

Table of Contents

CHAPTER 1. PRE-FILING CONSIDERATIONS: GENERAL

- § 1:1 First meeting—Determine client’s motives
- § 1:2 —Any skeletons in the closet?
- § 1:3 —Sizing up client as a witness
- § 1:4 Outline preliminary sketch of opening statement
- § 1:5 Duty to investigate suit before filing
- § 1:6 Objective standard of reasonableness applied
- § 1:7 Checklist for successful investigation
- § 1:8 Consequences of filing frivolous claims, failure to
investigate or unethical conduct
- § 1:9 The contingent fee—Generally
- § 1:10 —Judicial review
- § 1:11 —Disadvantage of oral or ambiguous contract
- § 1:12 —Lawyer’s share of pre-judgment interest
- § 1:13 —Acceptable percentages
- § 1:14 —Where appeal is taken
- § 1:15 —Client rejects settlement
- § 1:16 The hourly rate
- § 1:17 The hybrid fee arrangement
- § 1:18 Flat fees, special retainers and general retainers
- § 1:19 Changing the fee in mid-stream—Generally
- § 1:20 Changing fee in mid-stream—Unfairness presumed
- § 1:21 Court approval required—Medical malpractice actions
- § 1:22 —Wrongful death actions
- § 1:23 —Iowa Tort Claims Act
- § 1:24 Attorney fees allowed in certain actions
- § 1:25 Attorney fees for defendant—Non-resident actions
- § 1:26 Fee sharing among attorneys
- § 1:27 Court awarded fees
- § 1:28 Common law attorney’s fees
- § 1:29 Attorney’s lien—When counsel should always assert
lien
- § 1:30 —Notification to insurance carrier
- § 1:31 Paralegal fees in civil actions
- § 1:32 Financial assistance to a client
- § 1:33 Attorney conflict of interest
- § 1:34 Obtaining medical records

CHAPTER 2. STATUTE OF LIMITATIONS

- § 2:1 Statute of limitations—Computing time

- § 2:2 Claims of minors & mentally ill—General
- § 2:3 Iowa Tort Claims Act—Minority now extends two year limitation
- § 2:4 Probating estate can shorten limitations
- § 2:5 Peculiar circumstances exception
- § 2:6 Soldiers and Sailors Civil Relief Act
- § 2:7 Death of person having action
- § 2:8 Death of party to be charged
- § 2:9 Child sexual abuse
- § 2:10 Sexual abuse or exploitation by a counselor or therapist
- § 2:11 Non-resident or whereabouts of defendant unknown
- § 2:12 Caveat in non-resident cases
- § 2:13 Insurance policy and other contracts containing limitation of time to bring action
- § 2:14 The discovery rule—General
- § 2:15 Discovery rule—Medical malpractice limitation generally
- § 2:16 —Medical malpractice as to minors and mentally ill
- § 2:17 Discovery rule extends Iowa Tort Claims Act
- § 2:18 Dram shop notice
- § 2:19 Filing on last day or after courthouse hours
- § 2:20 Product liability limitations
- § 2:21 Improvements to real property
- § 2:22 Action brought after failure of first cause
- § 2:23 Effect of continuing violation in employment discrimination

CHAPTER 3. PRE-FILING CONSIDERATIONS: JURISDICTION

- § 3:1 State court jurisdiction
- § 3:2 Unified court system
- § 3:3 District Court appellate jurisdiction
- § 3:4 Judges of the district court
- § 3:5 Five bases for Iowa jurisdiction over defendant
- § 3:6 Federal court—Limited jurisdiction
- § 3:7 —Constitutional limitations
- § 3:8 —Congressional limitations
- § 3:9 Amount in controversy
- § 3:10 Diversity of citizenship requirement
- § 3:11 Improper or collusive joinder
- § 3:12 Civil rights actions
- § 3:13 Other federal jurisdiction
- § 3:14 No jurisdiction in probate or domestic relations

TABLE OF CONTENTS

- § 3:15 Habeas corpus
- § 3:16 Removal from State to federal court
- § 3:17 Supplemental jurisdiction
- § 3:18 Selecting the proper court
- § 3:19 Subject matter jurisdiction
- § 3:20 Personal jurisdiction
- § 3:21 When and how to raise subject matter jurisdiction issue
- § 3:22 When and how to raise personal jurisdiction issue
- § 3:23 Trial court jurisdiction during appeal

CHAPTER 4. VENUE

- § 4:1 Introduction
- § 4:2 Venue provisions in Iowa state courts
- § 4:3 Federal venue provisions
- § 4:4 Forum non conveniens
- § 4:5 When and how to raise venue issue
- § 4:6 Choice of venue in certain state court actions—
Generally
- § 4:7 Venue where multiple defendants
- § 4:8 County of injury different from defendant residence
- § 4:9 Venue in non-resident motor vehicle actions
- § 4:10 Railroads, electric utilities, telegraph or telephone
companies
- § 4:11 Insurance companies
- § 4:12 Where a county is the defendant
- § 4:13 Canals, boats
- § 4:14 Civil rights actions
- § 4:15 Certain construction companies
- § 4:16 Foreign corporations or non-resident persons
- § 4:17 Iowa department of transportation
- § 4:18 Iowa State Tort Claims Act
- § 4:19 Ignore venue when statute of limitations about to run

CHAPTER 5. PRE-FILING CONSIDERATION: PERPETUATION OF TESTIMONY

- § 5:1 Perpetuation of testimony prior to filing suit
- § 5:2 Application
- § 5:3 Place of filing
- § 5:4 Notice and service
- § 5:5 Adverse persons under disability
- § 5:6 Grounds
- § 5:7 Use

CHAPTER 6. CLASS ACTIONS

- § 6:1 True, hybrid and spurious class actions
- § 6:2 Basic requirements—Numerosity of parties and common law or fact question
- § 6:3 Further requirements for certification
- § 6:4 Criteria for court to consider
- § 6:5 No inquiry as to merits of case
- § 6:6 Adequacy of the representative party
- § 6:7 Only courts can grant class action
- § 6:8 Order on certification
- § 6:9 Amendment or decertification of certification order
- § 6:10 Jurisdiction over multi-state classes
- § 6:11 Notice of action
- § 6:12 Option to opt-out from class
- § 6:13 Conduct of action
- § 6:14 Discovery by or against class members
- § 6:15 Counterclaims
- § 6:16 Court approval for dismissal or compromise
- § 6:17 Effect of judgment on class
- § 6:18 Costs
- § 6:19 Relief afforded
- § 6:20 Attorney's fees
- § 6:21 Arrangements for representatives expenses
- § 6:22 Statute of limitations
- § 6:23 Virtual representation
- § 6:24 Shareholder's actions

CHAPTER 7. INJUNCTIVE RELIEF

- § 7:1 Action for injunction
- § 7:2 Can be independent or joined
- § 7:3 No adequate remedy requirement
- § 7:4 Statute of limitations defense
- § 7:5 Permanent injunction
- § 7:6 Temporary injunction
- § 7:7 When allowed
- § 7:8 Certification re—Any prior application
- § 7:9 Irreparable harm determination
- § 7:10 Distinguished from temporary restraining order
- § 7:11 Certify notice for ex parte temporary injunction
- § 7:12 When hearing required
- § 7:13 Notice and hearing can be waived
- § 7:14 Bond requirements and exception
- § 7:15 Burden on enjoined party to dissolve
- § 7:16 Vacated if not made permanent

TABLE OF CONTENTS

- § 7:17 Judge to state refusal on application
- § 7:18 Venue
- § 7:19 Effect of stay on statute of limitation
- § 7:20 Vacating or modifying a judgment
- § 7:21 Violation
- § 7:22 Removal to federal court
- § 7:23 Federal rules re—Preliminary injunction

CHAPTER 8. PERSONAL INJURY AND WRONGFUL DEATH ACTIONS

- § 8:1 Personal injury actions—Generally
- § 8:2 Wrongful death actions—Generally
- § 8:3 Specific topics treated elsewhere
- § 8:4 Elements of personal injury/wrongful death—Actions (generally)
- § 8:5 Proximate cause—Scope of liability
- § 8:6 Product liability
- § 8:7 Strict liability—Types of cases
- § 8:8 Damages—Personal injury actions
- § 8:9 —Wrongful death actions
- § 8:10 Premise liability
- § 8:11 Emergency response vehicles
- § 8:12 Respondeat superior
- § 8:13 Employee actions against employer
- § 8:14 Contact sports exception
- § 8:15 The rescue doctrine
- § 8:16 Wrongful birth claim

CHAPTER 9. MEDICAL MALPRACTICE ACTIONS

- § 9:1 Elements of a medical malpractice cause of action
- § 9:2 Applicable standard of care
- § 9:3 Limitation of actions
- § 9:4 Need for expert witnesses
- § 9:5 When expert witnesses may not be necessary
- § 9:6 Disclosure of expert witnesses
- § 9:7 Expert witness standards including locality rule
- § 9:8 Abrogation of the collateral source rule
- § 9:9 Peer review records privileged and confidential
- § 9:10 Contingent fee agreement reviewed by court
- § 9:11 Abandonment of care
- § 9:12 Lack of informed consent
- § 9:13 Consent in writing

- § 9:14 Comparative fault of patients
- § 9:15 Emotional distress
- § 9:16 Res ipsa loquitur
- § 9:17 Subsequent acts
- § 9:18 Subsequent remedial measures
- § 9:19 Loss of chance theory
- § 9:20 No duty owed by doctor to third party
- § 9:21 Non-patient/third party claims against medical providers
- § 9:22 Patient's contributory negligence
- § 9:23 Vicarious liability of hospital for emergency room physician
- § 9:24 Jury instructions
- § 9:25 Caps on noneconomic damages
- § 9:26 Expert qualifications
- § 9:27 Certificate of merit

