 Who is responsible for the dog bite incident
- § 12:15 Ownership of dog
- § 12:16 Landlord liability
- § 12:17 Police do not have a duty to obtain dog owner's name
- § 12:18 Locating defendant's insurance information
- § 12:19 Insurance policy exclusions
- § 12:20 Letter of representation
- § 12:21 —Form
- § 12:22 Filing a complaint
- § 12:23 —Form
- § 12:24 Prior violations of the dog
- § 12:25 Sample letter to township for records—Form
- § 12:26 Sample letter to township with completed OPRA request form—Form
- § 12:27 Sample subpoena to animal control—Form

CHAPTER 13. PRODUCTS LIABILITY

- § 13:1 Products liability cases—Generally
- § 13:2 Gathering information
- § 13:3 Obtain use and warning instructions
- § 13:4 Necessary information to file lawsuit
- § 13:5 Types of allegations for complaint
- § 13:6 The law and burden of proof
- § 13:7 Design changes and other subsequent remedial measures
- § 13:8 Duty to preserve—Spoliation
- § 13:9 Retaining a product expert

TABLE OF CONTENTS

§ 13:10	Manufacturing defect
§ 13:11	Design defect
§ 13:12	Duty to warn
§ 13:13	Crashworthiness doctrine
§ 13:14	Strict liability
§ 13:15	Punitive damages
§ 13:16	Product liability complaint—Form
§ 13:17	Defenses
§ 13:18	Apportionment of fault of settling defendants case law update

CHAPTER 14. DRAM SHOP AND SOCIAL HOST LIABILITY

§ 14:1	Generally
§ 14:2	Social Host Liability Act
§ 14:3	Liability under the Dram Shop Act
§ 14:4	Proof of visible intoxication
§ 14:5	Proximate cause
§ 14:6	Comparative fault
§ 14:7	Evidence of drinking habit admissible for impeachment purposes
§ 14:8	Conviction for Drunk Driving is absolute bar to claims for noneconomic losses (pain and suffering)
§ 14:9	Drunk driving conviction does not bar claim for PIP benefits
§ 14:10	Drunk driving conviction does not bar cause of action under Dram Shop Act
§ 14:11	Social host liability
§ 14:12	Underage social host liability
§ 14:13	Duty of social host and guest in claim made by intoxicated first party
§ 14:14	Duty of social host at house with pool
§ 14:15	Drunk driving conviction does not bar claim by underage drinker against social host that served him/her
§ 14:16	Allowing a drunk to drive
§ 14:17	Important information to gather
§ 14:18	Letter to preserve evidence—Form
§ 14:19	Hiring an expert
§ 14:20	Sample dram shop complaint—Form
§ 14:21	Sample outline for deposition of defendant establishment in Dram Shop case
§ 14:22	Sample interrogatories to defendant alcohol server establishment

CHAPTER 15. WRONGFUL DEATH AND SURVIVAL ACTIONS

§ 15:1	Overview
--------	----------

- § 15:2 Survivor's Act
- § 15:3 Wrongful Death Act
- § 15:4 Individuals considered survivors under the Wrongful Death Act
- § 15:5 Initiating the claim
- § 15:6 Obtaining surrogate appointments to file lawsuit
- § 15:7 Damages available in wrongful death claims
- § 15:8 Damages available in survivor claims
- § 15:9 Punitive damages
- § 15:10 Availability of monies to creditors
- § 15:11 Liability insurance limitations
- § 15:12 Forms for allocation hearing in Wrongful Death Action

CHAPTER 16. AUTOMOBILE LAW

- § 16:1 Introduction
- § 16:2 Automobile insurance laws and statutes—Generally
- § 16:3 Dealer's garage policy
- § 16:4 Dealer's garage policy constituted an illegal escape clause.
- § 16:5 Failure to maintain required medical expense coverage; effect on recovery for non-economic loss
- § 16:6 Non-owned vehicles
- § 16:7 Out-of-state motorists
- § 16:8 Claims arising from operation of Uber/Lyft vehicles
- § 16:9 Rideshare vehicles—Law regarding transportation network companies and its drivers
- § 16:10 Passengers whose car(s) are uninsured but not in the accident
- § 16:11 Owner as passenger
- § 16:12 Owner and driver of uninsured car
- § 16:13 Conviction/guilty plea to drunk driving; effect on recovery of economic and non-economic damages
- § 16:14 Intentional act; effect on recovery of economic and non-economic damages
- § 16:15 Dram shop case applicability
- § 16:16 N.J.S.A. 39:6A-4.5(a) bar to recovery applies to Wrongful death actions
- § 16:17 Limitation on lawsuit threshold—Introduction
- § 16:18 Determining which threshold applies
- § 16:19 Statute governing tort option
- § 16:20 Limitation on lawsuit—Case law interpretation
- § 16:21 Effect of tort election on immediate family member
- § 16:22 Authority to transact business in New Jersey
- § 16:23 Applicability to affiliated companies
- § 16:24 Out of state motorists

