

INDEX TO CIVIL JURY INSTRUCTIONS

References are to Instruction Number [NJI2d Civ.]. Point Indexed may be in the Instruction or in the Comment or Authorities.

ABSOLUTE LIABILITY

See Strict Liability, this index

ABSTRACTING EXPENSES

See Eminent Domain, this index

ABUSE OF JUDICIAL DISCRETION

Words and phrases, 1.42

ABUSE OF PROCESS

See Malice and Malicious, this index

ACCEPTANCE

Conditional acceptance as rejection and counteroffer, 15.04

Defined and discussed, 15.04

Previous dealings between parties, 15.05

Revoked prior to receipt, 15.42

Silence or inaction, 15.05

Teacher's tender of resignation, 15.42

Time for, 15.41

Withdrawal of offer, 15.42

ACCORD AND SATISFACTION

Mentioned, 15.28

ACCOUNTANTS

See Malpractice, this index

ACCRUAL OF CAUSE OF ACTION

See Cause of Action, this index

ACT OF GOD

See Extraordinary Force of Nature, this index

ACTION, CAUSE OF

See Cause of Action; Pleadings, this index

ACTION AT LAW OR IN EQUITY

At law

Assumpsit for money had and received, founded on equity, but action at law,
4.40

Breach of contract, damages, 15.01

INDEX—CIVIL JURY INSTRUCTIONS

ACTION AT LAW OR IN EQUITY—Cont'd

At law—Cont'd

Fraud case, burden of proof by the greater weight of the evidence, 2.12B

Private nuisance, 17.01

Probate of a will, 16.01

Rescission, affirmative defense of, *see* Rescission, this heading

Counterclaim at law, filed in equitable cause of action, 2.03

Deceit, attempt to relabel malpractice as, to avoid professional negligence statute of limitations, 12.01

Fraud, attempt to relabel malpractice as, to avoid professional negligence statute of limitations, 12.01

In equity

Breach of contract, specific performance, *see* Contract, Specific Performance, this index

Enforcement of rights under revoked reciprocal will, 16.11

Equitable adjustment of contract versus damages for breach, 4.47

Foreclosure of construction lien, 15.01

Fraud case, burden of proof by clear and convincing evidence, 2.12B

Private nuisance, 17.01

Quiet title action, 15.01

Reformation of a contract, 15.22

Reformation of a will, 16.10

Rescission, action to rescind, *see* Rescission, this heading

Suit against partners to recover judgment against partnership, 6.21

Legal and equitable issues in same case, 15.01

Malpractice recharacterized, attempt to avoid statute of limitations for professional negligence, 12.04

Rescission

Action to rescind is equitable action, 4.40; 15.24

Affirmative defense in law action, 15.24

Specific performance of contract, *see* Contract, Specific Performance, this index

ACTIVATION OF PREEXISTING CONDITION

Damages, 4.09

ACTIVITIES ON PREMISES

Injuries caused by, *see* Liability of Owner, Occupant or Lessor of Real Property, this index

ACTUAL DAMAGES

See Damages, this index

ADMINISTRATION

See Parties, this index

ADMINISTRATIVE RULES AND REGULATIONS

See Rules and Regulations, this index

ADMISSIONS

See also Credibility; Evidence, this index

Defendant's admission of co-defendant's negligence, 2.21

INDEX—CIVIL JURY INSTRUCTIONS

ADMISSIONS—Cont'd

Extrajudicial admissions, 1.41; 1.53
Judicial admissions, 1.53; 2.01; 2.06
Jury instruction on admissions, 1.53; 2.01
Liability admitted, damages denied, 2.06
Party's own testimony, 2.01
Pleadings, 2.01
Requests for admissions, 2.01
Uncontradicted or uncontroverted evidence, 1.61

ADMONITIONS

See Instructions, this index

ADULTERY

See Alienation of Affections, this index

ADVENTURE, JOINT

See Joint Venture, this index

ADVERSE POSSESSION

In general, 13.01

ADVERTISEMENT

Express warranty found in, 11.41

AFFIRMATIVE DEFENSES

See also Assumption of Risk; Breach of Contract, this index
Appeal, unless raised at trial, defenses cannot be raised on, 2.02D
Assumption of the risk, *see* Assumption of Risk, this index
Breach of contract, *see* Contract Actions, this heading
Burden of pleading and proving, on defendant, 2.02D
Common carrier sued by passenger, *see* Common Carrier, this index
Comparative negligence, *see* Comparative Negligence, this index
Consideration, failure of, *see* Contract, Rescission, this index
Contract actions
 Generally, 15.20 et seq.
 Breach of contract as an affirmative defense, 2.02D; 15.20
 Defined: matters that seek to avoid a valid contract, 15.01; 15.20 et seq.
 Duress, 15.26
 Election of remedies, 15.20
 Expenses saved by reason of breach, not affirmative defense, 4.40
 Failure of consideration, 15.06
 Fraud in the inducement, 15.21
 Fraudulent misrepresentation, 15.21; *see also* Misrepresentation, this index
 Impossibility of performance, 15.20
 Induced by threat, 15.26
 Material misrepresentation, 15.22; *see also* Misrepresentation, this index
 Mental capacity to execute contract, lack of, 15.25; 15.26
 Misrepresentation
 See also Misrepresentation, this index
 Fraudulent, 15.21

INDEX—CIVIL JURY INSTRUCTIONS

AFFIRMATIVE DEFENSES—Cont'd

- Contract actions—Cont'd
 - Misrepresentation—Cont'd
 - Material, 15.22
 - Modification, 15.28
 - Payment of a debt, 2.02D
 - Rescission
 - Action to rescind, 4.40; 15.24
 - Affirmative defense of rescission, 15.24
 - Supervening impossibility of performance, no defense, 15.20
 - Undue influence, 15.25
- Contributory negligence, *see* Contributory Negligence, this index
- Counterclaim, defense to, 2.03
- Cross-claim, defense to, 2.04
- Expenses saved by reason of breach of contract, not affirmative defense, 4.40
- Extraordinary force of nature, *see* Extraordinary Force of Nature, this index
- Governmental immunity, 2.02D
- Gross negligence, *see* Comparative Negligence, this index
- Injured party using defendant's real property with permission, without charge, for recreational purposes, 8.61
- Instruction drafted alternatively as elements of plaintiff's case and affirmative defense, 11.46
- Insurance policy, establishing event within exclusionary clause, 2.02D
- Knowledge of the defect, products liability, 11.26
- Laches, 2.02D
- Last clear chance discussed, 3.23
- Mental capacity to execute an instrument, lack of, 15.25; 15.26
- Miscellaneous affirmative defenses, 2.02D
- Misuse, *see* Products Liability, this index
- Mitigation of damages, *see* Mitigation of Damages, this index
- Must be evidenced, 2.02A
- Must be pleaded, 2.02A
- Negligence action
 - See also*, 2.02A to 2.02C
 - see generally*, 2.02D
 - State of the art, *see* Products Liability, this index
- Passenger on common carrier, carrier's defenses, *see* Common Carrier, this index
- Payment of a debt, 2.02D
- Products liability, *see* Products Liability, this index
- Real party in interest, 2.02D
- Recreation Liability Act, *see* Nebraska Recreation Liability Act, this index
- Release
 - Affirmative defense generally, 2.02D
 - Apportionment of damages under L.B. 262, effect of release, 5.04 (Comment, part VII)
 - Vicarious liability, as affected by release, 6.02
- Res judicata, 2.02D
- Rescission, *see* Contract, Rescission, this index

INDEX—CIVIL JURY INSTRUCTIONS

AFFIRMATIVE DEFENSES—Cont'd

State of the art, *see* Products Liability, this index
Statement of the case, into which defense inserted
 Contracts, 15.01
 Negligence, 2.01; 2.02D
Statutes of limitations, *see* Statutes of Limitations, this index
Strict liability, *see* Products Liability; Strict Liability, this index
Superseding cause, affirmative defense only when pleaded as such, 3.43
Third party claim, defense to, 2.04
Usury, 2.02D
Warranty, exclusion or modification of implied warranty, 11.46
Will contest, *see* Wills, Contest, this index

AGENCY

See also Common Carrier; Contract; Damages; Husband and Wife; Joint Venture; Negligence; Partnership; Statutes of Limitations, this index

Agent
 Authority of, *see* Authority of Agent, this heading
 Consent to act, 6.03
 Distinguished from employee, 6.01
 Distinguished from independent contractor, 6.06
 Duty to communicate knowledge to principal, 6.03; 6.30
 Duty to disclose, 6.03; 6.30
 Employee compared, 6.01
 Examples of agents, 6.03
 Fraud, 9.01
 Hired-out to another, 6.10
 Versus independent contractor, 6.06
 Knowledge of, imputed to principal, 6.30
 Loaned to another, 6.10
 Of State, *see* Nebraska Political Subdivisions Tort Claims Act, this index
 On principal's contract, *see* Contracts, this heading
 Statute of limitations, tort claim against, 12.01
Apparent authority, *see* Authority of Agent, this heading
Attorney
 Agent of client, 6.03
 Power of, *see* Power of Attorney, this heading
Auctioneer, agent of seller, 6.03
Authority of agent
 Acts of corporate officers, 6.30
 Actual and apparent authority distinguished, 6.08
 Agent's belief in own authority not enough to bind principal, 6.08
 Apparent authority
 Actual authority distinguished, 6.08
 Apparent agency cannot be created by acts of agents, 6.08
 Burden of proof, 6.01
 Continuing beyond termination of relationship, 6.08
 Defined and instructed, 6.08

INDEX—CIVIL JURY INSTRUCTIONS

AGENCY—Cont'd

- Authority of agent—Cont'd
- Apparent authority—Cont'd
 - Must be traceable to principal, 6.08
 - Third-party reliance must be reasonable, 6.08
- Attending to personal matters, 6.11
- Circumstantial evidence as proof of scope of employment, 1.31
- Criminal acts, 6.04
- Deceit, 6.04; 6.08; *see also* Misrepresentation, this index
- Defined, 6.04
 - Deviation from principal's business, 6.11
 - Forbidden act, 6.04
 - Force, use of, 6.04
 - Fraud, 6.04; 6.08
 - Implied, 6.04
 - Need not be in writing, 6.03
 - Principal's contractual liability to subagent hired by general agent, 6.03
 - Ratification of an agent's acts, 6.08
 - Borrowed servant doctrine, 6.10
 - Burden of proof, 6.01
 - Circumstantial evidence as proof of, 1.31
 - Consent, 6.03
 - Conspiracy, civil, mentioned, 17.02
 - Contracts
 - Agent generally not personally liable on principal's contracts, 6.01
 - Fraud, agent's personal liability for, 9.01
 - Ratification of unauthorized acts, 6.08
 - Shown by conduct, 6.03
 - Subagent, general agent's contract with, *see* Principal's Contractual Liability to Subagent Hired by General Agent, this heading
- Control by principal
 - Definition of agency, 6.03
 - Determinative of who is bound by acts of loaned or hired-out agent, 6.10
- Corporation acts through its agents, 6.30
- Deceit by agent, 6.08
- Defined, 6.03
 - Distinguishing features, consent and control, 6.03
 - Duty employer owed to employee injured on the job, mentioned, 3.02
 - Duty to communicate information to principal, *see* Corporations, this index
 - Duty to disclose, 6.03; 6.30
 - Duty to third party, 12.04
- Employment
 - Generally, *see* Employment, this index
 - Employer also liable as joint participant where employee acts at employer's direction, 6.01
 - Employment and agency compared, 6.01
 - Subagent, employment of, *see* Principal's Contractual Liability to Subagent Hired by General Agent, this heading

INDEX—CIVIL JURY INSTRUCTIONS

AGENCY—Cont'd

Employment—Cont'd

Subservant, employment of, *see* Principal's Contractual Liability to Subagent
Hired by General Agent, this heading

Force, use of by agent, 6.04

Fraud by agent, 6.08

Fraudulent concealment, 9.02

Fraudulent misrepresentation, 9.01; *see also* Misrepresentation, this index

Free, agency without payment agreement, 6.03

Free agency destroyed

Duress as defense to breach of contract, 15.26

In a will contest action, *see* Wills, this index

Hired-out agent or employee, 6.10

Imputed negligence, 3.25

Independent contractor and agent

Distinguished, 6.06

Question of fact whether agent or independent contractor, 6.06

Inferred, must be from words or conduct of principal, not agent, 6.08

Insurance agent, *see also* Insurance, this index

Issues and burden of proof, 6.01

Joint venturer both principal and agent, 6.40

Judgment for employee invalidates respondeat-superior judgment against employer, 6.02

Knowledge of agent as knowledge of principal, 6.30

Landlord-tenant relationship not, by itself, principal-agent relationship, *see* Lease, this index

Loaned agent or employee, 6.10

Notice defense to purchaser's suit for breach of warranty, 11.40

Notice to agent is notice to principal, 6.30

Obligation of principal unenforceable against agent acting only as agent, 6.01

Partnership, agency law applicable, 6.24

Payment, agency without agreement regarding, 6.03

Personal liability of agent on principal's contract, *see* Contracts, this heading

Personal matters, agent attending to, 6.11

Political subdivision, negligence of agent or employee of, *see* Nebraska Political Subdivisions Tort Claims Act, this index

Power of attorney creates agency, 6.03

Principal

Acts through agent, 6.30

Bound by agent's knowledge, 6.30

Contractual liability to subagent hired by general agent, 6.03

Obligation of, unenforceable against agent, 6.01

Right to control acts of agent, 6.03

Undisclosed, may be liable, 6.03

Principal-agent and employer-employee cases compared, 6.01

Principal's contractual liability to subagent hired by general agent, 6.03

Real estate agent negligence causes purchaser breach of contract, liability to seller, 4.42

INDEX—CIVIL JURY INSTRUCTIONS

AGENCY—Cont'd

- Real estate broker
 - Not a professional, 12.04
 - Obligations of broker and client, 15.01(C)
- Relationship
 - May be agency regardless of what parties call it, 6.03
 - May be inferred, 6.03
 - May exist without agreement agent will be paid, 6.03
 - Need not be known by or disclosed to third party, 6.03
- Release of agent from negligence liability releases principal, 6.02
- Scope of authority, *see* Authority of Agent, this heading
- Settlement with agent constitutes settlement with principal, 6.02
- Statement of the case instruction discussed, 6.01
- Statute of limitations, vicarious liability, 6.02
- Subagent hired by general agent, *see* Principal's Contractual Liability to Sub-agent Hired by General Agent, this heading
- Termination of agency, continuation of apparent authority, *see* Authority of Agent, this heading
- Third-party reliance on apparent authority, 6.08
- Undisclosed principal
 - Agent entering into contract in own name, on behalf of undisclosed principal, may sue in own name to enforce contract, 6.03
 - Liability of, 6.03
 - Vicarious liability generally, 6.01; 6.02; 6.05

AGENT

- See* Agency, this index

AGGRAVATION OF PREEEXISTING CONDITION

- See* Preexisting Condition, this index

AGREEMENT

- See* Admissions; Agency; Contract, Settlement Agreement, this index

AIRPLANE

- See* Common Carrier, this index

ALCOHOL AND DRUGS

- See* Intoxication, this index

ALIENATION OF AFFECTIONS

- See* Marriage, this index

ANIMALS

- Animal auction, auctioneer as agent, *see* Agency, this index
- Animal's normal response to defendant's act not superseding cause, 3.43
- Bull, statutory duty to restrain, mentioned, 3.03
- Cattle
 - Conversion of, damages, 4.27
 - Injury to, damages, 4.30
- Conversion of, 4.27

INDEX—CIVIL JURY INSTRUCTIONS

ANIMALS—Cont'd

- Diseased, no implied warranty, 11.46
- Dog bite, 8.41
- Domestic animals, owner's liability for injury inflicted by, 8.41
- Duty of driver overtaking animal or animal-drawn vehicle, 7.22A
- Livestock
 - Conversion of, damages, 4.27
 - Injury to, damages, 4.30
 - Owner's duty to confine, 3.02
- Prohibited from freeways, statute cited, 7.15; 7.20; 7.25 to 7.28; 7.32
- Sale of, no implied warranty free from disease, 11.46
- Sale of stolen cattle, damages, 4.27
- Statute or ordinance to restrain animals, violation of, 3.03
- Wild animals, keeping as ultrahazardous activity imposing strict liability, 8.41

ANTICIPATORY BREACH BY REPUDIATION

- See* Contract, Breach of Contract, this index

APPARENT AUTHORITY

- See* Agency, this index

APPEAL

- See also* Instructions, this index
- Review of expert testimony on appeal, 1.42

APPORTIONMENT OF DAMAGES

- See* Damages, this index

ARBITRATION

- See* Contract, this index

ARCHITECTS

- See* Malpractice; Products Liability, this index

ARGUMENT

- By attorneys, *see* Attorneys, this index

ARTERIAL HIGHWAY

- See* Highways; Motor Vehicles, this index

ASSAULT AND BATTERY

- Common carrier, *see* Common Carrier, this index
- Consent as a defense to intentional torts, 9.04
- Intentional torts of battery and assault mentioned, 3.02
- Negligent assault and battery, no such cause of action, 3.02

ASSIGNABILITY

- Of breach of contract and tort claims, 15.01 Comment X(C)(2)

ASSUMPSIT

- Assumpsit for money had and received, mentioned, 4.40
- Assumpsit not available to recover for burdens of parent-child relationship imposed by misrepresentation that plaintiff was child's biological father,

INDEX—CIVIL JURY INSTRUCTIONS

ASSUMPSIT—Cont'd

mentioned, 9.04; *see also* Misrepresentation, this index

ASSUMPTION OF RISK

Affirmative defense to negligence claim, 2.02B
Automobile guest statute, 2.02B; 7.54
Breach of express warranty, 11.40
Burden of proof, 2.02B
Contracts, assuming risk of supervening impossibility, 15.20
Contributory negligence compared, 2.02B
Counterclaim, defense to, 2.03
Cross-claim, defense to, 2.04
Open and obvious defects
 Condition on premises
 Liability of lessor, 8.31; 8.32
 Liability of owner or occupant, 8.22
 Loaned, donated, or gratuitously bailed property, 11.02
 Manufacturer's strict liability, 11.20
 Property bailed for compensation, 11.01
 Rental property, 11.01
Passenger
 Automobile guest passenger, 7.54
 On common carrier, 10.05
 In motor vehicle, generally, 2.02B; 7.03A
Products liability
 Misuse
 Negligence, 11.12
 Strict liability, 11.25
 Negligence, 2.02B; 11.12
 Strict liability
 Generally, 2.02B; 11.20
 Knowledge of defect, 11.26
 Misuse, 11.25
Special relationships between the parties, 2.02B
Statement of the case, 2.02B
Strict liability
 Of manufacturer, 11.20
 For ultrahazardous activity, 8.42
Superseding cause compared, 3.43
Third-party claim, defense to, 2.04
Ultrahazardous activity, 8.42

ATHLETES

Negligence of instructor or coach proximately causing injury to instructee, *see*
 Negligence, this index
Owner, occupant, or lessor of real property on which athlete injured, *see*
 Negligence, this index

INDEX—CIVIL JURY INSTRUCTIONS

ATTORNEYS

See also Agency; Malpractice, this index
Agent of client, 6.03
Arguments
 May draw legitimate deductions, 1.01
 Not evidence, 1.00; 1.02; 13.04
 Opening statements, considerable latitude, 1.10
Contingency fees must be reasonable, Ch. 4 Intro. (9)(1)
Creation of attorney-client relationship, 12.04
Duty does not extend to third party, 12.04
Duty to represent clients, 1.00; 1.01
Fees
 Contingency fees must be reasonable, Ch. 4 Intro. (9)(1)
 As element of damages, Ch. 4 Intro. (9), 2.03
Malpractice, *see* Malpractice, this index
Noneconomic damages in a legal malpractice action in the absence of physical
 injury, 12.04
Order of trial, 1.00
Power of attorney, *see* Agency, Power of Attorney, this index
Third persons, liability for damage to, 12.04
Wage Collection and Payment Act, 4.52

ATTRACTIVE NUISANCE

See Children, this index

AUCTIONEER

Agent of seller, 6.03

AUDIBLE SIGNAL

Emergency vehicles, *see* Motor Vehicles, Emergency Vehicles, this index
Motor vehicles in general, *see* Sounding Horn on Motor Vehicle, this index

AUTHORITY

Agent's authority, scope of, *see* Agency, this index
Automobile guest statute, *see* Passenger, this index
Experts, *see* Expert Testimony, this index
Police, *see* Police, this index

AUTOMOBILE

See Passenger; Motor Vehicles, this index

AVENUE

See Highways, this index

AVOIDABLE CONSEQUENCES, DOCTRINE OF

See Mitigation of Damages, this index

BAD ACTS EVIDENCE

Insurance company's refusal to pay, 15.01, Comment X(C)(2)
Limited use of, 1.70; 1.71; 1.72

INDEX—CIVIL JURY INSTRUCTIONS

BAILMENT

- Bailee's liability, damage to bailed property, 11.01
- Bailor's liability, damage caused by bailed property
 - Bailor for compensation, 11.01
 - Gratuitous bailor, 11.02
- Negligent entrustment, 11.02

BASIS OF THE BARGAIN

- Discussed, 11.41

BATTERY

- See* Assault and Battery, this index

BELIEVABILITY

- See* Credibility, this index

BENEFICIARIES

- See* Contract; Wills, this index

BENEFITS

- Damages, *see* Damages, this index
- General versus special benefits, *see* Eminent Domain, this index

BICYCLES

- See* Motor Vehicles; Passenger, this index
- Motor Vehicle Code applies, 7.01

BLASTING

- See* Strict Liability, this index

BOATS

- Motor vehicle guest statute inapplicable, 7.50A
- Negligent entrustment, 7.62

BONA FIDE

- Discussed, 9.10

BORROWED SERVANT DOCTRINE

- See* Agency; Employment, this index

BREACH OF CONTRACT

- See* Contract, Breach of Contract; Damages, Breach of Contract, this index

BREACH OF WARRANTY

- See also* Contract, Breach of Contract, Warranty, this index

- Express warranty
 - Basis of the bargain, 11.41
 - Damages, 11.40
 - Defined, 11.41
 - Expression of opinion distinguished, 11.41
 - Found in advertisement, 11.41
 - Notice to seller, of breach, 11.40; 11.45
 - Uniform Commercial Code, 11.40

INDEX—CIVIL JURY INSTRUCTIONS

BREACH OF WARRANTY—Cont'd

- Implied warranty
 - Diseased animals, 11.46
 - Exclusion or modification, 11.46
 - Fitness for a particular purpose, 11.44
- Merchantability
 - Burden of proof, 11.42
 - Defined, 11.43
 - Fungible, 11.43
- Insurance contract and warranty distinguished, *see* Insurance, this index
- Lemon Laws, *see* Nebraska Warranty Act, this index
- Merchantability, *see* Implied Warranty, this heading
- Negligence
 - Breach of warranty and, discussed, 11.40
 - Negligent warranty work, *see* Warranty, this index
- Negligence and breach of warranty discussed, 11.40
- Notice to defendant, of breach, 11.40; 11.45
- Privity
 - Express warranty, 11.40
 - Implied warranty, 11.42
- Seller's breach of warranty, condition of property sold, 4.49
- Warranty Act, Nebraska, *see* Nebraska Warranty Act, this index
- Warranty and insurance contract distinguished, *see* Insurance, this index

BROKER

- See* Agency; Contract; Damages; Malpractice, this index

BURDEN OF PRODUCTION

- Placement in will-contest action, 16.01

BURDEN OF PROOF

- See also* the heading for the particular claim or defense involved
- Apportionment of damages for tortious act, 4.09
- Assumption of the risk, 2.02B
- Automobile guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index
- Breach of contract
 - Affirmative defenses
 - Duress, 15.26
 - Failure of consideration, 15.27
 - Fraud in the inducement or fraudulent misrepresentation, 15.21; *see also* Misrepresentation, this index
 - Impossibility of performance, 15.20
 - Material misrepresentation, 15.22; *see also* Misrepresentation, this index
 - Modification, 15.28
 - Rescission, cancellation by mutual consent, 15.24
 - Undue influence, 15.25
 - Statement of the claim of breach, 15.01
- Breach of warranty
 - Express warranty, 11.40

INDEX—CIVIL JURY INSTRUCTIONS

BURDEN OF PROOF—Cont'd

- Breach of warranty—Cont'd
 - Implied warranty, 11.42; 11.44
- Business expectancy or relationship, tortious interference with, 17.02
- Business visitor, damage to, 8.22 to 8.24
- Circumstantial evidence and the burden of proof, 1.31
- Clear and convincing evidence
 - Cases to which burden applies
 - General discussion and examples, 2.12A; 2.12B
 - Undue influence in equitable action, 15.25; 16.06
- Defined, 2.12B
- Plaintiff claims partnership with defendant, 6.20
 - Undue influence as defense to contract action, burden not applicable, 15.25
- Comparative negligence, 2.02A
- Contributory negligence, 2.02A
- Counterclaim, 2.03
- Cross-claim, 2.04
- Damages, personal injury, 4.01
- Donated personal property, donor's liability for damage caused by, 11.02
- Eminent domain
 - Easement taken, 13.06; 13.07
 - Inverse condemnation, 13.08
 - Leasehold interest taken
 - Partial taking, 13.26
 - Total taking, 13.25
 - Property taken, 13.01
- Evenly balanced evidence, 2.12A
- Extraordinary force of nature, 2.02C
- Family purpose doctrine, 7.60
- Follows pleading, see Placement, this heading
- Fraudulent concealment, vendor/purchaser setting, tort action, 9.02
- Fraudulent misrepresentation, tort action, 9.01; *see also* Misrepresentation, this index
- Generally follows burden of pleading, 2.12A
- Greater weight of the evidence
 - Cases to which burden applies
 - General discussion and examples, 2.12A
 - Undue influence in action at law, 16.06
- Defined, 2.12A; 2.12B
- Intentional infliction of emotional distress, 9.04
- Lessor of real property, liability of, 8.31 to 8.33
- Licensee, damage to, 8.11
- Loaned personal property, lender's liability for damage caused by, 11.02
- Malicious prosecution, 9.10
- Manufacturer's liability
 - Negligence, 11.10 to 11.12
 - Strict liability, 11.20 to 11.26

INDEX—CIVIL JURY INSTRUCTIONS

BURDEN OF PROOF—Cont'd

- Mitigation of damages
 - Generally, 4.70
 - Seat belts, failure to wear, 7.70
- Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index
- Negligence, party alleging has burden of proving, 2.01
- Negligent entrustment, 7.62
- Owner's duty to those using land with permission, without charge, for recreational purposes, 8.61
- Passengers
 - Common carrier's right to eject, 10.09
 - Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index
- Preponderance of the evidence, *see* Greater Weight of the Evidence, this heading
- Proximate cause, burden discussed, 3.41
- Rental property, lessor's liability for damage caused by, 11.01
- Res ipsa loquitur, 2.13
- Shifted by presumptions, 2.14A to 2.14D
- Speculation, guess, or conjecture, *see* Speculation, this index
- Statement of the case
 - Contracts, 15.01
 - Negligence, 2.01
 - Otherwise, *see* heading for particular claim or defense involved
- Supplier of products, liability of, 11.10 to 11.12
- Third-party claim, 2.04
- Third person, nonparty, conduct of as proximate cause, 3.44
- Trespasser, injury to, 8.01
- Ultrahazardous activity
 - Assumption of the risk, 8.42
 - Strict liability, 8.41
- Vicarious liability
 - Agency, 6.01
 - Employment, 6.01
 - Joint venture, 6.40
 - Partnership, 6.20
- Wills
 - Proving the will, 16.01
 - Proving undue influence, 16.06

BUSES

- See* Common Carriers; Motor Vehicles, this index

BUSINESS EXPECTANCY

- Tortious interference with a business expectancy, 17.02

BUSINESS RELATIONSHIP

- Tortious interference with a business relationship, 17.02

INDEX—CIVIL JURY INSTRUCTIONS

BUSINESS VISITOR

See Liability of Owner, Occupant, or Lessor of Real Property, this index

BYSTANDER RECOVERY

See also emotional distress, this index

Negligent infliction of mental (a.k.a., emotional) distress, 9.04

CAMPGROUNDS

See Liability of Owner, Occupant, or Lessor of Real Property; Nebraska Recreation Liability Act, this index

CAPTAIN OF THE SHIP DOCTRINE

See Malpractice, this index

CARE

See Duty of Care, this index

CARELESS DRIVING

See Motor Vehicles, this index

CARRIERS, COMMON

See Common Carriers, this index

CARS

See Motor Vehicles, this index

CATTLE

See Animals, this index

CAUSATION

Activities on premises, 8.01 et seq.

Assumption of risk, 2.02B

Attractive nuisance, 8.51

Breach of contract

Duress, 15.26

Failure of consideration, 15.27

Fraud in the inducement, 15.21

Fraudulent representation, 15.21; *see also* Misrepresentation, this index

Material misrepresentation, 15.22; *see also* Misrepresentation, this index

Modification, 15.28

Undue influence, 15.25

Burden of proof, 3.41

Common carrier negligence, 10.04 et seq.

Comparative negligence, 2.02A

Concurring cause, 3.42

Condition on premises, 8.01 et seq.

