#### Volume 1

### PART 1. PATTERN INTERROGATORIES

#### A. IN GENERAL

# CHAPTER 1. HOW TO HANDLE WRITTEN INTERROGATORIES—RULE 33

- § 1:2 Rule 33 verbatim
- § 1:3 Advantages of interrogatories
- § 1:4 Disadvantages of interrogatories
- § 1:5 Procedures and strategy
- § 1:6 Drafting interrogatories
- § 1:7 Subject matters
- § 1:8 Answering interrogatories
- § 1:9 Supplementation of interrogatories
- § 1:10 Use at trial

#### **B. TORT ACTIONS**

# CHAPTER 2. PEOPLE INVOLVED/SOURCES OF INFORMATION

- § 2:1 Identification of adult
- § 2:2 Identification of minor by next friend
- § 2:3 Identification of fiduciary in death action
- § 2:4 Identification of corporate officer
- § 2:5 Identification of business proprietor
- § 2:6 Identification of firm/corporation
- § 2:7 Identification of physician
- § 2:8 Identification of expert witness
- § 2:9 Birth, age and citizenship
- § 2:10 Name
- § 2:11 Addresses
- § 2:12 Marriage and divorce
- § 2:13 Children

- § 2:14 Parents and relatives
- § 2:15 Education
- § 2:16 Employment record
- § 2:17 Military service
- § 2:18 Criminal record
- § 2:19 Miscellaneous
- § 2:20 Witnesses
- § 2:21 Sources of knowledge about occurrence
- § 2:22 Third parties

# CHAPTER 3. CIRCUMSTANCES OF THE OCCURRENCE

- § 3:1 Time of occurrence
- § 3:2 Place of occurrence
- § 3:3 Control of premises—Ownership or possession
- § 3:4 Agency
- § 3:5 Weather
- § 3:6 Visibility and lighting
- § 3:7 Physical and mental condition just before occurrence
- § 3:8 Warnings or precautions
- § 3:9 Prior awareness of hazard or danger
- § 3:10 Prior illness, injury or disability
- § 3:11 Government standards and regulations
- § 3:12 Industry, professional and trade association standards
- § 3:13 Defendant's knowledge of plaintiff's sensitivity/impairment
- § 3:14 Plaintiff's sensitivity/impairment
- § 3:15 Alcohol and drugs—Plaintiff to defendant
- § 3:16 —Defendant to plaintiff

#### CHAPTER 4. THE OCCURRENCE

- § 4:1 Description of occurrence
- § 4:2 Conduct of plaintiff—Plaintiff to defendant
- § 4:3 —Defendant to plaintiff
- § 4:4 Conduct of defendant—Plaintiff to defendant
- § 4:5 —Defendant to plaintiff

# CHAPTER 5. INJURY, LOSS AND TREATMENT—TO PLAINTIFF

- § 5:1 Injuries—General
- § 5:2 Disability
- § 5:3 Permanent injury
- § 5:4 Doctor's care and treatment
- § 5:5 Hospital, clinical or institutional care and treatment
- § 5:6 Nursing and other care and treatment

§ 5:7	Medical history
§ 5:8	Physical condition
§ 5:9	Diagnosis
§ 5:10	Use of diagnostic aids
§ 5:11	Prognosis
§ 5:12	Failure to follow medical advice
§ 5:13	Loss of consciousness
§ 5:14	Death and conscious suffering
§ 5:15	Mental or emotional suffering
§ 5:16	Financial losses—General
§ 5:17	Medical expenses and costs
§ 5:18	Loss of earning capacity

§ 5:19 Loss of consortium

### CHAPTER 6. EVENTS AFTER THE OCCURRENCE

- Subsequent disability or occurrence § 6:2 Oral conversations and admissions
- § 6:3 Written statements and reports

#### CHAPTER 7. RE: THE LAWSUIT

- § 7:1 Legal status of plaintiff—Plaintiff to defendant § 7:2 —Defendant to plaintiff § 7:3 Other claims or actions § 7:4 Receipt of notice § 7:5 Giving of notice § 7:6 Tangible evidence § 7:7 Insurance of the defendant § 7:8 Defenses and denials § 7:9 Asserted basis of liability § 7:10 Expert witness employed or consulted by party § 7:11 Doing business in jurisdiction
- § 7:12 Statute of limitations

#### CHAPTER 8. COMPREHENSIVE SETS

§ 8:1	Abuse of process—Plaintiff to defendant
8:2	—Defendant to plaintiff
8:3	Automobile: Intersection—Plaintiff to defendant
8:4	—Defendant to plaintiff
8:5	Deceit and misrepresentation—Plaintiff to defendant
8:6	—Defendant to plaintiff
8:7	Defamation—Plaintiff to defendant
8:8	—Defendant to plaintiff
8:9	False arrest—Plaintiff to defendant
8:10	—Defendant to plaintiff

#### PATTERN DISCOVERY: TORT ACTIONS

§	8:11	False imprisonment—Plaintiff to defendant
§	8:12	—Defendant to plaintiff
§	8:13	Interference with contractual relations—Plaintiff to
		defendant
	8:14	—Defendant to plaintiff
	8:15	Invasion of privacy—Plaintiff to defendant
	8:16	—Defendant to plaintiff
§	8:17	Malicious prosecution—Plaintiff to defendant
	8:18	—Defendant to plaintiff
	8:19	Medical malpractice—Plaintiff to defendant
	8:20	—Defendant to plaintiff
	8:21	Mental and emotional distress—Plaintiff to defendant
§	8:22	—Defendant to plaintiff
§	8:23	Nuisance—Plaintiff to defendant
§	8:24	—Defendant to plaintiff
§	8:25	Outrage—Plaintiff to defendant
§	8:26	—Defendant to plaintiff
§	8:27	Premises liability: Foreign substance—Plaintiff to
		defendant
§	8:28	—Defendant to plaintiff
§	8:29	Products liability—Plaintiff to defendant manufacturer
§	8:30	—Defendant manufacturer to plaintiff
§	8:31	Wrongful birth—Plaintiff to defendant
§	8:32	—Defendant to plaintiff
§	8:33	Wrongful life—Plaintiff to defendant
§	8:34	—Defendant to plaintiff
§	8:35	Wrongful death—Defendant to plaintiff fiduciary
§	8:36	Sterilization (minor or incompetent)—Plaintiff to
		defendant
§	8:37	—Defendant to plaintiff
§	8:38	Invasion of privacy by computer-unauthorized invasion
		of data base—Plaintiff to defendant
§	8:39	—Defendant to plaintiff
§	8:40	Invasion of privacy by computer-publication of
		confidential data—Plaintiff to defendant
_	8:41	—Defendant to plaintiff
§	8:42	Copyright infringement—Plaintiff to defendant
§	8:43	—Defendant to plaintiff
§	8:44	Worker's compensation—Plaintiff to defendant
§	8:45	—Defendant to plaintiff
8	8:46	Real estate broker-professional liability—Plaintiff to
Ü		defendant
§	8:47	—Defendant to plaintiff
§	8:48	Accountants-professional liability—Plaintiff to
		defendant
§	8:49	—Defendant to plaintiff
§	8:50	Lender liability—Plaintiff to defendant

§ 8:51	—Defendant to plaintiff
§ 8:52	Stockbroker liability—Plaintiff to defendant
§ 8:53	—Defendant to plaintiff
§ 8:54	Insurance agent/broker liability—Plaintiff to defendant
§ 8:55	—Defendant to plaintiff
§ 8:56	Architect liability—Plaintiff to defendant
§ 8:57	—Defendant to plaintiff
§ 8:58	Police misconduct—Plaintiff to defendant
§ 8:59	—Defendant to plaintiff
§ 8:60	Veterinary malpractice—Plaintiff to defendant
§ 8:61	—Defendant to plaintiff
§ 8:62	Funeral director liability—Plaintiff to defendant
§ 8:63	—Defendant to plaintiff
§ 8:64	Computer software copyright infringement—Plaintiff to defendant
§ 8:65	—Defendant to plaintiff
§ 8:66	Common-law trademark infringement—Plaintiff to defendant
§ 8:67	—Defendant to plaintiff
§ 8:68	Trade secret misappropriation—Plaintiff to defendant
§ 8:69	—Defendant to plaintiff

# CHAPTER 8A. COMPREHENSIVE SETS—CONTINUED

Misuse of intellectual property—Plaintiff intellectual property owner to defendant alleged infringer
—Defendant alleged infringer to plaintiff intellectual property owner
Architect liability—Plaintiff to defendant
—Defendant to Plaintiff
Land surveyor liability—Plaintiff to defendant
—Defendant to plaintiff
Churning securities—Plaintiff to defendant
—Defendant to plaintiff
Freedom of Information Act (FOIA)—Plaintiff to
defendant
—Defendant to plaintiff
AIDS litigation—Plaintiff to defendant
—Defendant to plaintiff
Mishandling of hazardous waste—Plaintiff to
defendant
—Defendant to plaintiff
Intentional spoliation of evidence—Plaintiff to
defendant
—Defendant to plaintiff
Illness from foodborne pathogens—Plaintiff to

§ 8A:18	—Defendant to plaintiff
§ 8A:19	Day care/nursery school liability—Plaintiff to
	defendant
§ 8A:20	—Defendant to plaintiff
§ 8A:21	Media outrage—Plaintiff to defendant
§ 8A:22	—Defendant to plaintiff
§ 8A:23	Liability for hospital-acquired infections—Plaintiff to defendant
§ 8A:24	—Defendant to plaintiff
§ 8A:25	Liability for nursing medication error—Plaintiff to defendant
§ 8A:26	—Defendant to plaintiff
§ 8A:27	Liability of investment promoter—Plaintiff to defendant
§ 8A:28	—Defendant to plaintiff
§ 8A:29	Negligent shooting by hunter—Plaintiff to defendant
§ 8A:30	—Defendant to plaintiff
§ 8A:31	False advertising under the Lanham Act—Plaintiff to defendant
§ 8A:32	—Defendant to plaintiff
§ 8A:33	Foreign substance in food or beverage—Plaintiff to defendant
§ 8A:34	—Defendant to plaintiff
§ 8A:35	Liability for roadside hazard—Plaintiff to defendant
§ 8A:36	—Defendant to plaintiff
§ 8A:37	Liability of public authority for injury caused by pothole—Plaintiff to defendant
§ 8A:38	—Defendant to plaintiff
§ 8A:39	Sports injuries resulting from negligent supervision—Plaintiff to defendant
§ 8A:40	—Defendant to plaintiff
§ 8A:41	Liability of practitioner using alternative medicine— Plaintiff to defendant
§ 8A:42	—Defendant to plaintiff

# PART 2. REQUESTS FOR PRODUCTION AND ADMISSIONS

# CHAPTER 9. RULE 34 REQUESTS FOR PRODUCTION OF DOCUMENTS

#### I. IN GENERAL

- § 9:1 Introduction to Rule 34—General
- $\$  9:2 —Federal Rule of Civil Procedure No. 34 (Complete Text)

