

Table of Contents

Volume 1

PART A. GENERAL PRINCIPLES

CHAPTER 1. SOFTWARE AND DIGITAL COPYRIGHT

- § 1:1 Non-Fungible Tokens
- § 1:2 Introduction

I. OVERVIEW

- § 1:3 Framing the issues—Information wars
- § 1:4 The CONTU report
- § 1:5 Historical stages: copyrightability
- § 1:6 Historical stages: scope of protection
- § 1:7 Historical stages: Internet
- § 1:8 Legal policy choices
- § 1:9 Copyright shapes the competitive framework
- § 1:10 Piracy prevention
- § 1:11 Nature of a computer program

II. COPYRIGHT BASICS

- § 1:12 Basic copyright themes: generally
- § 1:13 Basic copyright themes: subject matter
- § 1:14 —Works of authorship
- § 1:15 — —Categories of works
- § 1:16 — —Authorship basics
- § 1:17 — —Authorship—Non-human creators
- § 1:18 — — —AI systems
- § 1:19 — — —Works made for hire
- § 1:20 — — — —Employee works
- § 1:21 — — — —Specially commissioned works—
Requirements
- § 1:22 — — — — —Computer programs
- § 1:23 —Originality
- § 1:24 —Tangible media
- § 1:25 —Ideas and processes
- § 1:26 Basic copyright themes: rights protected

- § 1:27 —Right to “use” a work
- § 1:28 —Making-available “right”
- § 1:29 —Management and access devices
- § 1:30 Basic copyright themes: infringement
- § 1:31 —Proving copying
- § 1:32 —Wrongful copying
- § 1:33 — —Substantial similarity
- § 1:34 — —De minimis copying
- § 1:35 — —Copyrightable elements
- § 1:36 — —Proof of use or copying
- § 1:37 —Ordinary or specialized observers
- § 1:38 —Expert assistance
- § 1:39 —Literal and nonliteral
- § 1:40 — —Literal copying of part of a work
- § 1:41 — —Nonliteral infringement
- § 1:42 —Substantial similarity or virtual identity
- § 1:43 —Direct liability and voluntary acts
- § 1:44 —Indirect liability
- § 1:45 — —Contributory infringement
- § 1:46 — — —Reason to know as an element
- § 1:47 — — —Material contribution to infringement
- § 1:48 — —Inducement
- § 1:49 — —Vicarious liability

III. DIGITAL MILLENNIUM COPYRIGHT ACT: ACCESS AND MANAGEMENT CONTROLS

- § 1:50 Digital Millennium Copyright Act (DMCA)
- § 1:51 —Copyright management information
- § 1:52 —Access controls and anticircumvention
- § 1:53 —Effective controls and circumvention
- § 1:54 — —Authorization by copyright owner
- § 1:55 — —Effective controls on access
- § 1:56 — —“Circumventing” a technology measure
- § 1:57 —Rights protection technology
- § 1:58 —Rights issues in circumventing access controls
- § 1:59 —Exemptions
- § 1:60 —Remedies
- § 1:61 —Relation to fair use

IV. COPYRIGHT AND PROGRAM CODE OR STRUCTURE

- § 1:62 Flowcharts and source code
- § 1:63 Manuals and instructional materials
- § 1:64 Machine code: copyrightability
- § 1:65 —“Expressive” programs

TABLE OF CONTENTS

§ 1:66	—“Nonexpressive” programs
§ 1:67	— —Medium of expression
§ 1:68	— —Processes and expression
§ 1:69	—Microcode
§ 1:70	—Communications systems
§ 1:71	—Technical standards
§ 1:72	—Lockout codes
§ 1:73	Program code and design: infringement
§ 1:74	—Comprehensive verbatim copying
§ 1:75	—Loading and using programs and works
§ 1:76	—Partial literal copying
§ 1:77	—Subroutines
§ 1:78	—Languages and compilers
§ 1:79	—Data structures
§ 1:80	—Nonliteral infringement
§ 1:81	— —Abstraction
§ 1:82	— —Filtration or dissection
§ 1:83	— —Comparison of the works
§ 1:84	— —Limited structure and organization
§ 1:85	— —Computerization of manual systems
§ 1:86	— —Translation in languages and systems
§ 1:87	—Program and system interfaces
§ 1:88	—Data, constants, and models

V. DISPLAYS, OUTPUT, AND USER INTERFACE

§ 1:89	Displays distinguished from code
§ 1:90	—Symbiotic relationship
§ 1:91	—Single copyright
§ 1:92	—Asymmetrical relationship
§ 1:93	Copyrightable images
§ 1:94	Interactive output
§ 1:95	—Games
§ 1:96	— —Ideas and expression in games
§ 1:97	— —Infringement of games
§ 1:98	—Animated toys and machines
§ 1:99	User interface of data-processing programs
§ 1:100	—Method of analysis
§ 1:101	— —Filtration or dissection
§ 1:102	— —Level of required similarity
§ 1:103	—Methods of operation and processes
§ 1:104	—Forms that express
§ 1:105	—Ideas in a user interface
§ 1:106	—Expression in the user interface
§ 1:107	— —Specific Images or Screens
§ 1:108	— —Structure and sequence
§ 1:109	Computer-assisted works

- § 1:110 Masks and chip topology
- § 1:111 Software in ordinary goods

VI. FAIR USE, FIRST SALE, AND END USERS

- § 1:112 Fair use
- § 1:113 —Transformative uses
- § 1:114 —Noncommercial or commercial use
- § 1:115 —Downloading for personal use
- § 1:116 —Unpublished works
- § 1:117 —End users
- § 1:118 —Software distributed for no fee
- § 1:119 —Intermediate copies
- § 1:120 —Use of API
- § 1:121 Owners of copies
- § 1:122 —Owner or licensee?
- § 1:123 —Authorization of the transfer
- § 1:124 —Section 109 limited rights
- § 1:125 —Section 117
- § 1:126 — —Making copies
- § 1:127 — —Adaptations
- § 1:128 — —Maintenance of a computer
- § 1:129 —Contracts and first sale
- § 1:130 Reverse engineering under copyright and under contract
- § 1:131 —Intellectual property (herein of Copyright) doctrine
- § 1:132 —Contract doctrine and no reverse engineering clauses: no-reverse engineering clauses are generally enforceable
- § 1:133 — —Interpretation
- § 1:134 — —Limited public policy limitations
- § 1:135 Derivative works and personal modifications
- § 1:136 —Derivatives without copying
- § 1:137 —Commercial end user
- § 1:138 —Permanence
- § 1:139 Modification kits
- § 1:140 —Direct infringement
- § 1:141 —Contributory infringement

VII. NOTICE, DEPOSIT, AND REMEDIES

- § 1:142 Copyright notice
- § 1:143 Deposit and registration
- § 1:144 —Registration
- § 1:145 —Deposit
- § 1:146 Remedies
- § 1:147 —Monetary remedies
- § 1:148 —Remedies against the product

TABLE OF CONTENTS

§ 1:149	—Injunctive remedies
§ 1:150	—Third-party issues
§ 1:151	—State governmental immunity
§ 1:152	— —Intellectual property cases—General Rules
§ 1:153	— — —Patents
§ 1:154	— — —Copyrights
§ 1:155	— — —Trademarks
§ 1:156	— — —Injunctions
§ 1:157	— — —Waiver by states
§ 1:158	—Native American tribal immunity
§ 1:159	Presumption of validity for copyrights
§ 1:160	—Evidence overview
§ 1:161	—Copyright Act Provision
§ 1:162	—Initial application of Section 410(c)
§ 1:163	—Type of presumption
§ 1:164	— —Legislative history from 1909 Act
§ 1:165	— —Current Case Law conflicts
§ 1:166	—Other Issues in the operation of Section 410(c)
§ 1:167	—Contesting basic fact of issuance of certificate
§ 1:168	— —Challenging copyrightability
§ 1:169	— —Asserting inaccuracy and the Pro-IP Act
§ 1:170	— — —Pre Pro-IP Case Law
§ 1:171	— — —Pro-IP Act operation
§ 1:172	—Summary of Copyright Act Section 410(c)
§ 1:173	Copyright Small Claims

CHAPTER 2. PATENT LAW: SOFTWARE AND SYSTEMS PROTECTION

§ 2:1	Introduction
§ 2:2	Patent system overview
§ 2:3	—Policy basis of patent law
§ 2:4	—Patent system structure

0. INVENTORSHIP

§ 2:5	Inventors
§ 2:6	Joint inventors
§ 2:7	AI systems as inventors

I. CLAIMS PROCESS AND DEFINING THE SCOPE

§ 2:8	Claims
§ 2:9	— <i>Markman</i> case and claim construction
§ 2:10	—Indefiniteness— <i>Nautilus</i> standard
§ 2:11	— —Means plus function
§ 2:12	—Drafting, interpretation and the PTO
§ 2:13	—Claim interpretation in litigation

- § 2:14 —Classification of claims
- § 2:15 Prior art disclosure
- § 2:16 Invention disclosures: best mode and enablement
- § 2:17 —Enablement
- § 2:18 —Best mode issues

II. SUBJECT MATTER ISSUES

- § 2:19 Patent subject matter in general
- § 2:20 —Natural laws
- § 2:21 —Abstract ideas
- § 2:22 —Mental steps
- § 2:23 —Business methods
- § 2:24 —Mathematical algorithms
- § 2:25 Computer programs
- § 2:26 —The early Supreme Court decisions
- § 2:27 —*Bilski* and the modern standard
- § 2:28 Computer programs and Business Methods—Electronic signals
- § 2:29 Design patents
- § 2:30 —Federal Circuit: *Apple v. Samsung*
- § 2:31 —Damages

III. NOVELTY, UTILITY, AND OBVIOUSNESS

- § 2:32 Issues beyond subject matter
- § 2:33 Novelty
- § 2:34 —Prior invention
- § 2:35 —Prior publication
- § 2:36 Timely application
- § 2:37 —Placing a system on sale before completion
- § 2:38 —Experimental use and beta testing
- § 2:39 Utility
- § 2:40 Nonobviousness in general
- § 2:41 —Combination patents
- § 2:42 —Level and nature of prior art
- § 2:43 Hardware technology and obviousness
- § 2:44 Obviousness and application technology
- § 2:45 —Augmentation of physical processes
- § 2:46 —Business data-processing systems
- § 2:47 Internet patents
- § 2:48 Statutory limits on financial service and tax patents

IV. INFRINGEMENT AND RIGHTS LIMITATIONS

- § 2:49 Infringement
- § 2:50 —Dependence on the patent claim
- § 2:51 —Doctrine of equivalents

TABLE OF CONTENTS

- § 2:52 —Induced patent infringement
- § 2:53 — —Intent, knowledge and good faith
- § 2:54 — —Single entity
- § 2:55 Patent exhaustion
- § 2:56 —Terms of the initial transfer
- § 2:57 —Replication or reconstruction as compared to repair
- § 2:58 —International sales and exhaustion
- § 2:59 —Exhaustion does not protect parties outside the purchase chain—*Helferich* case
- § 2:60 Implied licenses
- § 2:61 Remedies
- § 2:62 Prior commercial use defense to infringement
- § 2:63 Presumption of validity for patents
- § 2:64 —Statutory provision
- § 2:65 —Operation of Patent Act Section 282
- § 2:66 —Contesting basic fact of issuance of the patent
- § 2:67 — —Contesting patent eligibility
- § 2:68 — —Asserting inequitable conduct
- § 2:69 —Summary of Patent Act Section 282

CHAPTER 3. TRADE SECRETS AND CONFIDENTIALITY

A. GENERAL PRINCIPLES

- § 3:1 Introduction
- § 3:2 Development of trade secret law
- § 3:3 Restatement (common law) phase
- § 3:4 Development of trade secret law—Restatement (common law) phase—UTSA phase
- § 3:5 — —DTSA phase
- § 3:6 Defining protected interests
- § 3:7 —Restatement
- § 3:8 —UTSA
- § 3:9 —DTSA
- § 3:10 —Comparing the different approaches
- § 3:11 Trade secrets—Basis of protection
- § 3:12 — —Confidentiality approach
- § 3:13 — —Property approach
- § 3:14 — —Significance of the approach
- § 3:15 —Contract terms
- § 3:16 —Information covered

B. SECRECY

- § 3:17 Reasonably protected secrets
- § 3:18 Novelty

- § 3:19 —Combination secrets
- § 3:20 —Particularity and equity
- § 3:21 —Value and investment
- § 3:22 Security and disclosure
- § 3:23 —Internal procedures
- § 3:24 —External secrecy
- § 3:25 — —Publication in articles
- § 3:26 — —Publication in manuals and brochures
- § 3:27 — —Publication by sale of product
- § 3:28 — — —Difficulty of discovery
- § 3:29 — — —Distribution in object code
- § 3:30 — —Publication on the Internet
- § 3:31 — —Patent disclosure
- § 3:32 — —Copyright disclosure

C. CONFIDENTIALITY

- § 3:33 Misappropriation and protected relationships
- § 3:34 Reverse engineering: individual rights
- § 3:35 —Buyers
- § 3:36 —Lessees and licensees
- § 3:37 — —Leases of tangible products
- § 3:38 — —Licenses of information
- § 3:39 — —Licensees of software
- § 3:40 Independent contractors and confidentiality
- § 3:41 Assignees of ownership and confidentiality
- § 3:42 Pretransaction disclosures
- § 3:43 Employees
- § 3:44 —Presumed confidentiality
- § 3:45 —General knowledge and trade secrets
- § 3:46 — —Internal security
- § 3:47 — —Particularity
- § 3:48 — —Employee's role in developing the secret
- § 3:49 —Nondisclosure agreements
- § 3:50 —Noncompetition clauses
- § 3:51 — —Enforceability and consideration
- § 3:52 — —Competition policy
- § 3:53 — — —Substantive reasonableness
- § 3:54 — — —Geographic restrictions
- § 3:55 — — —Choice-of-law terms
- § 3:56 — —Restricting or invalidating clauses
- § 3:57 — —Injunctive relief
- § 3:58 New companies and competitive hiring—Enticement
by third parties
- § 3:59 —Employee split-off companies: conflicting interests

D. REMEDIES AND MISAPPROPRIATION

- § 3:60 Misappropriation and proof

TABLE OF CONTENTS

§ 3:61	—Conversion as an alternative
§ 3:62	—Computer crime actions as an alternative
§ 3:63	—Copying as an issue
§ 3:64	—Nonliteral uses
§ 3:65	Third parties and notice
§ 3:66	—Giving notice to third parties
§ 3:67	—Constructive notice
§ 3:68	—Subsequent notice
§ 3:69	Damages
§ 3:70	Injunction

E. FEDERAL LIMITS ON STATE-CREATED RIGHTS

§ 3:71	Interaction of federal and state law
§ 3:72	Preemption
§ 3:73	Other constitutional provisions
§ 3:74	Interaction between trade secret, patent, and copyright law
§ 3:75	Patent interaction
§ 3:76	—Patent preemption and trade secrets
§ 3:77	—Patent disclosures
§ 3:78	Copyright interaction
§ 3:79	—Copyright preemption and trade secrets
§ 3:80	Subject matter test
§ 3:81	Equivalency test
§ 3:82	Summary of copyright act preemption and state trade secrets
§ 3:83	DTSA
§ 3:84	Copyright interaction—Copyright notice
§ 3:85	—Copyright deposit
§ 3:86	—Claims not involving special relationships
§ 3:87	Unjust enrichment
§ 3:88	Misappropriation
§ 3:89	Misrepresentation
§ 3:90	Conversion
§ 3:91	Criminal law
§ 3:92	“Hot news” misappropriation
§ 3:93	Rights of publicity
§ 3:94	Copyright interaction—Contractual or special relationships
§ 3:95	—Contract claims
§ 3:96	First amendment and trade secrets interaction
§ 3:97	Expressive conduct
§ 3:98	Public disclosure
§ 3:99	Breach of contract
§ 3:100	Content component
§ 3:101	Bankruptcy law

- § 3:102 —Business information in bankruptcy filings
- § 3:103 Enforcing confidentiality
- § 3:104 Bankruptcy law: restrictive agreements

Volume 2

CHAPTER 4. RESEARCH, DEVELOPMENT, AND OWNERSHIP

- § 4:1 Introduction

I. EMPLOYEE OWNERSHIP

- § 4:2 Employee developers
- § 4:3 —Works for hire
- § 4:4 — —Patent and copyright ownership
- § 4:5 — —Trade secret ownership
- § 4:6 — —Relationship to prior works
- § 4:7 Joint use and shop rights
- § 4:8 Assignments of inventions in employee contracts
- § 4:9 —Reasonableness and statutory limitations
- § 4:10 —Interpretation
- § 4:11 —Effect of bankruptcy
- § 4:12 — —Bankruptcy of employer
- § 4:13 — —Bankruptcy of employee
- § 4:14 Faculty-developed software

II. JOINT AND SEQUENTIAL OWNERSHIP

- § 4:15 Joint development and ownership
- § 4:16 —Patent law
- § 4:17 —Copyright and software development
- § 4:18 Joint authorship and co-owners
- § 4:19 —Coauthorship: ideas and intent
- § 4:20 —Coauthorship: separate contributions
- § 4:21 Collective works and compilations
- § 4:22 Sequential authorship and derivative works
- § 4:23 Joint venture relationships
- § 4:24 —Ownership
- § 4:25 —Collateral research and development
- § 4:26 —Preexisting works
- § 4:27 — —Use in the product of venture
- § 4:28 — —Effect of transfer
- § 4:29 Transfers of copyright
- § 4:30 Contractors and consultants
- § 4:31 —Confidentiality
- § 4:32 —Works for hire

