

Table of Contents

Volume 1

CHAPTER 1. PROCEDURAL AND TECHNICAL DEFENSES

- § 1:1 Abatement—Death of party
- § 1:2 —Disability or incapacity
- § 1:3 —Other action pending
- § 1:4 — —Sample testimony
- § 1:5 Res judicata
- § 1:6 —Sample testimony
- § 1:7 —Claim preclusion
- § 1:8 —Compulsory claims
- § 1:9 Collateral estoppel
- § 1:10 —Effect of
- § 1:11 Equitable estoppel
- § 1:12 Judicial estoppel
- § 1:13 Lack of jurisdiction
- § 1:14 —Long-arm statutes
- § 1:15 Failure to qualify as real party in interest
- § 1:16 —Sample testimony
- § 1:17 Failure to join indispensable party
- § 1:18 Statute of limitations
- § 1:19 —Miscellaneous actions
- § 1:20 —Sample testimony
- § 1:21 Statute of repose
- § 1:22 Immunity
- § 1:23 Judicial immunity
- § 1:24 Noerr-Pennington doctrine
- § 1:25 Statute of frauds
- § 1:26 Summary judgment
- § 1:27 Default judgment
- § 1:28 —Failure to appear
- § 1:29 Heightened pleading standards

CHAPTER 2. CONTRACTS

- § 2:1 Introduction
- § 2:2 Capacity of parties
- § 2:3 —Infancy
- § 2:4 — —Sample testimony

DEFENSE AGAINST A PRIMA FACIE CASE

- § 2:5 —Insanity
- § 2:6 — —Sample testimony
- § 2:7 —Intoxication
- § 2:8 Immunity
- § 2:9 Agency
- § 2:10 Nullum tempus occurrit regi (no time runs against the king)
- § 2:11 Nature of contract
- § 2:12 —Illegality
- § 2:13 Antitrust defense
- § 2:14 Nature of contract—Illegality—Sample testimony
- § 2:15 —Unconstitutionality
- § 2:16 — —Sample testimony
- § 2:17 —Unconscionability
- § 2:18 Adhesion contracts
- § 2:19 Nature of contract—Violation of public policy
- § 2:20 — —Sample testimony
- § 2:21 Making of contract
- § 2:22 —Lack of consideration
- § 2:23 — —Sample testimony
- § 2:24 —Mistake
- § 2:25 — —Sample testimony
- § 2:26 —Duress
- § 2:27 — —Economic duress
- § 2:28 — —Sample testimony
- § 2:29 —Undue influence
- § 2:30 — —Sample testimony
- § 2:31 —Fraud and misrepresentation
- § 2:32 — —Sample testimony
- § 2:33 —Contract incomplete
- § 2:34 — —Contract interpretation/construction
- § 2:35 — —Sample testimony
- § 2:36 —Contract terminable at will
- § 2:37 —Impossibility
- § 2:38 Force majeure
- § 2:39 Impracticability
- § 2:40 Subsequent actions by parties
- § 2:41 —Payment
- § 2:42 — —Sample testimony
- § 2:43 —Tender
- § 2:44 — —Sample testimony
- § 2:45 —Account stated
- § 2:46 — —Sample testimony
- § 2:47 —Accord and satisfaction
- § 2:48 — —Sample testimony
- § 2:49 —Discharge by gift

TABLE OF CONTENTS

§ 2:50	—Novation
§ 2:51	— —Sample testimony
§ 2:52	—Release
§ 2:53	— —Sample testimony
§ 2:54	—Excuse
§ 2:55	—Waiver
§ 2:56	— —Sample testimony
§ 2:57	—Agreement to arbitrate
§ 2:58	—Ratification
§ 2:59	— —Sample Testimony
§ 2:60	—Failure of consideration
§ 2:61	— —Sample testimony
§ 2:62	—Breach of contract by plaintiff
§ 2:63	—Anticipatory breach
§ 2:64	—Failure of condition precedent
§ 2:65	Statute of frauds
§ 2:66	—Sample testimony
§ 2:67	Forum selection clauses
§ 2:68	Choice of law
§ 2:69	Material alteration
§ 2:70	Cardinal change: federal defense
§ 2:71	Rescission
§ 2:72	Default
§ 2:73	Revocation
§ 2:74	Frustration
§ 2:75	Laches
§ 2:76	Contra non valentem
§ 2:77	Privilege
§ 2:78	Liable parties; third party beneficiary
§ 2:79	Promissory notes
§ 2:80	Constructive change
§ 2:81	Litigation privilege
§ 2:82	Bad faith