#### TABLE OF CONTENTS

§ 9:3	—How Rule 34 works
§ 9:4	—Drafting and Serving Rule 34 Document Request
§ 9:5	—Responding to Rule 34 Document Requests
§ 9:6	Statutory and rule references for requests for production
§ 9:7	Medical records—Plaintiff to defendant
§ 9:8	Employment records—Plaintiff to defendant
§ 9:9	General—Plaintiff to defendant physician
§ 9:10	Insurance—Plaintiff to defendant physician
§ 9:11	Hospital—Plaintiff to defendant physician
§ 9:12	General corporate—Plaintiff to defendant
§ 9:13	General personal injury—Defendant to plaintiff
§ 9:14	Medical records—Defendant to plaintiff
§ 9:15	Employment records—Defendant to plaintiff
§ 9:16	Education records—Defendant to plaintiff
§ 9:17	Minor plaintiff in school—Defendant to plaintiff
§ 9:18	Damages and losses—Defendant to plaintiff
§ 9:19	Decedent—Defendant to Plaintiff

#### II. MOTOR VEHICLE ACCIDENT CASES

§ 9:20 Defendant to plaintiff

### III. PRODUCTS LIABILITY CASES

### A. PLAINTIFF TO DEFENDANT MANUFACTURER

§ 9:21	Fact of sale
§ 9:22	Manufacturer
§ 9:23	Installation and servicing
$\S 9:24$	Warranties and representations
$\S 9:25$	Composition of product
§ 9:26	Alteration/design changes
$\S 9:27$	Defective condition
§ 9:28	Maintenance, repairs, recalls
§ 9:29	Intended/foreseeable use of product
§ 9:30	Scienter
§ 9:31	Precautions
§ 9:32	Written warnings, instructions, labels, directions
§ 9:33	Production process
§ 9:34	Use of component parts
§ 9:35	Tests and inspections performed by defendant
§ 9:36	Packaging
§ 9:37	Distribution
§ 9:38	Design of the product
§ 9:39	Patents and trademarks
§ 9:40	Government standards and regulations
§ 9:41	Industry, professional and trade association standards
-	V / 1

#### PATTERN DISCOVERY: TORT ACTIONS

	TATIERN DISCOVERY, TORT ACTION
§ 9:42	Proposed industry, professional and trade association standards
§ 9:43	Advertising and promotion
§ 9:44	Technical literature and publications
§ 9:45	Consumer reports and others
§ 9:46	Independent quality certificates
§ 9:47	Prior occurrences and claims
§ 9:48	Subsequent occurrences and claims
§ 9:49	Written statements and reports
§ 9:50	Examination and inspection after the occurrence
§ 9:51	Notice
§ 9:52	Comprehensive set—Plaintiff to defendant manufacturer
В.	DEFENDANT MANUFACTURER TO PLAINTIFF
§ 9:53	Product
§ 9:54	Purchase or acquisition
§ 9:55	Warranties
§ 9:56	Advertising
§ 9:57	Written warnings, instructions, labels, directions
§ 9:58	Packaging
§ 9:59	Inspections and tests
§ 9:60	Medical records
§ 9:61	Employment records
§ 9:62	Education records
§ 9:63	Decedent's records
§ 9:64	Comprehensive set—Defendant manufacturer to plaintiff
	Volume 2
~ ·	
CHAPTER 10. REQUESTS FOR ADMISSION	
OF F	ACTS—RULE 36
§ 10:1	Overview
0.100	

- § 10:2 Strategy
- § 10:3 Advantages and disadvantages
- § 10:4 Drafting and service
- § 10:5 Sanctions for improper refusal to admit
- § 10:6 Use of admissions at trial
- § 10:7 Responding to requests
- § 10:8 Pattern forms

xxviii

### PART 3. DEPOSITION CHECKLISTS

### A. IN GENERAL

# CHAPTER 11. HOW TO HANDLE A DEPOSITION—RULES 27–32

#### I. OVERVIEW

§ 11:1	Introduction
§ 11:2	Purposes
§ 11:3	Deposing the adverse party
§ 11:4	Deposing witnesses
§ 11:5	Deposing one's own client
§ 11:6	When to take depositions
§ 11:7	Preparation by examining counsel
§ 11:8	Preparation by counsel for deponent

### § 11:9 Medical literature

#### § 11:10 How to ask questions

#### II. PREPARATION OF DEPONENTS

§ 11:11	General instructions for deponents
§ 11:12	Suggestion sheet for deposition witnesses
§ 11:13	Preparation of plaintiff for deposition—Common "traps"
§ 11:14	Preparation of the defendant for testimony
§ 11:15	A primer for the defendant and the plaintiff as a deponent
8 11.16	Do's and don'ts of testimony

#### III. PRE-DEPOSITION MATTERS

S 11.17	Duadration of documents and monada
8 11:11	Production of documents and records
§ 11:18	Pre-deposition protective orders
§ 11:19	Scheduling procedures, notice and stipulations
§ 11:20	Subpoena duces tecum

#### IV. CONDUCTING THE EXAMINATION

§ 11:21	Thoroughness
§ 11:22	Demeanor of examining counsel
§ 11:23	Making an accurate record
§ 11:24	Preliminary statement to deponent
§ 11:25	Leading questions to adverse party
§ 11:26	False answers—Possibility of error
§ 11:27	Letting the witness ramble

	Thirtim Discovent. Tour
§ 11:28	Chronological questioning versus skipping around
§ 11:29	Form of questions
§ 11:30	Deponent's answers
§ 11:31	Prior inconsistent statements
§ 11:32	Repetition
§ 11:33	Objections and refusal to answer questions
§ 11:34	Off-the-record comments
§ 11:35	Reading into the record
§ 11:36	Using an interpreter
§ 11:37	Deposition exhibits
§ 11:38	Concluding the questioning
§ 11:39	Cross-examination by deponent's counsel
V. DE	EPOSITIONS OF EXPERTS
§ 11:40	Deposing an expert under the federal rules
§ 11:41	Preparation of the retained expert for
	deposition—Generally
§ 11:42	The retained expert's familiarity with the case, past writings, statements and testimony
§ 11:43	Materials for expert to bring (or not) to the deposition
§ 11:44	Expected areas of inquiry
§ 11:45	Do's and don'ts of expert testimony—A letter from counsel to the retained expert
§ 11:46	Deposing the opposing expert—Generally
§ 11:47	Discovery of relevant facts and obtaining leads from opposing expert
§ 11:48	The opposing expert's opinion and the bases for that opinion
§ 11:49	Preparation for cross-examination and impeachment of opposing expert
§ 11:50	Use of the retained expert in preparation for the deposition of the opposing expert
§ 11:51	Use of hypothetical questions to opposing expert
§ 11:52	Checklist for deposition of opposing expert
VI. O	THER DEPOSITIONS
§ 11:53	The non-expert treating physician's deposition
§ 11:54	Depositions of agents, officers and recordkeepers
§ 11:55	The non-party witness deposition
§ 11:56	The videotape deposition
VII. I	POST-DEPOSITION FOLLOW-UP
§ 11:57	Post-deposition procedures
§ 11:58	Further investigation
	5

§ 11:59 Motion for summary judgment

- § 11:60 Interrogatories
- § 11:61 Request for admission of facts

#### VIII. USE OF DEPOSITIONS AT TRIAL

- § 11:62 Use at trial—Generally
- § 11:63 Depositions offered in place of live testimony
- § 11:64 Depositions used to impeach or refresh recollection

#### **B. TORT ACTIONS**

#### CHAPTER 12. IN GENERAL

# I. PERSONS INVOLVED/SOURCES OF INFORMATION

- § 12:1 Identification of deponent
- § 12:2 Identification of child by deponent
- § 12:3 Identification of next friend
- § 12:4 Identification of fiduciary
- § 12:5 Identification of witnesses
- § 12:6 Identification of deponent—Corporate officer/Business representative
- § 12:7 —Agent
- § 12:8 Identification of physician
- § 12:9 Identification of expert witness
- § 12:10 Identification of marriages and divorces
- § 12:11 Identification of children
- § 12:12 Identification of parents, relatives and significant others
- § 12:13 Relationship to legal action
- § 12:14 Sources of knowledge about occurrence
- § 12:15 Third parties
- § 12:16 Education
- § 12:17 Asset valuation
- § 12:18 Employment history
- § 12:19 Wage and salary history

#### II. FINANCIAL CIRCUMSTANCES OF DEFENDANT

- § 12:20 Financial information regarding sole proprietorship
- § 12:21 Financial information regarding partnership
- § 12:22 Financial information regarding corporation
- § 12:23 Income tax history
- § 12:24 Employee benefits
- § 12:25 Pension and retirement funds
- § 12:26 Bonus and incentive plans

#### r Actions

	Pattern Discovery: Tort A
§ 12:27	Real property owned
§ 12:28	Intangible property owned and goodwill
§ 12:29	Bank accounts
§ 12:30	Securities and stock ownership
§ 12:31	Insurance policies
§ 12:32	Trusts
§ 12:33	Inheritances and gifts
§ 12:34	Personal assets
§ 12:35	Other sources of income
§ 12:36	Personal debts and obligations
§ 12:37	Business debts and obligations
§ 12:38	Household expenses
§ 12:39	Educational expenses
§ 12:40	Medical and dental expenses
§ 12:41	Clothing expenses
§ 12:42	Entertainment and travel expenses
§ 12:43	Charitable and political expenses
§ 12:44	Other personal expenses
§ 12:45	Military service
§ 12:46	Drug use: Prescription, non-prescription and unlawful
§ 12:47	Alcohol use
§ 12:48	Smoking habits
§ 12:49	Gambling habits
§ 12:50	Arrest and conviction record
III. C	IRCUMSTANCES OF THE OCCURRENCE
8 10.71	m:

### E

§ 12:51	Time of occurrence
§ 12:52	Place of occurrence
§ 12:53	Control of premises
§ 12:54	Agency
§ 12:55	Weather
§ 12:56	Visibility and lighting
§ 12:57	Physical and mental condition just before occurrence
§ 12:58	Precautions
§ 12:59	Warnings by parties
§ 12:60	Warning signs, etc
§ 12:61	Prior awareness of hazard or danger
§ 12:62	Prior accidents and civil actions
§ 12:63	Prior illness, injury or disability
§ 12:64	Government standards and regulations
§ 12:65	Industry, professional and trade association standards
§ 12:66	Defendant's knowledge of plaintiff's sensitivity/impairment
§ 12:67	Plaintiff's sensitivity/impairment
§ 12:68	Alcohol and drug consumption

xxxii

#### IV. THE OCCURRENCE

- § 12:69 Description of occurrence
- § 12:70 Conduct of party or agent

#### V. INJURY, LOSS AND TREATMENT

- § 12:71 Injuries suffered by defendant
- § 12:72 Injuries observed by deponent
- § 12:73 Medical treatment for injuries
- § 12:74 Medical treatment by defendant or agent
- § 12:75 Emergency services
- § 12:76 Medical history
- § 12:77 Avoidable consequences
- § 12:78 Mental or emotional suffering
- § 12:79 Death action—Conscious suffering
- § 12:80 Financial losses due to occurrence
- § 12:81 Financial losses from prior injury, illness or disability
- § 12:82 Loss of spousal consortium
- § 12:83 Loss of parental consortium