Conditions versus causes, 3.42; 3.43

Conduct of nonparty third person, 3.44

Contributory negligence, 2.02A

Defined, 3.41

Extraordinary force of nature, 2.02C

INDEX—CIVIL JURY INSTRUCTIONS

CAUSATION—Cont'd

Fraud

- Fraud in the inducement, breach of contract, 15.21
- Fraudulent concealment, vendor purchaser setting, 9.02
- Fraudulent misrepresentation, tort action, 9.01; *see also* Misrepresentation, this index
- Fraudulent representation, breach of contract, 15.21; *see also* Misrepresentation, this index
- Material misrepresentation, breach of contract, 15.22; *see also* Misrepresentation, this index
- Government damage to private property, *see* Eminent Domain, this index
- Government taking of private property, *see* Eminent Domain, this index
- Independent negligent acts of more than one person, 3.42
- Intentional infliction of emotional distress, 9.04
- Intervening cause, *see* Superseding Cause, this index
- Intoxication, 3.07
- Last clear chance, 3.23
- Malicious prosecution, 9.10
- Malpractice, 12.01; 12.04
- Manufacturer of goods, liability of, *see* Products Liability, this index
- Party's own failure to mitigate damages, 4.70
- Patient's duty to follow doctor's instructions, 12.02
- Preexisting condition, 4.09
- Probable cause defined, malicious prosecution, 9.11
- Products liability, *see* Products Liability, this index
- Professional malpractice, 12.01; 12.04
- Proximate cause
 - Generally, 3.41
 - Conduct of nonparty third person, 3.44
- Res ipsa loquitur, 2.13
- Substantial factor test, 3.41
- Sudden emergency, 3.09
- Superseding cause, *see* Superseding Cause, this index
- Supplier of goods, liability of, *see* Products Liability, this index
- Third person, nonparty, 3.44
- Ultrahazardous activity, 8.41; 8.42
- Wills, *see* Wills, this index

CAUSE

See Causation, this index

CAUSE OF ACTION

See also Index heading for particular kind of cause of action; Pleadings

Accrual date

- Generally, 2.02D; 5.04 (Comment, part II)
- Actions against state and local governments, 8.72
- Continuing tort exception, 2.02D; 15.04
- Contract, 15.01
- Discovery exception (a.k.a., discovery rule), 2.02D; 12.04

INDEX—CIVIL JURY INSTRUCTIONS

CAUSE OF ACTION—Cont'd

- Accrual date—Cont'd
 - Fraud, 5.04 (Comment, part II)
 - Negligence generally, 5.04 (Comment, part II)
 - Professional negligence, 12.04
- Contract versus tort
 - Damages, Ch. 4 Intro.
 - Discussed generally, 15.01; *See also* 15.40
 - Economic loss rule in products liability, 11.20
 - Products liability, 11.20
 - Purchaser suing manufacturer, 4.40
- Law versus equity, *see* Action At Law or In Equity, this index
- Recasting cause of action in attempt to avoid statute of limitations under which time for filing has expired, 12.04
- Statute of limitations
 - In General, *see* Statutes of Limitations, this index
 - Recasting cause of action to avoid shorter limitation, 12.04

CHARACTER EVIDENCE

- Limited use of, 1.70; 1.71; 1.72

CHILDREN

- Attractive nuisance
 - Condition need not have attracted child onto property, 8.51
 - Discussed and instructed, 8.51
 - Tendency to limit doctrine, 8.51
- Birth of child conceived after failed sterilization procedure
 - Damages regarding, 4.01
- Burdens of parent-child relationship imposed by misrepresentation that plaintiff was child's biological father, actions for intentional infliction of emotional distress, assumpsit, and fraud barred as against public policy, 9.04
- Care required for safety of, 3.04
- Contributory negligence, 3.24
- Duty of, 3.05
- Duty owed to, 8.51
- Injury to child trespasser, licensee, or invitee, 8.51
- Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index
- Negligence of, 3.05
- Negligence of child not imputed to parent, 3.25
- Negligence of parent not imputed to child, 3.26A; 3.26B
- Parental immunity, 3.04
- Parents, child may not maintain action against, general rule, 3.04; 8.51
- Parents' duty to warn others of child's known, dangerous propensities, 3.41
- Parents' liability for acts of children
 - Negligence of child not imputed to parent, 3.25
 - Parents liable for children's intentional infliction of personal injury, 3.41
- Passenger
 - On common carrier, *see* Common Carrier, this index

INDEX—CIVIL JURY INSTRUCTIONS

CHILDREN—Cont'd

Passenger—Cont'd
 Use of seat belts, 7.70
Representative of child, party suing as, 2.22
Seat belts, 7.70
Sterilization procedure, failed, resulting in birth of child, damages, 4.01
Wrongful death of, 4.60
Wrongful death of child by action of a parent or another person standing in that relation to the child, 3.04

CHIROPRACTOR

Duty, 12.04
Expert witness, 1.42
Informed consent, 12.03

CHURCHES

Contracts with, 15.01

CIRCUMSTANTIAL EVIDENCE

See Evidence, this index

CITIES

See Political Subdivisions, this index

CLAIMS

Counterclaim, *see* Counterclaim, this index
Crossclaims, *see* Counterclaim, this index
Defendant's claims, *see* Affirmative Defenses; Pleadings, this index
Plaintiff's claims, *see* Pleadings, this index
Third-party claim, *see* Third-Party Claim, this index

CLASS ACTIONS

Statute cited, 2.20

CLEAR AND CONVINCING EVIDENCE

See Burden of Proof, this index
Defined, 2.12B

CLOSING ARGUMENT

See Attorneys, this index

CLOSING INSTRUCTIONS

See Instructions, Jury Instructions, this index

COACHES

Negligence of proximately causing injury to instructee, *see* Negligence, this index

COLLATERAL SOURCE RULE

Discussed, 4.01; Ch. 4 Intro., (5)
Employee receiving worker's compensation and suing third person over same injury, 2.21

INDEX—CIVIL JURY INSTRUCTIONS

COMMON CARRIER

- Generally, Chapter 10
- Affirmative defenses, suit by passenger
 - See also* Affirmative Defenses, this index
 - Assumption of the risk, 10.05
 - Carrier's right to eject passenger, 10.09
 - Contributory negligence, 10.05
- Airline terminal, 10.02
- Assault and battery
 - Carrier's right to eject passenger, 10.09
 - Duty to protect passenger from assault by employees, 10.07
 - Duty to protect passenger from other passengers, 10.06
- Carrier's premises
 - Defined, 10.01; 10.03
 - Discussed, 10.02
- Concurrent negligence of employee and third person, 10.07
- Defined, 10.01
- Duty
 - Condition of premises, 10.04
 - Freight, 10.04
 - Passenger injured by employees, 10.07
 - Passenger injured by other passengers, 10.06
 - Passenger transferring from one vehicle to another, 10.02
 - Place to wait for and alight from, 10.05
 - Reasonable care, 10.04
 - Strict liability, 10.04
 - Utmost skill, 10.05
 - Warning, 10.04
 - While passenger on premises, 10.02
- Elevator as common carrier, 10.01; 10.05
- Passenger
 - Defined, 10.02
 - Ejection of, 10.09
 - Elevator, 10.01
 - Injured by carrier's employee, 10.07
 - Injured by other passengers, 10.06
 - Transfer, 10.02
 - Traveling in, boarding, alighting from, 10.05
- Railroads, *see also* Railroads, this index
- Rules and regulations, carrier's own, 10.09
- Special standard of care?, 10.02
- Station, 10.02
- Transfer from one vehicle to another, 10.02

COMPANIONSHIP

- Alienation of affection, Ch. 4 Intro. (9)
- Loss of
 - Personal injury, 4.01

INDEX—CIVIL JURY INSTRUCTIONS

COMPANIONSHIP—Cont'd

Loss of—Cont'd

 Wrongful death, 4.60

COMPARATIVE NEGLIGENCE

Generally, 2.02A; 5.04

Allocation of negligence under L.B. 262, 5.04 (Comment, part III)

Automobile guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index

Cases finding negligence more than slight or less than gross as a matter of law, 2.02A

Defined generally, 2.02A; 5.04

Diminishing plaintiff's damage award, 5.04 (Comment, part VI)

Gross negligence

 Generally, 2.02A

 Element of plaintiff's case, automobile guest statute, 7.50C; 7.51

 Slight negligence compared, 2.02A

Last clear chance, 3.23

Legislative Bill 262 explained, 5.04

Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index

Pre-January 1, 1992 law and post-February 7, 1992 law compared, 5.04

Products liability

 Negligence, 2.02A; 11.12

 Strict liability, 11.20

Summary of which L.B. 262 instructions to use when, 5.04 (Comment, part I)

COMPENSATION

See Damages, this index

COMPENSATORY DAMAGES

See Damages, this index

COMPETITION

See Covenant Not to Compete, this index

CONCEALMENT

See Fraudulent Concealment, this index

CONCURRENT NEGLIGENCE

See Causation; Common Carrier; Negligence, this index

CONCURRING CAUSE

See also Causation, this index

Defined, 3.42

CONDEMNATION

See Eminent Domain, this index

CONDEMNEE OR CONDEMNER

See Eminent Domain, this index

CONDITION

See also Causation, this index

INDEX—CIVIL JURY INSTRUCTIONS

CONDITION—Cont'd

Affecting driver's visibility, *see* Motor Vehicles, this index
Versus cause, 3.42; 3.43
Injury caused by condition on premises, *see* Liability of Owner, Occupant or Lessor of Real Property, this index

CONDITION PRECEDENT

See Contract, this index

CONSENT

Assumption of the risk, *see* Assumption of the Risk, this index
Consent to agency, *see* Agency, this index
Informed consent, *see* Malpractice, this index

CONSEQUENTIAL (a.k.a., SPECIAL) DAMAGES

See Damages, this index

CONSERVATOR

See Parties, this index

CONSIDERATION

See also Contract, this index
Defined, 15.06
Discussed, 15.02; 15.06
Element of plaintiff's case versus affirmative defense discussed, 15.06; 15.27
Essential to existence of contract, 15.02
Essential to valid contract, 15.06
Failure of, an affirmative defense, 15.27
Forbearance, 15.06
Grossly inadequate, as fraud, 15.21
Insufficient consideration
 Forbearance to sue where no grounds exist, 15.06
 Moral obligation, 15.06
 Promise to do what already legally obligated to do, 15.06
 Thing given or required before promise made, 15.06
Moral obligations, 15.06
Mutual promises, 15.06
Past consideration, 15.06
Performance of a legal obligation, 15.06
Rescission, 15.24
Sufficient consideration
 Generally, 15.06
 Benefit accruing to third party, 15.06
 Benefit to promisor or loss or detriment to promisee, 15.06
 Forbearance, 15.06
 Mutual promises, 15.06
Third—party benefit, 15.06

CONSORTIUM

See Damages, this index

INDEX—CIVIL JURY INSTRUCTIONS

CONSPIRACY

Civil conspiracy mentioned, 17.02

CONSTITUTIONAL LIMITATIONS

See also Eminent Domain, this index

Burden of proof by clear and convincing evidence sometimes required by constitution, 2.12A

Eminent domain, *see* Eminent Domain, this index

Hospital-Medical Liability Act, constitutional, 12.01

Medical malpractice statute of limitations, constitutional, 12.01

Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index

Private property damaged or taken by government, *see* Eminent Domain, this index

Professional malpractice statute of limitations, constitutional, 12.04

Punitive damages, *see* Punitive Damages, this index

Statement constitutionally inadmissible in prosecution's case-in-chief may be admissible to impeach testifying defendant, 1.41

CONSTRUCTION CONTRACT

See Contract; Damages, this index

CONSTRUCTION OF CONTRACTS

See Rules of Construction of Contracts, this index

CONSTRUCTIVE TRUST

Action in equity, 2.12A

Burden of Proof, 2.12A

Elements of cause of action, 2.12A

CONSUMER PROTECTION

Breach of contract generally, *see* Contract, Breach of Contract, this index

Breach of warranty under U.C.C., consumer required to give seller notice of breach, 11.40; 11.45

Door-to-door sales, 15.01

Federal statutes

Consumer Product Safety Act, 11.40

Magnuson-Moss Act, a.k.a, Consumer Product Warranties Act, 11.40

Home solicitation sales, 15.01

Lemon Laws, *see* Nebraska Warranty Act, this index

Liability to other than consumer

Generally, 11.30

Strict liability, 11.20 et seq.; 11.30 et seq.

Manufacturer's liability, negligence liability, 11.10 et seq.; 11.30 et seq.

Negligence

Generally, 2.01

By manufacturer, 11.10 et seq.; 11.30 et seq.

Seller's liability, breach of warranty under U.C.C, 11.40 et seq.

Unsolicited goods received by mail, 15.01; 15.05

Warranty Act, *see* Nebraska Warranty Act, this index

INDEX—CIVIL JURY INSTRUCTIONS

CONTEMPT

Civil contempt, Ch. 4 Intro. (9)

CONTRACT

See also Acceptance; Agency; Consideration; Consumer Protection; Covenant

Not to Compete; Damages; Rules of Construction of Contracts, this index
see generally, Ch. 4 for Damages; Ch. 15 for Other Than Damages

Acceptance, *see* Acceptance, this index

Accord and satisfaction mentioned, 15.28

Accrual of cause of action, *see* Breach of Contract, this heading

Action in contract or tort

 Generally, 15.01

 Purchaser suing manufacturer, 4.40

Affirmative defenses, *see* Affirmative Defenses, Contract Actions, this index

Agency

See generally Agency

 Contract obligation of principal unenforceable against agent, 6.01

Ambiguous, 15.01

Antenuptial agreement, *see* Marriage, this index

Arbitration, 15.01

Assignability of a breach of contract claim, 15.01, Comment, X(C)(2)

Assignment, 15.01

Attorney fees, contingency fees, Ch. 4 Intro. (9)(1)

Attorney fees, contract provision allowing to party prevailing in litigation over
 contract contrary to public policy and void, Ch. 4 Intro. (9), 15.01

Breach of contract

 Accrual of cause of action, 5.04; 15.01

 Action at law, damages, 15.01

 Action in breach of contract or in tort

 Generally, 15.01

 Purchaser suing manufacturer, 4.40

 Action in equity, specific performance, 15.01

 Affirmative defenses, *see* Affirmative Defenses, this index

 Anticipatory breach by repudiation, 15.01

 Breach of warranty, condition of property sold, 4.49

 Burden of proof, 15.01

 Construction contract, *see* Damages, Breach of Contract, Contract for
 Construction or Repair, this index

 Contract for personal services, 4.52

 Contract to convey land, 4.41; 4.42

 Contract to lend money, 4.50

 Contract to obtain insurance, 4.55; 4.56

 Contract to purchase goods

 Buyer's breach, 4.53

 Seller's breach, 4.54

 Contract to purchase real estate, 4.42

 Contract to restore property to original condition, 4.43

 Covenant not to compete, 4.51

INDEX—CIVIL JURY INSTRUCTIONS

CONTRACT—Cont'd

Breach of contract—Cont'd

 Damage action is law action, 15.01

 Damages, *see* Damages, Breach of Contract, this index

 Equitable adjustment versus rescission, 4.47

 Fraud as inducement to enter contract to purchase property, 4.49

 Insurance, contract to obtain, 4.55; 4.56

 Lessee's covenant to repair leased premises, 4.40

 Material fact defined, 15.09

 Misrepresentation of condition of property sold, 4.49; *see also* Misrepresentation, this index

 Purchaser suing under contract versus tort, 4.40

 Questions of law versus questions of fact, 15.01

 Renunciation, 15.01

 Rescission and damages inconsistent remedies, 4.40

 Rescission generally, 15.24

 Rescission versus equitable adjustment discussed, 4.47

 Rescission versus restitution, 15.24

 Restitution, 15.01

 Return of specific property, 4.48

 Specific performance, *see* Specific Performance, this heading

 Statement of the case, 15.01

 Statute of limitations, 15.01

 Substantial performance, 4.44; 4.45

 Termination, 15.01

 Versus tort action

 Generally, 15.01

 Purchaser suing manufacturer, 4.40

Burden of proof

See also Burden of Proof, this index

 Equity action for fraud, 2.12B; 15.22

 In general, greater weight of the evidence, 2.12A

Burdensomeness, 15.20

Cancellation by mutual consent, 15.24

Cause of action, *see* Breach of Contract, this heading

Churches, contracts with, 15.01

Circumstantial evidence, contract may be proved by, 1.31

Coercion, *see* Duress, this heading

Condition precedent, 15.01

Conditions imposed by law, *see* Terms Imposed by Law, this heading

Consideration, *see* Consideration, this index

Conspiracy, civil, mentioned, 17.02

Construction, rules of, *see* Rules of Construction of Contracts, this index

Construction contract, *see* Damages, Breach of Contract, Contract for Construction or Repair, this index

Consumer protection, *see* Consumer Protection, this index

Contract action or tort action? See Action in Contract or Tort, above this heading

Contract Claims Act, 15.01; 15.01, Comment I(A)

INDEX—CIVIL JURY INSTRUCTIONS

CONTRACT—Cont'd

- Contrary to public policy, 15.01
- Cost of compliance, 15.20
- Cost-plus contract, 4.40
- Creation of contract, 15.02
- Damages, *see* Damages, Breach of Contract, this index
- Definition, 15.02
- Discharge, 15.24
- Door-to-door sales, *see* Door-to-Door Sales, this index
- Duress
 - See also* Unconscionability, this heading
 - Existence of, question of fact, 15.26
 - Threats in the inducement, 15.26
 - What constitutes is question of law, 15.26
- Duty to perform with care, skill, and reasonable expediency, *see* Terms Imposed By Law, this heading
- Election of remedies, false representation as inducement to contract, 15.21
- Employer bound by acts of employee, *see* Agency; Employment, this index
- Employment, *see* Agency; Employment, this index
- Expired employment contract, relevance of terms or conditions, 15.01
- Fact, question of, *see* Questions of Fact this heading
- False representation as inducement to contract, action in tort or contract, 15.21
- Formation of, general rules, 15.01
- Forum selection clause, 15.01
- Fraud
 - Generally, 15.01; 16.08
 - Burden of proof
 - Equity action, 2.12B; 15.22
 - Law action, 2.12A; 15.01
 - Fraud in the execution, 15.21
 - Fraud in the inducement
 - Generally, 15.21
 - Election of remedies, 9.01
 - Fraudulent concealment, vendor-purchaser, 9.02
 - Grossly inadequate consideration, 15.21
 - Inducement to purchase property, 4.49
 - Statute of limitations, 15.22
- Frustration of, 15.20
- Home solicitation sales, 15.01; 15.05
- Illegality of performance, 15.20
- Implied contract
 - Generally, 15.01
 - Quasi contract distinguished, 15.01
- Implied terms, *see* Terms Imposed by Law, this heading
- Impossibility of performance, 15.20
- Impracticability, 15.20
- Inaction acceptance, 15.05
- Inconvenience of compliance, 15.20

INDEX—CIVIL JURY INSTRUCTIONS

CONTRACT—Cont'd

- Indemnity agreement
 - Is a contract, 15.01
 - Rules of construction of contract applicable, 15.01
- Inducement
 - Fraud, 15.21; 15.22
 - Mistake, 15.22
- Insurance, construction of, *see* Insurance, this index
- Intentional interference with a contract, 17.02
- Judgment against partnership condition precedent to action against individual partners, 6.21; 6.22
- Law
 - See also* Questions of Law; Statutes; Terms Imposed by Law, this heading
 - Whose law applies?, 15.01 (Comment, part I)
- Lease
 - See also* Lease, this index
 - Is a contract, 15.01
 - Rules of construction of contract apply, 15.01
- Lessor's liability for injury suffered on leased premises, *see* Liability of Owner, Occupant, or Lessor of Real Property, this index
- Limitation of liability clause, 15.01
- Material fact defined, 15.09
- Meeting of the minds, 15.01; 15.02
- Mental capacity to execute contract, lack of, 15.25; 15.26
- Misrepresentation, 15.21; 15.22; 15.23; *see also* Misrepresentation, this index
- Mistake
 - Failure to correct other party's mistaken belief, 15.23
 - Inducement by, 15.22
 - Mutual, 15.22
 - Settlement agreement set aside on grounds of mutual mistake, 15.22
 - Statute of limitations, 15.22
 - Unilateral mistake, 15.22
- Modification
 - Existence of is question of fact, 15.28
 - Of implied warranty, 11.46
 - May be implied, 15.28
 - Requires mutual consent, 15.28
 - What constitutes is question of law, 15.28
- Mutual mistake, *see* Mistake, this heading
- Mutuality, 15.01
- Obligation, mutuality of, *see* Mutuality, this heading
- Obligation of principal unenforceable against agent merely acting as agent, 6.01
- Offer
 - Defined and discussed, 15.03
 - Teacher's tender of resignation, offer to terminate contract, 15.42
 - Time during which remains open, 15.41
 - Withdrawal of, 15.42

INDEX—CIVIL JURY INSTRUCTIONS

CONTRACT—Cont'd

- Open to construction only if
 - Ambiguity in a will, 16.01
 - Ambiguous, 15.01
 - Fraud, 15.01
 - Mistake, 15.01
- Option to purchase real estate, mentioned, 15.01
- Parol evidence, 15.01
- Partnership or partners, suit against one, the other, or both?, 6.21; 6.22
- Partnership results from, 6.20
- Party who signs and delivers contract bound thereby even though other parties to same side of contract do not sign, 15.01
- Past consideration, 15.06
- Performance
 - Impossibility, 15.20
 - Made illegal, 15.20
 - Substantial
 - Damages, *see* Damages, Breach of Contract, this index
 - Defined, 15.07
 - Element of plaintiff's case, 15.01
- Personal services, 4.51; 4.52
- Previous dealings between parties, relevant to acceptance, 15.05
- Principal bound by acts of agent, *see* Agency, this index
- Principal's contractual liability to subagent hired by general agent, 6.01
- Privity, *see* Breach of Warranty, this index
- Public policy, contrary to, 15.01
- Quasi contract, 15.01
- Questions of fact
 - Conflicting evidence as to meaning of technical terms, 15.01
 - Meaning of ambiguous contract, 15.01
 - Meaning of contradictory provisions in contract, 15.01
- Performance
 - Good faith, 15.01
 - Reasonableness, 15.01
- Reasonable time for delivery where no time fixed, 15.01
- Resolution of extrinsic facts in dispute, 15.01
- Questions of law
 - Meaning of unambiguous contract, 15.01
 - What constitutes consideration, 15.06
 - Whether contract is ambiguous, 15.01
- Quiet title action, 15.01
- Real estate broker
 - Not a professional, 12.04
 - Obligations of broker and client, 15.01(C)
- Reformation, 15.22
- Release
 - Is a contract, 15.01
- Rules of construction of contracts apply, 15.01

INDEX—CIVIL JURY INSTRUCTIONS

CONTRACT—Cont'd

Rescission

- Action to rescind is equitable action, 15.24
- Affirmative defense in law action, 15.24
- Burden of proof, 2.12A
- Inconsistent with damages, 4.40

Rules of construction, *see* Rules of Construction of Contracts, this index

Services, personal, 4.51; 4.52

Services furnished and knowingly accepted, 15.02

Settlement agreement

- Is a contract, 15.01
- Rules of construction of contract apply, 15.01

Signator

Signed but not read, 15.22

Signed by one party to one side but not by other parties to same side, signator bound, 15.01

Silence as acceptance, 15.05

Skill, duty to perform with, *see* Terms Imposed By Law, this heading

Specific performance

see generally, 4.41; 15.01

Contract for sale of real estate, 4.41

Contract of employment, 4.51

Covenant not to compete, 4.51

Versus damages, 4.41

Equitable action, 15.01

Impossibility, 15.20

State, contract claims against, 8.72

Statutes

See also Terms Imposed by Law, this heading

Contractual rights created by statute, 15.01

In existence when contract executed, 15.01; 15.40

Of limitations

Generally, 2.02D; 15.01

See also Statutes of Limitations, Contract, this index

Fraud or mistake, 15.22

Passed after contract entered into, 15.20

Uniform Commercial Code

Generally, 15.01 et seq.

Breach of warranty, 11.40 et seq.

What law applies?, 15.01

Subagent or subservant, *see* Principal's Contractual Liability to Subagent Hired by General Agent, this heading

Substantial performance, 15.01; 15.07

Supervening impossibility of performance no defense, 15.20

Suretyship, 15.01

Terms imposed by law

Duty to perform with care, skill, and reasonable expediency, 15.40

Fitness of tools furnished by contracting party, 15.40

INDEX—CIVIL JURY INSTRUCTIONS

CONTRACT—Cont'd

- Terms imposed by law—Cont'd
 - Jury instruction regarding, 15.40
 - Statutes in existence at time contract executed, 15.01; 15.40
 - Where none provided, reasonable time for performance implied, 15.40
 - Work to be done in proper manner, 15.40
- Threats, *see* Duress, this heading
- Time during which offer remains open, 15.41
- Tort action or contract action?
 - See Contract Action or Tort Action?, this heading
- Tortious interference with a contract, 17.02
- Undisclosed principal, agent entering into contract in own name, on behalf of undisclosed principal, may sue in own name to enforce contract, *see* Agency, this index
- Undue influence, 15.20; 15.22; 15.25
- Uniform Commercial Code, *see* Nebraska Uniform Commercial Code, this index
- Unilateral mistake, *see* Mistake, this heading
- Unjust enrichment, 15.02
- Unsolicited merchandise received through the mail, 15.01; 15.05
- Wills, mutual, as contract, 16.01; 16.11
- Withdrawal of offer, 15.42
- Wrongful discharge, *see* Employment, this index

CONTRACTOR, CONSTRUCTION

- See* Construction Contract, this index

CONTRACTOR, INDEPENDENT

- See* Independent Contractor, this index

CONTRIBUTION

- Generally, 2.05
- Collateral source rule, *see* Collateral Source Rule, this index
- Donated property, *see* Property, this index
- Insurers, contribution among, 2.05
- Lost contributions as an element of damages in a wrongful death action, 4.60
- Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index
- Standing in street to solicit contributions from passing vehicles prohibited, 7.15
- State, contribution against, under State Tort Claims Act, 2.05; 8.72

CONTRIBUTORY NEGLIGENCE

- Allocation of negligence under L.B. 262, 5.04 (Comment, part III)
- Assumption of the risk compared, 2.02B
- Children, 2.02A; 3.24
- Child's negligence not imputed to parent, 3.25
- Federal Employers' Liability Act (FELA), 2.02A
- Harmless error rule applied to jury instruction, *see* Instruction, Jury Instructions, this index
- Imputed contributory negligence, *see* Imputed Negligence, this index
- Intoxication, 3.07

INDEX—CIVIL JURY INSTRUCTIONS

CONTRIBUTORY NEGLIGENCE—Cont'd

Jury question, 2.02A
Last clear chance, 3.23
Misuse of product, 11.12
Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index
Parent's negligence not imputed to child, 3.26A; 3.26B
Passenger on common carrier, 10.05
Products liability
 Misuse, 11.12
 Negligence, 2.02A; 11.12
 Strict liability, 11.20
Right to assume another's reasonable care, 3.01
Statement of the case, 2.02A; 2.02A-1; 2.02A-2
Strict liability, 11.20
Summary of which L.B. 262 instructions to use when, 5.04 (Comment, part I)
Superseding cause compared, 3.43
Wrongful death, 4.60

CONTROL OF MOTOR VEHICLE

See Motor Vehicles, this index

CONVERSION

Generally, 4.27
See also Eminent Domain, this index
Damages, conversion of property, 4.27

CONVINCING EVIDENCE, CLEAR AND

See Burden of Proof, this index

CORPORATIONS

See also Agency; Common Carrier; Contract; Damages; Employment; Negligence; Partnership; Statutes of Limitations, this index
Act through employees or agents, 6.30
Conspiracy, civil, mentioned, 17.02
De facto corporations, 6.30
Employee or agent's duty to communicate knowledge to corporation, 6.03; 6.30
Municipal corporation, *see* Political Subdivisions, this index
Notice defense to purchaser's suit for breach of warranty, 11.40; 11.45
Partner, corporation as, 6.23
Party, corporation entitled to same treatment as individual, 2.23
Personal liability of officers and directors for corporation's acts, contracts, or debts, 6.30
Piercing the corporate veil, mentioned, 6.30
Ratification of unauthorized acts of corporate officer, 6.08
Scope of authority of corporate officers, 6.04

COUNSEL

See Attorneys, this index

INDEX—CIVIL JURY INSTRUCTIONS

COUNTERCLAIM

- Appeal of plaintiff's cause of action while counterclaim still pending, 2.03
- Burden of proof, 2.03
- Defendant's cross-claim, 2.04
- Defenses to, 2.03
- Liquidated damages, Ch. 4 Intro. (7)
- Recoupment distinguished, 2.03
- Statement of the case, 2.03
- Statute of limitations, 2.03
 - Counterclaim, when time runs to file, 2.03
 - Recoupment as alternative to counterclaim barred by statute of limitations, 2.03

COUNTIES

- See* Political Subdivisions, this index

COURT'S DUTY

- See* Instructions, Jury Instructions; Juries, this index

COVENANT NOT TO COMPETE

- Damages, 4.51
- Related topic, employer's breach of contract for personal services, damages, 4.52
- Specific performance versus damages, 4.51

CREDIBILITY

- Generally, 1.42
- See also* Witnesses; Nebraska Evidence Rules, rules 607-609, this index
- Character evidence, 1.71
- Conviction of a crime, 1.70
- Evaluation of testimony, 1.41
- Expert witness
 - Generally, 1.42
 - See also* Expert Testimony, this index
- Extrajudicial admissions, 1.41
- False testimony, 1.45
- Impeachment
 - Conviction of crime, 1.70
 - Evidence of truthful character, 1.71
 - Evidence of untruthful character, 1.71
 - As a matter of law, 1.45
 - Prior statement on collateral matter, 1.41
 - Rehabilitation of impeached witness, 1.71
 - Reputation evidence, 1.71
 - Use of statement constitutionally inadmissible in prosecutor's case-in-chief, 1.41
- Instruction jury to assume all witnesses tried to testify truthfully is erroneous, 1.41A
- Judge, comments by, 1.41
- Jury decides
 - Credibility is jury decision, 1.00; 1.01; 1.41

INDEX—CIVIL JURY INSTRUCTIONS

CREDIBILITY—Cont'd

- Jury decides—Cont'd
 - Exception, witness impeached as matter of law, 1.45
 - Party's own witness, 1.41A
 - Preliminary instruction before trial, 1.00
 - Prior consistent statement, 1.41
 - Prior inconsistent statement, 1.41
 - Rehabilitation of impeached witness, 1.71
 - Reputation regarding truthfulness, 1.71
 - Statement constitutionally inadmissible in prosecution's case-in-chief may be admissible to impeach testifying defendant, 1.41
 - Witness changes testimony on retrial, 1.45
 - Witness fees, 1.41; 1.42; 1.46

CRIME VICTIM'S REPARATIONS ACT

- See* Nebraska Crime Victim's Reparations Act, this index

CROPS

- Damage to or destruction of, but not eminent domain, 4.30
- Eminent domain
 - Damage to crop land, inverse condemnation, compensation, 13.08
 - Lessee's compensation, 13.28
 - Taking of or damage to crop itself, 13.28
 - Value of crops, element of fair market value of property, 13.02
- Expert testimony on value, 1.42; 4.30
- Ground formerly planted to crops, loss of use, 4.25; 4.30

CROSS-CLAIM

- See* Counterclaim, this index

CROSS-PETITION

- See* Counterclaim, this index

CROSSWALK

- See* Motor Vehicles; Pedestrians, this index

CUSTOMER

- See also* Breach of Warranty; Common Carrier; Consumer Protection; Contract; Damages; Liability of Owner, Occupant, or Lessor of Real Property; Malpractice; Negligence; Products Liability; Statutes of Limitations, this index
- Business visitor, 8.21
- Consumer protection, *see* Consumer Protection, this index
- Injured by
 - Generally, 8.24
 - Activity or condition out of public area of store, 8.24
- Breach of contract, *see* Contract, Breach of Contract; Damages, Breach of Contract, this index
- Breach of warranty, *see* Breach of Warranty, this index
- Negligence, in general, *see* Negligence, this index
- Passenger on common carrier, 10.06
- Products, *see* Products Liability, this index

INDEX—CIVIL JURY INSTRUCTIONS

CUSTOMER—Cont'd

Injured by—Cont'd

 Professional negligence, *see* Malpractice, this index

Passenger on common carrier, *see* Common Carrier, this index

DAMAGES

See also Animals; Eminent Domain; Mitigation of Damages; Quotient Verdict; Remedies; Statutes of Limitations, this index

Abstracting expenses, eminent domain, 13.01

Accountant, fees paid to, for Report Negligently Prepared, *see* Malpractice, this index

Activation of preexisting condition, 4.09

Actual, consequential, or special, 4.59

Aggravation of preexisting condition, 4.09

Alienation of affections, Ch. 4 Intro. (9)

Animals, injury to, *see* Animals, this index

Appellate court

 Granting new trial limited to damages, Ch. 4 Intro. (9)

 Need not be able to discern exact computations by which factfinder figured damages, Ch. 4 Intro. (3)(b)

 Uses theory on which case tried, Ch. 4 Intro. (1)

Apportionment of damages

 Damages to part of leased premises, 4.25

 For tortious act, 4.09

Attorney malpractice, noneconomic damages in the absence of physical injury, 12.04

Attorneys fees, *see* Attorneys, this index

Avoidable consequences, *see* Mitigation of Damages, this index

Breach of contract

 Generally, Ch. 4 Intro.; 4.10; 4.40 et seq.

