### Volume 1

### **CHAPTER 1. ACTIONS**

CHAI	TIER I. ACTIONS
§ 1:1	Introduction
§ 1:2	Terminology
§ 1:3	Accrual of cause of action
§ 1:4	Actions based upon illegal transactions
§ 1:5	Conditions precedent
§ 1:6	Demand and notice; ante litem notice
§ 1:7	Splitting causes of action; prior pending action
§ 1:8	Joinder of claims and remedies
§ 1:9	Survival of actions
§ 1:10	Attorney's fees and expenses; abusive litigation
§ 1:11	Tort reform and medical malpractice reform;
	limitations on noneconomic damages; apportionmen of damages
§ 1:12	Georgia Arbitration Code
§ 1:13	Georgia Uniform Mediation Act
§ 1:14	Georgia Tort Claims Act
§ 1:15	Alternative dispute resolution
§ 1:16	Costs in civil cases
§ 1:17	Intra-military immunity and the Feres doctrine
§ 1:18	Civil forfeiture
§ 1:19	Civil action based on violation of criminal statute
§ 1:20	Sealing court records
§ 1:21	Interpreters
§ 1:22	Admission pro hac vice
§ 1:23	COVID 19 pandemic judicial and executive orders
CIT A I	

#### CHAPTER 2. COURT SYSTEM

§ 2:1	Unified judicial system
§ 2:2	Rules of courts
§ 2:3	Supreme Court
$\S 2:4$	Court of Appeals
§ 2:5	Superior courts; electronic filing; alternative facilities; virtual proceedings
§ 2:6	State courts; electronic filing
§ 2:7	Magistrate courts; virtual proceedings
§ 2:8	Probate courts; virtual proceedings

§ 2:9	Juvenile courts
§ 2:10	Georgia State-Wide Business Court
§ 2:11	Court emergency measures
CHA	PTER 3. JUDGES
§ 3:1	Constitutional judicial officers
§ 3:2	Ineligibility to hold judicial office
§ 3:3	Disqualification of judicial officers in general
§ 3:4	Impeachment in general
§ 3:5	Powers in general
§ 3:6	Power to punish for contempt
§ 3:7	Expressions in open court or discharge of jury forbidden
§ 3:8	Rule nisi
§ 3:9	Instructions to the jury
§ 3:10	Code of Judicial Conduct
§ 3:11	Special masters
§ 3:12	Judicial emergencies
§ 3:13	Accessibility of personal information of state and
	federal judges
CHA	PTER 4. PARTIES
§ 4:1	Definitions
§ 4:2	Right to be present at trial
§ 4:3	Real party in interest
§ 4:4	Capacity to bring or defend an action
§ 4:5	Infants or incompetent persons
§ 4:6	Aliens and nonresidents
§ 4:7	Agents and attorneys as parties
§ 4:8	Receivers
§ 4:9	The state and its political subdivisions
§ 4:10	Prison Litigation Reform Act of 1996
§ 4:11	Municipal corporations
§ 4:12	Class actions
§ 4:13	Raising question as to proper parties
§ 4:14	Joinder of persons needed for just adjudication
§ 4:15	Permissive joinder
§ 4:16	Misjoinder and nonjoinder of parties
§ 4:17	Interpleader
§ 4:18	Intervention
§ 4:19	Substitution of parties; suggestion of death
§ 4:20	Vouching into court

### **CHAPTER 5. VENUE**

§ 5:1 Venue in general

§ 5:2	Civil actions in general
§ 5:3	Forum selection clauses
§ 5:4	Forum non conveniens generally; child custody provisions
§ 5:5	Divorce actions; child custody
§ 5:6	Actions touching realty
§ 5:7	Equity cases
§ 5:8	Joint obligors, tortfeasors, promisors, copartners or trespassers; vanishing venue; actions relating to health care (medical malpractice)
§ 5:9	Makers and endorsers of notes
§ 5:10	Corporations
§ 5:11	Georgia Nonresident Motorists Act
§ 5:12	Long arm statute
§ 5:13	Third-party practice
§ 5:14	Counterclaims or cross-claims
§ 5:15	Change of venue
§ 5:16	Uniform Transfer Rules; constitutional provision
§ 5:17	Waiver of questions of venue
CHA	PTER 6. JURISDICTION