CHAPTER 3. ACTIONS UNDER THE UNIFORM COMMERCIAL CODE

I. SALES

A. BUYER'S DEFENSES

§ 3:1	Procedure
§ 3:2	Breach of express warranty
§ 3:3	—Sample testimony
§ 3:4	Fitness for a particular purpose
§ 3:5	—Sample testimony
§ 3:6	Merchantability

DEFENSE AGAINST A PRIMA FACIE CASE

- § 3:7 —Sample testimony
- § 3:8 Warranty of title
- § 3:9 —Sample testimony
- § 3:10 Nonacceptance
- § 3:11 —Statute of limitations
- § 3:12 —Revocation of acceptance
- § 3:13 —Sample testimony
- § 3:14 Consignments
- § 3:15 —Sample testimony
- § 3:16 Bona fide purchaser
- § 3:17 Good faith and fair dealing
- § 3:18 Relationship with other laws

B. SELLER'S DEFENSES

- § 3:19 Right to cure nonconforming tender
- § 3:20 In general
- § 3:21 Contributory negligence
- § 3:22 Statute of limitations
- § 3:23 Disposal of collateral
- § 3:24 Miscellaneous defenses

II. NEGOTIABLE INSTRUMENTS

- § 3:25 Alteration
- § 3:26 —Sample testimony
- § 3:27 —Action against bank
- § 3:28 Delivery
- § 3:29 Presentment
- § 3:30 Action on forged check
- § 3:31 —Sample testimony
- § 3:32 —Negligence of bank depositor
- § 3:33 — —Sample testimony
- § 3:34 Transfer
- § 3:35 Statute of limitations

III. SECURED TRANSACTIONS

- § 3:36 Parties
- § 3:37 Defenses
- § 3:38 —Estoppel
- § 3:39 Forgery
- § 3:40 Failure to file a financing statement
- § 3:41 —Other financing statement issues
- § 3:42 —Sample testimony

IV. BULK TRANSFERS

- § 3:43 Estoppel

TABLE OF CONTENTS

- § 3:44 Collateral
- § 3:45 In general
- § 3:46 Service enterprises

CHAPTER 4. INSURANCE

- § 4:1 Parties
- § 4:2 General defenses—Accord and satisfaction
- § 4:3 ——Sample testimony
- § 4:4 ——Failure to pay premiums
- § 4:5 ——Sample testimony
- § 4:6 ——Loss resulting from excepted cause
- § 4:7 ——Sample testimony
- § 4:8 ——Failure to comply with condition precedent
- § 4:9 ——Sample testimony
- § 4:10 ——Refusal to submit to examination
- § 4:11 ——Sample testimony
- § 4:12 ——Refusal to submit to appraisal
- § 4:13 ——Sample testimony
- § 4:14 ——Adjustment procured through fraud
- § 4:15 ——Sample testimony
- § 4:16 ——Fraudulent proof of loss
- § 4:17 ——Sample testimony
- § 4:18 ——Other defenses
- § 4:19 ——Failure to notify
- § 4:20 Actions on fire and casualty policies—Defense that plaintiff set fire to building
 - § 4:21 ——Sample testimony
 - § 4:22 ——Other insurance obtained without consent
 - § 4:23 ——Sample testimony
 - § 4:24 ——Sale of insured goods
 - § 4:25 ——Sample testimony
 - § 4:26 ——Failure of mortgagee to give notice of change of ownership
 - § 4:27 ——Sample testimony
 - § 4:28 ——Misrepresentation of risk
 - § 4:29 ——Sample testimony
 - § 4:30 Actions on life and health policies—Misrepresentation of risk
 - § 4:31 ——Sample testimony
 - § 4:32 ——Incontestability
 - § 4:33 ——Suicide
 - § 4:34 ——Sample testimony
 - § 4:35 ——Illegal operation
 - § 4:36 ——Sample testimony
 - § 4:37 ——Change to more hazardous occupation
 - § 4:38 ——Sample testimony