 Breach of warranty as to condition of property sold, 4.49; 4.53; 4.59

 Burden of proof

 Generally, 15.01

 Expenses saved by reason of breach, 4.40

 Real estate contract, *see* Land, this subheading

Breach of warranty, 4.49; 4.53; 4.59

Buyer's breach, contract to purchase goods, 4.53

Cattle, *see* Animals, this index

Certainty, 4.40; Ch. 4 Intro. (3)

Children, *see* Children, this index

Collateral source rule, *see* Collateral Source Rule, this index

Commissions not paid, breach of employment contract, 4.52

Companionship lost, 4.01

Compensation, eminent domain, *see* Eminent Domain, this index

Consequential (a.k.a., special) damages, 4.59

Consortium, loss of, 4.00 (Comment, part V), 4.01

Contract for construction or repair

 Generally, 4.44 to 4.47

INDEX—CIVIL JURY INSTRUCTIONS

DAMAGES—Cont'd

- Contract for construction or repair—Cont'd
 - Contractor
 - Owner does not allow contractor to complete performance, 4.46
 - Owner's breach caused extra cost to contractor, 4.47
 - Covenant not to compete, 4.51
 - Crops, 4.30
 - Defective work or unsuitable materials, 4.45
 - Employment contract
 - Covenant not to compete, 4.51
 - Employee's damages, breach by employer, 4.52
 - Expressed warranty, 11.40
 - Fraud as inducement to enter contract to purchase property, 4.49
 - Goods, contract to purchase
 - Buyer's breach, 4.53
 - Seller's breach, 4.54
 - Insurance, contract to obtain, 4.55; 4.56
 - Land
 - Contract to convey, 4.41
 - Contract to purchase, 4.42
 - Lessee's covenant to repair leased premises, 4.40
 - Liquidated damages, Ch. 4 Intro. (7)
 - Loan of money, contract for, 4.50
 - Misrepresentation of condition of property sold, 4.49; *see also* Misrepresentation, this index
 - Mitigation of damages, *see* Mitigation of Damages, this index
 - Nominal damages, 4.40
 - Owner does not allow contractor to complete performance, 4.46
 - Owner's breach causes extra cost to contractor, 4.47
 - Substantial performance
 - Contractor's damages, 4.44
 - Defective work or materials, 4.45
 - Owner's damages, 4.45
 - Personal services, 4.52
 - Proof with reasonable certainty, 4.40; Ch. 4 Intro. (3)(c)
 - Property
 - Breach of contract regarding, in general, 4.40 et seq.
 - Contract to convey land, 4.41
 - Contract to restore to original condition, 4.43
 - Negligence of real estate broker, 4.42
 - Purchase of real estate, seller's damage, 4.42
 - Rescission and damages, inconsistent remedies, 4.40
 - Restoration of property to original condition in return for use of same, 4.43
 - Return of specific property, 4.48
 - To return specific property, 4.48
 - Seller's misrepresentation of property sold
 - Generally, 4.49; *see also* Misrepresentation, this index
 - Termite damage, 4.20

INDEX—CIVIL JURY INSTRUCTIONS

DAMAGES—Cont'd

- Contract for construction or repair—Cont'd
 - Special damages, 4.59
 - Substantial performance
 - Contractor's damages, 4.44
 - Owner's damages, 4.45
 - Termite damages, 4.20
- Contract to purchase goods
 - Buyer's breach, 4.53
 - Seller's breach, 4.54
- Conversion of property, 4.27
- Court's duty, Ch. 4 Intro.
- Crops
 - See also* Eminent Domain, this index
 - see generally* Crops, this index
 - Regarding damages to crops, *see particularly* 4.30
- Death, 4.60
- Disability
 - Element of damages, personal injury, 4.01
 - Preexisting condition activated or aggravated, 4.09
- Double damages, 4.59
- Driver given permission to drive vehicle, insurance carrier's liability for damage caused by, *see* Motor Vehicles, this index
- Earning capacity, *see* Lost Earning Capacity, this heading
- Easement taken by eminent domain, 13.06; 13.07
- Economic damages, action to which contributory negligence could be a defense, 4.00; 5.02 to 5.04
- Election of remedies, false representation as inducement to contract, 15.21
- Eminent domain, *see* Eminent Domain, this index
- Emotional distress, *see* Emotional Distress, this index
- Employee's damages, breach by employer, 4.52
- Employment contract
 - see generally*, Ch. 4, Intro.
 - Covenant not to compete, 4.51
 - Exclusive dealership, 4.51
 - Personal services, 4.52
- Enjoyment of life, loss of, 4.01
- Equitable adjustment compared, 4.47
- Essay on, Ch. 4 Intro.
- Evidence
 - see generally*
 - Damages must be evidenced to be submitted, Ch. 4 Intro. (3)(b)
 - Defined, 1.00; 1.02; 13.04
 - Expert testimony, *see* Expert Testimony, this index
 - Uncontroverted, factfinder need not accept at face value, Ch. 4 Intro. (3)(b)
 - Value of property, 1.42; 4.20
- Excessive
- Prejudice, 4.01

INDEX—CIVIL JURY INSTRUCTIONS

DAMAGES—Cont'd

Excessive—Cont'd

Punitive damages

 See Punitive Damages, this index, Ch. 4 Intro. (4)

 Punitive damages generally not allowed, Ch. 4 Intro. (4)

Remittitur, Ch. 4 Intro. (2)

Sympathy, 4.01

Verdict set aside as excessive, Ch. 4 Intro. (2)

Expert testimony, see Expert Testimony, this index

Full settlement by one of several joint wrongdoers, Ch. 4 Intro. (9)

Future damages

 Generally, 4.01

 Present cash value, 4.13

General damages compared with actual, consequential, or special damages, 4.59

General discussion of damages, Ch. 4 Intro.

Golden Rule arguments, Ch. 4 Intro.

Hedonic damages

 Generally, 4.01

 Expert testimony, 1.42

 Not allowed as separate category, 4.01

Humiliation, 4.00 (Comment, part IV)

Inadequate, verdict set aside as, Ch. 4 Intro. (2)

Inconvenience, 4.00 (Comment, part IV)

Initial permission rule, insurance carrier's liability for damage caused by driver given permission to drive vehicle, see Motor Vehicles, this index

Instruction broader than called for, Ch. 4 Intro. (2)

Insurance benefits, see Lost Insurance Benefits, this heading

Insurance carrier's liability for damage caused by driver given permission to drive vehicle, see Motor Vehicles, this index

Insurance, contract to obtain, 4:55; 4:56

Interest, see Interest, this index

Interspousal tort immunity abrogated, 4.60

Joint and several liability is an issue, tort action, 4.00; 5.02 to 5.04

Joint and several liability is not an issue, tort action, 4.01; 5.05

Judgment interest, see Interest, this index

Land

See also other relevant-to-your-facts headings in this Index

 Contract to convey, 4.41

 Contract to purchase, 4.42

Leasehold interest

 Condemnation, 13.25 et seq.

 Damage to

 Eminent domain, 13.25; 13.26; 13.27

 Tort, 4.26

 Destruction of

 Eminent domain, 13.25; 13.27

 Tort, 4.26

 Government taking or damage, see Eminent Domain, this index

INDEX—CIVIL JURY INSTRUCTIONS

DAMAGES—Cont'd

Leasehold interest—Cont'd

Lessee's covenant to repair leased premises, 4.40

Lessor's failure to install items required by lease, 4.49

Liability of lessor of personal property, 11.01

Liability of lessor of real property, Ch. 8

Lessee's covenant to repair lease premises, 4.40

Life expectancy, see Life Expectancy, this index

Liquidated damages, Ch. 4 Intro. 7

Loan of money, contract for, 4.50

Loss-of-chance doctrine, Ch. 4, Intro., part 3(c)

Lost earning capacity

Death, 4.60

Injury, 4.01

Lost insurance benefits, breach of employment contract, 4.52

Lost profits. See Lost Profits, this index

Lost retirement funds, breach of employment contract, 4.52

Malpractice, see Malpractice, this index

Measure of compensation, see Eminent Domain, this index

Mental distress, see Emotional Distress, this index

Misrepresentation of condition of property sold, 4.49; *see also* Misrepresentation, this index

Mitigation, see Mitigation of Damages, this index

Negligence

Personal injury, 4.00 et seq.

Property damage, 4.20 et seq.

New trial limited to, Ch. 4 Intro. (9)

Nominal damages

Breach of contract, 4.40

Eminent domain, 13.01

Negligence, not allowed, Ch. 4 Intro. (4)

Noncompensatory, Ch. 4 Intro. (4)

Noneconomic damages, action to which contributory negligence could be a defense, 4.00; 5.02 to 5.04

Opinion evidence, see Evidence; Expert Testimony, this index

Pain and suffering

Generally, 4.01

See also, Emotional Distress, this index

Parasitic damages, see Emotional Distress, this index

Penalty versus liquidated damages, Ch. 4 Intro. (7)

Personal injury

Generally, 4.00 et seq.

Activation of preexisting condition, 4.09

Aggravation of preexisting condition, 4.09

Companionship lost, 4.01

Disability, 4.01

Dormant condition activated, 4.09

Earning capacity lost, 4.01

INDEX—CIVIL JURY INSTRUCTIONS

DAMAGES—Cont'd

- Personal injury—Cont'd
 - Elements, 4.01
 - Future damages, generally, 4.01
 - Golden Rule arguments, Ch. 4 Intro.
 - Life expectancy, *see* Life Expectancy, this heading
 - Loss of consortium, 4.01
 - Medical care and supplies, 4.01
 - Mitigation of damages, *see* Mitigation of Damages, this index
 - Mortality tables, 4.12; *see also* Life Expectancy, this index
 - Pain and suffering, *see* Emotional Distress, this index
 - Present cash value, 4.13
 - Profits lost, 4.01
 - Services lost, 4.01
 - Speculation, guess, or conjecture, 4.01
 - Temporary or permanent injury, 4.01
 - Wages lost, 4.01
- Personal property, 4.20 et seq.
- Personal services contracts, 4.51; 4.52
- Pleading and proof, Ch. 4 Intro. (3)
- Postjudgment interest, *see* Interest, this index
- Preexisting condition, aggravation of, 4.09
- Prejudgment interest, *see* Interest, this index
- Present cash value
 - Generally, 4.13
 - Breach of contract to lend money, additional cost spread into future, 4.50
- Profits
 - On extra work caused by contractor's breach, 4.47
 - Lost, *see* Lost Profits, this index
- Property
 - Generally, 4.20 et seq.; Ch. 4 Intro.
 - Animals, injury to, *see* Animals, this index
 - Breach of contract re termite damage, 4.20
 - Cattle, 4.30
 - Contract to convey land, 4.41
 - Contract to purchase land, real estate agent allowed purchases to get out of, 4.42
 - Contract to restore to original condition, 4.43
 - Contractor's damages, 4.44
 - Conversion of property, *see* Conversion, this index
 - Cost of repair, 4.20 et seq.
 - Cost of substitute rental property, 4.20 to 4.25
 - Crops, 4.30
 - Damage to improvement upon realty, 4.20
 - Eminent domain, *see* Eminent Domain, this index
 - Fact questions whether repairs will restore property and whether cost acceptable, 4.24
 - Government damage to, *see* Eminent Domain, this index

INDEX—CIVIL JURY INSTRUCTIONS

DAMAGES—Cont'd

Property—Cont'd

- Improvement upon realty, 4.20
- Leasehold interest, see Leasehold Interest, this heading
- Lessee's covenant to repair leased premises, 4.40
- Loss of use, 4.22
- Lost profits, *see* Lost Profits, this index
- Market value, 4.20; 4.43; 13.02
- Mitigation of damages, 4.70
- Negligence, 4.20 et seq.
- Opinion evidence of value, 1.42; 4.20
- Owner's damages, 4.45
- Placement of burden of proof
 - Cost of repair, 4.20
 - Property's pre-damage value, 4.20
- Property's pre-damage value, 4.20
- Rental of replacement rental property, 4.22
- Repairs to property
 - Question of fact
 - Acceptable cost, 4.22
 - Whether repairs will restore property, 4.23
 - Whether repairs will restore property and whether cost acceptable, 4.24
 - Will not restore property, 4.21
 - Will not restore property at acceptable cost, 4.20; 4.21
- Replevin action, property not returned, 4.27
- Special damages, 4.20
- Substitute rental property, 4.20
- Trees, 4.30
- Punishment, *see* Punitive Damages, this index
- Punitive, not allowed, Ch. 4 Intro. (4)
- Purchase of real estate, seller's damage, 4.42
- Quantum meruit, 15.01
- Quotient verdict forbidden, 4.02
- Real estate agent allowed purchaser to get out of contract to purchase land, 4.42
- Reasonable certainty, proof to a, 4.40; Ch. 4 Intro. (3)(c)
- Reduction to present cash value, 4.13
- Release, effect on plaintiff's recovery from remaining defendants
 - Discussed, 5.04 (Comment, part VII)
 - Instructed, 5.02; 5.03; 5.04; 5.05
- Remarriage of surviving spouse, 4.60
- Rental of replacement rental property, 4.22
- Repairs to property
 - Cost of repair
 - Generally, 4.20 et seq.
 - Whether repairs will and whether cost acceptable, 4.24
 - Whether repairs will restore property, 4.23
 - Will not restore property, 4.21

INDEX—CIVIL JURY INSTRUCTIONS

DAMAGES—Cont'd

Repairs to property—Cont'd

Will not restore property at acceptable cost, 4.20; 4.21

Replevin action, property not returned, 4.27

Rescission and damages inconsistent, 4.40

Restoration, *see* Property, Repairs to Property, this heading

Retirement funds, *see* Lost Retirement Funds, this heading

Seller's misrepresentation of property sold

Generally, 4.49

See also Misrepresentation, this index

Termite damages, 4.20

Settlement, effect on plaintiff's recovery from remaining defendants

Discussed, 5.04 (Comment, part VII)

Instructed, 5.02; 5.03; 5.04; 5.05

Special (a.k.a., consequential) damages

Generally, 4.20; 4.59

Breach of contract, 4.59

Conjectural, *see* Speculation, this index

Eminent domain, 13.01

To property, 4.21; 4.22

Speculation, guess, or conjecture, *see* Speculation, this index

Statute of limitations, *see* Statutes of Limitations, this index

Sterilization procedure, failed, resulting in birth of child, 4.01

Submission to the jury, Ch. 5

Substantial performance, *see* Contract, this index

Substitute rental property, 4.20

Sympathy, 4.01

Termite damages, 4.20

Treble damages, 4.59

Trees, 4.30

Trial limited to damages, Ch. 4 Intro. (9)

Uncontradicted evidence, factfinder need not accept at face value, Ch. 4 Intro. (3)(b)

Uniform Commercial Code, *see* Nebraska Uniform Commercial Code, this index

Verdict determined by chance, *see* Quotient Verdict, this index

Wages lost

Breach of contract, *see* Breach of Contract, this heading

Personal injury, 4.01

Profits lost, *see* Lost Profits, this index

Where law does not provide accurate measure, Ch. 4 Intro. (2)

Wrongful death

Generally, 4.60

see also Life Expectancy, this index

Life expectancy tables, 4.12

DAMAGES, MITIGATION OF

See Mitigation of Damages, this index

INDEX—CIVIL JURY INSTRUCTIONS

DANGEROUS THINGS AND ACTIVITIES

See Strict Liability, this index

DEAD MAN'S STATUTE

Repeal noted, 1.52

DEATH

See Wrongful Death, this index

DECEDENT'S ESTATES

See Wills, this index

DECEIT

See Misrepresentation, this index

DEFECT

See Negligence; Products Liability, this index

DEFENDANTS, MULTIPLE

See Parties, this index

DEFENSES

See Affirmative Defenses, this index

DEFINITIONS

See Words and Phrases, this index

DELIVERY PERSON

Injured on property of defendant while making delivery, *see* Liability of Owner, Occupant, or Lessor of Real Property, this index

Injured while en route, *see* Agency; Negligence, this index

Status as business visitor, 8.21

DENTISTS

See Malpractice, this index

DEPOSITIONS

See Credibility; Evidence, this index

DESIGN

See Negligence; Products Liability, this index

DIAGNOSIS

See Malpractice, this index

DIRECT EVIDENCE

See Evidence, this index

DISABILITY

See Damages, this index

DISCHARGE OF CONTRACTS

See Affirmative Defenses; Contracts, this index

DISCOUNT

See Present Cash Value, this index

INDEX—CIVIL JURY INSTRUCTIONS

DISCOVERY, RULES OF

See Evidence; Nebraska Rules of Discovery, this index

DISEASED ANIMALS

See Animals, this index

DISTRESS

See Damages; Emotional Distress, this index

DISTRIBUTORSHIP

Breach of contract for exclusive distributorship, 4.51

DOCTORS

See Malpractice, this index

DOCTRINE OF AVOIDABLE CONSEQUENCES

See Mitigation of Damages, this index

DOG BITE

See Animals, this index

DOMESTIC RELATIONS

See Alienation of Affections; Damages, this index

DONATION

See Property, this index

DOOR-TO-DOOR SALES

Generally, 15.01; 15.05

Buyer has three days to rescind contract, 15.01

DRIVER'S LICENSE

See Motor Vehicles, Driver's License, this index

DRIVEWAYS

See Motor Vehicles; Sidewalks, this index

DRIVING

See Motor Vehicles, this index

DRUGS AND ALCOHOL

See Intoxication, this index

DRUNK DRIVER

See Intoxication, this index

DRUNKENNESS

See Intoxication, this index

DURING TRIAL, INSTRUCTION

See Instructions, this index

DUTY OF CARE

Generally, 3.02

Accountants, 12.04

Agents, 3.02; 6.01; 6.03

INDEX—CIVIL JURY INSTRUCTIONS

DUTY OF CARE—Cont'd

- Architects, 12.04
- Attorney, 12.04
- Children
 - Owed by, 3.05
 - Owed to, 8.51
 - Parental immunity, 3.04
- Common carrier, *see* Common Carrier, Duty, this index
- Contract, duty of reasonable care arising from, 15.01
- Dentists, 12.04
- Disability, duty of person with, 3.02
- Donor of personal property, 11.02
- Driver's duty and conditions affecting visibility, 7.03A
- Drunken person, 3.07
- Employer's duty, employee injured on the job, mentioned, 3.02
- Engineer, 12.04
- Foreseeability, 3.02
- Intoxicated person
 - Duty of one who entrusts car to intoxicated person, 7.62
 - Duty of one who is intoxicated, 3.07
 - Duty of one who sells intoxicant, 3.03; 7.62
- Investment advisor, 12.04
- Jailor, 3.03
- Key-in-the-ignition ordinance, owner not liable for damage caused by car thief, 3.03; 7.62
- Landlord, *see* Lessor of Real Property, this heading
- Lawyer, *see* Attorney, this heading
- Lender of personal property, 11.02
- Lessor of personal property, 11.01
- Lessor of real property, 8.24; 8.31 et seq.
- Livestock, *see* Animals, Livestock, this index
- Manufacturer, *see* Products Liability, this index
- Medical technician, 12.04
- Negligence
 - Generally, 3.02
 - See also* general entries under Negligence, this index
- Nondelegable duty
 - Business possessor's duty, 8.22
 - Employer, nondelegable duties of, 6.06
 - Independent contractor, duties not delegable to, 6.06
 - Physician, nondelegable duties of, 12.01
 - Superseding or efficient-intervening cause, 3.43
- Occupant of real property, *see* Owner of Land, this heading
- Owner of land
 - Business visitor, 8.21
 - Child trespasser, licensee, or invitee, 8.51
 - Criminal acts of third person, injury caused by, 8.24; 8.31
 - Invitee, 8.21

INDEX—CIVIL JURY INSTRUCTIONS

DUTY OF CARE—Cont'd

Owner of land—Cont'd
 Licensee, 8.12
 Person using land for recreation, with permission, and without charge, 8.61
 Trespasser, 8.02
Owner of real property, *see* Owner of Land, this heading
Possessor of land, *see* Owner of Land, this heading
Prison, *see* Jailer, this heading
Professional malpractice, 12.04
Question of law, 3.02
Sidewalks
 Duty of municipality, 8.72
 Duty of owner of abutting property, 8.71
Stockbroker, 12.04
Streets, 8.72
Strict liability, *see* Products Liability; Strict Liability, this index
Supplier, *see* Products Liability, this index
Termite inspector, 12.04
Third party
 Accountant's duty to, *see* Accountants, this heading
 Attorney's duty to, *see* Attorney, this heading
Tow-truck operator, 12.04
Ultrahazardous activity, 8.41; 8.42
Veterinarians, 12.04
Volunteers, 3.08
Warden, *see* Jailer, this heading

DUTY TO DISCLOSE

Agency, 6.03; 6.30
Corporations, employee or agent's duty to communicate knowledge to corporation, 6.03; 6.30

DUTY TO INSTRUCT JURY

See Agency; Corporations; Jury Instructions; Juries, this index

DUTY TO WARN

See Products Liability; Warnings, this index

EARNING CAPACITY

See Damages, this index

EASEMENT

See Eminent Domain, this index

ECONOMIC DAMAGES

See Damages, this index

EFFICIENT INTERVENING CAUSE

See Superseding Cause, this index

EJECTMENT

Common carrier passenger, 10.09

INDEX—CIVIL JURY INSTRUCTIONS

ELECTION OF REMEDIES

See Remedies, this index

ELEVATORS

See Common Carrier, this index

EMERGENCY

See also Causation; Extraordinary Force of Nature; Motor Vehicles; Police, this index

Act of God, *see* Extraordinary Force of Nature, this index

Aid rendered at emergency scene, 3.08

Assumption of risk, 3.12

Defined, 3.09

Emergency vehicles, *see* Motor Vehicles, Emergency Vehicles, this index

Extraordinary force of nature, *see* Extraordinary Force of Nature, this index

Fire fighter as licensee, 8.11

Last clear chance, 3.23

Liability of one gratuitously rendering emergency care, 3.08

Police, *see* Police, this index

Rescue rule, 3.08

Sudden emergency, doctrine of, 3.09

Volunteer aid at scene of, 3.08

EMINENT DOMAIN

Abstracting expenses, 13.01

Access to street, impaired, 13.08

Alternative remedy, action under political subdivisions tort claims act, 13.08

Appeal, county court to district court, 13.01

Appealable order, 13.01

Compensable damage to property, 13.08

Compensation

 Generally, 13.01

 Abstracting expenses, 13.01

 All to be assessed now, 13.20

 Consequential damages, 13.01

 Crop land, 13.08

 Damage to leasehold interest, 13.27

 Damage to property discussed generally, 13.08

 Date of valuation, *see* Date of Valuation, this heading

 Easement taken by condemnation, 13.06; 13.07

 Evidence government intends less than full use of property taken irrelevant to compensation, 13.01

 Future uses of property, *see* Future Uses of Property, this heading

 Interest, 13.40

 Inverse condemnation, 13.08

 Jury question, 13.01

 Leasehold interest, 13.26

 Mitigation of damages, 13.01; 13.02

 Nominal damages, 13.01

INDEX—CIVIL JURY INSTRUCTIONS

EMINENT DOMAIN—Cont'd

- Compensation—Cont'd
 - Part of property taken, decrease in value of remainder, 13.01
 - Partial taking
 - Generally, 13.01
 - See also* Compensation, this heading
 - Partial taking of leasehold interest, 13.26
 - Past uses, 13.02; 13.07; 13.27
 - Permanent easement taken, 13.06; 13.07
 - Physical deterioration of property, 13.02; 13.07
 - Profits lost, not an element, 13.02
 - Property damaged by condemnation, 13.08
 - Property damaged by construction of public improvement, 13.08
 - Property taken by condemnation, 13.01
 - Public-improvement-caused change in fair market value, *see* Fair Market Value, this heading
 - Reduction in value of remaining property, 13.02; 13.07
 - Severance damage, 13.01
 - Special benefits provided by government, 13.01; 13.10
 - Special damages, 13.01
 - Taking of crops, 13.28
 - Temporary taking, 13.08
 - Total taking of leasehold interest, 13.25
 - Value of use for period damaged, 13.08
- Condemnation
 - Action filed
 - With condemnee as plaintiff, 13.01
 - With condemner as defendant, 13.01
 - In county court, 13.01
 - Appeal de novo to district court, 13.01
 - Burden of proof, 13.01
 - Damages, *see* Compensation, this heading
 - Date of, discussed, 13.08
 - Inverse, 13.08
 - Judge versus jury questions, 13.01
 - Sole issue, proper compensation, 13.01
- Consequential damages, 13.01
- Constitution limits power of eminent domain by requiring payment for property taken, 13.01
- Crop land, damage to, 13.08
- Crops, taking of, 13.28
- Damage to property, by government
 - Must be for public use, 13.01; 13.08
 - Must be with just compensation, 13.01; 13.08
- Damages, *see* Compensation, this heading
- Date of valuation
 - Condemnation, 13.01
 - Inverse condemnation, 13.08

