

# Index

## **ABSENCE OF PARTIES, COUNSEL, JUDGE, WITNESSES**

Civil cases, parties, § 2:3

Conduct of trial, presence of judge, § 2:8

Continuances

    Illness or conflict, absence of party or counsel, § 3:3

    Witness or document, § 3:4

Criminal cases, parties, § 2:2

Declarant

    Hearsay exceptions, §§ 16:6, 16:31

    Refreshed recollection distinguished from declarant unavailable, § 27:12

Eyewitness identification, presence of counsel, § 25:11

Hearsay exceptions, §§ 16:6, 16:31

Records entry, hearsay evidence, §§ 16:15, 16:18

Verdicts, presence of parties, § 41:9

View by jury, presence of judge and parties at view, § 21:3

## **ABSOLUTE LIABILITY**

Instructions to jury, duty of care, no-fault, § 39:7

## **ACCIDENT**

Criminal intent, jury instructions, § 38:16

Presumptions and inferences, § 12:10

Reconstruction, scientific tests and analyses, § 20:2

Relevancy, prior injury or accidents, § 13:12

## **ACCOMPlices**

Admissions and confessions, § 18:8

Competency to testify, § 22:9

Guilty plea in criminal cases, relevancy of, § 13:18

Instructions to jury, § 38:32

Relevancy of evidence, § 13:18

## **ACQUITTAL**

Criminal cases, motion for judgment of acquittal, § 33:4

## **ADDED VALUE**

Relevancy, § 13:28

## **ADDICTS**

Competency of witnesses, § 22:12

Instructions to jury, cautionary or limiting instructions, § 38:30

## **ADDITION OF COUNSEL**

Generally, § 1:6

**ADDITUR**

Motions after verdict, **§ 42:5**

**ADMISSIBILITY OF EVIDENCE**

Authenticated documents, **§ 17:12**

Braces, crutches, and other such devices, **§ 19:14**

Closing arguments, evidence received for limited purpose, **§ 34:11**

Confessions, **§ 18:13**

Court's own motion, exclusion of improper evidence, **§ 2:23**

Credibility and impeachment of witnesses

    Inconsistent statements, procedure for admitting, **§ 28:6**

    Prior convictions, procedure for admitting proof, **§ 28:13**

Documentary evidence

    Authenticated documents, **§ 17:12**

    Secondary evidence, **§ 17:17**

Duplicates, **§ 17:14**

Hypnosis, **§ 20:6**

Lie detector tests, **§ 20:7**

Motion to strike inadmissible evidence, **§ 31:5**

Rebuttal evidence, order of proof, **§§ 8:3, 8:4**

Restrictions on admitted evidence, **§ 2:22**

Ruling, **§ 2:21**

Scientific tests and analyses

    Lie detector tests, **§ 20:7**

    Truth serum, hypnosis inadmissible, **§ 20:6**

Secondary evidence, **§ 17:17**

**ADMISSIONS, CONFESSIONS AND STATEMENTS AGAINST INTEREST**

Generally, **§§ 18:1 to 18:22**

Admissibility of confessions, **§ 18:13**

Agents, admissions by agent or servant, **§ 18:7**

Authority to speak, admissions made by persons, **§ 18:6**

Burden of proof, determination of admissibility, **§ 18:15**

Co-conspirators, **§ 18:8**

Completeness, rule, **§ 18:17**

Compromise and offers to plead, **§ 18:9**

Conduct, admission, **§ 18:10**

Copies, written confessions, **§ 18:20**

Corpus delicti, **§ 18:14**

Corroboration of confessions, **§ 18:14**

Counsel, request, **§ 18:19**

Determination of admissibility, **§ 18:15**

Distinguished from statements against interest, **§ 18:3**

Electronically recorded custodial interrogation, **§ 18:21**

Hearings, determination of admissibility, **§ 18:15**

Illegally obtained confession, use to impeach, **§ 18:19**

Impeachment, use of illegally obtained confession to impeach, **§ 18:19**

Inculpation of accused, confessions by others, **§ 18:16**

## INDEX

### **ADMISSIONS, CONFESSIONS AND STATEMENTS AGAINST INTEREST**

#### **—Cont'd**

- Instructions, §§ **18:12, 38:24**
- Interpreters, § **18:22**
- Judicial admissions, § **18:2**
- Nature of confessions, § **18:13**
- Notice, determination of admissibility, § **18:15**
- Opening statements, statements by counsel constituting admissions of party, § **7:9**
- Opponent, admissions by party opponent, § **18:4**
- Plea offers, § **18:9**
- Redaction of prejudicial or inadmissible matter from confession or admission, § **18:18**
- Request for counsel, § **18:19**
- Servant, admissions by agent or servant, § **18:7**
- Silence, §§ **18:11, 18:19**
- Statements against interest, distinguishing between admissions and, § **18:3**
- Translators, § **18:22**
- Use or usefulness
  - Entire confession, rule of completeness, § **18:17**
  - Illegally obtained confession, to impeach, § **18:19**
- Vicarious admissions, § **18:5**
- Written confessions, § **18:20**

### **ADVERSE INFERENCES**

- Assertion of privilege, § **23:22**
- Self-incrimination privilege
  - Civil cases, § **24:4**
  - Criminal cases, § **24:5**
- Presumptions and inferences, § **12:15**

### **ADVERSE PARTIES**

- Cross-examination, § **29:6**
- Direct examination, § **27:9**

### **AFFIRMATIVE DEFENSES**

- Instructions to jury, civil cases, § **39:19**

### **AGENTS**

- Admissions and confessions, § **18:7**
- Instructions to jury, civil cases, § **39:6**

### **ALCOHOLIC BEVERAGES**

- Addicts
  - Competency of witnesses, § **22:12**
  - Instructions to jury, cautionary or limiting instructions, § **38:30**
- Dram shop act, instructions to jury, § **39:18**
- Instructions to jury, §§ **38:20, 39:18**
- Jury conduct and deliberations, § **40:15**
- Relevancy of alcohol consumption, § **13:23**

**ALCOHOLIC BEVERAGES—Cont'd**

Scientific tests and analyses, § 20:4

**ALIBI**

Instructions to jury, § 38:21

**ALTERNATE JURORS**

Deliberations of jury, § 40:27

**ALTERNATIVE PERPETRATOR**

Generally, § 13:24

**AMENDMENT OF PLEADINGS—CIVIL**

Punitive damages, motion to amend complaint to assert, § 4:5

**AMENDMENT OF PLEADINGS—CRIMINAL**

Motion to amend complaint, § 4:6

**ANCIENT DOCUMENTS**

Authentication documentary evidence, § 17:8

Hearsay evidence, statements in ancient documents, § 16:24

**ANIMALS**

Scientific tests and analyses, use of dogs, § 20:14

**ANONYMOUS JURY**

Selection of jury, § 6:9

**ANSWERS**

Direct examination, treatment of unresponsive answers, § 27:6

Redirect and re-cross examination, explaining impeaching answers, § 30:6

**APPEAL AND REVIEW**

Closing arguments

Cumulative errors, § 34:36

Future remedies, § 34:26

Improper argument, review, § 34:36

Invited error, § 34:32

Plain and harmless error, § 34:33

Contempt of court, § 5:17

Instructions to jury, criminal cases, § 38:35

Jury instructions, standard of review, § 38:37

Mid-trial orders, appeal of, § 4:20

Motions after verdict, §§ 42:1 to 42:9

View by jury, instructions to jury, § 21:5

**APPORTIONMENT OF DAMAGES**

Verdict, § 41:5

**ARREST**

Pretrial identification after illegal arrest, § 25:9

**ARSON**

Scientific tests and analyses, § 20:20

## INDEX

### ASSISTANCE OF COUNSEL

#### Generally, §§ 1:1 to 1:16

Admissions and confessions, request for counsel, § 18:19

Conduct of trial lawyers, § 1:2

Consultation, right to consult with counsel and others, § 1:12

Effective assistance of counsel, § 1:9

Ex parte communications, § 1:8

Introduction, § 1:1

Judge's duty to inform of right to counsel, § 1:13

Malpractice, § 1:9

Perjury, prevention of perjured testimony, § 1:11

Publicity, § 1:4

Regulation of lawyers, § 1:1

Rule 11 sanctions against attorneys, § 1:5

Substitution, addition or disqualification of counsel, § 1:6

Trial tactics, effective assistance of counsel, § 1:10

Types of trial lawyer misconduct, § 1:3

Waiver of right to counsel, §§ 1:14, 1:15

Witness' right to counsel, § 1:16

### ASSUMPTION OF RISK

Agency and other relationships, § 39:6

### ATTEMPTS

Verdicts, criminal cases, § 41:7

### ATTENDANCE

Absence of Parties, Counsel, Judge, Witnesses, this index

### ATTORNEY FEES

Damages, § 26:22

Judgments, attorney fees as costs, § 43:7

Privileged communications and information, attorney's disclosure of client fees, § 23:7

### ATTORNEYS

Generally, §§ 1:2, 1:7, 1:8, 23:3

Admissions, statements by counsel constituting admissions of party, § 7:9

Admissions and confessions, request for counsel, § 18:18

Assistance of Counsel, this index

Attacks on parties, witnesses, or counsel, § 34:23

Attorney-client privilege

Generally, § 23:3

Fees, attorney's disclosure of client fees, § 23:7

Identity of client, attorney's disclosure, § 23:8

Restrictions on attorney-client privilege, § 23:4

Waiver of right to counsel, § 1:14

Work product, § 23:5

Closing Arguments, this index

Competency of trial counsel to testify, § 22:8

## **ATTORNEYS—Cont'd**

- Concessions by counsel, closing arguments, **§ 34:25**
- Conduct
  - Generally, **§ 1:2**
  - Malpractice, **§ 1:9**
  - Rule 11 sanctions, **§ 1:5**
  - Types of misconduct, **§ 1:3**
- Conflicts of Interest, this index
- Constitutional right
  - Generally, **§§ 1:7, 1:8**
  - Admissions and confessions, request for counsel, **§ 18:19**
  - Consultation, right to consult with counsel and others, **§ 1:12**
  - Effective assistance of counsel, **§ 1:9**
  - Judge's duty to inform of right to counsel, **§ 1:13**
  - Substitution, addition or disqualification of counsel, **§ 1:6**
  - Waiver of attorney-client privilege, **§ 23:6**
  - Witness' right to counsel, **§ 1:16**
- Continuances, absence of counsel due to illness or conflict, **§ 3:3**
- Ex parte communications, **§ 1:8**
- Fees. Attorney Fees, this index
- Jury conduct and deliberations, contact with parties or lawyers, **§ 40:7**
- Payments to witnesses or counsel, **§ 34:24**
- Prejudicial questions by counsel, conduct of trial, **§ 2:33**
- Waiver of right to counsel, **§ 1:15**

## **AUTHENTICATION**

- Direct examination, firsthand knowledge, **§ 27:4**
- Documentary Evidence, this index

## **AUTOMOBILES**

- Accident reconstruction, **§ 20:2**
- Jury instructions, forfeiture of motorist's right-of-way, **§ 39:10**
- Skid marks, **§ 20:2**
- Speedometers and radar, **§ 20:5**

## **BAILMENTS**

- Burden of proof, **§ 9:10**

## **BALLISTICS**

- Scientific tests and analyses, **§ 20:13**

## **BAPTISMAL CERTIFICATES**

- Hearsay evidence, **§ 16:20**

## **BEST EVIDENCE RULE**

- Generally, **§ 17:13**
- Avoidance of best evidence rule, **§ 17:16**
- Secondary evidence
  - Admissibility, **§ 17:17**
  - Collateral issues, relation, **§ 17:18**
- Summaries, **§ 17:15**

## INDEX

### **BEYOND A REASONABLE DOUBT**

Burden of proof, § 9:11

### **BIAS**

Closing arguments

Passion, bias, prejudice, sympathy or sarcasm, § 34:18

Racist, sexist, or other discriminatory comments, § 34:20

Self-interest of jurors, §§ 34:16, 36:4

Credibility and impeachment of witnesses

Particular instances, impeachment by evidence of bias, § 28:4

Proof of bias, § 28:3

Jury selection, § 6:7

### **BITE MARKS**

Tests and analyses, § 20:17

### **BLOOD SPLATTER ANALYSIS**

Scientific tests and analyses, § 20:21

### **BLOOD TESTS**

Identification, § 20:3

Intoxication, § 20:4

### **BODILY FLUIDS**

Identification tests, § 20:3

### **BONES**

Exhibition, real and demonstrative evidence, § 19:5

### **BOUNDARIES**

Hearsay evidence, §§ 16:27, 16:32

### **BRACES**

Admissibility of evidence, § 19:14

### **BREATH TESTS**

Intoxication, § 20:4

### **BURDEN OF PROOF**

Generally, §§ 9:1 to 9:14

Admissions and confessions, determination of admissibility, § 18:15

Bailment cases, § 9:10

Beyond a reasonable doubt, § 9:11

Circumstantial evidence, § 14:3

Civil cases, § 9:3

Clear and convincing evidence, § 9:5

Closing arguments, criminal cases, § 36:18

Constructive trusts, § 9:8

Contempt of court proceedings, § 5:10

Contested wills, § 9:7

Corpus delicti, § 9:12

Criminal cases, § 9:11

Damages, § 9:6

**BURDEN OF PROOF—Cont'd**

Defendant's burdens, criminal cases, **§ 9:14**  
Dismissal and directed verdict based on opening statements, **§ 7:8**  
Estates, claims against, **§ 9:7**  
Eyewitness identification, **§ 25:2**  
Fair preponderance of evidence, **§ 9:5**  
Fraud, **§ 9:9**  
Going forward, burden, **§ 9:1**  
Instructions to jury  
    Civil cases, **§ 39:5**  
    Criminal cases, **§§ 38:6, 38:10**  
Opening statements, dismissal and directed verdict based, **§ 7:8**  
Particular matters, proof in criminal cases, **§ 9:13**  
Prima facie case, **§ 9:2**  
Quantum of evidence, civil cases, **§ 9:5**  
Shifting burden of proof, instructions to jury, **§§ 38:6, 38:10**  
Statutory allocation, **§ 9:4**

**BURNS**

Scientific tests and analyses, **§ 20:20**

**BUSINESS RECORDS**

Hearsay, **§§ 16:13, 16:14**

**CAUSATION**

Instructions to jury, civil cases, **§ 39:12**  
Instructions to jury, criminal cases, **§ 38:4**

**CAUTIONARY INSTRUCTIONS**

Closing arguments, rebuke of counsel by judge, **§ 34:34**  
Jury instructions  
    Generally, **§ 37:10**  
    Criminal cases, **§§ 38:7, 38:30**  
    Eyewitness identification, **§ 25:14**  
    Informers, drug addicts, perjurers, **§ 38:30**