CHAPTER 10. MINOR'S ACTIONS

- § 10:1 Definition of minor
- § 10:2 How a minor's action is filed
- § 10:3 Defense of a minor
- § 10:4 When action is filed
- § 10:5 Minor's personal injuries
- § 10:6 Wrongful death claims—Generally
- § 10:7 Who brings wrongful death claim
- § 10:8 Distribution of wrongful death claims
- § 10:9 Limitation for wrongful death claim
- § 10:10 Injury to parents—Loss of consortium
- § 10:11 Who brings loss of consortium
- § 10:12 Parent's negligence not imputed
- § 10:13 Injury to parent—Loss of support
- § 10:14 Minor's defense to contracts
- § 10:15 Minor's liability for torts
- § 10:16 Parental responsibility for minor's torts
- § 10:17 Common law quasi-dram shop action for minors
- § 10:18 Minor's claims against parents

CHAPTER 11. DRAM SHOP ACTIONS

- § 11:1 Purpose of Dram Shop Statutes
- § 11:2 The Iowa Dram Shop Act
- § 11:3 Constitutionality of Dram Shop Act and federal preemption
- § 11:4 Dram Shop Act provides exclusive remedy against licensee and permittees

TABLE OF CONTENTS

| | |
|---------|--|
| § 11:5 | Definition of licensee and permittee |
| § 11:6 | Non-license/permittee owner or officer not liable under Dram Shop Act |
| § 11:7 | Persons entitled to recovery under Dram Shop Act |
| § 11:8 | Persons not entitled to recovery under Dram Shop Act |
| § 11:9 | Elements to establish violation of Dram Shop Act |
| § 11:10 | Convenience stores not liable—Patron not “served” |
| § 11:11 | Damages recoverable under the Dram Shop Act |
| § 11:12 | Damages not recoverable under Dram Shop Act |
| § 11:13 | Notice requirements under the Dram Shop Act |
| § 11:14 | Consequences of failure to give adequate notice |
| § 11:15 | Personal knowledge of licensee/permittee does not satisfy notice requirement |
| § 11:16 | Circumstances which extend the six month notice requirement |
| § 11:17 | Termination of grounds for extension |
| § 11:18 | Injured minor is incapacitated under Dram Shop |
| § 11:19 | Affirmative defenses—Complete bar to recovery |
| § 11:20 | Affirmative defense—Lack of contribution |
| § 11:21 | —Complicity |
| § 11:22 | —Assumption of risk |
| § 11:23 | Comparative fault—Not a defense to dram shop actions |
| § 11:24 | Contribution |
| § 11:25 | Remedies against social hosts |

CHAPTER 12. MUNICIPAL TORT ACTIONS—TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

| | |
|---------|---|
| § 12:1 | Definition of municipality |
| § 12:2 | Extent of tort liability |
| § 12:3 | Individual liability of municipal employees |
| § 12:4 | Amount of award not limited by notice |
| § 12:5 | Public improvements |
| § 12:6 | Discretionary function |
| § 12:7 | Punitive damages |
| § 12:8 | Emergency response exception |
| § 12:9 | Taxation |
| § 12:10 | Supervision and control |
| § 12:11 | Limitation of actions |
| § 12:12 | Hold harmless and indemnity of officers and employees |
| § 12:13 | Scope of employment |

§ 12:14 Officers' and employees' personal liability

CHAPTER 13. STATE TORT ACTIONS

- § 13:1 Iowa Tort Claim Act
- § 13:2 Respondeat superior
- § 13:3 Statute of limitations
- § 13:4 Employees and agencies of the state
- § 13:5 Prejudgment interest
- § 13:6 Exhaustion of remedies—State Appeal Board claims
- § 13:7 Civil Rights Claims Independent of Act
- § 13:8 Federal court jurisdiction of state tort claims
- § 13:9 Intervention
- § 13:10 Appeal
- § 13:11 Exceptions to Tort Claims Act—General
- § 13:12 —Highway design
- § 13:13 Discretionary function cases
- § 13:14 Constitutional rights violations
- § 13:15 Whistleblower claims

CHAPTER 14. FEDERAL TORT ACTIONS

- § 14:1 Tort liability of the United States
- § 14:2 Definitions
- § 14:3 Adjustment and compromise of claims
- § 14:4 Notice and disposition requirements
- § 14:5 Judgment as bar
- § 14:6 Compromise
- § 14:7 Limit on attorney fees; penalty
- § 14:8 Exclusiveness of remedy
- § 14:9 Exceptions to the Federal Tort Claims Act

CHAPTER 15. CONTEMPT OF COURT

- § 15:1 Contempt—Definition
- § 15:2 Statutory only
- § 15:3 Strictly construed
- § 15:4 Purpose
- § 15:5 Limitations
- § 15:6 Definition of court
- § 15:7 Acts constituting contempt—In general
- § 15:8 —In courts of record
- § 15:9 Indirect contempt—Defined
- § 15:10 Direct contempt—Defined
- § 15:11 Indirect contempt—Procedure
- § 15:12 Direct contempt—Procedure
- § 15:13 Presumption and burden of proof

TABLE OF CONTENTS

| | |
|---------|--|
| § 15:14 | Defense—Absence of willfulness and indefiniteness of the order |
| § 15:15 | —Inability to comply |
| § 15:16 | Equitable defense not a defense |
| § 15:17 | Defense—Advice of counsel |
| § 15:18 | —Ignorance of the law |
| § 15:19 | —Violation of a void decree |
| § 15:20 | Cannot use contempt to enforce money judgment |
| § 15:21 | Use of contempt—Family law |
| § 15:22 | Contemnor allowed to purge |
| § 15:23 | Punishment |
| § 15:24 | Right to a jury trial |
| § 15:25 | Right to counsel |
| § 15:26 | Direct contempt—Different judge should hear |
| § 15:27 | Warrant of commitment |
| § 15:28 | Double jeopardy |
| § 15:29 | Contempt of a subpoena |
| § 15:30 | Will custodian |
| § 15:31 | Federal law—Power of court |
| § 15:32 | —Civil Contempt v. Criminal Contempt |
| § 15:33 | —Criminal contempt—Burden of proof |
| § 15:34 | —Civil contempt—Sentencing |
| § 15:35 | —Least possible power |
| § 15:36 | —Assessment of reimbursement and attorney’s fees |
| § 15:37 | —Demand for jury trial |
| § 15:38 | —Criminal direct contempt—Procedure |
| § 15:39 | —Criminal indirect contempt—Procedure |
| § 15:40 | —Defenses to contempt |

CHAPTER 16. JOINT AND SEVERAL LIABILITY

| | |
|--------|---|
| § 16:1 | Background and basis for the doctrine |
| § 16:2 | Judicial modification of joint and several liability in Iowa |
| § 16:3 | Statutory modification of joint and several liability in Iowa |
| § 16:4 | Effect of joint and several liability |

CHAPTER 17. COMPARATIVE FAULT

| | |
|--------|--|
| § 17:1 | Development of the doctrine of comparative fault |
| § 17:2 | Types of actions included in doctrine of comparative fault |
| § 17:3 | Types of actions excluded from doctrine of comparative fault |

- § 17:4 Definition of “fault”
- § 17:5 Definition of “party”
- § 17:6 Effect of comparative fault
- § 17:7 Effect of release—Proportionate credit rule for settling defendant’s share
- § 17:8 Joint and several liability
- § 17:9 Contribution
- § 17:10 Enforcement of contribution
- § 17:11 Effect on subrogation rights
- § 17:12 Tolling of statute of limitations
- § 17:13 Governmental exemptions
- § 17:14 State of the art defense (product liability cases)
- § 17:15 Collateral source rule
- § 17:16 Interest on judgments

CHAPTER 18. COMPENSATORY DAMAGES

- § 18:1 Theory of compensatory damages
- § 18:2 Allowance versus measure of damages
- § 18:3 Contracts versus tort damages
- § 18:4 Contract damages—Contemplation of parties
- § 18:5 Tort damages—Foreseeability
- § 18:6 Other damage principles
- § 18:7 Personal injury damages—Generally
- § 18:8 —Past and future medical expenses
- § 18:9 —Past lost wages and loss of future earning capacity
- § 18:10 —Impairment to mind or body
- § 18:11 —Pain, suffering and emotional distress
- § 18:12 Wrongful death damages
- § 18:13 —Loss to the estate
- § 18:14 —Support of dependents
- § 18:15 —Allocation between spouse and dependents and heirs
- § 18:16 Services or consortium
- § 18:17 Non-personal injury—Emotional distress
- § 18:18 —Damage to real property
- § 18:19 —Damage to personal property
- § 18:20 —Lost profits
- § 18:21 Attorney fees as damages
- § 18:22 Interest as damages
- § 18:23 Non-compensatory damages—Liquidated damages
- § 18:24 Other types of damages—Statutory damages
- § 18:25 —Nominal damages
- § 18:26 Rule 1.206 claims for death or injury to minor
- § 18:27 Mortality tables

TABLE OF CONTENTS

§ 18:28 Economic loss rule

CHAPTER 19. PUNITIVE DAMAGES

- § 19:1 Historical background
- § 19:2 United States Supreme Court guidelines
- § 19:3 Iowa statutory standard—Willful and wanton
- § 19:4 Burden of proof—Clear, convincing and satisfactory
- § 19:5 Parties—Survival of actions
- § 19:6 —Minors and other incompetents
- § 19:7 —Corporations, partnerships and other employers
- § 19:8 —Labor unions
- § 19:9 —Multiple plaintiffs
- § 19:10 —Joint defendants
- § 19:11 Immunity—State and federal governments
- § 19:12 —Municipalities and other state subdivisions
- § 19:13 Contract actions
- § 19:14 Breach of contract, warranty as independent tort
- § 19:15 Torts generally
- § 19:16 Specific conduct supporting punitive damages
- § 19:17 Calculation of punitive damages generally
- § 19:18 Damages—Requirement of actual damages
- § 19:19 Damages shared with state
- § 19:20 Defendant's wealth as a factor
- § 19:21 Discovery and admissibility of wealth
- § 19:22 Mitigation of damages, including provocation
- § 19:23 Assumption of risk and comparative fault
- § 19:24 Remittitur or additur
- § 19:25 Compensatory award fails when punitive damage does
- § 19:26 Special statutory punitive damages
- § 19:27 Interest on judgment prior to the codification of punitive damages
- § 19:28 Insurability of punitive damages
- § 19:29 Bifurcation or severance
- § 19:30 Statute of limitations
- § 19:31 Discharge in bankruptcy
- § 19:32 Tax consequences to both parties
- § 19:33 Punitive damages and the federal diversity requirement

