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

### 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

### 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 seg.

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

#### 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

### 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

#### 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

#### 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

#### 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 Subagent 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 PREEXISTING 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

#### 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,

#### 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

#### **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

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

## **BAILMENT**

Bailee's liability, damage to bailed property, 11.01

#### BAILMENT—Cont'd

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

Implied warranty

Diseased animals, 11.46

### BREACH OF WARRANTY—Cont'd

Implied warranty—Cont'd

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

Implied warranty, 11.42; 11.44

### BURDEN OF PROOF—Cont'd

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, lendor'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

Mitigation of damages

Generally, 4.70

Seat belts, failure to wear, 7.70

### BURDEN OF PROOF-Cont'd

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

# **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

Fraud

Fraud in the inducement, breach of contract, 15.21

Fraudulent concealment, vendor purchaser setting, 9.02

#### CAUSATION—Cont'd

Fraud—Cont'd

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

Fraud, 5.04 (Comment, part II)

Negligence generally, 5.04 (Comment, part II)

#### CAUSE OF ACTION—Cont'd

Accrual date—Cont'd

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

Use of seat belts, 7.70

Representative of child, party suing as, 2.22

### CHILDREN—Cont'd

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

### **COMMON CARRIER**

Generally, Chapter 10

Affirmative defenses, suit by passenger

See also Affirmative Defenses, this index

### COMMON CARRIER—Cont'd

Affirmative defenses, suit by passenger—Cont'd

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

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,

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

Affecting driver's visibility, see Motor Vehicles, this index

Versus cause, 3.42; 3.43

#### CONDITION—Cont'd

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

# **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

# **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

Damage action is law action, 15.01

Damages, see Damages, Breach of Contract, this index

Equitable adjustment versus rescission, 4.47

#### CONTRACT—Cont'd

Breach of contract—Cont'd

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)

Contrary to public policy, 15.01

Cost of compliance, 15.20

Cost-plus contract, 4.40

# CONTRACT—Cont'd 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 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 Indemnity agreement Is a contract, 15.01

Rules of construction of contract applicable, 15.01

# CONTRACT—Cont'd 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 Open to construction only if Ambiguity in a will, 16.01 Ambiguous, 15.01 Fraud, 15.01

# CONTRACT—Cont'd Open to construction only if-Cont'd 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

Index-28

Rules of construction of contracts apply, 15.01

Action to rescind is equitable action, 15.24 Affirmative defense in law action, 15.24

# CONTRACT—Cont'd Rescission—Cont'd 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 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

Statutes in existence at time contract executed, 15.01; 15.40

Jury instruction regarding, 15.40

### CONTRACT—Cont'd

Terms imposed by law—Cont'd

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 prom 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

Jury question, 2.02A

Last clear chance, 3.23

### CONTRIBUTORY NEGLIGENCE—Cont'd

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

# COUNTERCLAIM

Appeal of plaintiff's cause of action while counterclaim still pending, 2.03 Burden of proof, 2.03

### COUNTERCLAIM—Cont'd

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,

Instruction jury to assume all witnesses tried to testify truthfully is erroneous,  $1.41\mathrm{A}$ 

Judge, comments by, 1.41

Jury decides

Credibility is jury decision, 1.00; 1.01; 1.41

Exception, witness impeached as matter of law, 1.45

Party's own witness, 1.41A

#### CREDIBILITY—Cont'd

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

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

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

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

#### DAMAGES—Cont'd

Contract for construction or repair—Cont'd

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

Special damages, 4.59

Substantial performance

Contractor's damages, 4.44

Owner's damages, 4.45

Termite damages, 4.20

```
DAMAGES—Cont'd
  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
     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)
```

# DAMAGES—Cont'd 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 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

#### DAMAGES—Cont'd

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

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

#### DAMAGES—Cont'd

Personal injury—Cont'd

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

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.

# DAMAGES—Cont'd Property—Cont'd 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 Ouestion 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 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

#### DAMAGES—Cont'd

Seller's misrepresentation of property sold—Cont'd

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

## 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

# **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

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

#### **DUTY OF CARE—Cont'd**

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

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 Jailor, this heading

Professional malpractice, 12.04

Question of law, 3.02

#### **DUTY OF CARE—Cont'd**

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 Jailor, 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

# **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

#### EMERGENCY—Cont'd

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

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

#### EMINENT DOMAIN—Cont'd

Compensation—Cont'd

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

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

#### EMINENT DOMAIN—Cont'd

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

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

#### EMINENT DOMAIN—Cont'd

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

**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

#### EMINENT DOMAIN—Cont'd

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

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 tittle action, 9.01

# **EQUITABLE TOLLING**

See Equitable Estoppel, this index

#### **EOUITY**

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

# 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

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

#### EVIDENCE—Cont'd

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

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

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

# **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

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

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

# **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

#### INSTRUCTIONS—Cont'd

Admonition at recess-Cont'd

Drafting new instructions—Cont'd

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

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

#### INSTRUCTIONS—Cont'd

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 INFLICTION 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