INDEX—CIVIL JURY INSTRUCTIONS

EMINENT DOMAIN—Cont'd

- Easement, 13.06; 13.07
 - Damaged, 13.08
 - Fair market value, definition, *see* Fair Market Value, this heading
- Implied, 13.06
- Taken, 13.06
 - As taking under federal constitution, 13.06
- Evidence
 - Defined, 13.04
 - Of fair market value, *see* Fair Market Value, this heading
 - Government intention to make less than full use of property taken irrelevant to compensation, 13.01
- Expert witnesses, 1.42; 13.01
- Fair market value
 - Appraisal, 4.20; 4:43; 13.02
 - Condemnation, 13.02
 - Easement taken, 13.06; 13.07; 13.27
 - Evidence of, discussed, 13.01; 13.02
 - Income or capitalization of income approach to valuing real property, 13.01
 - Leasehold interest taken, 13.27
 - Market data approach to valuing real property, 13.01
 - Property taken, 13.02
 - Public-improvement-caused change in fair market value
 - General rule, 13.02; 13.07
 - General rule's exception, 13.10
 - Replacement or reproduction cost method of valuing real property, 13.01
- Future uses of property
 - Compensation figured by value of property taken, not by use government intends, 13.01
 - Condemnee's reasonable probable future uses but for taking
 - Easement, 13.06; 13.07
 - Leasehold interest, 13.27
 - Property, 13.02
- Highway, access to impaired, *see* Access to Street, this heading
- Income or capitalization of income approach to valuing real property, 13.01
- Injunction, discussed, 13.01
- Intended uses, *see* Future Uses of Property, this heading
- Interest, 13.40
- Inverse condemnation, 13.08
- Jury view, 13.04
- Leasehold interest
 - Damage to, 13.08; 13.27
 - Growing crops, 13.28
 - Inverse condemnation, 13.08
 - Partial taking, 13.26; 13.27
 - Total taking, 13.25; 13.27
- Limitation of action, *see* Statute of Limitations, this heading

INDEX—CIVIL JURY INSTRUCTIONS

EMINENT DOMAIN—Cont'd

- Market data approach to valuing real property, *see* Fair Market Value, this heading
- Measure of compensation, *see* Compensation, this heading
- Mitigation of damages, 13.01; 13.02
- Multiple condemnees, 13.01
- Nebraska Takings Clause is self-executory, 13.08
- Nominal damages, 13.01
- Obstruction of street, Access Impaired, *see* Access to Street, this heading
- Part of property taken, reduction in value of remainder, 13.01
- Partial taking
 - Compensation, *see* Compensation, this heading
 - Inverse condemnation, 13.08
 - Leasehold interest, 13.26
 - Special benefits, 13.10
- Parties, *see* Parties, this index
- Personal property on condemned real estate, 13.01
- Political Subdivisions Tort Claims Act compared, 13.08
- Private corporations exercising power of eminent domain, 13.01
- Profits lost, not element of compensation, 13.02
- Property defined, question for court, 13.01
- Property owner's remedies, 13.08
- Property taken, *see* Condemnation, this heading
- Public-use requirement
 - Generally, 13.01
 - Coterminous with sovereign's police power, 13.01
- Questions of fact, amount of just compensation, 13.01
- Questions of law
 - Property
 - Amount needed, 13.01
 - What constitutes, 13.01
 - Public use, what constitutes, 13.01
 - Whether taking is lawful, 13.01
- Railroad's power of eminent domain, *see* Railroads, this index
- Removal of personal property, cost not compensable, 13.01
- Repair, cost of, 13.01
- Replacement or reproduction cost method of valuing real property, *see* Fair Market Value, this heading
- Severance damages, 13.01
- Sole issue in condemnation action is determination of proper amount of compensation, 13.01
- Sovereign's liability based on constitutional mandate, 4.25
- Special benefits, 13.01; 13.10
- Special damages, 13.01
- Special proceedings, 13.01
- Statute of limitations, inverse condemnation, 13.08
- Street, access to impaired, *see* Access to Street, this heading

INDEX—CIVIL JURY INSTRUCTIONS

EMINENT DOMAIN—Cont'd

- Taking
 - Date of, discussed, 13.08
 - Must be for public use, 13.01; 13.08
 - Must be with just compensation, 13.01; 13.08
 - Without filing condemnation action, *see* Inverse Condemnation, this heading
- Temporary entry onto private land, 13.08
- Temporary taking, 13.01; 13.08
- Unaffixed personal property, 13.01
- Unit rule, 13.01
- Valuation (appraisal) of property, *see* Fair Market Value, this heading

EMOTIONAL DISTRESS

- Generally, 4.01
- Bad faith, tort of, 9.04
- Birth of child conceived after failed sterilization procedure, damages regarding, 4.01
- Bystander recovery
 - Negligent infliction of mental distress, 9.04; 11.30
 - Contract, breach of, not recoverable, 4.40; 9.04
 - Element of personal injury recovery, 4.00; 4.01
 - FELA (Federal Employers' Liability Act) and negligent infliction of emotional distress, 9.04
 - Humiliation as an element of damages, 4.00
 - Intentional infliction of, 9.04
 - Negligent infliction
 - Cause of action, mentioned, 9.04
 - Element of damages, 4.00; 4.01
 - Parasitic damages, 4.01
 - Sterilization procedure, failed, resulting in birth of child, damages, 4.01
 - Wrongful death action, 4.60; 5.04 (Comment, part IX)

EMPLOYEE

- See* Agency; Employment, this index

EMPLOYMENT

- See also* Agency, this index
- Agency compared, 6.01
- At-will status, 4.52
- Borrowed servant doctrine, 6.10
- Contract obligation of employer unenforceable against employee, 6.01
- Covenant not to compete, 4.51
- Distinguished from agent, 6.01
- Distinguished from independent contractor, 6.06
- Employee's damages, employer's breach of employment contract, 4.52
- Employer
 - Duty to employee injured on job, mentioned, 3.02
 - Liable as joint participant where employee acts at employer's direction, 6.01
- Expired employment contract, relevance of terms or conditions, 15.01

INDEX—CIVIL JURY INSTRUCTIONS

EMPLOYMENT—Cont'd

- Loaned or hired-out employee, 6.10
- Nebraska Wage Payment and Collection Act, 4.52
- Personal services contract, 4.51; 4.52
- Regarding construction contracts, *see* Damages, Breach of Contract, Contract for Construction or Repair, this index
- Tortious interference with a business relationship, 17.02
- Wrongful discharge, 4.52

EMPLOYMENT, SCOPE OF

- See* Agency, Authority of Agent, this index

EMPLOYMENT CONTRACT

- See* Agency; Damages; Employment, this index

ENGINEERS

- See* Malpractice, this index

ENRICHMENT, UNJUST

- See* Contract, this index

ENTRUSTMENT, NEGLIGENT

- See* Negligent Entrustment, this index

EQUITABLE ADJUSTMENT

- See* Action at Law or in Equity, this index

EQUITABLE CLAWBACK

- Equitable clawback mentioned, 15.01, Comment, XI(E)

EQUITABLE ESTOPPEL

- See also* Action at Law or in Equity; Fraudulent Concealment, this index

- Equitable tolling, 9.01; 12.04

- Essential elements of, cases cited, 9.01

- Judicial estoppel, 1.45

- Political Subdivision Tort Claims Act statute of limitations, 8.72

- Precluding use of statute of limitations as bar to wrongful death action, 4.60; 12.04

- Promissory estoppel, 4.52

- Statute of limitations, parties equitably estopped from asserting

- Political Subdivision Tort Claims Act, 8.72

- Quiet title action, 9.01

EQUITABLE TOLLING

- See* Equitable Estoppel, this index

EQUITY

- See* Action at Law or in Equity, this index

ERROR

- Error in jury instruction, *see* Instructions, this index

- Making the record, *see* Instructions, this index

- Plain error, *see* Instructions, this index

INDEX—CIVIL JURY INSTRUCTIONS

ESTATES, DECEDENTS*

See Wills, this index

ESTOPPEL

Equitable estoppel, *see* Equitable Estoppel, this index
Judicial estoppel, 1.45

EVALUATION OF TESTIMONY

See Credibility, this index

EVIDENCE

See also Burden of Proof; Credibility; Expert Testimony; Nebraska Evidence
Rules, this index

Admissions, *see* Admissions, this index

Admitted for a limited purpose, 1.72

Circumstantial evidence, 1.31

Clear and convincing evidence, *see* Burden of Proof, this index

Damages must be evidenced to be submitted, Ch. 4 Intro., (3)(b)

Defined

 Complete definition

 Eminent domain, 13.04

 Other than eminent domain, 1.02

 Preliminary definition before trial, 1.00

Deposition evidence, 1.44

Direct evidence, 1.31

Eminent domain

 Instructed, 13.04

 Specific items of evidence of compensation, 13.02

Expert testimony, *see* Expert Testimony, this index

Failure to produce, inference, 1.51

Greater weight of the evidence, *see* Burden of Proof, this index

Hearsay

 Admitted for limited purpose, 1.72

 Impeachment with evidence of conviction of crime, 1.70

 Learned treatises, *see* Expert Testimony, this index

Judge not allowed to comment on, 1.01

Judicial admissions, 2.01

Jury not to be influenced by objections, 1.00

Jury resolves conflicts in evidence, 1.00; 1.01

Jury to rely on evidence plus general knowledge, 1.00; 1.01

Jury view, 13.04

Learned treatises and the hearsay rule, *see* Expert Testimony, this index

Limited purpose evidence, 1.72

Nebraska Evidence Rules, *see* Nebraska Evidence Rules, this index

Opinion

 Expert, 1.42

 Value of property, 1.42; 4.20

Parol evidence, 15.01

Party's own witness, 1.41A

INDEX—CIVIL JURY INSTRUCTIONS

EVIDENCE—Cont'd

- Pleadings, 2.01
- Preliminary instruction, 1.00
- Preponderance of the evidence, *see* Burden of Proof, Greater Weight of the Evidence, this index
- Prior statement, used to evaluate testimony, 1.41
- Rulings upon, 1.01
- Stricken from the record, 1.01
- Subsequent remedial measures and products liability, 11.31
- Things that are not evidence, 1.00; 1.02; 13.04
- Uncontroverted evidence, 1.61
- Unexplained failure to call available witness who has unique knowledge, 1.51

EXCLUSION

- Implied warranty, 11.46

EXCLUSIVE DISTRIBUTORSHIP

- Breach of contract for, 4.51

EXEMPLARY DAMAGES

- See* Damages, this index

EXPERIMENTS

- Illustrative experiments, *see* Expert Testimony, this index

EXPERT TESTIMONY

- See also* Nebraska Evidence Rules, this index
- Admitted for limited purpose, limited-purpose instruction, 1.72
- Appeal, standard of review on, *see* Standard of Review on Appeal, this heading
- Basis for, 1.42
- Contract, expert testimony used to interpret ambiguous language, 15.01
- Court appointed expert, court ordered evaluation, immunity from liability, 12.01
- Crops, value of, 1.42; 4.30
- Discretion of trial court, *see* Trial Court Discretion, this heading
- Eminent domain, 13.01
- Expert testimony, in general, 1.42
- General discussion and cross references, 1.42
- Hypothetical questions, 1.43
- Immunity from liability, court appointed expert, court-ordered evaluation, 12.01
- Informed consent to medical procedure, 12.03
- Learned treatises and the hearsay rule, 12.01
- Limited-purpose instruction, 1.72
- Malpractice action
 - Informed-consent medical-malpractice action, 12.03
 - Medical malpractice generally, 12.01
 - Professional negligence generally, 12.04
- Medical treatment, proof of informed consent to, 12.01; 12.03
- Permitted when will assist trier of fact, 1.42
- Permitted without advance disclosure of underlying data, 1.42
- Qualifications of expert, 1.42

INDEX—CIVIL JURY INSTRUCTIONS

EXPERT TESTIMONY—Cont'd

- Real estate, market value, 1.42; 13.02
- Reasonable degree of certainty, standard for expert testimony, 1.42
- Required, *see* When Required, this heading
- Self-contradiction by expert, 1.42
- Standard of review on appeal, 1.42
- Trail court discretion, 1.42
- When required
 - Generally, 1.42
 - Malpractice action, 12.01

EXPLOSIVES

- See* Strict Liability, this index

EXPRESS CONTRACT

- See* Contract, this index

EXTRAORDINARY FORCE OF NATURE

- Affirmative defense, 2.02C
- Burden of proof, 2.02C
- Contracts
 - Failure of consideration, 15.27
 - Impossibility of performance, 15.20
- Defined, 2.02C
- Inapplicable if defendant's negligence concurrent cause, 2.02C
- Unavoidable accident defense, *see* Unavoidable Accident, this index

FACTS DETERMINED BY THE COURT

- See also* Judicial Notice, this index
- Contract action, 15.01
- Negligence action, 2.01; 2.08

FAIR MARKET VALUE

- See* Words and Phrases, Fair Market Value, this index

FALSE-IMPRISONMENT

- False imprisonment and the Tort Claims Act, 8.72
- Mentioned, 9.10

FALSE REPRESENTATION

- See* Misrepresentation, this index

FAMILY PURPOSE DOCTRINE

- Generally, 7.60

FEDERAL EMPLOYERS' LIABILITY ACT (FELA)

- Contributory negligence, 2.02A
- Scope of employment, 2.01

FIRE FIGHTER

- See also* Emergency; Police, this index
- Fire fighter responding to emergency call is licensee, 8.11
- Fireman's rule, mentioned and contrasted with rescue rule, 3.08

INDEX—CIVIL JURY INSTRUCTIONS

FIRE FIGHTER—Cont'd

Injured at scene of emergency by condition or activity on real property, *see*
 Liability of Owner, Occupant, or Lessor of Real Property, this index
Injured en route to emergency scene, *see* Motor Vehicles; Negligence, this index
Licensee, 8.11
Volunteers, duty of, 3.08

FIREMAN'S RULE

See Fire Fighter, this index

FLOOD

See Eminent Domain; Extraordinary Force of Nature, this index

FOLLOWING TOO CLOSELY

See Motor Vehicles, this index

FORCE OF NATURE, EXTRAORDINARY

See Extraordinary Force of Nature, this index

FOREMAN

See Presiding Juror, this index

FORESEEABILITY

See Duty of Care, this index

FORUM SELECTION

Clause in contract, *see* Contract, Forum Selection Clause, this index

FRAUD

See Cause of Action; Contract; Fraudulent Concealment; Fraudulent Representation; Wills; Words and Phrases, this index

FRAUDS, STATUTE OF

See Statute of Frauds, this index

FRAUDULENT CONCEALMENT

See also Equitable Estoppel; Fraudulent Representation, this index
Definition of material fact, 9.03

Statute of limitations, estops party from asserting, 12.04

Statute of repose, delays running of, 12.04

Tolling statute of limitations and repose, 12.04

Tort action

 Mortgagee against mortgagor, 9.02

 Mortgagor counterclaim against mortgagee, 9.02

 Purchaser against vendor, 9.02

 Vendor counterclaim against purchaser, 9.02

FRAUDULENT MISREPRESENTATION

See Misrepresentation, this index

FRAUDULENT REPRESENTATION

See also Fraudulent Concealment, this index

See Misrepresentation, this index

INDEX—CIVIL JURY INSTRUCTIONS

FREEWAY

See Highways; Motor Vehicles, this index

FUNGIBLE

Defined, 11.43

GENERAL BENEFITS

See Eminent Domain, this index

GENERAL DAMAGES

See Damages, this index

GOD, ACTS OF

See Extraordinary Force of Nature, this index

GOLDEN RULE ARGUMENTS

See Damages, this index

GOOD SAMARITAN

See Nebraska Good Samaritan Act, this index

GREATER WEIGHT OF THE EVIDENCE

See also Burden of Proof, this index

Defined, 2.12A

GROSS NEGLIGENCE

See Comparative Negligence; Negligence, this index

GUARANTEE

See Breach of Warranty, this index

GUARDIAN

See Parties, this index

GUEST

Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index

Social guest, *see* Social Guest, this index

HARMLESS ERROR

See Instructions, this index

HEAD-OF-HOUSEHOLD

See Family Purpose Doctrine, this index

HEALTH-CARE PROFESSIONALS

Liability of, *see* Malpractice, this index

HIGHWAYS

See also Motor Vehicles; Nebraska Political Subdivision Tort Claims Act; Pedestrians; Speed; Traffic-Control Signs and Signals, this index

Access to, taken, *see* Eminent Domain, this index

Backing-up upon, 7.32

Condition of, government's duty regarding, 8.72

Construction, property taken, *see* Eminent Domain, this index

INDEX—CIVIL JURY INSTRUCTIONS

HIGHWAYS—Cont'd

- Defined, 7.01
- Duty to keep in reasonably safe condition, 8.72
- Freeway, definition cited, 7.28
- Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index
- On recreational land, *see* Nebraska Recreation Liability Act, this index

HITCHHIKING

- See* Pedestrians, this index

HOLOGRAPHIC WILLS

- See* Wills, this index

HORN

- See* Sounding Horn on Motor Vehicle, this index

HOSPITALS

- See also* Malpractice; Nebraska Hospital-Medical Liability Act, this index
- Driveway considered private drive, statutory rules of road inapplicable, 7.01
- Hospital-Medical Liability Act, *see* Nebraska Hospital-Medical Liability Act, this index

HUMILIATION

- Damages, humiliation as an element of, 4.00

HUSBAND AND WIFE

- See* Marriage, this index

HYPOTHETICAL QUESTIONS

- See* Expert Testimony, this index

ICE

- See* Assumption of Risk; Damages; Extraordinary Force of Nature; Highways; Motor Vehicles; Negligence, this index

IMMUNITY

- Court-appointed psychiatrist performing court-ordered evaluation, 12.01
- Governmental immunity, *see* Nebraska Political Subdivisions Tort Claims Act; Nebraska State Tort Claim Act; Political Subdivisions, this index
- Interspousal tort immunity, *see* Marriage, this index
- Land used for recreation, *see* Nebraska Recreation Liability Act, this index
- Sovereign immunity, 8.72

IMPEACHMENT

- See* Credibility, this index

IMPLIED CONTRACT

- See* Contract, this index

IMPLIED WARRANTY

- See* Breach of Warranty, this index

IMPUTED NEGLIGENCE

- See also* Negligence, this index

INDEX—CIVIL JURY INSTRUCTIONS

IMPUTED NEGLIGENCE—Cont'd

- Child's negligence not imputed to parent, 3.25
- Discussed, 3.25
- Driver's negligence not imputed to passenger as passenger, 7.61
- Family purpose doctrine, 7.60
- Parents' negligence not imputed to child, 3.26A; 3.26B

INCONSISTENT STATEMENT, PRIOR

- See* Credibility, this index

INDEMNIFICATION

- Discussed, 2.05

INDEPENDENT-CONTRACTOR

- Construction contract, damages, *see* Damages, Breach of Contract, Contract for Construction or Repair, this index
- Defined, 6.06
- Distinguished from agent, 6.06
- Distinguished from employee, 6.06
- Duties not delegable to
 - Generally, 6.06
 - Physicians, *see* Malpractice, this index
- Question of fact, independent contractor or agent, 6.06

INFANTS

- See* Children, this index

INFLATION

- See* Present Cash Value, this index

INFLUENCE, UNDUE

- See* Undue Influence, this index

INFORMED CONSENT

- See* Malpractice, this index

INHERENTLY DANGEROUS PROPERTY

- See also* Strict Liability, this index
- Lender or donor's duty to examine, 11.02

INJURY

- See also* Animals; Damages, this index
- Personal injury defined and distinguished, 4.01

INSPECTORS

- See also* Agency; Duty of Care; Contract; Damages; Malpractice; Motor Vehicles; Negligence, this index
- Injured on property being inspected, *see* Liability of Owner, Occupant, or Lessor of Real Property, this index
- Inspector entering premises as matter of right is licensee, 8.11

INDEX—CIVIL JURY INSTRUCTIONS

INSTRUCTIONS

Admonition at recess

Appeal based on error in jury instructions, in general, Statement Adopted by S.Ct. Re NJI2d

Conference with reference to proposed instruction, Statement Adopted by S.Ct. Re NJI2d

Conflicting instructions, Statement Adopted by S.Ct. Re NJI2d

Copy provided each juror, Statement Adopted by S.Ct. Re NJI2d

Copying pleadings condemned, 2.01

Deliberation, instruction during, Statement Adopted by S.Ct. Re NJI2d

Drafted alternatively as element of plaintiff's case and affirmative defense, may be used as model, 11.46

Drafting new instructions

Active voice, Statement Adopted by S.Ct. Re NJI2d

Instruction conference, Statement Adopted by S.Ct. Re NJI2d

Plain English, Statement Adopted by S.Ct. Re NJI2d

Positive statements preferred over negative, Statement Adopted by S.Ct. Re NJI2d

Error

Error to submit general allegations of negligence, 2.01

Harmless error rule, generally, Statement Adopted by S.Ct. Re NJI2d

Instructing jury during deliberations

Limited-use instruction, Statement Adopted by S.Ct. Re NJI2d

In open court, Statement Adopted by S.Ct. Re NJI2d

In presence of parties and their counsel, Statement Adopted by S.Ct. Re NJI2d

Jury's duty to follow instructions given, 1.01

Must be considered together, 1.01

Party's duty to object

Erroneous instruction, Statement Adopted by S.Ct. Re NJI2d

Specificity of instructions, Statement Adopted by S.Ct. Re NJI2d

Unless plain error indicative of probable miscarriage of justice, Statement Adopted by S.Ct. Re NJI2d

Plain error in jury instruction, Statement Adopted by S.Ct. Re NJI2d

Presenting negligence case to jury, general discussion, 2.01

Preserving error in jury instruction, Statement Adopted by S.Ct. Re NJI2d

Reading pleadings condemned, 2.01

Recess admonition, 1.00A

Repetitive instructions, Statement Adopted by S.Ct. Re NJI2d

Requested instructions must be submitted in writing, Statement Adopted by S.Ct. Re NJI2d

Reversible error from failure to give requested instruction, Statement Adopted by S.Ct. Re NJI2d

Speculation, guess, or conjecture instruction, *see* Speculation, this index

Submission instruction, 5.01

Trial court's duty

Generally, 2.01; 2.02A; Ch. 4 Intro. (1)

See also heading for particular Claim or Defense involved

INDEX—CIVIL JURY INSTRUCTIONS

INSTRUCTIONS—Cont'd

- Admonition at recess—Cont'd
- Error—Cont'd
 - Trial court's duty—Cont'd
 - Damages, Ch. 4 Intro. (1)
 - Issues pleaded and evidenced, 2.01
 - Jury instruction describing trial court's duty, 1.00; 1.01
 - Negligence, 2.01
 - Writing, must be reduced to, Statement Adopted by S.Ct. Re NJI2d
- Instructions on use of products, *see* Products Liability; Warnings, this index
- Jury instructions
 - See also* Juries, this index
 - Harmless error rule, generally, Statement Adopted by S Ct. Re NJI2d
 - The use of pattern instructions is explained in the Use Note, which precedes the Table of Contents and the Statement Adopted by S.Ct. Re NJI2d
- Medical malpractice, failure to follow doctor's instructions, 11.12; 12.02
- Products liability, *see* Products Liability; Warnings, this index

INSURANCE

- Affirmative defense
 - Exclusionary clause, establishing event within, 2.02D
 - Assignability of a breach of contract claim, 15.01, Comment X(C)(2)
 - Bad faith refusal to pay, 15.01, Comment X(C)(2)
 - Breach of contract to obtain insurance, 4.55; 4.56
 - Construction of policy, 15.01
 - Contract, construction of insurance, 15.01
 - Driver given permission to drive vehicle, insurance carrier's liability for damage caused by, *see* Motor Vehicles, this index
 - Exclusionary clause, *see* Affirmative Defense, this heading
 - Initial permission rule, insurance carrier's liability for damage caused by driver given permission to drive vehicle, *see* Motor Vehicles, this index
 - Negligent failure to procure insurance, 4.55
 - Negligent misrepresentation, agent fails to exercise reasonable care or competence in supplying correct information to client, mentioned, 9.01; *see also* Misrepresentation, this index
 - Principal's contractual liability to subagent hired by general agent, 6.01
 - Settlement agreement set aside on grounds of mutual mistake, 15.22
 - Title insurance companies and agents, duty of, 12.04
 - Warranty and contract of insurance distinguished, 15.01

INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

- See* Emotional Distress, this index

INTENTIONAL INTERFERENCE WITH A CONTRACT

- See* Contract, Intentional Interference with a Contract, this index
- Regarding tortious interference with a business relationship, *see* 17.02

INTENTIONAL TRESPASS

- See* Nuisance, this index

INDEX—CIVIL JURY INSTRUCTIONS

INTEREST

See also Damages, this index
Conversion of property, 4.27
Eminent domain, 13.40
Judgment interest, Ch. 4 Intro. (6)
Liquidated claim, Ch. 4 Intro. (6)
Present cash value, 4.13

INTERSECTION

See Highways; Motor Vehicles; Pedestrians; Railroads; Traffic-Control Signs and Signals, this index

INTERSPOUSAL TORT IMMUNITY

See Marriage, this index

INTERVENING CAUSE

See Superseding Cause, this index

INTOXICATION

Automobile guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index
Character or reputation evidence regarding drunkenness, 1.71
Contributory negligence?, 3.07
Deceased's addition relevant to wrongful death damages, 4.60
Dramshop liability, 3.03
Drunk driver
 Automobile guest statute
 Drunkenness defined, 7.52
 Issues and burden of proof, 7.50B
 Pleading, 7.50A
 Minor sold alcohol in violation of state law, 3.03
 Negligent entrustment, 7.62
 Pleading passenger's suit against driver, 7.50A
 Duty of care of intoxicated person, 3.07
 Expert testimony establishing, 1.42
 Guest Passenger Act, *see* Passenger, Motor Vehicle Guest Statute, this index
 Minors, violation of statute prohibiting sale of alcohol to, 3.03
 Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index
 Pedestrian, intoxicated, 7.15
 Testamentary capacity, will contest, 16.04
 Worker's Compensation Act, injury to intoxicated employee, 3.07

INVERSE CONDEMNATION

See Eminent Domain, this index

INVESTMENT ADVISORS

See Malpractice, this index

INVITATION

Injured invitee, *see* Liability of Owner, Occupant, or Lessor, of Real Property, this index

INDEX—CIVIL JURY INSTRUCTIONS

INVITEE

See Liability of Owner, Occupant, or Lessor, of Real Property, this index

IRREBUTTABLE PRESUMPTION

See Presumptions, this index

JAILOR

See Duty of Care, this index

JOGGERS

See Pedestrians, this index

JOINDER

See Joint Tortfeasors; Parties, this index

JOINT AND SEVERAL LIABILITY

Generally, 5.04; *See also* Causation, this index

Damages

General instruction

Where joint and several liability is an issue, 4.00

Where joint and several liability is not an issue, 4.01

Wrongful death, joint and several liability, 4.60, 5.04 (Comment, part IX)

Economic damages, liability for, 4.00

Effect of finding, contributory negligence

Joint and several liability is an issue, 2.02A; 2.02A-1

Joint and several liability is not an issue, 2.02A; 2.02A-2

Legislative Bill 262 and joint and several liability explained, 5.04

Noneconomic damages, liability for, 4.00

Partners, 6.21

Summary of which L.B. 262 instructions to use when, 5.04 (Comment, part I)

Third person, not a party and not a person settled with or otherwise released, 5.04 (Comment, part VII(C))

Tortfeasors acting in concert as part of common enterprise or plan, 5.04

JOINT ENTERPRISE

See Joint Venture, this index

JOINT TORTFEASORS

See also Causation; Parties, this index

Full settlement by one of several, Ch. 4 Intro. (9)

Joinder discussed, 2.20; 2.21

No contribution among, 2.05

Post-February 7, 1992, 5.04 (Comment, *Passim* and part VIII)

JOINT VENTURE

See also Partnership, this index

Affirmative defense of joint enterprise, vehicle collision, passenger suit against other driver, 6.40

Agency relationship compared, 6.43

Automobile accident, passenger suit against other driver, affirmative defense of joint enterprise, 6.40

INDEX—CIVIL JURY INSTRUCTIONS

JOINT VENTURE—Cont'd

Contract action
Effect of findings, 6.42
Issues and burden of proof, 6.40
Ordinary course of business, 6.45
Vicarious liability, 6.40; 6.42
Contributory negligence of driver imputed to passenger, in passenger suit against other driver, 6.40
Defined, 6.43
Essential elements of the relationship, 6.40; 6.43
Exists only by voluntary agreement of the parties, 6.40
Implied joint venture, 6.40
Imputed contributory negligence and joint enterprise, 6.40
Joint enterprise distinguished, 6.43
Law of partnership applies, 6.40; 6.41
In the nature of a limited partnership, 6.40
Negligence action
Effect of findings, 6.41
Issues and burden of proof, 6.40
Ordinary course of business, 6.44
Vicarious liability, 6.40; 6.41
Ordinary course of business
Contract action, 6.45
Negligence action, 6.44
Partnership compared, 6.40
Partnership law applies, 6.40; 6.41
Question of fact, existence of joint venture in specific case, 6.40
Question of law, what constitutes a joint venture in general, 6.40
Vicarious liability
Contract action, 6.42
Negligence action, 6.41
Tort action to which contributory negligence could be a defense, after February 7, 1992, 5.04 (Comment, part VIII)

JUDGE'S DUTY

See Instructions, Jury Instructions; Juries, this index
Abuse of judicial discretion, 1.42
Judicial comment on credibility of witness, *see* Credibility, this index