**CERTIFICATES**

Hearsay evidence, marriage, baptismal and similar certificates, **§ 16:20**

**CHALLENGES**

Contempt of court, challenges to power, **§ 5:17**  
Jury  
    For cause, **§§ 6:12, 6:13, 6:14**  
    Civil cases, peremptory challenges, **§ 6:15**  
    Criminal cases, peremptory challenges, **§ 6:16**  
    Panel, **§ 6:6**  
    Timeliness of challenges for cause, **§ 6:14**

**CHARACTER**

Credibility and impeachment of witnesses, **§ 28:8**

## INDEX

### **CHARACTER—Cont'd**

Hearsay evidence  
    Boundaries or general history, § 16:28  
    Character, § 16:29  
    Personal history, §§ 16:27, 16:29  
Instructions to jury, criminal cases, § 38:24  
Relevancy, § 13:11

### **CHECKLISTS**

Direct examination, situations where leading question allowed, § 27:8  
Objections to evidence, § 31:8

### **CHILDREN**

Competency of young children to testify, § 22:10  
Hearsay, comment to jury concerning incompetency of child witness, § 16:41  
Hearsay evidence, out-of-court statements of children under 10, § 16:40  
Jury instructions, standard of care for children, exceptions, § 39:8  
Paternity cases, real and demonstrative evidence, § 19:6  
Privileged communications by minor to parent, § 23:12  
Televised testimony of children under 12 outside the courtroom or presence of  
    jury, public or defendant, § 2:19

### **CIRCUMSTANTIAL EVIDENCE**

Generally, §§ 14:1 to 14:9  
Authentication of documentary evidence, distinguishing characteristics, § 17:5  
Burden of proof, satisfying with circumstantial evidence, § 14:3  
Direct evidence compared, § 14:2  
Habit or routine practice, § 14:6  
Inferences, § 14:9  
Parol evidence rule, § 14:8  
Res ipsa loquitur, § 14:7  
Similar acts or occurrences, § 14:5  
State of mind, proof by circumstantial evidence, § 14:4

### **CIVIL DAMAGE ACT**

Instructions to jury, § 39:18

### **CLERGY**

Privileged communications and information, § 23:11

### **CLOSING ARGUMENTS**

Generally, §§ 34:1 to 34:36  
Additional arguments, § 34:3  
Appeal and error  
    Cumulative errors, § 34:36  
    Future remedies, § 34:26  
    Improper argument, review, § 34:36  
    Invited error, § 34:32  
    Plain and harmless error, § 34:33  
Attacks on parties, witnesses, or counsel, § 34:23  
Broader issues than those on trial, § 34:14

**CLOSING ARGUMENTS—Cont'd**

- Calling jurors by name, § 34:17
- Civil, generally, §§ 35:1 to 35:7
  - Damages, § 35:4
  - Failure of party to testify, call witnesses, and produce evidence, § 35:6
  - Improper remarks, § 35:1
  - Insurance, § 35:2
  - Negotiations, § 35:7
  - Per diem argument, § 35:5
  - Production of evidence, failure of party, § 35:6
  - Settlements or negotiations, § 35
  - Taxability of injury awards, § 35:3
- Concessions by counsel, § 34:25
- Counsel's opinions on merits of case, § 34:13
- Court's power to control argument, § 34:2
- Criminal, generally, §§ 36:1 to 36:23
  - Burden of proof, criminal cases, § 36:18
  - Character of defendant, improper references to, § 36:7
  - Charges, statement that only guilty people are charged, § 36:14
  - Citizens as prosecutor's "clients," criminal cases, § 36:3
  - "Clients," reference to state as prosecutor's "client" in criminal cases, § 36:3
  - Community expects conviction, statement in criminal cases, § 36:4
  - Credibility, counsel's opinion, § 36:6
  - Defense theory, § 36:17
  - Discrimination, self-interest of jurors, § 36:4
  - Disparagement of 'standard' defenses, § 36:12
  - Failure of party to testify, call witnesses, and produce evidence, § 36:18
  - Grand jury testimony, references, § 36:10
  - Guilty or nolo contendre plea withdrawn, § 36:22
  - Guilty plea withdrawn, § 36:22
  - Innocence or guilt
    - Charges, statement that only guilty people are charged, § 36:14
    - Counsel's opinion in criminal cases of guilt or credibility, §§ 36:6, 36:15
    - Insinuations of other evidence of guilt, criminal cases, § 36:9
    - Not guilty plea, improper reference, § 36:13
    - Presumption of innocence, improper reference, § 36:11
    - Prosecution suggestion that defense counsel believes defendant's guilt, § 36:15
    - Withdrawn guilty or non contendre plea, § 36:22
  - Insanity, effect of verdict, § 36:23
  - Jurors' self-interest, appeal to, § 36:4
  - Law and order, § 36:4
  - Marital and other privileges, § 36:19
  - Medical treatment, effect of verdict, § 36:23
  - Nolo contendre plea withdrawn, § 36:22
  - Notorious cases, references to, § 36:8
  - Other evidence of guilt, § 36:7
  - Presumption of innocence, improper reference, § 36:11

**CLOSING ARGUMENTS—Cont'd**

- Criminal, generally, §§ 36:1 to 36:23—Cont'd
  - Production of evidence, failure of party, § 36:18
  - Prosecutor, special obligations, § 36:2
  - Punishment, effect of verdict, § 36:23
  - Reasons for not calling prosecution witnesses, § 36:20
  - Representative of the state, reference to prosecutor, § 36:3
  - Rights of defendants, improper reference to in criminal cases, § 36:11
  - Silence, failure to testify or produce evidence, § 36:18
  - Society or community expects conviction, § 36:4
  - State, reference to state as prosecutor's "client" in criminal cases, § 36:3
  - "State's" opinion, references to by prosecutor, § 36:5
  - Theory of case, § 36:17
  - Uncontradicted, undisputed, or unexplained evidence, § 36:21
  - Verdict, effect, § 36:23
    - Victim's circumstances, age, etc., § 36:16
  - Criticism or rebuke of counsel by judge, § 34:34
  - Cumulative errors, § 34:36
  - Curative instructions, request, § 34:33
  - Discrimination
    - Passion, bias, prejudice, sympathy or sarcasm, § 34:18
    - Racist, sexist, or other discriminatory comments, § 34:20
    - Self-interest of jurors, § 34:16
  - Exclusion by ruling or argument, § 34:15
  - False or fabricated evidence, claims, § 34:21
  - Former proceedings, results, § 34:26
  - Graphic devices, § 34:31
  - Harmless error, § 34:33
  - Individual jurors, comments directed to, § 34:17
  - Inferences and evidence, § 34:8
  - Influencing witnesses, claims, § 34:21
  - Instructions to jury
    - Objections or requests for curative instructions, § 34:33
    - Right to know and argue jury instructions, § 34:7
  - Judges
    - Court's power to control argument, § 34:2
    - Criticism or rebuke of counsel by judge, § 34:34
  - Jurors
    - Calling by name, § 34:17
    - Comments directed to individual jurors, § 34:17
    - Self-interest, § 34:16
  - Law and order, § 34:14
  - In limine, rulings on questionable matters, § 34:6
  - Limitations and restrictions
    - Generally, § 34:6
    - Evidence received for limited purpose, § 34:11
    - Number of lawyers, limitations, § 34:4

**CLOSING ARGUMENTS—Cont'd**

Limitations and restrictions—Cont'd

    Time, limitation on, **§ 34:4**

Matters not in evidence, **§§ 34:9, 34:12**

Merits, counsel's opinions or beliefs, **§ 34:13**

Motive, **§ 34:28**

Name, calling jurors by name, **§ 34:17**

Non-legal writings not in evidence, **§ 34:9**

Notice and knowledge

    Common knowledge, **§ 34:12**

    Counsel's personal knowledge, **§ 34:12**

Number of lawyers arguing, **§ 34:4**

Objections, **§ 34:33**

Opening the door, **§ 34:32**

Oratory, **§ 34:8**

Order of argument, **§ 34:3**

Passion, **§ 34:18**

Payments to witnesses or counsel, **§ 34:24**

Personal knowledge of counsel, **§ 34:12**

Physical demonstrations, **§ 34:31**

Plain and harmless error, **§ 34:33**

Pleadings, reading or comment, **§ 34:27**

Privileges, comments, **§ 34:22**

Pro se argument, **§ 34:5**

Public, protection of public, **§ 34:14**

Racist comments, **§ 34:20**

Reading or comment on pleadings, **§ 34:27**

Rebuke of counsel by judge, **§ 34:34**

Remedies, future, **§ 34:26**

Reporting final argument, **§ 34:35**

Results of other cases or former proceedings in same case, **§ 34:26**

Retaliation, **§ 34:32**

Right to argue, **§ 34:1**

Right to know and argue jury instructions and law, **§ 34:7**

Sarcasm, **§ 34:18**

Scope, **§ 34:1**

Self-interest of jurors, **§ 34:16**

Sexist comments, **§ 34:20**

Special interrogatories, **§ 34:29**

Standards, applying higher or improper standards to parties, **§ 34:19**

Sympathy, **§ 34:18**

Theories of the parties, **§ 34:30**

Transcript of trial, reading, **§ 34:10**

Verdicts, comments on special interrogatories or verdict, **§ 34:29**

Waiver, **§ 34:1**

Witnesses

    Attacks on witnesses, **§ 34:23**

## INDEX

### **CLOSING ARGUMENTS—Cont'd**

Witnesses—Cont'd  
Influencing witnesses, claims, § 34:21  
Not called, § 34:12  
Payments to witnesses, § 34:24

### **COCONSPIRATOR**

Admissions and confessions, § 18:8  
Competency to testify, § 22:9  
Instructions to jury, § 38:28

### **COERCION**

Closing arguments, claims of influencing witnesses, § 34:21  
Instructions to jury, coercive, § 37:16  
Jury instructions, coercion in criminal sexual conduct cases, § 38:2

### **COLLATERAL ISSUES**

Closing arguments, broader issues than those on trial, § 34:14  
Credibility and impeachment of witnesses, impeachment evidence and collateral issues, § 28:14  
Secondary evidence when document relates to collateral issue, § 17:18

### **COLLATERAL SOURCE RULE**

Generally, § 26:13

### **COMMERCIAL PUBLICATIONS**

Hearsay evidence, § 16:25

### **COMPARATIVE NEGLIGENCE OR FAULT**

Instructions to jury, § 39:11  
Verdicts, § 41:5

### **COMPETENCY OF WITNESSES**

Generally, §§ 22:1 to 22:14  
Accomplice, competency to testify, § 22:9  
Addict, narcotics, § 22:12  
Children, competency of young children to testify, § 22:10  
Counsel, competency of trial counsel to testify, § 22:8  
Dead Man's Statute abolished, § 22:5  
Firsthand knowledge of witness, § 22:4  
Hearsay, comment to jury concerning incompetency of child witness, § 16:41  
Hypnotic recall testimony, § 22:11  
Judge, competency to testify, § 22:6  
Juror, competency to testify, § 22:7  
Jury instructions, criminal cases, § 38:40  
Multiple personality disorder, competency of witness with, § 22:14  
Narcotics addict, § 22:12  
Objection to competency of witness, § 22:3  
Qualifying the witness, § 22:2

### **COMPETENCY TO STAND TRIAL**

Generally, § 22:13

**COMPLAINT**

Motion to amend complaint, civil, § 4:5  
Motion to amend complaint, criminal, § 4:6

**COMPLETENESS DOCTRINE**

Admissions and confessions, § 18:17  
Credibility and impeachment, § 28:15

**COMPROMISE**

Admissions and confessions, compromise and offers to plead, § 18:9  
Closing arguments  
    Civil cases, § 35:7  
    Withdrawn guilty or nolo contendre plea or plea negotiations, § 36:22  
Miller-Shugart release, § 26:25  
Pierringer release, § 13:6  
Privileged communications and information, mediation, § 23:15  
Relevancy, compromise offers, § 13:6

**COMPULSORY TESTIMONY**

Privilege against self-incrimination, § 24:10

**COMPUTER-GENERATED ANIMATION**

Experiments and demonstrations, § 19:7

**CONCEALMENT OF EVIDENCE**

Presumptions and inferences, § 12:13

**CONDUCT OF TRIAL**

Exclusion of witnesses, § 2:15  
Interpreters, § 2:30  
Joint trial, § 2:34  
Physical restraint of defendant, § 2:5  
Police officers at counsel table, § 2:7  
Prejudicial questions by counsel, § 2:33  
Prison attire, § 2:6  
Right to present evidence, § 2:32  
Sanctions for spoliation, destruction, or nondisclosure of evidence, § 2:26  
Stipulation, criminal defendants' offer to stipulate, § 2:28  
Telephone, testimony by, § 2:18  
Testimony, criminal defendant's right to testify, § 2:35  
Witnesses  
    Exclusion of witnesses, § 2:15  
    Judge's comment on witness credibility, § 2:12  
    Telephone, testimony by, § 2:18  
    Televised testimony of children under 12 outside the courtroom or presence of  
        jury, public or defendant, § 2:19

**CONFESIONS**

Admissions, Confessions and Statements Against Interest, this index

**CONFIDENTIALITY**

Privileged Communications and Information, this index

## INDEX

### **CONFLICTS OF INTEREST**

Attorneys, §§ **1:6, 1:9**  
Corporations, attorneys representing, § **23:3**  
Right to waive, § **1:14**  
Two defendants at one trial, § **1:10**

### **CONFRONTATION CLAUSE**

Generally, §§ **16:1, 16:2**

### **CONSPIRACY**

Accomplices  
Admissions and confessions, § **18:8**  
Competency to testify, § **22:9**  
Instructions to jury, § **38:28**  
Admissions and confessions, co-conspirators, § **18:8**  
Instructions to jury, § **38:28**  
Out-of-court statements by co-conspirator, § **16:5**

### **CONSTRUCTIVE CONTEMPT**

Generally, § **5:3**

### **CONSTRUCTIVE POSSESSION**

Jury instructions, criminal cases, § **38:5**

### **CONSTRUCTIVE TRUSTS**

Burden of proof, § **9:8**

### **CONTEMPT OF COURT**

Generally, §§ **5:1 to 5:17**  
Acts constituting contempt, §§ **5:4 to 5:6**  
Burden of proof, § **5:10**  
Challenges, contempt of court, § **5:17**  
Civil and criminal contempt, § **5:2**  
Constructive contempt, § **5:3**  
Contempt proceedings, § **5:8**  
Defense, contempt charges, § **5:11**  
Direct contempt, § **5:3**  
Disobedience of court orders as contempt, § **5:7**  
Indemnification as punishment for contempt, § **5:15**  
Indictment subsequent to finding of contempt, § **5:16**  
Indirect contempt, § **5:3**  
Jury trial, generally, § **5:9**  
Miscellaneous conduct constituting contempt, § **5:6**  
Punishment, § **5:12**  
Review of contempts, § **5:17**  
Specific contempt proceedings, § **5:9**  
Statutory provisions, acts constituting contempt, § **5:5**  
Summary punishment for contempt, § **5:13**  
Timeliness of summary punishment for direct contempt, § **5:14**