CHAPTER 20. SPOUSAL AND PARENTAL CLAIMS AND DAMAGES

- § 20:1 Parent's Rule 1.206 claim generally
- § 20:2 Unemancipated minors, only

- § 20:3 Medical expenses
- § 20:4 Statute of limitations—Rule 1.206 claim
- § 20:5 Loss of services
- § 20:6 Loss of companionship and society
- § 20:7 Parents’ wrongful death claim
- § 20:8 Child’s negligence not imputed to parent
- § 20:9 Parent’s consortium claim not barred for emancipated children
- § 20:10 Emotional distress and mental anguish disallowed
- § 20:11 Minors are always intestate
- § 20:12 Spousal loss of support
- § 20:13 Spousal loss of consortium defined
- § 20:14 Spousal loss of consortium
- § 20:15 Spouse’s negligence not imputed
- § 20:16 Spousal wrongful death claims
- § 20:17 Survivor’s share
- § 20:18 Who brings spousal claim
- § 20:19 Apportionment of loss of support and loss of services between spouse and child
- § 20:20 Wrongful death damages are exempt

CHAPTER 21. TYPES AND FUNCTIONS OF EVIDENCE

- § 21:1 Character and reputation evidence
- § 21:2 Testimonial evidence
- § 21:3 Opinion evidence—Expert and lay person
- § 21:4 Real/demonstrative evidence
- § 21:5 Photographs, motion pictures and other visual aids
- § 21:6 Documentary evidence
- § 21:7 Valuation of real estate
- § 21:8 Proof of handwriting
- § 21:9 Experiments, demonstrations and tests
- § 21:10 Medical testimony
- § 21:11 Hearsay and exceptions to hearsay
- § 21:12 Testimony at former trial or proceeding
- § 21:13 Business entries, records and reports
- § 21:14 Admission by party
- § 21:15 Depositions
- § 21:16 Interrogatories
- § 21:17 Evidence showing due care or lack of due care
- § 21:18 Circumstantial evidence

CHAPTER 22. JUDICIAL NOTICE

- § 22:1 Definition of judicial notice

TABLE OF CONTENTS

| | |
|---------|---|
| § 22:2 | Definition of adjudicative facts |
| § 22:3 | Definition of legislative facts |
| § 22:4 | Codification of judicial notice of adjudicative facts |
| § 22:5 | Adjudicative facts indisputable by their nature |
| § 22:6 | Adjudicative facts ascertained by reference to a source |
| § 22:7 | Adjudicative facts within documents of the record |
| § 22:8 | Adjudicative facts of technical and scientific basis |
| § 22:9 | Judicial notice of ordinances and laws generally |
| § 22:10 | City ordinances contained in city code |
| § 22:11 | City ordinances not contained in city code |
| § 22:12 | Iowa statutes and case law |
| § 22:13 | Statutory laws of other jurisdictions |
| § 22:14 | Case law of other jurisdictions |
| § 22:15 | Regulations, rules and other matters |
| § 22:16 | Procedural aspects of Rule 5.201, I.R.E |
| § 22:17 | Opportunity to be heard on matters of judicial notice |
| § 22:18 | Judicial notice—When mandatory |
| § 22:19 | Instructions on judicially noticed matters |

CHAPTER 23. PRESUMPTIONS

| | |
|---------|---|
| § 23:1 | The nature of presumptions in civil cases |
| § 23:2 | Standard to overcome presumption |
| § 23:3 | Existing laws not affected by Iowa Rules of Evidence |
| § 23:4 | Rebuttable presumptions and inferences |
| § 23:5 | Inferences upon inferences |
| § 23:6 | Res ipsa loquitur—A rebuttable presumption |
| § 23:7 | Violation of statute or ordinance—When negligence per se |
| § 23:8 | Legal excuse for violation of statute |
| § 23:9 | Negligence per se does not rule out defenses |
| § 23:10 | Compliance with statute not necessarily proof of due care |
| § 23:11 | Violation of statute by children—Not negligence per se |
| § 23:12 | Violation of OSHA negligence per se as to employee |
| § 23:13 | Violation of OSHA—Evidence of negligence as to non-employee |
| § 23:14 | Violation of custom or safety codes |
| § 23:15 | Presumption of due care—No eye witness rule |
| § 23:16 | Presumption of death after five (5) years |
| § 23:17 | Presumptions about marriage |
| § 23:18 | Presumptions about legitimacy |
| § 23:19 | Presumption of single or married status continues |
| § 23:20 | Presumption of continuance of other conditions |

- § 23:21 Presumption of receipt of letter
- § 23:22 Presumption of intoxication from blood alcohol
- § 23:23 Presumption about gifts
- § 23:24 Premises liability—Knowledge or notice of condition of the premises
- § 23:25 Libel per se; presumption of general damages
- § 23:26 Simultaneous Death Act
- § 23:27 Missing in action presumption
- § 23:28 Railroad presumptions
- § 23:29 Holder in due course
- § 23:30 Proceedings of all officers and courts within the state
- § 23:31 Spoliation and fabrication of evidence
- § 23:32 Uncalled witnesses and failure to produce known evidence
- § 23:33 Suicide—Presumption of love of life and avoidance of danger
- § 23:34 Presumption medical expense reasonable

CHAPTER 24. ADMISSIONS

- § 24:1 Definition of admissions
- § 24:2 Substantive evidence against a party
- § 24:3 Preliminary foundation unnecessary
- § 24:4 Obtaining jury instructions re admission
- § 24:5 Examples of admissions
- § 24:6 Examples of non-admission statement
- § 24:7 Silence of party as an admission in civil cases
- § 24:8 Failure to reply to written statements as an admission
- § 24:9 Offers of compromise as an admission
- § 24:10 Offer of payment or payment of damages as an admission
- § 24:11 Judicial admissions and judicial admissions in the pleadings
- § 24:12 Admissibility of criminal judgments in civil suits
- § 24:13 Admissions by an agent, employee, partner, party, consent driver, or co-conspirator
- § 24:14 Admissions by others
- § 24:15 Other types of admissions

CHAPTER 25. WITNESSES

- § 25:1 Compelling attendance of witnesses
- § 25:2 Subpoena and subpoena duces tecum
- § 25:3 Witness fees and mileage
- § 25:4 Fees in advance if demanded; consequence if not paid

TABLE OF CONTENTS

| | |
|---------|--|
| § 25:5 | Out-of-state witnesses |
| § 25:6 | Testimony of out-of-state witness |
| § 25:7 | Avoiding a subpoena |
| § 25:8 | Failure to attend or testify—Liability |
| § 25:9 | Expert witness |
| § 25:10 | Compelling expert testimony |
| § 25:11 | Expert witness fees |
| § 25:12 | Quashing subpoena |
| § 25:13 | Witness right to counsel |

CHAPTER 26. COMPETENCY OF WITNESSES WHO TESTIFY

| | |
|---------|---|
| § 26:1 | Competency of witnesses generally |
| § 26:2 | Child witness |
| § 26:3 | Unsoundness of mind or mild retardation |
| § 26:4 | Hearing impaired witnesses |
| § 26:5 | Person who speaks foreign language |
| § 26:6 | Conduct of examination through an interpreter |
| § 26:7 | Testimonial qualification of witness |
| § 26:8 | Statutory disqualification |
| § 26:9 | Dead man statute |
| § 26:10 | Witness omitted from list |
| § 26:11 | Segregation of witnesses at trial |

CHAPTER 27. EXPERT WITNESSES

| | |
|---------|---|
| § 27:1 | General standard for admissibility |
| § 27:2 | Basis of expert opinion generally |
| § 27:3 | Qualifying the expert |
| § 27:4 | Requirement of specialized knowledge or experience |
| § 27:5 | Opinions which embrace ultimate issue of fact |
| § 27:6 | Opinions regarding legal standards |
| § 27:7 | Testimony regarding credibility of witnesses |
| § 27:8 | Opinions on mixed questions of law and fact |
| § 27:9 | When is expert testimony necessary? |
| § 27:10 | The degree of certainty—Probability vs. Possibility |
| § 27:11 | Admissibility of “scientific” opinion under Daubert |
| § 27:12 | Compensation of experts |

CHAPTER 28. MEDICAL EXPERT WITNESSES

| | |
|--------|---------------------------------------|
| § 28:1 | The medical witness generally |
| § 28:2 | Professional communications privilege |
| § 28:3 | The compelled medical examination |

- § 28:4 Qualifying the medical witness
- § 28:5 Hypothetical questions
- § 28:6 Hospital and doctors' records—Generally
- § 28:7 —Foundation
- § 28:8 Hearsay within hearsay
- § 28:9 Establishing proximate cause of condition
- § 28:10 Evidence as to future damages
- § 28:11 Psychologists and psychiatrists
- § 28:12 Using medical authorities to impeach medical expert

CHAPTER 29. PRIVILEGED COMMUNICATIONS

- § 29:1 Background
- § 29:2 Privilege not to testify narrowly construed
- § 29:3 Marital privilege in general
- § 29:4 Common law marriage
- § 29:5 Exceptions to marital communications privilege
- § 29:6 Whose privilege is it
- § 29:7 Death or divorce of spouses
- § 29:8 Attorney-client privilege generally
- § 29:9 Privilege re—Insurer and defense counsel
- § 29:10 Requirements for attorney-client privilege
- § 29:11 Communications in confidence
- § 29:12 Third party presence generally
- § 29:13 Joint clients—Corporate privilege
- § 29:14 Tax returns
- § 29:15 The privilege is the client's
- § 29:16 Waiver of privilege generally
- § 29:17 Waiver when misconduct of lawyer claimed
- § 29:18 Advice of counsel as a defense
- § 29:19 Designating the attorney as an expert
- § 29:20 Attorney-client communications not privileged
- § 29:21 Death of client
- § 29:22 Attorney work product
- § 29:23 Physician-patient privilege
- § 29:24 Privilege is the patient's
- § 29:25 What health care professionals are covered
- § 29:26 Relationship of physician and patient
- § 29:27 Worker's compensation cases waives medical privilege
- § 29:28 Autopsy not privileged
- § 29:29 Presence of third party
- § 29:30 Waiver by bringing injury action
- § 29:31 Effects of waiver in injury actions
- § 29:32 Child abuse waives privilege