8 e:T	Definitions
§ 6:2	Subject matter
§ 6:3	In rem jurisdiction
§ 6:4	Jurisdiction of the person
§ 6:5	Nonresidents
§ 6:6	Record must show jurisdiction
§ 6:7	Pleas to the jurisdiction
§ 6:8	Superior courts
§ 6:9	Probate courts
§ 6:10	Magistrate courts
§ 6:11	Juvenile courts
§ 6:12	State, city and municipal courts
§ 6:13	Georgia State-Wide Business Court
§ 6:14	Appellate jurisdiction; petition for review in lower tribunals

### CHAPTER 7. COMPLAINTS

§ 7:1	Suits commenced by complaint
§ 7:2	Civil case initiation and disposition forms
§ 7:3	Redaction of court filings
$\S 7:4$	Civil case filing and disposition forms
§ 7:5	Overview
§ 7:6	Sufficiency of the complaint

### Davis and Shulman's Georgia Practice and Procedure

§	7:7	How construed; ambiguity
§	7:8	Multiple counts and paragraphs
§	7:9	Pleading ordinances, statutes, regulations, and foreign law
§	7:10	Pleading special damages
§	7:11	Pleading professional malpractice
§	7:12	Pleading medical malpractice—Medical authorization form
§	7:13	Pleading the basis for jurisdiction and venue
§	7:14	Matters requiring special pleading—Fraud, mistake, condition of mind, and conditions precedent
§	7:15	—Certification of claims arising from act in furtherance of rights of petition and free speech
§	7:16	Alternative, inconsistent or conflicting claims and remedies
§	7:17	The "and/or" construction
§	7:18	Pleading agency or the master-servant relationship
§	7:19	Pleading judgments
§	7:20	Prejudicial or irrelevant matter; privilege
§	7:21	Copies of complaint for service
§	7:22	Exhibits
§	7:23	Verification
§	7:24	The caption
§	7:25	Demand for judgment or other relief
§	7:26	Signature; entry of appearance form
(	CHAI	PTER 8. SERVICE OF PROCESS
_	8:1	Definition and object of process and service thereof
	8:2	Notice; due process
	8:3	Issuance of summons
§	8:4	Form and sufficiency
	8:5	Second original and alias process
§	8:6	Waiver of service
	8:7	Waiver of process and acknowledgment of service
	8:8	Privilege from service of process
§	8:9	Amending process
§	8:10	Authority to serve
	8:11	Certified process servers
	8:12	Time of service—Grace period; Giles v. State Farm
	8:13	—Due diligence
§	8:14	Actual service and service by publication (constructive service)
§	8:15	Personal service within the state
§	8:16	Personal service beyond state
	8:17	Service upon persons in foreign country

### TABLE OF CONTENTS

§ 8:18	Service upon persons residing in gated and secured
	communities
§ 8:19	Service under the long arm statute
§ 8:20	Service of process upon minor 14 years of age or older where such minor is temporarily outside state
§ 8:21	Personal service through service on counsel; service by email
§ 8:22	Service on persons non sui juris
§ 8:23	Substituted service in general
§ 8:24	Service by publication (constructive service)
§ 8:25	—Procedure
§ 8:26	—Known but unlocatable uninsured motorist
§ 8:27	Certified mail; registered mail; statutory overnight delivery
§ 8:28	Service on corporations pursuant to the Civil Practice Act
§ 8:29	Service pursuant to the corporate code
§ 8:30	Personal service on corporation—Who is an agent
§ 8:31	Service on limited liability companies
§ 8:32	Substituted service on corporations
§ 8:33	Service on foreign corporations
§ 8:34	Service on express companies
§ 8:35	Service in garnishment
§ 8:36	Service of notice in attachment proceedings
§ 8:37	Service on nonresident motorists
§ 8:38	Service on public bodies and state government entities
§ 8:39	Alternative service
§ 8:40	Return of service
§ 8:41	Amendment of return
§ 8:42	Defendant's remedies for defective service
§ 8:43	Waiver of defective service
UHA	PTER 9. MOTION PRACTICE