TABLE OF CONTENTS

§ 16:25	Case Law Update—Deemer statute does not apply to pedestrians
§ 16:26	—Deemer Statute: Compulsory Liability Limits Not Effected by Basic Policy
§ 16:27	Comparative analysis of prior injuries
§ 16:28	Qualifying injuries under the limitation on lawsuit threshold
§ 16:29	Permanent injury defined and discussed
§ 16:30	Multiple injuries under AICRA
§ 16:31	Negligent infliction of emotional distress claim is not subject to AICRA
§ 16:32	Drunken defendant is entitled to benefit of limitation on lawsuit threshold
§ 16:33	Statutory requirements for compliance with limitation on lawsuit threshold
§ 16:34	Property Liability Insurance Guaranty Association (PLIGA)
§ 16:35	Insurance Fair Conduct Act-New Legislation: Bad faith against Uninsured (UM) and Underinsured (UIM) insurance carriers
§ 16:36	Complaint for UM/UIM coverage with count for violation of the Fair Conduct Act (Count Four)
§ 16:37	Letter to PLIGA to set up claim—Form
§ 16:38	Uninsured motorists
§ 16:39	Apportionment of fault to UM John Doe driver on verdict sheet
§ 16:40	UM-Comparative negligence: Plaintiff can recover full award from defendant who was 60% at fault and phantom driver (UM) is 40% at fault
§ 16:41	Underinsured motorists
§ 16:42	Determining UIM coverage where there are multiple claimants
§ 16:43	Step down clauses in UM/UIM policies
§ 16:44	Step-Down Provision in Commercial Vehicle Insurance Policy Where Vehicle was Engaged in Interstate and Intrastate Commerce
§ 16:45	Procedures to pursue UM/UIM claim
§ 16:46	Case Law Update—Failure to notify UIM carrier of lawsuit against underinsured tortfeasor and extinguishing UIM carrier’s subrogation rights precludes UIM claim
§ 16:47	Longworth letter
§ 16:48	Zirger letter
§ 16:49	Amendment to R.4-30A Entire Controversy Doctrine—UM/UIM bad-faith claims no longer need to be plead with initial UM/UIM claim
§ 16:50	Insurer’s responsibility to innocent third party after revocation of policy due to material misrepresentation by the insured tortfeasor

- § 16:51 Personal injury protection benefits
- § 16:52 What policy to obtain PIP benefits from
- § 16:53 Full amount of PIP benefit is available without reduction of copay or deductible
- § 16:54 Special or “Dollar-A-Day” policies PIP coverage for owner and passenger
- § 16:55 PIP coverage chart based on policy type
- § 16:56 Two or more PIP policies apply
- § 16:57 PIP for out-of-state vehicle in New Jersey collision
- § 16:58 Purpose of PIP Coverage
- § 16:59 Payment of PIP benefits
- § 16:60 PIP benefits for pedestrian struck
- § 16:61 Electric Scooters and PIP
- § 16:62 Coordination of benefits—PIP v. Health Plan Coverage-ERISA
- § 16:63 Form-Letter to PIP to Convert Policy to PIP Primary
- § 16:64 Subrogation rights of PIP carrier in limited circumstances
- § 16:65 Recovery of PIP Benefits—Where alleged tortfeasors were not “required” to maintain PIP or medical expense benefits coverage there is a right to subrogation and recovery of PIP benefits
- § 16:66 Reimbursement of PIP Benefits—Statute of Limitations—When is a claim for PIP benefits deemed filed
- § 16:67 Medical providers seeking more than PIP fee schedule—Balance billing
- § 16:68 Letter to provider regarding balance billing issue—Form
- § 16:69 Known future medical treatment—Statute of limitation does not bar action
- § 16:70 Verbal Threshold Does Not Apply to Subrogation Actions Filed by Workers’ Compensation Carriers
- § 16:71 Major case law update—Medical expenses beyond selected PIP limits
- § 16:72 Law on Unreimbursed Medical Bills, N.J.