#### VI. EVENTS AFTER THE OCCURRENCE

- § 12:84 Subsequent accidents and civil actions
- § 12:85 Subsequent illness, injury or disability
- § 12:86 Subsequent similar occurrences
- § 12:87 Conversations and oral admissions
- § 12:88 Written statements and reports

#### VII. REGARDING THE LAWSUIT

- § 12:89 Legal status of plaintiff
- § 12:90 Other claims resulting from occurrence
- § 12:91 Receipt of notice
- § 12:92 Giving of notice
- § 12:93 Tangible evidence
- § 12:94 Insurance of defendant
- § 12:95 Defenses and denials
- § 12:96 Asserted basis of liability
- § 12:97 Expert witnesses
- § 12:98 Doing business in jurisdiction
- § 12:99 Statute of limitations

# CHAPTER 13. PARTICULAR CAUSES OF ACTION—COMPREHENSIVE SETS

- § 13:1 Abuse of process—Plaintiff to defendant
- § 13:2 —Defendant to plaintiff

#### PATTERN DISCOVERY: TORT ACTIONS

§ 13:3	Deceit and misrepresentation—Plaintiff to
	defendant
§ 13:4	—Defendant to plaintiff
§ 13:5	Defamation—Plaintiff to defendant
§ 13:6	—Defendant to plaintiff
§ 13:7	False arrest—Plaintiff to defendant
§ 13:8	—Defendant to plaintiff
§ 13:9	False imprisonment—Plaintiff to defendant
§ 13:10	—Defendant to plaintiff
§ 13:11	Interference with contractual relations—Plaintiff to
0.10.10	defendant
§ 13:12	—Defendant to plaintiff
§ 13:13	Invasion of privacy—Plaintiff to defendant
§ 13:14	—Defendant to plaintiff
§ 13:15	Malicious prosecution—Plaintiff to defendant
§ 13:16	—Defendant to plaintiff
§ 13:17	Mental and emotional distress—Plaintiff to
0.40.40	defendant
§ 13:18	—Defendant to plaintiff
§ 13:19	Nuisance—Plaintiff to Defendant
§ 13:20	—Defendant to plaintiff
§ 13:21	Outrage—Plaintiff to defendant
§ 13:22	—Defendant to plaintiff
§ 13:23	Wrongful Birth—Plaintiff to defendant
§ 13:24	—Defendant to plaintiff
§ 13:25	Wrongful life—Plaintiff to defendant
§ 13:26	—Defendant to plaintiff
§ 13:27	Wrongful death—Defendant to plaintiff fiduciary
§ 13:28	Sterilization (minor or incompetent)—Plaintiff to
	defendant
§ 13:29	—Defendant to plaintiff
§ 13:30	Invasion of privacy by computer-unauthorized
	invasion of data base—Plaintiff to defendant
§ 13:31	—Defendant to plaintiff
§ 13:32	Invasion of privacy by computer-publication of
	confidential data—Plaintiff to defendant
§ 13:33	—Defendant to plaintiff
§ 13:34	Copyright infringement—Plaintiff to defendant
§ 13:35	—Defendant to plaintiff
§ 13:36	Workers' compensation—Plaintiff to defendant
§ 13:37	—Defendant to plaintiff
§ 13:38	Real estate broker-professional liability—Plaintiff to
	defendant
§ 13:39	—Defendant to plaintiff
§ 13:40	Doing business in jurisdiction
§ 13:41	Failure to warn—Plaintiff to defendant
§ 13:42	—Defendant to plaintiff
•	1

#### TABLE OF CONTENTS

§	13:43	Accountants-professional liability—Plaintiff to defendant
Ş	13:44	—Defendant to plaintiff
_	13:45	Lender liability—Plaintiff to defendant
	13:46	—Defendant to plaintiff
	13:47	Stockbroker liability—Plaintiff to defendant
	13:48	—Defendant to plaintiff
	13:49	Insurance agent/broker liability—Plaintiff to
•		defendant
§	13:50	—Defendant to plaintiff
§	13:51	Architect's liability—Plaintiff to defendant
§	13:52	—Defendant to plaintiff
§	13:53	Police misconduct—Plaintiff to defendant
§	13:54	—Defendant to plaintiff
§	13:55	Veterinary malpractice—Plaintiff to defendant
§	13:56	—Defendant to plaintiff
§	13:57	Funeral director liability—Plaintiff to defendant
§	13:58	—Defendant to plaintiff
§	13:59	Computer software copyright infringement— Plaintiff to defendant
8	13:60	—Defendant to plaintiff
	13:61	Common-law trademark infringement—Plaintiff to
		defendant
§	13:62	—Defendant to plaintiff
§	13:63	Trade secret misappropriation—Plaintiff to defendant
§	13:64	—Defendant to plaintiff
§	13:65	Misuse of intellectual property—Plaintiff intellectual
		property owner to defendant alleged infringer
§	13:66	—Defendant alleged infringer to plaintiff
		intellectual property owner
	13:67	Architect liability—Plaintiff to defendant
	13:68	—Defendant to plaintiff
§	13:69	Land surveyor's liability—Plaintiff to defendant
	13:70	—Defendant to plaintiff
§	13:71	Churning securities—Plaintiff to defendant
§	13:72	—Defendant to plaintiff
§	13:73	Freedom of Information Act (FOIA)—Plaintiff to defendant
§	13:74	—Defendant to plaintiff
§	13:75	AIDS litigation—Plaintiff to defendant
§	13:76	—Defendant to plaintiff
§	13:77	Mishandling of hazardous waste—Plaintiff to defendant
§	13:78	—Defendant to plaintiff
§	13:79	Intentional spoliation of evidence—Plaintiff to defendant

§ 13:80	—Defendant to plaintiff
§ 13:81	Illness from foodborne pathogens—Plaintiff to defendant
§ 13:82	—Defendant to plaintiff
§ 13:83	Day care/nursery school liability—Plaintiff to defendant
§ 13:84	—Defendant to plaintiff
§ 13:85	Media outrage—Plaintiff to defendant
§ 13:86	—Defendant to plaintiff
§ 13:87	Liability for hospital-acquired infection—Plaintiff to defendant
§ 13:88	—Defendant to plaintiff
§ 13:89	Liability for nursing medication error—Plaintiff to defendant
§ 13:90	—Defendant to plaintiff
§ 13:91	Liability of investment promoter—Plaintiff to defendant
§ 13:92	—Defendant to plaintiff
§ 13:93	Negligent shooting by hunter—Plaintiff to defendant
§ 13:94	—Defendant to plaintiff
§ 13:95	False advertising under the Lanham Act—Plaintiff to defendant
§ 13:96	—Defendant to plaintiff
§ 13:97	Foreign substance in food or beverage—Plaintiff to defendant
§ 13:98	—Defendant to plaintiff
§ 13:99	Liability for roadside hazard—Plaintiff to defendant
§ 13:100	—Defendant to plaintiff
§ 13:101	Liability of public authority for injury caused by pothole—Plaintiff to defendant
§ 13:102	—Defendant to plaintiff
§ 13:103	Sports injuries resulting from negligent supervision—Plaintiff to defendant
§ 13:104	—Defendant to plaintiff
§ 13:105	Liability of practitioner using alternative medicine— Plaintiff to defendant
§ 13:106	—Defendant to plaintiff

## PART 4. TORT ACTIONS

# CHAPTER 14. UNIQUE ASPECTS OF GENERAL TORT ACTIONS

- § 14:1 Overview
- § 14:2 Outline of the legal process—Introduction
- § 14:3 —Complaint and answer
- § 14:4 —Interrogatories

#### TABLE OF CONTENTS

§ 14:5	—Depositions
§ 14:6	-Experts
§ 14:7	—Trial
§ 14:8	—Directed verdict or nonsuit
§ 14:9	—Jury instructions
§ 14:10	—Appeal
§ 14:11	—Jury verdicts
§ 14:12	—Settlement
§ 14:13	Criteria for successful plaintiff's case—General
§ 14:14	—Positive characteristics—Checklist
§ 14:15	—Negative characteristics—Checklist
§ 14:16	How court action will affect plaintiff and plaintiff's
	family—Time requirements
§ 14:17	—Plaintiff's report form—Checklist
§ 14:18	—Checklist for plaintiff's counsel
§ 14:19	How court action will affect defendant—General
§ 14:20	—Things not to do immediately—Checklist
§ 14:21	—Things to do immediately—Checklist
§ 14:22	—Defendant's report form—Checklist
§ 14:23	—Time requirements
§ 14:24	—Defense counsel
§ 14:25	—Settlement

### Volume 3

### **CHAPTER 15. LEGAL DOCTRINES**

### I. LEGAL DOCTRINES OF TORT LIABILITY

§ 15:1	Overview
§ 15:2	Basis of liability—Scope; Basis of liability
§ 15:3	Defamation
§ 15:4	False imprisonment
§ 15:5	Outrage
§ 15:6	Workers' compensation
§ 15:7	Legal causation of injury—Burden of proof
§ 15:8	—Hypothetical questions for proof of causation
§ 15:9	—Source of professional misunderstanding
§ 15:10	Punitive damages

### II. DEFENSES TO TORT LIABILITY

§ 15:11	Overview
§ 15:12	Plaintiff's burden of proof
§ 15:13	Defendant's burden of persuasion
§ 15:14	Improper or inadequate expert opinions

§ 15:15	Contributory or comparative negligence
§ 15:16	Assumption of risk
§ 15:17	Intervening cause
§ 15:18	Statutes of limitations
§ 15:19	Denial of administration
§ 15:20	Immunity
§ 15:21	Aggravation of preexisting condition
§ 15:22	Trial to empty chair
§ 15:23	Damages—Objective v. Subjective, and Punitive

#### CHAPTER 16. PLAINTIFF'S CASE

# I. THE NEW CASE—REPRESENTING THE PLAINTIFF

§ 16:1	Overview
§ 16:2	Initial meeting with plaintiff—Preparation for initial meeting
§ 16:3	—Preliminary advice for new client from plaintiff's attorney—Checklist
§ 16:4	—Interviewing the client—Checklist
§ 16:5	—Relations with the client
§ 16:6	—After the initial meeting—Checklist
§ 16:7	—Further investigation
§ 16:8	Case finances and client communication
§ 16:9	—Fee arrangements, client contract, and billing—Checklist
§ 16:10	—Communicating with the client
§ 16:11	Matters referred from other counsel
§ 16:12	Maintaining docket and calendar
§ 16:13	Matters involving multiple clients and attorneys
§ 16:14	Preliminary legal research
§ 16:15	Evaluating the merit and value of plaintiff's case