JUDGMENT INTEREST

See Interest, this index

JUDICIAL ADMISSIONS

See Admissions, this index

JUDICIAL ESTOPPEL

See NJI2d Civ. 1.45

JUDICIAL NOTICE

See also, Facts Determined by the Court, this index

INDEX—CIVIL JURY INSTRUCTIONS

JUDICIAL NOTICE—Cont'd

- General discussion, 1.02
- Instruction defining kinds of evidence, 1.02
- Instruction stating facts determined by court, 2.01
- Pretrial instruction, 1.00
- Statement of the case, 2.01

JURIES

- See also* Instructions, Jury Instructions; Speculation, this index
- Admonition at recess, 1.00A
- Common knowledge
 - Jurors' common knowledge relied upon in fixing present cash value, 4.13
 - Jurors consider evidence plus general knowledge, not other personal knowledge, 1.00; 1.01
- Consider evidence plus general knowledge, 1.00; 1.01
- Duty of jurors, 1.00; 1.01
- Foreman, *see* Presiding Juror, this subheading
- Items taken to jury room, 5.01
- Jury view
 - Eminent domain, 13.04
 - Negligence, 1.02
- Note taking by members, 1.00
- Party, jurors asked to put selves in place of, 1.01
- Prejudice, 1.00; 1.01
- Presiding juror, 5.01
- Presubmission discussion among jurors, 1.00A; 4.02
- Questions of fact, *see* Questions of Fact, Main Index, this index
- Quotient verdict, 4.02
- Sequestration, 5.01
- Speculation by, *see* Speculation, this index
- Submission to jury, *see* Instructions, this index
- Sympathy
 - Asked to put selves in place of party, 1.01
 - Damages, 4.01
- Time for deliberation, 5.01
- Transcript of trial not provided, 1.00
- Unanimity of verdict, 5.01
- Verdict forms
 - Mentioned, 5.01
 - Pattern provided, 5.02; 5.03; 5.04; 5.05

JURISDICTION

- Subject matter jurisdiction discussed, 8.72

JURY INSTRUCTIONS

- See* Instructions, Jury Instructions, this index

JURY VIEW

- See* Juries, this index

INDEX—CIVIL JURY INSTRUCTIONS

LACHES

See Affirmative Defenses, this index

LANDLORD

See Lease, this index

LANDOWNER

Liability of, *see* Liability of Owner, Occupant, or Lessor of Real Property, this index

LAST CLEAR CHANCE

Discussed, 3.23

LAW, CONTRACT TERMS IMPOSED BY

See Contracts, Terms Imposed by Law, this index

LAW ACTION

See Action at Law or in Equity, this index

LAW ENFORCEMENT OFFICER

See Police, this index

LAWYERS

See Attorneys, this index

LEASE

See also Contract; Damages; Eminent Domain; Liability of Owner, Occupant, or Lessor of Real Property; Negligence; Products Liability; Property, this index

A lease is a contract, 15.01

Construed as any other contract, 15.01

Damage to leasehold interest, *see* Damages, Leasehold Interest, this index

Landlord-tenant relationship not, by itself, principal-agent relationship, 6.03

Landlord's damages when tenant abandons lease, 4.40

Landlord's duty to mitigate when tenant abandons premises during term of lease, 4.70

Liability of lessor, *see* Damages, Leasehold Interest; Liability of Owner, Occupant, or Lessor of Real Property; Products Liability, this index

LEFT TURN

See Motor Vehicles, this index

LEGAL CAUSE

See Causation, this index

LENDER

See Loan, this index

LESSEE

See Lease, this index

LESSOR

See Lease, this index

INDEX—CIVIL JURY INSTRUCTIONS

LIABILITY, STRICT

See Strict Liability, this index

LIABILITY, VICARIOUS

See Vicarious Liability, this index

LIABILITY OF OWNER, OCCUPANT, OR LESSOR OF REAL PROPERTY

Generally, 8.61

See also Lease; Nebraska Recreation Liability Act; Political Subdivision, this index

Absentee owner, liability of, 8.02

Affirmative defenses, *see* Affirmative Defenses, this index

Agency, tenant not necessarily agent of landlord, *see* Lease, this index

Assumption of the risk, *see* Assumption of Risk, this index

Attractive nuisance, *see* Children, this index

Business visitor

Customer, 8.21

Damage to

Activities on premises, 8.23

Acts of third persons, 8.24

Condition of premises, 8.22

Defined, 8.21

Delivery person, 8.21

Duty owed to, *see* Duty Owed to, this heading

Licensee distinguished, 8.11; 8.21

Mail carrier, 8.21

Passenger on common carrier, *see* Common Carrier, this index

Who goes outside area of invitation, 8.21

Who knows of danger, 8.22

Children, *see* Children, this index

Common areas, 8.32

Common carrier's premises, *see* Common Carrier, this index

Comparative negligence, *see* Comparative Negligence, this index

Contributory negligence, *see* Contributory Negligence, this index

Criminal acts of third persons, 8.24; 8.31

Criminal acts of third persons on premises, 8.24

Crops, damage to neighbor's, *see* Crops, this index

Customer, *see* Business Visitor, this heading; Customer, this index

Damages, *see* Damages; Mitigation of Damages, this index

Defendant's status as occupant or owner, 8.12

Dog bite, landlord's liability, tenant's dog, 8.41

Duty of lessor

Personal property, 11.01

Real property, Ch. 8

Duty owed to

Business visitor

Activities on premises, 8.23

Acts of third persons, 8.24

INDEX—CIVIL JURY INSTRUCTIONS

LIABILITY OF OWNER, OCCUPANT, OR LESSOR OF REAL PROPERTY

—Cont'd

- Duty owed to—Cont'd
 - Business visitor—Cont'd
 - Children, 8.51
 - Common carrier passenger, *see* Common Carrier, this index
 - Condition on premises, 8.22
 - Hazard created by third person, 8.24
 - Ultrahazardous activity, 8.41
 - Who goes outside area of invitation, 8.21
 - Who knows of danger, 8.22
 - Children, 8.51
 - Invitee, *see* Business Visitor, this subheading
- Lessee
 - Personal property, 11.01
 - Real property
 - Concealment of or failure to disclose condition of premises, 8.31
 - Lessor's duty to lessee, *see* Lessee, this subheading
 - Lessor's duty to person on real property with permission of lessee, 8.31; 8.32; 8.33
 - Liability runs with possession or ownership or both?, 8.02; 8.12
- Licensee
 - Generally, 8.12
 - Children, 8.51
 - Guest of lessee suing lessor, 8.31; 8.32; 8.33
 - Ultrahazardous activities, 8.41
 - Wanton defined, 8.81
 - Willful defined, 8.81
- Lighting, business premises, 8.22
- Person using land with permission, without charge, for recreation, 8.61
- Sublessee, *see* Lessee, this subheading
- Trespassers
 - Generally, 8.02
 - Children, 8.51
 - Ultrahazardous activities, 8.41
 - Wanton defined, 8.81
 - Willful defined, 8.81
- From facts within knowledge should have expected, defined, 8.84
- From facts within knowledge should have known, defined, 8.84
- From facts within knowledge should have realized, defined, 8.84
- Fire fighter, 8.11
- Free use of land for recreation, 8.61
- Guest, social, 8.11
- Had reason to expect, defined, 8.84
- Had reason to know, defined, 8.84
- Inspector, 8.11
- Landlord-tenant relationship not, by itself, principal-agent relationship, *see* Lease, this index

INDEX—CIVIL JURY INSTRUCTIONS

LIABILITY OF OWNER, OCCUPANT, OR LESSOR OF REAL PROPERTY

—Cont'd

- Last clear chance, *see* Affirmative Defenses, this index
- Lessee assumes risk of open and obvious defects, discussion and cross-references, 8.31
- Lessor has no duty to warn tenant of known danger, 8.31
- Lessor's liability
 - Injury inflicted by tenant's dog, 8.41
 - Injury suffered on leased premises, liability may be affected by terms of lease, 8.33
 - Premises leased for purpose involving admission of public, condition of, 8.33
- Liability of one in possession of property, 8.02; 8.12
- Liability of owner not in possession of property, 8.02; 8.12
- Licensee
 - Business visitor (invitee) distinguished, 8.11; 8.21
 - Damage to
 - Burden of proof, 8.12
 - Effect of findings, 8.12
 - Elements of plaintiff's case, 8.12
 - Defined, 8.11
 - Fire fighter, 8.11
 - Inspector, 8.11
 - Police officer responding to emergency call, 8.11
 - Social guest, 8.11
- Mail carrier, 8.21
- Mitigation of damages, *see* Mitigation of Damages, this index
- Mode of operation rule, 8.26
- Municipalities, suits against, *see* Nebraska Political Subdivisions Tort Claims Act; Political Subdivisions, this index
- Owner not in possession, liability of, 8.02; 8.12
- Parental immunity, 3.04
- Plaintiff's status
 - Business visitor
 - Customer, 8.21
 - Delivery person, 8.21
 - Independent contractor, 8.21
 - Mail carrier, 8.21
 - Who goes outside area of invitation, 8.21
 - Who knows of danger, 8.22
 - Categorizing plaintiffs, 8.01
 - Child, 8.51
 - Invitee, *see* Business Visitor, this subheading
 - Jury question, 8.01
- Licensee
 - Fire fighter, 8.11
 - Inspector, 8.11
 - Person entering property as a matter of right, 8.11
 - Police officer responding to emergency call, 8.11

INDEX—CIVIL JURY INSTRUCTIONS

LIABILITY OF OWNER, OCCUPANT, OR LESSOR OF REAL PROPERTY

—Cont'd

- Plaintiff's status—Cont'd
- Licensee—Cont'd
 - Social guest, 8.11
 - Licensee or trespasser, customer outside area of invitation, 8.21
 - Trespasser, one who enters property without express or implied contract, 8.01
 - Use of status labels in jury instructions, 8.01
- Police officer, *see* Police, this index
- Possessor of property, liability of, 8.02; 8.12
- Public sidewalks, *see* Sidewalks, this index
- Reasonable care defined, 8.82
- Recovery for injury to the person versus other kinds of damage, 8.01
- Recreation Liability Act, *see* Nebraska Recreation Liability Act, this index
- Recreational use of land, without charge
 - See also* Nebraska Recreation Liability Act, this index
- Should have expected, defined, 8.84
- Should have known, defined, 8.84
- Should have realized, defined, 8.84
- Sidewalks, *see* Sidewalks, this index
- Social guest, 8.11
- Statute of limitations, *see* Statutes of Limitations, this index
- Strict liability, *see* Strict Liability, this index
- Third persons on premises, criminal acts of, 8.24
- Trespasser
 - Children, *see* Children, this index
 - Defined, 8.01
 - Injury to
 - Burden of proof, 8.02
 - Effect of finding, 8.02
 - Elements of plaintiff's case, 8.02
- Ultrahazardous activity, *see* Strict Liability, this index
- Uniform Resident Landlord Tenant Act cited, 8.31
- Unreasonable risk of harm, defined, 8.83
- Vicarious liability, *see* cross references at Vicarious Liability, this index

LIBEL

- Clear and convincing evidence required in action by public figure, 2.12A
- Product disparagement, 17.02
- Statute of limitation, 2.02D

LICENSE

- See also* Liability of Owner, Occupant, or Lessor of Real Property, this index
- Driver's license, *see* Motor Vehicles, Driver's License, this index

LICENSEE

- See* Liability of Owner, Occupant, or Lessor of Real Property, this index

LIFE EXPECTANCY

- See also* Damages, this index

INDEX—CIVIL JURY INSTRUCTIONS

LIFE EXPECTANCY—Cont'd

Life Expectancy tables, 4.12
Mortality tables, 4.12
Personal injury, 4.01
Wrongful death, 4.60

LIGHTS

On business premises, 8.02
On motor vehicles, *see* Motor Vehicles, this index
Traffic lights, *see* Motor Vehicles; Traffic-Control Signs and Signals, this index

LIMINE, MOTIONS IN

See Motions in Limine, this index

LIMITATION OF ACTIONS

See Statutes of Limitations, this index

LIMITATIONS, STATUTES OF

See Statutes of Limitations, this index

LIMITED USE OF EVIDENCE

Generally, 1.70; 1.71; 1.72

LIQUIDATED CLAIM

See Damages, this index

LIQUIDATED DAMAGES

See Damages, this index

LIVESTOCK

See Animals, this index

LOAN

Breach of contract to lend money, 4.50
Liability of lender of personal property, 11.02

LOCALITY RULE

See Malpractice, this index

LOSS OF CONSORTIUM

See also Marriage, this index
Damage for, 4.01

LOST EARNING CAPACITY

See Damages, this index

LOST PROFITS

See Damages, this index
Breach of contract
Generally, 4.40
Construction contract, owner's breach caused extra cost to contractor, 4.47
Construction or repair contract, owner does not allow contractor to complete performance, 4.46
Contract for exclusive dealership, 4.51

INDEX—CIVIL JURY INSTRUCTIONS

LOST PROFITS—Cont'd

- Breach of contract—Cont'd
 - Contract to convey land, loss of resale contract, 4.41
 - Contract to purchase goods, 4.53
 - Contract to return specific property, 4.48
 - Covenant not to compete, 4.51
 - Special or consequential damages, 4.59
- Breach of warranty, 4.59
- Consequential damages, breach of contract, 4.59
- General discussion, 4.01; 4.59
- Lost retirement funds, breach of employment contract, 4.52
- Lost wages, *see* Damages, Wages Lost, this index
- Personal injury, 4.01
- Property, breach of warranty as to condition of, 4.59
- Property damages, lost profits as evidence of value of loss of use of property, 4.20; 4.22
- Rescission of contract, no recovery of lost profits, 4.40
- Special damages, breach of contract, 4.59
- Tort action, generally speculative, 4.01; 4.20; 4.22; 4.59
- U.C.C, generally, 4.59

MAIL

- See also* Mail Carrier, this index
- Presumption of due receipt of material properly addressed, stamped, and mailed, 2.14C
- Receipt of unsolicited merchandise, 15.01; 15.05

MAIL CARRIER

- Injured while delivering mail, *see* Liability of Owner, Occupant, or Lessor of Real Property; Motor Vehicles; Negligence; Pedestrians, this index
- Negligence of, *see* Negligence, this index
- Status as business visitor, 8.21

MALICE AND MALICIOUS

- Defined
 - Malice, in context of malicious prosecution, 9.12
 - Malicious, in general, 8.81
 - Special finding of malicious conduct in a negligence case, 3.10
- Malicious prosecution
 - Abuse of process distinguished, 9.10
 - Tort action, 9.10
- Malicious prosecution, tort action, 9.10

MALICIOUS PROSECUTION

- See* Malice and Malicious, this index

MALPRACTICE

- Generally, Ch. 12
- Accountants
 - Generally, 2.01; 12.04

INDEX—CIVIL JURY INSTRUCTIONS

MALPRACTICE—Cont'd

Accountants—Cont'd

 Fees paid to, for report negligently prepared, 12.04

Affirmative defenses, *see* Affirmative Defenses, this index

Architects, 2.01; 12.04

Attorneys, 2.01; 12.04

 Captain of the ship doctrine, *see* Nondelegable Duty, Physicians, this heading

 Cause, nondelegable duty and superseding or efficient-intervening, 3.43

 Cause of action recast as other than professional negligence, in attempt of avoid
 short limitation period for professional negligence, 12.04

 Consent to medical treatment, 12.03

 Court-appointed psychiatrist, immunity, 12.01

 Damages, limitation on amount recoverable against health-care provider, 12.01

 Deceit, attempts to relabel malpractice as, *see* Action At Law or In Equity, this
 index

 Delegation, *see* Nondelegable Duty, this heading

 Dentists, 2.01; 12.04

 Duty to third parties

 Accountant's duty, 12.04

 Attorney's duty, 12.04

 Doctor's duty, 2.01; 12.01

 Engineers, 12.04

 Expert witnesses

 Generally, 1.42; 12.01

See also Expert Testimony, this index

 Hypothetical question, 1.43

 Informed consent to medical treatment, 12.01; 12.03

 Medical malpractice, 12.01

 Failed sterilization procedure resulting in birth of child, damages, 4.01

 Fraud, attempt to relabel malpractice as, *see* Action At Law or In Equity, this
 index

 Immunity, court-appointed psychiatrist, 12.01

 Informed consent, *see* Consent to Medical Treatment, this heading

 Injury to third person, *see* Duty to Third Parties, this heading

 Investment advisors, 2.01; 12.04

 Lawyers, *see* Attorneys, this heading

 Learned treatises and the hearsay rule, *see* Expert Testimony, this index

 Locality rule, 12.01; 12.04

 Medical technicians, 2.01; 12.04

 Medical treatment, informed consent, 12.03

 Misdiagnosis, 12.01

 Nondelegable duty

 Physicians, 2.01; 12.01

 Patient's duty to follow instructions

 Aspect of proof of negligence or proximate cause, burden on plaintiff, 12.02

 Contributory negligence, burden on defendant, 11.12

 Post-operative treatment, 12.01

 Professional defined, 12.04

INDEX—CIVIL JURY INSTRUCTIONS

MALPRACTICE—Cont'd

- Professional services
 - Defined, 12.04
 - Duty, 12.04
- Real estate broker
 - Not a professional, 12.04
 - Obligations of broker and client, 15.01(C)
- Recharacterized, in attempt to avoid professional negligence statute of limitations, *see* Action At Law or In Equity, this index
- Specialists, 12.04
- Statute of limitations
 - See also* Statutes of Limitations, this index
 - Applicable generally, 12.01
 - Attempt to avoid shorter limitation period by recasting cause of action as other than one sounding in professional negligence, 12.04
 - Claim against employee of state, 12.01
 - Claim against political subdivision of state, 12.01
 - Wrongful death, 12.04
- Sterilization procedure, failed, resulting in birth of child, damages, 4.01
- Stockbrokers, 2.01; 12.04
- Surgeon's reliance on other physician's diagnosis, 12.01
- Termite inspectors, 2.01; 12.04
- Third person, professional's duty to, *see* Duty to Third Parties, this heading
- Tow-truck
 - Operator malpractice, 2.01; 12.04
 - Rules of the road on tow truck assisting stranded vehicle, 7.25
- Treatises, *see* Expert Testimony, this index
- Veterinarians, 2.01; 12.04

MANUFACTURERS

- See* Products Liability, this index

MARKET VALUE

- See* Words and Phrases, Fair Market Value, this index

MARRIAGE

- See also* Children; Damages, this index
- Alienation of affections action abrogated by statute, Ch. 4 Intro. (9)
- Antenuptial agreement
 - As contract, 15.01
 - Fraud by concealment, 9.02; 16.08
- Birth of child conceived after failed sterilization procedure, damages regarding, 4.01
- Consortium, loss of, 4.01
- Contract
 - Antenuptial agreement, *see* Antenuptial Agreement, this heading
 - Tortious interference with, unavailable regarding interference with marital relationship, 9.04
- Immunity, interspousal tort immunity abolished, 4.60

INDEX—CIVIL JURY INSTRUCTIONS

MARRIAGE—Cont'd

- Intentional infliction of emotional distress
- Tort unavailable regarding interference with marital relationship, 9.04
- Tort unavailable to recover for burdens of parent-child relationship imposed by misrepresentation that he was child's biological father, 9.04
- Interspousal tort immunity abolished, 4.60
- Joint enterprise, husband and wife engaged in, 6.43
- Remarriage of surviving spouse, disregarded in wrongful death action, 4.60
- Sterilization procedure, failed, resulting in birth of child, damages, 4.01
- Tortious interference with contract unavailable regarding interference with marital relationship, 17.02

MASTER-SERVANT

- See* Agency; Employment, this index

MEASURE OF DAMAGES

- See* Damages, this index

MEDICAL CARE

- Defendant's liability for medical expenses
- See also* Damages, this index
- Breach of contract, 15.01
- Malpractice, *see* Malpractice, this index
- Duty of care by medical personnel, *see* Malpractice, this index
- Provision of medical services creates implied contract, 15.01
- Tort, 2.01; 4.01

MEDICAL MALPRACTICE

- See* Malpractice, this index

MEETING OF THE MINDS

- See* Contract, this index

MENTAL DISTRESS

- See also* Emotional Distress, this index

MERCHANTABILITY

- See* Breach of Warranty, this index

MINIMIZING DAMAGE

- See* Mitigation of Damages, this index

MINORS

- See* Children, this index

MISREPRESENTATION

- See* Contract; Fraudulent Concealment, this index
- Assumpsit not available to recover for burdens of parent-child relationship imposed by misrepresentation that plaintiff was child's biological father, mentioned, 9.04
- Fraudulent representation
 - Contract action, affirmative defense, 15.21
 - Defined, 15.08

INDEX—CIVIL JURY INSTRUCTIONS

MISREPRESENTATION—Cont'd

- Malpractice, attempt to relabel as deceit or fraud so as to avoid professional negligence statute of limitations, 12.01
- Negligent misrepresentation mentioned, 9.01
- Tort action, fraudulent misrepresentation, 9.01

MISTAKE

- Mutual mistake, *see* Contract, this index

MISUSE

- See* Products Liability, this index

MITIGATION OF DAMAGES

- Breach of contract for personal services, 4.52
- Breach of employment contract, employee's damages, breach by employer, 4.52
- Buyer's breach of contract to purchase goods, 4.53
- Cover and resale under the U.C.C., 4.70
- Eminent domain, 13.01; 13.02
- Landlord's duty to mitigate when tenant abandons premises during term of lease, 4.70
- Seat belts, failure to wear, 7.70
- Slight negligence goes to mitigation of damages, 2.02A
- Statement of the case, 2.02D
- Strict liability case, 11.20
- Uniform Commercial Code, 4.70

MODE OF OPERATION RULE

- Not adopted in Nebraska, 8.26

MODIFICATION

- See* Contract, Modification, this index

MONEY DAMAGES

- See* Damages, this index

MORTALITY TABLES

- See* Life Expectancy, this index

MOTIONS IN LIMINE

- Motions in limine, 1.70

MOTOR BOATS

- See* Boats, this index

MOTOR VEHICLES

- See also* Affirmative Defenses; Comparative Negligence; Contributory Negligence; Damages; Extraordinary Force of Nature; Last Clear Chance; Negligence; Passenger; Pedestrians; Police; Sounding Horn on Motor Vehicle; Traffic-Control Signs and Signals, this index

Alcohol, *see* Intoxication, this index

Animals

See also Animals, this index

On freeway, 7.15

INDEX—CIVIL JURY INSTRUCTIONS

MOTOR VEHICLES—Cont'd

Animals—Cont'd

Overtaking animals or animal-drawn vehicles, 7.22A

Applicable law

On highways, Motor Vehicle Code, 7.01

On private property

Common law rules apply generally, 7.01

Motor Vehicle Code applies to careless driving, 7.01

Approach road, vehicles entering highway from, 7.10

Approaching intersection at same time, 7.10

Audible signal by driver, *see* Sounding Horn on Motor Vehicle, this index

Automobile guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index

Backing up prohibited on roadway or shoulder of freeway, 7.32

Bailment, liability of bailor

For compensation, 11.01

Gratuitous, 11.02

Bicycles

Motor Vehicle Code applies, 7.01

Overtaking, 7.22A

Blinding headlights, 3.43; 7.03A

Car thief injuries to third party, liability of owner, 3.03; 7.62

Careless driving, statutes relative to, apply on public and private property, 7.01

Children, *see* Children, this index

Construction workers, *see* Workers, Highway construction, this heading

Control, 7.03A

Crosswalk, definition cited, 7.28

Damages, *see* Damages, this index

Darkness, nighttime driving, duty, 7.03A

Disabled vehicle

Burden of proof, 7.28

Driving on highway shoulder, 7.26

Driving onto median to assist, 7.25

Parking, 7.28

Driver given permission to drive vehicle, insurance carrier's liability for damage caused by, 7.62

Driver's license

Negligent entrustment to unlicensed driver, 7.62

Requirements to obtain, 7.62

Driver's negligence not imputed to passenger as passenger, 7.61

Driveway

Emerging from private drive, 7.12A

Entering private drive

Generally, 7.12B

Left turn into, 7.11

Driving conditions, general instructions, 7.03A

Driving on right half of roadway, 7.21

Driving onto or across median of divided highway, 7.25

Driving upon sidewalk, 7.33

INDEX—CIVIL JURY INSTRUCTIONS

MOTOR VEHICLES—Cont'd

- Drunk driver, *see* Intoxication, this index
- Dust, 3.43; 7.03A
- Emergency vehicles
 - See also* Emergency, this index
 - Assisting stranded vehicle, 7.25
 - Driving onto or across median of divided highway, 7.25
 - Duty of care of driver of emergency vehicle, 7.07A
 - Duty of other driver upon approach of, 7.07A; 7.31
 - Exemption from rules of road
 - Generally, 7.30
 - For Specific Exemption, *see* Instruction Relating to Particular Rule Involved, this index
 - Operation of other vehicles upon approach of emergency vehicle, 7.07A; 7.31
 - Other drivers must yield to, 7.07A
 - Police vehicles, *see* Police, this index
 - Right of way, 7.07A; 7.31
 - U-turns, 7.20
- Entrustment, *see* Negligent Entrustment, this heading
- Equipment required
 - Brakes, 7.29
 - Clearance lights, 7.29
 - Emblems, 7.29
 - Horns, 7.29
 - Lights, 7.29
 - Mirrors, 7.29
 - Reflectors, 7.29
 - When carrying long or protruding load, 7.29
 - Windshield wipers, 7.29
- Exemption from rules of the road
 - Generally, 7.01
 - Emergency vehicles, 7.30
- Family member driving for family purpose, liability of head-of-household, 7.60
- Family purpose doctrine, 7.60
- Fog, 3.43; 7.03A
- Following too close, 7.24
- Freeway, definition cited, 7.28
- Front seat, overloading, 7.34
- Green light, *see* Traffic-Control Signs and Signals, this index
- Headlights, *see* Lights, this heading
- Highway defined, 7.01
- Hitchhiking, *see* Pedestrian, this index
- Hospital driveway private drive, Motor Vehicle Code inapplicable, 7.01
- Ice, 3.43; 7.03A
- Imputed negligence, *see* Imputed Negligence, this index
- Initial permission rule, insurance carrier's liability for damage caused by driver given permission to drive vehicle, 7.62

INDEX—CIVIL JURY INSTRUCTIONS

MOTOR VEHICLES—Cont'd

Intersection

- Definition cited, 7.28
- Unprotected, 7.10

Intervening cause, *see* Superseding Cause, this index

Intoxication, *see* Intoxication, this index

Key-in-the-ignition ordinance, car stolen, owner's liability to third person injured in collision with thief, 3.03; 7.62

Lane change, signal required, 7.19

Left turn, *see* Turning, this heading

Liability of head-of-household, vehicle driven by family member, for family purpose, 7.60

Licensing Drivers, *see* Driver's License, this heading

Lights

- On motor vehicles
 - Blinding headlights, 3.43; 7.03A
 - Required equipment, 7.29
 - Turn signals, 7.19; 7.22A

Nighttime driving, duty, 7.03A

Traffic lights, *see* Traffic-Control Signs and Signals, this index

Lookout

- Approaching railroad crossing, 7.03A
- Comparative negligence, 2.02A; 7.03A
- Contributory negligence, 2.02A; 7.03A
- Driver, 7.03A
- Passenger, 7.03A

Motor Vehicle Code, applicability

- Applies to bicycles and motorcycles, 7.01
- Does not apply on private property, except relative to careless and reckless driving, 7.01
- Relative to careless and to reckless driving, applies everywhere in state, 7.01
- Unless specified otherwise, applies to operation of vehicles, upon highways, 7.01

Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index

Motorcycles, Motor Vehicle Code applies, 7.01

Negligence defined

- Generally, 3.02
- Drivers, 7.03A

Negligent entrustment

- Generally, 7.62
- Passenger's suit against owner and automobile guest statute, 7.50A

Nighttime driving, duty, 7.03A

No-parking, 7.28

No-passing zone, 7.22A; 7.22B

Obstructing driver's view, 7.03A; 7.34

Obstruction in roadway, necessitating driving to left of center, 7.21

Ordinances, *see* Ordinances, this index

INDEX—CIVIL JURY INSTRUCTIONS

MOTOR VEHICLES—Cont'd

- Overloading front seat, 7.34
- Owner of vehicle as passenger, 7.61
- Parked vehicle, *see* Parking; Stopped Vehicle, this heading
- Parking
 - On or near railroad tracks, 7.28
 - Parallel versus angle or center parking, 7.28
 - On roadway, freeway, or bridge, 7.27
 - On sidewalks, 7.28
- Passengers, *see* Passenger, this index
- Passing
 - Animals or animal-drawn vehicles, 7.22A
 - Bicycles, 7.22A
 - No-passing zone, 7.22A; 7.22B
 - Vehicle going in opposite directions, 7.23
 - Vehicle going in same direction
 - Passing on left, 7.22A
 - Passing on right, 7.22B
 - Vehicle stopped for pedestrian, 7.15
- Pedestrians, *see* Pedestrians, this index
- Permission to drive vehicle, insurance carrier's liability for damage caused by driver with, 7.62
- Place of operation
 - On highways, Motor Vehicle Code applies, 7.01
 - On private property
 - Careless and reckless driving, Motor Vehicle Code applies, 7.01
 - Other than careless and reckless driving, common-law rules apply, 7.01
 - Use of non-public way may be controlled by owner, 7.01
- Police, *see* Police, this index
- Railroad crossing, *see* Railroads, this index
- Range of vision, 7.03B
- Reckless driving statutes apply everywhere in state, private and public property, 7.01
- Red light, *see* Traffic-Control Signs and Signals, this index
- Rental car, liability of the lessor, 11.01
- Restricted access roadway
 - Entering and leaving in general, 7.27
 - Entering driver must yield right-of-way, 7.10
 - Stopping, standing, or parking upon, 7.28
- Right-of-way
 - See also* Traffic-Control Signs and Signals, this index
 - Driver turning left, 7.11
 - Driver with stop sign yielding to drivers on cross street without stop sign, 7.04
 - Duty of driver having right-of-way discussed, 7.13
 - Entering and leaving restricted access roadway, 7.10; 7.27
 - Equal rights of pedestrians and drivers, 7.15
 - Intersection of paved and unpaved roads, 7.10
 - Moving stopped, standing, or parked vehicle, 7.17