DEFENSE AGAINST A PRIMA FACIE CASE

- § 4:39 ——Policy limits
- § 4:40 Actions on automobile policies—Underage driver
- § 4:41 ——Sample testimony
- § 4:42 —Failure to give timely notice of accident
- § 4:43 —Failure to cooperate with insurer
- § 4:44 ——Sample testimony
- § 4:45 —Illegal acts
- § 4:46 Outside scope of policy
- § 4:47 Actions on burglary policies—Premises not solely occupied by insured
- § 4:48 ——Sample testimony
- § 4:49 —Failure to keep inventory records
- § 4:50 —Failure to exercise due diligence, car left unlocked and unattended
- § 4:51 ——Sample Testimony
- § 4:52 Actions on title insurance policies—Loss sustained through matter excepted
- § 4:53 —Failure to disclose material fact
- § 4:54 ——Sample testimony
- § 4:55 Actions for failure to defend—Defense that claim was excluded or excepted
- § 4:56 —Failure to cooperate with insurer
- § 4:57 ——Sample testimony
- § 4:58 —Duty to defend
- § 4:59 ——Conflict of interest between insurer and insured
- § 4:60 Bad faith
- § 4:61 Continuation of coverage

CHAPTER 5. EMPLOYMENT

- § 5:1 Failure to devote full time to performance of duties
- § 5:2 —Sample testimony
- § 5:3 Incompetence
- § 5:4 —Sample testimony
- § 5:5 Satisfaction
- § 5:6 Misconduct of employee
- § 5:7 Partial defense that plaintiff could have secured other similar employment
- § 5:8 —Sample testimony
- § 5:9 Action on covenant not to compete—Defense that covenant was unreasonable
- § 5:10 Action for work, labor and services—Defense that plaintiff failed to perform contract
- § 5:11 ——Sample testimony
- § 5:12 Unemployment insurance
- § 5:13 Wrongful or retaliatory discharge
- § 5:14 Employment terminable at will
- § 5:15 After-acquired evidence doctrine

TABLE OF CONTENTS

- § 5:16 Discrimination
- § 5:17 Resume fraud
- § 5:18 Workers' compensation coverage
- § 5:19 Waiver
- § 5:20 Other defenses
- § 5:21 Statute of limitations
- § 5:22 Action for unpaid wages
- § 5:23 —Sample testimony
- § 5:24 Just cause
- § 5:25 OSHA
- § 5:26 Equal Pay Act
- § 5:27 —Actions under state law
- § 5:28 ERISA
- § 5:29 Fair Labor Standards Act

CHAPTER 6. BROKERAGE COMMISSIONS

- § 6:1 Broker secretly acting for purchaser
- § 6:2 —Sample testimony
- § 6:3 Conflict of interest
- § 6:4 —Sample testimony
- § 6:5 Employment had been terminated
- § 6:6 —Sample testimony
- § 6:7 Broker not procuring cause of sale
- § 6:8 —Sample testimony
- § 6:9 Broker not licensed
- § 6:10 —Sample testimony
- § 6:11 Payment
- § 6:12 Lack of misuse
- § 6:13 Other defenses

CHAPTER 7. LANDLORD AND TENANT

- § 7:1 Actions for rent
- § 7:2 —Eviction by landlord
- § 7:3 ——Sample testimony
- § 7:4 —Constructive eviction
- § 7:5 ——Sample testimony
- § 7:6 —Partial eviction
- § 7:7 ——Sample testimony
- § 7:8 —Disturbance of tenant's possession
- § 7:9 ——Sample testimony
- § 7:10 —Quiet enjoyment
- § 7:11 —Damage to or destruction of premises
- § 7:12 ——Sample testimony
- § 7:13 —Implied warranty of habitability
- § 7:14 ——Sample testimony
- § 7:15 —Failure to give possession of premises

DEFENSE AGAINST A PRIMA FACIE CASE

- § 7:16 ——Sample testimony
- § 7:17 —Cancellation of lease
- § 7:18 ——Sample testimony
- § 7:19 —Termination of lease
- § 7:20 ——Sample testimony
- § 7:21 —Surrender and acceptance
- § 7:22 ——Sample testimony
- § 7:23 —Assignment of lease to third party
- § 7:24 ——Sample testimony
- § 7:25 Other defenses
- § 7:26 Action to recover overpayment of rent
- § 7:27 Actions to recover possession
- § 7:28 —Failure to give notice to vacate
- § 7:29 —Exercise of right of renewal
- § 7:30 ——Sample testimony
- § 7:31 —Nuisance
- § 7:32 —Retaliatory eviction
- § 7:33 Disbursement of funds
- § 7:34 Affirmative defenses
- § 7:35 Repair covenant
- § 7:36 Breach of contract
- § 7:37 Waiver of defenses
- § 7:38 —Other defenses