TABLE OF CONTENTS

- § 4:33 — —Employee or contractor
- § 4:34 — —Commissioned works
- § 4:35 — —Creative involvement and authorship
- § 4:36 — —Contracts and property rights
- § 4:37 — —Implied contracts
- § 4:38 — —Express terms
- § 4:39 — — —Copies vs. copyright
- § 4:40 — — —Reserved library rights
- § 4:41 — — —Conveyance of copyright
- § 4:42 End-user modifications

III. ANTITRUST LAW AND INNOVATION

- § 4:43 Introduction to antitrust law
- § 4:44 Single product innovation
- § 4:45 Integrated systems innovation
- § 4:46 —Product superiority
- § 4:47 —Ancillary restraints and market power
- § 4:48 —Predisclosure
- § 4:49 Joint venture research and production
- § 4:50 —Cooperative Research Act protections
- § 4:51 —Scope of the venture
- § 4:52 —Rule-of-reason standards
- § 4:53 — —Research and other relevant markets
- § 4:54 — —Secondary restrictions
- § 4:55 — —Joint ventures and monopolists
- § 4:56 Joint standard-setting groups
- § 4:57 —De facto standards
- § 4:58 —Joint organizational standards
- § 4:59 — —General overview
- § 4:60 — —Antitrust risks
- § 4:61 — —*American Needle* and Antitrust Division policy
- § 4:62 — — —*American Needle*
- § 4:63 — — —Recent policy statements by the Antitrust Division
- § 4:64 — —SSO disclosure rules and patent remedies
- § 4:65 — — —Antitrust cases
- § 4:66 — —IP rights
- § 4:67 —Reasonable and nondiscriminatory licensing (RAND or FRAND)
- § 4:68 — —Nature of the right owner's obligation
- § 4:69 — —Agreement and policies
- § 4:70 — —What is a RAND or FRAND royalty?
- § 4:71 — —Patent injunctions and antitrust considerations

CHAPTER 5. TRADEMARK ISSUES

- § 5:1 Introduction

I. TRADEMARK BASICS

- § 5:2 Source and nature of law
- § 5:3 Existence of rights
- § 5:4 Statutory grounds for exclusion—Generic, descriptive, geographically descriptive, and functional subject matter
- § 5:5 — —Categories of distinctiveness
- § 5:6 — — —Suggestive marks
- § 5:7 — — —Generic terms and merely descriptive marks
- § 5:8 — —Top-level domain names (e.g. “.com”)
- § 5:9 —Immoral, deceptive, scandalous or disparaging subject matter
- § 5:10 Registration and the TTAB
- § 5:11 Nature of rights
- § 5:12 —Priority
- § 5:13 —Likelihood of confusion
- § 5:14 —Initial interest confusion
- § 5:15 —Use in commerce as a mark
- § 5:16 —Limitations—Fair use
- § 5:17 Nature of Rights—Limitations—Trade dress and functionality
- § 5:18 Nature of rights—Limitations—First Amendment protections as to expressive content
- § 5:19 Dilution of famous marks

II. DOMAIN NAMES

- § 5:20 Domain names generally
- § 5:21 Domain names as property
- § 5:22 Domain names as trademarks
- § 5:23 Domain names that infringe marks
- § 5:24 —Infringement not found
- § 5:25 —Infringement found
- § 5:26 Cybersquatting and the ACPA
- § 5:27 —Bad-faith intent to profit
- § 5:28 —Distinctive and famous marks
- § 5:29 —In rem proceedings
- § 5:30 —Reverse hijacking
- § 5:31 Domain name registration issues

III. SELECTED ISSUES

- § 5:32 Metatags and links
- § 5:33 Antisites
- § 5:34 Focused advertising: keywords and pop-ups
- § 5:35 —Use in commerce
- § 5:36 —Functionality

TABLE OF CONTENTS

- § 5:37 —Likelihood of confusion
- § 5:38 First sale, online resales, and the like
- § 5:39 Trademark licensed sales online
- § 5:40 Presumption of validity for federal trademarks
- § 5:41 —Statutory provisions
- § 5:42 —Initial application of Lanham Act Sections 1057(b) & 1115(a)
- § 5:43 —Type of presumption
- § 5:44 — —Legislative history
- § 5:45 — —Case Law Conflicts
- § 5:46 —Other issues in operation of Lanham Act Sections
- § 5:47 —Contesting basic fact of issuance of registration
- § 5:48 — —Collateral attack on registration
- § 5:49 — —Asserting fraudulent conduct
- § 5:50 —Summary of Lanham Act Sections 1057(b) & 1115(a)

PART B. TRANSACTIONAL ISSUES

CHAPTER 6. COMPUTER AND SYSTEMS SALES CONTRACTS

- § 6:1 Introduction
- § 6:2 What law governs (goods, services, intangibles)
- § 6:3 —Statutory definitions of goods
- § 6:4 —Goods or services
- § 6:5 — —Training, installation, and the like
- § 6:6 — —Custom development contracts
- § 6:7 — —Predominant purpose test
- § 6:8 — —Services and data-processing contracts
- § 6:9 —Goods or intangibles

I. DEFINING THE BARGAIN

- § 6:10 Enforceable contracts: open or unwritten terms
- § 6:11 —Intent to form a contract
- § 6:12 —Statute of frauds barriers
- § 6:13 —Default and gap-filler terms
- § 6:14 Enforceable contracts: standard forms
- § 6:15 —Conflicting forms
- § 6:16 —Sales terms accompanying the goods
- § 6:17 Standard terms prohibiting reviews or critiques—
Consumer Review Fairness Act of 2016
- § 6:18 Resources and solutions contracts
- § 6:19 —Role of contract specifications
- § 6:20 —Turnkey system
- § 6:21 Requests for proposal
- § 6:22 —Consultants and reliance

- § 6:23 —Specifications and parol evidence
- § 6:24 —Merger clauses
- § 6:25 Acceptance standards and testing
- § 6:26 Software and hardware contract interdependence
- § 6:27 —Single vendors and bundled systems
- § 6:28 —Separate vendors and products
- § 6:29 Multiple delivery relationships

II. WARRANTIES AND REPRESENTATIONS

- § 6:30 Express warranties
- § 6:31 —Contract and system specifications
- § 6:32 —Suitability and performance
- § 6:33 —Express limited warranties
- § 6:34 —Parol evidence
- § 6:35 Limited express software warranties
- § 6:36 Implied warranties
- § 6:37 —Merchantability standards
- § 6:38 —Fitness warranties and consulting sellers
- § 6:39 —Warranty of title and noninfringement
- § 6:40 —Conspicuous disclaimers
- § 6:41 —Disclaimer with express warranty
- § 6:42 Computer viruses
- § 6:43 Compatibility and communications
- § 6:44 Response time and speed of processing
- § 6:45 Automation and human involvement
- § 6:46 System security warranty

III. OBLIGATIONS RELATED TO THE SALE

- § 6:47 Collateral obligations
- § 6:48 —Documentation
- § 6:49 —Data transfer and training
- § 6:50 —Maintenance and repair services
- § 6:51 Updates and revisions

IV. DISPUTES AND REMEDIES

- § 6:52 Defining a breach of contract
- § 6:53 —System defects and perfect tender
- § 6:54 —Causation
- § 6:55 Performance issues
- § 6:56 —Rejection and debugging new systems
- § 6:57 —Revocation
- § 6:58 —Adequate assurances and repudiation
- § 6:59 Damages computation
- § 6:60 Damages and loss computation—Direct damages
- § 6:61 —Consequential and incidental damages

TABLE OF CONTENTS

- § 6:62 Limited warranties and remedies
- § 6:63 —Failure of purpose in replacement and repair remedies
- § 6:64 —Consequential damage limitations
- § 6:65 —Liquidated damages provisions
- § 6:66 Limitations periods
- § 6:67 Unconscionability
- § 6:68 Manufacturer liability
- § 6:69 Arbitration clauses
- § 6:70 —Scope of the arbitration clause
- § 6:71 —Enforceability of an arbitration clause

CHAPTER 7. TECHNOLOGY LICENSING

- § 7:1 Introduction

I. NATURE OF INTANGIBLES CONTRACTS

- § 7:2 General characteristics
- § 7:3 —Assignment or license
- § 7:4 —Licenses
- § 7:5 Types of licenses
- § 7:6 Focus of different types of licenses—Patent and copyright licenses
- § 7:7 —Trademark licenses
- § 7:8 —Trade secret licenses
- § 7:9 —Online licenses

II. ANTITRUST AND MISUSE ISSUES IN LICENSING

- § 7:10 Antitrust policy
- § 7:11 —General parameters
- § 7:12 —Antitrust policy and licensing
- § 7:13 Statutory framework
- § 7:14 Method of analysis
- § 7:15 —Per se rules
- § 7:16 —Rule of reason analysis
- § 7:17 Market and economic power
- § 7:18 —Defining a market
- § 7:19 —Market power
- § 7:20 Scope of property right as an issue
- § 7:21 Tying arrangements
- § 7:22 —Product differentiation
- § 7:23 —Economic power
- § 7:24 —Intellectual property
- § 7:25 —Services and systems
- § 7:26 — —Separate products

- § 7:27 — —Primary product lock-in
- § 7:28 —Justifications and exceptions
- § 7:29 Package licenses
- § 7:30 Refusals to license
- § 7:31 Monopolization
- § 7:32 Antitrust injury

III. MISUSE DOCTRINE

- § 7:33 Patent and copyright misuse: Overview
- § 7:34 Patent misuse
- § 7:35 Copyright misuse
- § 7:36 Misuse and third parties

IV. LICENSES AND CONTRACT LAW

- § 7:37 Sources of contract law
- § 7:38 Contract formation: In general
- § 7:39 Contract interpretation
- § 7:40 —Federal law impact
- § 7:41 — —Federal policy as a tool
- § 7:42 — —Intellectual property as default rules
- § 7:43 — —Preemptive federal rules
- § 7:44 Scope of license as a contract issue
- § 7:45 —Scope limitation or contract promise
- § 7:46 —Broad vs. narrow construction
- § 7:47 —Reservation of rights
- § 7:48 —New technology applications
- § 7:49 — —General issues
- § 7:50 — —Coverage of digital uses
- § 7:51 —Internal use and location restrictions
- § 7:52 Implied licenses
- § 7:53 —Estoppel
- § 7:54 —To cure transactional defect
- § 7:55 —To complete terms
- § 7:56 Parol evidence
- § 7:57 —Trade use
- § 7:58 —Course of dealing and performance
- § 7:59 —Ambiguity of a term
- § 7:60 —Merger clauses
- § 7:61 Relationship of license to tangible property
- § 7:62 —Copy ownership and infringement
- § 7:63 —Licenses and copy ownership
- § 7:64 — —Copyright first sale
- § 7:65 — —Patent exhaustion
- § 7:66 —Right to possession of copies
- § 7:67 Bona fide purchase of a license

TABLE OF CONTENTS

§ 7:68	What ownership rights are transferred
§ 7:69	Good faith performance
§ 7:70	Best efforts
§ 7:71	Assignability of contract rights
§ 7:72	—No contract term and no consent
§ 7:73	— —Article 9 and assignability
§ 7:74	— —Nonexclusive licenses
§ 7:75	— —Exclusive licenses
§ 7:76	—Contract terms that preclude assignment
§ 7:77	— —Contract terms regulating transfer
§ 7:78	Required record of ownership transfer
§ 7:79	Choice of law clauses
§ 7:80	—Statutory rules
§ 7:81	—Common law and restatement
§ 7:82	—Consumer law issues
§ 7:83	Choice of judicial forum
§ 7:84	—General contract law restrictions
§ 7:85	—Fundamental public policy issues
§ 7:86	Duration: Termination without breach
§ 7:87	—Copyright overlay
§ 7:88	—Rights validity issues
§ 7:89	—Licensee and assignor estoppel
§ 7:90	Termination of a license
§ 7:91	—Termination at will
§ 7:92	—Termination other than at-will
§ 7:93	—Effect of termination

V. ROYALTY ISSUES

§ 7:94	Royalty duration
§ 7:95	—Post-expiration royalties
§ 7:96	—Multiple rights licenses
§ 7:97	Royalty computation
§ 7:98	—Differential rates
§ 7:99	—Most-favored licensees

VI. LICENSOR'S OBLIGATIONS

§ 7:100	General considerations
§ 7:101	Warranty of title
§ 7:102	—Public-domain warranty
§ 7:103	—Exclusivity warranty
§ 7:104	—Infringement and authority
§ 7:105	—Specifications and indemnity
§ 7:106	Warranty of noninterference
§ 7:107	Quality warranties
§ 7:108	—Implied obligations

- § 7:109 —Express warranties
- § 7:110 —Limited express warranties
- § 7:111 Upgrades
- § 7:112 Informational content licenses
- § 7:113 —Defining the subject matter
- § 7:114 —Standard of care

VII. LICENSEE'S OBLIGATIONS AND RIGHTS

- § 7:115 Nondisclosure and information use
- § 7:116 —Enforceability of the term
- § 7:117 —Independence of contract claim
- § 7:118 Prohibiting reviews or critiques—Consumer Review Fairness Act of 2016
- § 7:119 Disclosure and use compared
- § 7:120 No reverse engineering clauses
- § 7:121 Noncircumvention and noncompetition
- § 7:122 Modifications and improvements
- § 7:123 —Licensee's right to adapt technology
- § 7:124 —Modifications and warranties
- § 7:125 —Antitrust and grant-back clauses
- § 7:126 Distribution licenses
- § 7:127 Use restrictions

VIII. SOFTWARE END USER LICENSES

- § 7:128 End user licenses: General issues
- § 7:129 —Contract enforceability
- § 7:130 —Enforceability and first sale rules
- § 7:131 —Timing of assent
- § 7:132 Three-party transactions
- § 7:133 Mass-market licenses
- § 7:134 Terms in end user licenses
- § 7:135 —Warranties and warranty disclaimers
- § 7:136 —Nondisclosure of secrets
- § 7:137 —No reverse engineering
- § 7:138 —System or location limitations
- § 7:139 —Source code
- § 7:140 —Restraints on transfer
- § 7:141 —Licensee's sole use
- § 7:142 —Restrictions on type of use

IX. DISTRIBUTION LICENSES

- § 7:143 Software distribution formats
- § 7:144 Resale price and antitrust
- § 7:145 Nonprice vertical restrictions

TABLE OF CONTENTS

X. BREACH AND CANCELLATION OF LICENSE

- § 7:146 Cancellation for material breach
- § 7:147 —Conditions justifying cancellation
- § 7:148 —Notice of cancellation
- § 7:149 Failure of a condition
- § 7:150 Contract or property claim
- § 7:151 —Use after license is cancelled
- § 7:152 Electronic self-help remedies
- § 7:153 Damages for breach
- § 7:154 Property claims against third parties
- § 7:155 —Copyright standing
- § 7:156 —Patent standing
- § 7:157 Effect of bankruptcy on licenses
- § 7:158 —Termination of license
- § 7:159 —Licensor as bankrupt
- § 7:160 — —Right to continue use—Automatic stay
- § 7:161 — —Licensor's right to reject
- § 7:162 — —Licensee's rights after rejection—365(n)
- § 7:163 —Licensee bankruptcy

Volume 3

CHAPTER 8. COMPUTER AND SOFTWARE LEASING

- § 8:1 Introduction
- § 8:2 Choice of transactional format
- § 8:3 Governing law: Article 2A

I. TYPES OF LEASES

- § 8:4 True lease or security interest
- § 8:5 —UCC standards
- § 8:6 — —Pre-Article 2A UCC standards
- § 8:7 — —UCC Article 2A standards
- § 8:8 — — —Intent test rejected
- § 8:9 — — —Nonterminable obligations
- § 8:10 — — —Economic life as a standard
- § 8:11 — — —Option to purchase
- § 8:12 — — —Conditions not indicating a security interest
lease
- § 8:13 Conditions not indicating a security—Tax law
standards
- § 8:14 Finance and leveraged leases
- § 8:15 Software leases
- § 8:16 —Relationship between lessor and licensor

- § 8:17 —Transfer to the licensee-lessee
- § 8:18 —Licensor and licensee relationship
- § 8:19 Choice of law and forum

II. LEASE OBLIGATIONS AND RIGHTS

- § 8:20 Lessor warranties
- § 8:21 —Common-law warranties
- § 8:22 —Article 2A warranties
- § 8:23 — —Performance warranties
- § 8:24 — —Title and quiet possession
- § 8:25 —Warranty disclaimers
- § 8:26 Purchase and renewal options
- § 8:27 Maintenance and repair
- § 8:28 Obsolescence and upgrades
- § 8:29 —Hardware upgrades
- § 8:30 —Software upgrades
- § 8:31 Sublease and assignment
- § 8:32 —Subleases and lessee assignment
- § 8:33 — —Express terms
- § 8:34 — —No contractual provisions
- § 8:35 —Assignment by lessor
- § 8:36 Perfecting the lessor's interest
- § 8:37 Finance leases and third-party liability
- § 8:38 —Warranties of supplier
- § 8:39 —Waiver of defenses
- § 8:40 —Warranties of lessor

III. DEFAULT AND TERMINATION

- § 8:41 Termination and cancellation
- § 8:42 Bankruptcy
- § 8:43 Remedies for lessee default
- § 8:44 —Mitigation and election of remedies
- § 8:45 — —Duty to mitigate
- § 8:46 — —Election of remedies
- § 8:47 —Accelerated rentals
- § 8:48 —Foreclosure and other sales
- § 8:49 —Second leases