## **CONTINUANCES**

Generally, §§ 3:1 to 3:7

Absence or presence

Illness or conflict, absence of party or counsel, § 3:3

Witness or document, § 3:4

Amendment of pleadings, § 3:5

Motion for continuance, considerations in ruling, § 3:2

Stay of proceedings, § 3:7

Surprise, § 3:6

## **CONTROLLED SUBSTANCES**

Identification of controlled substances, § 20:19

Protocol, drug recognition protocol, § 20:18

## **CONVICTION**

Admissibility of evidence, duplicates, § 17:14

Credibility of witnesses

Procedure for admitting proof, § 28:12

Proof, §§ 28:10, 28:12

Scope, § 28:11

Hearsay evidence, previous judgments, § 16:30

## **CORPUS DELICTI**

Admissions and confessions, § 18:14

Burden of proof, § 9:12

## **CORROBORATION**

Confessions, § 18:14

Instructions to jury, alibi, § 38:21

Jury instructions, necessity of corroboration in criminal case, § 38:11

## **COSTS**

Generally, § 43:4

Attorney fees, § 43:7

Damages, § 26:22

Disbursements, § 43:4

Items of costs and disbursements, § 43:6

Multiple party actions, § 43:8

Procedure for taxation of costs, § 43:5

## **COUNSEL**

Assistance of counsel, this index

Attorney, this index

## **CREDIBILITY AND IMPEACHMENT**

Completeness doctrine, § 28:15

Curative admissibility, § 28:15

## **CREDIBILITY OF WITNESSES**

Generally, §§ 28:1 to 28:18

Admissibility of evidence

Inconsistent statements, procedure for admitting, § 28:6

## INDEX

### **CREDIBILITY OF WITNESSES—Cont'd**

Admissibility of evidence—Cont'd

Prior convictions, procedure for admitting proof, §§ 28:12, 28:13

Admissions and confessions, use of illegally obtained confession to impeach, § 18:19

Bias

Particular instances, impeachment by evidence of bias, § 28:4

Proof of bias, § 28:3

Character evidence, § 28:8

Closing arguments

Criminal cases, counsel's opinion, § 36:6

Criminal cases, improper references to defendant's credibility, § 36:7

Collateral issues, impeachment evidence, § 28:14

Commonly used improper credibility questions, § 28:18

Conduct, specific instances, § 28:9

Confessions, use of illegally obtained confession to impeach, § 18:19

Corruption, proof, § 28:3

Credibility, § 28:1

Expert witnesses, § 15:13

Hearsay evidence

Attacking and supporting credibility of declarant, § 16:39

Prior inconsistent statements, use as non-hearsay substantive evidence, § 28:7

Impeachment, § 28:2

Improper credibility questions commonly used, § 28:18

Improper impeachment, § 28:16

Inconsistent statements

Cross-examination, § 29:9

Prior inconsistent statements, § 28:5

Procedure for admitting inconsistent statements, § 28:6

Substantive evidence, use of prior inconsistent statements as non-hearsay, § 28:7

Interest, proof, § 28:3

Judge's comments, § 2:12

Opening the door, § 28:15

Prior convictions

Procedure for admitting proof, §§ 28:12, 28:13

Proof, § 28:10

Scope, § 28:11

Rape shield law, § 28:17

Reputation evidence, § 28:8

Vouching, §§ 15:2, 15:8

### **CROSS-EXAMINATION**

Generally, §§ 29:1 to 29:10

Adversariness as basis, § 29:6

Depositions, use in cross-examination, § 29:8

Expert witnesses, § 15:14

Form of questions, § 29:3

**CROSS-EXAMINATION—Cont'd**

- Hostility as basis, § 29:7
- Impeachment
  - Admissibility of evidence
    - Inconsistent statements, procedure for admitting, § 28:6
    - Prior convictions, procedure for admitting proof, § 28:13
  - Admissions and confessions, use of illegally obtained confession to impeach, § 18:19
  - Bias
    - Particular instances, impeachment by evidence of bias, § 28:4
    - Proof of bias, § 28:3
  - Character evidence, § 28:8
  - Closing arguments
    - Criminal cases, counsel's opinion, § 36:6
    - Merits of case, counsel's opinion, § 34:13
  - Collateral issues, impeachment evidence, § 28:14
  - Commonly used improper credibility questions, § 28:18
  - Conduct, specific instances, § 28:9
  - Confessions, use of illegally obtained confession to impeach, § 18:19
  - Corruption, proof, § 28:3
  - Credibility of witnesses, § 28:1
  - Expert witnesses, § 15:13
  - Hearsay evidence
    - Attacking and supporting credibility of declarant, § 16:39
    - Prior inconsistent statements, use as non-hearsay substantive evidence, § 28:7
  - Impeachment of witnesses, § 28:2
  - Improper credibility questions commonly used, § 28:18
  - Improper impeachment, § 28:16
  - Inconsistent statements
    - Cross-examination, § 29:8
    - Prior inconsistent statements, § 28:5
    - Procedure for admitting inconsistent statements, § 28:6
    - Substantive evidence, use of prior inconsistent statements as non-hearsay, § 28:7
  - Interest, proof, § 28:3
  - Prior convictions
    - Procedure for admitting proof, § 28:13
    - Proof, § 28:10
    - Scope, § 28:11
  - Rape shield law, § 28:17
  - Reputation evidence, § 28:8
- Prior inconsistent statements or testimony to impeach witness, § 29:9
- Redirect and Re-cross Examination
  - Content of questions on redirect examination, § 30:2
  - Correction of testimony, § 30:4
  - Explaining impeaching answers, § 30:6
  - Explaining testimony, § 30:4

## INDEX

### **CROSS-EXAMINATION—Cont'd**

Redirect and Re-cross Examination—Cont'd  
Form of questions on redirect examination, § 30:2  
Memory of witness, refreshing, § 30:3  
Purpose of redirect examination, § 30:1  
Recollection of witness, refreshing, § 30:3  
Re-cross examination, § 30:7  
Refreshing witness' memory, § 30:3  
Rehabilitating a witness, § 30:5  
Scope of redirect examination, § 30:1  
Restrictions on scope of cross-examination, § 29:5  
Scope, generally, § 29:4  
Technology, cross-examination by remote video, § 29:10  
Waiver of right to cross-examination, § 29:2

### **CRUTCHES**

Admissibility of evidence, § 19:14

### **CUSTOM**

Circumstantial evidence, habit or routine practice, § 14:6  
Relevancy, § 13:14

### **DAMAGES**

Generally, §§ 26:1 to 26:25  
Additur, motions after verdict, § 42:5  
Apportionment in verdict, § 41:5  
Attorneys' fees, § 26:22  
Burden of proof, § 9:6  
Closing arguments  
    Civil cases, § 35:4  
    Taxability of injury awards, § 35:3  
Collateral source rule, § 26:13  
Contingent damages, § 26:4  
Contract cases, § 26:14  
Discounting to present value, § 26:11  
Disfigurement, § 26:9  
Excessive damages, § 26:12  
Exemplary damages, § 26:6  
Fees, attorneys', § 26:22  
Fraud, real estate misrepresentation cases, § 26:16  
Future damages, jury instructions, § 39:20  
Future medical expenses, § 26:8  
General and special damages, tort cases, § 26:3  
General principles, § 26:1  
Human Rights Act, § 26:21  
Inadequate damages, § 26:12  
Instructions to jury, civil cases, § 39:18  
Insurance claims, determining actual cash value, § 26:17  
Interest, § 26:22

**DAMAGES—Cont'd**

Jury instructions, discounting of future damages, **§ 39:20**  
Liquidated damages and penalties, **§ 26:18**  
Medical expenses, past and future, **§ 26:8**  
Mental suffering, **§ 26:10**  
Mitigation of damages, **§ 26:5**  
Nominal damages, **§ 26:2**  
Past medical expenses, **§ 26:8**  
Penalties  
    Liquidated damages, **§ 26:18**  
    Punitive damages, **§ 26:6**  
Present value, discounting to, **§ 26:11**  
Profits, loss of, contracts, **§ 26:14**  
Property damages, **§ 26:19**  
Punitive damage claim, motion to assert, **§ 4:5**  
Punitive damages, **§ 26:6**  
Real estate misrepresentation cases, **§ 26:16**  
Releases, **§ 26:25**  
Remittitur, motions after verdict, **§ 42:5**  
Remote damages, **§ 26:4**  
Security cases, **§ 26:15**  
Settlements, **§ 26:25**  
Special damages, **§ 26:3**  
Speculative damages, **§ 26:4**  
Taxability of tort damage awards, **§ 26:24**  
Uncertain damages, **§ 26:4**  
Wrongful death, **§ 26:20**

**“DAY IN THE LIFE” VIDEOTAPES**

Demonstrative evidence, **§ 19:11**

**DEAD MAN’S STATUTE**

Competency of witnesses, **§ 22:5**

**DEADLOCKED JURY**

Discharge, **§ 40:26**  
Instructions to jury, **§ 37:16**  
Mistrial, **§ 32:7**

**DEATH**

Burden of proof, claims against estates, **§ 9:7**  
Damages, wrongful death, **§ 26:20**  
Hearsay evidence, statement under belief of impending death, **§ 16:34**  
Presumptions and inferences, missing persons, **§ 12:8**

**DECEDENTS’ ESTATES**

Burden of proof, claims against estates, **§ 9:7**

**DECREE**

Judgment or Decree, this index

## INDEX

### DEFAULT JUDGMENTS

- Generally, **§ 4:8**
- Grounds, **§ 4:10**
- Motions
  - Grounds for taking default judgments, **§ 4:10**
  - Procedure for taking default judgments, **§ 4:9**
  - Reopening default judgments, **§ 4:11**
- Procedure for taking default judgments, **§ 4:9**
- Reopening default judgments, **§ 4:11**

### DEFENSES

- Civil cases
  - Assumption of Risk, **§ 39:19**
  - Contributory negligence, **§ 39:19**
  - Emergency rule, **§ 39:9**
- Closing arguments, defense theory, criminal cases, **§ 36:17**
- Closing arguments, disparagement of ‘standard’ defenses, **§ 36:12**
- Criminal cases
  - Accident, **§ 38:16**
  - Alibi, **§ 38:21**
  - Duress, **§ 38:43**
  - Entrapment, **§ 38:23**
  - Mental illness (insanity), **§ 38:19**
  - Reliance on advice of counsel, **§ 38:18**
  - Self-defense and defense of another, **§ 38:22**
- Instructions to jury, **§§ 38:22, 39:19**

### DEMONSTRATIVE EVIDENCE

- Generally, **§§ 19:1 to 19:15**
- Articles, **§ 19:5**
- Bones, exhibition, **§ 19:15**
- Braces, crutches, etc., admissibility, **§ 19:14**
- Computer-generated animations, **§ 19:7**
- “Day in the life” videotapes, **§ 19:11**
- Demonstrations, **§ 19:7**
- Diagrams, **§ 19:6**
- Displays, **§ 19:6**
- Distinguished from real evidence, **§ 19:1**
- Drawings, **§ 19:6**
- Experiments, **§ 19:7**
- Foundation, laying, **§ 19:3**
- Maps, **§ 19:6**
- Models, **§ 19:6**
- Motion pictures, **§ 19:9**
- Objects, **§ 19:5**
- Personal injuries, displaying to jury, **§ 19:4**
- Photographs, this index
- Skeleton, exhibition, **§ 19:15**

**DEMONSTRATIVE EVIDENCE—Cont'd**

Sound recordings, § 19:13  
Summaries, § 19:6  
Use of real and demonstrative evidence, § 19:2  
Uses of photographic evidence, § 19:10  
Videotapes, this index  
X-rays, § 19:12

**DEPOSITIONS**

Cross-examination, use, § 29:8  
Jury deliberations, depositions not taken to jury room, § 40:21

**DESTRUCTION OF EVIDENCE**

Spoliation of Evidence, this index

**DEVELOPMENT COST APPROACH**

Relevancy, real estate values, § 13:27

**DIAGNOSIS**

Hearsay evidence, medical diagnosis or treatment, § 16:11

**DIAGRAMS**

Real and demonstrative evidence, § 19:6

**DIMINISHED CAPACITY**

Intent, § 15:7  
Mens rea, § 15:7  
Mental health/sanity, § 15:7  
State of mind, § 15:7

**DIRECT EXAMINATION**

Generally, §§ 27:1 to 27:12  
Adverse parties, § 27:9  
Authentication, firsthand knowledge, § 27:4  
Checklist, situations where leading question allowed, § 27:8  
Content of questions, § 27:5  
Documents used by experts, § 27:11  
Experts, documents used, § 27:11  
Firsthand knowledge  
    Authentication, § 27:4  
    Hearsay, § 27:3  
Form of questions, § 27:5  
Hearsay, firsthand knowledge, § 27:3  
Personal knowledge, necessity, § 27:2  
Refreshed recollection  
    Distinguishing from declarant unavailable, § 27:12  
    Witness' memory, § 27:10  
Unresponsive answers, treatment, § 27:6

**DIRECTED VERDICT**

Judgment as a Matter of Law, this index

## INDEX

### **DISCOVERY**

- Compliance with discovery rules, failure of, **§ 31:9**
- Motion to compel, **§ 4:15**
- Objections to evidence, failure to comply with discovery rules, **§ 31:9**

### **DISCRIMINATION**

- Closing arguments
  - Passion, bias, prejudice, sympathy or sarcasm, **§ 34:18**
  - Racist, sexist, or other discriminatory comments, **§ 34:20**
  - Self-interest of jurors, **§§ 34:16, 36:4**
- Credibility and impeachment of witnesses
  - Evidence of bias, **§ 28:4**
  - Proof of bias, **§§ 28:3, 28:4**
- Jury selection, **§ 6:7**
- Opening statements, improper conduct and prejudice, **§ 7:5**

### **DISFIGUREMENT**

- Damages, **§ 26:9**

### **DISJUNCTIVE INSTRUCTIONS**

- Criminal cases, **§ 38:3**

### **DISMISSAL**

- Generally, **§§ 4:1 to 4:21**
- Considerations in ruling on motions for voluntary dismissals, **§ 4:4**
- Criminal cases, **§ 4:19**
- Deadlocked jury, **§ 40:26**
- Default judgments
  - Grounds, **§ 4:10**
  - Motions
    - Generally, **§ 4:8**
    - Grounds for taking default judgments, **§ 4:10**
    - Procedure for taking default judgments, **§ 4:9**
    - Reopening default judgments, **§ 4:11**
- Grounds for dismissal, miscellaneous civil grounds, **§ 4:18**
- Involuntary dismissals, **§ 4:12**
- Motions
  - Default judgments, *supra*
  - Involuntary dismissals, **§ 4:12**
  - Judgment as a matter of law (JAML), this index
  - Multiple parties and claims, voluntary dismissals, **§ 4:3**
  - Nolle prosequi, **§ 4:7**
  - Ruling on motions for voluntary dismissals, **§ 4:4**
  - Voluntary dismissals, **§ 4:2**
- Multiple parties and claims, voluntary dismissals, **§ 4:3**
- Nolle prosequi, **§ 4:7**
- Opening statements, **§ 7:8**
- Reopening a dismissed case, **§ 4:20**
- Voluntary dismissals, **§ 4:2**