#### II. PREPARING THE PLAINTIFF'S CASE

§ 16:16	Overview—Checklist
§ 16:17	—General considerations
§ 16:18	-Ethical and legal restrictions on bringing suit
§ 16:19	Choosing the defendant(s)
§ 16:20	Choosing a forum—Checklist
§ 16:21	Drafting the complaint—Checklist
§ 16:22	—Overview
§ 16:23	—Form of the complaint
§ 16:24	—Stating the factual basis for the complaint
§ 16:25	—Request for monetary relief
§ 16:26	Filing the complaint—Checklist

xxxviii

§ 16:27	—Filing with the court
§ 16:28	—Service of process
§ 16:29	Voluntary dismissal—Checklist
§ 16:30	Amending the complaint, motion to strike for insufficient defense, and reply to answer
§ 16:31	Plaintiff's comprehensive interview and investigative checklist for a tort action
§ 16:32	Plaintiff's interview and investigative checklist for minor child
§ 16:33	Plaintiff personal representative's interview and investigative checklist for decedent

### CHAPTER 17. DEFENDANT'S CASE

# I. THE NEW CASE—REPRESENTING THE DEFENDANT

§ 17:1	Overview
§ 17:2	Defense counsel's early activity—Checklist
§ 17:3	Early contact with the defendant—Preparation for
	initial meeting
§ 17:4	—Interviewing the client
§ 17:5	—The recorded statement—Checklist
§ 17:6	—Other investigation—Checklist
§ 17:7	—The nonprofit defendant
§ 17:8	—The corporate defendant
§ 17:9	—After the initial meeting
§ 17:10	Role of insurance company—Overview
§ 17:11	—Knowledge of details of coverage
§ 17:12	—Early Inquiry into Coverage Details
§ 17:13	—Insurance policy
§ 17:14	—Conduct by insurance company—Checklist
§ 17:15	—Claim handling by insurance company claim
	representative—Checklist
§ 17:16	—Personal counsel—Inadequate coverage—Demand
	for settlement within the policy limits
§ 17:17	Role of defense counsel
§ 17:18	—Choice of counsel and fee arrangements
§ 17:19	—Intellectual approach
§ 17:20	—Maintaining docket and calendar—Checklist
§ 17:21	—Use of personnel and equipment
§ 17:22	Matters involving multiple parties and attorneys
§ 17:23	Contact with plaintiff's attorney
§ 17:24	Medicolegal library

#### II. PREPARING THE DEFENDANT'S CASE

§ 17:25 Overview

§ 17:26	Reviewing complaint—Checklist
§ 17:27	Alternative responses: Dispositive and non-dispositive
	motions
§ 17:28	—Motion to dismiss—Checklist
§ 17:29	-Motion for more definite statement-Checklist
§ 17:30	—Motion for judgment on pleadings—Checklist
§ 17:31	—Motion to strike—Checklist
§ 17:32	Answering complaint and jury demand—Checklist
§ 17:33	Counterclaims, cross-claims, third-party practice,
	impleader, joinder of parties, and claims
§ 17:34	—Counterclaims and cross-claims—Checklist
§ 17:35	—Third-party practice and impleader—Checklist
§ 17:36	—Joinder of parties and claims—Checklist
§ 17:37	Consolidation, severance, transfer, and removal of
	case
§ 17:38	—Consolidation of cases—Checklist
§ 17:39	—Severance of claims or parties—Checklist
§ 17:40	—Transfer of case—Checklist
§ 17:41	—Removal of case—Checklist
§ 17:42	Defendant's comprehensive interview and
	investigative checklist for a tort action case
§ 17:43	Bibliography

# CHAPTER 18. INVESTIGATION AND EVALUATION

- § 18:1 Preliminary investigation
- § 18:2 —Overview—Checklist
- § 18:3 —Preliminary witness interviews
- § 18:4 —Contacting employees and former employees of a corporate defendant
- § 18:5 —Investigating damages
- § 18:6 —Evaluating the case and estimating damages
- § 18:7 —Pretrial strategy
- § 18:8 Information gathering—General
- § 18:9 —Conducting the investigation
- § 18:10 —Information from the client
- § 18:11 —Accident scene
- § 18:12 —Preserving physical evidence
- § 18:13 —The product
- § 18:14 —Publicly available information—Checklist
- § 18:15 Interviewing witnesses—General
- § 18:16 —Conducting the interview
- § 18:17 —Illustrative letter and questionnaire to lay witness
- § 18:18 Researching codes and standards—Overview
- § 18:19 —Investigating codes and standards
- § 18:20 —Standards organizations

§ 18:21	—Federal statutes
§ 18:22	—Government agency reports
§ 18:23	Determining insurance coverage
§ 18:24	Chronology
§ 18:25	Understanding medical records
§ 18:26	Experts

## PART 5. DISCOVERY

### **CHAPTER 19. DISCOVERY**

### I. DISCOVERY—GENERALLY

§ 19:1	Overview
§ 19:2	Discovery options—Checklist—Oral depositions
§ 19:3	—Document requests
§ 19:4	—Interrogatories
§ 19:5	—Mental or physical examination
§ 19:6	—Deposition on written questions
§ 19:7	—Requests for admission
§ 19:8	Discovery strategy—Checklist
§ 19:9	Sequence and timing—Checklist
§ 19:10	Scope of discovery and privileges—Checklist
§ 19:11	Judicial regulation of discovery and pretrial activities—General
§ 19:12	—Discovery and scheduling conferences and orders—Checklist

#### II. OTHER SOURCES

§ 19:13	Overview
§ 19:14	Defendant's investigation of plaintiff
§ 19:15	Prior cases
§ 19:16	Other sources of information—Information on
	plaintiff's care
§ 19:17	—Litigation resources

### III. SANCTIONS

§ 19:18	Overview
§ 19:19	Protective orders
§ 19:20	Motions to compel discovery
§ 19:21	—Moving directly for sanctions without filing a
	motion to compel
§ 19:22	—Drafting the motion
§ 19:23	—Service of motion
§ 19:24	—Expenses for obtaining orders to compel discovery

§ 19:25	Sanctions motions—Sanctions for failure to comply
§ 19:26	with court order under Rule 37  —Expenses on failure to admit to genuineness of
0	documents or matters which were subject of request
§ 19:27	—Drafting motion for sanctions
§ 19:28	Sanctions for violation of Rule 26(g)
§ 19:29	—Requirements of Rule 26(g)
§ 19:30	—Consequences of failure to comply
§ 19:31	Duty to supplement discovery responses— Requirements of Rule 26(e)
§ 19:32	—Consequences of failure to supplement responses
§ 19:33	—Drafting supplemental responses
§ 19:34	Pattern form

#### IV. APPEALING RULINGS

§ 19:35	Overview
§ 19:36	—Who can hear the appeal
§ 19:37	—Effect of order
§ 19:38	—Client's interests
§ 19:39	—Preparing the appeal
§ 19:40	Pattern form

#### V. REFERENCES

§ 19:41 Bibliography

### CHAPTER 20. DISCOVERY—OPTIONS

#### I. WRITTEN INTERROGATORIES—RULE 33

 $\$  20:1 Overview  $\$  20:2 Subject matters—Checklists

# II. REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND—RULE 34

§ 20:3	Introduction to Rule 34
§ 20:4	Pattern requests
§ 20:5	—Abuse of process—Harassment of debtor— Plaintiff to defendant
§ 20:6	—Harassment of debtor—Defendant to plaintiff
§ 20:7	—Motor vehicle accident—Plaintiff to defendant
§ 20:8	—Automobile warranty—Plaintiff to defendant manufacturer
§ 20:9	——Plaintiff to defendant dealer

§ 20:10	—Defamation—Plaintiff to defendant
§ 20:11	——Defendant to plaintiff
§ 20:12	—Premises liability—Landlord liability for criminal acts of third parties—Plaintiff to defendant
§ 20:13	—Products liability—Breast implant—Plaintiff to defendant manufacturer
§ 20:14	—Software copyright infringement—Defendant to plaintiff
§ 20:15	—Professional liability—Accountant—Plaintiff self-discovery
§ 20:16	— — —Plaintiff to defendant accounting firm
§ 20:17	— — —Plaintiff to defendant promoter
§ 20:18	—Lender liability—Plaintiff to defendant
§ 20:19	——Defendant to plaintiff
§ 20:20	Use of subpoena duces tecum
§ 20:20.10	Common-Law trademark infringement—Defendant to plaintiff

#### III. PHYSICAL AND MENTAL EXAMINATION— RULE 35

- § 20:21 Overview—Checklist
- § 20:22 Use in tort cases
- § 20:23 Pattern form

## IV. DEPOSITION ON ORAL QUESTIONS—RULES 26–30

- § 20:24 Overview
- § 20:25 Deposition by plaintiff's counsel of defendant
- § 20:26 Expected deposition questions for defendant—Checklist
- § 20:27 —Identification
- § 20:28 —Identification of all persons and records involved
- § 20:29 —Your preparation for your deposition testimony
- § 20:30 —Your alleged liability
- § 20:31 —Plaintiff's comparative negligence
- § 20:32 —Liability of others
- § 20:33 —Causation
- § 20:34 —Defense experts
- § 20:35 —Defense counsel
- § 20:36 —Expected deposition questions for defendant—Checklist
- § 20:37 Deposition by defense counsel of plaintiff
- § 20:38 Pattern questions to plaintiff—Checklist

# V. DEPOSITION ON WRITTEN QUESTIONS—RULE 31

§ 20:39 Overview—Checklist

- § 20:40 Advantages/Disadvantages—Checklist
- § 20:41 When to use Rule 31 depositions on written questions
- § 20:42 Pattern form

#### VI. REQUESTS FOR ADMISSION

§ 20:43 Overview—Checklist

#### VII. REFERENCES

§ 20:44 Bibliography

# PART 6. EXPERTS & OTHER WITNESSES

#### CHAPTER 21. EXPERTS

- § 21:1 Introduction
- § 21:2 Deciding to use an expert witness—General
- § 21:3 Expert witness roles—General considerations— Overview
- § 21:4 —Legal requirements
- § 21:5 —Selection and preparation
- § 21:6 Locating an expert witness—General
- § 21:7 Selecting an expert witness—General
- § 21:8 Expert witness and pretrial preparation—Checklist
- § 21:9 Preliminary conference with expert witness—General
- § 21:10 Clarification of terminology and definitions
- § 21:11 Technique for using defense expert in a tort case
- § 21:12 Pretrial discovery of experts—Checklist
- § 21:13 Preparing expert for deposition—Checklist
- § 21:14 Deposing opponent's expert—Checklist
- § 21:15 Cross-examination—Checklist
- § 21:16 Deposing plaintiff's attending physician
- § 21:17 Objections to expert testimony—General
- § 21:18 —Federal Rule of Civil Procedure 26(b)(4) ("Rule 26")
- § 21:19 —Inappropriate subject matter for expert testimony
- § 21:20 —Qualifications
- § 21:21 —Hypothetical questions
- § 21:22 —Improper standards
- § 21:23 —Causation
- § 21:24 Use of expert during trial preparation—General
- § 21:25 Direct examination of experts—Overview
- § 21:26 —Qualifying the expert—Checklist
- § 21:27 —Direct examination—Checklist
- § 21:28 Preparation of the expert for cross-examination—General