CHAPTER 9. COMPUTER AND INFORMATION SERVICES CONTRACTS

- § 9:1 Introduction

I. LAW OF SERVICES CONTRACTS

- § 9:2 General considerations: goods, services, or information

TABLE OF CONTENTS

§ 9:3	Defining the services contract bargain
§ 9:4	Standards of performance: contract product
§ 9:5	—Warranty of result
§ 9:6	—Workmanlike and reasonable performance
§ 9:7	Tort or contract claim
§ 9:8	—Reasons for extension: privity
§ 9:9	—Reasons for extension: two-party cases
§ 9:10	—Basis of distinction
§ 9:11	Substantial performance
§ 9:12	—Substantial performance as breach
§ 9:13	—Material breach
§ 9:14	Payment obligations
§ 9:15	—Part performance: divisible contracts
§ 9:16	—Part performance: restitution
§ 9:17	Disclaimer and indemnity
§ 9:18	Remedy limitations
§ 9:19	—Damage limitations
§ 9:20	—Standard-form limitations
§ 9:21	—Limitations on time to bring suit
§ 9:22	Waiver and estoppel
§ 9:23	Good faith and cooperation
§ 9:24	Independent contractor or employee?
§ 9:25	Assignability

II. CONSULTING AND PROGRAMMING SERVICES

§ 9:26	General considerations
§ 9:27	Contract obligation: outcome or effort?
§ 9:28	Reasonable care, negligence, and malpractice
§ 9:29	—Representation of skill
§ 9:30	—Computer malpractice
§ 9:31	Consultants and negligent misrepresentation
§ 9:32	—Information providers
§ 9:33	—Consulting sellers and negligent misrepresentation
§ 9:34	Cooperation in design
§ 9:35	Staffing
§ 9:36	Cost and system changes
§ 9:37	Defining “successful completion”
§ 9:38	Time of completion
§ 9:39	Payment

III. DATA PROCESSING, OUTSOURCING, AND ACCESS CONTRACTS

§ 9:40	General considerations
§ 9:41	Standard of care and accuracy
§ 9:42	Material breach and performance

- § 9:43 Cooperation and exclusivity
- § 9:44 Disclaimers and remedy limitations
- § 9:45 Managing disputes in the relationship
- § 9:46 Rights in the data
- § 9:47 —Rights during the contract
- § 9:48 —Rights at the end of the contract
- § 9:49 Continuous access and on-line services contracts
- § 9:50 —Nature of the access obligation
- § 9:51 —Modification of terms
- § 9:52 —Control of data accessed
- § 9:53 —Termination
- § 9:54 Damages and remedies

IV. MAINTENANCE AND REPAIR CONTRACTS

- § 9:55 General considerations
- § 9:56 Purpose and performance
- § 9:57 —Extension of sales or lease contract
- § 9:58 —Separate repair and maintenance services contracts
- § 9:59 —Improvements and upgrades
- § 9:60 —Assurances and continuity
- § 9:61 Response and completion time
- § 9:62 Scope of coverage
- § 9:63 Remedies

CHAPTER 10. OPEN SOURCE AND FREE SOFTWARE

- § 10:1 Introduction

I. THE COMMUNITY CONTEXT

- § 10:2 Distinguishing open, free, and proprietary software
- § 10:3 —FOSS compared to “proprietary” software
- § 10:4 FOSS compared to public domain software
- § 10:5 The FOSS community and philosophy
- § 10:6 —Free software community
- § 10:7 — —Free for a price
- § 10:8 — —Free software definition
- § 10:9 — —Copyleft: viral and reciprocal terms
- § 10:10 —Open source initiative
- § 10:11 License terms: diversity, restrictions, and core values
- § 10:12 —Diversity in FOSS licenses
- § 10:13 —Overlap among FOSS and other licenses

II. THE LEGAL CONTEXT

- § 10:14 Mapping the context

TABLE OF CONTENTS

§ 10:15	Does use of an FOSS license create an enforceable contract?
§ 10:16	—Licenses as noncontractual releases
§ 10:17	—Enforceability of noncontractual conditions
§ 10:18	FOSS licenses as contracts
§ 10:19	GPL (and LGPL) as a contract or a restrictive notice
§ 10:20	When license is applicable; dual licensing
§ 10:21	License compatibility
§ 10:22	Ownership issues in free and open source
§ 10:23	—Types of authorship recognized
§ 10:24	—Authorship models in FOSS software
§ 10:25	Viral impact: unrestricted vs. copyleft software
§ 10:26	—Pure unrestricted licenses
§ 10:27	—Pass-through license terms
§ 10:28	—Viral licenses: affecting independent software
§ 10:29	—GNU General Public License (GPL 2.0) and expanded control
§ 10:30	— —Verbatim copies and pass-through terms
§ 10:31	— —Licensee modifications and new material (GPL 2.0)
§ 10:32	— — —Work based on the program (GPL 2.0)
§ 10:33	— — —Derivative work (GPL 2.0)
§ 10:34	— — —Links and collective works (GPL 2.0)
§ 10:35	— —GPL Version 3.0
§ 10:36	—GNU lesser general public license (LGPL)
§ 10:37	— —Verbatim and modified libraries
§ 10:38	— —Programs linked or associated with libraries
§ 10:39	Selected additional legal issues
§ 10:40	—Scope of the license grant
§ 10:41	— —Copyright rights
§ 10:42	— —Modifications
§ 10:43	— —Source code disclosure
§ 10:44	— —Internal use or distribution
§ 10:45	—License terms relating to patent rights issues
§ 10:46	— —Grant of an FOSS patent license
§ 10:47	— —Patent retaliation clauses
§ 10:48	— —Patent terms in GPL 3.0
§ 10:49	—Trademark and attribution rules
§ 10:50	—Warranties
§ 10:51	— —Warranties about quality
§ 10:52	— —Warranties and indemnities of noninfringement
§ 10:53	—Digital rights management and GPL 3.0
§ 10:54	—“Additional” provisions and GPL 3.0
§ 10:55	—Duration and termination
§ 10:56	—Remedies and remedy limitations
§ 10:57	— —Damages claimed by licensee
§ 10:58	— —Remedies of licensor

CHAPTER 11. COMPUTER ERROR AND USE LIABILITY

- § 11:1 Introduction
- § 11:2 Derivative or primary obligations
- § 11:3 —Reasonable care or absolute liability
- § 11:4 —Design limitations
- § 11:5 Computer error and negligence defined
- § 11:6 —System design errors
- § 11:7 —Operational errors

I. DUTY OF REASONABLE CARE IN RECORDKEEPING

- § 11:8 General issues and themes
- § 11:9 Human verification
- § 11:10 Internal fraud detection
- § 11:11 Incorrect data and common-error tolerance
- § 11:12 Encoding and data entry errors
- § 11:13 Awareness of system inadequacies
- § 11:14 Wrongful nonuse of a computer
- § 11:15 —Nonuse of verification and notice systems
- § 11:16 —Nonuse excused
- § 11:17 Narrowing of obligations under contract law
- § 11:18 Enhanced damages
- § 11:19 Computer models
- § 11:20 Advent of artificial intelligence programs, big data
Internet of Things (IoT)—General overview
- § 11:21 Core feature: connectedness—A blessing and a curse
- § 11:22 Legal issues concerning process and design

II. CONTRACT AND CREDIT PERFORMANCE

- § 11:23 Wrongful debt enforcement
- § 11:24 —Wrongful repossession
- § 11:25 —Fair credit reporting
- § 11:26 Waiver and estoppel
- § 11:27 —Overpayments
- § 11:28 —Termination

III. NOTICE REQUIREMENTS AND SYSTEM ADEQUACY

- § 11:29 Proof of notice or filing
- § 11:30 Filing system error

IV. GOVERNMENT COMPUTER USE AND ERROR LIABILITY

- § 11:31 General features

TABLE OF CONTENTS

- § 11:32 Criminal justice
- § 11:33 —Arrests and searches based on computer error
- § 11:34 —Speedy trial
- § 11:35 Rights administration

CHAPTER 12. FRAUD AND COMPUTER-RELATED TORTS

- § 12:1 Introduction

I. FRAUD: GENERAL ISSUES AND ELEMENTS

- § 12:2 Elements and rationale
- § 12:3 Fraud and contract policy
- § 12:4 —Intentional fraud v. circumvention of contractual provisions
- § 12:5 —Fraud v. contract claims—Scienter
- § 12:6 — —Representations of “factual matters”
- § 12:7 Fraud and contract barriers
- § 12:8 —Disclaimers, non-reliance and merger clauses
- § 12:9 — —Specificity of language
- § 12:10 — —General language
- § 12:11 — —General merger or non-reliance clauses and non-intentional misrepresentations
- § 12:12 — —Sophistication of the parties, language and non-reliance clauses
- § 12:13 —Remedy limitations
- § 12:14 —Arbitration clauses
- § 12:15 —Economic loss doctrine
- § 12:16 Enhanced and actual damages: common law
- § 12:17 Enhanced and actual damages: state deceptive trade laws
- § 12:18 Standards of care or culpability
- § 12:19 —Negligence and scope of liability
- § 12:20 Negligence in buyer-seller relationships
- § 12:21 Reasonable reliance

II. FRAUD: TYPES OF MISREPRESENTATIONS

- § 12:22 Misrepresentations of present fact
- § 12:23 —Duty to disclose
- § 12:24 — —Half truths
- § 12:25 — —Superior knowledge
- § 12:26 — —Special relationship
- § 12:27 —False promises and predictions
- § 12:28 Misrepresentations in systems contracting
- § 12:29 —Existing system capacity
- § 12:30 —New systems and disclosure

- § 12:31 —Obsolete and discontinued systems
- § 12:32 —Suitability for intended use
- § 12:33 —Time and cost savings
- § 12:34 Testing and performance
- § 12:35 Fraud in distribution agreements

III. NEGLIGENCE AND PRODUCT LIABILITY

- § 12:36 Negligence, malpractice, and contracts: negligent contract performance
- § 12:37 Reasonable care and malpractice
- § 12:38 Product liability
- § 12:39 —Type of damage: injury to data
- § 12:40 —Computer-assisted machines
- § 12:41 —Software as a product
- § 12:42 — —Programming, services, and products
- § 12:43 — —Tangible products or information products

CHAPTER 13. ELECTRONIC TRANSACTION ENVIRONMENTS

- § 13:1 Introduction

I. ELECTRONIC CONTRACTS GENERALLY

- § 13:2 Policy context: support or reaction?
- § 13:3 What contract law applies?
- § 13:4 —Digital information provided online
- § 13:5 —Sales or lease of goods online
- § 13:6 —Online marketplaces
- § 13:7 —Access contracts

II. ELECTRONIC CONTRACTING: VALIDITY OF FORMAT

- § 13:8 Validation of electronics satisfying formalities
- § 13:9 When does a validation issue arise?
- § 13:10 —No writing or signature required
- § 13:11 —Specific laws permitting electronics
- § 13:12 —Laws where interpretation suffices
- § 13:13 General validating laws: framework
- § 13:14 Digital or secure signature laws
- § 13:15 General validation laws: nondiscrimination laws
- § 13:16 —Uniform Electronic Transactions Act (UETA)
- § 13:17 — —Requirement of an agreement
- § 13:18 — —Substantive impact
- § 13:19 —Federal Electronic Signature Act (E-Sign)
- § 13:20 — —Requirement that record be retainable

TABLE OF CONTENTS

- § 13:21 — —Consumer protection rules
- § 13:22 What validation laws govern? E-Sign preemption
- § 13:23 —Pure version of UETA
- § 13:24 —Consistent laws
- § 13:25 Recipient's receipt of notice

III. PROCESS AND TERMS OF ELECTRONIC CONTRACTING

- § 13:26 Contracts and objective assent
- § 13:27 Contract formation online
- § 13:28 —Access contracts and use of site
- § 13:29 —Sales or licenses of products: third parties
- § 13:30 — —Soliciting an offer or making one
- § 13:31 — —Accepting a customer's offer
- § 13:32 — —Accepting terms of the third-party contract
- § 13:33 Electronic agents and automated systems
- § 13:34 E-mails and contracts: intent and statute of frauds
- § 13:35 Effect of contract not being formed
- § 13:36 —Failed license grant
- § 13:37 —Notices as a noncontractual relationship
- § 13:38 Mistakes in contracting online
- § 13:39 —Mutual and unilateral mistakes
- § 13:40 —Systems to prevent errors: Article 4A
- § 13:41 —UCITA and UETA
- § 13:42 — —Human errors and rescission right
- § 13:43 — —Following established systems
- § 13:44 Attribution: who is the other party?
- § 13:45 Miscellaneous issues
- § 13:46 —Time that contract is formed
- § 13:47 —When notices are sent or received
- § 13:48 —Location deemed sent or received
- § 13:49 —Credit card receipts online

IV. TERMS OF ONLINE CONTRACTS

- § 13:50 Agreements and their terms: general sources
- § 13:51 —General sources of contract rules
- § 13:52 —Dealing with multiple-party contracts
- § 13:53 —Conspicuous terms online
- § 13:54 Unconscionability and reasonable expectations online
- § 13:55 Required use of electronic methods
- § 13:56 Terms relating to system use
- § 13:57 —Service quality
- § 13:58 —Availability of access
- § 13:59 —Regulation of handicapped access
- § 13:60 —Access using robots or electronic agents

- § 13:61 —User's compliance with law
- § 13:62 Termination of service or access
- § 13:63 Changes in service or access terms
- § 13:64 Warranties and obligations as to subject matter
- § 13:65 Use of downloaded or accessed data
- § 13:66 Contractual choice of law or forum
- § 13:67 —Choice of law by contract
- § 13:68 —Choice of forum by contract
- § 13:69 Consumer regulation: EU Distance Contracts
Directive and Consumer Rights Directive
- § 13:70 Federal online advertising guidelines

Volume 4

PART C. SELECTED ISSUES

CHAPTER 14. SELECTED TORT AND OTHER LIABILITY ISSUES ONLINE

- § 14:1 Introduction

I. GENERAL ISSUES

- § 14:2 Information liability: general issues
- § 14:3 Information liability: Services or information
- § 14:4 Information liability: Standards of obligation
- § 14:5 Information liability: online conduits
- § 14:6 Information liability: Contractual relationships
- § 14:7 Published compared to focused information products

II. LIABILITY FOR FALSE INFORMATION

- § 14:8 Defamation online
- § 14:9 —Truth of the statement
- § 14:10 —Opinions
- § 14:11 —Single publication rule online
- § 14:12 —Retraction rules online
- § 14:13 —Defamation rules and bloggers
- § 14:14 False information causing personal injury
- § 14:15 Misrepresentation causing economic loss
- § 14:16 CDA section 230
- § 14:17 —Interactive computer service and information
content provider
- § 14:18 —The distinction between interactive computer
service and information content provider
- § 14:19 —Protection for users

TABLE OF CONTENTS

- § 14:20 —Expansion of Section 230
- § 14:21 CDA Section 230—Social Media Sites—Content Regulations
- § 14:22 — — —Florida Legislation
- § 14:23 — — —Texas Legislation
- § 14:24 Undesired electronic messages
- § 14:25 —Governmental regulation of SPAM, CANSPAM
- § 14:26 —Private party responses
- § 14:27 —EU Directives on SPAM
- § 14:28 —Telephone Consumer Protection Act—Autodialers and robocalls
- § 14:29 *[Reserved]*

III. INTERNET THREATS

- § 14:30 Internet threats as a federal crime
- § 14:31 Internet threats—Section 875 and statutory issues
- § 14:32 —First Amendment issues
- § 14:33 Pre-transaction disclosures and fraud claims online

CHAPTER 15. SELECTED ISSUES IN INTERNET COPYRIGHT LAW

- § 15:1 Introduction
- § 15:2 Structure of the issues
- § 15:3 Automation and copying—Voluntary acts
- § 15:4 Downloading and uploading
- § 15:5 Distribution and making-available
- § 15:6 Displays and performances online
- § 15:7 Framing and linking
- § 15:8 Copyright and pop-up ads
- § 15:9 Indirect infringement online
- § 15:10 DMCA Section 512 Safe Harbors
- § 15:11 —Repeat infringer policy: in general
- § 15:12 —Transmitting entities
- § 15:13 —Caching
- § 15:14 —Information placed on a system by users
- § 15:15 — —Section 512(c)—Knowledge and “red flags”
- § 15:16 — — —Direct financial benefit and control
- § 15:17 — — —Balancing inducement and willful blindness
- § 15:18 — — —Designated agent
- § 15:19 —Links to infringing material
- § 15:20 —Notice and takedown provisions
- § 15:21 DMCA Section 512—Subpoenas to identify alleged infringers
- § 15:22 Posting and use—Posting as implied license
- § 15:23 Use of online images as fair use

- § 15:24 Digital reproduction and distribution (including streaming)
- § 15:25 —Music—Background
- § 15:26 — —ASCAP and consent decrees
- § 15:27 — —ASCAP and consent decree—Streaming
- § 15:28 — — —Review and attempted extension
- § 15:29 — —ASCAP and consent decrees—*United States v. Broadcast Music, Inc.*
- § 15:30 — —ASCAP and consent decree—New developments
- § 15:31 — —Musical works and compulsory licenses
- § 15:32 — — —Music Modernization Act
- § 15:33 — — —Section 115 compulsory licenses: Conditions for claiming
- § 15:34 — — —Section 115 compulsory licenses: Process for claiming
- § 15:35 — — —Section 115 compulsory licenses: Royalties
- § 15:36 — — —Section 114 compulsory licenses: Noninteractive digital music services
- § 15:37 — —ASCAP and consent decrees
- § 15:38 Streaming and public performance—Streaming as a cable system
- § 15:39 Damages in personal downloading and distribution cases
- § 15:40 Aggregators, search systems and transformative fair use
- § 15:41 —Google Books cases
- § 15:42 —Aggregators

CHAPTER 16. ACCESS TO ONLINE INFORMATION AND DATABASES

- § 16:1 Introduction
- § 16:2 Information as property

I. ACCESS CONTROL RIGHTS

- § 16:3 Access rights
- § 16:4 —Protected locations
- § 16:5 —Protected relationships
- § 16:6 —Contractual controls
- § 16:7 —Control of access devices
- § 16:8 Copyright and remote database access
- § 16:9 Trespass to chattels

II. DATABASE AND COPYRIGHT

- § 16:10 Database copyright generally
- § 16:11 Factual databases
- § 16:12 —What is a “fact”?