**DISQUALIFICATION OF COUNSEL**

Generally, § 1:6

**DISSOCIATIVE IDENTITY DISORDER**

Competency of witnesses, § 22:14

**DNA ANALYSIS**

Scientific tests and analyses, § 20:16

**DOCUMENTARY EVIDENCE**

Generally, §§ 17:1 to 17:19

Admissibility

Authenticated documents, § 17:12

Secondary evidence, § 17:17

Authentication

Generally, § 17:2

Admissibility of authenticated documents, § 17:12

Ancient documents, § 17:8

Avoidance of best evidence rule, § 17:16

Avoidance of proof, § 17:11

Direct methods of authentication, § 17:3

Distinguishing characteristics, circumstantial evidence, § 17:5

Handwriting comparisons, § 17:4

Process or system-produced evidence, § 17:9

Public records and reports, § 17:7

Self-authenticating documents, § 17:10

Summaries, use, § 17:15

Telephone conversations, voice identification, § 17:6

Voice identification, § 17:6

Avoidance of proof of authenticity, § 17:11

Certificates, marriage, baptismal and similar certificates, § 16:19

Circumstantial evidence, authentication by distinguishing characteristics, § 17:5

Distinguishing characteristics, authentication by circumstantial evidence, § 17:5

Handwriting comparisons, authentication, § 17:4

Procedure for offering documents in evidence, § 17:19

Process or system-produced evidence, authentication, § 17:9

Public records and reports, authentication, § 17:7

Secondary Evidence, this index

Self-authenticating documents, § 17:10

Summaries, use of, best evidence rule, § 17:15

System-produced evidence, authentication, § 17:9

Telephone conversations, voice identification, § 17:6

Voice identification, authentication, § 17:6

**DOGS**

Scientific tests and analyses, use of dogs, § 20:14

**DOMESTIC ABUSE, PAST PATTERN OF DOMESTIC ABUSE**

Jury instructions, § 38:38

Relevancy of evidence, § 13:18

## INDEX

### **DOUBLE JEOPARDY**

Acquittal, motion for, § 33:4

Mistrial, § 32:7

### **DRAM SHOP ACT**

Instructions to jury, § 39:18

### **DRUGS AND NARCOTICS**

Addicts

Competency of witnesses, § 22:12

Competency of witnesses, § 22:12

Scientific tests and analyses

Drug identification protocol, § 20:19

Random sample testing for controlled substances, § 20:19

### **DUE CARE**

Presumptions and inferences, § 12:10

### **DYING DECLARATIONS**

Hearsay evidence, § 16:34

### **EMERGENCY RULE**

Jury instructions, negligence, § 39:7:2

### **EMOTIONAL CONDITION**

Hearsay evidence, § 16:10

### **EVIDENCE**

Accomplice's guilty plea in criminal cases, relevancy of, § 13:14:1

Admissibility of Evidence, this index

Alternatives to evidence, §§ 10:1 to 10:4

Burden of proof, this index

Character

Personal history, § 16:27

Reputation, § 16:29

Circumstantial Evidence, this index

Concealment of evidence, § 12:13

Credibility, this index

Demonstrative Evidence, this index

Destruction of evidence, § 12:13

Direct evidence compared to circumstantial evidence, § 14:2

Documentary Evidence, this index

Emergency 911 tapes, § 16:8

Expert Testimony, this index

Failure to produce witness or material evidence, § 12:14

False or fabricated evidence, claims, § 34:21

Hearsay Evidence, this index

Homicide victim's life, relevancy of evidence, § 13:23

Illegally Obtained Evidence, this index

Impeachment evidence. Credibility, this index

Inferences, this index

**EVIDENCE—Cont'd**

Instructions to jury, spoliation of evidence, **§ 37:19**

Materiality and relevancy

Accomplice's guilty plea in criminal cases, **§ 13:18**

Homicide victim's life, personal details in, **§ 13:23**

Real estate values, **§§ 13:27 to 13:30**

Motive, **§ 13:1**

Objections to Evidence, this index

Opinion Evidence, this index

Parol evidence rule, **§ 14:8**

Photographs, this index

Police investigation, **§ 13:22**

Presumptions, this index

Prima Facie Case, this index

Production of Evidence, this index

Proof of facts

Generally, **§§ 10:1 to 10:4**

Burden of Proof, this index

Construction of stipulations, **§ 10:4**

Enforcement of stipulations, **§ 10:4**

Excuse of proof, **§§ 10:2, 10:3**

Stipulations to excuse proof, **§ 10:3**

Before trial, situations where proof is excused, **§ 10:2**

Relevancy, negative evidence, **§ 13:15**

Reputation

Boundaries or general history, **§ 16:28**

Character, **§ 16:29**

Personal history, **§ 16:27**

Restrictions on use of admitted evidence, **§ 2:22**

Right to testify, **§ 2:35**

Scientific Tests and Analyses, this index

Secondary Evidence, this index

Self-incrimination. Privilege Against Self-Incrimination, this index

Sound Recordings, this index

Suppression of Evidence, this index

Threats to witnesses, **§ 13:8**

Uncontradicted, undisputed, or unexplained evidence, **§ 36:21**

Videotape, this index

Weight and sufficiency, **§ 15:13**

Witnesses, this index

**EX PARTE COMMUNICATIONS**

Attorneys, **§ 1:8**

**EXCITED UTTERANCES**

Hearsay evidence, **§§ 16:8, 16:9**

**EXCLUSION OF EVIDENCE**

Trial conduct, **§ 2:23**

INDEX

**EXCUSE OF PROOF**

Generally, §§ 10:2, 10:3

**EXEMPLARY DAMAGES**

Generally, § 26:6

**EXHIBITS**

Demonstrative Evidence, this index

**EXPERIMENTS**

Jury conduct and deliberations, § 40:17

Real and demonstrative evidence, § 19:7

**EXPERT TESTIMONY**

Generally, §§ 15:1 to 15:15

Accident Reconstruction, § 15:8(1)

Alcohol intoxication, § 15:8(8)

Basis of opinion evidence, § 15:10

Battered child syndrome, § 15:8(25)

Battered woman syndrome, § 15:8(20)

Cause and effect, § 15:8(2)

Cause of death, § 15:8(3)

Child sexual abuse, § 15:8(31)

Competency of Witnesses, this index

Construction of written instrument, § 15:8(5)

Contracts, § 15:8(6)

Court-appointed experts, § 15:12

Credibility, § 15:8(19)

Cross-examination of expert witnesses, § 15:14

Dangerous drugs, § 15:8(7)

Death, cause of, § 15:8

Direct examination, documents used by experts, § 27:11

Disclosure of facts underlying expert's opinion, § 15:10

Distinction between expert and skilled witnesses, § 15:7

Domestic abuse and credibility, § 15:8(30)

Drug courier profile, § 15:8(28)

Drug recognition protocol, § 15:8(29)

Drunkenness, § 15:8

Effect of living in high crime on reasonableness of consent, § 15:8(32)

Employability, § 15:8(9)

Ethnic cultural customs and propensities, § 15:8(35)

Expert testimony, § 15:4

Eyewitness identification, expert testimony as to reliability, § 25:15

Fees, § 15:15

Fetal Alcohol Syndrome, § 15:8(26)

Future dangerousness, § 15:8(24)

Future pain and suffering, § 15:8

Identification of drug paraphernalia, § 15:8(38)

Impact of past abuse, § 15:8(27)

**EXPERT TESTIMONY—Cont'd**

Impeachment of expert witnesses, § 15:14  
Indigent defendants, expert witness fees, § 15:15  
Intent, § 15:8(22)  
Intoxication effect on intent, § 15:8(23)  
Knowledge of others, § 15:8(10)  
Laws of foreign jurisdictions, § 15:8(11)  
Lay witnesses, § 15:2  
Male Sexual Victimization Syndrome, § 15:8(21)  
Medical care and treatment, § 15:8(12)  
Mens Rea, § 15:8(22)  
Mental health/sanity, § 15:8(18)  
Motor vehicle operation, § 15:8  
Negligence, § 15:8(14)  
Opinion evidence, § 15:1  
Permanence of injury, § 15:8(15)  
Personal injuries, § 15:8(16)  
Police interrogation techniques, § 15:8(34)  
Proper construction and maintenance, § 15:8(4)  
Qualification of experts, § 15:6  
Rape trauma syndrome, § 15:8(18)  
Reporting practice of adolescent sexual assault victims, § 15:8(37)  
Reports, reading experts' reports into evidence, § 15:11  
Repressed-memory theory, § 15:8(39)  
Requirement, expert testimony not required, § 15:5  
Skilled witness distinguished from expert, § 15:7  
State of mind, § 15:8(22)  
Subject matter, § 15:8  
Sufficiency of evidence, § 15:13  
Susceptibility of coercion during police interrogation, § 15:8(33)  
Ultimate issue, § 15:3  
Value of services, § 15:8(17)  
Vouching, § 15:8  
Weight and sufficiency of expert testimony, § 15:12

**EYEWITNESS IDENTIFICATION**

Generally, §§ 25:1 to 25:15  
Burden of proving identity, § 25:2  
Counsel, presence at identification, § 25:11  
Expert testimony as to reliability, § 25:15  
Hearsay, out-of-court identification, § 25:10  
Improper out-of-court identification, §§ 25:7, 25:8  
In-court identification based on improper out-of-court identification, § 25:7  
Independent identification, § 25:8  
Instruction to jury, cautionary, § 25:14  
Lineups, §§ 25:5, 25:12  
Out-of-court identification  
    Hearsay, § 25:10

## INDEX

### **EYEWITNESS IDENTIFICATION—Cont'd**

Out-of-court identification—Cont'd

In-court identification based on improper out-of-court identification, § 25:7

Independent origin identification following improper out-of-court identification, § 25:8

Photographs, use to identify accused, § 25:4

Pretrial identification after illegal arrest, § 25:9

Request for lineup by defendant, § 25:12

Scientific tests and analysis, § 20:3

Show up, § 25:6

Suggestiveness of identification procedure, § 25:3

Telephone conversations, voice identification, § 17:6

Voice, identification, § 25:13

### **FABRICATED EVIDENCE**

Closing arguments, § 34:21

### **FAILURE TO PROSECUTE**

Generally, § 4:17

Motions during trial, dismissal, and default, §§ 4:12, 4:17

### **FAILURE TO STATE CLAIM**

Motions, § 4:14

### **FAILURE TO TESTIFY**

Burden of proof, § 36:18

Closing arguments, §§ 35:6, 36:18

Criminal defendant's right to testify, § 2:35

Instructions to jury, § 38:27

### **FAMILY OR RELATIVES**

Hearsay

Judgments as to family history, § 16:31

Records, § 16:21

Reputation, § 16:27

Statements of family history, § 16:36

Husband and Wife, this index

### **FIFTH AMENDMENT**

Privilege Against Self-Incrimination, this index

### **FINAL ARGUMENT**

Closing Arguments, this index

### **FINGERPRINTS**

Scientific tests and analyses, § 20:9

### **FOREIGN LAW**

Presumptions and inferences, § 12:6

### **FRAUD**

Burden of proof, § 9:9

Damages, real estate misrepresentation cases, § 26:16

**FRAUD—Cont'd**

Motions after verdict, civil cases, § 42:4

**FRYE-MACK HEARING**

Scientific tests and analyses, § 20:1

**GANG AFFILIATION**

Relevancy of evidence, § 13:13

**GENERAL VERDICTS**

Generally, § 41:1

Interrogatories, § 41:4

**“GOLDEN RULE”**

Closing arguments, § 34:16

**GOVERNMENT DATA PRACTICES ACT**

Privileged communications and information, § 23:23

**GRAND JURY**

Closing arguments, references to grand jury testimony, § 36:10

**GRAPHOLOGY**

Documentary evidence authentication, handwriting comparisons, § 17:4

Scientific tests and analyses, § 20:12

**GUILTY PLEA**

Accomplice's guilty plea in criminal cases, relevancy of, § 13:16

Closing arguments, § 36:22

Offer to plead, § 18:9

**HABIT OR CUSTOM**

Circumstantial evidence, habit or routine practice, § 14:6

Relevancy, § 13:14

**HAIR**

Scientific tests and analyses, § 20:11

**HANDWRITING**

Documentary evidence authentication, comparisons, § 17:4

Scientific tests and analyses, § 20:12

**HARMLESS ERROR**

Closing arguments, § 34:33

**HEARING IMPAIRMENT**

Privileged communications and information, interpreters assisting hearing-impaired, § 23:18

**HEARSAY EVIDENCE**

Generally, §§ 16:1 to 16:42

Absence of record of entry, §§ 16:15, 16:18

Ancient documents, statements, § 16:24

Baptismal certificates, § 16:20

Boundaries, reputation concerning, § 16:28

INDEX

**HEARSAY EVIDENCE—Cont'd**

- Business activities, records, §§ **16:13, 16:14, 16:15**
- Character reputation, § **16:29**
- Child witness, incompetency of, § **16:41**
- Children, out-of-court statements of children under 10, § **16:40**
- Commercial publications, § **16:25**
- Convictions, previous judgments, § **16:30**
- Credibility, this index
- Definitions, § **16:3**
- Direct examination, firsthand knowledge, § **27:3**
- Distinguishing present sense impression from excited utterances, § **16:9**
- Emotional condition then existing, § **16:10**
- Exceptions to hearsay rule
  - Declarant unavailable, § **16:32**
  - Other exceptions, § **16:37**
  - Relevancy of declarant availability, § **16:6**
  - Statements against interest, § **16:35**
- Excited utterances, §§ **16:8, 16:9**
- Exclusion, rationale of hearsay exclusion, § **16:2**
- Eyewitness identification, out-of-court identification as hearsay, § **25:10**
- Family or relatives
  - Judgments as to family history, § **16:31**
  - Records, § **16:21**
  - Reputation, § **16:27**
  - Statements of family history, § **16:36**
- Former testimony, § **16:33**
- Hearsay within hearsay, § **16:38**
- Impeachment of Witnesses, this index
- Impending death, statement under belief, § **16:34**
- Incompetency of child witness, § **16:41**
- Interest, statements against, § **16:35**
- Interest in property
  - Records of documents affecting, § **16:22**
  - Statements in documents affecting, § **16:23**
- Judgments
  - Boundaries, § **16:31**
  - Personal, family, or general history, § **16:31**
  - Previous convictions, § **16:30**
- Jury, comments to, § **16:41**
- Learned treatises, § **16:26**
- Market quotations, § **16:25**
- Marriage certificates, § **16:20**
- Medical diagnosis or treatment, § **16:11**
- Mental condition then existing, § **16:10**
- Out-of-court statements
  - Children under 10, § **16:40**
  - Not deemed hearsay, § **16:5**