INDEX—CIVIL JURY INSTRUCTIONS

MOTOR VEHICLES—Cont'd

- Right-of-way—Cont'd
 - Pedestrians, 7.15
 - Stop signs, 7.04; 7.05
 - Vehicles approaching intersection at same time, 7.10
- Right turn, *see* Turning, this heading
- Roadway, definition cited, 7.28
- Safety zone
 - Definition cited, 7.28
 - Parking next to, 7.28
- Seat belts
 - Mitigation of damages, 4.70
 - Use of by child, 7.70
- Shoulder of highway
 - Driving upon, 7.26
 - Walking upon, 7.15
- Sidewalks, *see* Sidewalks, this index
- Signals
 - Changing lanes, 7.19
 - Passing vehicle proceeding in same direction, 7.22A
 - Stopping, 7.19
 - Turning, 7.19
- Signs upon windows of vehicle, 7.34
- Smoke, 3.43; 7.03A
- Snow, 3.43; 7.03A
- Space between moving vehicles, 7.24
- Speed
 - See also* Affirmative Defenses, this index
 - Automatic forfeiture of right-of-way repealed, 7.14
 - Driving too fast, 7.14
 - Driving too slow, 7.14
 - Slow vehicle's use of furthest right-hand lane, 7.21
 - Speed contest, 7.14
 - Violation of statute or ordinance as evidence of negligence, 3.03
- Standing vehicle, *see* Stopped Vehicle, this heading
- Statute of limitations, *see* Statutes of Limitations, this index
- Statute or ordinance, violation of as evidence of negligence, 3.03
- Stolen car, damage caused by thief to third person, liability of owner who violated key-in-the-ignition ordinance, 3.03; 7.62
- Stop defined, 7.04
- Stop lights and signs, *see* Traffic-Control Signs and Signals, this index
- Stopped vehicle
 - Moving stopped vehicle, 7.17
 - Stopped on highway, freeway, or bridge, 7.28
- Superseding cause, *see* Superseding Cause, this index
- Tow-truck
 - Assisting stranded vehicle, 7.25
 - Negligence by tow-truck driver, *see* Malpractice, this index

INDEX—CIVIL JURY INSTRUCTIONS

MOTOR VEHICLES—Cont'd

Traffic-control signs and signals, *see* Traffic-Control Signs and Signals, this index

Turn signals

- Changing lanes, 7.19
- Passing, 7.22A
- Turning, 7.19

Turning

- See also* Traffic-Control Signs and Signals, this Index; Turn Signals, this heading
- Left-turning vehicle
 - Lookout, 7.03A
 - Required position and method of turning, 7.18
 - Right-of-way, 7.11
 - Signal required, 7.19
- Passing, 7.22A
- Red light, turning on, 7.09A
- Required position and method of turning, 7.18
- Signal required, turning and changing lanes, 7.19
- U-turns, 7.20

Underage driver, negligent entrustment, 7.62

Unprotected intersection, 7.10

Visibility, conditions affecting, 7.03A

Workers, highway construction, exempt from rules of road, 7.01

Yellow light, *see* Traffic-Control Signs and Signals, this index

Yield signs, 7.06

MOTORCYCLES

See also Passenger, this index

MULTIPLE PARTIES

See Parties, this index

MUNICIPALITIES

See Political Subdivisions, this index

MUTUAL MISTAKE

See Contract, this index

MUTUALITY OF OBLIGATION

See Contract, this index

NATURE, EXTRAORDINARY FORCE OF

See Extraordinary Force of Nature, this index

NATURE OF ACTION

See Action at Law or in Equity; Cause of Action; Pleadings, this index

NEBRASKA AUTOMOBILE GUEST STATUTE

See Passenger, Motor Vehicle Guest Statute, this index

INDEX—CIVIL JURY INSTRUCTIONS

NEBRASKA COMMON NAME STATUTE

Partnership may be sued in its own name, 6.20; 6.21

NEBRASKA CONSTRUCTION LIEN ACT

Mentioned, 4.46

NEBRASKA CONTRACT CLAIMS ACT

Cited and case-discussion noted, 15.01, Comment I(A)

Mentioned, 8.72; 15.01

NEBRASKA CONTRIBUTORY AND COMPARATIVE NEGLIGENCE STATUTE

Allocation of negligence under L.B. 262, 5.04 (Comment, part III)

Cited, discussed, and instructed

Generally, 2.02A; 5.04; 2.02A-1; 2.02A-2

January 1 through February 7, 1992, 5.04 (Comment, part II(A))

Under motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this index

Post-February 7, 1992, 2.02A-1; 2.02A-2; 5.04

Pre-1992, 2.02A

Summary of which L.B. 262 instructions to use when, 5.04 (Comment, part I)

NEBRASKA CRIME VICTIM'S REPARATIONS ACT

Mentioned, 4.60

NEBRASKA DOGBITE STATUTE

See Animals, this index

NEBRASKA EVIDENCE RULES

See also Credibility; Evidence; Expert Testimony; Judicial Notice; Witnesses, this index

Rule 201, 1.00; 1.02; 2.01; 2.14A to 2.14D; 3.01; 3.06

Rule 403, 1.70; 1.71

Rule 404, 1.70

Rule 405, 1.70

Rule 407, 11.20; 11.31

Rule 601, 1.52

Rule 605, 13.04

Rule 607, 1.41

Rule 608, 1.71

Rule 609, 1.70

Rule 611, 1.70

Rule 613, 1.41

Rule 702, 1.42; 1.43

Rule 705, 1.42; 1.43

Rule 801(4), 1.72

Rule 803, 1.72

Rule 803(20), 1.70

Rule 804, 1.72

INDEX—CIVIL JURY INSTRUCTIONS

NEBRASKA GOOD SAMARITAN ACT

Mentioned, 3.08

NEBRASKA GUEST STATUTE

See cross-references at Nebraska Motor Vehicle Guest Statute, this index

NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

Discussed, 12.01

NEBRASKA LEMON LAW

See Nebraska Warranty Act, this index

NEBRASKA MOTOR VEHICLE CODE

See Motor Vehicles; Passenger, Motor Vehicle Guest Statute; Cross-Reference Table at End of Ch 7

NEBRASKA MOTOR VEHICLE GUEST STATUTE

See Passenger, Motor Vehicle Guest Statute, this index

NEBRASKA POLITICAL SUBDIVISIONS TORT CLAIMS ACT

See also Nebraska State Tort Claims Act; Political Subdivisions, this index

Action under Nebraska Taking Clause, alternative remedy, 13.08

Allocations of negligence and the tort claims act under the new comparative negligence statute (L.B. 262), 5.04 (Comment, part III(C))

Board of mental health, application to, 8.72

Cited and discussed, 8.72

Common-carrier units of local government, 10.01

Elevators in public buildings, 10.01

Eminent domain compared, 13.08

Employee of political subdivision, negligence of, 8.72

Equitable estoppel and the statute of limitations, 8.72

Highways, 8.72

Juries and the tort claims act, 5.04 (Comment, part III(C)), 8.72

Malpractice, *see* Malpractice, this index

Public power districts, 8.72

Related issues, medical malpractice against employee or political subdivision of state, 12.01

Sidewalks, 8.72

Statute of limitations, 8.72

Trial to court, without jury, 5.04 (Comment, part III(C)), 8.72

NEBRASKA PROBATE CODE

See Wills, this index

NEBRASKA RECREATION LIABILITY ACT

Affirmative defense, 8.61

Applies to roads, water, buildings, structures, machinery, equipment, etc., 8.61

Defense available to owner, tenant, lessee, occupant, person in control, 8.61

Includes political subdivision as well as private person, 8.61

Malicious defined, 8.81

Willful defined, 8.81

INDEX—CIVIL JURY INSTRUCTIONS

NEBRASKA RULES OF DISCOVERY

See also Evidence, this index

For purposes of construction, treated like statutes, 2.01
Requests for admissions, 2.01; rule 36A

NEBRASKA RULES OF THE ROAD

See cross-references at Nebraska Motor Vehicle Code, this index

NEBRASKA SEAT BELT STATUTE

Generally, 7.70
Mitigation of damages, 4.70

NEBRASKA STATE CONTRACT CLAIMS ACT

Cited, 8.72

NEBRASKA STATE TORT CLAIMS ACT

See also Nebraska Political Subdivisions Tort Claims Act, this index
Boards of mental health, applicable to, 8.72
Cited, 8.72

NEBRASKA STATUTES OF LIMITATIONS

See Statutes of Limitations, this index

NEBRASKA UNIFORM COMMERCIAL CODE

Buyer seeks damage for cover, 4.53
Buyer's damages, breach in regard to acceptance, 4.54
Buyer's nonacceptance or repudiation of goods, 4.53
Consequential damages, 4.54
Cover, 4.70
Express warranty
 Breach of, 11.40
 Defined, 11.41
 Notice of breach, 11.40; 11.45
Goods, 4.53; 4.54
Implied warranty
 Exclusion, 11.46
 Merchantability
 Breach of, 11.42
 Defined, 11.43
 Modification, 11.46
 Notice of breach, 11.45
Incidental damages, 4.53; 4.54
Lost profits caused by breach of warranty, 4.59
Market price, 4.54
Mitigation of damages,
 By the buyer, cover, 4.70
 By the seller, resale, 4.70
Punitive damages, Ch. 4 Intro. (4)
Remedies liberally construed and administered, 4.59
Resale, 4.70

INDEX—CIVIL JURY INSTRUCTIONS

NEBRASKA UNIFORM COMMERCIAL CODE—Cont'd

Sale of goods versus rendering of services, 11.40
Section 1-105(1), 4.53; 4.54; 4.59; Ch. 4 Intro. (4)
Section 2-105(1), 4.53; 4.54
Section 2-313, 11.41
Section 2-316(1), 11.41
Section 2-318, 11.40
Section 2-607(3), 11.40
Section 2-706, 4.53; 4.70
Section 2-708, 4.53; 4.70
Section 2-708(2), 4.53
Section 2-709, 4.53
Section 2-710, 4.53
Section 2-712, 4.53; 4.54; 4.70
Section 2-713, 4.54
Section 2-713(2), 4.54
Section 2-714, 4.54
Section 2-714(3), Ch. 4 Intro. (3)
Section 2-715, 4.54; 4.70
Section 2-715(1), 4.54; 4.59
Section 2-715(2), 4.54; Ch. 4 Intro. (3)
Section 2-723, 4.54
Section 2-725, 11.40
Special damages, 4.53

NEBRASKA UNIFORM PARTNERSHIP ACT & NEBRASKA UNIFORM PARTNERSHIP ACT OF 1998

Cited and discussed, 6.20 to 6.28

NEBRASKA UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT

Cited, 8.31

NEBRASKA WAGE PAYMENT AND COLLECTION ACT

Cited, quoted, and discussed, 4.52

NEBRASKA WARRANTY ACT

Mentioned, 11.40

NEBRASKA WRONGFUL DEATH ACT

Generally, 4.60

NEGLIGENCE

See also Affirmative Defenses; Causation; Comparative Negligence; Contributory Negligence; Damages; Duty of Care; Intoxication; Malpractice; Motor Vehicles; Products Liability; Statutes of Limitations, this index

Act of God, *see* Extraordinary Force of Nature, this index

Activation or aggravation of a preexisting condition, 4.09

Administrative rules and regulations, violation of, 3.03

Allocation of negligence, 5.04 (Comment, part III)

Apportionment of damages for tortious act, *see* Damages, this index

Assault and battery, *see* Assault and Battery, this index

INDEX—CIVIL JURY INSTRUCTIONS

NEGLIGENCE—Cont'd

- Assumption non-favored driver will respect right-of-way, 3.01
- Assumption of the risk, *see* Assumption of Risk, this index
- Assumption others will use reasonable care, 3.01
- Attorneys, *see* Malpractice, this index
- Attractive nuisance, *see* Children, this index
- Bailment, *see* Bailment, this index
- Breach of contract versus negligence, 4.40
- Breach of warranty and negligence discussed, 11.40
- Burden of proof, *see* Burden of Proof, this index
- Causation, *see* Causation, this index
- Children, *see* Children, this index
- Circumstantial evidence as proof of, 1.31
- Coaches or teachers, negligence of, *see* Sports, this heading
- Common carrier, *see* Common Carrier, this index
- Comparative negligence, *see* Comparative Negligence, this index
- Concealment, *see* Negligent Concealment, this index
- Concurring cause, 3.42
- Conduct of nonparty third person, 3.44
- Consciousness, sudden loss of, *see* Unavoidable Accident, this index
- Contributory negligence, *see* Contributory Negligence, this index
- Crops, damage to or destruction of, *see* Crops, this index
- Damages, *see* Damages, this index
- Defined, 3.02
- Dentists, *see* Malpractice, this index
- Disability, negligence by one with a physical disability, 3.02
- Doctors, *see* Malpractice, this index
- Driver, motor vehicle, *see* Motor Vehicles, this index
- Drunkenness, *see* Intoxication, this index
- Due care on part of deceased, 3.06
- Duty of care, *see* Duty of Care, this index
- Duty of person with disability, 3.02
- Duty of volunteers, 3.08
- Emergency, *see* Emergency, this index
- Employer-employee relationship, *see* Agency, this index
- Employer's duty, employee injured on job, mentioned, 3.02
- Entrustment, *see* Negligent Entrustment, this index
- Essential elements, 2.01
- Extraordinary force of nature, 2.02C
- Governmental negligence, *see* Eminent Domain; Nebraska Political Subdivisions
 Tort Claims Act; Nebraska Recreation Liability Act, this index
- Gross negligence, *see* Comparative Negligence, this index
- Hiring, 6.01
- Imputed negligence, *see* Imputed Negligence, this index
- Intoxication, *see* Intoxication, this index
- Joint venture, *see* Joint Venture, this index
- Last clear chance, 3.23
- Law, negligence as a matter of, *see* Question of Law, this heading

INDEX—CIVIL JURY INSTRUCTIONS

NEGLIGENCE—Cont'd

Lessor, *see* Liability of Owner, Occupant, or Lessor of Real Property, this index
Lights, *see* Lights, this index
Loss of consciousness, sudden, *see* Unavoidable Accident, this index
Malpractice
 See generally Malpractice, this index, this index
 Malpractice recharacterized, attempt to avoid professional negligence statute
 of limitations, *see* Action At Law or In Equity, this index
Manufacturer's, *see* Products Liability, this index
Medical personnel, *see* Malpractice, this index
Misrepresentation, negligent, mentioned, 9.01
Motor vehicle guest statute, *see* Passenger, Motor Vehicle Guest Statute, this
 index
Motor vehicles, *see* Motor Vehicles, this index
Negligence on the part of another, absent notice, no duty to anticipate, 3.01
Negligence versus
 Breach of contract, 4.40
 Breach of warranty, 11.40
 Liability, 3.02
 Res ipsa loquitur, 2.13
 Strict liability, *see* Strict Liability, this index
Negligent entrustment, *see* Negligent Entrustment, this index
Negligent misrepresentation mentioned, 9.01
Negligent supervision, *see* Supervision, Negligent, this heading
Nuisance versus negligence, 17.01
Ordinances, *see* Ordinances, this index
Owner of vehicle, *see* Motor Vehicles, this index
Owner or occupant of real property, *see* Liability of Owner, Occupant, or Lessor
 of Real Property, this index
Parental immunity from suit by their unemancipated minor children, 3.04
Partnership, *see* Partnership, this index
Passengers, *see* Common Carrier; Passenger, this index
Patient's duty to follow doctor's instructions, *see* Malpractice, this index
Pedestrians, *see* Pedestrians, this index
Physical disability, negligence by one with, 3.02
Political subdivisions, *see* cross-references at Governmental Negligence, this
 heading
Pre-January 1 1992 law and post-February 7, 1992 law compared, 5.04
Presumed, negligence is never, 2.01; 2.13
Presumptions, *see* Presumptions, this index
Prima facie case, 2.01; 2.01A
Principal and agent relationship, *see* Agency, this index
Products liability, *see* Products Liability, this index
Professional malpractice, *see* Malpractice, this index
Proof by circumstantial evidence, 1.31
Property damaged
 Generally, 4.20 et seq.
 By the Government, *see* Eminent Domain, this index

INDEX—CIVIL JURY INSTRUCTIONS

NEGLIGENCE—Cont'd

Proximate cause, *see* Proximate Cause, this index
Purchaser's suit, negligence versus breach of contract, 4.40
Question of law, negligence as, 2.02A; 3.02
Range of vision rule, *see* Motor Vehicles, this index
Res ipsa loquitur, *see* Res Ipsa Loquitur, this index
Right to assume another's reasonable care, 3.01
Right to assume non-favored driver will respect right-of-way, 3.01
Rules and regulations, violation of, 3.03
Seller or supplier's, *see* Products Liability, this index
Skilled-trade workers, *see* Malpractice, this index
Slight negligence, *see* Comparative Negligence, this index
Sports
 Negligence of coaches, teachers or co-participants, 3.02
 Owner, occupant, or lessor of real property
 Generally, *see* Liability of Owner, Occupant, or Lessor of Real Property; Nebraska Recreation Liability Act, this index
 Political subdivision, liability of, *see* Nebraska Recreation Liability Act; Political Subdivisions, this index
Statement of the case, 2.01; 2.01A
Statute, violation of, 3.03
Statute of limitations, *see* Statutes of Limitations, this index
Streets and highways, *see* Highways, this index
Sudden emergency, 3.09
Supervision, negligent, 6.01
Supplier of products, *see* Products Liability, this index
Teachers or coaches, negligence of, *see* Sports, this heading
Third person, conduct of, 3.43; 3.44; 5.04; 8.24; 8.31
Traffic-control signs and signals, *see* Traffic-Control Signs and Signals, this index
Unavoidable accident defense, *see* Unavoidable Accident, this index
Vicarious liability, *see* Vicarious Liability, this index
Violation of administrative rules and regulations, 3.03
Violation of statute or ordinance, 3.03

NEGLIGENCE, COMPARATIVE

See Comparative Negligence, this index

NEGLIGENCE, CONTRIBUTORY

See Contributory Negligence, this index

NEGLIGENT CONCEALMENT

See Fraudulent Concealment; Misrepresentation, this index

NEGLIGENT ENTRUSTMENT

Bailor, 11.02

Motor vehicle, in general, 7.62

Passenger's suit against owner and the automobile guest statute, 7.50A

INDEX—CIVIL JURY INSTRUCTIONS

NEGLIGENT HIRING

See Negligence, this index

NEGLIGENT MISREPRESENTATION

See Misrepresentation, this index

NEGLIGENT SUPERVISION

See Negligence, this index

NEW TRIAL

Limited to the issue of damages, Ch. 4 Intro. (9)

NO-PARKING SIGNS

See Traffic-Control Signs and Signals, this index

NOMINAL DAMAGES

See also Damages, this index

Breach of contract, 4.40

Eminent domain, 13.01

Negligence, not allowed, Ch. 4 Intro. (4)

NONDELEGABLE DUTY

See Duty of Care, this index

NONECONOMIC DAMAGES

See Damages, this index

NOTICE

Absent notice, no duty to anticipate negligence on the part of another, 3.01

Breach of express warranty, U.C.C, 11.40; 11.45

Judicial notice, *see* Judicial Notice, this index

NUISANCE

Attractive nuisance, *see* Children, this index

As basis for liability for injury to leasehold, 4.25

Intentional trespass, 17.01

Private nuisance, 17.01

OBJECTIONS

See also Attorneys; Evidence; Expert Testimony; Instructions, Jury Instructions;

Nebraska Evidence Rules, this index

Attorney's duty to object, 1.01

Jury not to consider or be influenced by, 1.00

OCCUPANT OF LAND

See Liability of, *see* Liability of Owner, Occupant, or Lessor of Real Property, this index

OFFER

See Contract, this index

OFFSET

Liquidated damages, Ch. 4 Intro. (7)

INDEX—CIVIL JURY INSTRUCTIONS

OPINION EVIDENCE

See Evidence; Expert Testimony; Nebraska Evidence Rules, this index

OPTION TO PURCHASE REAL ESTATE

Mentioned, 15.01

ORDER OF TRIAL

Order of trial, 1.00

ORDINANCES

See Political Subdivisions, this index

OUTRAGEOUS CONDUCT

See Emotional Distress, this index

OWNER OF LAND

Liability of, *see* Liability of Owner, Occupant, or Lessor of Real Property; Property, this index

OWNER OF REAL PROPERTY

Liability of, *see* Liability of Owner, Occupant, or Lessor of Real Property; Property, this index

PAIN AND SUFFERING

See Damages; Emotional Distress, this index

PARASITIC DAMAGES

See Emotional Distress, this index

PARENT AND CHILD

See Children; Damages, this index

PARENTS

See Children; Marriage, this index

PARK LAND

See Nebraska Recreation Liability Act; Liability of Owner, Occupant, or Lessor of Real Property, this index

PARKING

Generally, 7.28

See also Motor Vehicles; Railroads; Traffic-Control Signs and Signals, this index

PARTIES

Assignment of legal malpractice claim not allowed, 12.04

Conservator, 2.22

Corporate party, same treatment as individual, 2.23

Cross-claimant, 2.04

Eminent domain

Condemnee is plaintiff, 13.01

Condemner is defendant, 13.01

Multiple condemnees, 13.01

Full settlement with one joint tortfeasor releases others, Ch. 4 Intro. (9)

Guardian, 2.22

INDEX—CIVIL JURY INSTRUCTIONS

PARTIES—Cont'd

- Multiple defendants, 2.21
- Multiple plaintiffs, 2.20
- Need not join all tortfeasors as defendant, 3.42
- Self incrimination, adverse inference from party's failure to testify in civil case, 1.51
- Suing or being sued in representative capacity, 2.22
- Suing partnership or partners or both
 - Contract action, 6.21; 6.22
 - Tort action, 6.21
- Third-party claim, 2.04
- Third-party defendant, 2.04

PARTNERS

See Partnership, this index

PARTNERSHIP

- See also* Agency; Contract; Damages; Joint Venture; Negligence; Statutes of Limitations, this index
- Acts through partners, employees, or agents, 6.30
- Agency as basis for vicarious liability of partnership, 6.24
- Authority of partner, *see* Scope of Partner's Authority, this heading
- Common name statute, 6.20; 6.21
- Contract, partnership results from, 6.20
- Contract action
 - See also* Contract, this index
 - Suing partners as opposed to partnership, 6.21; 6.22
 - Vicarious liability of partnership, 6.22
- Corporations as partners, 6.23
- Credit given to partnership, partner's liability for, 6.26; 6.27
- Defined, 6.23
- Dissolution, 6.20
- Entitled to same fair and impartial treatment as individual, 2.23
- Existence determined by intent of putative partners
 - To carry on business for a profit, 6.23
 - To share profits, 6.23
- Exists separate and apart from partners, 6.23
- Imposed by law, 6.26; 6.27; 6.28
- Imputed negligence, 3.25
- Joint and several liability of partners in tort action, 6.21
- Joint but not several liability of partners in contract action, 6.21
- Joint venture, applicability of partnership law to, 6.40; 6.41
- Joint venture compared, 6.43
- Judgment against partnership collected against partners, 6.21
- Law of agency applies, 6.24
- Liability for acts of partners
 - Contract, 6.22
 - Negligence, 6.21
- Limits imposed on partner's authority, 6.24

INDEX—CIVIL JURY INSTRUCTIONS

PARTNERSHIP—Cont'd

- Ordinary course of business
 - Contract action, 6.25
 - Negligence action, 6.24
- Partner, agent, or employee's duty to communicate knowledge to partnership, 6.30
- Partner by estoppel
 - Generally, 6.26; 6.27; 6.28
 - Ordinary course of partnership business, 6.28
- Partner's intentional use of force, 6.24
- Partner's liability for judgment against partnership, 6.21
- Partner's property not used to satisfy partnership debt unless partnership property insufficient, 6.21
- Partnership is entity separate from partners, 6.20
- Personal liability of partner, tort action and contract action distinguished, 6.21
- Plaintiff claiming partnership with defendant has burden of proof by clear and convincing evidence, 6.20
- Ratification of acts of its agents, 6.08
- Recovery of judgment, suit against partners to recover judgment against partnership, 6.21
- Scope of partner's authority
 - See also* Agency, Authority of Agent, this index
 - Limits imposed on partner's authority, 6.24
 - Partnership by estoppel, 6.28
- Sue and be sued in its own name, 6.20
- Sued over acts or omissions of partner, issues and burden of proof, 6.20
- Sufficiency of partnership assets to satisfy judgment, not a jury question, 6.21
- Tort action
 - Suing partners as opposed to partnership, 6.21
 - Suing the partners but not the partnership or suing both at once, 6.21
 - Vicarious liability of partnership, 6.21
- Trusts as partners, 6.23
- Vicarious liability
 - Contract action, 6.22
 - Negligence action, 6.21

PASSENGER

- See also* Children; Common Carrier; Motor Vehicles; Negligence; Statutes of Limitations, this index
- Barred from recovery, discussed, 7.61
- Child's use of seat belts, 7.70
- Common-carrier passengers, *see* Common Carrier, this index
- As defendant, discussed, 7.61
- Driver's negligence not imputed to passenger as passenger, 7.61
- Duty to lookout
 - Driver's duty, 7.03A
 - Passenger's duty, 7.40
- Duty to warn driver, 7.40

INDEX—CIVIL JURY INSTRUCTIONS

PASSENGER—Cont'd

Elevator, *see* Common Carrier, this index
Imputed negligence, *see* Imputed Negligence, this index
Motor vehicle guest statute
 Applies on private property, 7.50A
 Applies to motorcycles and bicycles, 7.52
 Burden of proof, 7.50A to 7.50C
 Comparative negligence, 2.02A; 7.54
 Constitutionality, 7.50A
 Contribution under, 2.05; 7.50A
 Contributory negligence, 2.02A, 5.04 (Comment, part III)
 Drunk driver defined, 7.52
 Gross negligence defined, 7.51
 Guest defined, 7.53
 Guest's duty to anticipate danger, 7.54
 Passenger injured while entering car, 7.50A
 Passenger's burden to prove not a guest, 7.50A
 Private property, statute applies on, 7.50A
 Protection extends to operator and owner of vehicle, 7.50A
 Suit against owner or operator of vehicle of passage
 Drunk driver, 7.50B
 Gross negligence on part of driver, 7.50C
 Overloading front seat, 7.43
 Owner of vehicle as passenger, 7.61
 Passenger not a guest, 7.50A
 Seat belts, 7.70

PEDESTRIANS

Generally, 7.15
See also Motor Vehicles; Negligence; Police; Sidewalks, Statutes of Limitations; Traffic-Control Signs and Signals, this index
Crossing street or highway, 7.15
Crosswalk, definition cited, 7.28
Driver's duty towards
 See also Traffic-Control Signs and Signals, this index
 Drivers generally, 7.15
 Emergency vehicles, *see* Motor Vehicles, Emergency Vehicles, this index
Hitchhiking, 7.15
Intoxicated, 7.15
Lookout and conditions affecting visibility, 7.03A
Must use reasonable care, 7.15
Negligence of, in general, *see* Negligence, this index
Right of pedestrian equal that of driver unless otherwise provided, 7.15
Safety zones, 7.15
Shoulder of roadway, pedestrians on, 7.15
Sidewalks, use of, where provided, 7.15
Soliciting contribution, employment, or ride from driver, 7.15
Standing in or near roadway, 7.15

INDEX—CIVIL JURY INSTRUCTIONS

PEDESTRIANS—Cont'd

Yield right-of-way to emergency vehicles, 7.31

PENALTY

See Damages, this index

PERFORMANCE

See Contract, this index

PERSONAL INJURY

See Damages; Injury, this index

PERSONAL PROPERTY

See Property, this index

PERSONAL SERVICES CONTRACT

See Agency; Contract; Covenant Not to Compete; Damages, Breach of Contract, this index

PHYSICIANS AND SURGEONS

See Malpractice, this index

PIERCING THE CORPORATE VEIL

Mentioned, 6.30

PLAIN ERROR

See Instructions, this index

PLAINTIFFS, MULTIPLE

See Parties, this index

PLANE

Airplane, *see* Common Carrier, this index

PLAYGROUNDS

See Liability of Owner, Occupant, or Lessor of Real Property; Nebraska Recreation Liability Act, this index

PLEADINGS

See also Affirmative Defenses, this index

Admissions, pleadings are judicial admissions, 2.01

Affirmative defenses, how to plead, 2.02D

Amended to conform to the proof, 2.01

Contracts

Instruction on affirmative defenses, pleaded and evidenced, 15.20

Instruction on plaintiff's claims, pleaded and evidenced, 15.01

Damages, must be pleaded to be submitted

Generally, Ch. 4 Intro. (3)