TABLE OF CONTENTS

- § 16:13 —Facts and effort: *Feist* case
- § 16:14 —Copyright text and video content
- § 16:15 Organization and selection
- § 16:16 —Copyrightable selection
- § 16:17 —Expression and infringement in arrangement
- § 16:18 Database infringement by downloading contents
- § 16:19 Computerizing a work and its arrangement
- § 16:20 Computerizing collective works
- § 16:21 Extraction and the EU directive
- § 16:22 Registration of database copyright

III. RIGHT OF ACCESS

- § 16:23 Public interest in ensuring access to public systems
- § 16:24 Access rights, public systems and the First Amendment

CHAPTER 17. PRIVACY, DATA PROTECTION, AND ACCESS TO INFORMATION

- § 17:1 Introduction

I. DEFINITIONS AND PROTECTED INTERESTS

- § 17:2 “Privacy” and “data protection” defined
- § 17:3 —Privacy as a balancing issue
- § 17:4 —Informational “privacy” as a traditional theme
- § 17:5 —“Data protection” as a contrasting idea
- § 17:6 —Business right of privacy
- § 17:7 Reasonable privacy expectations
- § 17:8 Third parties that disclose information they know
- § 17:9 —Governmental records
- § 17:10 —Information voluntarily disclosed to private parties
- § 17:11 Individual items as compared to aggregated facts
- § 17:12 Individual rights vs. public rights
- § 17:13 Sources of law
- § 17:14 —Constitutional litigation
- § 17:15 —Statutes and regulations
- § 17:16 —Privacy torts
- § 17:17 —Right to anonymity
- § 17:18 Privacy and data protection as property rights
- § 17:19 Privacy and risk of harm from disclosure

II. COMMON LAW AND PRIVACY TORTS

- § 17:20 General common-law approach
- § 17:21 Intrusion on seclusion

- § 17:22 Publishing private facts
- § 17:23 False-light publishing
- § 17:24 The right of publicity

III. COMMUNICATIONS PRIVACY

- § 17:25 Computer and communications privacy
- § 17:26 Constitutional restrictions
- § 17:27 Statutory restrictions
- § 17:28 —Wiretap Act: interceptions of a communication
- § 17:29 — —Consent of a party
- § 17:30 — —Readily accessible systems
- § 17:31 — —Remedies provisions
- § 17:32 ECPA: Stored Communications Act
- § 17:33 —Unauthorized third-party access
- § 17:34 — —Authorization by users
- § 17:35 — —Authorization by system provider
- § 17:36 —Voluntary disclosure by the service operator
- § 17:37 — —Disclosure of content of the communications
- § 17:38 — —Noncontent transactional data
- § 17:39 —Standards for compelled disclosure
- § 17:40 —Stored or intercepted communications
- § 17:41 Duty of service providers to assist
- § 17:42 CPNI and other customer proprietary information
- § 17:43 —Federal Computer Fraud and Abuse Act (CFAA)
- § 17:44 Automated surveillance of transactional information
- § 17:45 —Pen registers
- § 17:46 —Display pagers
- § 17:47 —Caller identification systems
- § 17:48 E-mail privacy issues
- § 17:49 —Governmental acquisition
- § 17:50 —Private parties: public systems
- § 17:51 —Employer-operated and nonpublic systems
- § 17:52 Cookies and transactional information

IV. GOVERNMENTAL DATA COLLECTION AND DISCLOSURE

- § 17:53 General issues
- § 17:54 Governmental data collection
- § 17:55 —Statutory limitations
- § 17:56 —Constitutional right of privacy
- § 17:57 —Accuracy of data
- § 17:58 Governmental disclosure vs. privacy
- § 17:59 —Privacy restrictions
- § 17:60 —Social Security numbers and similar data
- § 17:61 —Criminal records and registries

TABLE OF CONTENTS

V. PRIVATE DATA SYSTEMS

- § 17:62 Private data systems generally
- § 17:63 Data protection principles
- § 17:64 European data-protection rules
- § 17:65 EU Data Protection Directive
- § 17:66 EU Data Protection Regulation
- § 17:67 U.S. privacy rights and personal data
- § 17:68 —Private data collection
- § 17:69 — —Social security, driver's license and credit cards
- § 17:70 — —Zip code numbers
- § 17:71 — —Policy: prevent collection or prevent misuse?
- § 17:72 —Personal data use or disclosure
- § 17:73 Privacy policies, contracts, and deceptive practices
- § 17:74 Safe-harbor principles
- § 17:75 Private disclosure of Social Security numbers
- § 17:76 Identity theft
- § 17:77 —Federal identity theft criminal law
- § 17:78 —Fair and Accurate Credit Transactions Act
- § 17:79 —State laws and common law duties
- § 17:80 Personal data security issues
- § 17:81 —Security and the wrongdoer's liability
- § 17:82 —Data security as a three-party issue
- § 17:83 —Federal law creating security obligations
- § 17:84 —Security breach notification
- § 17:85 —Contracts, privacy policies, and deceptive acts
- § 17:86 —Implied or tort-based duties regarding security
- § 17:87 —Obligations to others in the system
- § 17:88 Insurance issues in data security breach claims
- § 17:89 Federal Article 3 standing

CHAPTER 18. COMPUTER CRIME

- § 18:1 Introduction

I. COMPUTER CRIME IN GENERAL

- § 18:2 "Computer crime" defined
- § 18:3 Search and seizure of computer systems

II. FINANCIAL CRIMES

- § 18:4 Traditional crimes: writings, intent, and misrepresentations
- § 18:5 Computer financial fraud
- § 18:6 —Access as an element
- § 18:7 —Authorization as an element
- § 18:8 —Level of crime and restitution

III. INFORMATION AND SOFTWARE THEFT CRIMES

- § 18:9 Tangibility, tradition, and policy choices
- § 18:10 —Intangibility and retained value
- § 18:11 —Depriving the owner
- § 18:12 Information theft statutes
- § 18:13 Trade secret theft
- § 18:14 Theft of computer programs
- § 18:15 —State laws
- § 18:16 —Federal copyright law
- § 18:17 Valuation and sanctions

IV. ACCESS AND USE CRIMES

- § 18:18 Computers as a protected environment
- § 18:19 Unauthorized access
- § 18:20 —Access and trespass to chattels
- § 18:21 —Intent to access
- § 18:22 Unauthorized computer use
- § 18:23 Scope of authorization
- § 18:24 Damaging, destroying, or modifying data

V. FEDERAL LAW

- § 18:25 General federal crimes
- § 18:26 —Theft of government property
- § 18:27 —Interstate stolen goods
- § 18:28 —Economic Espionage Act
- § 18:29 — —Defend Trade Secrets Act
- § 18:30 — — —Key definitions
- § 18:31 — — —Remedies
- § 18:32 — — —Preemption, jurisdiction and limitations
- § 18:33 Federal Computer Fraud and Abuse Act
- § 18:34 —Scope of statute
- § 18:35 — —Protected computers
- § 18:36 — —Distributed and cloud computing
- § 18:37 —Scope of Statute—Access
- § 18:38 —Scope of statute—Indirect access
- § 18:39 — —Authorization
- § 18:40 — —Transmission
- § 18:41 — —Interpretation Rules
- § 18:42 —Unauthorized access and exceeding authorized access
- § 18:43 — —Types of harm
- § 18:44 — —Violating company policy
- § 18:45 — —Violating terms of use
- § 18:46 — —Employment termination

TABLE OF CONTENTS

- § 18:47 — —Cease and desist letters
- § 18:48 — —Access to defraud
- § 18:49 —Civil actions
- § 18:50 —Transmission of harmful code
- § 18:51 Communications system abuse
- § 18:52 —Mail and wire fraud
- § 18:53 — —Intangible subject matter
- § 18:54 — —Interstate as an element
- § 18:55 — —Deprivation of property or services
- § 18:56 —Electronic privacy law

VI. SPECIAL CRIME ISSUES

- § 18:57 Hacking
- § 18:58 Viruses
- § 18:59 Obscenity and pornography in digital environments
- § 18:60 —Federal statutory law
- § 18:61 —Children Online Protection Act
- § 18:62 Interstate Communications: Threats (18 U.S.C.A. § 875)

CHAPTER 19. INTERNET JURISDICTION

- § 19:1 Introduction
- § 19:2 Internet jurisdiction generally
- § 19:3 Bases for personal jurisdiction
- § 19:4 —Long-arm statutes
- § 19:5 —Due process, minimum contacts and purposeful availment
- § 19:6 General or specific personal jurisdiction
- § 19:7 —General jurisdiction on the Internet
- § 19:8 —Specific jurisdiction on the internet
- § 19:9 Nature of the website
- § 19:10 —Passive sites and postings
- § 19:11 —Interactive sites
- § 19:12 Purposeful “effects test”
- § 19:13 Transactions and jurisdictional effects
- § 19:14 Specific, directed acts
- § 19:15 Personal jurisdiction in patent and patent license cases
- § 19:16 U.S. jurisdiction over foreign entities or events
- § 19:17 Commerce clause limits on state authority—
Background principles
- § 19:18 —Discrimination or burdens on interstate commerce
vs. neutral principles
- § 19:19 —Tax cases

APPENDICES

- APPENDIX A. Uniform Computer Information Transactions Act

THE LAW OF COMPUTER TECHNOLOGY

- APPENDIX B. “Antitrust Guidelines for the Licensing of Intellectual Property Issued by the U.S. Department of Justice and the Federal Trade Commission” January 12, 2017
- APPENDIX C. Report of Exemptions to the DMCA Anticircumvention Provision, Section 1201
- APPENDIX D. Consumer Review Fairness Act, 130 Stat. 1355
- APPENDIX E. U.S. Copyright Office, The Making Available Right in the United States, 2016 WL 827563 (Feb 2016)

Table of Laws and Rules

Table of Cases

Index

Table of Contents

PART I. IN GENERAL

CHAPTER 1. OVERVIEW; POWER OF STATE TO REGULATE

I. IN GENERAL

- § 1:1 Scope
- § 1:2 Overview
- § 1:3 Modern law

II. STATE REGULATION OF INSURANCE, IN GENERAL

- § 1:4 Power of state to regulate, generally
- § 1:5 —Subject to constitutional limitations
- § 1:6 —Impairment of right to contract
- § 1:7 —Power to tax insurers
- § 1:8 Statutory regulation, generally; overview
- § 1:9 —Federal law
- § 1:10 ——ERISA; HIPAA; COBRA

III. STATE DEPARTMENT OF FINANCIAL SERVICES

A. IN GENERAL

- § 1:11 Authorization
- § 1:12 Funding
- § 1:13 Practitioner resources; Web sites and organizations

B. STAFFING; SUPERINTENDENT; POWERS AND DUTIES

- § 1:14 Generally
- § 1:15 Gratuities; prohibited payments to department personnel
- § 1:16 Duties; powers
- § 1:17 —Regulation of persons or companies involved in insurance business; licensing; policy approval
- § 1:18 —Conducting hearings

CHAPTER 2. TYPES OF INSURANCE POLICIES; STATE APPROVAL OF FORMS

I. DEFINITIONS AND DISTINCTIONS, IN GENERAL

- § 2:1 Insurance policy or contract
- § 2:2 Doing an insurance business
- § 2:3 Risk retention group or risk management company
distinguished

II. PARTICULAR TYPES OF INSURANCE AUTHORIZED BY LAW

A. IN GENERAL

- § 2:4 Statutory authorization, generally

B. OF OR RELATING TO PERSONS

- § 2:5 Annuity
- § 2:6 Accident and health insurance
- § 2:7 —Medicare supplemental insurance; medical expense
indemnity distinguished
- § 2:8 Disability insurance
- § 2:9 Endowment insurance
- § 2:10 Industrial life, accident, and health insurance; policies
as prohibited
- § 2:11 Life insurance; group life insurance
- § 2:12 Long-term care insurance; health insurance for long
term care
- § 2:13 Tontine insurance
- § 2:14 Unemployment insurance
- § 2:15 Workers' compensation and employers' liability
insurance; railroad relief

C. OF OR RELATING TO PROPERTY

- § 2:16 Animal insurance
- § 2:17 Boiler and machinery insurance
- § 2:18 Builders' risk insurance
- § 2:19 Burglary and theft insurance
- § 2:20 Business interruption insurance
- § 2:21 Collision insurance
- § 2:22 Elevator insurance
- § 2:23 Fire insurance

TABLE OF CONTENTS

§ 2:24	Glass insurance
§ 2:25	Jewelers' block policy
§ 2:26	Marine and inland marine insurance
§ 2:27	Miscellaneous property insurance
§ 2:28	Motor vehicle and aircraft physical damage insurance
§ 2:29	—Collision damage waivers for rental vehicles
§ 2:30	Personal property floater insurance; reporting or provisional policy
§ 2:31	Residual value insurance
§ 2:32	Service, repair, or replacement contract; warranty distinguished
§ 2:33	Title insurance
§ 2:34	Water damage insurance

D. OF OR PERTAINING TO DEBTS OF INSURED

§ 2:35	Credit and credit unemployment insurance
§ 2:36	Fidelity and surety insurance
§ 2:37	Financial guaranty insurance
§ 2:38	“Gap” insurance
§ 2:39	Mortgage guaranty insurance
§ 2:40	Mortgage indemnity insurance

E. OTHER PARTICULAR TYPES OF INSURANCE

§ 2:41	Bail or bail bond surety
§ 2:42	Legal services insurance
§ 2:43	Liability insurance; personal or property liability
§ 2:44	—Motor vehicle or aircraft insurance—No-fault insurance
§ 2:45	Malpractice insurance
§ 2:46	Marine protection and indemnity insurance
§ 2:47	Prize indemnification insurance
§ 2:48	Reciprocal or interinsurance
§ 2:49	Reinsurance
§ 2:50	Other particular illustrations of “insurance contract”

III. POLICY FORM APPROVAL PROCESS

§ 2:51	Generally; policy approval and withdrawal of approval
§ 2:52	Accident and health, life, credit unemployment, and annuity policy forms
§ 2:53	—Individual accident and health insurance mandated policy provisions
§ 2:54	—Group or blanket accident and health insurance mandated policy provisions

- § 2:55 —Health insurance providing long term care; life care contract; long term care insurance
- § 2:56 Fire insurance
- § 2:57 Motor vehicle coverages—Automobile physical damage insurance
- § 2:58 —Motor vehicle accident coverage
- § 2:59 Non-profit medical and dental indemnity; health and hospital service corporations
- § 2:60 Property and casualty insurance
- § 2:61 Life settlements; viatical settlements
- § 2:62 Special risks and filing exemptions

IV. PREMIUMS AND APPROVAL PROCESS

A. DEFINITIONS AND NATURE

- § 2:63 Generally
- § 2:64 “Vanishing” premiums
- § 2:65 Definition and nature—Minimum premium; other particular premium formula

B. STATE REGULATION

- § 2:66 Disclosures
- § 2:67 —Prohibition against disclosure by insurer
- § 2:68 Rates; filed rates; rate-making bureaus
- § 2:69 Disputing filed rates
- § 2:70 Rate discrimination; rebating of premium
- § 2:71 —Specific criteria of genetic testing or HIV or AIDS status
- § 2:72 —Specific criteria of race, creed, color, national origin, disability, sex or marital status
- § 2:73 Changing premium rates—Changing filed rates
- § 2:74 —As to individual policies
- § 2:75 — —Mandated rate reductions
- § 2:76 Special risks and filing exemptions

C. INSURER’S RIGHT TO COLLECT PREMIUM

- § 2:77 Assessments, generally
- § 2:78 When obligation to pay arises; notice of premium due
- § 2:79 —Effect of grace periods; time limits
- § 2:80 What constitutes payment; effect of partial payment
- § 2:81 Burden of proof; questions of law or fact
- § 2:82 Waiver of payment
- § 2:83 Effect of non-payment; forfeiture; lapse
- § 2:84 Waiver of default for nonpayment

TABLE OF CONTENTS

§ 2:85 Return of premium or assessment

**CHAPTER 3. STATE REGULATION OF
INSURERS; LICENSES, CERTIFICATES, AND
APPROVALS**

**I. AUTHORIZATION TO DO INSURANCE
BUSINESS**

- § 3:1 Right to engage in insurance business; requirement of authorization
- § 3:2 —Medical or dental expense indemnity corporation, hospital or health service corporations
- § 3:3 Exemption from licensing requirement
- § 3:4 Application; approval procedure; issuance or denial
- § 3:5 License form and content
- § 3:6 Qualification; certificate of qualification
- § 3:7 —Agent for service of process
- § 3:8 —Deposit of securities
- § 3:9 Effect of authorization of insured
- § 3:10 Duration of license or authorization
- § 3:11 Examination

II. REGULATION OF INSURERS, IN GENERAL

- § 3:12 Insurance rates; mandatory filing
- § 3:13 Regulatory assessment fees
- § 3:14 Insurance forms
- § 3:15 Reports and statements required to be filed by insurer
- § 3:16 Special risks license

**III. FOREIGN, ALIEN, OR UNAUTHORIZED
INSURERS**

A. IN GENERAL

- § 3:17 Definitions
- § 3:18 Power to regulate
- § 3:19 —“Doing business”; “minimum contacts” tests