**HEARSAY EVIDENCE—Cont'd**

- Personal history
  - Character reputation, **§ 16:29**
  - Judgments as to personal history, **§ 16:31**
  - Reputation, **§§ 16:27, 16:29**
  - Statement of personal history, **§ 16:36**
- Physical condition then existing, **§ 16:10**
- Police tips, **§ 16:42**
- Present sense impressions, **§§ 16:7, 16:9**
- Public records and reports, **§ 16:16**
- Recollection, recorded, **§ 16:12**
- Records
  - Absence of record or entry, **§§ 16:15, 16:18**
  - Baptismal certificates, **§ 16:20**
  - Business activity, regularly conducted, **§ 16:13**
  - Certificates, **§ 16:20**
  - Family records, **§ 16:21**
  - Interest in property, **§§ 16:22, 16:23**
  - Marriage certificates, **§ 16:20**
  - Public records and reports, **§ 16:16**
  - Recollection recorded, **§ 16:12**
  - Regularly conducted business activity, **§§ 16:13, 16:14**
  - Religious organizations, **§ 16:19**
  - Vital statistics, **§ 16:17**
- Redaction of records, **§ 16:14**
- Relevancy, availability of declarant, **§ 16:6**
- Religious organizations, records, **§ 16:19**
- Reports, public records and reports, **§ 16:16**
- Reputation
  - Boundaries or general history, **§ 16:28**
  - Character, **§ 16:29**
  - Personal history, **§§ 16:27, 16:29**
- Statements
  - Ancient documents, contained, **§ 16:24**
  - Children under 10, **§ 16:40**
  - Death, statements under belief of impending death, **§ 16:34**
  - Against interest, **§ 16:35**
  - Interest in property, statements in documents affecting, **§ 16:23**
  - Medical diagnosis or treatment, **§ 16:11**
  - Personal or family history, **§ 16:36**
- Time or date
  - Convictions, previous judgments, **§ 16:30**
  - Credibility, use of prior inconsistent statements as non-hearsay substantive evidence, **§ 28:7**
  - Former testimony, **§ 16:33**
  - Present sense impressions, **§§ 16:7, 16:9**
  - Records of regularly conducted business activities, **§§ 16:13, 16:14**
  - Truth of matter asserted, **§ 16:4**

## INDEX

### **HEARSAY EVIDENCE—Cont'd**

Vital statistics records, § 16:17

### **HISTORIC DOCUMENTS**

Authentication, documentary evidence, § 17:8

Hearsay evidence, statements in ancient documents, § 16:24

### **HUSBAND AND WIFE**

Closing arguments, marital privilege, § 36:19

Domestic Abuse, Past Pattern of Domestic Abuse, this index

Hearsay evidence, marriage certificates, § 16:20

Presumptions and inferences, marriage, § 12:11

Privileged communications and information, § 23:2

### **HYPNOSIS**

Recall testimony, §§ 20:6, 22:11

Truth serum, § 20:6

### **IDENTIFICATION**

Eyewitness Identification, this index

### **ILLEGAL ARREST**

Pretrial identification after illegal arrest, § 25:9

### **ILLEGALLY OBTAINED EVIDENCE**

Confessions, use to impeach, § 18:19

Objections to evidence, § 31:10

### **IMMUNITY**

Privilege against self-incrimination, § 24:10

### **IMPEACHMENT OF WITNESSES**

Generally, §§ 28:1 to 28:18

Admissibility of evidence

Inconsistent statements, procedure for admitting, § 28:6

Prior convictions, procedure for admitting proof, § 28:13

Admissions, use of illegally obtained confession to impeach, § 18:19

Bias

Particular instances, impeachment by evidence of bias, § 28:4

Proof of bias, § 28:3

Character evidence, § 28:8

Closing arguments

Criminal cases, counsel's opinion, § 36:6

Merits of case, § 34:13

Collateral issues, impeachment evidence, § 28:14

Commonly used improper credibility questions, § 28:18

Conduct, specific instances, § 28:9

Confessions, use of illegally obtained confession to impeach, § 18:19

Corruption, proof, § 28:3

Credibility, § 28:1

Expert witnesses, § 15:14

**IMPEACHMENT OF WITNESSES—Cont'd**

Hearsay evidence

Attacking and supporting credibility of declarant, **§ 16:39**

Prior inconsistent statements, use as non-hearsay substantive evidence, **§ 28:7**

Improper impeachment, **§ 28:16**

Inconsistent statements

Cross-examination, **§ 29:9**

Prior inconsistent statements, **§ 28:5**

Procedure for admitting inconsistent statements, **§ 28:6**

Substantive evidence, use of prior inconsistent statements as non-hearsay, **§ 28:7**

Interest, proof, **§ 28:3**

Prior convictions

Procedure for admitting proof, **§ 28:13**

Proof, **§ 28:10**

Scope, **§ 28:11**

Rape shield law, **§ 18:15**

Reputation evidence, **§ 28:8**

Scope of prior convictions, **§ 28:11**

**IN LIMINE**

Generally, **§ 4:16**

Closing arguments, rulings, **§ 34:6**

Relevancy, **§ 13:20**

**INDIGENT DEFENDANTS**

Expert witness fees, **§ 15:15**

**INFERENCES**

Generally, **§§ 12:1 to 12:20**

Accidents, **§ 12:8**

Adverse inferences

Assertion of privilege, **§ 23:22**

Self-incrimination privilege

Civil cases, **§ 24:4**

Criminal cases, **§ 24:5**

Presumptions and inferences, **§ 12:15**

Burden of Proof, this index

Circumstantial evidence, **§§ 14:7, 14:9**

Closing arguments, **§ 34:8**

Concealment of evidence, **§ 12:13**

Conclusive presumptions, **§ 12:4**

Conduct, presumptions relating, **§ 12:9**

Conflicting presumptions, **§ 12:3**

Continuation of a condition, **§ 12:12**

Criminal cases, **§ 12:17**

Death, missing persons, **§ 12:8**

Destruction of evidence, **§ 12:13**

Distinguished from presumptions, **§ 12:2**

## INDEX

### **INFERENCES—Cont'd**

- Due care presumption, **§ 12:10**
- Failure to produce witness or material evidence, **§ 12:14**
- Foreign law, knowledge, **§ 12:6**
- Innocence or Guilt, this index
- Instructions to jury, adverse inference from spoliation of evidence, **§ 37:19**
- Knowledge of facts, **§ 12:7**
- Knowledge of law, **§ 12:5**
- Marriage, **§ 12:11**
- Missing persons, **§ 12:8**
- Possession of recently stolen property, **§ 12:19**
- Presumptions, this index
- Privileged communications and information, assertion of privilege, **§ 23:22**
- Res Ipsa Loquitur, this index
- Suicide, **§ 12:8**
- Suppression of evidence, **§ 12:13**

### **INFORMERS**

- Identity, privileged communications and information, **§ 23:21**
- Instructions to jury, cautionary or limiting instructions, **§ 38:30**

### **INSANITY**

- Closing arguments, effect of verdict, **§ 36:23**
- Instructions of jury, criminal cases, **§ 38:19**

### **INSURANCE**

- Bad faith failure of insurer to settle, instructions to jury, **§ 39:23**
- Closing arguments, civil cases, **§ 35:2**
- Collateral source rule, **§ 26:13**
- Damages, determining actual cash value, **§ 26:17**
- Instructions to jury, civil cases, **§§ 39:18, 39:23**
- Mistrial, disclosure of liability insurance, **§ 32:5**
- Voir dire, jury selection, insurance companies, **§ 6:10**

### **INTEREST ON MONEY**

- Damages, **§ 26:22**

### **INTERLOCUTORY JUDGMENTS**

- Generally, **§ 43:2**

### **INTERPRETATION**

- Instructions to jury, **§ 37:17**
- Stipulations, proof of facts, **§ 10:4**
- Verdicts, **§ 41:14**

### **INTERPRETERS**

- Confessions through, **§ 18:22**
- Privileged communications and information, assistants to hearing-impaired, **§ 23:18**
- Trial conduct, **§ 2:30**

## **INTERROGATION**

Electronically recorded custodial interrogation, **§ 18:21**

Ex parte communications, right to counsel, **§ 1:8**

## **INTERROGATORIES**

Closing arguments, comments, **§ 34:29**

## **INTOXICATION**

Addicts

Competency of witnesses, **§ 22:12**

Instructions to jury, cautionary or limiting instructions, **§ 38:20**

Dram shop act, instructions to jury, **§ 39:14**

Expert testimony, **§ 15:8**

Instructions to jury, **§§ 38:20, 39:14**

Jury conduct and deliberations, **§ 40:15**

Lay witnesses, **§ 15:8**

Relevancy of evidence, **§ 13:21**

Scientific tests and analyses, **§ 20:4**

## **INVITED ERROR**

Improper conduct and prejudice, **§§ 7:5, 34:32**

## **JOINDER OF PARTIES**

Generally, **§ 2:34**

## **JOINT TRIAL**

Generally, **§ 2:34**

Jury instructions, **§ 38:41**

## **JOURNALISTS**

Privileged communications and information, **§ 23:17**

## **JUDGES**

Admissions, judicial, **§ 18:2**

Closing Arguments, this index

Competency to testify, **§ 22:6**

Conduct, **§§ 2:10, 2:11**

Control of examination of witnesses, **§ 2:17**

Credibility of witnesses, judge's comment on, **§ 2:12**

Demeanor, **§§ 2:10, 2:11**

Jury Conduct and Deliberations, this index

Jury Instructions, this index

Presence, **§ 2:8**

Preservation of order, duty of judge, **§ 2:13**

Privilege against self-incrimination, court's duty, **§ 24:9**

Questioning of witnesses by judge, **§ 2:17**

Right to counsel, judge's duty, **§ 1:13**

Substitution during trial, **§ 2:9**

Trier of fact, **§ 2:31**

Verdicts, judicial comment, **§ 41:16**

View by jury, presence of judge, **§ 21:3**

## INDEX

### **JUDGMENT AS A MATTER OF LAW (JAML)**

Generally, §§ 33:1 to 33:4

Civil cases

Procedure for moving for JAML, § 33:2

Right to JAML, determination, § 33:3

Criminal cases, motion for judgment of acquittal, §§ 33:4, 42:6

Determination of right, § 33:3

Motions after verdict, § 42:1

Nature of JAML, § 33:1

Opening statements, § 7:8

### **JUDGMENT OR DECREE**

Generally, §§ 43:1 to 43:10

Attorneys fees as costs, § 43:7

Attorneys' fees as costs, § 43:7

Costs

Generally, § 43:4

Attorneys fees as costs, § 43:7

Disbursements, § 43:4

Items of costs and disbursements, § 43:6

Multiple party actions, § 43:8

Procedure for taxation of costs, § 43:5

Criminal cases, § 43:10

Default Judgments, this index

Directed Verdict, this index

Disbursements for costs, § 43:6

Hearsay Evidence, this index

Interlocutory judgment, § 43:2

As a matter of law, motions, § 42:1

Mistrial, result of granting, § 32:7

Multiple party actions, costs, § 43:8

Offer of, § 43:9

Procedural aspects of taking judgment, § 43:3

Rule 68 offer of judgment or settlement, § 43:9

Settlement offer, § 43:9

### **JUDICIAL IMMUNITY**

Generally, § 23:25

### **JUDICIAL NOTICE**

Generally, §§ 11:1 to 11:7

Civil cases, § 39:3

Criminal cases, § 38:25

Examples of facts judicially noticed, § 11:5

Examples of facts refused judicial notice, § 11:6

Government, judicial notice of facts about, § 11:4

Laws and proceedings, judicial notice, § 11:3

Political subdivisions, judicial notice of facts about, § 11:4

Procedural aspects, § 11:2

**JURY**

Generally, §§ **6:1 to 6:18**

Alternate jurors, § **6:18**

Anonymous jury, selection, § **6:9**

Challenges

    Batson challenges, § **6:7**

    For cause, § **6:12**

    Civil cases, peremptory challenges, § **6:15**

    Criminal cases, peremptory challenges, § **6:16**

    Grounds for challenge for cause, § **6:13**

        “Mary Carter” agreements, § **6:15**

        Panel, § **6:6**

    Timeliness of challenges for cause, § **6:14**

Closing Arguments, this index

Competency of juror to testify, § **22:7**

Conduct of jury. Jury Conduct and Deliberations, this index

Deadlocked jury. Jury Conduct and Deliberations, this index

Deliberations. Jury Conduct and Deliberations, this index

Discrimination, jury selection, § **6:7**

Exemptions from jury service, § **6:5**

Eyewitness identification, cautionary instruction to jury, § **25:14**

Grand jury testimony, reference to in closing arguments, § **36:10**

Grounds for challenge for cause, § **6:13**

Hearsay, comments to jury, § **16:41**

Instructions. Jury Instructions, this index

Insurance companies, voir dire, § **6:11**

    “Mary Carter” agreements, § **6:15**

Media contact, § **40:8**

Mistrial, deadlocked jury, § **32:6**

Objections to jury, § **6:3**

Peremptory challenges

    Civil, § **6:15**

    Criminal, § **6:16**

Personal injuries, displaying to jury, § **19:4**

Qualifications of jurors, § **6:4**

Questions on voir dire, § **6:10**

Real and demonstrative evidence, displaying personal injuries to jury, § **19:4**

Right to trial by impartial jury, § **6:1**

Selection of jurors, generally, § **6:2**

Summoning jurors, § **6:2**

Swearing the jury, § **6:17**

Televised testimony of children under 12 taken outside presence of jury, § **2:19**

Timeliness

    Challenges for cause, § **6:14**

    Objections to jury, § **6:3**

Verdicts, this index

View by Jury, this index

INDEX

**JURY—Cont'd**

- Voir dire
  - Conduct of examination, **§ 6:8**
  - Insurance companies, **§ 6:11**
  - Questions, **§ 6:10**
  - Waiver of, **§ 2:31**
- JURY CONDUCT AND DELIBERATIONS**
  - Generally, **§§ 40:1 to 40:27**
    - Alternate jurors in deliberations, **§ 40:27**
    - Authority of court to control jury, **§ 40:2**
    - Comments by jurors, improper, **§ 40:10**
    - Communications to jurors, **§ 40:23**
    - Contact with parties or lawyers, **§ 40:7**
    - Court's authority to control jury, **§ 40:2**
    - Custodians and officers, **§ 40:3**
    - Deadlocked jury
      - Discharge, **§ 40:26**
      - Instructions to jury, **§ 37:16**
      - Mistrial, **§ 32:6**
    - Depositions not taken to jury room, **§ 40:21**
    - Experiments, **§ 40:17**
    - Food and lodging for jurors, **§ 40:24**
    - Illness of jurors, **§ 40:16**
    - Improper comments by jurors, **§ 40:10**
    - Intoxicants, jurors' use, **§ 40:15**
    - Investigations, **§ 40:17**
    - Judges
      - Authority of court to control jury, **§ 40:2**
      - Extra judicial influence or information, **§ 40:5**
      - Instructions to jury, coercion, **§ 37:16**
    - Jury room
      - Depositions not taken, **§ 40:21**
      - Items taken, **§ 40:18**
      - Pleadings to jury room, **§ 40:20**
      - Written instructions to jury room, **§ 40:19**
    - Knowledge of jurors, **§ 40:9**
    - Length of deliberations, **§ 40:25**
    - Lodging for jurors, **§ 40:24**
    - Management of jury, **§ 40:1**
    - Motions after verdict, jury misconduct, **§ 42:9**
    - Notes, taking and use of by jurors, **§ 40:11**
    - Officers, **§ 40:3**
    - Personal knowledge of jurors, **§ 40:9**
    - Pleadings to jury room, **§ 40:20**
    - Publicity, exposure, **§ 40:6**
    - Questions by jurors to witnesses, **§ 40:12**
    - Request for evidence, **§ 40:22**