§ 21:29	Cross-examination of opposing expert—Checklist
§ 21:30	Direct examination of hypothetical medical expert—Author's comments
§ 21:31	Direct examination of defense hypothetical expert—Checklist
§ 21:32	Direct examination of treating physician—Checklist
§ 21:33	Cross-examination of hypothetical physician—Checklist
§ 21:34	Cross-examination of plaintiff's hypothetical expert—Checklist
§ 21:35	Bibliography

# CHAPTER 22. EXAMINATION OF OTHER WITNESSES

§ 22:1 Direct examination—Overview
§ 22:2 Cross-examination—Overview
§ 22:3 Basic cross-examination procedure, tactics, and strategy—Checklist
§ 22:4 Impeaching the witness—Checklist
§ 22:5 Direct examination of plaintiff—Checklist
§ 22:6 Direct examination of defendant—Checklist
§ 22:7 Bibliography

### PART 7. TRIAL

# CHAPTER 23. NEGOTIATIONS AND SETTLEMENT

§ 23:1	Overview
§ 23:2	Communications with client
§ 23:3	Classical approaches to evaluation—Practical limits
§ 23:4	—Median verdict discounted by liability
§ 23:5	—Verdict by special questions to jury
§ 23:6	—Special damages evaluation
§ 23:7	—Small case evaluation
§ 23:8	Evaluation for settlement—General
§ 23:9	—Elements of cause of action—Checklist
§ 23:10	—Other potentially significant factors—Checklist
§ 23:11	Negotiations—Checklist—Overview
§ 23:12	—Preparation
§ 23:13	—Conditions of a substantial settlement offer in a
	tort case
§ 23:14	—Commonly used negotiation techniques
§ 23:15	—Negotiation preparation form
§ 23:16	—Conduct of counsel
§ 23:17	—Amount of opening demand or offer

—Continuing negotiation § 23:18 § 23:19 —The demand letter and settlement brochure § 23:20 —Information not to be disclosed —Settlement timing § 23:21 —Structured settlements § 23:22 § 23:23 —Offer of judgment § 23:24 —The settlement conference § 23:25 —The settlement agreement § 23:26 Alternative dispute resolution § 23:27 Bibliography

#### CHAPTER 24. TRIAL—GENERALLY

- § 24:1 Overview
- § 24:2 Trial procedure
- § 24:3 Bifurcated trials
- § 24:4 Trial preparation strategy
- § 24:5 Trial exhibit preparation—Checklist
- § 24:6 Trial preparation schedule—Checklist
- § 24:7 Bibliography

#### CHAPTER 25. MOTIONS

- § 25:1 Options, strategy, and procedures—Checklist
- § 25:2 Motion for summary judgment
- § 25:3 Brief in support of motion for summary judgment— Pattern form
- § 25:4 Pretrial conferences
- § 25:5 Trial and post-trial motion practice
- § 25:6 Motion in limine
- § 25:7 Motion to bifurcate
- § 25:8 Motion for mistrial
- § 25:9 Motion to dismiss
- § 25:10 Motion for directed verdict
- § 25:11 Motion for judgment notwithstanding verdict—J.N.O.V
- § 25:12 Motion for new trial
- § 25:13 Motion to amend judgment
- § 25:14 Motion to disqualify judge
- § 25:15 Motion to reopen record
- § 25:16 Motion for continuance
- § 25:17 Bibliography

# CHAPTER 26. JURY—SELECTION AND INSTRUCTIONS

#### I. SELECTION OF JURY

§ 26:1 General

§ 26:2 Investigating the panel—Checklist
§ 26:3 Voir dire strategy and procedure—Checklist
§ 26:4 Questioning the jurors—Checklist
§ 26:5 Peremptory challenges
§ 26:6 Jury chart
§ 26:7 After selection

#### II. JURY INSTRUCTIONS

§ 26:8	General—Checklist
§ 26:9	Preliminary instructions
§ 26:10	Plaintiff's pattern jury instructions—Checklist— Overview
§ 26:11	—Negligence
§ 26:12	—Multiple defendants—Joint and several liability
§ 26:13	—Admissions
§ 26:14	—Plaintiff's burden of proof
§ 26:15	—Causation
§ 26:16	—Contributory or comparative negligence
§ 26:17	—Statute of limitations
§ 26:18	—Take plaintiff as you find him or her
§ 26:19	—Credibility of witnesses and experts
§ 26:20	—Damages—General
§ 26:21	——Loss of earning capacity
§ 26:22	——Loss of consortium
§ 26:23	——Death action
§ 26:24	—Punitive damages
§ 26:25	Defendant's pattern jury instructions—Checklist— Overview
§ 26:26	—Negligence
§ 26:27	—Violation of statute—Some evidence of negligence
§ 26:28	—New and independent cause
§ 26:29	—Admissions
§ 26:30	—Contributory or comparative negligence
§ 26:31	—Assumption of the risk
§ 26:32	—Statute of limitations
§ 26:33	—Jury not to use hindsight or retrospective judgment
§ 26:34	—Defendants to be judged separately
§ 26:35	—Burden of proof—No speculation
§ 26:36	—Preponderance of evidence
§ 26:37	—Liability to be decided first
§ 26:38	-Expert testimony
§ 26:39	—Credibility of witnesses
§ 26:40	—Plaintiff's bias or prejudice
§ 26:41	—Proximate cause requirement
. =0.11	2 2 Junio Gado I o qui o moito

#### PATTERN DISCOVERY: TORT ACTIONS

§ 26:42	—Two or more probable causes
§ 26:43	—Prohibition against punitive damages
§ 26:44	—Damages
§ 26:45	Pattern jury instructions in specific tort actions— Abuse of process
§ 26:46	—Auto/Motor vehicle
§ 26:47	—Deceit and misrepresentation
§ 26:48	—Defamation
§ 26:49	—False arrest and imprisonment
§ 26:50	—Interference with contractual relations
§ 26:51	—Invasion of privacy
§ 26:52	—Malicious prosecution
§ 26:53	—Medical malpractice—Plaintiff's pattern jury instructions
§ 26:54	——Defendant's pattern jury instructions
§ 26:55	—Intentional and negligent infliction of emotional distress/outrage
§ 26:56	—Premises liability—Plaintiff's pattern jury instructions
§ 26:57	——Defendant's pattern jury instructions
§ 26:58	—Products liability—Plaintiff's pattern jury instructions
§ 26:59	——Defendant's pattern jury instructions
§ 26:60	Special questions for jury
§ 26:60.10	Pattern jury instructions—Copyright
§ 26:60.20	—Trademark, trade dress, unfair competition and false advertising
§ 26:60.30	Pattern jury instructions in specific tort actions—Private Antitrust Action

#### III. REFERENCES

§ 26:61 Bibliography

# CHAPTER 27. OPENING STATEMENT AND CLOSING ARGUMENT

#### I. OPENING STATEMENT

§ 27:1	Overview
§ 27:2	Purpose
§ 27:3	Importance
$\S 27:4$	Comparison of opening statement to final summation
§ 27:5	The law and court rules
§ 27:6	Preparation of opening statement
§ 27:7	Contents of opening statement—Checklist
§ 27:8	Techniques of effective presentation—Checklist

xlviii

#### II. CLOSING ARGUMENT

- § 27:9 Overview
- § 27:10 Delivery
- § 27:11 Objections
- § 27:12 Common argument structures
- § 27:13 Argument techniques

#### III. REFERENCES

§ 27:14 Bibliography

# CHAPTER 28. EVIDENCE AND OBJECTIONS

#### I. OTHER EVIDENCE

- § 28:1 Overview
- § 28:2 Real evidence
- § 28:3 Demonstrative evidence
- § 28:4 Documentary exhibits
- § 28:5 Learned treatises
- § 28:6 Cumulative evidence
- § 28:7 Judicial notice
- § 28:8 Presumptions
- § 28:9 Proving official records
- § 28:10 Proving foreign law
- § 28:11 Views by court and jury

#### II. OBJECTIONS

- § 28:12 Overview
- § 28:13 Tactics of making objections—Purposes of objections
- § 28:14 —Anticipating objections
- § 28:15 —Whether to object
- § 28:16 —Ethics of objections
- § 28:17 Procedure for making objections—Overview
- § 28:18 —Timeliness
- § 28:19 —Manner of objecting
- § 28:20 —Form of objection
- § 28:21 —General objection
- § 28:22 —Specific objection
- § 28:23 —Arguing objection in and out of jury presence
- § 28:24 —Be sure to obtain ruling
- § 28:25 —Do not bicker with judge following adverse ruling
- § 28:26 —Motion to strike
- § 28:27 —Continuing objection
- § 28:28 Objection to form of question—Leading

-Argumentative § 28:29 § 28:30 -Ambiguous and/or unintelligible § 28:31 —Compound -Narrative or too broad § 28:32 -Asked and answered § 28:33 § 28:34 —Misquoting witness or prior evidence § 28:35 —Assumes facts not in evidence § 28:36 —Improper hypothetical or opinion question § 28:37 Objections to substance of evidence—Irrelevant and immaterial § 28:38 -Incompetent § 28:39 —Hearsay § 28:40 —Inadmissible opinion § 28:41 —Insufficient foundation § 28:42 —Improper impeachment § 28:43 —Not the best evidence § 28:44 —Beyond scope of prior examinations § 28:45 —Privileged communication § 28:46 —Document speaks for itself § 28:47 —Violation of court order or court rule § 28:48 —Improper conduct of counsel § 28:49 —Improper witness conduct § 28:50 —Improper juror conduct § 28:51 -Statement or action of court § 28:52 -Prejudicial evidence § 28:53 Grounds for objections to expert testimony § 28:54 Tactics of responding to objections—General § 28:55 —Whether to respond § 28:56 -How to respond § 28:57 Rulings on objections—Voir dire § 28:58 -Offer of proof § 28:59 —Request for ruling § 28:60 —Disposition of objection § 28:61 —Reserved or de bene rulings § 28:62 Particular situations—Jury voir dire examination § 28:63 —Objections to opening statements and closing arguments § 28:64 —Objections to demonstrative evidence —Offering evidence for limited purpose § 28:65 § 28:66 —Objections to jury instructions and deliberations § 28:67 Perfecting the record

#### III. REFERENCES

§ 28:68 Bibliography

#### CHAPTER 29. VERDICT AND JUDGMENT

§ 29:1 Proposed findings of fact and conclusions of law

- § 29:2 Verdict and judgment—Overview
  § 29:3 Verdict
  § 29:4 Judgment
  § 20:5 Appeal timing
- § 29:5 Appeal timing

#### § 29:6 Bibliography

#### CHAPTER 30. POST-TRIAL ACTIVITIES

- § 30:1 Post-trial briefs
- § 30:2 Amending pleadings to conform to proof
- § 30:3 Petitions for fees and costs
- § 30:4 Securing the judgment
- § 30:5 Satisfaction of the judgment
- § 30:6 Execution of the judgment
- § 30:7 Stays pending appeal
- § 30:8 Relief from judgment
- § 30:9 Action on the judgment
- § 30:10 Interest on the judgment
- § 30:11 Default judgment
- § 30:12 Appeals—General
- § 30:13 Interlocutory appeals
- § 30:14 Appeal of right after judgment
- § 30:15 Bibliography