§ 9:1	General considerations
§ 9:2	Form and sufficiency of motions; notice of adverse decision
§ 9:3	Basic defenses which may be made by motion: procedure for determination by court
§ 9:4	Waiver of defenses
§ 9:5	Motion to dismiss for failure to state a claim; stay of discovery
§ 9:6	Failure to join an indispensable party
§ 9:7	Motion for judgment on the pleadings
§ 9:8	Motion for more definite statement
§ 9:9	Motion to strike

§ 9:10	Motion in limine
§ 9:11	Motion to stay proceedings; bankruptcy stay
§ 9:12	Preliminary hearings on motions
§ 9:13	Motions in civil actions—Uniform rules for the
	superior courts
§ 9:14	Civil case disposition form
CHA	PTER 10. ANSWERS
§ 10:1	In general
§ 10:2	Offer to settle in tort claims
§ 10:3	Offer to settle tort claims for personal injuries arising
	from a motor vehicle collision (eff. April 22, 2024)
§ 10:4	Time for filing an answer and defensive pleadings; extensions of time
§ 10:5	Admissions, denials and other responses
§ 10:6	Form and sufficiency
§ 10:7	Fraud, mistake and condition of the mind as defenses
§ 10:8	Condition precedent
§ 10:9	Capacity
§ 10:10	Alternative, hypothetical and inconsistent defenses
§ 10:11	Admissions in defensive pleadings; admissions in judicio
§ 10:12	Pleading municipal ordinances and foreign law
§ 10:13	Affirmative defenses which must be pled
§ 10:14	Affirmative defenses which are not required to be
§ 10:15	pled under the CPA Waiver of defenses
§ 10:15 § 10:16	
	Averments to which no responsive pleading is required or permitted
§ 10:17	Amended answers
§ 10:18	Verification of the answer
CHA	PTER 11. COUNTERCLAIMS AND
CRO	SS-CLAIMS
§ 11:1	In general
§ 11:2	Separate or surviving claims
§ 11:3	Statute of limitations for counterclaims and cross- claims; renewal
§ 11:4	Compulsory counterclaims
§ 11:5	Permissive counterclaims
§ 11:6	Counterclaim exceeding opposing claim
§ 11:7	Counterclaim against the state; sovereign immunity; official (qualified) immunity; judicial immunity
§ 11:8	Counterclaim maturing or acquired after pleading

Omitted counterclaim

§ 11:9

§ 11:10 Cross-claims against coparty § 11:11 Additional parties may be brought in CHAPTER 12. THIRD-PARTY PRACTICE § 12:1 In general § 12:2 Venue in third-party practice Effect of statutes of limitations on third-party actions § 12:3 § 12:4 Privileges which bar third-party actions Direct liability to defendant prohibited § 12:5 Prohibited tender of a substitute defendant § 12:6 Contribution § 12:7 § 12:8 Releases and covenants not to sue Time to file and respond to the third-party action § 12:9 § 12:10 Third-party defenses to the plaintiff's action Third-party claims against the plaintiff § 12:11 § 12:12 Motion to strike or for severance § 12:13 Fourth-party actions

When plaintiff may bring in third party

### CHAPTER 13. AMENDMENTS; SUPPLEMENTAL PLEADINGS

Exhibits to third-party complaint

§ 13:1 In general

§ 12:14

§ 12:15

- § 13:2 Service and response
- § 13:3 Relation back of amendments; parties
- § 13:4 Misnomers
- § 13:5 Amendments to conform to the evidence
- § 13:6 Supplemental pleadings
- § 13:7 Miscellaneous provisions

### CHAPTER 14. ORDERS

- § 14:1 In general
- § 14:2 Correction of errors
- § 14:3 Service of orders
- § 14:4 Exceptions unnecessary

# CHAPTER 15. DEPOSITIONS AND DISCOVERY

- § 15:1 Discovery methods
- § 15:2 Scope of discovery: in general
- § 15:3 Scope of discovery: insurance agreements
- § 15:4 Scope of discovery: trial preparation: materials (work product)