**JURY CONDUCT AND DELIBERATIONS—Cont'd**

Sequestration and separation of jury, **§ 40:13**  
**Sleeping jurors, § 40:14**  
Use or usefulness  
    Intoxicants, by jurors, **§ 40:15**  
    Notes, taking and use of by jurors, **§ 40:11**  
View by Jury, this index  
Witnesses, questions by jurors to witnesses, **§ 40:12**  
Written instructions to jury room, **§ 40:19**

**JURY INSTRUCTIONS**

Generally, §§ 37:1 to 37:19, 38:1 to 38:46, 39:1 to 39:23  
Cautionary instructions  
    Generally, **§ 37:10**  
    Criminal cases, §§ 38:7, 38:30  
    Eyewitness identification, **§ 25:14**  
    Informers, drug addicts, perjurers, **§ 38:30**  
Civil and Criminal  
    Generally, **§ 37:10**  
    Adverse inference from spoliation of evidence, **§ 37:19**  
    Close of trial, **§ 37:7**  
    Coercive instructions, **§ 37:16**  
    Construction of instructions, **§ 37:17**  
    Deadlocked juries, **§ 37:16**  
    Deliberations and jury conduct  
        Coercive instructions, **§ 37:16**  
        Instructions during deliberations, **§ 37:8**  
        Written instructions to jury room, **§ 40:19**  
    Duties and powers of trial judge, **§ 37:2**  
    Elements of claims or offenses, **§ 37:12**  
    End of trial, **§ 37:7**  
    Failure to object, **§ 37:4**  
    Impeachment instructions, **§ 37:11**  
    Inconsistent or contradictory instructions, **§ 37:18**  
    Law of the case, **§ 37:4**  
    Modification or supplement of instructions after arguments, **§ 37:15**  
    Multiple parties, **§ 37:14**  
    Objections to proposed instructions and verdict forms, **§ 37:3**  
    Powers and duties of trial judge, **§ 37:2**  
    Preliminary instructions, **§ 37:5**  
    Presumptions and inferences, generally, **§ 12:20**  
    Prior inconsistent statements, **§ 37:11**  
    Proposed instructions and verdict forms, **§ 37:3**  
    Requests for proposed instructions and verdict forms, **§ 37:3**  
    Statutes, reading, **§ 37:12**  
    Supplement of instructions after arguments, **§ 37:15**  
    Theories of the parties, **§ 37:13**

**JURY INSTRUCTIONS—Cont'd**

Civil and Criminal—Cont'd

Time or date

Deliberations, instructions during, **§ 37:8**

Instructions at close of trial, **§ 37:7**

Instructions during trial, **§§ 37:6, 38:7**

Modification or supplement of instructions after arguments, **§ 37:15**

During trial, **§§ 37:6, 38:7**

Verdict forms, **§ 37:3**

View by jury, **§ 21:5**

Written instructions, **§§ 37:9, 40:19**

Civil cases

Generally, **§§ 39:1 to 39:23**

Affirmative defenses, **§ 39:19**

Agency and other relationships, **§ 39:6**

Aggravation of preexisting condition, **§ 39:22**

Bad faith failure of insurer to settle, **§ 39:23**

Burden of proof, **§ 39:5**

Causation, **§ 39:12**

Children, standard of care for, **§ 39:8**

Civil Damage Act, **§ 39:18**

Comments by court on evidence or credibility, **§ 39:4**

Comparative negligence, **§ 39:11**

Contract actions, **§ 39:17**

Damages, **§ 39:18**

Discounting of future damages, **§ 39:20**

Emergency rule, negligence, **§ 39:9**

Expert instructions, medical malpractice, **§ 39:21**

Forfeiture of motorist's right-of-way, **§ 39:10**

Future damages, discounting of, **§ 39:20**

Insurance, **§ 39:18**

Intentional torts and other civil actions, **§ 39:14**

Judge's comment on evidence, **§ 39:4**

Judicial notice, **§ 39:3**

Medical malpractice, expert instructions, **§ 39:21**

Multiple parties, **§ 39:18**

Negligence

Children, standard of care for, **§ 39:8**

Comparative negligence, **§ 39:11**

Emergency rule, **§ 39:9**

Strict liability, duty of care, no-fault, **§ 39:7**

No-fault, **§ 39:7**

Preliminary instructions, **§ 39:2**

Property damage, **§ 39:13**

Res ipsa loquitur, **§ 39:16**

Strict liability, **§ 39:7**

Torts, **§§ 39:14, 39:15**

**JURY INSTRUCTIONS—Cont'd**

- Civil cases—Cont'd
  - Warranties, **§ 39:17**
- Criminal cases
  - Generally, **§§ 38:1 to 38:46**
  - Accomplices, **§ 38:32**
  - Alcoholic beverages, **§ 38:20**
  - Alibi, **§ 38:21**
  - Appeals, **§ 38:35**
  - Burden of proof, **§§ 38:10, 38:17**
  - Causation, **§ 38:4**
  - Cautionary or limiting instructions, **§ 38:7**
    - Separate charges considered separately, **§ 38:31**
  - Character evidence, **§ 38:24**
  - Circumstantial evidence, **§ 38:36**
  - Coercion in sexual conduct cases, **§ 38:2**
  - Confessions, **§ 38:33**
  - Conspiracy, **§ 38:28**
  - Constructive possession, **§ 38:5**
  - Corporate liability, **§ 38:44**
  - Corroboration, necessity of, **§ 38:11**
  - Credibility, court's comment on evidence or credibility, **§ 38:8**
  - Defendant's failure to testify or produce evidence, **§ 38:27**
  - Disjunctive instructions, **§ 38:3**
  - Domestic abuse murder statute, past pattern of domestic abuse, **§ 38:38**
  - Drug addicts, **§ 38:30**
  - Duress, **§ 38:43**
  - Effect of verdict, **§ 38:35**
  - Entrapment, **§ 38:23**
  - Essential elements, **§ 38:12**
  - Eyewitness identification, cautionary instruction, **§ 25:14**
  - Failure of defendant to testify or produce evidence, **§ 38:27**
  - Felony murder, **§ 38:39**
  - Flight, **§ 38:42**
  - Identification testimony, **§ 38:29**
  - Incompetency of witness, **§ 38:40**
  - Informers, **§ 38:30**
  - Instructions during trial, **§ 38:7**
  - Intent
    - Accident, **§ 38:16**
    - Criminal intent, generally, **§ 38:13**
    - Premeditation, **§ 38:14**
    - Strict liability, **§ 38:15**
  - Intoxication, **§ 38:20**
  - Joint trials, **§ 38:41**
  - Judicial notice, **§ 38:25**
  - Lesser included offenses, **§ 38:26**

## INDEX

### **JURY INSTRUCTIONS—Cont'd**

Criminal cases—Cont'd

Liability for another's crimes, § 38:28

Mental illness, § 38:19

Mistake of law, § 38:46

Nullification of verdict, § 38:35

Other crimes and misconduct, § 38:34

Perjurors, § 38:30

Preliminary instructions, § 38:6

Premeditation, intent, § 38:14

Presumption of innocence, § 38:9

Production of evidence, failure of defendant in criminal case, § 38:27

Punishment, § 38:35

Self-defense and defense of another, § 38:22

Separate charges considered separately, cautionary instruction, § 38:31

Sexual conduct cases, coercion in, § 38:2

Shifting burden of proof, §§ 38:10, 38:17

Standard of review, § 38:37

During trial, § 38:7

Unanimous verdict, § 38:45

Verdict, § 38:35

Intoxication, §§ 38:20, 39:14

### **JUVENILES**

Competency of young children to testify, § 22:10

Hearsay evidence, out-of-court statements of children under 10, § 16:40

Paternity cases, real and demonstrative evidence, § 19:15

Privileged communications and information by minor to parent, § 23:12

### **LAW OF THE CASE**

Instructions to jury, § 37:4

### **LEADING QUESTIONS**

Generally, § 27:7

Checklist, situations where leading question allowed, § 27:8

### **LEARNED TREATISES**

Hearsay evidence, § 16:26

### **LESSER INCLUDED OFFENSES**

Instructions to jury, § 38:26

Verdicts, criminal cases, § 41:7

### **LIABILITY INSURANCE**

Mistrial, disclosure of liability insurance, § 32:5

### **LIE DETECTOR TESTS**

Admissibility, § 20:7

### **LINEUPS**

Eyewitness identification, §§ 25:5, 25:12

**LIQUIDATED DAMAGES**

Generally, § 26:18

**LOSS OF EARNINGS OR PROFITS**

Generally, § 26:7

Contract cases, § 26:14

**MALPRACTICE**

Generally, § 1:9

Jury instructions, expert instructions, medical malpractice, § 39:21

**MAPS**

Real and demonstrative evidence, § 19:6

**MARKET QUOTATIONS**

Hearsay evidence, § 16:25

**MARRIAGE CERTIFICATES**

Hearsay evidence, § 16:20

**“MARY CARTER” AGREEMENTS**

Generally, § 6:15

**MATERIALITY**

Distinguished from relevancy, § 13:4

Presumptions and inferences, failure to produce material evidence, § 12:14

**MEDIA**

Jury conduct and deliberations, contact with media, § 40:8

Privileged communications to journalists, § 23:17

**MEDIATION**

Negotiation and Settlement, this index

**MEDICAL EXPENSES**

Damages, § 26:8

**MEDICAL STAFF**

Peer review privilege, § 23:24

**MEDICAL TREATMENT**

Closing arguments, effect of verdict, § 36:23

Hearsay evidence, § 16:11

**MEMORY**

Hearsay, § 16:12

Hypnotic recall testimony, § 22:11

Refreshed recollection

Generally, § 27:10

Distinguished from declarant unavailable, § 27:12

Redirect and re-cross examination, § 30:3

**MENS REA**

Generally, §§ 15:8, 38:15

## INDEX

### **MENTAL ANGUISH**

Generally, § 26:10

### **MENTAL CONDITION**

Circumstantial evidence, proof of state of mind, § 14:4

Closing arguments, effect of verdict, § 36:23

Damages, mental suffering, § 26:10

Expert testimony, § 15:7

Hearsay evidence, § 16:10

Insanity

Closing arguments, effect on verdict, § 36:23

Instructions to jury, criminal cases, § 38:19

Multiple personality disorder, competency of witness with, § 22:14

### **MID-TRIAL ORDERS**

Appeal of, § 4:20

### **MILLER-SHUGART RELEASE**

Generally, § 26:25

### **MINORS**

Children, this index

### **MISCONDUCT**

Credibility and impeachment of witnesses, § 28:9

Judges, general conduct and demeanor, §§ 2:10, 2:11

Jury Conduct and Deliberations, this index

Motions after verdict, Schwartz hearing, misconduct by jury, § 42:9

Opening statements, improper conduct and prejudice, § 7:5

Parties to trial, § 2:4

Presumptions relating to conduct, § 12:9

Trial lawyers

Generally, § 1:2

Malpractice, § 1:9

Rule 11 sanctions against attorneys, § 1:5

Types of trial lawyer misconduct, § 1:3

### **MISSING PERSONS**

Presumptions and inferences, § 12:8

### **MISTAKE**

Jury instructions, mistake of law, § 38:46

Motions after verdict, § 42:4

### **MISTRIAL**

Generally, §§ 32:1 to 32:7

Deadlocked jury, § 32:6

Double jeopardy, § 32:7

Granting, result, § 32:7

Grounds, § 32:3

Liability insurance, disclosure, § 32:5

Mitigating prejudice to avoid mistrial, § 32:4

**MISTRIAL—Cont'd**

Motion, timing, § 32:2

**MITIGATION**

Damages, § 26:5

Mistrial, mitigating prejudice to avoid mistrial, § 32:4

**MODELS**

Real and demonstrative evidence, § 19:6

**MOTION PICTURES**

Real and demonstrative evidence, § 19:9

**MOTIONS**

Generally, §§ 4:1 to 4:21

After verdict. Motions After Verdict, this index

Continuance, considerations in ruling, § 3:2

Criminal cases

Amended complaint, § 4:6

Dismissal, § 4:19

Judgment of acquittal, § 33:4

Default Judgments, this index

Discovery, motion to compel, § 4:15

Dismissal, this index

Exclusion of improper evidence on court's own motion, § 2:23

Failure to prosecute, obey the court, or comply with procedure statutes, § 4:17

Failure to state a claim upon which relief can be granted, § 4:14

Judgment as a Matter of Law, this index

Jurisdiction, costs, § 4:13

In limine. Motions in Limine, this index, this index

Mid-trial orders, appeal of, § 4:21

Mistrial, timing of motion, § 32:2

Multiple parties and claims, voluntary dismissals, § 4:3

Nolle prosequi, § 4:7

Objections to evidence, motion to strike, § 31:5

Punitive damages, motion to amend complaint to assert, § 4:5

Reopening a dismissed case, § 4:20

Verdict. Motions After Verdict, this index

**MOTIONS AFTER VERDICT**

Generally, §§ 42:1 to 42:9

Civil cases

Fraud, § 42:4

Grounds for new trial, § 42:2

Judgment as a matter of law (JAML), § 42:1

Mistake, § 42:4

New trial, § 42:2

Newly discovered evidence, § 42:4

Void judgment, § 42:4

INDEX

**MOTIONS AFTER VERDICT—Cont'd**

Criminal cases

    Grounds for new trial, § 42:7

    Judgment of acquittal, § 42:6

    New trial, § 42:7

    Vacation of judgment, § 42:8

    Misconduct by jury, Schwartz hearing, § 42:9

**MOTIONS IN LIMINE**

Generally, § 4:15

Closing arguments, rulings, § 34:6

Relevancy, § 13:20

**MOTIVE**

Closing arguments, § 34:28

**MOTOR VEHICLES**

Automobiles, this index

**MULTIPLE PARTIES**

Instructions to jury, §§ 37:14, 39:18

Judgments, costs, § 43:8

Motions for voluntary dismissal, § 4:3

**MULTIPLE PERSONALITY DISORDER**

Competency of witnesses, § 22:14

**NAIG SETTLEMENT**

Generally, § 26:25

**NEGATIVE EVIDENCE**

Relevancy, § 13:19

**NEGOTIATION AND SETTLEMENT**

Admissions and confessions, compromise and offers to plead, § 18:9

Closing arguments

    Civil cases, § 35:7

    Criminal cases

    Withdrawn guilty or nolo contendre plea or plea negotiations, § 36:22

Damages, settlements, § 26:25

Judgment offer, § 43:9

Miller-Shugart settlement, § 26:25

Naig Settlement, § 26:25

Pierringer release, § 13:6

Privileged communications and information, mediation, § 23:15

Relevancy, compromise offers, § 13:6

Schmidt-Clothier settlement, § 26:25

**NEUTRON ACTIVATION ANALYSIS**

Scientific tests and analyses, § 20:15

**NEW TRIAL**

Motion and hearing, time for, § 42:3

**NEW TRIAL—Cont'd**

Motions after verdict  
Civil, §§ 42:2 to 42:3  
Criminal, § 42:7

**NEWLY DISCOVERED EVIDENCE**

Motions after verdict, civil cases, § 42:4

**NO-FAULT**

Instructions to jury, § 39:7

**NOLLE PROSEQUI**

Generally, § 4:7

**NOLO CONTENDRE**

Closing arguments, plea withdrawn, § 36:22

**NOMINAL DAMAGES**

Generally, § 26:2

**NONCONFORMING USE**

Materiality and relevancy of evidence, real estate values, § 13:28

**NOTES**

Jury conduct and deliberations, taking and use of notes by jurors, § 40:11

**NOTORIOUS CASES**

Closing arguments, references to notorious cases, § 36:8

**NULLIFICATION OF VERDICT**

Criminal cases, § 41:15  
Instructions to jury, § 38:35

**OBJECTIONS**

Civil litigation, evidence obtained during course of, § 31:11  
Closing arguments, § 34:33  
Competency of witnesses, § 22:3  
Discovery rules, failure to comply with, § 31:9  
Jury, timely objections, § 6:3  
Jury instructions and verdict forms, § 37:3  
Opening statements, objection and waiver, § 7:7