TABLE OF CONTENTS

- § 29:33 Clergy privilege
- § 29:34 Other statutory privilege
- § 29:35 Limited privilege of journalists
- § 29:36 Hospital peer review
- § 29:37 Qualified right of privacy
- § 29:38 Challenging witness to waive privilege improper
- § 29:39 Attorney statements outside judicial proceedings

CHAPTER 30. RELEVANCE: ADMISSIBLE EVIDENCE GENERALLY

- § 30:1 Admissibility of evidence generally
- § 30:2 Scope and purpose of Iowa Rules of Evidence
- § 30:3 Laying foundation for admissibility of evidence
- § 30:4 Admissibility of negative evidence
- § 30:5 Competency, materiality and relevancy of evidence distinguished
- § 30:6 Admissibility of evidence as stipulated or admitted fact
- § 30:7 Admissibility of circumstantial evidence
- § 30:8 Evidence that causes unfair surprise
- § 30:9 Inadmissible evidence to rebut admitted improper evidence
- § 30:10 Procedure for admitting documentary evidence
- § 30:11 Ruling on admission of evidence
- § 30:12 Preserving error
- § 30:13 Conditional admission of evidence—Preserving error
- § 30:14 Restricting use of admitted evidence

CHAPTER 31. RELEVANCE: SPECIFIC ISSUES

- § 31:1 Admissibility of evidence on collateral issues
- § 31:2 Admissibility of evidence of similar acts or occurrences
- § 31:3 Proof of habits and routine
- § 31:4 Custom and usage, usual method or practice
- § 31:5 Proof of intoxication
- § 31:6 Evidence of character and reputation
- § 31:7 Specific instances of conduct
- § 31:8 Evidence of bad conduct
- § 31:9 Character inadmissible to show acting in conformity
- § 31:10 Methods of proving character
- § 31:11 Reputation for truth and veracity
- § 31:12 Conviction of crime—General rule
- § 31:13 Time limit re—Conviction of crime

- § 31:14 Effect of pardon or pendency of appeal
- § 31:15 Juvenile adjudications
- § 31:16 Race, religion, nationality, wealth or poverty
- § 31:17 Subsequent remedial measures

CHAPTER 32. OPINION EVIDENCE

- § 32:1 Qualifications for expert
- § 32:2 Requirement that expert witness testify to facts as opposed to the law
- § 32:3 Opinions expressing a legal conclusion
- § 32:4 Opinions as to the ultimate issue
- § 32:5 Required degree of certainty on which expert opinion is based
- § 32:6 Bases for expert opinion testimony
- § 32:7 Hearsay as basis for expert's opinion testimony
- § 32:8 Disclosure of facts underlying expert opinion
- § 32:9 Use of hypothetical to admit expert opinion testimony
- § 32:10 Federal test for admissibility of scientific opinion testimony
- § 32:11 Identification of experts and disclosure of their opinions
- § 32:12 Non-expert opinion testimony

CHAPTER 33. HEARSAY EVIDENCE

- § 33:1 Introduction and definition
- § 33:2 Nonassertive statements
- § 33:3 Statements not offered to prove the truth of the matter asserted
- § 33:4 Declarant's statement offered to explain—Words or conduct of another
- § 33:5 Statements offered to show knowledge or awareness
- § 33:6 Statements as elements of cause of action
- § 33:7 Admissions by opposing party
- § 33:8 Adoptive admissions
- § 33:9 Admissions by authorized person
- § 33:10 Admissions by employee or agent
- § 33:11 Admissions by co-conspirator
- § 33:12 Impeachment by prior inconsistent statement
- § 33:13 Prior consistent statement of witness
- § 33:14 Out-of-court identification
- § 33:15 Spontaneous declaration—Present sense impression
- § 33:16 —Excited utterance
- § 33:17 Declarant's state of mind or physical/mental condition
- § 33:18 Statements for medical diagnosis or treatment

TABLE OF CONTENTS

- § 33:19 Past recollection recorded
- § 33:20 Business records exception
- § 33:21 Public records and reports
- § 33:22 Learned treatises
- § 33:23 Former testimony
- § 33:24 Dying declarations
- § 33:25 Statements against interest
- § 33:26 “Unavailability as a witness” defined
- § 33:27 “Catch-all” exception to hearsay rule
- § 33:28 Hearsay within hearsay
- § 33:29 Effect of erroneous admission of hearsay
- § 33:30 Miscellaneous exceptions to hearsay rule
- § 33:31 Confrontation clause considerations
- § 33:32 Absence of entry or record to prove nonoccurrence of event

CHAPTER 34. PROBATIVE VALUE VERSUS PREJUDICIAL EFFECT

- § 34:1 Introduction
- § 34:2 Only unfair prejudice proscribed
- § 34:3 Unfair prejudice defined
- § 34:4 The balancing test
- § 34:5 Specific applications of Rule 5.403
- § 34:6 Tactical considerations in confronting Rule 5.403 evidence
- § 34:7 Appellate review of Rule 5.403 rulings

CHAPTER 35. OBJECTIONS TO WITNESS, TO QUESTION OR RESPONSE

- § 35:1 List of common objections
- § 35:2 Timeliness of objections generally
- § 35:3 Stating the grounds for objections
- § 35:4 Objection must reasonably alert court as to its nature
- § 35:5 No need for formal exception
- § 35:6 Motion to strike evidence and admonish jury
- § 35:7 Obtain a ruling on the objection
- § 35:8 Objection for benefit of court, not jury
- § 35:9 Offer of proof—When required
- § 35:10 —How made
- § 35:11 Objection to competency of witness—Court’s duty to determine
- § 35:12 —Timeliness required
- § 35:13 —Specificity required
- § 35:14 Privileged communication objections

- § 35:15 Incompetence of witness to express expert opinion
- § 35:16 Answer not proper subject for expert testimony
- § 35:17 Unresponsive answer—Belongs to examiner only
- § 35:18 Limited admissibility with admonition to jury

CHAPTER 36. OFFERS OF PROOF

- § 36:1 Offers of proof—Generally
- § 36:2 Offer of proof not required when evidence apparent
- § 36:3 Offer of proof required if evidence not apparent
- § 36:4 Better practice to make offer of proof
- § 36:5 Making the offer
- § 36:6 Preferred method of offer of proof
- § 36:7 Questions and answers given by attorney
- § 36:8 Risks with attorney giving summation of offer
- § 36:9 Offer of proof must be outside presence of jury
- § 36:10 Written offer of proof

CHAPTER 37. REFRESHING RECOLLECTION, PAST RECOLLECTION RECORDED

- § 37:1 What can refresh a recollection
- § 37:2 Writings used to refresh a memory
- § 37:3 Recollection must be shown to need refreshing
- § 37:4 Inspection by opposing counsel of document used to refresh recollection
- § 37:5 In camera inspection of document allowed
- § 37:6 Documents refreshing memory prior to testifying
- § 37:7 Past recollection recorded
- § 37:8 Laying foundation for past recollection recorded

CHAPTER 38. IMPEACHMENT OF WITNESSES

- § 38:1 Background
- § 38:2 Prior inconsistent statements by a witness
- § 38:3 Examination of witness concerning prior statements
- § 38:4 Extrinsic evidence of prior inconsistent statement of witness
- § 38:5 Admissibility of statement
- § 38:6 Right to confront witness with prior statement
- § 38:7 Collateral issues
- § 38:8 Recent fabrication rule
- § 38:9 Bias
- § 38:10 Forms of bias limitless

TABLE OF CONTENTS

- § 38:11 Family relationships
- § 38:12 Friendly or unfriendly feelings toward a party
- § 38:13 Paid testimony
- § 38:14 Financial interest
- § 38:15 Self interest in general
- § 38:16 Impeachment on bad character
- § 38:17 Specific incident of misconduct generally not admissible
- § 38:18 Specific incidents of misconduct
- § 38:19 Foundation for establishing reputation for truth and veracity
- § 38:20 Conviction of a crime
- § 38:21 Time limit for criminal conviction evidence to be admissible
- § 38:22 Crimes more than 10 years old
- § 38:23 Pardons and juvenile offenders
- § 38:24 Pendency of appeal of criminal conviction
- § 38:25 Defective capacity to observe, remember or recount
- § 38:26 Drug use
- § 38:27 Proof of material facts at variance with the witness' testimony

CHAPTER 39. EXHIBITS AND DEMONSTRATIVE EVIDENCE

- § 39:1 Exhibits and demonstrative evidence generally
- § 39:2 Preliminary matters—Pretrial disclosure
- § 39:3 Determining admissibility and the trial court's discretion
- § 39:4 Relevance
- § 39:5 Authentication
- § 39:6 Self-authenticating material
- § 39:7 Photographs, films, X-rays, and video tape
- § 39:8 Tape recorded conversations
- § 39:9 Testimony concerning telephone conversations
- § 39:10 Computer simulations
- § 39:11 Admissibility of models and casts
- § 39:12 Blood tests in paternity cases
- § 39:13 Exhibits demonstrating scientific theory or opinion
- § 39:14 Maps, drawings, diagrams and displays

CHAPTER 40. DOCUMENTARY EVIDENCE

- § 40:1 General requirements
- § 40:2 Procedure for offering documents in evidence
- § 40:3 Authentication of private writings