Special damages, 4.59

Evidence, pleadings are not, 2.01

Inconsistent pleading, specific acts of negligence and *res ipsa loquitur*, 2.13

Instructing jury by reading pleadings condemned, 2.01

Judicial admissions, pleadings are, 2.01

INDEX—CIVIL JURY INSTRUCTIONS

PLEADINGS—Cont'd

Negligence

- Instruction on affirmative defenses pleaded and evidenced, 2.02A
- Instruction on plaintiff's issues pleaded and evidenced, 2.01
- Party may not take position inconsistent with pleadings, 2.01
- Specific acts of negligence versus *res ipsa loquitur*, 2.13
- Statutes of limitations, *see* Statutes of Limitations, this index
- Violation of ordinance evidence of negligence if properly pleaded and evidenced, 2.01; 7.01

POLICE

See also Emergency; Motor Vehicles, Emergency Vehicles, this index

Driver's duty to obey

- Generally, 7.04
- Duty of care, jailor, *see* Duty of Care, this index
- Upon approach of emergency vehicle, 7.31

Emergency vehicles, *see* Motor Vehicles, Emergency Vehicles, this index

Expert witnesses, 1.42

Injured at scene of emergency by condition or activities on real-property emergency-scene, *see* Liability of Owner, Occupant, or Lessor of Real Property, this index

Injured en route to emergency scene, *see* Emergency; Motor Vehicles, Emergency Vehicles, this index

Jailor's duty of care, jailor, *see* Duty of Care, this index

Licensee when responding to emergency call, 8.11

Pedestrian's duty to obey

- Generally, 7.15
- Upon approach of emergency vehicle, 7.31

Police power, eminent domain

Compensable taking versus noncompensable inconvenience, discussed, 13.08

Public-use requirement coterminous with police power, 13.01

Police vehicles

Generally, 7.30

See also Motor Vehicles, Emergency Vehicles, this index

Approach of, duty of other drivers, 7.31

Exemption from rules of the road

Generally, 7.30

See also Instruction Relating to Particular Rule Involved, this index

On median of divided highway, 7.25

Parked above or below highway, 7.28

Pursuit by police, 8.72

Right-of-way, 7.07A; 7.31

U-turns on freeways, 7.20

Signal to driver to stop on roadway, freeway, or bridge, 7.28

Stop sign, directing driver through, 7.04

POLITICAL SUBDIVISIONS

See also Nebraska Political Subdivisions Tort Claims Act; Statutes, this index

Harm caused by falling trees or branches, 8.72

INDEX—CIVIL JURY INSTRUCTIONS

POLITICAL SUBDIVISIONS—Cont'd

Land used for recreational purposes without charge, *see* Nebraska Recreation Liability Act, this index
Ordinances
Effect of violation, 3.03
Instruction stating applicable ordinances, 7.01
Traffic regulation
See also Motor Vehicles, this index
Statutes granting local authorities right to change rule of state law, 7.01
Violation as evidence of negligence
Generally, 3.03
Only if pleaded and evidenced, 2.01; 7.01
Sidewalks, duty regarding condition of, 8.72
Sports injuries, *see* Negligence, subheading Sports, this index
Streets, duty regarding condition of, 8.72

POLITICAL SUBDIVISIONS TORT CLAIMS ACT

See Nebraska Political Subdivisions Tort Claims Act, this index

POSTAL EMPLOYEE

See Mail Carrier, this index

POSTJUDGMENT INTEREST

See Interest, this index

POWER OF ATTORNEY

See Agency, this index

PREEXISTING CONDITION

Aggravation of, *see* Damages, this index
Apportionment of damages for tortious act, *see* Damages, this index

PREJUDGMENT INTEREST

See Interest, this index

PREJUDICE, JURY

See Instructions, Jury Instructions; Juries, this index

PREMISES LIABILITY

See Liability of Owner, Occupant, or Lessor of Real Property, this index

PREPONDERANCE OF THE EVIDENCE

See Burden of Proof; Greater Weight of the Evidence, this index

PRESENT CASH VALUE

Generally, 4.13
Breach of contract to lend money, additional cost spread into future, 4.50

PRESIDING JUROR

See Juries, this index

PRESUMPTIONS

Generally, 2.14A to 2.14D
Irrebuttable presumptions distinguished, 2.14A

INDEX—CIVIL JURY INSTRUCTIONS

PRESUMPTIONS—Cont'd

- Legally permissible inference distinguished, 2.14A
- Negligence not presumed from fact of injury or accident, 2.01
- Prima facie case distinguished, 2.14A
- Undue influence in a will contest, 16.06

PRETRIAL INSTRUCTION

- Instruction to jury before civil trial, 1.00

PRINCIPAL

- See* Agency, this index

PRIOR INCONSISTENT STATEMENT

- Generally, 1.72
- See also* Credibility, this index

PRISON

- See* Duty of Care, this index

PRIVITY

- See* Breach of Warranty, this index

PROBABLE CAUSE

- See* Causation; Malicious Prosecution, this index

PROBATE

- See* Wills, this index

PRODUCT DISPARAGEMENT

- Mentioned, 17.02

PRODUCTS LIABILITY

- Affirmative defenses
 - Contributory negligence, 11.20
 - Instructions, failure to follow, *see* Misuse, this subheading
 - Known defects, 11.26
 - Manufacturer's liability
 - Generally, 11.10 et seq.; 11.20 et seq.; 11.30 et seq.
 - Apparent manufacturer doctrine, 11.20
 - Fitness for particular purpose, 11.44
 - Misuse, including failure to follow instructions
 - Assumption of the risk compared, 11.25
 - Negligence, 11.12
 - Strict liability, 11.25
 - State of the art
 - Affirmative defense, negligence and strict liability, 11.31
 - Industry standards compared, 11.31
 - Test, could anything more reasonably and economically be done?, 11.31
 - Tightens, rather than relaxes, standards governing failure to warn, 11.31
 - Statute of limitations
 - Generally, 11.20
- See also* Statutes of Limitations, this index

INDEX—CIVIL JURY INSTRUCTIONS

PRODUCTS LIABILITY—Cont'd

Affirmative defenses—Cont'd

 Strict liability, defenses discussed, 11.20

Breach of express warranty, U.C.C, 11.40

Circumstantial evidence, 11.20

Defect

 Design, 11.22

 Insufficient warning, 11.23

 Manufacture, 11.21

Defective product, manufacturer's strict liability, 11.20

Design

 Negligent, 11.10

 Strict liability, 11.22

Evidence, subsequent remedial measures, 11.31

Industry standards, state of the art compared, 11.31

Installation instructions, insufficient, 11.23

Instructions to user, failure to follow, 11.25

Malfunction theory, 11.20

Manufacturer's liability, generally, 11.10 et seq.; 11.20 et seq.; 11.30 et seq.

 Affirmative defenses, *see* Affirmative Defenses, this heading

 Breach of warranty, U.C.C, 11.40 et seq.

 Goods not safe for intended purpose, negligence liability, 11.10

 Negligence, 11.10; 11.11; 11.12

 Sale by defendant to plaintiff, not required, 11.10; 11.30

 Strict liability, *see* Strict Liability, this heading

 Unreasonably dangerous, defective product, *see* Strict Liability, this heading

 Warning, *see* Warning, this heading

Misuse

 See Affirmative Defenses, this heading

Negligence

 Failure to warn, 11.11

 Goods unsafe for intended use, 11.10

 Misuse, 11.12

 Strict liability versus, 11.10; 11.24

Negligence and breach of warranty discussed, 11.40

Seller or supplier's liability

 Affirmative defenses, *see* Affirmative Defenses, this heading

 Breach of warranty under the U.C.C, 11.40 et seq.

 Failure to warn reasonably foreseeable user, negligence liability, 11.11

 Goods not safe for intended purpose, negligence liability, 11.10

State of the art, *see* Affirmative Defenses, this heading

Statute of limitations, *see* Affirmative Defenses, this heading

Strict liability

 Generally, 11.20 et seq.

See also Strict Liability, this index

Definitions

 Defect in design, 11.22

INDEX—CIVIL JURY INSTRUCTIONS

PRODUCTS LIABILITY—Cont'd

- Strict liability—Cont'd
- Definitions—Cont'd
 - Defect in instructions, 11.23
 - Defect in manufacture of product, 11.21
 - Insufficient warning, 11.23
 - Unreasonably dangerous, 11.24
- Manufacturer, 11.20 et seq.
 - Negligence versus, 11.10; 11.24
 - Statement of the case, 11.20
- Subsequent remedial measures, 11.20; 11.31
- Unreasonably dangerous, 11.20; 11.24
- Warning
 - Failure to warn reasonably foreseeable user, negligence liability, 11.11
 - Insufficient warning, strict liability, 11.23

PROFESSION

- See* Malpractice; Words and Phrases, this index

PROFESSIONAL MALPRACTICE

- See* Malpractice, this index

PROFESSIONAL NEGLIGENCE

- See* Negligence, this index

PROFITS

- See* Damages, this index

PROFITS LOST

- See* Lost Profits, this index

PROMISSORY ESTOPPEL

- See* Estoppel, this index

PROPERTY

- See also* Breach of Contract; Damages; Eminent Domain; Liability of Owner, Occupant, or Lessor of Real Property; Products Liability; Statutes of Limitations, this index

Bailment, *see* Bailment, this index

Breach of contract

- To convey land, 4.41

- To purchase real estate, 4.42

- To restore property to original condition, 4.43

- Substantial performance

- Contractor's breach, 4.45

- Owner's breach, 4.44

Breach of warranty as to condition of property sold, 4.49

Damaged for public use, *see* Eminent Domain, this index

Damages

- See also* Ch 4 Intro.; Damages; Eminent Domain, this index

INDEX—CIVIL JURY INSTRUCTIONS

PROPERTY—Cont'd

Damages—Cont'd

Breach of contract

Construction or repair, 4.44; 4.45; 4.46; 4.47

Purchase of real estate, 4.42

Real estate broker

Broker's damages, 15.01(C)

Not a professional, 12.04

Restoration of property to original condition, 4.43

Return of specific property, 4.48

Sale of real estate, 4.41

Construction or repair

Owner does not allow contractor to complete performance, 4.46

Owner's breach of contract caused extra cost to contractor, 4.47

Substantial performance with defective work or materials, 4.45

Contractor in substantial performance, 4.44

Crops, value of, 4.30

Negligence case, 4.20 et seq.

Non-negligence case discussed, 4.20

Real estate

Appraisal of real estate, 4.20; 4:43; 13.02

Market value, 4.20; 4:43; 13.02

Seller's misrepresentation of property sold; *see also* Misrepresentation of Condition of Property Sold, this heading

Fraud, inducement to purchase, 4.49; *see also* Misrepresentation, this index

Lessor's liability, *see* Rental Property, this heading

Manufacturer's liability, *see* Products Liability, this index

Misrepresentation of condition of property sold, 4.49; *see also* Misrepresentation, this index

Occupant of land, liability for damage caused by condition or activity thereon, *see* Liability of Owners, Occupants, and Lessors of Real Property, this index

Option to purchase real estate, mentioned, 15.01

Owner of land, liability for damage caused by condition or activity thereon, *see* Liability of Owners, Occupants, and Lessors of Real Property, this index

Possessor of land, liability for damage caused by condition or activity thereon, *see* Liability of Owners, Occupants, and Lessors of Real Property, this index

Rental property, liability of lessor

Personal property, 11.01

Real property, 8.31 to 8.33

Supplier's liability, *see* Products Liability, this index

Taken for public use, *see* Eminent Domain, this index

PROSECUTION, MALICIOUS

See Malicious Prosecution, this index

PROXIMATE CAUSE

See Causation, this index

INDEX—CIVIL JURY INSTRUCTIONS

PROXIMATE RESULT

See Causation, this index

PUBLIC POLICY

See Contract, this index

PUBLIC POWER DISTRICTS

See Nebraska Political Subdivisions Tort Claims Act, this index

PUBLIC USE

See Eminent Domain, this index

PUNISHMENT

See Damages; Punitive Damages, this index

PUNITIVE DAMAGES

See also Damages, this index

Nebraska's general rule against, Ch. 4 Intro. (4)

Necessary to protect federal constitutional right, Ch. 4 Intro. (4)

No damages by way of punishment, 4.01

QUESTIONS OF FACT

Contract action, *see* Contract, Questions of Fact, this index

Credibility, 1.00; 1.01

Eminent domain, amount of compensation, 13.01

Jury decides, 1.00; 1.01

Mitigation of damages, how doctrine applies, 4.70

QUESTIONS OF LAW

Contract action, *see* Contract, Questions of Law, this index

Eminent domain

Amount of property needed, 13.01

Public use, what constitutes, 13.01

What constitutes property, 13.01

Whether taking is lawful, 13.01

Impeachment as a matter of law, 1.45

Judge decides, 1.00; 1.01

Mitigation of damages, whether doctrine applies, 4.70

Negligence as a matter of law, *see* Negligence, this index

What constitutes ultrahazardous activity, 8.41

QUOTIENT VERDICT

Defined, 4.02

Forbidden by law, 4.02

RAILROADS

See also Common Carrier; Motor Vehicles, this index

Driver's duty to look and listen when approaching railroad crossing, 7.03A

Eminent domain, railroad's power of, 13.01

Parking motor vehicles on or near railroad tracks, 7.28

RANGE OF VISION

See Motor Vehicles, this index

INDEX—CIVIL JURY INSTRUCTIONS

REAL ESTATE BROKER

Not a professional, 12.04
Obligations of broker and client, 15.01(C)

REAL PROPERTY

See Property and the Cross-References thereunder, this index
Appraisal of real property, 4.43

REASONABLE CARE

See also Negligence, this index
Children, reasonable care by, 3.05
Deceased, reasonable care by, 3.06
Defined, 8.82
Intoxicated person, reasonable care by, 3.07
Right to assume another's, 3.01
For safety of child, 3.04
Volunteers, reasonable care by, 3.08

REASONABLE CERTAINTY

Damage proof, Ch. 4 Intro. (3)(c)

RECESS

Admonition at recess, 1.00A

RECKLESS DRIVING

See Motor Vehicles, this index

RECOUPMENT

Counterclaim distinguished, 2.03
Defense not barred by statute of limitations, 2.02D; 2.03
Statute of limitations, effect of, 2.02D; 2.03

RECOVERY

See Damages, this index

REDUCTION OF DAMAGES

See Damages; Present Cash Value, this index

REFORMATION

Contracts, 15.22
Wills, 16.10

REGULATIONS

See Rules and Regulations, this index

RELEASE

See also, Affirmative Defenses, Release, this index
Affirmative defense generally, 2.02D
Apportionment of damages under L.B. 262, effect of release, 5.04 (Comment, part VII)
Construction of, rules of construction of contract apply, 15.01
Released entity's effect on plaintiff's recovery from defendant's
Discussed, 5.04 (Comment, part VII)

INDEX—CIVIL JURY INSTRUCTIONS

RELEASE—Cont'd

Released entity's effect on plaintiff's recovery from defendant's—Cont'd
Instructed, 5.02 et seq.
Vicarious liability, as affected by release, 6.02

REMEDIAL MEASURES

See Subsequent Remedial Measures, this index

REMEDIES

See Action at Law or in Equity; Affirmative Defenses; Contract, Breach of Contract; Damages, this index

REMITTITUR

Generally, 4.01 (2); Ch. 4 Intro. 2(c)

RENTAL PROPERTY

See Damages, Leasehold Interest; Liability of Owner, Occupant, or Lessor of Real Property; Products Liability; Property, this index

RENUNCIATION

See Contract, Breach of Contract, this index

REPLEVIN

Damages, 4.27

REPRESENTATIVE

See Parties, this index

REPUDIATION, ANTICIPATORY BREACH BY

See Contract, Breach of Contract, this index

REQUESTS FOR ADMISSIONS

Requests for admissions, 2.01

RES IPSA LOQUITUR

Burden of proof, 2.13
Definition, 2.13
Negligence never presumed from fact of accident or injury, 2.01
Specific acts of negligence and res ipsa, inconsistent pleading, 2.13

RES JUDICATA

See Affirmative Defenses, this index

RESCISSION

See Contract, Rescission, this index

RESCUE RULE

See Emergency, this index

RESIGNATION

Tender of, by teacher, offer to terminate contract, 15.42

RESPONDEAT SUPERIOR

See Vicarious Liability, this index

INDEX—CIVIL JURY INSTRUCTIONS

RESTITUTION

See Contract, Restitution, this index

RESTRICTIVE COVENANT

See Covenant Not to Compete, this index

RIGHT-OF-WAY

See Motor Vehicles, this index

ROAD

See Highways, this index

RULES AND REGULATIONS

Common carrier's own, 10.09

Governmental or private, 3.03

Industry standards and products liability, 11.31

Motor vehicle rules of the road, *see* Motor Vehicles, this index

Rules of the road, *see* Motor Vehicles, this index

Violation of as evidence of negligence

Generally, 3.03

Only if pleaded and evidenced, 2.01

RULES OF CONSTRUCTION OF CONTRACTS

Absent contrary intention, instruments executed at same time, by same parties, for same purpose, in course of same transaction, considered one, 15.01

Ambiguity construed against party preparing contract, 15.01

Construction giving effect to all parts preferred over one rendering parts redundant, 15.01

Construction making contract lawful preferred over one making contract unlawful, 15.01

Contract must be viewed as a whole, 15.01

Eiusdem generis, 15.01

Expressio unius est exclusio, alterius, 15.01

Expression of one thing of a class excludes those not expressed, 15.01

Indemnity agreement construed as any other contract, 15.01

Lease construed as any other contract, 15.01

Parties bound by terms even if intent different, 15.01

Parties interpretation of contract evidence of intent, 15.01

Preliminary negotiations considered to determine intent but not to vary plain terms, 15.01

Reasonable person standard applies to meaning of words, 15.01

Release construed as any other contract, 15.01

Specific terms control over general, 15.01

Statutes existing when contract executed are part of contract, 15.01

Technical terms, 15.01

Terms imposed by law, 15.40

Typewritten part controls over printed, and handwritten part controls over type-written, 15.01

Where question as to meaning, contract construed against party preparing it, 15.01

INDEX—CIVIL JURY INSTRUCTIONS

RULES OF CONSTRUCTION OF CONTRACTS—Cont'd

Words given meaning attached to them by one party and made known to other party who did not object, 15.01
Words given ordinary meaning, 15.01

RULES OF DISCOVERY

See Nebraska Rules of Discovery, this index

RULES OF THE ROAD

See Motor Vehicles, this index

RUNNERS

See Pedestrians, this index

SAFETY REGULATIONS

See Rules and Regulations, this index

SALES

See also Agency; Breach of Warranty; Contracts; Damages; Nebraska Uniform Commercial Code; Property, this index
Breach of express warranty, 11.40
Sale of goods versus rendering of services, 11.40

SATISFACTORY EVIDENCE, CLEAR AND

See Clear and Convincing Evidence, this index

SCAFFOLDS

Statutory liability cited, 11.01

SCOPE OF AUTHORITY

See Agency, Authority of Agent, this index

SCOPE OF EMPLOYMENT

See Agency, Authority of Agent, this index

SEAT BELTS

See Nebraska Seat Belt Statute, this index

SELLER

See Agency, this index

SELLER'S LIABILITY

See Products Liability, this index

SEQUESTRATION

Of juries, 5.01

SET-OFF

See Counterclaim, this index

SETTLEMENT

Effect on plaintiff's recovery from remaining defendants
Discussed, 5.04 (Comment, part VII)
Instructed, 5.02; 5.03; 5.04; 5.05
Mutual mistake, set aside on grounds of, 15.22

INDEX—CIVIL JURY INSTRUCTIONS

SETTLEMENT—Cont'd

Principles of contract law apply to settlement agreement, 15.01
Set aside on grounds of mutual mistake, 15.22

SEVERAL LIABILITY

See Joint and Several Liability, this index

SEVERANCE DAMAGES

See Eminent Domain, this index

SHERIFF

See Police, this index

SHOPPER

See Customer, this index

SHOULDER OF ROADWAY

See also Motor Vehicles; Pedestrians; Sidewalks, this index
Backing-up upon, 7.23
Driving forward upon, 7.26

SIDEWALKS

See also Liability of Owner, Occupant, or Lessor of Real Property; Motor Vehicles; Nebraska Political Subdivisions Tort Claims Act; Traffic-Control Signs and Signals, this index

Definition, cited, 7.33

Driving across, including driveways, 7.11; 7.12A; 7.12B

Driving upon, 7.33

Parking upon, 7.28

Pedestrians

Generally, 7.15

See also Pedestrians, this index

Pedestrians injured by defect in public sidewalk, 8.71; 8.72

Pedestrians using shoulder of roadway where no sidewalk provided, 7.15

Private sidewalk, *see* Liability of Owner, Occupant, or Lessor of Real Property, this index

Public sidewalks

Abutting property owner's duty regarding, 8.71

Ice and snow, 8.71

Municipality's duty regarding condition of, 8.72

On recreational land, *see* Nebraska Recreation Liability Act, this index

Statutes of limitations, *see* Statutes of Limitations, this index

Where provided, use by pedestrians, 7.15

SIGNS AND SIGNALS

See Motor Vehicles; Traffic-Control Signs and Signals, this index

SLANDER

See Libel, this index

SLIGHT NEGLIGENCE

See Comparative Negligence, this index

INDEX—CIVIL JURY INSTRUCTIONS

SMOKE

See Cross-References under Ice, this index

SNOW

See Cross-References under Ice, this index

SOCIAL GUEST

See also Liability of Owner, Occupant, or Lessor of Real Property, this index
Is a licensee, 8.11

OUNDING HORN ON MOTOR VEHICLE

See also Motor Vehicles, this index

Due care for pedestrians, 7.07A; 7.09A; 7.15

Emergency vehicles, *see* Motor Vehicles, Emergency Vehicles, this index

Horn, required equipment on vehicle, 7.29

Overtaking animal or animal-drawn vehicle proceeding in same direction, 7.22A

Overtaking bicycle proceeding in same direction, 7.22A

Overtaking farm vehicle proceeding in same direction, 7.22A

OVEREIGN IMMUNITY

See Immunity, this index

SPECIAL BENEFITS

See Eminent Domain, this index

SPECIAL DAMAGES

See Damages, this index

SPECIAL PROCEEDINGS

See Eminent Domain: Wills, this index

SPECIALISTS

See Malpractice, this index

SPECIFIC PERFORMANCE

See Contract, Specific Performance, this index

SPECULATION

Attorney may draw legitimate deductions, 1.01

Automobile guest statute, passenger conferring speculative benefit on owner or operator, 7.53

Damages

See Damages, this index

see generally, 4.01; 4.59; Ch. 4 Intro. (1); Ch. 4 Intro. (3)

Breach of contract, 4.40; 4.47

Lost profits, *see* Lost Profits, this index

Wrongful death, prospects for future changes in decedent's situation, 4.60

Objection sustained, jury may not speculate as to answer

Instruction at close of trial, 1.01

Pretrial instruction, 1.00

Verdict may not be based on guess, speculation, or conjecture

Discussed and authorities cited, 1.31

INDEX—CIVIL JURY INSTRUCTIONS

SPECULATION—Cont'd

Verdict may not be based on guess, speculation, or conjecture—Cont'd
Instructed
At close of trial, 1.01
Pretrial, 1.00

SPEED

See also Affirmative Defenses; Motor Vehicles; Negligence, this index
Automatic forfeiture of right-of-way, repealed, 7.14
Driving too fast, 7.14
Driving too slow
Generally, 7.14
Use farthest right-hand lane, 7.21
Violation of statute or ordinance as evidence of negligence, 3.08

SPORTS

See Negligence; Nebraska Recreation Liability Act, this index

SPOUSE

See Husband and Wife, this index

STANDING

See Motor Vehicles; Parking; Pedestrians, this index

STATE OF THE ART

See Products Liability, this index

STATEMENTS OF COUNSEL

See Attorneys, this index

STATUTE OF FRAUDS

Oral contract to answer for debt or misdoings of another, 15.01

STATUTES

See Listings Under Nebraska ... (“Nebraska” Followed by the Rest of the Popular Name of Statute)

Consumer protection, *see* Consumer Protection, this index

Contracts

Statutes in existence when contract executed, 15.01; 15.40

Statutes passed after contract entered into, 15.20

Terms Imposed by law, *see* Contract, Terms Imposed by Law, this index

Effect of violation, 3.03

Instruction stating applicable statutes, Motor Vehicle Code, 7.01

Traffic regulation

See also Motor Vehicles, this index

State law takes precedence over home rule charter or ordinance, 7.01

Statutes granting local authorities right to change rule established by state law, 7.01

Violation of as evidence of negligence

Generally, 3.03

Only if pleaded and evidenced, 2.01; 7.01

INDEX—CIVIL JURY INSTRUCTIONS

STATUTES OF LIMITATIONS

- Affirmative defense, 2.02D
- Avoidance of statute by recasting action to one with longer limitation, 12.04
- Cause of action, accrual date, *see* Cause of Action, this index
- Condemnation, inverse, 13.08
- Constitutional claims, 2.02D
- Contract
 - Action on unwritten contract, 15.01
 - Breach of, generally, 15.01
 - Fraud or mistake in the inducement, 15.22
 - Installment contract, 15.01
- Counterclaim, 2.03
- Discovery rule, *see* Malpractice, this heading
- Eminent domain, inverse condemnation, 13.08
- Fraud, 9.01
- Fraudulent concealment
 - Delays running of statute of repose, 12.04
 - Estops party from asserting statute of limitations, 12.04
- Government defendant
 - Malpractice against employee of state, 12.01
 - Malpractice against political subdivision of state, 12.01
 - Political Subdivision Tort Claims Act, 8.72
- Home construction, 12.04
- Laches, *see* Affirmative Defenses, this index
- Law of the forum applies, 2.02D
- Limitation period changed between time of accrual and filing of action, 12.04
- Malpractice
 - Generally, 2.01; 12.04
 - Attorney, 12.04
 - Continuing treatment exception, 12.01; 12.04
 - Continuous relationship exception, 12.04
 - Discovery rule, 12.01; 12.04
 - Medical
 - Generally, 12.01
 - Against employee of state, 12.01
 - Against political subdivision of state, 12.01
 - Recharacterized in attempt to avoid professional negligence statute of limitations, *see* Action At Law or In Equity, this index
- Manufacturer of product, suit against, 11.20
- Medical malpractice, *see* Malpractice, this heading
- Nebraska's Political Subdivision Tort Claims Act, 8.72
- Negligence, generally, 2.02D
- Political Subdivision Tort Claims Act, 8.72
- Products liability, 11.20
- Professional negligence, *see* Malpractice, this heading
- Recoupment, 2.03
- Respondeat superior, statute applicable to one who is vicariously liable, 6.02

INDEX—CIVIL JURY INSTRUCTIONS

STATUTES OF LIMITATIONS—Cont'd

Runs from the accrual date of the cause of action, 2.02D; 5.04
State's law, which applies, 2.02D; 12.04
Strict liability of manufacturer, 11.20
Subrogation, effect on statute of limitations, 12.04
Suit against physician for failure to obtain informed consent to treatment, 12.03
Tolling the statute, 9.01; 12.04
Uniform Commercial Code, breach of express warranty, 11.40
Vicarious liability, statute applicable to one who is vicariously liable, 6.02
Which statute applies?, 2.02D
Wrongful death, 12.04

STOCKBROKER

See Malpractice, this index

STOP SIGNS

See Traffic-Control Signs and Signals, this index

STREET

See Highways, this index

STRICT LIABILITY

Generally inapplicable, 8.42
Affirmative defenses
 See also Affirmative Defenses, this index
 General discussion, 11.20
Assumption of the risk, 8.42
Common carrier, 10.07
Comparative negligence and strict liability under L.B. 262, 5.04 (Comment, parts II(C) and XI)
Keeping wild animals, 8.41
Manufacturer, *see* Products Liability, this index
Mitigation of damages, 11.20
Negligence versus, 11.10; 11.24
Ultrahazardous activities
 Blasting, 8.41
 Defined, 8.41
 Harboring wild animals, 8.41
 What constitutes is question of law, 8.41

SUBCONTRACTOR

See Independent Contractor, this index

SUBJECT MATTER JURISDICTION

Discussed, 8.72

SUBMISSION OF CASE TO JURY

See Juries, this index

SUBROGATION

Generally, 2.05
Statute of limitations, effect on, 12.04

INDEX—CIVIL JURY INSTRUCTIONS

SUBSEQUENT REMEDIAL MEASURES

See also Nebraska Evidence Rules, Rule 407

Products liability, 11.20; 11.31

SUBSTANTIAL PERFORMANCE

See Contract, this index

SUDDEN EMERGENCY

Discussed, 3.09

SUFFERING, PAIN AND

See Damages; Emotional Distress, this index

SUPERSEDING CAUSE

See also Causation, this index

Discussed

Generally, 3.43

As part of proximate cause, 3.41

Not an affirmative defense, 3.43

Products liability, misuse, 11.12

SUPPLIER'S LIABILITY

See Products Liability, this index

SURETYSHIP

See Contract, this index

SURGERY

See Malpractice, this index

SYMPATHY, JURY

See Damages; Instructions, Jury Instructions; Juries, this index

TAKING

Of property, *see* Conversion; Eminent Domain, this index

TAXICAB

See Common Carrier, this index

TEACHERS

Tender of resignation is an offer to terminate contract, 15.42

TECHNICIAN, MEDICAL

See Malpractice, this index

TENANT

See Lessee, this index

TERMINATION

Contract, *see* Contract, Breach of Contract, this index

Employment, *see* Agency; Employment, this index

TERMITIC DAMAGE

See Damages, this index

INDEX—CIVIL JURY INSTRUCTIONS

TERMITES INSPECTORS

See Malpractice, this index

TESTIMONY

See Credibility; Evidence; Expert Testimony; Nebraska Evidence Rules; Witnesses, this index

THIRD-PARTY CLAIM

See Parties, this index

THIRD PERSON, NON-PARTY

Conduct of as cause, 3.43; 3.44; 5.04; 8.24; 8.31

TITLE INSURANCE

See Insurance, this index

TORT

See also Affirmative Defenses; Agency; Animals; Burden of Proof; Children; Causation; Common Carrier; Comparative Negligence; Contributory Negligence; Damages; Emergency; Highways; Intoxication; Liability of Owner, Occupant, or Lessor of Real Property; Malpractice; Marriage; Motor Vehicles; Nebraska Political Subdivisions Tort Claims Act; Negligence; Passenger; Pedestrians; *Res Ipsa Loquitur*; Sidewalks; Statutes of Limitations; Traffic-Control Signs and Signals, this index

Damages, Ch. 4 Intro.