**OBJECTIONS TO EVIDENCE**

Generally, § 31:1  
Checklists, common trial objections, § 31:8  
Failure to object, effect, § 31:4  
Form of objections, § 31:2  
Illegally obtained evidence, § 31:10  
Motion to strike inadmissible evidence, § 31:5  
Offer of proof, § 31:7  
Relevancy, objections to irrelevant evidence, § 13:4  
Ruling on objections, § 31:6  
Suppression hearing, illegally obtained evidence, § 31:10

## INDEX

### **OBJECTIONS TO EVIDENCE—Cont'd**

Timeliness, § 31:3

### **OFFER OF PROOF**

Generally, § 31:7

### **OFFERS**

Admissions and confessions, offers to plead, § 18:9

Judgment, Rule 68, § 43:9

Objections to evidence, offer of proof, § 31:7

Pierringer release, § 13:6

Relevancy, compromise offers, § 13:6

Settlement, Rule 68, § 43:9

Stipulations, criminal defendant's offer to stipulate, § 2:28

### **OFFICERS**

Jury conduct and deliberations, § 40:4

Privileged communications and information, public officers, § 23:13

### **OPENING STATEMENTS**

Generally, §§ 7:1 to 7:9

Admissions of party, statements by counsel constituting, § 7:9

Content, § 7:4

Dismissal and directed verdict, § 7:8

Improper conduct, § 7:5

Objection, § 7:7

Order of presentation, § 7:3

Prejudice, § 7:5

Right and advantages of opening statement, § 7:2

Scope, § 7:4

Visual aids, § 7:6

Waiver, § 7:7

### **OPENING THE DOOR**

Generally, § 28:15

### **OPINION EVIDENCE**

Generally, §§ 15:1 to 15:15

Basis of opinion evidence, §§ 15:9, 15:10

Court-appointed experts, § 15:12

Cross-examination of expert witnesses, § 15:14

Direct examination, documents used by experts, § 27:11

Disclosure of facts underlying expert's opinion, § 15:10

Distinction between expert and skilled witnesses, § 15:7

Expert testimony, § 15:4

Eyewitness identification, expert testimony as to reliability, § 25:15

Impeachment of expert witnesses, § 15:14

Lay witnesses, § 15:2

Qualification of experts, § 15:6

Reports, reading experts' reports into evidence, § 15:11

Subject matter, § 15:8

**OPINION EVIDENCE—Cont'd**

Ultimate issue, **§ 15:3**

Weight and sufficiency of expert testimony, **§ 15:13**

**ORDER (SEQUENCE)**

Closing arguments, **§ 34:3**

Opening statements, **§ 7:3**

Proof. Order of Proof, this index

**ORDER OF PROOF**

Generally, **§§ 8:1 to 8:5**

Admission of rebuttal evidence in case in chief, **§ 8:4**

Evidence in chief, **§ 8:2**

Rebuttal evidence, **§§ 8:3, 8:4**

Reopening the evidence, **§ 8:5**

**ORDERS OF COURT**

Contempt of court, disobedience of court orders as contempt, **§ 5:7**

Mid-trial orders, appeal of, **§ 4:20**

Pretrial orders, control of proceedings, **§ 2:25**

**OTHER CRIMES, WRONGS OR ACTS**

Closing arguments in criminal cases, references to notorious cases, **§ 36:8**

Relevancy, **§ 13:15**

Spreigl evidence, **§§ 13:15, 13:17**

**PAIN AND SUFFERING**

Generally, **§ 26:9**

Mental suffering, **§ 26:10**

**PARENTS**

Children, this index

**PAROL EVIDENCE RULE**

Circumstantial evidence, **§ 14:8**

**PARTIAL VERDICTS**

Criminal cases, **§ 41:8**

**PARTNERSHIPS**

Privilege against self-incrimination, **§ 24:3**

**PATERNITY**

Child displayed as evidence, **§ 19:16**

**PATTERN**

Domestic abuse, relevancy of past pattern of domestic abuse, **§ 13:18**

Teeth pattern, tests and analyses, **§ 20:17**

**PAYMENT**

Closing arguments, payments to witnesses or counsel, **§ 34:24**

Relevancy, prepayments, **§ 13:6**

## INDEX

### **PEER REVIEW**

Privileged communications and information, § 23:24

### **PER DIEM**

Closing arguments, § 35:5

### **PEREMPTORY CHALLENGES**

Civil cases, § 6:15

Criminal cases, § 6:16

### **PERJURY**

Instructions to jury, cautionary or limiting instructions, § 38:30

Prevention of perjured testimony, § 1:11

### **PERMISSION**

Direct examination, situations where leading question allowed, § 27:8

### **PERPETRATOR ALTERNATIVE**

Generally, § 13:24

### **PERSONAL HISTORY**

Hearsay

Character reputation, § 16:29

Judgments as to personal history, § 16:30

Reputation, §§ 16:27 to 16:29

Statement of personal history, § 16:36

### **PERVERSE VERDICT**

Generally, § 41:12

### **PHOTOGRAPHS**

Eyewitness identification, § 25:4

Motion pictures, § 19:9

Real and demonstrative evidence, § 19:8

Uses of photographic evidence, § 19:10

### **PHYSICAL APPEARANCE**

Prison attire worn by defendant, § 2:6

### **PHYSICAL EXAMINATION**

Privilege against self-incrimination, § 24:8

### **PHYSICAL RESTRAINT OF DEFENDANT**

Trial conduct, § 2:5

### **PHYSICIAN-PATIENT PRIVILEGE**

Generally, § 23:9

Exceptions, § 23:10

### **PHYSICIANS**

Peer review privilege, § 23:24

### **PIERRINGER RELEASE**

Generally, § 13:6

Settlements and Releases, § 26:25

**PLEAS**

Accomplice's guilty plea in criminal cases, relevancy of, **§ 13:16**  
Admissions and confessions, compromise and offers to plead, **§ 18:9**

**POLICE**

Counsel table, police officers at, **§ 2:7**  
Emergency 911 tapes, **§ 16:8**  
Hearsay, police tips, **§ 16:42**

**POLLING OF JURY**

Verdicts, **§ 41:11**

**POLYGRAPHS**

Admissibility, lie detector tests, **§ 20:7**

**POSSESSION**

Jury instructions, constructive possession, **§ 38:5**  
Stolen property, presumptions and inferences, **§ 12:19**

**PRELIMINARY INSTRUCTIONS TO JURY**

Generally, **§ 37:5**  
Civil cases, **§ 39:2**  
Criminal cases, **§ 38:6**

**PREMEDITATION**

Criminal intent, jury instructions, **§ 38:14**

**PRESUMPTION OF INNOCENCE**

Generally, **§ 12:18**  
Closing arguments, criminal cases, **§ 36:11**  
Instructions to jury, criminal cases, **§ 38:9**

**PRESUMPTIONS**

Generally, **§§ 12:1 to 12:20**  
Accidents, **§ 12:8**  
Adverse inferences  
    Assertion of privilege, **§ 23:22**  
    Self-incrimination privilege  
        Civil cases, **§ 24:4**  
        Criminal cases, **§ 24:5**  
        Presumptions and inferences, **§ 12:15**  
Burden of Proof, this index  
Circumstantial evidence, **§§ 14:7, 14:9**  
Closing arguments, **§ 34:8**  
Concealment of evidence, **§ 12:13**  
Conclusive presumptions, **§ 12:4**  
Conduct, presumptions relating, **§ 12:9**  
Conflicting presumptions, **§ 12:3**  
Continuation of a condition, **§ 12:12**  
Criminal cases, **§ 12:17**  
Death, missing persons, **§ 12:8**  
Destruction of evidence, **§ 12:13**

## INDEX

### **PRESUMPTIONS—Cont'd**

- Distinguished from inferences, § 12:2
- Due care presumption, § 12:10
- Failure to produce witness or material evidence, § 12:14
- Foreign law, knowledge, § 12:6
- Innocence, generally, § 12:18
- Knowledge of facts, § 12:7
- Knowledge of law, § 12:5
- Marriage, § 12:11
- Missing persons, § 12:8
- Possession of recently stolen property, § 12:19
- Res Ipsa Loquitur, this index
- Suicide, § 12:8
- Suppression of evidence, § 12:13

### **PRETRIAL MATTERS**

- Discovery, this index
- Eyewitness identification, illegal arrest, § 25:9
- Orders, control of proceedings by pretrial order, § 2:25

### **PRIMA FACIE CASE**

- Burden of proof, § 9:2
- Opening statements, dismissal and directed verdict based, § 7:8

### **PRINCIPAL AND AGENT**

- Admissions and confessions, § 18:7
- Instructions to jury, civil cases, § 39:6

### **PRINTS**

- Fingerprints, § 20:9
- Shoeprints, § 20:10
- Voiceprints, § 20:8

### **PRISON ATTIRE**

- Trial conduct, § 2:6

### **PRIVILEGE AGAINST SELF-INCrimINATION**

- Generally, §§ 24:1 to 24:10
- Acts of a witness, § 24:8
- Adverse consequences for asserting privilege, § 24:6
- Compelling incriminating testimony—immunity, § 24:10
- Corporations, § 24:3
- Court's duty to advise of privilege, § 24:9
- Exceptions, § 24:7
- Immunity—compelling incriminating testimony, § 24:10
- Nature of incriminating testimony, § 24:1
- Partnerships and other entities, § 24:3
- Physical examination or acts of witnesses, § 24:8
- Scope of privilege, § 24:2
- Waiver, § 24:7

## **PRIVILEGED COMMUNICATIONS AND INFORMATION**

Generally, §§ 23:1 to 23:25

Absolute privilege, § 23:25

Adverse inference from assertion of privilege, § 23:22

Attorney-client privilege

Generally, § 23:3

Fees, attorney's disclosure of client fees, § 23:7

Identity of client, attorney's disclosure, § 23:8

Restrictions on attorney-client privilege, § 23:4

Waiver, § 23:6

Work product privilege, lawyers, § 23:5

Clergy, § 23:11

Counselors, sexual assault, § 23:14

Crime victim compensation proceedings, § 23:19

Government Data Practices Act, § 23:23

Informers, identity, § 23:21

Interpreters assisting hearing-impaired, § 23:18

Journalists, § 23:17

Judicial immunity, § 23:25

Marital privilege, § 23:2

Mediation communications, § 23:15

Nature of privileged communications, § 23:1

Parents, communications by minor, § 23:12

Peer review privilege, § 23:24

Physician-patient privilege

Generally, § 23:9

Exceptions, § 23:10

Public officers, § 23:13

Rape shield law, credibility and impeachment of witnesses, § 28:15

Records, § 23:16

Reports, § 23:16

Trade secrets, § 23:20

Waiver

Attorney-client privilege, § 23:6

Work product privilege, lawyers, § 23:5

## **PRO SE ARGUMENTS**

Closing arguments, § 34:5

## **PROBABILITIES**

Statistical probabilities, scientific tests and analyses, § 20:1

## **PROPERTY DAMAGE**

Generally, § 26:19

Instructions to jury, § 39:13

## **PROXIMATE CAUSE**

Instructions to jury, civil cases, § 39:12

## INDEX

### **PUBLICATIONS**

Hearsay evidence, § **16:25**

### **PUBLICITY**

Counsel's role, § **1:4**

Jury exposure, § **40:6**

Before and during trial, § **2:16**

### **PUNISHMENT**

Closing arguments, effect of verdict, § **36:23**

Instructions to jury, criminal cases, § **38:35**

### **QUOTATIONS, MARKET AND COMMERCIAL PUBLICATIONS**

Hearsay evidence, § **16:25**

### **QUOTIENT VERDICT**

Generally, § **41:13**

### **RACE DISCRIMINATION**

Closing arguments, § **34:20**

### **RADAR**

Scientific tests and analyses, § **20:5**

### **RANDOM SAMPLE TESTING**

Controlled substances, § **20:19**

### **RAPE SHIELD LAW**

Credibility and impeachment of witnesses, § **28:17**

### **REAL ESTATE**

Damages

Real estate misrepresentation cases, § **26:16**

### **REAL EVIDENCE**

Demonstrative Evidence, this index

### **REAL PROPERTY**

Hearsay evidence, interest in property, §§ **16:22, 16:23**

### **REALLOCATION**

Verdict, § **41:5**

### **REBUTTAL EVIDENCE**

Order of proof, §§ **8:3, 8:4**

### **RECOLLECTION**

Hearsay, § **16:12**

Hypnotic recall testimony, § **22:11**

Refreshed recollection

Generally, § **27:10**

Distinguished from declarant unavailable, § **27:12**

Redirect and re-cross examination, §§ **30:3, 30:7**

## **RECORDINGS (SOUND)**

Sound Recordings, this index

## **RECORDS**

Authentication, public records and reports, **§ 17:7**

Hearsay

Absence of record or entry, **§§ 16:15, 16:18**

Baptismal certificates, **§ 16:20**

Certificates, **§ 16:20**

Family records, **§ 16:21**

Interest in property, **§§ 16:22, 16:23**

Marriage certificates, **§ 16:20**

Public records and reports, **§ 16:16**

Recollection recorded, **§ 16:12**

Regularly conducted business activity, **§§ 16:13, 16:14, 16:15**

Religious organizations, **§ 16:19**

Vital statistics, **§ 16:17**

Privileged communications and information, **§ 23:16**

## **RE-CROSS EXAMINATION**

Redirect and Re-Cross Examination, this index

## **REDACTION**

Confession or admission, redaction of prejudicial or inadmissible matter in, **§ 18:18**