# **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

#### 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

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

#### JOINT VENTURE—Cont'd

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

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

#### JURIES-Cont'd

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

## **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

## 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

# LIABILITY OF OWNER, OCCUPANT, OR LESSOR OF REAL PROPERTY

-Cont'd

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

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

# LIABILITY OF OWNER, OCCUPANT, OR LESSOR OF REAL PROPERTY —Cont'd

Duty owed to-Cont'd

Lessee—Cont'd

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

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

# LIABILITY OF OWNER, OCCUPANT, OR LESSOR OF REAL PROPERTY

-Cont'd 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 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

Recovery for injury to the person versus other kinds of damage, 8.01 Recreation Liability Act, see Nebraska Recreation Liability Act, this index

Reasonable care defined, 8.82

# LIABILITY OF OWNER, OCCUPANT, OR LESSOR OF REAL PROPERTY —Cont'd

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

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

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

#### LOST PROFITS—Cont'd

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

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

#### MALPRACTICE—Cont'd

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

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

#### MALPRACTICE—Cont'd

Statute of limitations—Cont'd

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

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

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

### MITIGATION OF DAMAGES—Cont'd

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 Vehi-

cle; Traffic-Control Signs and Signals, this index

Alcohol, see Intoxication, this index

Animals

See also Animals, this index

On freeway, 7.15

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

#### MOTOR VEHICLES—Cont'd

Bailment, liability of bailor—Cont'd

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

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

### MOTOR VEHICLES—Cont'd

Emergency vehicles—Cont'd

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

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

#### MOTOR VEHICLES—Cont'd

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

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

### MOTOR VEHICLES—Cont'd

Passing—Cont'd

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

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

### MOTOR VEHICLES—Cont'd 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 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

### MOTOR VEHICLES—Cont'd

Turning—Cont'd

Left-turning vehicle—Cont'd

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

### 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)

## NEBRASKA CONTRIBUTORY AND COMPARATIVE NEGLIGENCE STATUTE—Cont'd

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

### 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

### NEBRASKA RULES OF DISCOVERY

See also Evidence, this index

For purposed 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

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

### NEBRASKA UNIFORM COMMERCIAL CODE—Cont'd

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

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

#### NEGLIGENCE—Cont'd

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

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

#### NEGLIGENCE—Cont'd

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

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

#### NEGLIGENCE—Cont'd

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

### **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)

Index-88

#### 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)

## NONDEGLEGABLE 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)

### **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

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,

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

#### PARTIES—Cont'd

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

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

#### PARTNERSHIP—Cont'd

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

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)

#### PASSENGER—Cont'd

Motor vehicle guest statute—Cont'd

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

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

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

#### POLICE—Cont'd

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

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

### POLITICAL SUBDIVISIONS—Cont'd

Ordinances—Cont'd

Violation as evidence of negligence—Cont'd

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

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

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

### PRODUCTS LIABILITY—Cont'd 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 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

### PRODUCTS LIABILITY—Cont'd

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

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

#### PROPERTY—Cont'd

Damages-Cont'd

Construction or repair—Cont'd

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

### 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

### **OUESTIONS 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

### **OUESTIONS 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

### 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

### REASONABLE CARE—Cont'd

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)

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

### 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

Index-103

#### RULES AND REGULATIONS—Cont'd

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

Ejusdem 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 typewritten, 15.01

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

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

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

### SHOULDER OF ROADWAY—Cont'd

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

### **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

### SOUNDING 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

### SOUNDING HORN ON MOTOR VEHICLE—Cont'd

Overtaking bicycle proceeding in same direction, 7.22A Overtaking farm vehicle proceeding in same direction, 7.22A

### **SOVEREIGN 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

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

### 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

# STATUTES OF LIMITATIONS—Cont'd

Fraudulent concealment—Cont'd

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

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

# 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

# SUPERSEDING CAUSE—Cont'd

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

# TERMITE DAMAGE

See Damages, this index

# TERMITE 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

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

#### TRAFFIC-CONTROL SIGNS AND SIGNALS—Cont'd

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

# **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

#### UNDUE INFLUENCE—Cont'd

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

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

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

#### WARNINGS—Cont'd

Personal property—Cont'd

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

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

#### WILLS—Cont'd

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

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

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

# WORDS AND PHRASES—Cont'd

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

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

#### WORDS AND PHRASES—Cont'd

Negligence—Cont'd

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

Ouotient 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

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

# WORDS AND PHRASES—Cont'd

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

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

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

#### **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

#### **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

#### **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

#### 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

#### **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

#### 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

#### 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

# **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