### Davis and Shulman's Georgia Practice and Procedure

§ 15:5	Early planning conference and discovery plan
§ 15:6	Scope of discovery: trial preparation: experts
§ 15:7	Protective orders
§ 15:8	Protective orders for high-ranking officers
§ 15:9	Sequence and timing of discovery
§ 15:10	Stay of discovery upon the filing of a motion to dismiss
§ 15:11	Supplementation of responses
§ 15:12	Depositions before action
§ 15:13	Depositions pending appeal
§ 15:14	Persons before whom depositions may be taken
§ 15:15	Stipulations regarding discovery procedures
§ 15:16	Filing of discovery materials with the court
§ 15:17	Depositions upon oral examination: leave of court
§ 15:18	Depositions upon oral examination: notice of examination to parties
§ 15:19	Depositions upon oral examination: examination and record
§ 15:20	Depositions upon oral examination: recording and storing; form of presentation
§ 15:21	Depositions upon oral examination: motion to terminate or limit examination
§ 15:22	Depositions upon oral examination: duration
§ 15:23	Depositions upon oral examination: failure to attend or serve subpoena
§ 15:24	Depositions upon written questions
§ 15:25	Use of depositions
§ 15:26	Objections to and irregularities in depositions
§ 15:27	Interrogatories to parties
§ 15:28	Request for production of documents and things and for permission to enter upon land or other property
§ 15:29	Evidence seized in criminal prosecution for violations relating to obscene materials and minors
§ 15:30	Physical and mental examinations
§ 15:31	Requests for admission
§ 15:32	Motion for order compelling discovery
§ 15:33	Motion for order compelling discovery: failure to comply with order
§ 15:34	Subpoena for taking deposition
§ 15:35	Post-judgment discovery
	• •

### CHAPTER 16. PRETRIAL CONFERENCE

- § 16:1 Generally
- § 16:2 Notice of conference
- § 16:3 Order

§ 16:4 Superior court rules

# CHAPTER 17. CONSOLIDATION AND SEPARATE TRIALS

- § 17:1 Consolidation
- § 17:2 Separate trials; bifurcation
- § 17:3 Dual jury trials

### CHAPTER 18. DISMISSALS

- § 18:1 Voluntary dismissal; renewal; pauper's affidavit
- § 18:2 Involuntary dismissal
- § 18:3 Dismissal of counterclaim, cross-claim or third-party claims
- § 18:4 Costs of previously dismissed action
- § 18:5 Dismissal for want of prosecution

### CHAPTER 19. TRIALS AND ARGUMENTS

- § 19:1 Generally
- § 19:2 Calling of case for trial; resolution of attorney conflicts
- § 19:3 Transcript of proceedings
- § 19:4 Jury trial of right
- § 19:5 Trial by jury or by court
- § 19:6 Time of trial
- § 19:7 Trial in chambers
- § 19:8 Public trial
- § 19:9 Assignment of cases for trial
- § 19:10 Electronic and photographic news coverage of judicial proceedings
- § 19:11 Use of audiovisual media in trials
- § 19:12 Continuances
- § 19:13 Soldiers' and Sailors' Civil Relief Act of 1940
- § 19:14 Findings by the court
- § 19:15 Evidence on trials
- § 19:16 Evidence on motions
- § 19:17 Expert witnesses in civil actions—Application of Daubert principles
- § 19:18 Determination of the law of other jurisdictions
- § 19:19 Subpoenas in general
- § 19:20 Exclusion of witnesses; rule of sequestration
- § 19:21 Preliminary statement
- § 19:22 Object and right of argument
- § 19:23 Right to open and conclude
- § 19:24 Time limit of argument and number of counsel

	DAVIS AND SHULMAN'S GEORGIA I RACTICE AND I RU
§ 19:25 § 19:26 § 19:27	Latitude of argument and conduct of counsel Regulation of argument Mistrial
	Volume 2
CHAF	TER 20. THE JURY
§ 20:1	Selecting, drawing and summoning the jury
§ 20:2	Panels
§ 20:3	Number of jurors
§ 20:4	Examination of jurors upon their "voir dire"
§ 20:5	Challenges to the array and to polls
§ 20:6	Peremptory challenges and challenges for cause
§ 20:7	Disqualification of jurors in civil cases
§ 20:8	Expression of opinion
§ 20:9	Kinship
§ 20:10	Interest
§ 20:11	Membership on another jury
§ 20:12	Deafness
§ 20:13	Oath of the jury
§ 20:14	Polling the jury
§ 20:15	Questions from jury
CHAF	TER 21. CHARGE OF THE COURT
§ 21:1	Definition
§ 21:2	Office of the charge
§ 21:3	Duty to instruct in absence of request
§ 21:4	Request to charge
§ 21:5	Statutory regulations as to charge
§ 21:6	Form of charge
§ 21:7	Charging sections of the Code
§ 21:8	Charging in language of reviewing court
§ 21:9	Infringement upon province of jury
§ 21:10	Cautionary instructions
§ 21:11	Recharge upon request of jury
§ 21:12	Review of erroneous charge
§ 21:13	Objections to charge
СНАЕ	TER 22. VERDICTS
§ 22:1	Definitions Variet to come increase qualities demands
§ 22:2	Verdict to cover issues; punitive damages
§ 22:3	Instructions by judge as to form of verdict
§ 22:4	Construction of verdicts