CHAPTER 8. PERSONAL PROPERTY

- § 8:1 Replevin
- § 8:2 —Ownership
- § 8:3 ——Sample testimony
- § 8:4 —Artisan's lien
- § 8:5 ——Sample testimony
- § 8:6 Nonpossessory liens
- § 8:7 Bailments
- § 8:8 —Contributory negligence
- § 8:9 ——Sample testimony
- § 8:10 —Burglary
- § 8:11 ——Sample testimony
- § 8:12 —Abandonment
- § 8:13 ——Sample testimony
- § 8:14 —No bailment created
- § 8:15 ——Sample testimony
- § 8:16 —Enforcement of lien
- § 8:17 —Failure to give written notice to carrier
- § 8:18 —Carrier's limitation of liability
- § 8:19 ——Sample testimony
- § 8:20 —Guest's Failure to deposit valuables in innkeeper's safe

TABLE OF CONTENTS

- § 8:21 Conversion
- § 8:22 Repair obligations
- § 8:23 "As is"
- § 8:24 Mitigation
- § 8:25 Other defenses
- § 8:26 Partition of personal property

CHAPTER 9. REAL PROPERTY

- § 9:1 Erroneous description in deed
- § 9:2 —Sample testimony
- § 9:3 Restrictive covenant—Generally
- § 9:4 —Absence
- § 9:5 — —Sample testimony
- § 9:6 —Waiver
- § 9:7 —Laches
- § 9:8 Adverse possession
- § 9:9 —Sample testimony
- § 9:10 Partition, generally
- § 9:11 Partition of property held in trust
- § 9:12 —Sample testimony
- § 9:13 Failure to give notice to redeem tax lien
- § 9:14 —Sample testimony
- § 9:15 Defective notice to redeem tax lien
- § 9:16 —Sample testimony
- § 9:17 Cloud on title—Appearance of invalidity of instrument on its face
- § 9:18 —Sample testimony
- § 9:19 Defect in title
- § 9:20 —Sample testimony
- § 9:21 Estoppel
- § 9:22 Criminal use of property
- § 9:23 Agency
- § 9:24 Statute of limitations
- § 9:25 Forfeitures
- § 9:26 Liens

CHAPTER 10. MORTGAGE FORECLOSURE

- § 10:1 Eviction of grantee by paramount title
- § 10:2 —Sample testimony
- § 10:3 Lack of consideration
- § 10:4 —Sample testimony
- § 10:5 Illegal consideration
- § 10:6 —Sample testimony
- § 10:7 Fraud
- § 10:8 —Sample testimony
- § 10:9 Tender of amount due

DEFENSE AGAINST A PRIMA FACIE CASE

- § 10:10 —Sample testimony
- § 10:11 Extension of time for payment
- § 10:12 —Sample testimony
- § 10:13 Statute of limitations
- § 10:14 —Sample testimony
- § 10:15 Failure to perform condition precedent
- § 10:16 —Sample testimony
- § 10:17 Failure to make equity of redemption owner a party
- § 10:18 —Sample testimony
- § 10:19 Usury
- § 10:20 —Sample testimony
- § 10:21 Procedure
- § 10:22 Wrongful foreclosure
- § 10:23 Other defenses
- § 10:24 Acceleration
- § 10:25 Executory proceedings
- § 10:26 Mediation

CHAPTER 11. EQUITY

- § 11:1 Adequate remedy at law
- § 11:2 Clean hands doctrine
- § 11:3 —Sample testimony
- § 11:4 Estoppel
- § 11:5 —Sample testimony
- § 11:6 Laches
- § 11:7 —Sample testimony
- § 11:8 Acquiescence
- § 11:9 Reformation
- § 11:10 Action for rescission—Generally
- § 11:11 —Waiver
- § 11:12 — —Sample testimony
- § 11:13 —Ratification by failure to rescind
- § 11:14 — —Sample testimony
- § 11:15 —Retention of property
- § 11:16 — —Sample testimony
- § 11:17 Action for injunction—Relative hardships of parties
- § 11:18 — —Sample testimony
- § 11:19 —Lack of equity jurisdiction
- § 11:20 Action for specific performance—Impossibility of performance
- § 11:21 — —Sample testimony
- § 11:22 —Contract against public policy
- § 11:23 — —Sample testimony
- § 11:24 —Unmarketable title
- § 11:25 — —Sample testimony
- § 11:26 Specific performance; laches