B. PARTICULAR REGULATION

1. In General

- § 3:20 Exclusion from particular insurance activities
- § 3:21 Exclusion from particular insurance activities—
Federal regulation of multistate risk retention groups

- § 3:22 Retaliatory statutes
- § 3:23 Miscellaneous regulation; abandoned proceeds
- 2. Admission to State; License, Certificate, and Authorization
- § 3:24 Conditions for admission to state; authorization to do business
- § 3:25 Capital requirements
- § 3:26 Requirements as to investments; deposit of securities
- § 3:27 Issuance of license
- § 3:28 Effect of issuance of license, generally
- § 3:29 Duration of license; renewal of license
- § 3:30 Revoking or suspending existing license; denying renewal of license
- § 3:31 Reporting; annual statements and examinations

CHAPTER 4. CHANGES IN INSURER'S STRUCTURE; DISSOLUTION

I. IN GENERAL

- § 4:1 Scope and nature of discussion

II. CHANGES IN NATURE AND STRUCTURE

A. CONSOLIDATION; MERGER

- § 4:2 Definitions, generally
- § 4:3 Who may merge or consolidate
- § 4:4 Procedure, generally; meeting; approval
- § 4:5 —Agreement; contents; adoption
- § 4:6 —Emergency procedure
- § 4:7 Effect of merger or consolidation—On consolidated company
- § 4:8 — —Where one company is a member of The Life Insurance Guaranty Corporation
- § 4:9 —On stockholders or members

B. CONVERSION OR REORGANIZATION, IN GENERAL

- § 4:10 Generally
- § 4:11 Demutualization, generally; entitlement of policyholders to proceeds
- § 4:12 Superintendent's jurisdiction; effect on insured's right to challenge

TABLE OF CONTENTS

- § 4:13 Of stock life company into mutual company
- § 4:14 Of fraternal benefit society or retirement system into mutual life insurance company
- § 4:15 Of assessment corporation into advance premium corporation
- § 4:16 Of advance premium or assessment corporation into mutual property/casualty insurance company; reconversion
- § 4:17 Of mutual property/casualty insurance company or advance premium corporation into stock company
- § 4:18 Of reciprocal insurer into stock or mutual company
- § 4:19 Of savings banks life insurance into mutual life insurance company

C. REORGANIZATION

- § 4:20 Of domestic guarantee capital life insurer into stock life insurance company
- § 4:21 Of domestic mutual life insurer into domestic stock life insurer; demutualization

D. DOMESTICATION AND REDOMESTICATION

- § 4:22 Domestication of United States branch of alien insurer
- § 4:23 Redomestication of foreign insurer

E. SEVERING PART OF INSURER'S BUSINESS OPERATIONS; DIVESTITURE OF LESS THAN ALL OF INSURER'S BUSINESS

- § 4:24 Severing single division; restructuring of remaining entity
- § 4:25 Procedure; approvals

III. LIQUIDATION AND DISSOLUTION; REHABILITATION AND CONSERVATION

A. IN GENERAL

- § 4:26 Exclusiveness of proceedings
- § 4:27 Definition and nature of conditions—Insolvency
- § 4:28 —Impairment
- § 4:29 Grounds for instituting proceedings—Rehabilitation or conservation
- § 4:30 —Liquidation and dissolution

B. OVERVIEW OF PROCEEDINGS

- § 4:31 Institution, generally

- § 4:32 Enjoining transaction of business or waste or disposition of property
- § 4:33 Foreign liquidation proceedings; lifting foreign stay of proceedings
- § 4:34 Order of rehabilitation
- § 4:35 Order of liquidation
- § 4:36 Order to conserve assets; foreign or alien insurers

C. STATUS, POWERS, DUTIES OF REHABILITATOR OR LIQUIDATOR

- § 4:37 Superintendent
- § 4:38 Role of court
- § 4:39 Role of other state agencies
- § 4:40 Powers and duties, generally
- § 4:41 —Application and proposal to disburse assets
- § 4:42 —Avoiding fraudulent transactions and transfers
- § 4:43 Personal liability

D. EFFECT ON POLICYHOLDERS, MEMBERS, AND CREDITORS

1. In General

- § 4:44 Time as of which rights and liabilities are determined
- § 4:45 Liability of members of mutual insurer; assessments
- § 4:46 Rights and liabilities of agents and brokers
- § 4:47 Qualified financial contracts
- § 4:48 Choice of law

2. Claims

- § 4:49 Notice; time for filing
- § 4:50 Proof of claim
- § 4:51 Allowance
- § 4:52 Setoffs and counterclaims
- § 4:53 Defenses; setoffs; counterclaims
- § 4:54 Priorities as to particular claims
- § 4:55 —Claims against life insurers

3. Distributions

- § 4:56 Distribution of assets, generally
- § 4:57 Priorities as to particular claims—Injunctions; multi-state insurers
- § 4:58 Statutory deposits of domestic companies, generally
- § 4:59 Delinquency proceedings; Uniform Insurers Liquidation Act

TABLE OF CONTENTS

- § 4:60 Multi-state proceedings; effect of out-of-state proceedings; stays; injunctions

CHAPTER 5. PROHIBITED PRACTICES; ENFORCEMENT; DISCIPLINE, PENALTIES, AND SANCTION OF INSURERS

I. IN GENERAL

- § 5:1 General prohibition against violation of Insurance Law; penalty
- § 5:2 General procedure—By persons other than Superintendent
- § 5:3 —By Superintendent
- § 5:4 Other specific provisions authorizing penalties for general violations of law
- § 5:5 Personal liability

II. SPECIFIC ACTIONS PENALIZED UNDER INSURANCE LAW

A. IN GENERAL

- § 5:6 Annual statements and reporting
- § 5:7 Articles and charters; amendments; membership
- § 5:8 Certificates of insurance; willful violations
- § 5:9 Claims settlement
- § 5:10 Fiduciary breach by agent or broker
- § 5:11 Forged insurance identification cards
- § 5:12 Forms approval and filing violations
- § 5:13 Fraudulent insurance acts
- § 5:14 Holding company violations
- § 5:15 Inadequate surplus or reserves
- § 5:16 Insolvency
- § 5:17 License or permit violations; doing business without license or permit
- § 5:18 Life insurance and annuity business expense limitations
- § 5:19 Medical information; genetic testing
- § 5:20 Misrepresentations, misleading statements
- § 5:21 Payments
- § 5:22 Persons serving in particular capacities
- § 5:23 Rebating and discrimination
- § 5:24 Receiving unlawful benefit
- § 5:25 Lavish or excessive activities, advertising and political contributions

- § 5:26 Stock; dividends
- § 5:27 Stock ownership, interlocking directorates, common management
- § 5:28 Miscellaneous other specific actions

B. UNFAIR INSURANCE TRADE PRACTICES

1. In General

- § 5:29 What constitutes unfair trade practices
- § 5:30 —Enumerated acts
- § 5:31 Applicability of General Business Law

2. Particular Practices

- § 5:32 Misleading or deceptive contents of advertisements
- § 5:33 Misrepresenting policy terms
- § 5:34 Misleading statements and incomplete comparisons
- § 5:35 Wrongful replacement
- § 5:36 False statements as to financial condition or authority
- § 5:37 Requiring insurance through a particular agent or broker
- § 5:38 Insurance in connection with purchase of other goods
- § 5:39 Discrimination and rebating by insurers
- § 5:40 Unfair claim settlement practices by insurers

3. Procedure to Determine Violation

- § 5:41 Generally
- § 5:42 Report; determined violation

CHAPTER 6. INDIVIDUALS INVOLVED IN INSURANCE BUSINESSES; BROKERS, AGENTS, CONSULTANTS

I. DEFINITIONS AND DISTINCTIONS

- § 6:1 Insurance agent; related definitions
- § 6:2 —Persons excluded from definition
- § 6:3 Insurance broker; related definitions
- § 6:4 —Persons excluded from definition
- § 6:5 Insurance producer
- § 6:6 Miscellaneous related terms

II. STATUTORY REGULATION

A. LICENSE; CERTIFICATE OF AUTHORITY

- § 6:7 Requirement, generally

TABLE OF CONTENTS

- § 6:8 —Excess line brokers
- § 6:9 Exceptions from license requirement
- § 6:10 Application for, and issuance of, license—To agent
- § 6:11 —To broker
- § 6:12 —Temporary licenses for agents or brokers
- § 6:13 Refusal to issue license
- § 6:14 Revocation, suspension, or non-renewal of license
- § 6:15 Effect of failure to procure license

B. POWERS AND DUTIES OF LICENSEES

- § 6:16 To act on behalf of insurer, fraternal benefit society or HMO
- § 6:17 —Unlicensed or unauthorized insurers
- § 6:18 To accept applications; sell, solicit, negotiate, issue, or deliver
- § 6:19 To apply for additional licenses
- § 6:20 Not to collect excess over premium; not to engage in rebating
- § 6:21 To be compensated by insurer; commissions
- § 6:22 Unfair and deceptive practices or advertising

III. NATURE OF RELATIONSHIP AS ONE OF AGENCY

A. IN GENERAL

- § 6:23 Status of insurance agent and insurance broker

B. WHO IS AGENT'S PRINCIPAL

- § 6:24 Insurer as principal—Of insurance agent
- § 6:25 —Of insurance broker
- § 6:26 Insured as principal—Of insurance broker
- § 6:27 Dual or multiple party representation; statutory protection as to premiums remitted

C. CREATION AND SCOPE OF RELATIONSHIP

- § 6:28 Generally; implied agency
- § 6:29 Terminating agency
- § 6:30 —Statutory notice requirements
- § 6:31 —Effect of termination of agency
- § 6:32 Authority of agent to bind insured or insurer, generally
- § 6:33 Ratification of agent's unauthorized acts, generally

D. DUTIES AND LIABILITIES OF INSURANCE AGENTS AND BROKERS

1. As Owed to Insured

a. In General

- § 6:34 Sources of duty
- § 6:35 As expressed or implied in agency contract
- § 6:36 Defenses; insured's comparative negligence
- § 6:37 Effect of agent acting gratuitously
- § 6:38 Effect of waiver or indemnification obtained by broker or agent from insured

b. Particular Duties

- § 6:39 Reasonable diligence; duty to disclose, generally
- § 6:40 To act as directed; duty to notify if unable to act
- § 6:41 To give advice
- § 6:42 To record accurately and review application and other documents submitted to insurer
- § 6:43 Loyalty
- § 6:44 To transmit premiums delivered by insured
- § 6:45 To present claim to insurer

2. As Owed to Insurer

- § 6:46 Generally
- § 6:47 To act within authority; to obey instructions
- § 6:48 To report and disclose information to insurer
- § 6:49 —Notice of claims; handling of claims
- § 6:50 To transmit or deposit premiums and property deposited for insurer's benefit

E. RIGHTS

1. Against Insured

- § 6:51 To compensation; statutory limitation
- § 6:52 To recover premiums
- § 6:53 To lien

2. Against Insurer

- § 6:54 To compensation; commissions
- § 6:55 —Statutory regulations
- § 6:56 —Renewal premiums
- § 6:57 To expirations and other insurance data

TABLE OF CONTENTS

IV. RIGHTS AND LIABILITIES AS TO THIRD PERSONS

A. AS TO INSURER

§ 6:58 Based on contracts of agent

§ 6:59 Based on torts by agent

B. AS TO AGENT

§ 6:60 Based on contract or policy

§ 6:61 Based on tort

V. OTHER INSURANCE PROFESSIONALS; CONSULTANTS; ADVISORS

§ 6:62 Generally; licensing

CHAPTER 7. THIRD PARTY DUTY TO OBTAIN INSURANCE

§ 7:1 Generally; duty to procure as contractual

§ 7:2 Scope of duty; what constitutes breach

§ 7:3 Duration of obligation

§ 7:4 Effect of breach; liability

§ 7:5 Effect of compliance

§ 7:6 Waiver of liability

PART II. POLICY ISSUANCE AND CANCELLATION

CHAPTER 8. POLICY, IN GENERAL; APPLICATION; BINDERS; ISSUANCE AND DENIAL

I. NATURE OF POLICY; INSURANCE DOCUMENTS AS CONTRACTS; ELEMENTS

§ 8:1 Definitions and distinctions

§ 8:2 Nature of policy, generally

§ 8:3 Elements, generally—Policy; form

§ 8:4 — —Statutory requirements

§ 8:5 — — —Governing law and conflict of laws

§ 8:6 —Contract of insurance

§ 8:7 —Agreements for preliminary or temporary insurance; binders

- § 8:8 Parties to insurance contract, generally
- § 8:9 Transferability of policy
- § 8:10 Notices from insurer; electronic delivery

II. APPLICATION PROCESS

- § 8:11 Nature of application, generally
- § 8:12 Representations and warranties by applicant in application
- § 8:13 Insurer's duty upon receipt of application
- § 8:14 Processing of application; rating or underwriting of risks; disclosures

III. ACCEPTANCE OF APPLICATION; CONDITIONAL ACCEPTANCE

A. IN GENERAL

- § 8:15 Acceptance of application, generally
- § 8:16 Conditional acceptance
- § 8:17 Effect of acceptance of application

B. PRE-CONDITIONS TO UNQUALIFIED ACCEPTANCE

1. Payment of Premium

- § 8:18 Generally
- § 8:19 Waiver of requirement

2. Other Conditions Precedent

- § 8:20 Generally
- § 8:21 Insured's good health at time of delivery of policy; mandatory physical examination
- § 8:22 Determination that insured is "insurable risk"
- § 8:23 Inspection of premises to be insured
- § 8:24 Expiration of waiting period

IV. BINDER, CERTIFICATE, OR COMMITMENT; POLICY ISSUANCE

- § 8:25 Binder; effect as temporary insurance
- § 8:26 Issuance of policy; definitions and distinctions
- § 8:27 Issuance of policy—Signature requirement
- § 8:28 Certificate of insurance
- § 8:29 Effective date of policy
- § 8:30 Delivery of policy

TABLE OF CONTENTS

- § 8:31 Delivery of certificate or policy—Acceptance by insured
- § 8:32 —Insured’s duty to examine

V. REJECTION OF APPLICATION; DENIAL OR NON-ISSUANCE OF FINAL POLICY

A. IN GENERAL

- § 8:33 Rejection of application

B. GROUNDS FOR DENIAL OR NON-ISSUANCE

- § 8:34 Material misrepresentation
- § 8:35 Failure to fulfill conditions for approval
- § 8:36 Miscellaneous other grounds

C. PROCEDURE TO DENY OR DECLINE TO ISSUE FINAL POLICY

- § 8:37 Duty of good faith
- § 8:38 Duty to act within reasonable time
- § 8:39 Notice to insured

CHAPTER 9. MODIFICATION OR AMENDMENT OF POLICY; REFORMATION

I. IN GENERAL

- § 9:1 Scope of chapter

II. AMENDMENT OR MODIFICATION BY ACTION OF PARTIES

- § 9:2 What constitutes “amendment” or “modification” of policy; particular actions distinguished
- § 9:3 Who may initiate
- § 9:4 When authorized—By agreement of parties
- § 9:5 —By statute; particular types of policies affected
- § 9:6 Manner of effecting modification or amendment
- § 9:7 —Statutory provisions affecting particular types of policies
- § 9:8 —Notice to insured
- § 9:9 —Amendment sought by insured; change of beneficiary
- § 9:10 Proof of intent to modify
- § 9:11 Effect of modification or amendment
- § 9:12 —Change requested by insured

III. REFORMATION

- § 9:13 Generally
- § 9:14 Persons entitled to reformation
- § 9:15 Time to seek; effect of laches or delay by petitioner
- § 9:16 Grounds for reformation
- § 9:17 Burden of proof; sufficiency of evidence
- § 9:18 Particular mistakes, changes, or corrections—Identity of insured
- § 9:19 —Property insured
- § 9:20 —Other risk insured
- § 9:21 Defenses to reformation

CHAPTER 10. POLICY RENEWAL, REINSTATEMENT, OR EXCHANGE

I. RENEWAL OF POLICY

A. DEFINITION AND NATURE OF RENEWAL

- § 10:1 Nature of renewal, generally; renewal as contract
- § 10:2 Under particular types of policies, generally
- § 10:3 Effect of renewal upon terms and conditions of renewed policy
- § 10:4 Effect of intervening changes in status or organization of insurer

B. PROCEDURE TO EFFECT RENEWAL

1. In General

- § 10:5 Request for renewal; renewal application
- § 10:6 Payment of premium
- § 10:7 —Prepayment as condition precedent
- § 10:8 Renewal by agent
- § 10:9 Issuance of renewal binder by insurer
- § 10:10 Issuance of substituted equivalent policy by insurer
- § 10:11 Oral renewal
- § 10:12 Effect of failure to comply with renewal procedures

2. Renewal Upon Changed Conditions

- § 10:13 Types of changed conditions
- § 10:14 Notice to insured

C. DETERMINATION NOT TO RENEW

1. By Insurer

- § 10:15 Grounds, generally

TABLE OF CONTENTS

- § 10:16 Grounds—Misrepresentation by insured
- § 10:17 Procedure; notice to insured of nonrenewal
- § 10:18 Notice of nonrenewal—Commercial, professional, and public entity insurance
- § 10:19 Procedure; notice of nonrenewal—Non-profit medical, dental, health, and hospital service insurance
- 2. By Insured
- § 10:20 Procedure; notice to insurer

II. REVIVAL OR REINSTATEMENT OF POLICY

- § 10:21 When required; mandatory policy provisions
- § 10:22 When reinstatement required; mandatory policy provisions—Health and accident insurance
- § 10:23 Application
- § 10:24 Response to application
- § 10:25 Preconditions to reinstatement or revival—Payment of past due premiums
- § 10:26 —Insurability; good health
- § 10:27 Effect of loss prior to reinstatement
- § 10:28 Effect of reinstatement