CHAPTER 17. MEDICAL MALPRACTICE AND PROFESSIONAL NEGLIGENCE

- § 17:1 Claims—In general
- § 17:2 Types of medical malpractice claims
- § 17:3 Deviation from the standard of care
- § 17:4 Informed consent
- § 17:5 Battery
- § 17:6 Common knowledge may furnish standard of care
- § 17:7 Res ipsa loquitur
- § 17:8 Preexisting condition—Increased risk/loss of chance/proximate cause

TABLE OF CONTENTS

§ 17:9	Failure to perform a diagnostic test increased the risk of harm
§ 17:10	Wrongful birth and life
§ 17:11	Malpractice—Exercise of judgment
§ 17:12	Apparent authority
§ 17:13	Emergency room visit
§ 17:14	Ongoing treatment
§ 17:15	Initial meeting with client
§ 17:16	Medical records
§ 17:17	Prior litigation involving defendants
§ 17:18	Statute of limitations
§ 17:19	Discovery rule in relation to statute of limitations
§ 17:20	Case Law Update—Medical malpractice: Fictitious pleading of newly added defendants
§ 17:21	—Medical malpractice: Self-Critical analysis and the Patient Safety Act
§ 17:22	Types of damages available
§ 17:23	Legal malpractice
§ 17:24	Plaintiff in a legal malpractice case is entitled to recovery of attorneys’ fees incurred in prosecuting the legal malpractice claim
§ 17:25	Expert testimony in legal malpractice cases
§ 17:26	When common knowledge is sufficient in legal malpractice cases
§ 17:27	Prior settlement does not bar legal malpractice claim
§ 17:28	Comparative negligence as a defense to a professional liability claim
§ 17:29	Affidavit of merit
§ 17:30	When is an affidavit of merit needed?
§ 17:31	When is an affidavit of merit not needed?
§ 17:32	Three procedural requirements
§ 17:33	“Licensed Person” defined for affidavit of merit
§ 17:34	Determining which type of professional needs to issue affidavit of merit
§ 17:35	Plaintiff’s medical expert must match qualifications of defendant
§ 17:36	Affidavit of merit cannot ambiguously refer to a group
§ 17:37	What type of expert needed in legal malpractice case?
§ 17:38	Failure to file the affidavit of merit
§ 17:39	Ferreira conference
§ 17:40	What Counts as “Extraordinary Circumstances”?
§ 17:41	Doctrine of substantial compliance
§ 17:42	Timing of the motion to dismiss
§ 17:43	Sample affidavit of merit—Form

CHAPTER 18. NOT YOUR ORDINARY PERSONAL INJURY CLAIM

I. INJURIES CAUSED BY FALLING TREES AND BRANCHES

- § 18:1 Tree along highway falls on car driving by
- § 18:2 Tree abutting property line between neighbors

II. INJURIES AT AN AMUSEMENT PARK OR CARNIVAL

- § 18:3 Overview
- § 18:4 Carnival-Amusement Rides Safety Act
- § 18:5 Required content of notice of injury at an amusement park or carnival
- § 18:6 Defendant's failure to serve timely notice of claim bars third party claims for contribution and indemnification
- § 18:7 Gross negligence by waterpark

III. INJURIES AT ICE SKATING AND ROLLER SKATING RINKS

- § 18:8 Liability for falls on ice rink
- § 18:9 Responsibility of roller skating rink operators
- § 18:10 Responsibility of roller skaters
- § 18:11 Assumption of the risk
- § 18:12 Rink's liability for skating lessons

IV. SKIING INJURIES

- § 18:13 Responsibility of ski operator
- § 18:14 Duties of skiers
- § 18:15 Skiers assumption of risk
- § 18:16 Application of law on comparative negligence
- § 18:17 Reporting injury within 90 days
- § 18:18 Requirements of notice content
- § 18:19 Late notice of ski accident
- § 18:20 Statute of limitations
- § 18:21 Statute of limitations as it relates to injured minors
- § 18:22 Defenses

V. SPORTS RELATED INJURIES TO PLAYERS AND SPECTATORS

- § 18:23 Limited duty rule
- § 18:24 Spectator injured at baseball game

TABLE OF CONTENTS

- § 18:25 Negligent crowd security
- § 18:26 Standard for tort liability of a minor who injures another while playing sport activity
- § 18:27 Parent's liability for injuries inflicted by own child to another child
- § 18:28 Standard for tort liability of adult who injures another while playing sport activity
- § 18:29 Standard of care applied to coach when player injured
- § 18:30 The "reckless" standard defined in sports activities
- § 18:31 Factors to consider in determining whether conduct was reasonable in the context of a sports activity

VI. GOLFING INJURIES

- § 18:32 Standard for a golfer on the green—yell "Fore"
- § 18:33 Golf cart injury
- § 18:34 Struck by lightning while golfing