TABLE OF CONTENTS

- § 11:27 Subrogation—Defense that payment made gratuitously
- § 11:28 — —Sample testimony
- § 11:29 Equitable attachment
- § 11:30 Action for “money had and received”

CHAPTER 12. CORPORATIONS, AGENCIES AND PARTNERSHIPS

- § 12:1 Not doing business in state
- § 12:2 — —Sample testimony
- § 12:3 Ultra vires
- § 12:4 Corporate organization for illegal purpose
- § 12:5 — —Sample testimony
- § 12:6 Certificate of incorporation
- § 12:7 Unclean hands
- § 12:8 In pari delicto defense
- § 12:9 Action against directors and officers—Ratification by stockholders
- § 12:10 — —Sample testimony
- § 12:11 — —Business judgment
- § 12:12 — —Nonparticipation in complained of action
- § 12:13 — —Sample testimony
- § 12:14 — —Notice requirements in buyer’s breach of warranty actions
- § 12:15 — —Plaintiff’s lack of stockholder status
- § 12:16 — —Sample testimony
- § 12:17 Director’s dissent from declaring improper dividend
- § 12:18 — —Sample testimony
- § 12:19 Piercing corporate veil
- § 12:20 Stockholder intervention
- § 12:21 Acting for corporation
- § 12:22 Other defenses
- § 12:23 Partnerships—Adjustment of accounts between parties
- § 12:24 — —Sample testimony
- § 12:25 — —Dissolution agreement
- § 12:26 — —Sample testimony
- § 12:27 Doing business under assumed name without filing assumed name certificate
- § 12:28 Other defenses
- § 12:29 Agencies—Control over agent
- § 12:30 — —Agency by estoppel
- § 12:31 Procedural issues
- § 12:32 Limited liability companies

Volume 2

CHAPTER 13. NEGLIGENCE

I. IN GENERAL

- § 13:1 Procedural and technical defenses
- § 13:2 —Lack of jurisdiction
- § 13:3 —Collateral estoppel
- § 13:4 — —Sample testimony
- § 13:5 —Statute of limitations
- § 13:6 Lack of duty
- § 13:7 —Abutting owners
- § 13:8 — —Sample testimony
- § 13:9 —Provision of service by utility
- § 13:10 —General contractor's lack of duty to independent contractor's employees
- § 13:11 —Trespassers
- § 13:12 — —Sample testimony
- § 13:13 —Duty to warn
- § 13:14 Exculpatory contract
- § 13:15 Absence of negligence or causation
- § 13:16 —Due care
- § 13:17 — —Sample testimony
- § 13:18 —Lack of notice of defect
- § 13:19 — —Sample testimony
- § 13:20 —Proximate cause
- § 13:21 — —Sample testimony
- § 13:22 —Independent cause
- § 13:23 —Intervention of third party or outside cause
- § 13:24 — —Sample testimony
- § 13:25 —Several causes of accident
- § 13:26 — —Sample testimony
- § 13:27 —Inevitable accident
- § 13:28 — —Sample testimony
- § 13:29 —Irresistible forces
- § 13:30 — —Sample testimony
- § 13:31 —Negligence of independent contractor
- § 13:32 — —Sample testimony
- § 13:33 —Employee not under employer's control at time of accident
- § 13:34 —Sudden emergency doctrine
- § 13:35 —Voluntary rescue doctrine
- § 13:36 —Landowner's duty to warn
- § 13:37 Persons liable
- § 13:38 Premises liability

TABLE OF CONTENTS

§ 13:39 Thin skull rule

II. CONTRIBUTORY NEGLIGENCE

§ 13:40 Contributory negligence
§ 13:41 —Momentary forgetfulness
§ 13:42 —Children
§ 13:43 Last clear chance
§ 13:44 Assumption of risk
§ 13:45 Procedure

III. COMPARATIVE NEGLIGENCE

§ 13:46 Comparative negligence
§ 13:47 —Sample testimony
§ 13:48 —Allocation of fault
§ 13:49 —Derivative actions
§ 13:50 —Motor vehicles
§ 13:51 — —Sample testimony
§ 13:52 —Children
§ 13:53 —Sports and recreation
§ 13:54 — —Sample testimony
§ 13:55 —Commercial transactions
§ 13:56 —Passengers and pedestrians
§ 13:57 Open and obvious standard
§ 13:58 Proportionate liability