Generally, 15.01

Purchaser suing manufacturer, 4.40

TORT CLAIMS ACT

See Nebraska Political Subdivisions Tort Claims Act; Nebraska State Tort Claims Act, this index

TORT IMMUNITY, INTERSPOUSAL

See Marriage, this index

TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP

See Business Relationship, this index

TOW TRUCK

Operator, *see* Malpractice, this index

Rules of the road and tow truck assisting stranded vehicle, 7.25

TOWNSHIPS

See Political Subdivisions, this index

TRAFFIC-CONTROL SIGNS AND SIGNALS

See also Motor Vehicles; Police, this index

Compliance with signal to stop on roadway, freeway, or bridge, 7.28

Flashing red light, 7.09B; 7.13

Flashing yellow light, 7.08B; 7.13

Green arrow, 7.07B; 7.13

Green light, 7.07B; 7.13

Left turn on red light, 7.09A

Light stuck on red or green, 7.09A

INDEX—CIVIL JURY INSTRUCTIONS

TRAFFIC-CONTROL SIGNS AND SIGNALS—Cont'd

Negligence of proximately causing injury to instructee, *see* Negligence, this index

No-parking signs, 7.28

Parking near stop sign, 7.28

Parking near to, 7.28

In place and visible, 7.04

Right turn on red light, 7.09A

Signal to stop on roadway, freeway, or bridge, 7.28

Steady red light, 7.09A; 7.13

Steady yellow light, 7.08A; 7.13

Stop sign

- Driver directed by police officer to proceed through, 7.04
- Duty of driver having right of way, 7.13

Temporarily removed or obstructed, 7.05

Turn signals, *see* Motor Vehicles, Turn Signals; Motor Vehicles, Turning, this index

Walk and don't walk signals, 7.15

Yield right-of-way sign, 7.06; 7.13

TRAIN

See Common Carrier; Railroads, this index

TRESPASSER

See Liability of Owner, Occupant, or Lessor of Real Property, this index

TRIAL, INSTRUCTION DURING

See also Instructions, Jury Instructions, this index

Nuisance versus trespass, 17.01

TRUCKS

See Motor Vehicles, this index

TRUSTEE

See also Parties, this index

See also Trusts, just below

TRUSTS

Administration of a trust, 16.01

Attorney fees for administration of a trust, 16.01

As partners, 6.23

Removal of a trustee, 16.01

TURN SIGNALS

See Motor Vehicles, Turn Signals; Motor Vehicles, Turning; Traffic-Control Signs and Signals, this index

U-TURNS

Generally, 7.20

See also Motor Vehicles, this index

INDEX—CIVIL JURY INSTRUCTIONS

ULTRAHAZARDOUS ACTIVITY

See Liability of Owner, Occupant, or Lessor of Real Property; Strict Liability, this index

UNAVOIDABLE ACCIDENT

Act of God, *see* Extraordinary Force of Nature, this index

Consciousness, sudden loss of, 2.02D

Extraordinary force of nature, *see* Extraordinary Force of Nature, this index

Unavoidable accident defense, 2.02D

UNDISCLOSED PRINCIPAL

See Agency, this index

UNDUE INFLUENCE

See also Wills; Words and Phrases, this index

Action to set aside inter vivos transfer of property on grounds of, action in equity, 16.07

Contract action

Affirmative defense, 15.25

Defined, 15.10

Grounds to challenge to will

Defined, 16.07

Statement of the case, 16.06

UNIFORM COMMERCIAL CODE

See Nebraska Uniform Commercial Code, this index

UNIFORM PROBATE CODE

See Wills, this index

UNIT RULE

See Eminent Domain, this index

UNJUST ENRICHMENT

See Contract, this index

UNSOLICITED MERCHANDISE

See Consumer Protection, this index

VALUE

See Damages, this index

VALUE, PRESENT CASH

See Present Cash Value, this index

VENTURE, JOINT

See Joint Venture, this index

VERDICT

See also Instructions, Jury Instructions; Juries, this index

Determined by chance, 4.02

Forms

Mentioned, 5.01

Pattern provided, 5.02; 5.03; 5.04; 5.05

INDEX—CIVIL JURY INSTRUCTIONS

VERDICT—Cont'd

Jury's duty to follow instructions given, 1.01
May not be based on guess, speculation or conjecture, *see* Speculation, this index
Non-unanimous verdict and L.B. 262, 5.04 (Comment, part XIII)
Quotient verdict, 4.02

VETERINARIANS

See Malpractice, this index

VICARIOUS LIABILITY

Generally, Ch. 6
See also Agency; Corporations; Joint Venture; Partnership, this index
Tort action to which contributory negligence could be a defense, after February 7, 1992, 5.04 (Comment, part VIII)

VIEW, JURY

See Jury View, this index

VILLAGES

See Political Subdivisions, this index

VIOLATION OF STATUTES OR REGULATIONS

See Rules and Regulations; Statutes, this index

VISIBILITY

See Motor Vehicles, this index

VISION, RANGE OF

See Motor Vehicles, this index

VISITOR

Business visitor, *see* Liability of Owner, Occupant, or Lessor of Real Property, this index

VOLUNTEERS

See also Emergency; Nebraska Good Samaritan Act, this index
Collateral source rule, 4.01; Ch. 4 Intro. (5)
Duty of a volunteer, 3.08
Voluntary exposure to danger, *see* Assumption of Risk, this index

WAGES LOST

See Damages, this index

WALKERS

See Pedestrians, this index

WANTON

Defined, 8.81

WARNINGS

See also Products Liability, this index

Duty to warn

Driver, *see* Motor Vehicles; Sounding Horn on Motor Vehicle, this index
Lender or donor of personal property, 11.02

INDEX—CIVIL JURY INSTRUCTIONS

WARNINGS—Cont'd

- Duty to warn—Cont'd
 - Lessor of personal property, 11.01
 - Manufacturer or supplier, 11.11
 - Goods dangerous when used as intended, negligence liability, 11.11
 - Insufficient warning, user knew of danger, failure to warn not proximate cause of injury, 11.11
 - Manufacturer or supplier's failure to warn reasonably foreseeable use, 11.11
- Personal property
 - Bailor's duty to warn, 11.01
 - Donor's duty to warn, 11.02
 - Gratuitous bailor's duty to warn, 11.02
 - Lender's duty to warn, 11.02
 - Lessor's duty to warn, 11.01
 - Manufacturer's duty to warn, 11.11
 - Sufficient warning defined, strict liability of manufacturer, 11.23
 - Supplier's duty to warn, 11.11
- Products liability, warnings generally, 11.11; 11.23
- Seller's right to expect instructions will be followed, 11.12

WARRANTY

- See also* Breach of Warranty, this index
- Negligent warranty work, manufacturer's and distributor's liability for dealers
 - negligent warranty work, 6.02; 6.03; 6.05; 6.06

WILD ANIMALS

- See* Animals, this index

WILLFUL

- Defined, 8.81
- Special finding of willful and malicious conduct in a negligence case, 3.10

WILLS

- Generally, Chapter 16
- Ambiguity, latent versus patent, 16.01
- Bounty discussed, 16.04
- Burden of production, 16.01
- Burden of proof, 16.01
- Challenge to, *see* Contest, this heading
- Coercion, *see* Duress, this heading
- Contest
 - Duress, 16.09
 - Fraud, 16.08
 - Mistake, 16.10
 - Revocation, 16.11
 - Undue influence, 16.06
- Contract, mutual wills as, 16.01; 16.11
- Deceit, *see* Fraud, this heading; *see also* Misrepresentation, this index
- Disposition as deceased pleased, 16.03

INDEX—CIVIL JURY INSTRUCTIONS

WILLS—Cont'd

- Duress
 - Generally, 16.09
 - Undue influence compared, 16.09
- Force, *see* Duress, this heading
- Fraud
 - Mistake distinguished, 16.10
 - Undue influence distinguished, 16.08
- Free agency destroyed
 - Duress, 16.09
 - Fraud, 16.08
 - Undue influence, 16.06; 16.07
- Holographic wills, 16.01
- Intention of deceased to be honored, 16.03
- Irrevocable reciprocal wills, 16.11
- Latent ambiguity, 16.01
- Mistake
 - In the expression, 16.10
 - Fraud distinguished, 16.10
 - In the inducement, 16.10
 - Reformation, 16.10
- Patent ambiguity, 16.01
- Reciprocal wills, 16.11
- Reformation, 16.10
 - Relatives, not required to will property to, 16.03
- Requirements for a valid will, 16.01
- Self-proved will, 16.01
- Sound mind, *see* Testamentary Capacity, this heading
- Special proceedings, 16.01
- Statutes stated, 16.02
- Testamentary capacity
 - Definition, 16.04
 - Evidence of prior will, 16.05
 - Time when important, 16.05
- Trustee, removal of, 16.01
- Undue influence
 - Burden of proof, 16.06
 - Circumstantial evidence, 16.06
 - Definition, 16.07
 - Duress compared, 16.09
 - Fraud distinguished, 16.08
 - Presumptions, 16.06
 - Statement of the claim, 16.06
- Uniform Probate Code
 - Age of deceased, 16.01
 - Burdens of proof and production, 16.01
- Who may make a will, 16.01

INDEX—CIVIL JURY INSTRUCTIONS

WILLS—Cont'd

Witnesses, 16.01

WITHDRAWAL OF AN OFFER

Instruction, 15.42

WITNESSES

See also Credibility; Evidence; Expert Testimony; Nebraska Evidence Rules; Wills, this index

Failure to call witness, unexplained, inference therefrom, 1.51

Harassment and undue embarrassment of, 1.70

Judicial comment on credibility of witness, *see* Credibility, this index

Judicial estoppel, 1.45

Self incrimination, adverse inference from party's failure to testify in civil case, 1.51

Unexplained failure to call available witness who has unique knowledge, 1.51

WORDS AND PHRASES

Abuse of judicial discretion, 1.42

Acceptance

Generally, 15.04

By silence or inaction, 15.05

Act of God, *see* Extraordinary Force of Nature, this index

Agency, 6.03

Ambiguity, latent versus patent, 16.01

And versus or, 8.02; 8.12; 8.81

Assumption of risk, 2.02B

Attractive nuisance, 8.51

Basis of the bargain, 11.41

Bounty, 16.04

Business visitor, 8.21

Circumstantial evidence, 1.31

Clear and convincing evidence, 2.12B

Collateral source rule, Ch. 4 Intro. (5)

Common carrier, 10.01

Comparative negligence, 2.02A; 2.02A-1; 2.02A-2

Concurring cause, 3.42

Consideration, 15.06

Contract, 15.02

Contributory negligence, 2.02A; 2.02A-1; 2.02A-2

Conversion, 4.27

Counterclaim, 2.03

Cross-claim, 2.04

Damages

Actual, 4.59

Consequential, 4.59

Economic, 4.00

General, 4.59

Noneconomic, 4.00

INDEX—CIVIL JURY INSTRUCTIONS

WORDS AND PHRASES—Cont'd

- Damages—Cont'd
 - Special, 4.59
- Dead mans statute, 1.52
- Defect in manufacture, 11.21
- Design defect, 11.22
- Direct evidence, 1.31
- Easement, 13.06
- Economic damages, 4.00
- Efficient intervening cause, *see* Superseding Cause, this heading
- Ejusdem generis, 15.01
- Evidence
 - In general, 1.02
 - Circumstantial, 1.31
 - Direct, 1.31
 - Eminent domain, 13.04
 - Limited use, 1.70 to 1.72
- Express warranty, *see* Warranty, this heading
- Extraordinary force of nature, 2.02C
- From facts within knowledge should have expected, 8.84
- From facts within knowledge should have known, 8.84
- From facts within knowledge should have realized, 8.84
- Fair market value
 - In general, 4.20; 4:43; 13.02
 - Easement taken, 13.06; 13.07
 - Eminent domain
 - Condemnation, 13.02
 - Easement taken, 13.06; 13.07
 - Leasehold interest, 13.27
 - Leasehold interest taker, 13.27
 - Property taken, 13.02
- Family purpose doctrine, 7.60
- Fraud, will contest, 16.08
- Fungible, 11.43
- Greater weight of the evidence, 2.12A
- Gross negligence
 - Automobile guest statute, 7.51
 - Otherwise, 2.02A
- Had reason to expect, 8.84
- Had reason to know, 8.84
- Highway, 7.01
- Implied warranty, *see* Warranty, this heading
- Imputed negligence, 3.25 to 3.26B
- Independent contractor, 6.06
- Initial permission rule, 7.62
- Intervening cause, *see* Superseding Cause, this heading
- Intoxication, 3.07

INDEX—CIVIL JURY INSTRUCTIONS

WORDS AND PHRASES—Cont'd

- Invasion of another's interest in use and enjoyment of land, private nuisance, 17.01
- Inverse condemnation, 13.08
- Invitee, 8.21
- Joint venture, 6.43
- Last clear chance, 3.23
- Latent ambiguity, 16.01
- Licensee, 8.11
- Liquidated damages, Ch. 4 Intro. (7)
- Malice, 9.12
- Malicious, 8.81
- Material fact, 15.09
- Misuse, 11.12; 11.25
- Mitigation of damages, 4.70
- Negligence
 - Generally, 3.05
 - On the part of a driver, 7.03
 - Professional negligence, 12.04
- Negligent entrustment, 7.62
- Noneconomic damages, 4.00
- Nuisance
 - Attractive, 8.51
 - Private, 17.01
- Offer, 15.03
- “Or” versus “and,” 8.02; 8.12; 8.81
- Partnership, 6.23
- Passenger (on common carrier), 10.02
- Patent ambiguity, 16.01
- Plain error, Statement Adopted by S.Ct. Re NJI2d Civ.
- Preponderance of the evidence, *see* Greater Weight of the Evidence, this heading
- Present cash value, 4.13
- Presumptions, 2.14A to 2.14D
- Privity, 11.40; 11.42
- Probable cause, 9.11
- Profession, 12.04
- Proximate cause, 3.41
- Quotient verdict, 4.02
- Range of vision rule, 7.03B
- Reasonable care, 8.82
- Res ipsa loquitur, 2.13
- Res judicata, 2.02D
- Rescue rule, 3.08
- Safety zone, 7.28
- Scope of authority, 6.04
- “Shall,” sometimes not mandatory, Statement Adopted by S.Ct. Re NJI2d Civ.
- Should have expected, 8.84

INDEX—CIVIL JURY INSTRUCTIONS

WORDS AND PHRASES—Cont'd

- Should have known
 - Defined, 8.84
 - Element of probable cause, 9.11
- Should have realized, 8.84
- Slight negligence, 2.02A
- Soundness of mind, *see* Testamentary Capacity, this heading
- Special benefits in eminent domain action, 13.10
- Special damages, 4.59
- Special proceedings, 13.01; 16.01
- State of the art, 11.31
- Stop, 7.04
- Substantial performance, 15.07
- Sudden emergency, 3.09
- Superseding cause, 3.43
- Testamentary capacity, 16.04
- Third-party claim, 2.04
- Trespasser, 8.01
- Ultrahazardous activity, 8.41
- Undue influence
 - Contract, 15.10
 - Gift, 16.07
 - Will, 16.07
- Unit rule, *see* Eminent Domain, this index
- Unreasonable risk of harm, 8.83
- Wanton, 8.81
- Warning, insufficient, 11.23
- Warranty
 - Express, 11.41
 - Implied, 11.43
- Willful, 8.81
- Wrongful death, 4.60

WORKER'S COMPENSATION

- Employee receiving worker's compensation and suing third person over same injury, 2.21
- Injury to intoxicated employee, 3.07

WRECKERS

- See* Tow Truck, this index

WRONGFUL CIVIL PROCEEDINGS

- See* Malicious Prosecution, this index

WRONGFUL CRIMINAL PROCEEDINGS

- See* Malicious Prosecution, this index

WRONGFUL DEATH

- Generally, 4.60, 5.04 (Comment, part IX)
- See also* Damages, this index

INDEX—CIVIL JURY INSTRUCTIONS

WRONGFUL DEATH—Cont'd

See also Life Expectancy, this index
Dead man's statute, repeal noted, 1.52
Imputed negligence of deceased child, 3.25
Life expectancy tables, 4.12
Right to assume another's reasonable care, 3.01

WRONGFUL DISCHARGE

See Employment, this index

YIELD SIGNS

Generally, 7.06
See also Motor Vehicles; Traffic-Control Signs and Signals, this index

ZONE OF DANGER

See Bystander Recovery, this index

INDEX—TO CRIMINAL JURY INSTRUCTIONS

**References are to Instruction Number [NJI2d Crim.]. Point Index may be
in the instruction or in the Comment or Authorities**

ACCESSORIES

Accomplices and Accessories, this index

ACCOMPLICES AND ACCESSORIES

Generally, 3.8

Different crime from principal, 3.9

Evidence, 5.6

ADMISSIBILITY OF EVIDENCE

Limited purpose, 5.3

Multiple defendants

Evidence admissible against one or more but not all, 5.7

Limited use, X5.7

Statement admissible only against defendant who made it, 5.8

ADMONITION

Recess, 1.3

AFFIRMATIVE DEFENSES

Generally, 7.0 et seq.

Choice of lesser harm, 7.6

Defense of another person, 7.4

Defenses that are not affirmative defenses, 8.0 et seq.

Entrapment, 7.7, 7.8

Estoppel, entrapment by, 7.8

Insanity, 7.0

Property, defense of property, 7.5

Self-defense, 7.1-7.3

AGGRAVATING CIRCUMSTANCES

Death penalty, 10.0

AIDERS AND ABETTORS

Accomplices and Accessories, this index

ALIBI

Defenses, 8.1

INDEX—CRIMINAL JURY INSTRUCTIONS

ATTEMPT

Elements of offense, 3.3

ATTORNEYS

Function of attorneys

Generally, 1.0

Closing instructions, 9.1

BREAK AND ENTER

Definitions, 4.4

BURDEN OF PROOF

Death penalty, 10.0

Insanity defense, 7.0

Presumptions

Element of crime for which state has burden of proof, 2.1

Element of crime or defense that state has not burden of proof, 2.2

Reasonable doubt, proof beyond, 2.0

BURGLARY

Definitions, 4.4

CHARACTER EVIDENCE

Generally, 5.4

Impeachment of witnesses, limited use, 5.12, X5.12

Pertinent trait in issue, 5.5

CIRCUMSTANTIAL EVIDENCE

Generally, 5.0

CLOSING INSTRUCTIONS

Generally, 9.0 et seq.

Disposition, jury not to consider, 9.5

Evidence, 9.2, 9.3

Failure of defendant to testify, 9.4

Function of judge, jury, and counsel, 9.1

Nature of case, 9.2

Presumption of innocence, 9.2

Submission to jury, 9.0

CONCEALMENT

Death penalty, concealing another crime or identity of perpetrator, 10.2

CONSPIRACY

Withdrawal, elements of offense, 3.4

CONSTRUCTIVE POSSESSION

Definitions, 4.2

CREDIBILITY OF WITNESSES

Generally, 5.2

CRUELTY

Death penalty, heinous and cruel acts, 10.4

INDEX—CRIMINAL JURY INSTRUCTIONS

DANGEROUS WEAPONS

Definitions, 4.3

DEADLY WEAPONS

Definitions, 4.3

DEATH PENALTY

Generally, 10.0

Aggravating circumstances, 10.0

Burden of proof, 10.0

Concealing another crime or identity of perpetrator, 10.2

Depravity, murder manifesting exceptional, 10.4

Elements, 10.0

Enforcement of laws, murder to disrupt, 10.8

Findings, effect of, 10.0

Government function, murder to disrupt, 10.8

Great risk of death to several persons, creating, 10.6

Heinous and cruel, 10.4

Law enforcement officer, murder of while on duty, 10.9

Multiple murders, 10.5

Nature of case, 10.0

Prior history of violence, 10.1

Public servants, murder of, 10.7

DEFENDANTS

Disposition, closing instructions, 9.5

Failure to testify, 9.4

DEFINITIONS

Break and enter, 4.4

Burglary, 4.4

Constructive possession, 4.2

Dangerous weapon, 4.3

Deadly weapon, 4.3

Deliberate, 4.0

Evidence, 5.0

Force and by violence, 4.5

From the persons, 4.5

Malice, 4.0

Penetration, 4.6

Possession, 4.2

Premeditation, 4.0

Proximate and concurring cause, 4.1

Proximate cause, 4.1

Purposeful, 4.0

Reckless, 4.0

Robbery, 4.5

To steal, 4.4

Weapons, 4.3

INDEX—CRIMINAL JURY INSTRUCTIONS

DEFINITIONS—Cont'd

Willful, 4.0

DELIBERATE

Definitions, 4.0

DEPRAVITY,

Death penalty, murder manifesting exceptional depravity, 10.4

DIRECT EVIDENCE

Generally, 5.0

ELEMENTS OF OFFENSE

Attempt, 3.3

Conspiracy, 3.4

Death penalty, 10.0

Felony-murder, 3.5

Greater and included offenses, 3.1

Insanity defense, 3.2, 7.0

No insanity defense, 3.0, 3.1

Theft, 3.6

Value, theft, 3.6

Withdrawal, conspiracy, 3.4

ENFORCEMENT OF LAWS

Death penalty, murder to disrupt law enforcement, 10.8

ENTRAPMENT

Generally, 7.7, 7.8

ESTOPPEL

Entrapment by, 7.8

EVIDENCE

Generally, 5.0

Accomplices, 5.6

Admissibility of Evidence, this index

Burden of Proof, this index

Character Evidence, this index

Charges are not evidence, 1.2, 9.2

Circumstantial evidence, 5.0

Closing instructions, 9.2, 9.3

Defendants failure to testify, 9.4

Evaluation, 5.2

Expert witnesses, 5.4

Function of evidence, 1.0

Limited use or purpose

Generally, 5.3

Impeachment by prior conviction, 5.11

Other similar acts, 5.10

Other similar acts, limited use of evidence, 5.10, X5.10

Presumptions, this index

INDEX—CRIMINAL JURY INSTRUCTIONS

EVIDENCE—Cont'd

Reasonable doubt, 2.0
States of mind proved inferentially, 5.1
View by jury, 5.9
Witnesses, this index

EXPERT WITNESSES

Generally, 5.4

FELONY-MURDER

Elements of offense, 3.5

FORCE AND VIOLENCE

Choice of lesser harm, 7.6
Death penalty, prior history of violence, 10.1
Self-defense
 Deadly force, 7.3
 Issue as to deadly force, 7.2
 No deadly force, 7.1

FORCIBLY AND BY VIOLENCE

Definitions, 4.5

GOVERNMENT FUNCTION

Death penalty, murder to disrupt government, 10.8

GREATER AND INCLUDED OFFENSES

Elements of offense, 3.1

IDENTITY

Death penalty, concealing another crime or identity of perpetrator, 10.2

IMPEACHMENT OF WITNESSES

Miranda-violative previous inconsistent statement, X6.0
Opinion or reputation evidence, limited use, 5.12, X5.12
Previous inconsistent statement, 5.3, X5.3
Prior conviction, limited use of evidence, 5.11, X5.11
Reputation evidence, limited use, 5.12, X5.12

INFERENCES

State of mind, 5.1

INNOCENCE

Closing instructions, 9.3
Presumptions
 Generally, 1.2
 Charge not evidence, 9.2
Evidence, 9.2

INSANITY DEFENSE

Generally, 3.2, 7.0

INTOXICATION

Defenses, 8.0

INDEX—CRIMINAL JURY INSTRUCTIONS

JUDGES

Function of judge
Generally, 1.0
Closing instructions, 9.1

JUDICIAL NOTICE

Generally, 2.3

JURY

Disposition, jury not to consider, 9.5
Function of jury
Generally, 1.0
Closing instructions, 9.1
Sequestration explained at voir dire, X9.0
View by jury, 5.9

LAW ENFORCEMENT OFFICERS

Death penalty, murder of officer while on duty, 10.9

LESSER HARM

Affirmative defenses, choice of lesser harm, 7.6

LESSER INCLUDED OFFENSES

Elements of offense, 3.1

LIMITED PURPOSE INSTRUCTION

Generally, 5.3, X5.3

MALICE

Definitions, 4.0

MENTALLY DEFICIENT AND MENTALLY ILL PERSONS

Elements of offense, insanity defense, 3.2

MIRANDA WARNINGS

Impeachment of witnesses, Miranda-violative previous inconsistent statement,
X6.0

MULTIPLE COUNTS

Generally, 3.7

MULTIPLE DEFENDANTS

Generally, 3.7
Accomplices and Accessories, this index
Evidence admissible against one or more but not all
Generally, 5.7
Limited use, X5.7
Statement admissible only against defendant who made it, 5.8

MULTIPLE MURDERS

Death penalty, 10.5

MURDER

Death Penalty, this index

INDEX—CRIMINAL JURY INSTRUCTIONS

MURDER—Cont'd

Felony-murder, elements of offense, 3.5

NATURE OF CASE

Closing instructions, 9.2

Death penalty, 10.0

Preliminary instructions, 1.2

NOTE TAKING

Generally, 1.1

OPINION EVIDENCE

Impeachment of witnesses, limited use of evidence, 5.12, X5.12

ORDINANCES

Withdrawn instructions, 14.09

PENETRATION

Definitions, 4.6

PLEADING

Affirmative Defenses, this index

POLICE

Death penalty, murder of officer while on duty, 10.9

POSSESSION

Definitions, 4.2

PRELIMINARY INSTRUCTIONS

Generally, 1.0

Evidence, 1.0

Evidence, charge not evidence, 1.2

Function of judge, jury, and counsel, 1.0

Nature of case, 1.2

Note taking, 1.1

Presumption of innocence, 1.2

PREMEDITATION

Definitions, 4.0

PRESUMPTIONS

Element of crime for which state has burden of proof, 2.1

Element of crime or defense that state has not burden of proof, 2.2

Innocence, 1.2, 9.2

PRIOR CONVICTION

Impeachment of witnesses, limited use of evidence, 5.11, X5.11

PRIOR HISTORY OF VIOLENCE

Death penalty, 10.1

PRIOR INCONSISTENT STATEMENTS

Impeachment of witnesses

Generally, 5.3, X5.3

INDEX—CRIMINAL JURY INSTRUCTIONS

PRIOR INCONSISTENT STATEMENTS—Cont'd

 Impeachment of witnesses—Cont'd
 Miranda warnings violative previous inconstant statement, X6.0

PROPERTY

 Defense of property, 7.5

PROXIMATE AND CONCURRING CAUSE

 Definitions, 4.1

PROXIMATE CAUSE

 Definitions, 4.1

PUBLIC SERVANTS

 Death penalty, murder of public servants, 10.7

PURPOSEFUL

 Definitions, 4.0

REASONABLE DOUBT

 Generally, 2.0

RECESS

 Admonition, 1.3

RECKLESS

 Definitions, 4.0

REPUTATION

 Character Evidence, this index

RISK

 Death penalty, creating great risk of death to several persons, 10.6

ROBBERY

 Definitions, 4.5

SELF-DEFENSE

 Deadly force, 7.2, 7.3
 No deadly force, 7.1

SELF-INCRIMINATION

 Generally, 9.4

SENTENCE AND PUNISHMENT

 Closing instructions, 9.5

SEQUESTRATION

 Explained at voir dire, X9.0

SILENCE

 Failure of defendant to testify, 9.4

SILENCE OF ACCUSED

 Generally, 9.4

INDEX—CRIMINAL JURY INSTRUCTIONS

SIMILAR ACTS

Other similar acts, 5.10, X5.10

STATE OF MIND

Evidence, 5.1

STATEMENTS

Defendant, voluntary statement by, 6.0

STATUTES

Withdrawn instructions, 14.09

STEAL

Definitions, 4.4

TESTIMONY

Evidence, this index

THEFT

Elements of offense, 3.6

THIRD PERSONS

Defense of another person, 7.4

VALUE OF PROPERTY

Theft, elements of offense, 3.6

VIEW BY JURY

Generally, 5.9

VIOLENCE

Force and Violence, this index

VOIR DIRE EXAMINATION

Sequestration, explanation, X9.0

WEAPONS

Definitions, 4.3

WILLFUL

Definitions, 4.0

WITNESSES

Accomplice testimony, 5.6

Credibility, 5.2

Expert witnesses, 5.4

Impeachment of Witnesses, this index