#### CHAPTER 31. BAD FAITH

- § 31:1 Introduction
- § 31:2 Law
- § 31:3 Client interview and investigative checklists
- § 31:4 Interrogatories—Plaintiff to defendant
- § 31:5 Deposition checklists
- § 31:6 Plaintiff's request for production of documents and things pursuant to Rule 34
- § 31:7 Requests for admission of facts
- § 31:8 Jury instructions—Bad faith or wrongful failure to settle

#### CHAPTER 32. POLICE MISCONDUCT

- § 32:1 Introduction
- § 32:2 Law
- § 32:3 Client interview and investigative checklists
- § 32:4 Deposition checklists
- § 32:5 Interrogatories
- § 32:6 Request for production of documents
- § 32:7 Requests for admission of facts
- § 32:8 Jury instructions—Background
- § 32:9 —Plaintiff
- § 32:10 —Defendant

# CHAPTER 33. COPYRIGHT INFRINGEMENT

§ 33:1	Introduction
§ 33:2	Law
§ 33:3	Client interview—Plaintiff Interview
§ 33:4	—Defendant Interview
§ 33:5	Deposition checklists—Copyright Infringement—
	Plaintiff to Defendant
§ 33:6	——Defendant to Plaintiff
§ 33:7	Interrogatories—Copyright Infringement—Plaintiff to Defendant
§ 33:8	——Defendant to Plaintiff
§ 33:9	Rule 34 request for production of documents
§ 33:10	Requests for admission of facts
§ 33:11	Jury instructions for copyright cases

#### CHAPTER 34. FALSE IMPRISONMENT

- § 34:1 Introduction
- § 34:2 Law
- § 34:3 Client interview and investigative checklists
- § 34:4 Pleadings
- § 34:5 Deposition checklists
- § 34:6 Interrogatories
- § 34:7 Request for production of documents
- § 34:8 Request for admission of facts
- § 34:9 Jury instructions

#### CHAPTER 35. MALICIOUS PROSECUTION

- § 35:1 Introduction
- § 35:2 Law
- § 35:3 Investigation and client interview
- § 35:4 Pleadings
- § 35:5 Deposition checklists
- § 35:6 Interrogatories
- § 35:7 Request for production of documents
- § 35:8 Request for admission of facts
- § 35:9 Jury instructions

# CHAPTER 36. SPECIAL STUDIES: ATTRACTIVE NUISANCE

- § 36:1 Introduction
- § 36:2 Law
- § 36:3 Client interview and case investigation
- § 36:4 Pleadings
- § 36:5 Deposition checklists

§ 36:6 Interrogatories
§ 36:7 Request for production of documents
§ 36:8 Request for admission of facts
§ 36:9 Jury instructions

## Volume 4

### **CHAPTER 37. DEFAMATION**

§ 37:1	Introduction—In general
§ 37:2	Law—Types of defamation—Defamation defined
§ 37:3	— —Libel
$\S 37:4$	——Slander
§ 37:5	—Malice
§ 37:6	—New York times standard
§ 37:7	—Publication
§ 37:8	—Identification of plaintiff
§ 37:9	—Members of group or class
§ 37:10	—Intention to defame
§ 37:11	—Defamation by employer—Generally
§ 37:12	—Defenses—Privileged matter
§ 37:13	——Truth
§ 37:14	
§ 37:15	
§ 37:16	
§ 37:17	2 2
§ 37:18	8 8
§ 37:19	
§ 37:20	—Limitation of action
§ 37:21	—Damages
§ 37:22	-
§ 37:23	——Identity of individual defamed
§ 37:24	
§ 37:25	——Affirmative defenses—libel
§ 37:26	——Damages
§ 37:27	Client interview—Plaintiff
§ 37:28	—Defendant
§ 37:29	Pleadings—Complaint—In general
§ 37:30	— — Checklist for drafting complaint
§ 37:31	— —Complaint against publisher
§ 37:32	——Slanderous words
§ 37:33	—Motion to dismiss
§ 37:34	—Answer—Guidelines
§ 37:35	— —Form
§ 37:36	—Retraction—Drafting guide
§ 37:37	——Demand for retraction—Form

#### PATTERN DISCOVERY: TORT ACTIONS

§ 37:38 — —Expression of regret—Form § 37:39 Deposition checklists—Plaintiff to defendant § 37:40 —Defendant to plaintiff Interrogatories—Plaintiff to defendant § 37:41 § 37:42 —Defendant to plaintiff § 37:43 Request for production of documents § 37:44 Request for admission of facts—Generally § 37:45 —Injury to business reputation § 37:46 Jury instructions—Plaintiff § 37:47 — Libel and slander defined § 37:48 ——Definition of publication § 37:49 — — Defamation action per se — — Newspaper's liability § 37:50 § 37:51 — Right to make defensive declarations — —Damages § 37:52 § 37:53 —Defendant—Existence of injury — Proper interpretation of published matter § 37:54 ——Presumption of good reputation § 37:55 § 37:56 — Truth as defense — —Damages § 37:57

#### CHAPTER 38. ASSAULT AND BATTERY

#### I. INTRODUCTION

§ 38:1 Introduction

#### II. LAW

§ 38:2	Assault—Definition
§ 38:3	Battery—Definition
§ 38:4	Criminal assault contrasted with civil assault
§ 38:5	Consent
§ 38:6	Spoken words
§ 38:7	Privilege
§ 38:8	—Peace officer
§ 38:9	—Persons in loco parentis
§ 38:10	—Teachers
§ 38:11	Evidentiary considerations
§ 38:12	Defense considerations—Self-defense
§ 38:13	—Defense of others
§ 38:14	—Defense of property
§ 38:15	—Mistake of fact
§ 38:16	Damages—Compensatory
§ 38:17	—Punitive
§ 38:18	—Provocation as mitigating damages
§ 38:19	Elements of proof—Assault

§ 38:20 —Battery
 § 38:21 —Use of excessive force by person privileged to use force
 § 38:22 —Damages
 § 38:23 —Provocation to mitigate damages

## III. CLIENT INTERVIEW AND INVESTIGATIVE CHECKLISTS

- § 38:24 Client interview § 38:25 —Defense counsel
- § 38:26 —Eyewitness identification
- § 38:27 —Information bearing on assaultive acts
- § 38:28 Investigation—Determining the facts
- § 38:29 —Locating and interviewing witnesses

#### IV. PLEADINGS

- § 38:30 Form of complaint—Checklist
- § 38:31 —General form
- § 38:32 —Mutual combat
- § 38:33 —Use of firearm
- § 38:34 —Use of unreasonable force by police officer
- § 38:35 —Claim for medical expenses
- § 38:36 —Punitive damages
- § 38:37 Defense—Answer—Denial of assault and battery
- § 38:38 ——Defendant smaller than plaintiff
- § 38:39 ——Force used necessary for self-protection
- § 38:40 —Use of force reasonably necessary to protect third person
- § 38:41 ——Force used necessary to defend property
- § 38:42 ——Plaintiff provoked assault
- $\S 38:43$  ——Self-defense—Mutual combat
- § 38:44 ——Force used reasonably necessary to make arrest
- § 38:45 ——Action for assault and battery barred by statute of limitations

#### V. DEPOSITION CHECKLISTS

- § 38:46 Plaintiff to defendant
- § 38:47 Defendant to plaintiff

#### VI. INTERROGATORIES

- § 38:48 Plaintiff to defendant
- § 38:49 Defendant to plaintiff

## VII. REQUEST FOR PRODUCTION OF DOCUMENTS

§ 38:50 Document requests—Generally

#### VIII. REQUEST FOR ADMISSION OF FACTS

§ 38:51 Request for admissions—Generally

#### IX. JURY INSTRUCTIONS

§ 38:52	Definitions—Assault
§ 38:53	—Battery
§ 38:54	—Assault and battery distinguished
§ 38:55	—Malice
§ 38:56	—Willfully
§ 38:57	Intent and malice presumed
§ 38:58	Defense of property—Elements and degree of proof
	necessary to sustain affirmative defense
§ 38:59	—Justifiable amount of force used
§ 38:60	—Trespasser may be ejected after refusing request to leave
§ 38:61	—Right to use reasonable force to eject disorderly person from business premises
§ 38:62	Privilege of police officer—Right to repel attack made during resistance to arrest
§ 38:63	—Degree or amount of force allowed to overcome resistance to lawful arrest
§ 38:64	Self-defense—Elements
§ 38:65	—Burden of proof
§ 38:66	—Requirement that defendant retreat before using
Ü	force
§ 38:67	Use of reasonable force for self-protection—Belief tha
	danger exists—Reasonable person standard
§ 38:68	—Apparent danger sufficient
§ 38:69	—Justifiable amount or degree of force used
§ 38:70	—Plaintiff was the aggressor
§ 38:71	—No duty to retreat
§ 38:72	—Duty to retreat before resorting to use of deadly or
	dangerous weapon
§ 38:73	—Unavoidable accident
§ 38:74	Mutual combat—Consent to engage not a defense
§ 38:75	Damages—Mitigation of damages based on plaintiff's consent to engage in mutual combat
8 38.76	—Damages following finding of liability

### CHAPTER 39. EXCESSIVE FORCE

#### I. INTRODUCTION

§ 39:1 Generally

#### II. LAW

§ 39:2 Privileged use of force by police officers

### Table of Contents

§ 39:3	Arresting officer's right of self-defense	
§ 39:4	State law claims	
§ 39:5	Federal claims	
§ 39:6	Actions against Federal Law Enforcement Officers	
§ 39:7	Employer liability issues	
§ 39:8	Excessive force in use of firearm	
§ 39:9	Excessive force in beating case	
§ 39:10	Use of an expert witness	
§ 39:11	Defense considerations	
§ 39:12	Measure of damages	
§ 39:13	Elements of proof	

### III. CLIENT INTERVIEW AND INVESTIGATION

- § 39:14 Client interview
- § 39:15 Investigating the case

### IV. PLEADINGS

- § 39:16 Form complaints
- § 39:17 Form answers

### V. DEPOSITION CHECKLISTS

- § 39:18 Plaintiff to defendant
- § 39:19 Defendant to plaintiff
- § 39:20 Plaintiff's expert

### VI. INTERROGATORIES

- § 39:21 Plaintiff to defendant
- § 39:22 Defendant to plaintiff

# VII. REQUEST FOR PRODUCTION OF DOCUMENTS

- § 39:23 Plaintiff to defendant § 39:24 Defendant to plaintiff
- VIII. REQUEST FOR ADMISSION OF FACTS
- § 39:25 Requests for admissions—Generally

### IX. JURY INSTRUCTIONS

§ 39:26 Generally
§ 39:27 Violation of civil rights
§ 39:28 Plaintiff instructions—Damages
§ 39:29 Defendant instructions—Reasonable use of force