IV. AUTOMOBILES

§ 13:59 Skidding
§ 13:60 —Sample testimony
§ 13:61 Head-on collision
§ 13:62 —Sample testimony
§ 13:63 Passing
§ 13:64 —Sample testimony
§ 13:65 Turning
§ 13:66 —Sample testimony
§ 13:67 Intersection accidents
§ 13:68 —Sample testimony
§ 13:69 Stop signs
§ 13:70 —Sample testimony
§ 13:71 Traffic signals
§ 13:72 Rear end collision
§ 13:73 —Sample testimony
§ 13:74 Defect in vehicle not known to host
§ 13:75 —Sample testimony
§ 13:76 Imputing negligence of operator to owner-passenger
§ 13:77 —Sample testimony

DEFENSE AGAINST A PRIMA FACIE CASE

- § 13:78 Negligent entrustment
- § 13:79 Vehicle driven without owner's consent
- § 13:80 —Sample testimony
- § 13:81 Violation of restrictions placed on vehicle use by owner
- § 13:82 —Sample testimony

V. MALPRACTICE AND PROFESSIONAL NEGLIGENCE

- § 13:83 Statute of limitations—Medical malpractice
- § 13:84 —Legal malpractice
- § 13:85 General defenses
- § 13:86 Health care providers
- § 13:87 Accountants
- § 13:88 Hospital negligence
- § 13:89 —Independent contractors
- § 13:90 —Surgical procedures
- § 13:91 State institutions
- § 13:92 Release of mental patient or prisoner
- § 13:93 Legal malpractice
- § 13:94 —Attorney-client privilege
- § 13:95 Psychotherapists

VI. STATUTORY LIABILITY

- § 13:96 Action brought under Applicable Compensation Act
- § 13:97 —Sample testimony
- § 13:98 Civil rights claims for breach of duty to provide police protection
- § 13:99 CERCLA
- § 13:100 Fireman's rule
- § 13:101 Estoppel
- § 13:102 Legal excuse doctrine

CHAPTER 14. INTENTIONAL TORTS

I. ASSAULT AND BATTERY

- § 14:1 Procedural defenses
- § 14:2 Self-defense
- § 14:3 —Sample testimony
- § 14:4 Conviction on plea of guilty by plaintiff
- § 14:5 —Sample testimony
- § 14:6 Reputation for good character
- § 14:7 —Sample testimony
- § 14:8 Provocation
- § 14:9 —Sample testimony

TABLE OF CONTENTS

- § 14:10 Defense of property
- § 14:11 —Sample testimony
- § 14:12 Consent, generally
- § 14:13 Consent to medical treatment
- § 14:14 —Sample testimony
- § 14:15 Immunity
- § 14:16 Defense of another

II. FALSE ARREST OR IMPRISONMENT

- § 14:17 False imprisonment, generally
- § 14:18 In general—Consent
- § 14:19 Arrest without warrant
- § 14:20 —Crime committed in presence of police officer
- § 14:21 — —Sample testimony
- § 14:22 —Probable cause
- § 14:23 — —Sample testimony
- § 14:24 —Plaintiff committed a felony
- § 14:25 — —Sample testimony
- § 14:26 Merchant’s defense
- § 14:27 —Sample testimony
- § 14:28 —Self defense
- § 14:29 Effect of state court order
- § 14:30 Privilege
- § 14:31 Immunity

III. MALICIOUS PROSECUTION

- § 14:32 Absence of malice
- § 14:33 —Absolute privilege and malicious prosecution
- § 14:34 —Litigation privilege
- § 14:35 —Final disposition for plaintiff
- § 14:36 Advice of counsel
- § 14:37 Immunity
- § 14:38 Failure of proof

IV. DEFAMATION

- § 14:39 Truth
- § 14:40 —Sample testimony
- § 14:41 Statements pursuant to judicial proceedings
- § 14:42 Advice of counsel
- § 14:43 Third party causation
- § 14:44 Opinion
- § 14:45 Fair comment
- § 14:46 —Sample testimony
- § 14:47 Absolute privilege
- § 14:48 Qualified privilege