Hearsay, **§ 16:14**

## **REDIRECT AND RE-CROSS EXAMINATION**

Generally, **§§ 30:1 to 30:7**

Content of questions on redirect examination, **§ 30:2**

Correction of testimony, **§ 30:4**

Explaining and correcting testimony, **§ 30:4**

Explaining impeaching answers, **§ 30:6**

Form and content of questions on redirect examination, **§ 30:2**

Memory of witness, refreshing, **§ 30:3**

Purpose of redirect examination, **§ 30:1**

Refreshing witness' memory, **§ 30:3**

Rehabilitating a witness, **§ 30:5**

Scope of redirect examination, **§ 30:1**

## **REFRESHED RECOLLECTION**

Generally, **§ 27:10**

Distinguished from declarant unavailable, **§ 27:12**

Redirect and re-cross examination, **§ 30:3**

## **REHABILITATION OF WITNESS**

Redirect and re-cross examination, **§ 30:5**

## **RELATIVES**

Family or Relatives, this index

## INDEX

### RELEASE

- Damages, § 26:20
- Miller-Shugart settlement, § 26:25
- Naig settlement, § 26:25
- Pierringer release, § 13:6

### RELEVANCY OF EVIDENCE

- Generally, §§ 13:1 to 13:30
- Civil and Criminal
  - Alcohol consumption, § 13:21
  - Character, § 13:11
  - Compromise offers, § 13:6
  - Custom, § 13:14
  - Development cost approach, real estate values, § 13:27
  - Habit, § 13:13
  - Intoxication, § 13:21
  - Negotiations, § 13:6
  - Religious affiliation, § 13:12
  - Routine practice, § 13:14
- Civil cases
  - Accidents, prior, § 13:10
  - Codes, violation of, § 13:25
  - Injury, prior, § 13:10
  - Pierringer release, § 13:6
  - Prepayments, § 13:6
  - Prior injury or accidents, § 13:10
- Real estate
  - Generally, §§ 13:26 to 13:30
  - Added value, § 13:28
  - Comparable sales, § 13:26
  - Cost approach, § 13:28
  - Development cost approach, § 13:27
  - Market tax rate, § 13:29
  - Nonconforming use value, § 13:28
  - Value-in-use, § 13:30
- Remedial measures and changes, § 13:7
- Similar acts and occurrences, § 13:9
- Statutes, violation of, § 13:25
- Conditioned on fact, § 13:3
- Criminal cases
  - Accomplice's guilty plea, § 13:16
  - Another perpetrator, evidence implicating another in crime charged, § 13:24
  - Domestic abuse, past pattern of, § 13:18
  - Gang affiliation, § 13:13
  - Guilty plea of accomplice in criminal case, § 13:16
  - Homicide victim's life, personal details in, § 13:23
  - Implicating another perpetrator of crime charged, § 13:24
  - Investigation, relevance of events that trigger investigation, § 13:22

**RELEVANCY OF EVIDENCE—Cont'd**

Criminal cases—Cont'd

    Other crimes, wrongs, or acts, § 13:15

    Other crimes, wrongs or acts, § 13:15

    Past pattern of domestic abuse, § 13:18

    Prior or subsequent occurrences, § 13:8

Distinguished from materiality, § 13:2

Exclusion of relevant evidence, § 13:5

Materiality distinguished, § 13:4

Motions in limine, § 13:20

Negative evidence, § 13:19

Objections to irrelevant evidence, § 13:4

Real estate. Civil cases, above

**RELIGIOUS AFFILIATION**

Relevancy of evidence, § 13:12

**RELIGIOUS ORGANIZATIONS**

Hearsay evidence, records, § 16:19

Privileged communications and information, clergy, § 23:11

**REMITTITUR**

Motions after verdict, § 42:5

**REMOTE VIDEO**

Cross-examination, Technology, § 29:10

**REOPENING**

Dismissed case, § 4:20

Evidence, order of proof, § 8:5

**REPORTS**

Authentication, public records and reports, § 17:7

Experts, reading experts' reports into evidence, § 15:11

Privileged reports and records, § 23:16

**REPUTATION**

Credibility and impeachment of witnesses, § 28:8

Hearsay evidence

    Boundaries or general history, § 16:28

    Character, § 16:29

    Personal history, § 16:27

Instructions to jury, criminal cases, § 38:24

Relevancy, § 13:13

**REQUEST FOR EVIDENCE**

Jury deliberations, § 40:22

**REQUEST FOR INSTRUCTIONS**

Instructions to jury and verdict forms, § 37:3

**RES IPSA LOQUITUR**

Circumstantial evidence, § 14:8

INDEX

**RES IPSA LOQUITUR—Cont'd**

Instructions to jury, § 39:16

**ROUTINE PRACTICE AND HABIT**

Circumstantial evidence, habit or routine practice, § 14:6

Relevancy, § 13:14

**RULE 11**

Sanctions against attorneys, § 1:5

**RULE 68**

Offer of judgment or settlement, § 43:9

**SANCTIONS AGAINST ATTORNEYS**

Rule 11, § 1:5

Spoliation, destruction or new disclosure of evidence, § 2:26

**SCHWARTZ HEARING**

Motions after verdict, misconduct by jury, § 42:9

**SCIENTIFIC TESTS AND ANALYSES**

Generally, §§ 20:1 to 20:22

Accident reconstruction, § 20:2

Admissibility

    Lie detector tests, § 20:7

    Truth serum, hypnosis inadmissible, § 20:6

Arson, § 20:20

Ballistics, § 20:13

Bite-mark analysis, § 20:17

Blood splatter analysis, § 20:21

Bodily fluids tests for identification, § 20:3

Breath tests for intoxication, § 20:4

Burns, § 20:20

DNA analysis, § 20:16

Dogs, use, § 20:14

Drug recognition protocol, § 20:18

Fingerprints, § 20:9

Frye-Mack hearing, § 20:1

Graphology, § 20:12

Hair tests, § 20:11

Handwriting, § 20:12

Hypnosis, § 20:6

Identification of controlled substances, § 20:19

Intoxication tests, § 20:4

Lie detector tests, § 20:7

Neutron activation analysis, § 20:15

Other tests and analyses, § 20:22

Polygraph tests, § 20:7

Radar, § 20:5

Semen tests for identification, § 20:3

Shoemarks, § 20:10

**SCIENTIFIC TESTS AND ANALYSES—Cont'd**

Skid marks, speed of vehicle based, § 20:2  
Speedometers, § 20:5  
Statistical probabilities, § 20:1  
Teeth pattern, § 20:18  
Urine tests for intoxication, § 20:4  
Voiceprints, § 20:8

**SEALED VERDICT**

Generally, § 41:9

**SEAT BELT "GAG" RULE**

Exclusion of relevant evidence, § 13:5

**SECONDARY EVIDENCE**

Admissibility, § 17:17  
Collateral issue, when document relates, § 17:18

**SELF-AUTHENTICATION**

Documentary evidence, § 17:10

**SELF-DEFENSE**

Effect of living in high crime area, § 15:8 (32)

**SELF-DEFENSE AND DEFENSE OF ANOTHER**

Instructions to jury, § 38:22

**SELF-INCRIMINATION**

Privilege Against Self-Incrimination, this index

**SEQUESTRATION OF JURY**

Generally, § 40:13

**SETTLEMENT**

Negotiation and Settlement, this index

**SEVERANCE OF OFFENSES**

Generally, § 2:36

**SEX DISCRIMINATION**

Closing arguments, § 34:20

**SHOEPRINTS**

Scientific tests and analyses, § 20:10

**SHOWUP**

Eyewitness identification, § 25:6

**SIMILAR ACTS AND OCCURRENCES**

Circumstantial evidence, § 14:5

Relevancy, § 13:9

**SKELETONS**

Exhibition, real and demonstrative evidence, § 19:15

## INDEX

### **SKID MARKS**

Speed of vehicle, scientific tests and analyses, **§ 20:2**

### **SOUND RECORDINGS**

Admissions and confessions, electronically recorded custodial interrogation, **§ 18:21**

Emergency 911 tapes, **§ 16:8**

Hearsay evidence, recorded recollection, **§ 16:12**

Real and demonstrative evidence, **§ 19:13**

Voiceprints, scientific tests and analyses, **§ 20:8**

### **SPECIAL VERDICT**

Generally, **§§ 41:1, 41:3**

### **SPEEDY TRIAL**

Right to in Criminal Proceeding, **§ 4:19**

### **SPOLIATION OF EVIDENCE**

Instructions to jury, adverse inference, **§ 37:19**

Presumptions and inferences, **§ 12:13**

Sanctions, **§ 2:26**

### **STANDARD OF CARE**

Jury instructions, standard of care for children, exceptions, **§ 39:8**

### **STATE OF MIND**

Circumstantial evidence, proof of state of mind, **§ 14:4**

Closing arguments, effect of verdict, **§ 36:23**

Damages, mental suffering, **§ 26:10**

Hearsay evidence, **§ 16:10**

Instructions to jury, criminal cases, **§§ 38:13 to 38:16, 38:19**

Mental Condition, this index

### **STATEMENTS AGAINST INTEREST**

Admissions and confessions, **§ 18:3**

Hearsay evidence, **§ 16:35**

### **STATISTICAL PROBABILITIES**

Scientific tests and analyses, **§ 20:1**

### **STAY OF PROCEEDINGS**

Continuances, **§ 3:1**

Stay of adjudication, **§ 4:19**

### **STIPULATIONS**

Control of proceedings, **§ 2:27**

Credibility and impeachment of witnesses, offer to stipulate prior to conviction, **§ 28:12**

Criminal defendant's offer to stipulate, **§ 2:28**

Exclusion of relevant evidence, **§ 13:5**

Judgments of previous conviction, **§ 16:30**

Proof of facts

Construction and enforcement of stipulations, **§ 10:4**

**STIPULATIONS—Cont'd**

Proof of facts—Cont'd

Use of stipulations to excuse proof, **§ 10:3**

**STOLEN PROPERTY**

Possession, presumptions and inferences, **§ 12:19**

**SUICIDE**

Presumptions and inferences, **§ 12:8**

**SUMMARIES**

Best evidence rule, use of summaries, **§ 17:15**

Real and demonstrative evidence, **§ 19:6**

**SUMMARY PUNISHMENT**

Contempt, **§ 5:13**

Direct contempt, timeliness of punishment, **§ 5:14**

**SUPPRESSION OF EVIDENCE**

Hearing, illegally obtained evidence, **§ 31:10**

Presumptions, **§ 12:13**

**SURPRISE**

Continuances, **§ 3:6**

**TECHNOLOGY**

Remote video,Cross-examination, **§ 29:10**

**TEETH**

Scientific tests and analyses, teeth pattern, **§ 20:17**

**TELEPHONE**

Testimony by telephone, conduct of trial, **§ 2:18**

Voice identification, **§ 17:6**

**TELEVISION**

Children under 12, televised testimony of, **§ 2:18**

**TRADE SECRETS**

Privileged communications and information, **§ 23:20**

**TRANSCRIPT**

Closing arguments, reading trial transcript, **§ 34:10**

Conduct of trial, **§ 2:29**

**TRANSLATORS**

Confessions through, **§ 18:22**

Privileged communications, assistants to hearing-impaired, **§ 23:18**

**TREATISES**

Hearsay evidence, learned treatises, **§ 16:26**

**TRUTH SERUM**

Hypnosis inadmissible, **§ 20:6**

INDEX

**URINE TESTS**

Intoxication, § 20:4

**VACATION OF JUDGMENT**

Motions after verdict, criminal cases, § 42:6

**VALUE AND VALUATION**

Actual cash value for insurance claims, determining, § 26:17

Damages

Determining actual cash value, § 26:17

Discounting to present value, § 26:11

Real estate values

Comparable sales, § 13:26

Relevancy of evidence, §§ 13:26 to 13:30

**VEHICLES**

Automobiles, this index

**VENUE**

Change of, publicity, § 2:16

**VERDICT**

Generally, §§ 41:1 to 41:16

Amendment of verdict, § 41:14

Apportionment of damages, § 41:5

Comparative fault, § 41:5

Construction, correction or amendment of verdict, § 41:14

Correction, § 41:14

Criminal cases

Attempts, § 41:7

Jury nullification, § 41:15

Lesser offenses, § 41:7

Motions After Verdict, this index

Partial verdicts, § 41:8

Separate defendants, § 41:8

Special interrogatories, § 41:6

Directed Verdict, this index

Forms, § 37:3

General verdicts, §§ 41:1, 41:4

Judicial comment on verdict, § 41:16

Majority verdicts, § 41:2

Perverse and inconsistent verdicts, § 41:12

Polling the jury, § 41:11

Presence of parties, § 41:9

Quotient verdict, § 41:13

Reallocation, § 41:5

Sealed verdicts, § 41:9

Signing of verdict, § 41:10

Special verdicts, §§ 41:1, 41:3

Unanimous verdicts, §§ 38:45, 41:2

**VERDICT—Cont'd**

Variance, § 41:12

**VIDEO**

Cross-examination, Technology, Remote video, § 29:10

**VIDEOTAPES**

“Day in the life” videotapes, § 19:11

Real and demonstrative evidence, § 19:9

**VIEW BY JURY**

Generally, §§ 21:1 to 21:5

Conduct and deliberations of jury, § 40:17

Instructions to jury and appellate review, § 21:5

Presence of judge and parties at view, § 21:3

Right to view, § 21:2

**VISUAL AIDS**

Demonstrative Evidence, this index

Opening statements, use, § 7:6

**VITAL STATISTICS**

Hearsay evidence, records, § 16:17

**VOICE IDENTIFICATION**

Authentication, documentary evidence, § 17:6

Eyewitness identification, § 25:13

Scientific tests and analyses, voiceprints, § 20:8

**VOID JUDGMENT**

Motions after verdict, § 42:4

**VOUCHING TESTIMONY (CREDIBILITY)**

Expert witnesses, § 15:8

Lay witnesses, § 15:2

**WAIVER OF JURY TRIAL**

By judge, § 2:31

**WILLS**

Burden of proof, contested wills, § 9:7

**WITNESSES**

Comment on failure to call, §§ 34:12, 35:6, 36:18, 36:20

**WORK PRODUCT**

Lawyers, § 23:5

**WRONGFUL DEATH**

Damages, § 26:20

**X-RAYS**

Real and demonstrative evidence, § 19:12