- § 40:4 Authentication of attested documents
- § 40:5 Authentication of official records
- § 40:6 Authentication of recorded documents
- § 40:7 Newspapers, periodicals, trade inscriptions and commercial papers
- § 40:8 Historical and scientific works
- § 40:9 The best evidence rule
- § 40:10 Copies of primary or secondary evidence (Rule 5.1003, I.R.E.)
- § 40:11 Where primary evidence is in control of opponent
- § 40:12 Unavailability or loss of primary evidence
- § 40:13 Secondary evidence of public records
- § 40:14 Secondary evidence of bulky records
- § 40:15 Testimony or written admission of party
- § 40:16 Function of court and jury
- § 40:17 Field notes and plats
- § 40:18 Maps and office of the surveyor general
- § 40:19 Entries and writings of deceased persons
- § 40:20 The parol evidence rule
- § 40:21 Writings required by statute of frauds

CHAPTER 41. MISCELLANEOUS EVIDENTIARY PROBLEMS

- § 41:1 Evidence of liability insurance
- § 41:2 Use of depositions
- § 41:3 Lie detector evidence
- § 41:4 Income tax returns
- § 41:5 Proof of corporate existence
- § 41:6 Construction and interpretation of contracts
- § 41:7 Offers in compromise
- § 41:8 When offer to compromise admissible
- § 41:9 Payment of claims, or losses
- § 41:10 Plea of guilty which is withdrawn, etc
- § 41:11 Stipulations

CHAPTER 42. FILING THE LAWSUIT

- § 42:1 Filing petition with clerk or judge commences state action
- § 42:2 Filing complaint with clerk or judge commences federal action
- § 42:3 Filing petition tolls statutes of limitation in state court
- § 42:4 Filing complaint tolls statutes of limitation in federal court

TABLE OF CONTENTS

| | |
|---------|--|
| § 42:5 | Contents of petition in state court—Notice pleading |
| § 42:6 | —Contract actions |
| § 42:7 | Contents of complaint in federal court—Notice pleading |
| § 42:8 | Other petition requirements |
| § 42:9 | Averments in numbered paragraphs |
| § 42:10 | Separate counts for each claim |
| § 42:11 | Relief in the alternative allowed |
| § 42:12 | Specific amount of money damages prohibited |
| § 42:13 | Small claims and liquidated damages exception |
| § 42:14 | Verifications abolished—Sanctions |
| § 42:15 | —Exceptions |
| § 42:16 | Amendment of petition before answer |
| § 42:17 | Jury demand—Served if filed with petition |

CHAPTER 43. SERVING ORIGINAL NOTICE

| | |
|---------|--|
| § 43:1 | Contents of original notice in state court |
| § 43:2 | Service of original notice in state court |
| § 43:3 | Contents and service of summons in federal court |
| § 43:4 | By whom served |
| § 43:5 | Personal service |
| § 43:6 | Service on minors |
| § 43:7 | Service on minor by his guardian or other fiduciary |
| § 43:8 | Service on incompetent not confined in state mental hospital |
| § 43:9 | Action by guardian on incompetent not confined |
| § 43:10 | Hospitalized in county or state institutions, competent or not |
| § 43:11 | Prisoner or patient |
| § 43:12 | Prisoner in a county jail |
| § 43:13 | Military service |
| § 43:14 | County care facility |
| § 43:15 | Partnership, association or corporation |
| § 43:16 | Defendant suable in non-resident county |
| § 43:17 | City |
| § 43:18 | County |
| § 43:19 | School district, township or corporation |
| § 43:20 | State of Iowa |
| § 43:21 | Filing of consent to service |
| § 43:22 | Governmental board, commission or agency |
| § 43:23 | Court ordered service |
| § 43:24 | Foreign corporations and non-residents generally |
| § 43:25 | Non-resident motorists |
| § 43:26 | Minimum contacts—Alternate method of service |

- § 43:27 Return of service
- § 43:28 Amendment of process or proof of service
- § 43:29 Harmless irregularities
- § 43:30 Service by publication—What actions
- § 43:31 —Known defendants
- § 43:32 Unknown defendants
- § 43:33 Service by publication—How published
- § 43:34 Publication
- § 43:35 Actual service
- § 43:36 Consequence of delay in service of original notice
- § 43:37 Delay in service of summons in federal court

CHAPTER 44. APPEARANCE, PRE-ANSWER MOTIONS, ANSWER AND REPLY

- § 44:1 Appearances generally
- § 44:2 Appearance insufficient to delay default
- § 44:3 Methods of attacking personal jurisdiction
- § 44:4 Subject matter jurisdiction raised anytime
- § 44:5 Motion not a pleading
- § 44:6 Time to move or plead generally
- § 44:7 Enlargement of time to move or plead
- § 44:8 Shortening time to move or plead
- § 44:9 Time to move in special cases
- § 44:10 Error in ruling not waived by pleading over
- § 44:11 Certain motions must be combined
- § 44:12 Venue objection combined with other motions or waived
- § 44:13 Defense of lack of personal jurisdiction, etc., must be combined
- § 44:14 Motion to dismiss
- § 44:15 Motion for judgment on the pleadings
- § 44:16 Motion for more specific statement
- § 44:17 Motion striking improper matter
- § 44:18 Notice of motion days unnecessary
- § 44:19 Proof of facts in motion—Cross examining affiant
- § 44:20 Motion days; disposition of motions
- § 44:21 Time for ruling on motions
- § 44:22 Answers generally
- § 44:23 Averments of defense in numbered paragraphs
- § 44:24 Answers for ward
- § 44:25 Reply

CHAPTER 45. AFFIRMATIVE DEFENSES

- § 45:1 Definition of an affirmative defense

TABLE OF CONTENTS

| | |
|---------|--|
| § 45:2 | Affirmative defenses must be specially pled |
| § 45:3 | Failure to plead amounts to waiver |
| § 45:4 | Denial of allegations doesn't raise an affirmative defense |
| § 45:5 | Complicity |
| § 45:6 | Assumption of the risk—Generally |
| § 45:7 | When assumption of the risk needs to be pled |
| § 45:8 | Assumption of risk—Reduces fault |
| § 45:9 | Comparative fault |
| § 45:10 | Affirmative defenses in breach of contract |
| § 45:11 | Impossibility of performance as affirmative defense |
| § 45:12 | Prevention of performance |
| § 45:13 | Waiver of performance |
| § 45:14 | Renunciation |
| § 45:15 | Mitigation as an affirmative defense |
| § 45:16 | Employee's or passenger's contributory negligence |

CHAPTER 46. PLEADINGS, JURY DEMAND, DISMISSALS, SERVICE AND TRIAL SETTING

| | |
|---------|--|
| § 46:1 | Pleadings generally |
| § 46:2 | Claims for relief—Notice pleading |
| § 46:3 | Trial of issue by consent |
| § 46:4 | Enlargement of time to move or plead |
| § 46:5 | Shortening of time to move or plead |
| § 46:6 | Pleading over; election to stand |
| § 46:7 | Correcting or recasting pleadings |
| § 46:8 | Supplemental pleadings |
| § 46:9 | Punitive and exemplary damages |
| § 46:10 | Mitigation must be pled |
| § 46:11 | Employee contributory negligence as mitigation |
| § 46:12 | Unconscionability as defense to breach of contract |
| § 46:13 | Permissible legal conclusions |
| § 46:14 | Denial of legal conclusions insufficient |
| § 46:15 | Unliquidated damages |
| § 46:16 | Judicial notice—When and when not to plead |
| § 46:17 | Amendments—Matter of right |
| § 46:18 | —Only with leave of court |
| § 46:19 | Amendments to conform to the proof |
| § 46:20 | Jury demand |
| § 46:21 | Voluntary dismissal—As a matter of right |
| § 46:22 | —By leave of court |
| § 46:23 | Dismissal for want of prosecution |
| § 46:24 | Involuntary dismissals |

- § 46:25 Service copies
- § 46:26 Filing of service copies
- § 46:27 Notice of orders or judgments
- § 46:28 Certificate of service
- § 46:29 Notice to attorney is notice to client
- § 46:30 Trial setting
- § 46:31 Time standards

CHAPTER 47. PARTIES, JOINDER OF CLAIMS AND CONSOLIDATION

- § 47:1 Real party in interest
- § 47:2 Parties partly interested
- § 47:3 Transfer of interest
- § 47:4 Partnerships and associations
- § 47:5 Domestic corporations
- § 47:6 Foreign corporations
- § 47:7 Professional corporations
- § 47:8 Limited liability companies (including professional)
- § 47:9 Actions by and against state
- § 47:10 Parent claim for injury, death of minor
- § 47:11 Minor adjudged incompetent
- § 47:12 Minor, prisoner or incompetent as defendant
- § 47:13 Minor attains majority
- § 47:14 Incapacity during the action
- § 47:15 Substitution of parties
- § 47:16 Notice of substituted party
- § 47:17 Cessation of representative capacity
- § 47:18 Actions joined
- § 47:19 —Consortium claim
- § 47:20 Multiple plaintiffs
- § 47:21 Permissive joinder of defendants
- § 47:22 Indispensable parties
- § 47:23 Remedy for misjoinder
- § 47:24 Dependent remedies joined
- § 47:25 Consolidation of separate actions
- § 47:26 Separate trials
- § 47:27 Splitting causes of action

CHAPTER 48. COUNTERCLAIMS, CROSS CLAIMS, INTERPLEADER AND INTERVENTION

- § 48:1 Compulsory counterclaims
- § 48:2 Permissive counterclaims

TABLE OF CONTENTS

| | |
|---------|---|
| § 48:3 | Joinder of counterclaims |
| § 48:4 | Counterclaim not limited |
| § 48:5 | Reply to counterclaim |
| § 48:6 | Cross-claims against co-party |
| § 48:7 | Plaintiff bringing in third party |
| § 48:8 | Defendant bringing in third party |
| § 48:9 | Reply to cross-claims |
| § 48:10 | Answer to cross-petition, counterclaim and reply |
| § 48:11 | Counterclaim after statute of limitations has run |
| § 48:12 | Counterclaim not allowed in certain actions |
| § 48:13 | Interpleader against potential claimants |
| § 48:14 | Interpleader by defendant |
| § 48:15 | Interpleader absolved who admits liability |
| § 48:16 | Substitution of claimant |
| § 48:17 | Injunctive relief for interpleader |
| § 48:18 | Attorney's fees in interpleader actions |
| § 48:19 | Interventions |
| § 48:20 | Manner and disposition |