III. EXCHANGE OR CONVERSION OF POLICY

- § 10:29 Generally

CHAPTER 11. CANCELLATION OR TERMINATION OF POLICY OR COVERAGE

I. IN GENERAL

- § 11:1 Strict compliance
- § 11:2 Partial cancellation; additional coverage distinguished
- § 11:3 Retroactive cancellation

II. UPON MUTUAL CONSENT OR AGREEMENT

- § 11:4 Generally

III. BY INSURER

A. IN GENERAL

- § 11:5 Right of insurer, generally; prerequisites to exercise
- § 11:6 Waiver; estoppel

- § 11:7 Effect of improper cancellation by insurer; role of bad faith

B. STATUTORY RULES FOR PARTICULAR POLICIES

- § 11:8 Generally
- § 11:9 Automobile, property or casualty insurance
- § 11:10 Fire insurance
- § 11:11 Commercial risk, professional liability, and public entity insurance
- § 11:12 Accident and health insurance; life insurance
- § 11:13 Nonprofit medical, dental, health, and hospital service insurance
- § 11:14 Gap insurance
- § 11:15 Reinsurance

C. GROUNDS

- § 11:16 Material misrepresentation by insured
- § 11:17 Nonpayment of premiums
- § 11:18 Loss history of insured
- § 11:19 Geographic location of risk
- § 11:20 Physical changes in insured property
- § 11:21 Age of insured
- § 11:22 Noncompliance with recommendations
- § 11:23 Other particular acts by insured; loss of license; conviction of crime
- § 11:24 Grounds relating to insurer's financial condition
- § 11:25 Miscellaneous other reasons

D. NOTICE AND OPPORTUNITY TO CURE

1. In General

- § 11:26 Statutory requirements, generally
- § 11:27 Automobile, property or casualty insurance
- § 11:28 Commercial risk, professional liability, and public entity insurance
- § 11:29 Other forms of insurance
- § 11:30 Strict compliance with statutory notice requirements

2. Who Must Be Given Notice

- § 11:31 Insured; effect of multiple, joint, or additional insureds
- § 11:32 Agent or broker
- § 11:33 Department of Motor Vehicles under automobile insurance policy

TABLE OF CONTENTS

- § 11:34 Loss payee; assignee; other person
- § 11:35 Designee of senior citizen insured
- 3. Form, Content, and Delivery of Notice
- § 11:36 Form and content, generally
- § 11:37 Timeliness of notice of cancellation; computation of time upon which notice becomes effective
- § 11:38 Delivery or mailing of notice of cancellation; requirement of actual receipt
- § 11:39 Return of unearned premiums

IV. BY INSURED

- § 11:40 When permitted
- § 11:41 Who can cancel; effect of multiple insureds
- § 11:42 Form and content
- § 11:43 When effective
- § 11:44 Fraudulent inducement to purchase; insurer's defenses

V. RESCISSION OF CANCELLATION; AVOIDING CANCELLATION

- § 11:45 Mutual mistake or fraud inducing cancellation

VI. EFFECT OF CANCELLATION

- § 11:46 Accrued rights of insured
- § 11:47 Unearned premiums

PART III. SCOPE OF COVERAGE— CONSTRUCTION AND INTERPRETATION, IN GENERAL

CHAPTER 12. IN GENERAL

I. WHAT CONSTITUTES INSURANCE CONTRACT OR POLICY

- § 12:1 Completeness; policy as entire contract
- § 12:2 Endorsements; incorporation by reference; incorporation of application
- § 12:3 —Upon amendment or renewal of policy
- § 12:4 Endorsements; incorporation by reference—Matters presumed incorporated; filed rate schedules

- § 12:5 Construction of endorsement
- § 12:6 Proof issues

II. VALIDITY AND LEGALITY OF CONTRACT OR PROVISIONS; GOVERNING LAW

- § 12:7 Validity; effect of contract variance with state law
- § 12:8 Partial invalidity or conflict
- § 12:9 What constitutes conflict with state law
- § 12:10 Conflict of laws
- § 12:11 Choice of law

III. SEVERABILITY OF CONTRACTS OR PROVISIONS

- § 12:12 Generally
- § 12:13 Determining severability; intent
- § 12:14 “Severability” provisions

IV. APPLICATION OF RULES OF CONTRACT CONSTRUCTION

- § 12:15 Applicability of rules of construction of contracts, generally
- § 12:16 Contracts employing statutory language; standard form contracts
- § 12:17 Deference to regulatory interpretations
- § 12:18 Construction as a question of law
- § 12:19 Ambiguity
- § 12:20 Liberal or strict construction
- § 12:21 Reference to documents; nature and purpose; relevant circumstances
- § 12:22 Presumptions
- § 12:23 Coverage by estoppel or waiver
- § 12:24 Burden of proof

CHAPTER 13. PERSONS COVERED, INSURED, OR ENTITLED TO BENEFITS UNDER POLICY

I. NAMED INSURED

A. IN GENERAL

- § 13:1 Insured, generally; nature of relationship to insurer
- § 13:2 Multiple insureds

TABLE OF CONTENTS

§ 13:3 Description; sufficiency of identification

B. PARTICULAR PERSONS AS INSURED

§ 13:4 Partners; partnership; corporation; business organization

§ 13:5 Minors

§ 13:6 Transferee of interest in policy

II. ADDITIONAL INSURED

§ 13:7 Generally

§ 13:8 Description; sufficiency

§ 13:9 —On certificate of insurance

§ 13:10 —Incorporating named insured's obligations to provide insurance under other covered contracts

§ 13:11 —Claims arising from named insured's work

§ 13:12 Application to particular persons—Members or residents of insured's household

§ 13:13 —Landlord or tenant of real property; lessor and lessee of personal property

§ 13:14 —State or municipality or agency thereof

§ 13:15 —Employees

§ 13:16 —Contractors

§ 13:17 Effect of status as additional insured

III. LOSS PAYEE

§ 13:18 Nature of relationship to insured and insurer, generally

§ 13:19 Particular types or classes of loss payees

IV. BENEFICIARY

§ 13:20 Definitions and distinctions

§ 13:21 Construction of provisions

§ 13:22 Designation or change of designation; manner, form, content

§ 13:23 Nature of beneficiary's interest

§ 13:24 Who may be beneficiary; persons eligible

§ 13:25 Effect of designation; right to change designation

CHAPTER 14. INSURABLE INTEREST

I. IN GENERAL

§ 14:1 Nature of interest; definitions; distinctions

- § 14:2 Effect of lack of insurable interest; burden to raise;
waiver; estoppel

II. INSURABLE INTEREST IN PROPERTY

- § 14:3 Generally
§ 14:4 Statutory requirement
§ 14:5 Nature and extent of interest; equitable interests
§ 14:6 Particular relationships as giving rise to insurable
interest—Spouses
§ 14:7 —Parents and their children
§ 14:8 —Landlord and tenant of real property
§ 14:9 —Lessor and lessee of personal property
§ 14:10 —Creditors and debtors
§ 14:11 Particular relationships giving rise to insurable
interest—Mortgagor and mortgagee
§ 14:12 — —Effect of default or foreclosure
§ 14:13 —Persons in possession of stolen property
§ 14:14 —Seller and buyer; vendor and purchaser/vendee
§ 14:15 —Other particular relationships

III. INSURABLE INTEREST IN LIFE OR HEALTH

- § 14:16 Generally
§ 14:17 Whose life may be insured; insuring own life to
benefit another
§ 14:18 Other prerequisites to such insurance
§ 14:19 Particular relationships—Spouses
§ 14:20 —Parent and child
§ 14:21 —Creditor and debtor
§ 14:22 —Employment and business relationships

CHAPTER 15. COMMON ISSUES INVOLVING SCOPE OF COVERAGE

I. IN GENERAL

- § 15:1 Risks and coverage generally
§ 15:2 Risks and coverage, generally—Statutory framework
§ 15:3 Subject matter of insurance
§ 15:4 Cause of loss; proximate cause
§ 15:5 Limitations of liability; exclusions from coverage,
generally
§ 15:6 —Burden of proof
§ 15:7 Waiver or estoppel

TABLE OF CONTENTS

II. LIABILITY COVERAGE

- § 15:8 Claims-made coverage
- § 15:9 Discrimination
- § 15:10 Criminal or intentional conduct
- § 15:11 Punitive damages award

**PART IV. SCOPE OF COVERAGE—
PROPERTY, CASUALTY,
LIABILITY, AND RELATED
COVERAGES**

**CHAPTER 16. PROPERTY AND CASUALTY
COVERAGE, IN GENERAL**

I. TYPES OF COVERAGES, IN GENERAL

A. IN GENERAL

- § 16:1 Nature of coverages, generally; relation to other coverages
- § 16:2 Particular types of insurance covered elsewhere; automobiles

II. INSURED PROPERTY, IN GENERAL

A. SUBJECT MATTER

- § 16:3 Description of property insured; effect of misdescription
- § 16:4 Real property; buildings and improvements; appurtenances
- § 16:5 Personal property; goods
- § 16:6 —Custody issues
- § 16:7 —Floater policies
- § 16:8 Newly acquired property
- § 16:9 Location of property

**B. CONDITIONS, LIMITATIONS, WARRANTIES,
OR DUTIES RELATING TO INSURED
PROPERTY**

1. In General

- § 16:10 Alienation or change in ownership
- § 16:11 Inspection of property by insurer

- § 16:12 Inventory of property; accounting for property
- § 16:13 —Inventory shortage exclusion
- § 16:14 Other insurance, generally
- § 16:15 Value of property insured
- 2. Status of Insured's Title to, or Interest in, Insured
- § 16:16 Misrepresentation, generally
- § 16:17 What constitutes ownership, misrepresentation of ownership
- § 16:18 Effect of foreclosure
- § 16:19 Mortgage or other encumbrance of property
- § 16:20 Notice of change of ownership
- 3. Use or Occupancy of Property
- § 16:21 Generally
- § 16:22 Business use of personal property
- § 16:23 Residential use of property
- § 16:24 Vacancy or unoccupancy
- § 16:25 —Proving vacancy or unoccupancy
- § 16:26 —What constitutes
- 4. Insured's Other Insurance or Loss History
- § 16:27 Prior losses
- § 16:28 Prior cancellations
- 5. Increase of Risk or Hazard
- § 16:29 Generally
- § 16:30 Keeping or storage of hazardous materials

III. RISKS OR PERILS COVERED OR EXCLUDED, IN GENERAL

A. COVERED PERILS

- § 16:31 Generally
- § 16:32 Covered peril; named peril, generally
- § 16:33 “All-risk” policy; coverage of fortuitous events
- § 16:34 Business interruption coverage
- § 16:35 Particular perils—Governmental act or law
- § 16:36 —Water damage or flooding
- § 16:37 —Forces of nature other than water
- § 16:38 —Vandalism; willful and malicious damage
- § 16:39 —Miscellaneous covered or named perils; terrorism; collapse; explosion

TABLE OF CONTENTS

B. EXCLUDED PERILS

- § 16:40 Excluded perils, generally
- § 16:41 Weather conditions
- § 16:42 Water damage
- § 16:43 —Flood damage
- § 16:44 Movement of earth or structure; collapse
- § 16:45 Corrosion; deterioration; “wear-and-tear”; mold; fungus
- § 16:46 Pollution; contamination
- § 16:47 Unexplained disappearance or loss
- § 16:48 Negligent or faulty workmanship; defective materials
- § 16:49 Intentional or wrongful acts of insured; dishonest acts exclusion
- § 16:50 Miscellaneous other exclusions from coverage; governmental act or law; terrorism; explosion

IV. SPECIFIC RISKS—FIRE

- § 16:51 Scope of coverage, generally
- § 16:52 Statutory standard fire insurance policy
- § 16:53 —Statutory form
- § 16:54 Representations and warranties relating to fire; maintenance of fire-fighting apparatus
- § 16:55 Acts by insured causing fire; negligence; willfulness
- § 16:56 Exclusions

V. PARTICULAR RISKS—THEFT

A. IN GENERAL

- § 16:57 Scope of coverage, generally; what constitutes act within coverage
- § 16:58 As exclusion from coverage

B. REPRESENTATIONS, WARRANTIES, CONDITIONS, OR OTHER LIMITATIONS ON COVERAGE

- § 16:59 Maintenance of anti-theft systems, devices or equipment; burglar alarms
- § 16:60 Security personnel; guards

VI. SERVICE CONTRACTS

- § 16:61 Generally; nature; distinctions
- § 16:62 What constitutes “service contract”
- § 16:63 Specific types of service contracts authorized by statute

§ 16:64 —Vehicle-related service contracts

CHAPTER 17. LIABILITY COVERAGE; COMMERCIAL LIABILITY

I. IN GENERAL

- § 17:1 Nature of liability coverage, generally
- § 17:2 —“Claims made” and “occurrence” coverages
- § 17:3 —Excess and umbrella coverages
- § 17:4 Statutory regulation, generally
- § 17:5 Effect of multiple theories of liability of insured
- § 17:6 Commencement and duration of coverage; accrual of claim
- § 17:7 —Triggering event; effect of ongoing or continuing occurrences
- § 17:8 Persons entitled to coverage; corporate officers
- § 17:9 Types of injury compensable
- § 17:10 —Bodily injury
- § 17:11 Types of compensable injury—Property damage
- § 17:12 Types of injury compensable—Defense costs; attorney fees; related expenses
- § 17:13 Burden of proof

II. PARTICULAR COVERAGES OR RISKS

A. COVERED RISKS

- § 17:14 Accidental injuries
- § 17:15 —As excluding intentional acts
- § 17:16 —Continuous or repeated acts or exposure
- § 17:17 —Defective work product
- § 17:18 —Negligence of insured as equivalent
- § 17:19 Advertising injury
- § 17:20 Business; commercial liability; commercial general liability (CGL) coverage
- § 17:21 Contractual liability
- § 17:22 Corporate officer or director liability
- § 17:23 Employment
- § 17:24 Personal injury; tort
- § 17:25 Pollution; environmental hazard
- § 17:26 Premises liability; ownership, use, or maintenance of premises
- § 17:27 —Homeowner’s liability
- § 17:28 —Landlord and tenant

TABLE OF CONTENTS

- § 17:29 Professional liability; errors and omissions; malpractice
- § 17:30 Operations hazards; injuries “arising out of work”; ongoing and completed operations
- § 17:31 Territorial coverage
- § 17:32 Workers’ compensation

B. RISKS EXCLUDED FROM COVERAGE

1. In General; Public Policy Exclusions from Coverage

- § 17:33 Generally
- § 17:34 Known loss doctrine
- § 17:35 Deliberate acts; dishonesty; bad faith
- § 17:36 Discrimination; disparate impact discrimination
- § 17:37 Penal consequences; punitive damages

2. Express Exclusions

- § 17:38 Amusement devices; exclusion of use of particular apparatus
- § 17:39 Animals; dogs; dangerous dog
- § 17:40 Antitrust
- § 17:41 Assault; physical contact
- § 17:42 Benefit accruing to insured; direct or indirect benefit of coverage
- § 17:43 Business use or pursuit; professional services
- § 17:44 Communicable disease
- § 17:45 Contract; interference with; breach
- § 17:46 Customer safety precautions
- § 17:47 Defamation; slander; libel; trademark infringement; other advertising injury
- § 17:48 Employment; temporary workers
- § 17:49 Intellectual property; media; trademark; copyright
- § 17:50 Intentional, willful, or malicious acts
- § 17:51 —Criminal acts
- § 17:52 —Assault or battery; sexual acts or abuse
- § 17:53 Interior and exterior work and similar site location distinctions
- § 17:54 Intoxicants or other substances affecting mental capacity
- § 17:55 License requirements; failure to meet
- § 17:56 Money; negotiable instruments
- § 17:57 Motor vehicle
- § 17:58 “Operations”; work performed by contractors or subcontractors

- § 17:59 Pending litigation; pending claims; “claims made” coverage
- § 17:60 Programming error
- § 17:61 Pollution; environmental hazard
- § 17:62 Property—Takings of property
- § 17:63 Property of insured
- § 17:64 Uninsured premises
- § 17:65 Vehicles
- § 17:66 Violation of law
- § 17:67 Work product or completed operations

C. EXCLUSION OF CLAIMS BY PARTICULAR PERSONS

- § 17:68 Spouse of insured
- § 17:69 Persons “in the care of” insured; members of insured’s household
- § 17:70 Other particular persons

CHAPTER 18. TITLE INSURANCE

I. IN GENERAL

- § 18:1 Nature of title insurance, generally; diminution of market value
- § 18:2 Construction
- § 18:3 Form of policy; preliminary and final report
- § 18:4 Nature of insurer’s obligation under policy
- § 18:5 “Gap” coverage

II. COVERAGE

- § 18:6 Covered risks, generally
- § 18:7 Title defects; what constitutes
- § 18:8 Mortgage or other debt; mortgage title insurance
- § 18:9 Encroachments
- § 18:10 Title being vested other than as described in policy
- § 18:11 Diminution in market value; market value rider; marketability

III. EXCEPTIONS

- § 18:12 Exceptions, generally
- § 18:13 Fraud or concealment; fraudulent title documents
- § 18:14 Survey exception; state of facts a survey would show
- § 18:15 Rights of tenants or persons in possession

TABLE OF CONTENTS

- § 18:16 Taxes for prior year
- § 18:17 Easements
- § 18:18 Rights of municipality; from mapping of street; zoning
- § 18:19 Encroachments
- § 18:20 Losses created, suffered, assumed, or agreed to by insured

CHAPTER 19. MARINE INSURANCE; INLAND MARINE

I. IN GENERAL

- § 19:1 Definitions and distinctions
- § 19:2 Statutory regulation, generally—State law
- § 19:3 —Admiralty and federal law