DEFENSE AGAINST A PRIMA FACIE CASE

- § 14:49 Humor or allegory
- § 14:50 Previous publication as mitigating damages
- § 14:51 —Sample testimony
- § 14:52 Retraction as partial defense
- § 14:53 —Sample testimony
- § 14:54 Immunity
- § 14:55 Statute of limitations
- § 14:56 Public figure
- § 14:57 Statements not involving personal reputation
- § 14:58 Other defenses

V. NUISANCE AND TRESPASS

- § 14:59 Abatement of nuisance
- § 14:60 —Voluntarily coming within reach of nuisance
- § 14:61 —Sample testimony
- § 14:62 Legality/compliance with generally accepted practices
- § 14:63 Loss or abandonment of easement
- § 14:64 —Sample testimony
- § 14:65 —Trespass defense—Easement
- § 14:66 — —Sample testimony
- § 14:67 —Consent
- § 14:68 Necessity
- § 14:69 Other defenses

VI. INVASION OF PRIVACY

- § 14:70 Invasion of privacy
- § 14:71 Name and portrait not used for trade or advertising
- § 14:72 —Sample testimony
- § 14:73 Publicity placing persons in false light
- § 14:74 Public disclosure of private embarrassing facts
- § 14:75 Intrusion upon seclusion
- § 14:76 Waiver and consent
- § 14:77 Litigation privilege
- § 14:78 Insurance
- § 14:79 Consent
- § 14:80 Mistake of fact
- § 14:81 Statutory immunity
- § 14:82 Statute of limitations
- § 14:83 Other defenses

VII. EMOTIONAL DISTRESS

- § 14:84 Intentional infliction
- § 14:85 Negligent infliction

VIII. UNFAIR COMPETITION

- § 14:86 Prices fixed in contract were generally disregarded

TABLE OF CONTENTS

§ 14:87 —Sample testimony

IX. INTERFERENCE WITH CONTRACTUAL RELATIONS

§ 14:88 Privilege and justification
§ 14:89 Tortious interference with business relations
§ 14:90 Interference with advantageous economic relations
§ 14:91 Waiver
§ 14:92 Miscellaneous defenses

CHAPTER 15. PRODUCTS LIABILITY

§ 15:1 Misuse of product
§ 15:2 Assumption of risk
§ 15:3 Contributory negligence
§ 15:4 Comparative negligence
§ 15:5 Conformance to specifications and industry standards
§ 15:6 —Component part manufacturers
§ 15:7 Safety devices
§ 15:8 Duty to warn
§ 15:9 Adequate warning
§ 15:10 Simple tool rule
§ 15:11 Proximate cause
§ 15:12 —Design of product by manufacturer
§ 15:13 Subsequent alteration
§ 15:14 Industry liability
§ 15:15 Disregard of warnings or instructions
§ 15:16 Disclaimers
§ 15:17 Worn-out products
§ 15:18 Government contractor defense
§ 15:19 Unavoidably unsafe products
§ 15:20 Sophisticated user
§ 15:21 Mere supplier defense
§ 15:22 Sealed container defense
§ 15:23 State of the art defenses
§ 15:24 No defect
§ 15:25 Inherent characteristics
§ 15:26 Preemption
§ 15:27 Other defense considerations

CHAPTER 16. MATRIMONY

I. DIVORCE AND DISSOLUTION

§ 16:1 Dissolution of marriage without fault
§ 16:2 Divorce
§ 16:3 —Condonation

DEFENSE AGAINST A PRIMA FACIE CASE

- § 16:4 — Sample testimony
- § 16:5 — Adultery
- § 16:6 — Sample testimony
- § 16:7 — Recrimination
- § 16:8 — Sample testimony
- § 16:9 — Connivance
- § 16:10 — Sample testimony
- § 16:11 — Abandonment
- § 16:12 — Other defenses

II. ANNULMENT

- § 16:13 In general
- § 16:14 Cohabitation after majority
- § 16:15 — Sample testimony
- § 16:16 Cohabitation after discovery of fraud
- § 16:17 — Sample testimony
- § 16:18 Cohabitation after knowledge of prior marriage
- § 16:19 — Sample testimony
- § 16:20 Plaintiff's knowledge of facts constituting fraud
- § 16:21 — Sample testimony
- § 16:22 Alleged former marriage dissolved by divorce
- § 16:23 — Sample testimony
- § 16:24 Death of former spouse prior to second marriage
- § 16:25 — Sample testimony
- § 16:26 Knowledge of insanity at time of marriage
- § 16:27 — Sample testimony