CHAPTER 49. REMOVAL TO FEDERAL COURT

| | |
|---------|---|
| § 49:1 | State action removable—When |
| § 49:2 | Defendants sued under fictitious names |
| § 49:3 | Removal despite joinder of non-removable claims |
| § 49:4 | Non-removable actions |
| § 49:5 | Procedure for removal—Filing |
| § 49:6 | Time limits on removal |
| § 49:7 | Amendment can restart time to file |
| § 49:8 | Multiple defendants—Time to file |
| § 49:9 | Notice and filing |
| § 49:10 | Waiver of time limit |
| § 49:11 | Removal not a general appearance |
| § 49:12 | Procedure after removal |
| § 49:13 | Service of process after removal |
| § 49:14 | Remand |
| § 49:15 | Remand not reviewable |
| § 49:16 | Right to remove not affected by new process |
| § 49:17 | Adding defendant to destroy jurisdiction |
| § 49:18 | Fraudulently joined parties |
| § 49:19 | Counterclaim won't warrant removal |
| § 49:20 | Jurisdiction lacking in state court |
| § 49:21 | Remand establishes old status—Caveat re jury demand |
| § 49:22 | State or subdivision not "citizen" for diversity |

CHAPTER 50. DISCOVERY: GENERAL

- § 50:1 Discovery—Purposes
- § 50:2 —Relevant matters not privileged
- § 50:3 —Rules liberally construed
- § 50:4 —Conduct in good faith
- § 50:5 Review of discovery methods
- § 50:6 Initial disclosures and sequence in timing of
subsequent discovery
- § 50:7 Protective orders
- § 50:8 Discovery conference
- § 50:9 Stipulations regarding discovery procedures
- § 50:10 Motion for order to compel discovery
- § 50:11 Completing or adjourning oral examination
- § 50:12 Award of expenses to moving party
- § 50:13 Award of expenses to opposing party
- § 50:14 Sanctions for failure to comply after court order to do
so
- § 50:15 Sanctions for noncompliance with order in district
where deposition taken
- § 50:16 Sanctions for noncompliance where action pending
- § 50:17 Reasonable expenses awarded
- § 50:18 Failure to admit genuineness
- § 50:19 Discovery under the Federal Rules of Civil Procedure
- § 50:20 Objections based on privilege and work product
- § 50:21 Obtaining medical records
- § 50:22 Mandatory pretrial disclosures

CHAPTER 51. DISCOVERY: INTERROGATORIES

- § 51:1 Purpose
- § 51:2 Limited number—Each sub-part counts
- § 51:3 Leave of court to file additional number
- § 51:4 Procedure on use of interrogatories
- § 51:5 Answers to interrogatories
- § 51:6 Objections to interrogatories
- § 51:7 Option to produce business records
- § 51:8 Contention interrogatories
- § 51:9 Duty to supplement or amend
- § 51:10 Sanctions for failure to answer or supplement
- § 51:11 Use of interrogatories at trial
- § 51:12 Discovery materials not filed

CHAPTER 52. DISCOVERY: DEPOSITIONS

- § 52:1 Depositions—In general

TABLE OF CONTENTS

| | |
|---------|--|
| § 52:2 | Prima facie right to take depositions |
| § 52:3 | Earliest that depositions may be taken |
| § 52:4 | Enlarging or shortening time for taking deposition |
| § 52:5 | Place of taking without leave of court |
| § 52:6 | Place of taking where court leave required |
| § 52:7 | Place of deposition—Party versus non-party |
| § 52:8 | Form of notice and service |
| § 52:9 | Objection to notice |
| § 52:10 | Failure to attend or to serve subpoena—Expenses |
| § 52:11 | Subpoena—Not required for party |
| § 52:12 | Subpoena duces tecum—Requirement |
| § 52:13 | Quashing or limiting subpoena duces tecum |
| § 52:14 | Protective order in advance |
| § 52:15 | Discovery conference |
| § 52:16 | Limiting time or length of deposition |
| § 52:17 | Scope of examination—Generally |
| § 52:18 | Stenographic reporting, audio taping and video taping |
| § 52:19 | Officer taking deposition and avoid conflict |
| § 52:20 | Conducting the deposition—Generally |
| § 52:21 | Right to inspect papers witness reviewed for deposition |
| § 52:22 | Evidence taken subject to objection |
| § 52:23 | Objection to non-curable testimony is reserved |
| § 52:24 | Instructing witness not to answer—Sanctions |
| § 52:25 | Coaching a witness via an objection |
| § 52:26 | Motion to terminate or limit deposition—Sanctions |
| § 52:27 | Use and effect of taking depositions |
| § 52:28 | Use of deposition from another case |
| § 52:29 | Use of deposition of expert or medical doctor, et al |
| § 52:30 | Offering only part of deposition |
| § 52:31 | Telephonic depositions |
| § 52:32 | Videotaping deposition—Notice |
| § 52:33 | Adversary takes deposition—Contingency plan |
| § 52:34 | Deposition to prove up default judgment |
| § 52:35 | Deponent in prison |
| § 52:36 | Instruction to jury re—Weight to give deposition testimony |
| § 52:37 | Certification and return of copies |
| § 52:38 | Costs |
| § 52:39 | Reading and signing transcript |
| § 52:40 | Deposition on written interrogatories |
| § 52:41 | —Procedure |

CHAPTER 53. DISCOVERY: PRODUCTION OF DOCUMENTS, PHYSICAL AND MENTAL EXAMINATIONS, INSPECTION OF REAL OR PERSONAL PROPERTY

- § 53:1 Production of documents and things
- § 53:2 Production of documents and things directed to a non-party
- § 53:3 Uses for request for production
- § 53:4 Inspection of land and other real property
- § 53:5 Inspection of land and other real property of a non-party
- § 53:6 Rule related to production of documents liberally construed
- § 53:7 Physical and mental examination of persons
- § 53:8 —Requirements
- § 53:9 Report of examining physician
- § 53:10 Objections to requests for production
- § 53:11 Failure to make discovery—Sanctions
- § 53:12 Exception to rule disallowing request to depose officials of an administrative agency
- § 53:13 Production of electronically stored information
- § 53:14 Uniform Interstate Depositions and Discovery Rule

CHAPTER 54. DISCOVERY: EXPERT WITNESS DESIGNATION

- § 54:1 Experts who are expected to testify
- § 54:2 Time to answer or disclose; sanctions
- § 54:3 Discovery of expert by deposition
- § 54:4 Documents, other things prepared by expert
- § 54:5 Testimonial experts not retained in anticipation of litigation
- § 54:6 Treating physicians
- § 54:7 Treating physician exception
- § 54:8 Expert not expected to be called as a witness
- § 54:9 Pretrial scheduling orders
- § 54:10 Scope of expert testimony at trial and sanctions for non-compliance with pretrial disclosure
- § 54:11 Deadlines for disclosing experts
- § 54:12 Liberally interpreted to accomplish deadlines' purpose
- § 54:13 When is a professional expert witness designation necessary?
- § 54:14 Expert's fees during discovery

TABLE OF CONTENTS

**CHAPTER 55. REQUESTS FOR
ADMISSIONS**

- § 55:1 Requests for admissions—In general
- § 55:2 Establish genuineness of documents
- § 55:3 Limitation on number of requests
- § 55:4 Federal interpretation persuasive
- § 55:5 Reasons to utilize requests for admissions
- § 55:6 Importance of careful draftsmanship
- § 55:7 Time to serve and respond to requests
- § 55:8 Basis for response
- § 55:9 Request for additional time to answer
- § 55:10 Failure to admit, deny or object
- § 55:11 Withdrawing or amending answer
- § 55:12 Sufficiency of answers or objections
- § 55:13 Sanctions for noncompliance
- § 55:14 Denial made in good faith
- § 55:15 Use of requests for admissions at trial

**CHAPTER 56. CONFESSION OF
JUDGMENT**

- § 56:1 Offer to confess before action brought
- § 56:2 Non-acceptance—Costs
- § 56:3 Effect of unaccepted offer
- § 56:4 Offer to confess for partial amount or part of causes
- § 56:5 Offer to confess—Attorney's fees
- § 56:6 Failure to comply with procedure
- § 56:7 Non-acceptance—Costs
- § 56:8 Offer to confess in open court—Presence of plaintiff
- § 56:9 Offer to confess—Interest included
- § 56:10 Non-accepted offer not admissible
- § 56:11 Offer to confess after action brought
- § 56:12 Defendant not bound if has no knowledge
- § 56:13 Acceptance—Judgment
- § 56:14 Costs
- § 56:15 Determining award of damages
- § 56:16 Conditional offer
- § 56:17 Effect of acceptance of conditional offer
- § 56:18 Effect of non-acceptance of conditional offer
- § 56:19 Making offer no cause for continuance
- § 56:20 Judgment entered by clerk of court
- § 56:21 Costs when pleading contains new defense suit
- § 56:22 Partner's authority to confess judgment
- § 56:23 Federal rule—Offers of judgment generally

- § 56:24 —Confession after liability established
- § 56:25 —Costs
- § 56:26 —Withdrawal of offer
- § 56:27 —Determination of amount of verdict
- § 56:28 —When does trial begin

CHAPTER 57. SUMMARY JUDGMENT

- § 57:1 The purpose of summary judgment
- § 57:2 The Iowa rule
- § 57:3 Who may file motion for summary judgment
- § 57:4 When to file motion for summary judgment
- § 57:5 Time period to file resistance to motion for summary judgment
- § 57:6 Two prerequisites for obtaining summary judgment
- § 57:7 Establish the absence of genuine issues of material fact
- § 57:8 Material fact—Definition
- § 57:9 What is a genuine issue and when is it engendered
- § 57:10 Necessary filings by moving party
- § 57:11 Use of affidavits to support or oppose motion
- § 57:12 Resisting the motion for summary judgment
- § 57:13 Resisting party to be given the benefit of legitimate inferences
- § 57:14 Resisting party's burden to establish genuine issue
- § 57:15 Necessary filings by resisting party
- § 57:16 Inability to resist summary judgment
- § 57:17 Partial summary judgment
- § 57:18 Procedure by court when partial summary judgment granted
- § 57:19 Summary judgment when multiple parties involved
- § 57:20 Issues not usually susceptible to summary judgment
- § 57:21 Cases fully adjudicated on motion
- § 57:22 Appellate review
- § 57:23 F.R.C.P. 56—The federal rule