§ 22:5	Molding verdicts and decrees
§ 22:6	Verdicts received, how
§ 22:7	Polling jury
§ 22:8	Verdict not excessive or inadequate
§ 22:9	Jurors not to act on private knowledge
§ 22:10	Amendment of verdict to conform to pleadings
§ 22:11	Amendment of verdict after dispersion of jury
§ 22:12	Amendment of verdict where part is legal and part illegal
§ 22:13	Special verdicts
§ 22:14	Motion for a directed verdict; when made; effect
§ 22:15	Motion for judgment notwithstanding the verdict
§ 22:16	Conditional rulings on grant of motion for judgment notwithstanding the verdict
§ 22:17	Denial of motion for judgment notwithstanding the verdict
§ 22:18	Denial of motion for directed verdict; order for new trial by appellate court
§ 22:19	Expression in open court or discharge of jury forbidden
§ 22:20	Disqualification of judge to preside at new trial; formal order
§ 22:21	Commending or complimenting jury forbidden
	TER 23. JUDGMENTS
§ 23:1	Definition and general consideration
§ 23:2	Kinds of judgments
§ 23:3	Requisites of a valid judgment
§ 23:4	The form of the judgment
§ 23:5	Signing
§ 23:6	Entry; nunc pro tunc; civil case disposition form
§ 23:7	Foreign judgments, preliminary statement
§ 23:8	Uniform Foreign—Country Money Judgments Recognition Act
§ 23:9	Lien of foreign judgments
§ 23:10	Effect of foreign judgments
§ 23:11	Dignity and priority
§ 23:12	Law of the case
§ 23:13	Default
§ 23:14	Opening a default
§ 23:15	Summary judgment in general
§ 23:16	Summary judgment—Slip and fall cases
§ 23:17	Motion
§ 23:18	
3 =0.10	Affidavits

### Davis and Shulman's Georgia Practice and Procedure

§ 23:20	Evidence; oral arguments
§ 23:21	Attacking judgments generally
§ 23:22	Motion to set aside
§ 23:23	—Procedure and evidence
§ 23:24	Full faith and credit
§ 23:25	Collateral attack of foreign judgments
§ 23:26	Complaint in equity abolished
§ 23:27	Relief to creditors and purchasers
§ 23:28	Relief from void judgment
3 20.20	Tioner from void judgment
<b>CHAP</b>	TER 24. MOTION FOR NEW TRIAL
§ 24:1	Nature of motion for new trial
§ 24:2	Time for making
§ 24:3	Extraordinary motion for new trial
§ 24:4	Grounds of motion for new trial
§ 24:5	Harmless error
§ 24:6	Judge to set forth reasons for exercise of discretion
§ 24:7	Form of the motion; amendment
§ 24:8	Rules nisi
§ 24:9	Filing and service
§ 24:10	Supersedeas
§ 24:11	Preparation of transcript; hearing on motion
§ 24:12	Retrial, where new trial granted
§ 24:13	Joint motions
§ 24:14	Motion for new trial—Appeal; tactical considerations
СНАР	TER 25. ENFORCEMENT OF
	MENTS
§ 25:1	Perfecting the judgment
§ 25.1 § 25:2	Interest on judgments
§ 25.2 § 25:3	Issuance of fi. fa.
§ 25.5 § 25:4	Execution upon judgment
§ 25.4 § 25:5	Recording fi. fa.
§ 25.5 § 25:6	General execution docket
§ 25.0 § 25:7	Stay of proceedings to enforce judgment; supersedeas
8 20.1	bond
§ 25:8	Manner of enforcement of foreign judgments
§ 25:9	Proof of foreign judgments
§ 25:10	Effect of fi. fa. on personalty
§ 25:11	Informal post-judgment discovery
§ 25:12	Interrogatories, depositions and other post-judgment
	discovery methods
§ 25:13	Debtor's failure to comply with discovery
§ 25:14	Objections to discovery: forfeiture of estate