### CHAPTER 40. ABUSE OF PROCESS

### I. INTRODUCTION

§ 40:1 In general

### II. LAW

- § 40:2 Elements of an actionable abuse of process
- § 40:3 Abuse of process in collection of debt
- § 40:4 Abuse in the discovery process
- § 40:5 Proof of abuse; defenses
- § 40:6 Elements of proof

### III. CLIENT INTERVIEW AND INVESTIGATION

- § 40:7 Client interview—Generally
- § 40:8 Case investigation

### IV. DEPOSITION CHECKLISTS

- § 40:9 Plaintiff to defendant
- § 40:10 Defendant to plaintiff

#### V. INTERROGATORIES

- § 40:11 Plaintiff to defendant
- § 40:12 Defendant to plaintiff

### VI. PLEADINGS

- § 40:13 Complaints—Generally
- § 40:14 Form complaints
- $\S~40:15$  Answer—Mitigation of damages-advice of counsel

# VII. REQUEST FOR PRODUCTION OF DOCUMENTS

§ 40:16 Document requests—Generally

### VIII. REQUEST FOR ADMISSION OF FACTS

§ 40:17 Request for admissions—Generally

### IX. JURY INSTRUCTIONS

- § 40:18 Abuse of process
- § 40:19 Elements of abuse of process
- § 40:20 Malice
- § 40:21 Damages

lviii

### CHAPTER 41. SLANDER OF TITLE

### I. INTRODUCTION

§ 41:1 In general

### II. LAW

§ 41:2	Slander of title—Generally	
§ 41:3	Basis for slander of title claim	
§ 41:4	Sufficiency of plaintiff's interest in property	
§ 41:5	Publication of disparaging statement or claim by defendant	
§ 41:6	Falsity of statement or claim of interest	
§ 41:7	Malicious intent of defendant	
§ 41:8	Specific types of disparaging statements or claim constituting slander of title	
§ 41:9	Defenses to action for slander of title	
§ 41:10	Alternate theories of relief	
§ 41:11	Damages for slander of title	

### III. CLIENT INTERVIEW AND INVESTIGATION

- § 41:13 Client interview—Plaintiff
- § 41:14 —Defendant

§ 41:12 Elements of proof

### IV. DEPOSITION CHECKLISTS

- § 41:15 Plaintiff to defendant
- § 41:16 Defendant to plaintiff

### V. INTERROGATORIES

- § 41:17 Plaintiff to defendant
- § 41:18 Defendant to plaintiff

### VI. PLEADINGS

- § 41:19 Complaint—Generally
- § 41:20 Form complaint
- § 41:21 Form answer and counterclaim

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 41:22 Document requests—Generally

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 41:23 Admission of facts—Generally

- § 41:24 Plaintiff's instructions
- § 41:25 Defendant's instructions

### CHAPTER 42. LIABILITY FOR STD

### I. INTRODUCTION

- § 42:1 In general
- § 42:2 Most common STDs

### II. LAW

- § 42:3 Theories of liability
- § 42:4 Causation
- § 42:5 Defense considerations
- § 42:6 Expert witnesses
- § 42:7 Damages
- § 42:8 Elements of proof

# III. CLIENT INTERVIEW AND CASE INVESTIGATION

- § 42:9 Client interview—Generally
- § 42:10 Case investigation

### IV. DEPOSITION CHECKLISTS

- § 42:11 Plaintiff to defendant
- § 42:12 Defendant to plaintiff

### V. INTERROGATORIES

- § 42:13 Plaintiff to defendant
- § 42:14 Defendant to plaintiff

#### VI. PLEADINGS

- § 42:15 Model complaint
- § 42:16 Model answer

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 42:17 Document requests—Generally

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 42:18 Admission of facts—Generally

- § 42:19 Plaintiff's instructions
- § 42:20 Defendant's instructions

### CHAPTER 43. CLERGY MALPRACTICE

### I. INTRODUCTION

§ 43:1 In general

### II. LAW

- § 43:2 Legal background
- § 43:3 Theories of liability
- § 43:4 Defense considerations
- § 43:5 Expert witnesses
- § 43:6 Damages
- § 43:7 Elements of proof

# III. CLIENT INTERVIEW AND CASE INVESTIGATION

- § 43:8 Client interview—Generally
- § 43:9 Case investigation

#### IV. DEPOSITION CHECKLISTS

- § 43:10 Plaintiff to defendant
- § 43:11 Defendant to plaintiff

### V. INTERROGATORIES

- § 43:12 Plaintiff to defendant
- § 43:13 Defendant to plaintiff

### VI. PLEADINGS

- § 43:14 Model complaint
- § 43:15 Model answer

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

- § 43:16 Document requests—Generally
- § 43:17 Plaintiff's request

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 43:18 Admission of facts—Generally

§ 43:19 Jury instructions—Generally

# CHAPTER 44. INTENTIONAL SPORTS INJURY

### I. INTRODUCTION

§ 44:1 In general

### II. LAW

§ 44:2	Legal background—In general	
§ 44:3	Distinguishing act as part of zealous, hard play v	
	negligence, recklessness or intentional conduct	
§ 44:4	Defense considerations	
§ 44:5	Officials, referees and umpires	
§ 44:6	Coaches, teams, schools and leagues	
§ 44:7	Spectators	
§ 44:8	Sovereign and charitable immunity	
§ 44:9	Damages	

# III. CLIENT INTERVIEW AND CASE INVESTIGATION

- § 44:11 Client interview—Generally
- § 44:12 Case investigation

§ 44:10 Elements of proof

### IV. DEPOSITION CHECKLISTS

- § 44:13 Plaintiff to defendant
- § 44:14 Defendant to plaintiff

### V. INTERROGATORIES

- § 44:15 Plaintiff to defendant
- § 44:16 Defendant to Plaintiff

#### VI. PLEADINGS

- § 44:17 Model complaint
- § 44:18 Model answer

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 44:19 Document requests—Generally

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 44:20 Admission of facts—Generally

§ 44:21 Jury instructions—Generally

# CHAPTER 45. PUBLIC SCHOOL LIABILITY FOR BULLYING

### I. INTRODUCTION

- § 45:1 In general
- § 45:2 Bullying and its effects

### II. LAW

- § 45:3 Antibullying legislation
- § 45:4 Theories of liability
- § 45:5 Defense considerations
- § 45:6 Remedies and relief; damages
- § 45:7 Elements of proof

# III. CLIENT INTERVIEW AND CASE INVESTIGATION

- § 45:8 Client interview—Generally
- § 45:9 Case investigation

#### IV. DEPOSITION CHECKLISTS

- § 45:10 Plaintiff to defendant
- § 45:11 Defendant to plaintiff

### V. INTERROGATORIES

- § 45:12 Plaintiff to Defendant
- § 45:13 Defendant to plaintiff

### VI. PLEADINGS

- § 45:14 Notice of claim—Model form
- § 45:15 Complaint—Model form
- § 45:16 Answer—Model form

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 45:17 Document requests—Generally

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 45:18 Admission of facts—Generally

§ 45:19 Jury instructions—Generally

# CHAPTER 46. UNAUTHORIZED DISCLOSURE OF PRIVATE INFORMATION

### I. INTRODUCTION

§ 46:1 In general

### II. LAW

- § 46:2 Restatement of torts
- § 46:3 Constitutional right to privacy
- § 46:4 Common-law elements
- § 46:5 Procedural issues
- § 46:6 Medical information
- § 46:7 Federal Privacy Act
- § 46:8 Damages
- § 46:9 Elements of proof

# III. CLIENT INTERVIEW AND CASE INVESTIGATION

- § 46:10 Client interview—Generally
- § 46:11 Case investigation

### IV. DEPOSITION CHECKLISTS

- § 46:12 Plaintiff to defendant
- § 46:13 Defendant to plaintiff

### V. INTERROGATORIES

- § 46:14 Plaintiff to defendant
- § 46:15 Defendant to plaintiff

#### VI. PLEADINGS

- § 46:16 Complaint—Model form
- § 46:17 Answer—Model form

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 46:18 Document requests—Generally

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 46:19 Admission of facts—Generally

lxiv

§ 46:20 Jury instructions—Generally

# CHAPTER 47. NEGLIGENCE IN AIRCRAFT CRASH

### I. INTRODUCTION

§ 47:1 Generally

### II. LAW

- § 47:2 Theory of liability
- § 47:3 Defenses to negligence
- § 47:4 Procedural limitations
- § 47:5 Choice of law
- § 47:6 Consolidation
- § 47:7 Class actions
- § 47:8 Warsaw convention
- § 47:9 Montreal liability convention
- § 47:10 Death on the High Seas Act
- § 47:11 International Aviation Transport Association Intercarrier Agreements
- § 47:12 Terrorism
- § 47:13 Damages
- § 47:14 Victim's Compensation Fund

### III. CLIENT INTERVIEW AND INVESTIGATION

- § 47:15 Client interview
- § 47:16 Case investigation
- § 47:17 Use of expert witnesses

### IV. DEPOSITION CHECKLISTS

- § 47:18 Plaintiff to defendant
- § 47:19 Defendant to plaintiff

#### V. INTERROGATORIES

- § 47:20 Plaintiff to defendant
- § 47:21 Defendant to plaintiff

### VI. PLEADINGS

§ 47:22 Complaint—Model form

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 47:23 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 47:24 Requests to admit—Model form to manufacturer

### IX. JURY INSTRUCTIONS

§ 47:25 Jury instructions—Generally

### CHAPTER 48. TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS

### I. INTRODUCTION

§ 48:1 Generally

### II. LAW

- § 48:2 General analytical considerations
- § 48:3 Elements of tortious interference with prospective contractual relations
- § 48:4 Factors in determining propriety of actor's conduct
- § 48:5 Special instances where conduct is proper
- § 48:6 Damages and other relief
- § 48:7 Elements of proof—Checklist

#### III. CLIENT INTERVIEW AND INVESTIGATION

- § 48:8 Client interview
- § 48:9 Case investigation

### IV. DEPOSITION CHECKLISTS

- § 48:10 Plaintiff to defendant
- § 48:11 Defendant to plaintiff

### V. INTERROGATORIES

- § 48:12 Plaintiff to defendant
- § 48:13 Defendant to plaintiff

### VI. PLEADINGS

§ 48:14 Complaint—Model form

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 48:15 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 48:16 Requests to Admit—Model form to Defendant

lxvi

§ 48:17 Jury instructions—Generally

### CHAPTER 49. PHARMACIST LIABILITY

### I. INTRODUCTION

§ 49:1 In general

#### II. LAW

- § 49:2 Standard of care
- § 49:3 Theories of liability
- § 49:4 Statutory duty
- § 49:5 Voluntarily assumed duties
- § 49:6 Breach of warranty
- § 49:7 Strict liability
- § 49:8 Fraud and misrepresentation

### III. CLIENT INTERVIEW AND CASE INVESTIGATION

- § 49:9 Client interview—Generally
- § 49:10 Case investigation

#### IV. DEPOSITION CHECKLISTS

- § 49:11 Plaintiff to defendant
- § 49:12 Defendant to plaintiff

### V. INTERROGATORIES

- § 49:13 Plaintiff to defendant
- § 49:14 Defendant to plaintiff

### VI. PLEADINGS

- § 49:15 Form complaint
- § 49:16 Model Answer

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

- § 49:17 Document requests—Generally
- § 49:18 Plaintiff's request

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 49:19 Admission of facts—Generally