CHAPTER 58. OTHER PRETRIAL MOTIONS

- § 58:1 Motion—Defined
- § 58:2 Motions attacking pleadings
- § 58:3 Available motions
- § 58:4 When to file
- § 58:5 Single motion attacking pleading required
- § 58:6 Motions which must be combined with motion attacking pleading
- § 58:7 Motion to dismiss for failure to state a claim

TABLE OF CONTENTS

| | |
|---------|--|
| § 58:8 | Motion to recast |
| § 58:9 | Motion striking improper matter |
| § 58:10 | Motion for more specific statement |
| § 58:11 | Motion challenging personal jurisdiction |
| § 58:12 | Motion challenging original notice or service of original notice |
| § 58:13 | Motion challenging subject matter jurisdiction |
| § 58:14 | Matters subject to preliminary hearings |
| § 58:15 | Motion for separate adjudication of law points |
| § 58:16 | Motion for judgment on the pleadings |
| § 58:17 | Motion to consolidate |
| § 58:18 | Motion for separate trial/bifurcation |
| § 58:19 | Motion for change of venue |
| § 58:20 | Action brought in wrong county |
| § 58:21 | Actions originally filed in proper county—Generally |
| § 58:22 | County as party |
| § 58:23 | Interest of judge |
| § 58:24 | Prejudice or influence of judge or jury |
| § 58:25 | Written agreement of the parties |
| § 58:26 | Fraud in the contract |
| § 58:27 | Costs |
| § 58:28 | Change of venue not allowed and limit on changes |
| § 58:29 | Change of venue when multiple parties involved |
| § 58:30 | County to which venue changed |
| § 58:31 | Transfer |
| § 58:32 | Federal Rule of Civil Procedure 12 |
| § 58:33 | Motion practice |

CHAPTER 59. MOTIONS IN LIMINE

| | |
|--------|--|
| § 59:1 | Function of motion in limine |
| § 59:2 | Avoids inadvertent prejudice |
| § 59:3 | Not ruling on admissibility, theoretically |
| § 59:4 | Necessity to object if motion overruled |
| § 59:5 | Rule where underlying admissibility issue determined |
| § 59:6 | Violation of limine ruling—Preserving error |
| § 59:7 | Denial of limine action not a bar to introducing same evidence |
| § 59:8 | Pre-trial motion in limine deadline |
| § 59:9 | Motion for advance ruling on evidence |

CHAPTER 60. TRIAL TO THE COURT

| | |
|--------|----------------------------|
| § 60:1 | Cases triable to the court |
| § 60:2 | Reception of evidence |
| § 60:3 | Reopening the record |

- § 60:4 Motion to dismiss
- § 60:5 Findings of the court
- § 60:6 Delay in findings of the court
- § 60:7 Preparation of ruling by counsel
- § 60:8 Enlargement of findings
- § 60:9 Scope of review
- § 60:10 Manner of presenting case to court

CHAPTER 61. CONDUCT OF JUDGE, ATTORNEY AND JURY

- § 61:1 Conduct and duties of judge generally
- § 61:2 Judicial comments during jury selection
- § 61:3 Jury communications with judge
- § 61:4 Judge aiding counsel—Examination of witness
- § 61:5 Independent investigation by judge
- § 61:6 Disqualification of judge—Statutory recusal
- § 61:7 Disqualification—Iowa Code of Judicial Conduct
- § 61:8 Written waiver
- § 61:9 Timely objection required
- § 61:10 Disqualification in contempt of court proceeding
- § 61:11 Pressure on parties to reach settlement
- § 61:12 Ex parte communications
- § 61:13 Conduct and duties of attorney generally
- § 61:14 Conduct of jury generally
- § 61:15 Dismissal of juror for improper conduct
- § 61:16 Note-taking by jurors
- § 61:17 Communications with jurors during trial
- § 61:18 Entire trial reported unless waived

CHAPTER 62. JURY SELECTION AND TRIAL

- § 62:1 Constitutional right to jury
- § 62:2 Eight member jury
- § 62:3 Jury incapacity—Minimum number
- § 62:4 Less than unanimous verdict
- § 62:5 Stipulation as to mere majority verdict
- § 62:6 Alternate jurors
- § 62:7 Equity actions
- § 62:8 Determining the equitable or legal nature of case
- § 62:9 Counterclaims and split trials
- § 62:10 Actions created by statute
- § 62:11 Declaratory judgment actions
- § 62:12 Jury demand, waiver and withdrawal

TABLE OF CONTENTS

| | |
|---------|--|
| § 62:13 | Late demand—Court’s discretion |
| § 62:14 | Jury demand after new issue raised |
| § 62:15 | Impaneling a jury |
| § 62:16 | Minimum qualifications for juror |
| § 62:17 | Challenge to the panel |
| § 62:18 | Excusing jurors for hardship |
| § 62:19 | Voir dire—Purpose |
| § 62:20 | Voir dire by court |
| § 62:21 | Voir dire—Wide latitude |
| § 62:22 | —Court’s discretion on latitude |
| § 62:23 | Use of jury questionnaires |
| § 62:24 | Presumption of impartiality |
| § 62:25 | Example of proper question re—State of mind |
| § 62:26 | Reading law during voir dire |
| § 62:27 | Pledges not permissible |
| § 62:28 | Reference to inadmissible evidence |
| § 62:29 | Inadmissible matter may be disclosed |
| § 62:30 | Function not to educate as to facts |
| § 62:31 | Juror as client of counsel |
| § 62:32 | Insurance connection of juror |
| § 62:33 | Strikes—Multiple party allocation |
| § 62:34 | Race-based peremptory strike not allowed |
| § 62:35 | Challenges for cause |
| § 62:36 | Plaintiff challenging jurors who reside in the defendant municipality |

CHAPTER 63. OPENING STATEMENT

| | |
|---------|--|
| § 63:1 | Purpose and importance |
| § 63:2 | Right to open |
| § 63:3 | Determining party with burden |
| § 63:4 | Determination within court’s discretion |
| § 63:5 | Scope of permissible opening statement |
| § 63:6 | Improper opening statement generally |
| § 63:7 | Specific instances of improper opening |
| § 63:8 | Curing improper opening statement |
| § 63:9 | Abuse of discretion and prejudice |
| § 63:10 | Motion in limine |
| § 63:11 | Waiver and preserving error |
| § 63:12 | Admissions in opening statement |
| § 63:13 | Use of exhibits and demonstrative evidence |
| § 63:14 | Time limit on opening statement |

CHAPTER 64. ORDER AND BURDEN OF PROOF

| | |
|--------|--------------------------|
| § 64:1 | Order of proof generally |
|--------|--------------------------|

- § 64:2 Court’s discretion on order of receiving testimony
- § 64:3 Party with burden proceeds first
- § 64:4 Multiple issues and burdens—Plaintiff proceeds first
- § 64:5 Where plaintiff’s allegations admitted
- § 64:6 Order of producing testimony
- § 64:7 The effect of primacy and recency
- § 64:8 Right to open and close
- § 64:9 Reopening the case
- § 64:10 Factors considered by the court in reopening
- § 64:11 Right to refute evidence received on reopening
- § 64:12 When to make motion to reopen
- § 64:13 Recalling witnesses
- § 64:14 Rebuttal evidence
- § 64:15 Discretion of court to allow non-rebuttal evidence in rebuttal
- § 64:16 Surrebuttal evidence
- § 64:17 Burden of proof—Generally
- § 64:18 Burden rests with party who will suffer loss
- § 64:19 Burden of persuasion—Obligation to establish
- § 64:20 Consequences of failing to establish case burden
- § 64:21 Burden of proof—Preponderance of the evidence
- § 64:22 Clear, satisfactory and convincing evidence—Quantum of proof
- § 64:23 Issues requiring proof by clear, satisfactory and convincing evidence
- § 64:24 Burden of going forward—Establishing prima facie case
- § 64:25 Examples of parties having the burden of proof of going forward or where burden of going forward shifts

CHAPTER 65. DIRECT EXAMINATION OF WITNESSES

- § 65:1 Purpose
- § 65:2 Scope of examination and court’s control
- § 65:3 Form of the question generally
- § 65:4 Leading questions
- § 65:5 What constitutes a leading question
- § 65:6 Questions not considered leading
- § 65:7 When leading questions permissible
- § 65:8 Use of plats, models, etc
- § 65:9 Calling adverse party
- § 65:10 Leading questions to refresh memory
- § 65:11 Responsiveness of answer

TABLE OF CONTENTS

CHAPTER 66. CROSS EXAMINATION OF WITNESSES

- § 66:1 Purpose
- § 66:2 Scope of cross examination
- § 66:3 Making the witness one's own
- § 66:4 Scope of adverse direct examination
- § 66:5 Scope of adverse cross examination
- § 66:6 Testing credibility
- § 66:7 Scope and fraud are concealment cases
- § 66:8 To rebut inferences
- § 66:9 Court's right to control
- § 66:10 Scope within the trial court's discretion
- § 66:11 Abuse of discretion
- § 66:12 Exceptions to confining cross examination to direct
- § 66:13 Leading questions
- § 66:14 Hostile witness
- § 66:15 Mixed questions of law and fact
- § 66:16 Conviction of felony
- § 66:17 Harassing, annoying questions
- § 66:18 Challenging witness to waive privilege
- § 66:19 Impeachment
- § 66:20 Collateral matters
- § 66:21 Address and occupation
- § 66:22 Assuming facts not in evidence—Non-expert
- § 66:23 Cross examination by two attorneys
- § 66:24 Refusal to submit to cross examination
- § 66:25 Recall is discretionary
- § 66:26 The ABC's of cross examination