II. COVERED RISKS OR LOSSES

A. IN GENERAL

- § 19:4 Coverage, generally
- § 19:5 All risks; “all other perils” coverage
- § 19:6 —All-risk yacht policy
- § 19:7 Property insured; vessels; cargo
- § 19:8 Burden of proof

B. PARTICULAR COVERAGES

- § 19:9 Arrests, restraints, and detention
- § 19:10 Collision
- § 19:11 Lost cargo; open cargo; warehouse coverage
- § 19:12 Lost profits
- § 19:13 “Perils of the sea”
- § 19:14 —Seaworthiness as prerequisite
- § 19:15 Stranding
- § 19:16 Theft of vessel

III. LIMITATIONS ON, OR EXCEPTIONS TO, COVERAGE

A. IN GENERAL

- § 19:17 Generally; materiality of breach

B. PARTICULAR EXCLUSIONS FROM, OR LIMITATIONS UPON, COVERAGE

- § 19:18 Condition and stowage of cargo

- § 19:19 Course; deviation from course
- § 19:20 Guards, watchman; examination clause
- § 19:21 —Who is guard or watchman
- § 19:22 Lay up periods
- § 19:23 Prior loss history
- § 19:24 Prohibited ports or waters
- § 19:25 Required certificates; registry certificates
- § 19:26 Seaworthiness
- § 19:27 —What constitutes
- § 19:28 Theft; mysterious disappearance
- § 19:29 Miscellaneous exception clauses or provisions

IV. INLAND MARINE INSURANCE

A. IN GENERAL

- § 19:30 Definitions and distinctions
- § 19:31 Statutory regulation, generally

B. SCOPE OF COVERAGE

- § 19:32 Generally; all risks
- § 19:33 Transportation insurance
- § 19:34 —Property “in transit”
- § 19:35 — —Effect of delay or interruption
- § 19:36 Personal property floater policies, generally
- § 19:37 —Jewelers’ block policy
- § 19:38 Tourist’s property insurance, generally; method of transportation

CHAPTER 20. GUARANTY AND FIDELITY INSURANCE; MORTGAGE GUARANTY INSURANCE

I. FINANCIAL GUARANTY INSURANCE

A. IN GENERAL

- § 20:1 Definitions and distinctions, generally
- § 20:2 Exceptions
- § 20:3 Permitted coverages
- § 20:4 Mandated provisions
- § 20:5 Effect of cancellation of underlying debt

B. RELATED TYPES OF GUARANTY INSURANCE

- § 20:6 Property valuation insurance

TABLE OF CONTENTS

§ 20:7 Other types of guaranty insurance

II. MORTGAGE GUARANTY INSURANCE

- § 20:8 Definitions and distinctions, generally
- § 20:9 Risks within scope of coverage
- § 20:10 Mandated restrictions or limits on coverage
- § 20:11 Excluded risks

III. FIDELITY AND SURETY INSURANCE

- § 20:12 Definitions and distinctions, generally
- § 20:13 Application to particular risks—Acts of non-employees
- § 20:14 —Lending and loan practices
- § 20:15 —Manifest intent to injure employer
- § 20:16 —Forgery or alteration
- § 20:17 —Scope of employment; acts exceeding
- § 20:18 —Other particular risks
- § 20:19 Particular event as single or multiple loss
- § 20:20 Period of coverage; discovery of covered occurrence
- § 20:21 Termination of coverage

PART V. SCOPE OF COVERAGE— MOTOR VEHICLE INSURANCE

CHAPTER 21. MOTOR VEHICLE PROPERTY AND LIABILITY COVERAGE

I. IN GENERAL

- § 21:1 Mandatory coverage
- § 21:2 Definitions and nature of motor vehicle coverage
- § 21:3 Duration of coverage
- § 21:4 Regulation of motor vehicle insurers; automobile physical damage insurers

II. COVERAGE ISSUES RELATING TO IDENTIFICATION AND USE OF COVERED VEHICLE

A. VEHICLES INSURED

- § 21:5 As described or listed in policy
- § 21:6 —Concurrent coverage under one or more policies

- § 21:7 Newly acquired, replacement, and substitute vehicles
- § 21:8 “Hired” or rented automobile clause
- § 21:9 Hired or rented automobile clause—Transportation network company vehicle coverage
- § 21:10 Indicia of removal of vehicle from coverage
- § 21:11 Exclusion of vehicles not disclosed
- § 21:12 Non-owned or “other” automobile
- § 21:13 —Permissive use
- § 21:14 Public service vehicles; police vehicles

B. MANNER AND USE OF VEHICLE

1. Commercial or Business Uses

- § 21:15 Coverage of commercial or business use only; exclusion of non-business use
- § 21:16 —Transportation network company vehicle coverage
- § 21:17 Exclusion of “commercial use”
- § 21:18 Exclusion of use in particular business—“Automobile business”
- § 21:19 —Public or livery conveyance; carrying passengers for hire; rent or lease of vehicle
- § 21:20 Exclusion of use of vehicle to tow or propel trailer
- § 21:21 Territorial limits; radius restrictions

III. PROPERTY DAMAGE INSURANCE

A. GENERAL REQUIREMENTS

- § 21:22 Inspection of insured private passenger automobile
- § 21:23 —Related terms; standard deductible
- § 21:24 —Conduct of inspection
- § 21:25 —Outcome of inspections

B. PARTICULAR RISKS AND LOSSES AS WITHIN COVERAGE

- § 21:26 Generally; fire
- § 21:27 Theft
- § 21:28 —Express exclusions from coverage
- § 21:29 Collision or upset

C. COMPREHENSIVE COVERAGE; OTHER PROPERTY RISKS

- § 21:30 Generally

TABLE OF CONTENTS

IV. LIABILITY COVERAGE

A. IN GENERAL

- § 21:31 Definition and nature, generally
- § 21:32 Monetary limitations on coverage amount; statutory minimum coverage amounts
- § 21:33 Effect of use of vehicle out of state

B. PARTICULAR COVERAGE OR EXCLUSION PROVISIONS

1. In General

- § 21:34 Injury or damage arising from ownership, operation, or use of insured vehicle, generally
- § 21:35 “Ownership”
- § 21:36 —Lease; bailment; other possessory interests
- § 21:37 “Operating,” “operation,” “use,” or “use and operation” of vehicle
- § 21:38 —Permission to operate or use
- § 21:39 “Occupant” of, or “occupying,” a motor vehicle; being “in, on, entering, or alighting from” insured vehicle
- § 21:40 “Maintenance”
- § 21:41 Loading or unloading vehicle
- § 21:42 —What constitutes; continuous or complete operation
- § 21:43 —Persons included in clause
- § 21:44 Rental, sharing, hiring, or business use of vehicle; car-share

2. Negligence; accident; “caused by accident”

- § 21:45 Generally
- § 21:46 Intentional acts; assault as accident
- § 21:47 Effect of violation of law at time of accident
- § 21:48 Other conditions relating to driver; age; intoxication

3. Persons Covered

a. In General

- § 21:49 Named insured
- § 21:50 Additional insureds; omnibus coverage, generally
- § 21:51 —Requirement of permission or consent of insured
- § 21:52 Persons excluded from coverage, generally

CHAPTER 22. NO-FAULT INSURANCE COVERAGE

I. IN GENERAL

- § 22:1 Statutory overview; purpose; related coverage
- § 22:2 Validity of no-fault insurance law
- § 22:3 Mandated refund or credit of excess profits
- § 22:4 Construction of no-fault law and policy provisions
- § 22:5 Defenses of insurer to coverage
- § 22:6 Territorial application; residents driving outside of state; nonresident motorists driving in state

II. SPECIFIC COVERAGE PROVIDED

A. IN GENERAL

- § 22:7 Mandated coverage, generally; first party benefits
- § 22:8 —Particular additional requirements for certain types of vehicles; bus; motorcycle; ATV
- § 22:9 Insurers permitted to provide coverage; health, accident, or medical expense insurer

B. USE OR OPERATION OF AUTOMOBILE

- § 22:10 Generally
- § 22:11 What constitutes motor vehicle
- § 22:12 Particular circumstances as “use” or “operation”
- § 22:13 —Held not use or operation

C. “COVERED PERSONS”; PERSONS TO WHOM COVERAGE APPLIES; PERSONS ENTITLED TO FIRST PARTY BENEFITS

- § 22:14 Generally
- § 22:15 Named insured and members of household; spouses
- § 22:16 Unidentified or uninsured motorist

D. EXCLUSIONS FROM COVERAGE

- § 22:17 Expressly permitted statutory exclusions; intentional or reckless conduct; intoxication

CHAPTER 23. UNINSURED AND UNDERINSURED MOTORIST COVERAGE

I. IN GENERAL

- § 23:1 Definitions and distinctions

TABLE OF CONTENTS

- § 23:2 Statutory mandate and purpose, generally
- § 23:3 —Supplementary uninsured/underinsured motorist coverage
- § 23:4 Statutory mandate and purpose—Application to self-insurers
- § 23:5 Construction of policies with statute or regulations
- § 23:6 Territorial limitations; out-of-state accidents

II. REQUIREMENTS AS TO ACCIDENT

A. IN GENERAL

- § 23:7 Accident arising out of ownership, maintenance, or use of motor vehicle; occupying vehicle
- § 23:8 Involving “uninsured” vehicle
- § 23:9 Insured’s use of insured vehicle; owned but not listed vehicles excluded
- § 23:10 As excluding intentional torts

B. WHO IS COVERED OR PROTECTED

- § 23:11 Generally
- § 23:12 Who is “insured” person
- § 23:13 Who is “qualified” person

III. REQUIREMENTS AS TO UNINSURED VEHICLE

A. IN GENERAL

- § 23:14 Generally; “uninsured motor vehicle” and related qualifying status
- § 23:15 What constitutes “motor vehicle”; detached parts

B. FACTORS AFFECTING STATUS AS “UNINSURED”

- § 23:16 Factors in proving uninsured or insured status, generally
- § 23:17 Policy exclusions or limitations as rendering vehicle or motorist uninsured; disclaimer by insurer
- § 23:18 —Insolvency of tortfeasor’s insurer

C. OTHER VEHICLE OR MOTORIST STATUS AS TRIGGERING UM COVERAGE

- § 23:19 Unknown or hit-and-run vehicle or motorist
- § 23:20 —Requirement of physical contact

§ 23:21 — —What constitutes

IV. “UNDERINSURED” MOTORIST COVERAGE

§ 23:22 Generally

§ 23:23 Supplementary underinsured motorist benefits

§ 23:24 Effect of insolvency of insurer

PART VI. SCOPE OF COVERAGE— LIFE INSURANCE

CHAPTER 24. LIFE INSURANCE

I. IN GENERAL

§ 24:1 Nature of life insurance coverage, generally

§ 24:2 Statutory regulation, generally

§ 24:3 —Waiver

§ 24:4 Types of life insurance

§ 24:5 Person whose life is insured; parties to life insurance contract

§ 24:6 —Groups

§ 24:7 Elements of policy, generally; policy provisions regarding amendment

§ 24:8 Commencement of coverage

§ 24:9 Duration and termination of coverage

§ 24:10 Contestability

§ 24:11 Disclosures

§ 24:12 Burden of proof

II. RISKS WITHIN COVERAGE

§ 24:13 Death

§ 24:14 Accidental death

III. EXCLUSIONS FROM, AND LIMITATIONS ON, COVERAGE

§ 24:15 Generally

§ 24:16 Age of person whose life is insured

§ 24:17 Anti-assignment provision

§ 24:18 Employment—Profession, employment, work qualification or experience; hazardous occupations

§ 24:19 —Effect of termination

§ 24:20 Foreign residence

TABLE OF CONTENTS

- § 24:21 Health of insured; family and personal history; pre-existing condition or illness
- § 24:22 —Cancer
- § 24:23 Military service; war or any act of war
- § 24:24 Other insurance
- § 24:25 Relationship of insured to beneficiary
- § 24:26 Suicide; attempted suicide
- § 24:27 Violation of law; commission of criminal act contributing to death; attempted acts

IV. POLICY LOAN PROVISIONS

- § 24:28 Statutory provisions
- § 24:29 Types of policies excluded
- § 24:30 Effect of transfer of policy or death benefit in connection with loan; objection to transfer

V. CALCULATION OF DEATH BENEFIT; SURPLUS; CASH SURRENDER VALUE

- § 24:31 Death benefit; annuity; installment payments
- § 24:32 Surplus
- § 24:33 Cash surrender value; policy value
- § 24:34 Effect of surrender; reinstatement; related provisions

PART VII. SCOPE OF COVERAGE— HEALTH INSURANCE

CHAPTER 25. HEALTH INSURANCE COVERAGE, IN GENERAL

I. SCOPE AND CAUTION

- § 25:1 Federal action
- § 25:2 State protections modeled on federal Affordable Care Act

II. STATE REGULATION

- § 25:3 Generally; State Insurance Department
- § 25:4 Claims procedures, generally
- § 25:5 Disclosures to insureds; potential insureds
- § 25:6 Contracts with, or involving, health care providers
- § 25:7 State regulatory scheme—State Department of Health

III. FEDERAL REGULATION, IN GENERAL

- § 25:8 Federal statutes and regulations

- § 25:9 Medicare and Medicaid
- § 25:10 COBRA
- § 25:11 ERISA qualified health insurance plans
- § 25:12 Accident and health insurance policies, generally—
Reimbursement for particular services
- § 25:13 HIPAA

IV. TYPES OF COVERAGE, IN GENERAL

A. IN GENERAL

- § 25:14 Accident and health insurance, generally
- § 25:15 Ambulance prehospital provision of emergency
services
- § 25:16 Child health insurance plans
- § 25:17 Student health plans offered by colleges
- § 25:18 Discrimination based on being a victim of domestic
violence
- § 25:19 Discontinued health insurance programs
- § 25:20 Group and blanket accident and health insurance
policies
- § 25:21 Reproductive rights; legally protected health activity;
gender-affirming care
- § 25:22 —Abortion services
- § 25:23 Non-profit medical and dental indemnity or health
and hospital service corporation benefits
- § 25:24 Group and blanket policies
- § 25:25 Medically fragile children
- § 25:26 Mental health
- § 25:27 Network of providers; special requirements
- § 25:28 Telehealth services
- § 25:29 Womens' health issues
- § 25:30 Substance use disorders; rehabilitation services
- § 25:31 Step therapy protocols

B. PARTICULAR CLAUSES OR EXCLUSIONS

- § 25:32 Essential health benefits; package; limits on
cost-sharing—Definitions
- § 25:33 —Levels of coverage
- § 25:34 —Family member termination and essential benefits
coverage
- § 25:35 Pre-existing conditions
- § 25:36 Prescription drug coverage
- § 25:37 Dependents; full time students; Age 29 dependent
coverage extension
- § 25:38 Wellness programs

TABLE OF CONTENTS

- § 25:39 Discrimination on basis of sex or marital status in hospital, surgical, or medical expense insurance

C. PARTICULAR HEALTH INSURANCE PROGRAMS

1. In General

- § 25:40 Healthy New York

- § 25:41 Long term care insurance

2. Medicare and Medicaid Related Programs

- § 25:42 Medicare supplemental insurance policies

- § 25:43 Child Health Plus; Family Health Plus

- § 25:44 Elderly Pharmaceutical Assistance Program (EPIC)

- § 25:45 Women's health issues; prenatal care assistance program (PCAP); Breast and/or cervical cancer treatment program

- § 25:46 HIV uninsured care programs

D. DISABILITY INSURANCE COVERAGE

- § 25:47 Generally

- § 25:48 Factors in determining degree of disability

- § 25:49 Limits to recovery

CHAPTER 26. PARTICULAR SERVICE AND CARE PROVIDERS

I. IN GENERAL

- § 26:1 State regulation

II. NETWORK PARTICIPATION, IN GENERAL

- § 26:2 Application procedures; disclosure

- § 26:3 Provider and insurer duties regarding network provider directory; duty to update

- § 26:4 Termination of participation

III. PARTICULAR PROVIDERS

A. PHARMACY BENEFIT MANAGERS

- § 26:5 License or registration

- § 26:6 Duties of pharmacy benefit managers

- § 26:7 Effect of license or registration revocation

PART VIII. SCOPE OF COVERAGE— COVERAGE UNDER OTHER TYPES OF INSURANCE

CHAPTER 27. GROUP INSURANCE

I. IN GENERAL

- § 27:1 Statutory overview
- § 27:2 Definitions and distinctions
- § 27:3 —Particular types of group policies

II. GROUP LIFE, ACCIDENT, AND HEALTH INSURANCE

A. GROUP LIFE INSURANCE

- § 27:4 Statutory provisions; applicability
- § 27:5 Policyholders; insureds
- § 27:6 Mandated minimum provisions
- § 27:7 —Coverage—Wellness programs
- § 27:8 —Beneficiaries
- § 27:9 —Employee and member coverage, termination, and
conversion provisions
- § 27:10 —Notice of conversion event
- § 27:11 Assignment of policy

B. GROUP ACCIDENT, GROUP HEALTH, AND GROUP ACCIDENT AND HEALTH POLICIES

1. In General

- § 27:12 Nature and purpose; definitions
- § 27:13 Statutory overview; summary of recent amendments
to provisions; transitional provisions
- § 27:14 Policyholders; insureds
- § 27:15 Group requirements
- § 27:16 Participation requirements
- § 27:17 Premiums
- § 27:18 Community rating requirements