III. SEPARATION

- § 16:28 In general
- § 16:29 Constructive desertion
- § 16:30 — Sample testimony
- § 16:31 Defense that defendant left at plaintiff's request
- § 16:32 — Sample testimony
- § 16:33 Condonation
- § 16:34 — Sample testimony
- § 16:35 Separation agreement
- § 16:36 — Sample testimony
- § 16:37 Misconduct of plaintiff
- § 16:38 — Sample testimony
- § 16:39 Contempt

IV. MISCELLANEOUS ISSUES

- § 16:40 Child support
- § 16:41 Spousal support
- § 16:42 Equitable distribution

TABLE OF CONTENTS

§ 16:43 Paternity

CHAPTER 17. WILLS

- § 17:1 Lack of testamentary capacity
- § 17:2 —Sample testimony
- § 17:3 Will not properly executed
- § 17:4 —Sample testimony
- § 17:5 Undue influence
- § 17:6 —Sample testimony
- § 17:7 —Expert testimony
- § 17:8 Fraud
- § 17:9 —Sample testimony
- § 17:10 Revocation
- § 17:11 —Sample testimony
- § 17:12 Applicable law

CHAPTER 18. DEBTOR AND CREDITOR

- § 18:1 Usury
- § 18:2 —Sample testimony
- § 18:3 Transfer in fraud of creditors—Solvency of transferor
- § 18:4 — —Sample testimony
- § 18:5 —Simulated sale
- § 18:6 —Fair consideration
- § 18:7 — —Sample testimony
- § 18:8 Guaranty and suretyship—Payment by principal releasing guarantor
- § 18:9 —Extinguishment or change of original contract
- § 18:10 Bankruptcy
- § 18:11 Novation
- § 18:12 Review
- § 18:13 Breach of contract defense
- § 18:14 Defenses of guarantor
- § 18:15 Common debtor
- § 18:16 Miscellaneous defenses
- § 18:17 Marshaling of assets

CHAPTER 19. DAMAGES

- § 19:1 In general
- § 19:2 Compensatory damages
- § 19:3 —Breach of contract
- § 19:4 —Property damages
- § 19:5 — —Sample testimony
- § 19:6 — — —Sample testimony (valuation of lost crops)
- § 19:7 Penalties and liquidated damages
- § 19:8 —Rebutting enforceability of liquidated damages clause

DEFENSE AGAINST A PRIMA FACIE CASE

- § 19:9 Punitive damages
- § 19:10 —Burden of proof
- § 19:11 —Mitigation
- § 19:12 Nominal damages
- § 19:13 Remoteness
- § 19:14 Matters not within contemplation of parties
- § 19:15 Speculativeness and proof of loss
- § 19:16 —Future medical expenses
- § 19:17 —Sample testimony
- § 19:18 Single recovery and collateral source rules
- § 19:19 Mitigation
- § 19:20 Economic factors
- § 19:21 Excessive amounts
- § 19:22 Liquidated damages
- § 19:23 Release
- § 19:24 Setoff
- § 19:25 Other defenses/considerations

CHAPTER 20. INTELLECTUAL PROPERTY

- § 20:1 Patents
- § 20:2 Invalidity
- § 20:3 Estoppel
- § 20:4 Noninfringement
- § 20:5 Unclean hands
- § 20:6 —Repair
- § 20:7 Waiver of defenses
- § 20:8 Patents—Laches
- § 20:9 Misuse
- § 20:10 Exhaustion
- § 20:11 Copyright
- § 20:12 Copyright infringement—Sample testimony
- § 20:13 Unclean hands—Involving Internet
- § 20:14 Statute of limitations
- § 20:15 Bona fide purchaser
- § 20:16 Independent creation
- § 20:17 Fair use
- § 20:18 Laches
- § 20:19 Safe harbor
- § 20:20 Misuse
- § 20:21 Transfer statute
- § 20:22 Security interest
- § 20:23 Other defenses
- § 20:24 Estoppel
- § 20:25 Trademark
- § 20:26 Laches and acquiescence
- § 20:27 Trademark—Fair use

TABLE OF CONTENTS

§ 20:28 —Parody
§ 20:29 —Sample expert testimony

Table of Laws and Rules

Table of Cases

Index