§ 49:20 Jury instructions—Generally

# CHAPTER 50. CRUISE SHIP PASSENGER INJURY

### I. INTRODUCTION

§ 50:1 In general

### II. LAW

- § 50:2 Theories of liability
- § 50:3 Defenses
- § 50:4 Procedural matters
- § 50:5 Burden of proof
- § 50:6 Damages

# III. CLIENT INTERVIEW AND CASE INVESTIGATION

- § 50:7 Client interview—Generally
- § 50:8 Case investigation

### IV. DEPOSITION CHECKLISTS

- § 50:9 Plaintiff to defendant
- § 50:10 Defendant to plaintiff

### V. INTERROGATORIES

- § 50:11 Plaintiff to defendant
- § 50:12 Defendant to plaintiff

### VI. PLEADINGS

- § 50:13 Complaint—Model form
- § 50:14 Answer—Model form

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 50:15 Document requests—Generally

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 50:16 Admission of facts—Generally

### IX. JURY INSTRUCTIONS

§ 50:17 Jury instructions—Generally

lxviii

# CHAPTER 51. BREACH OF COVENANT NOT TO COMPETE

### I. INTRODUCTION

§ 51:1 Generally

### II. LAW

- § 51:2 Nature of noncompete agreement
- § 51:3 Governing Law
- § 51:4 Causes of action—Elements
- § 51:5 Proof necessary to establish a breach—Checklist
- § 51:6 Parties

#### III. CLIENT INTERVIEW AND INVESTIGATION

- § 51:7 Client interview
- § 51:8 Case investigation

### IV. DEPOSITION CHECKLISTS

- § 51:9 Plaintiff to defendant
- § 51:10 Defendant to plaintiff

### V. INTERROGATORIES

- § 51:11 Plaintiff to defendant
- § 51:12 Defendant to plaintiff

### VI. PLEADINGS

- § 51:13 Complaint—Model form
- § 51:14 Answer—Model form

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 51:15 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 51:16 Requests to Admit—Model form to Defendant

### IX. JURY INSTRUCTIONS

§ 51:17 Jury instructions—Generally

### CHAPTER 52. FOOTBALL HELMET INJURY

### I. INTRODUCTION

§ 52:1 Generally

#### II. LAW

- § 52:2 Causes of action
- § 52:3 Damages
- § 52:4 Defenses used by manufacturer
- § 52:5 Defenses used by coaches
- § 52:6 Defenses used by football league

### III. CLIENT INTERVIEW AND INVESTIGATION

- § 52:7 Client interview
- § 52:8 Case investigation

### IV. DEPOSITION CHECKLISTS

- § 52:9 Plaintiff to defendant
- § 52:10 Defendant to plaintiff

### V. INTERROGATORIES

- § 52:11 Plaintiff to defendant
- § 52:12 Defendant to plaintiff

### VI. PLEADINGS

- § 52:13 Complaint—Model forms
- § 52:14 Answer—Model form

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 52:15 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 52:16 Requests to admit—Model form to defendant

#### IX. JURY INSTRUCTIONS

§ 52:17 Jury instructions—Generally

# CHAPTER 53. PASSENGER REMOVAL FROM COMMERCIAL CARRIER

### I. INTRODUCTION

§ 53:1 Generally

#### II. LAW

§ 53:2 Preparing the case

lxx

### Table of Contents

- § 53:3 Types of claims
- § 53:4 Defenses
- § 53:5 Damages

### III. CLIENT INTERVIEW AND INVESTIGATION

- § 53:6 Client Interview
- § 53:7 Case investigation

### IV. DEPOSITION CHECKLISTS

- § 53:8 Plaintiff to defendant
- § 53:9 Defendant to plaintiff

### V. INTERROGATORIES

- § 53:10 Plaintiff to defendant
- § 53:11 Defendant to Plaintiff

### VI. PLEADINGS

- § 53:12 Complaint—Model form
- § 53:13 Answer—Model form

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 53:14 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 53:15 Admission of facts—Generally

### IX. JURY INSTRUCTIONS

§ 53:16 Jury instructions—Generally

### CHAPTER 54. ASSERTING CLAIM OF UNCONSTITUTIONAL PRISON CONDITIONS

### I. INTRODUCTION

§ 54:1 Generally

### II. LAW

- § 54:2 The statute
- § 54:3 Class actions
- § 54:4 Remedies available to prisoner civil rights litigants under 42 USCA § 1983

§ 54:5 Elements and standards of proof of constitutional violations
 § 54:6 Documentary evidence
 § 54:7 Basic considerations of 42 USCA § 1983 liability and defenses

# III. CLIENT INTERVIEW AND CASE INVESTIGATION

§ 54:8 Client Interview § 54:9 Case investigation

### IV. DEPOSITION CHECKLISTS

- § 54:10 Plaintiff to defendant
- § 54:11 Defendant to plaintiff

### V. INTERROGATORIES

§ 54:12 Plaintiff to defendant § 54:13 Defendant to plaintiff

### VI. PLEADINGS

§ 54:14 Complaint—Model form

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 54:15 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 54:16 Requests for admission—Generally

#### IX. JURY INSTRUCTIONS

§ 54:17 Jury instructions—Generally

### CHAPTER 55. SLANDER OF TITLE

### I. INTRODUCTION

§ 55:1 Generally

#### II. LAW

- § 55:2 Slander of title defined
- § 55:3 Common-law basis
- § 55:4 Statutory basis
- § 55:5 Restatement (Second) of Torts view

lxxii

#### Table of Contents

- § 55:6 Elements of slander of title claim
- § 55:7 Act constituting slander of title
- § 55:8 Defenses
- § 55:9 Damages

#### III. CLIENT INTERVIEW AND INVESTIGATION

§ 55:10 Client interview and case intake

### IV. PLEADINGS

- § 55:11 Complaint drafting checklist
- § 55:12 Complaint—Model form

### V. DEPOSITION CHECKLISTS

- § 55:13 Plaintiff to defendant
- § 55:14 Defendant to plaintiff

#### VI. INTERROGATORIES

- § 55:15 Plaintiff to defendant
- § 55:16 Defendant to plaintiff

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 55:17 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 55:18 Requests for admission—Generally

### IX. JURY INSTRUCTIONS

§ 55:19 Jury instructions

# CHAPTER 56. LIABILITY FOR PASSENGER REMOVAL FROM MASS TRANSPORTATION

### I. INTRODUCTION

§ 56:1 Generally

### II. LAW

- § 56:2 Potential plaintiffs
- § 56:3 Potential defendants
- § 56:4 Considerations before filing an action
- § 56:5 Theories of liability

§ 56:6 Damages § 56:7 Defenses

### III. CLIENT INTERVIEW AND INVESTIGATION

§ 56:8 Client interview and case intake

#### IV. PLEADINGS

§ 56:9 Complaint—Model form § 56:10 Affirmative defenses

### V. DEPOSITION CHECKLISTS

§ 56:11 Plaintiff to defendant § 56:12 Defendant to plaintiff

### VI. INTERROGATORIES

- § 56:13 Plaintiff to defendant § 56:14 Defendant to plaintiff
- VII. REQUESTS FOR PRODUCTION OF

### DOCUMENTS

§ 56:15 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 56:16 Requests for admission—Generally

### IX. JURY INSTRUCTIONS

§ 56:17 Jury instructions

# CHAPTER 57. LIABILITY FOR HOSPITAL-ACQUIRED INFECTION

### I. INTRODUCTION

- § 57:1 Generally
- § 57:2 Infection process
- § 57:3 Types of infectious agents
- § 57:4 Diagnosis of infections
- § 57:5 Treatment
- § 57:6 Prevention
- § 57:7 Hospital reportage of hospital-acquired infection to CDC

### II. LAW

§ 57:8 Legal considerations

lxxiv

### Table of Contents

§ 57:9	Liability of hospitals
§ 57:10	Standard of care
§ 57:11	Specific duties of care
§ 57:12	Breach; acts of neglect
§ 57:13	Causation
§ 57:14	Damages
§ 57:15	Liability of physicians
§ 57:16	Liability of nonphysician healthcare employees of
	hospital
§ 57:17	The 48-hour rule
§ 57:18	Res ipsa loquitur
§ 57:19	Anticipating affirmative defenses

### III. CLIENT INTERVIEW AND INVESTIGATION

- § 57:20 Case interview and intake
- § 57:21 Case investigation
- § 57:22 Recruiting and interviewing medical and scientific experts

### IV. PLEADINGS

- § 57:23 Complaint—In general § 57:24 Model complaint—Complaint for wrongful death damages against defendant hospital in a hospitalacquired infection action
- § 57:25 —Complaint for negligence damages against defendant hospital in a hospital-acquired infection action
- § 57:26 Answer

### V. DEPOSITION CHECKLISTS

§ 57:27 Plaintiff to defendant § 57:28 Defendant to plaintiff

### VI. INTERROGATORIES

- § 57:29 Plaintiff to defendant
- § 57:30 Defendant to plaintiff

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 57:31 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 57:32 Requests for admission—Generally

### IX. JURY INSTRUCTIONS

§ 57:33 Jury instructions

# CHAPTER 58. LIABILITY OF COMMON CARRIER FOR INJURIES TO BUS PASSENGER

### I. INTRODUCTION

§	58:1	Generally
---	------	-----------

§ 58:2 Technical aspects of a bus collision

#### II. LAW

- § 58:3 Safety codes and regulations
- § 58:4 Federal and state law
- § 58:5 Choice of forum
- § 58:6 Diversity jurisdiction and venue
- § 58:7 Statutory notice and sovereign immunity
- § 58:8 Statute of limitations
- § 58:9 Common carrier defined
- § 58:10 Standard of care and duty of care
- § 58:11 Care for special needs passengers
- § 58:12 Negligence
- § 58:13 Res ipsa loquitur
- § 58:14 Defenses
- § 58:15 Damages
- § 58:16 Sudden emergency doctrine
- § 58:17 Jerk or jolt doctrine
- § 58:18 Expert witnesses

#### III. CLIENT INTERVIEW AND INVESTIGATION

- § 58:19 Case interview and intake
- § 58:20 Case investigation

### IV. PLEADINGS

- § 58:21 Model complaints—Federal and state
- § 58:22 Model answer—Federal and state

### V. DEPOSITION CHECKLISTS

- § 58:23 Plaintiff to defendant
- § 58:24 Defendant to plaintiff

### VI. INTERROGATORIES

- § 58:25 Plaintiff to defendant
- § 58:26 Defendant to plaintiff

lxxvi

# VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 58:27 Plaintiff to defendant

### VIII. REQUESTS FOR ADMISSION OF FACTS

§ 58:28 Requests for admission—Generally

### IX. JURY INSTRUCTIONS

§ 58:29 Jury instructions

### **APPENDIX**

Appendix A. Discovery Statutes and Rules

Glossary

**Key Number Table** 

**Index**