VII. GYM INJURIES

- § 18:35 What is an exculpatory clause in a gym membership?
- § 18:36 When is an exculpatory clause enforceable?
- § 18:37 Seminal case on fitness membership exculpatory clause
- § 18:38 Standard applied to gym exculpatory clauses
- § 18:39 What may not be included in an exculpatory clause

VIII. SKYDIVING INJURIES

- § 18:40 Signed waiver of rights
- § 18:41 Skydiving is regulated
- § 18:42 Recklessness/Intentional conduct standard
- § 18:43 What is considered reckless
- § 18:44 Expert testimony

IX. TRAMPOLINE INJURIES

- § 18:45 Assessments to make for injuries at a home
- § 18:46 Homeowner's duty to warn
- § 18:47 Commercial trampoline park waivers
- § 18:48 Review arbitration clause to determine if enforceable

X. INJURIES WHILE RIDING PUBLIC TRANSPORTATION

- § 18:49 Injuries while a passenger on public transportation

XI. INJURED MOTORIST FROM POLICE INACTION

- § 18:50 Tort Claims Act: police officers not entitled to

immunity for ministerial as or under good
samaritan act

XII. PORTEE CLAIM-BYSTANDER NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS (NIED)

- § 18:51 What is a portee claim?
- § 18:52 Elements of a portee claim
- § 18:53 What is an intimate and familial relationship?
- § 18:54 Claimant does not need to “see” the event happen if
she “hears” it
- § 18:55 What is considered “severe emotional distress”?
- § 18:56 Portee claim is not subject to verbal threshold
- § 18:57 Parents claim is tolled for as long as child’s claim is
tolled

XIII. ITEMS THAT FALL FROM A STORE SHELF

- § 18:58 Duty store owes a patron

XIV. ROLLERBLADING IN PARK

- § 18:59 No duty owed by park for injury due to hole in path

XV. INJURIES ON BICYCLE

- § 18:60 Continued pothole issues on a roadway could be a
palpably unreasonable dangerous condition

CHAPTER 19. SETTLEMENT

- § 19:1 How do I get the settlement money
- § 19:2 Who prepares the release
- § 19:3 Common Release Issues
- § 19:4 Release form
- § 19:5 Closing statement
- § 19:6 Closing statement form
- § 19:7 Child support liens/judgments
- § 19:8 Stipulation of dismissal
- § 19:9 Dismissal form
- § 19:10 Power of Attorney
- § 19:11 Power of attorney form
- § 19:12 Letter to counsel enclosing settlement items
- § 19:13 Enclosed settlement items form
- § 19:14 Settlement when plaintiff is a minor or incompetent
- § 19:15 Special needs Trust
- § 19:16 Friendly hearing
- § 19:17 Friendly hearing testimony outline for parents

TABLE OF CONTENTS

- § 19:18 Friendly hearing paperwork
- § 19:19 Affidavit of treating physician form
- § 19:20 Certification of counsel form
- § 19:21 Uniform order form
- § 19:22 Order approving settlement and dismissal form
- § 19:23 Affidavit of attorney form
- § 19:24 Motion to enforce settlement
- § 19:25 Motion to enforce settlement form

CHAPTER 20. DAMAGES

- § 20:1 What is the value of a client's claim?
- § 20:2 Factors to consider
- § 20:3 Proof required for damages
- § 20:4 Types of damages to pursue
- § 20:5 Medical expenses—Model Civil Jury Charge 8.11A
- § 20:6 Medical expenses related to treatment
- § 20:7 Medical expenses related to future treatment
- § 20:8 Plaintiff's duty to mitigate damages
- § 20:9 Past and future lost wages—Model Civil Jury Charge 8.11C and 8.11I
- § 20:10 Past and future lost wages due to the accident and injury
- § 20:11 Past lost wages and verbal threshold statute
- § 20:12 Pain, suffering, disability, impairment and loss of enjoyment of life—Model Civil Jury Charge 8.11E
- § 20:13 Pain, suffering, disability, impairment and loss of enjoyment of life
- § 20:14 Aggravation of pre-existing disability—Model Civil Jury Charge 8.11F
- § 20:15 Aggravation of pre-existing disability
- § 20:16 Per quod or consortium—Model Civil Jury Charge 8.30B
- § 20:17 Per quod or consortium
- § 20:18 Punitive damages—Model Civil Jury Charge 8.60
- § 20:19 Punitive damages
- § 20:20 Life expectancy
- § 20:21 Time unit argument
- § 20:22 Life expectancy and Time Unit Rule—Model Civil Jury Charge 8.11G

Table of Laws and Rules

Table of Cases

Index