§ 25:15	Objections to discovery: Fifth Amendment
§ 25:16	Levy of execution
§ 25:17	Methods of levy
§ 25:18	Levy on corporate stock or interests in a limited liability company
§ 25:19	Affidavit of illegality
§ 25:20	Sale; damages upon rescission of sale
§ 25:21	Distribution of proceeds: sale of realty
§ 25:22	Property subject to or exempt from levy: examples
§ 25:23	On what property execution first levied
§ 25:24	Dormant judgments
§ 25:25	Revival of dormant judgments
§ 25:26	Installment-payment alimony judgments
8 25.27	Judgment for specific acts: vesting title

### CHAPTER 26. DECLARATORY JUDGMENTS

- § 26:1 Nature and grounds in general; judicial review § 26:2 Actual or justiciable controversy
- § 26:3 Other remedies
- § 26:4 Subjects of declaratory relief
- § 26:5 Nature of the proceedings
- § 26:6 **Parties**
- § 26:7 Procedure in general
- § 26:8 Pleading
- Judgment § 26:9

### CHAPTER 27. FORMER ADJUDICATION

- § 27:1 Preliminary statement § 27:2 Doctrine of res judicata; judicial estoppel § 27:3 Scope and application of the doctrine Enumeration of prerequisites; estoppel by judgment § 27:4 (collateral estoppel) distinguished § 27:5 Identity of parties § 27:6 Identity of the cause of action Adjudication by court of competent jurisdiction or § 27:7 administrative agency § 27:8 Conclusiveness of judgments § 27:9 Of what and when a judgment is conclusive
- § 27:10 As to whom a judgment is conclusive
- § 27:11 Judgments to which applicable
- § 27:12 Doctrine of binding precedent
- § 27:13 Pleading of former judgment

### CHAPTER 28. INJUNCTIONS; RESTRAINING ORDERS

§ 28:1 In general § 28:2 Procedure

# CHAPTER 29. EXTRAORDINARY REMEDIES

- § 29:1 Petitions for extraordinary legal remedies: verification; sovereign immunity
- § 29:2 Mandamus
- § 29:3 Procedure to obtain mandamus
- § 29:4 Quo warranto
- § 29:5 Prohibition
- § 29:6 Ne exeat
- § 29:7 Bills of peace
- § 29:8 Definition and nature of equitable interpleader
- § 29:9 Collateral and ancillary equitable interpleader
- § 29:10 Quia timet
- § 29:11 Receivers
- § 29:12 Garnishment

### **CHAPTER 30. LIMITATION OF ACTIONS**

- § 30:1 Constitutionality and general principles; statute of limitations compared to statute of repose
- § 30:2 Operation against the state and its agencies
- § 30:3 Who may plead or waive the bar of the statute
- § 30:4 Period of limitation—In general
- § 30:5 Actions ex contractu
- § 30:6 Actions ex delicto
- § 30:7 Rights under statutes or acts of incorporation
- § 30:8 Actions by or against special parties or for special purposes
- § 30:9 Application of statute to trusts
- § 30:10 Period of limitation in courts of equity; laches
- § 30:11 Causes for postponement or suspension—In general
- § 30:12 Personal disabilities of the plaintiff
- § 30:13 Absence of the defendant from the state
- § 30:14 Fraud of the defendant
- § 30:15 Unrepresented estates—Suits against administrators
- § 30:16 Dismissal or discontinuance; renewal
- § 30:17 Time from which the statute runs
- § 30:18 Time at which the statute stops running
- § 30:19 Computation of time

§ 30:20	New promise as affecting the bar of the statute
-	Sufficiency of new promise
\$ 30:22	<i>v</i> 1
\$ 30:23	Pleading of the statute
	Questions of conflict of laws

# CHAPTER 31. TIME TABLE AND CHECKLIST

 $\S~31:1~$  Alphabetical time table and checklist under Civil Practice Act

### **APPENDIX**

Appendix A. Uniform Superior Court Rules

Table of Laws and Rules
Table of Cases
Index