2. Minimum Coverage; Mandated Minimum Provisions

a. In General

- § 27:19 Mandated minimum provisions, generally

TABLE OF CONTENTS

- § 27:20 Eligibility requirements
- § 27:21 Renewal; policyholder's option
- § 27:22 —Nonrenewal or discontinuance by insurer

b. Particular Types of Care

- § 27:23 In-patient hospital care—Preadmission testing; second surgical opinion; emergency services
- § 27:24 —Home care
- § 27:25 Home and nursing home care; ambulatory care
- § 27:26 Nursing home care
- § 27:27 Emergency services
- § 27:28 Primary or preventive care
- § 27:29 Experimental treatments; clinical trials

c. Particular Health Conditions

- § 27:30 Pregnancy and childbirth; reproductive issues; fertility and infertility
- § 27:31 —Contraceptives
- § 27:32 —Abortion services
- § 27:33 Biomarker precision medical testing
- § 27:34 Diabetes treatments
- § 27:35 Cancer
- § 27:36 —Breast cancer; lymph node dissection; lumpectomy
- § 27:37 —Screening; prostate, cervical screening, mammography
- § 27:38 —Drug treatments
- § 27:39 Drug and chemical dependency; alcoholism
- § 27:40 Mental, nervous or emotional disorders or ailments; psychologists, psychiatrists, and clinical social worker providers for mental health services
- § 27:41 —Mental health conditions; amendments effective in 2024 and 2025
- § 27:42 Other particular condition or treatment

d. Particular Providers

- § 27:43 Use of particular participating providers
- § 27:44 Chiropractic care
- § 27:45 Nurses
- § 27:46 Hospice care

e. Conversion or Continuation Rights of Particular Persons

- § 27:47 Conversion rights; terminated or reduced coverage under group policy
- § 27:48 —Expense-occurred basis hospital and surgical coverage plan options

- § 27:49 —Major medical plans
- § 27:50 Continuation rights
- § 27:51 Dependent coverage conversion or continuation election
- § 27:52 Members of Armed Forces reserves special conversion and continuation rights

III. GROUP CONTRACTS WITH NON-PROFIT MEDICAL AND DENTAL INDEMNITY, OR HEALTH AND HOSPITAL SERVICE CORPORATIONS

- § 27:53 Generally; pre-2011 provisions distinguished
- § 27:54 Group contract, generally
- § 27:55 Eligibility
- § 27:56 Conversion rights
- § 27:57 Scope of coverage; mandated minimum contract provisions

IV. MISCELLANEOUS OTHER GROUP COVERAGES

- § 27:58 Group annuity contracts
- § 27:59 Group property/casualty insurance
- § 27:60 Transportation network company (TNC) group insurance policies

CHAPTER 28. *[Reserved]* Workers Compensation, Employers Liability and Disability

CHAPTER 29. *[Reserved]* Guaranty, Funds and Other State Insurance Programs

PART IX. CLAIMS AND CLAIMS PROCESS

CHAPTER 30. CLAIM; NOTICE OF LOSS, DAMAGE, OR POTENTIAL CLAIM; PROOF OF LOSS

I. IN GENERAL

- § 30:1 Notice of claim and proof of loss distinguished

TABLE OF CONTENTS

- § 30:2 —What constitutes “claim”
- § 30:3 Policy requirement of notice
- § 30:4 Purpose of notice requirement
- § 30:5 Nature of requirement; as condition precedent
- § 30:6 Effect of multiple policies; umbrella, excess, and supplemental coverage
- § 30:7 Effect of failure to comply
- § 30:8 —Effect of knowledge of claim by insurer

II. BY WHOM GIVEN OR MADE

- § 30:9 Statutory requirements; duty of insured to give notice
- § 30:10 By injured person
- § 30:11 By mortgagee
- § 30:12 By additional insured; agent; subrogee

III. FORM, CONTENT, AND DELIVERY OF NOTICE OR PROOF OF CLAIM, DAMAGE, OR LOSS

A. IN GENERAL

- § 30:13 Statutory forms
- § 30:14 Insurer’s form
- § 30:15 Signature and verification of contents
- § 30:16 Form of notification or proof of loss; oral or written notice
- § 30:17 To whom given or made—Generally; agent of insurer
- § 30:18 —Broker; claims adjuster
- § 30:19 —Automobile insurance; peer-to-peer car sharing
- § 30:20 —Effect where insured has multiple insurers
- § 30:21 Content; sufficiency of description of claim
- § 30:22 —Notice of litigation or underlying action
- § 30:23 —Effect of false statement, misrepresentation, or error in notice or proof
- § 30:24 Waiver of compliance

B. TIMELINESS OF NOTICE OR PROOF OF LOSS

1. Measuring Notice Period; Triggering Event

- § 30:25 Generally

2. Statutory Regulation

- § 30:26 Accident and health insurance
- § 30:27 Disability insurance
- § 30:28 Fire insurance
- § 30:29 Property insurance

§ 30:30 Liability insurance

3. Absent Statutory Mandate; Particular Policy
Provision as to Time; Reasonable Time

§ 30:31 Generally; reasonable time; “as soon as practicable”

§ 30:32 Factors in determining reasonable time

§ 30:33 Effect on reasonable time standard where notice
given by injured person

4. Effect of Delay or Failure to Timely Comply

§ 30:34 Generally; prejudice to insurer

§ 30:35 Excuse

§ 30:36 Waiver of defect by insurer

C. MANNER OF DELIVERY

§ 30:37 Manner of delivery; mailing

D. SUPPLEMENTAL, CORRECTIVE, AMENDED
OR WITHDRAWN NOTICE OR PROOF; EFFECT
OF ERRORS AND OMISSIONS

§ 30:38 Requiring additional proofs or notices, generally

§ 30:39 At insured’s option; intent to defraud

E. INSURER’S RESPONSE TO UNTIMELY PROOF
OR NOTICE

§ 30:40 Denial of claim or disclaimer of coverage

§ 30:41 Rejection of untimely proof of loss

F. INSURER’S ACKNOWLEDGEMENT OF
RECEIPT OF CLAIM

§ 30:42 Generally

**CHAPTER 31. INSURER’S RESPONSE TO
CLAIM; DUTIES OF PARTIES AFTER CLAIM
IS MADE**

I. IN GENERAL

A. SCOPE OF CHAPTER

§ 31:1 Generally; separate treatment of health and
automobile insurance

TABLE OF CONTENTS

B. INSURED'S DUTY TO COOPERATE WITH INSURER

- § 31:2 Generally; duty as arising under policy provision
- § 31:3 Good faith and fair dealing; relation to duty to cooperate
- § 31:4 Breach; effect of breach
- § 31:5 Particular acts as breach of duty

C. OTHER PARTICULAR DUTIES OF INSURED

- § 31:6 To forward summons or process to insurer

II. INSURER'S RIGHTS AND DUTIES PENDING DETERMINATION OF CLAIM

A. IN GENERAL

- § 31:7 Power of insurer, generally
- § 31:8 Examination or inspection of insured; autopsy
- § 31:9 Physical inspection or examination of insured; independent medical examination (IME)
- § 31:10 Property insurance; insurer's obligation to furnish copies of estimates
- § 31:11 —Insurer investigation; protecting health and safety
- § 31:12 Ongoing medical treatment of insured; "first aid" clause

B. REJECTION OR DENIAL OF CLAIM; DISCLAIMER OF LIABILITY

1. In General

- § 31:13 Duty to act in good faith when disclaiming coverage

2. Grounds

- § 31:14 Claimed loss or occurrence not within policy coverage
- § 31:15 Defective notice or proof of loss
- § 31:16 Other breach of insurance contract by insured
- § 31:17 Other particular grounds

3. Procedure; Notice of Disclaimer

- § 31:18 Notice of disclaimer
- § 31:19 —Partial denial; explanation of benefits
- § 31:20 Application to excess insurers
- § 31:21 Claims to which disclaimer requirement applies
- § 31:22 Time for, manner of, and parties entitled to, notice of disclaimer

- § 31:23 —Natural disaster and terrorism claims
- § 31:24 Content of notice; grounds for disclaimer
- § 31:25 Effect of failure to disclaim promptly

4. Waiver and Estoppel

- § 31:26 Generally
- § 31:27 Statutory provisions

III. DUTY TO DEFEND INSURED; RIGHT TO CONTROL LITIGATION

A. IN GENERAL

- § 31:28 Choice of counsel
- § 31:29 Negotiation and settlement of litigation, generally
- § 31:30 —Insurer's duty of good faith
- § 31:31 — —What constitutes "bad faith" by insurer

B. DUTY TO DEFEND

- § 31:32 Generally
- § 31:33 Person to whom duty extends, other than insured
- § 31:34 Policy limitations or restrictions on duty to defend
- § 31:35 Proceedings to which duty extends
- § 31:36 Scope of insurer's duty
- § 31:37 Relation to duty to disclaim coverage
- § 31:38 Insurer's remedies; nonwaiver agreement or notice; declaratory judgment
- § 31:39 Effect of insurer's refusal to defend
- § 31:40 Termination of duty to defend

IV. DETERMINATION AND PAYMENT OF CLAIM; DUTY TO INDEMNIFY INSURED

A. IN GENERAL

- § 31:41 Distinguishing types of claims

B. ADJUSTMENT OF CLAIM

- § 31:42 Powers and duties of adjusters
- § 31:43 Statutory regulation
- § 31:44 —Entitlement to fee
- § 31:45 Third party administrators
- § 31:46 Property valuation expert; auto body repair estimator

C. APPRAISAL OR ARBITRATION

- § 31:47 Generally

TABLE OF CONTENTS

- § 31:48 Statutory fire insurance provisions
- § 31:49 When available
- § 31:50 Procedure; demand; selection of umpire
- § 31:51 Award or appraisal

D. SETTLEMENT AND COMPROMISE OF CLAIM

- § 31:52 Amount required to be in controversy
- § 31:53 Agreement of parties required
- § 31:54 Waiver

E. PERSONS ENTITLED TO PROCEEDS

1. In General

- § 31:55 Named insured; loss payee
- § 31:56 Third party beneficiary
- § 31:57 Creditor; judgment creditor of insured
- § 31:58 Assignee from insured
- § 31:59 Miscellaneous other persons

2. Beneficiary of Life Insurance

- § 31:60 Beneficiary
- § 31:61 Changing beneficiary
- § 31:62 Contingent beneficiary
- § 31:63 Waiver of rights by beneficiary

F. PAYMENT OF PROCEEDS

- § 31:64 Prerequisites to payment
- § 31:65 Time for payment
- § 31:66 Policy limitation as to total amount payable
- § 31:67 —Concurrent and excess coverages; stacking
- § 31:68 Multiple claims by multiple claimants
- § 31:69 Interest
- § 31:70 Amounts of damages payable; setoff
- § 31:71 Unclaimed benefits

CHAPTER 32. SPECIAL ISSUES: AUTO INSURANCE CLAIMS

I. MOTOR VEHICLE NO FAULT INSURANCE AND PERSONAL INJURY PROTECTION

A. IN GENERAL

- § 32:1 Overview

B. BASIC ECONOMIC LOSS; FIRST PARTY BENEFITS

1. In General

- § 32:2 Definitions and distinctions, generally
- § 32:3 Optional additional coverage amounts; loss of earnings; other coverages and stacking
- § 32:4 Effect on underlying litigation and recovery from tortfeasor
- § 32:5 Effect on litigation against insurer for breach of contract

2. Particular Elements of Basic Economic Loss

a. Medical Expenses

- § 32:6 Generally
- § 32:7 Validity of statute and regulations
- § 32:8 Medical necessity of treatment or service
- § 32:9 Particular services as medical expense; medically necessary
- § 32:10 Approved providers; assignees of first-party benefits
- § 32:11 Limits on amount recoverable; permissible charges under workers' compensation schedules

b. Other Particular Elements

- § 32:12 Lost earnings, generally
- § 32:13 —Duration of right to recover
- § 32:14 —Particular items as “earnings”
- § 32:15 Non-income producing expenses

3. Deductions and Offsets from Basic Economic Loss

- § 32:16 Statutory overview, generally
- § 32:17 Social security disability, workers' compensation, or Medicare benefits
- § 32:18 Deductibles under applicable insurance policy

4. Payment of Benefits

- § 32:19 Claim; proof; verification; timeliness of payment
- § 32:20 Interest on overdue first-party benefits
- § 32:21 Attorneys' fees

5. Dispute Resolution; Arbitration; Court Action

- § 32:22 Methods, generally
- § 32:23 Mutual exclusivity of remedies

TABLE OF CONTENTS

- § 32:24 Scope of issues subject to arbitration
- § 32:25 Insurer's right to stay arbitration
- § 32:26 Review of arbitration award; vacating or modifying award

6. Insurer's Right to Reimbursement

- § 32:27 Lien against recovery by insured, generally
- § 32:28 Insurer's action to recover first-party benefits
- § 32:29 Settlement between insurers; loss-transfer claims; mandatory arbitration

C. NO-FAULT RESTRICTIONS ON PERSONAL INJURY ACTIONS; SERIOUS INJURY REQUIREMENT

1. In General

- § 32:30 Statutory restrictions, generally
- § 32:31 Serious injury
 - § 32:32 —Sufficiency of proof
 - § 32:33 — —Causation; pre-existing condition
 - § 32:34 —Particular injuries as "serious"
 - § 32:35 Other damages; future pain and suffering

II. MOTOR VEHICLE UNINSURED/ UNDERINSURED MOTORIST COVERAGE

A. IN GENERAL

- § 32:36 Overview
- § 32:37 Disclaimer of coverage
- § 32:38 Proof of insurance coverage or uninsured status
- § 32:39 "Qualified person" under UM coverage—MVAIC

B. RECOVERY AGAINST MVAIC

- § 32:40 Generally
- § 32:41 Notice of claim; affidavit—Qualified person
 - § 32:42 — —Late notice
 - § 32:43 —Insured person
- § 32:44 Investigation of accident or claim
- § 32:45 Appearance and defense of action
- § 32:46 Settlement by MVAIC
- § 32:47 Application for payment
- § 32:48 Petition to sue MVAIC
- § 32:49 Hearing; order
- § 32:50 Judgment; subrogation

**C. RECOVERY UNDER UNINSURED MOTORIST
COVERAGE**

- § 32:51 Arbitration of claim
- § 32:52 Conduct of arbitration; stay
- § 32:53 Statutory liability limits; UM; SUM; UIM
- § 32:54 Stacking of coverages
- § 32:55 Set-off of “other insurance”; anti-stacking clauses
- § 32:56 Ratable contribution clauses; multiple auto policies

**D. DIRECT ACTION BY INSURED AGAINST
UNINSURED MOTORIST**

- § 32:57 Effect on UM or UIM recovery

**III. CLAIMS UNDER OTHER MOTOR VEHICLE
COVERAGES**

A. PROPERTY DAMAGE

- § 32:58 Damage to vehicle; theft of vehicle
- § 32:59 Physical damage repair
- § 32:60 Repair of vehicle damage; steering practices

B. MEDICAL PAYMENT INSURANCE

- § 32:61 Generally; nature and form of medical payment
clause
- § 32:62 Expenses covered

**CHAPTER 33. SUITS BY INSUREDS TO
ENFORCE POLICY**

I. IN GENERAL

- § 33:1 Scope

II. JURISDICTION AND VENUE

- § 33:2 Personal jurisdiction over insurer; service on
designated agent or Superintendent
- § 33:3 —Unauthorized insurers
- § 33:4 —Effect of policy provision; “service of suit” clauses
- § 33:5 Subject matter jurisdiction
- § 33:6 Effect of foreign insurer’s liquidation to stay New York
proceedings pending liquidation
- § 33:7 Venue; forum non conveniens

TABLE OF CONTENTS

III. FORM AND NATURE OF REMEDY

- § 33:8 Generally
- § 33:9 Arbitration
- § 33:10 Article 78 proceeding
- § 33:11 Direct, private right of action under statute
- § 33:12 —Prerequisites

IV. PARTIES

- § 33:13 Plaintiffs—Insureds; additional insureds; loss payees
- § 33:14 —Other persons
- § 33:15 Defendants
- § 33:16 Third-party practice; interpleader

V. TIME TO BRING ACTION; LIMITATIONS OF ACTIONS

- § 33:17 General statutes of limitations
- § 33:18 Special statutes of limitations
- § 33:19 Statutory or contractual prohibition of action before certain time or event
- § 33:20 Contractual limitation of time to bring action
- § 33:21 Commencement of limitation period, generally
- § 33:22 —Specified time or event
- § 33:23 Tolling of limitation period
- § 33:24 Waiver of, or estoppel to assert, limitations period, generally

VI. PLEADINGS

- § 33:25 Generally
- § 33:26 Complaint
- § 33:27 —Damages
- § 33:28 Answer; affirmative defenses

VII. EVIDENCE

A. BURDEN OF PROOF; PRESUMPTIONS

- § 33:29 Burden of proof; presumptions, generally
- § 33:30 Bad faith; prejudice
- § 33:31 Misrepresentation
- § 33:32 Breach of conditions or warranties
- § 33:33 Risk and coverage
- § 33:34 Exceptions or exclusions from, and limitations of, liability

- § 33:35 Notices; proof of loss
- § 33:36 Cancellation of policy
- § 33:37 Defenses; estoppel to bring claim

B. ADMISSIBILITY; SUFFICIENCY; WEIGHT

- § 33:38 Generally
- § 33:39 Questions of law and fact
- § 33:40 Statements and admissions
- § 33:41 Documentary evidence
- § 33:42 —Insurance company records
- § 33:43 Parol and extrinsic evidence

VIII. MISCELLANEOUS TRIAL ISSUES

- § 33:44 Duty to defend and conflicts of interest, generally
- § 33:45 Judgment; recovery of damages
- § 33:46 Effect of recovery; insurer's right to recover from settlement with tortfeasor

Table of Laws and Rules

Table of Cases

Index