CHAPTER 67. REDIRECT AND RE-CROSS EXAMINATION

- § 67:1 Purpose of redirect examination
- § 67:2 Scope of redirect examination
- § 67:3 Explaining, correcting or qualifying testimony on redirect
- § 67:4 Opening the door in cross-examination
- § 67:5 Introducing the whole of a writing of conversation or redirect
- § 67:6 Use of prior consistent statements on redirect
- § 67:7 Redirect examination to rebut an inference of fact raised on cross-examination
- § 67:8 Examples of redirect examination questions
- § 67:9 Re-cross examination

CHAPTER 68. EXAMINATION BY COURT OR JUROR

- § 68:1 Court examining witness
- § 68:2 Jurors' questions to a witness

CHAPTER 69. REBUTTAL EVIDENCE

- § 69:1 Rebuttal—Generally
- § 69:2 Rebuttal re—Burden of proof
- § 69:3 Purpose for rebuttal evidence
- § 69:4 Admissibility in the discretion of the court
- § 69:5 Surrebuttal
- § 69:6 Offer of proof

CHAPTER 70. TRIAL MOTIONS

- § 70:1 Relationship with pretrial and post-trial motions
- § 70:2 Motions in limine and for advance ruling on evidence
- § 70:3 Motion to exclude witnesses
- § 70:4 Motion to withhold exhibit from jury
- § 70:5 Motion to seal or redact irrelevant part of exhibit
- § 70:6 Motion to seal confidential materials
- § 70:7 Motion for adjournment
- § 70:8 Motion to amend to conform to the proof
- § 70:9 Motion for a view of the premises
- § 70:10 Motion for mistrial
- § 70:11 Motion for directed verdict
- § 70:12 Motion to withdraw issue from jury
- § 70:13 Motion for default judgment
- § 70:14 Motion to reopen case before decision

CHAPTER 71. MISTRIAL

- § 71:1 Motion for mistrial generally
- § 71:2 Granting of motion within court's discretion
- § 71:3 Abuse of discretion
- § 71:4 Admonition may not be enough
- § 71:5 Timeliness of motion
- § 71:6 Liability insurance injected
- § 71:7 Hung jury
- § 71:8 The allen or "dynamite" charge

CHAPTER 72. JURY INSTRUCTIONS

- § 72:1 Introduction
- § 72:2 Instructions the court must give the jury
- § 72:3 Form of instructions

TABLE OF CONTENTS

| | |
|---------|---|
| § 72:4 | Making objections to jury instructions |
| § 72:5 | Effect of erroneous jury instructions |
| § 72:6 | Undue emphasis |
| § 72:7 | Misleading or confusing instructions |
| § 72:8 | Timing of instructing the jury |
| § 72:9 | Advising jury of effects of its findings |
| § 72:10 | Improper jury instruction re: taxability of personal injury damages |

CHAPTER 73. CLOSING ARGUMENTS

| | |
|---------|---|
| § 73:1 | Importance of summation to outcome |
| § 73:2 | Order of arguments—Burden of proof |
| § 73:3 | Counsel's latitude—Court's discretion |
| § 73:4 | Time limitation |
| § 73:5 | Proper summation—Generally |
| § 73:6 | Oratorical privilege—Appeals to sympathy or prejudice |
| § 73:7 | Retaliatory remarks (invited error) |
| § 73:8 | Comments on failure to produce evidence |
| § 73:9 | Arguments about damages—Per diem and others |
| § 73:10 | Reading books, papers—Learned treatises exception |
| § 73:11 | Improper summation—Examples |
| § 73:12 | Golden rule improper |
| § 73:13 | Expressing personal belief improper |
| § 73:14 | Comments on conduct of adversary |
| § 73:15 | Curing improper argument |
| § 73:16 | Prejudicial error and preserving it |
| § 73:17 | Improper comment of court on argument |
| § 73:18 | Using the court's instructions in argument |
| § 73:19 | Using visual charts, models & blackboards |

CHAPTER 74. JURY DELIBERATIONS

| | |
|---------|--|
| § 74:1 | Iowa rules governing jury deliberations |
| § 74:2 | Statements by jury |
| § 74:3 | Quotient verdict |
| § 74:4 | Communications with jury |
| § 74:5 | Separation of jury before verdict read |
| § 74:6 | Discussion of insurance—Prejudice not presumed |
| § 74:7 | Jurors passing near scene |
| § 74:8 | Length of deliberations |
| § 74:9 | Types of misconduct |
| § 74:10 | Misconduct—Elements |
| § 74:11 | —How shown |
| § 74:12 | Consideration of matters outside record |

- § 74:13 Request by jury to have testimony read
- § 74:14 Items taken by jury into jury room—Notes
- § 74:15 —Exhibits, depositions
- § 74:16 —Pleadings
- § 74:17 Items taken by jury into jury room
- § 74:18 Answering juror’s questions
- § 74:19 Discharge of jury
- § 74:20 Food and lodging, hardship for jury

CHAPTER 75. VERDICT, ENTRY OF JUDGMENT AND INTEREST ON JUDGMENTS

- § 75:1 Return of the verdict
- § 75:2 Alternative to sealed verdict
- § 75:3 Sealed verdict
- § 75:4 Comparative fault actions
- § 75:5 Recalling a discharged jury
- § 75:6 Juror equivocation during polling
- § 75:7 Forms of verdict—General
- § 75:8 Entry of verdict and judgment
- § 75:9 General verdict
- § 75:10 Types of verdicts
- § 75:11 Effect of written comments
- § 75:12 General verdict with special interrogatories
- § 75:13 Form and propriety of interrogatories
- § 75:14 Error in submission of interrogatories
- § 75:15 Answers to interrogatories
- § 75:16 Special verdicts
- § 75:17 Purposes of special verdicts
- § 75:18 Failure to request special verdict
- § 75:19 Special verdict takes precedence over general
- § 75:20 Improper special verdicts
- § 75:21 Objection to special verdicts
- § 75:22 Unanswered or error in one part
- § 75:23 Submission of claim and counterclaim
- § 75:24 Reformation of a verdict
- § 75:25 Impeachment of the verdict
- § 75:26 Jury misconduct
- § 75:27 Standard in addressing jury misconduct
- § 75:28 Entry of judgment or decree
- § 75:29 Default judgment
- § 75:30 Interest on judgments and decrees generally
- § 75:31 Allowance of pre-judgment interest
- § 75:32 When pre-judgment interest not allowed

TABLE OF CONTENTS

| | |
|---------|--|
| § 75:33 | Interest in comparative fault cases |
| § 75:34 | New claim—Interest from date of amendment |
| § 75:35 | Interest cannot be denied as a sanction |
| § 75:36 | Interest on uninsured motorist coverage |
| § 75:37 | Comparative fault—Proportionate Credit Rule |
| § 75:38 | Interest on wrongful death action |
| § 75:39 | Interest for worker's compensation, alimony and support awards |
| § 75:40 | Interest on conversion |
| § 75:41 | Interest in Federal Court diversity actions |
| § 75:42 | Interest on punitive damages |
| § 75:43 | Pre-judgment interest under the Iowa Civil Rights Act |
| § 75:44 | Taxation of costs |

CHAPTER 76. POST-TRIAL MOTIONS

| | |
|---------|--|
| § 76:1 | Judgment notwithstanding verdict |
| § 76:2 | Motion for judgment notwithstanding verdict based on insufficiency of evidence |
| § 76:3 | The Uhlenhopp rule |
| § 76:4 | Relief sought |
| § 76:5 | Joinder with new trial motion |
| § 76:6 | Time for judgment notwithstanding verdict motion |
| § 76:7 | Judgment notwithstanding verdict for defective pleadings |
| § 76:8 | Motion for new trial |
| § 76:9 | Error preservation in the motion |
| § 76:10 | Error preservation at trial |
| § 76:11 | Standard of review |
| § 76:12 | Grounds—Generally |
| § 76:13 | —Instructions |
| § 76:14 | —Evidentiary rulings |
| § 76:15 | —Irregularity |
| § 76:16 | —Misconduct |
| § 76:17 | —Verdict contrary to law or evidence |
| § 76:18 | —Surprise, accident, inadvertence |
| § 76:19 | —Newly-discovered evidence |
| § 76:20 | Scope of retrial |
| § 76:21 | Time for motion for new trial |
| § 76:22 | Conditional new trial—Remittiturs and additurs |
| § 76:23 | Rule 1.904(2) reconsideration, enlargement or amendment of findings or conclusions |
| § 76:24 | Proceedings from which motion lies |
| § 76:25 | Scope of rule |
| § 76:26 | Substance over form |

- § 76:27 Appellate review preservation
- § 76:28 Rule 1.904(2) tolling time for appeal
- § 76:29 Time for a Rule 1.904(2) motion
- § 76:30 Bill of exceptions
- § 76:31 Time for motions
- § 76:32 Vacation or modification of judgment
- § 76:33 Stay
- § 76:34 Motions for extension of time

CHAPTER 77. NEWLY DISCOVERED EVIDENCE

- § 77:1 Newly discovered evidence generally
- § 77:2 Newly discovered evidence not favored
- § 77:3 Not discoverable through normal discovery methods
- § 77:4 Evidence in existence at time of trial
- § 77:5 Not equitable to enforce a judgment
- § 77:6 Time limitations—Rule 1.1004, I.R.C.P.
- § 77:7 —Rules 1.1012 and 1.1013, I.R.C.P.
- § 77:8 Federal rule—Rule 59 procedure
- § 77:9 —Rule 60 procedure
- § 77:10 —Stay
- § 77:11 —What law governs
- § 77:12 —Definition of newly discovered evidence
- § 77:13 —Miscarriage of justice

CHAPTER 78. APPEALS

- § 78:1 Appellate jurisdiction
- § 78:2 Final judgment
- § 78:3 Other orders treated as final judgments
- § 78:4 Interlocutory orders
- § 78:5 Certiorari proceedings
- § 78:6 Jurisdictional amount
- § 78:7 Commencing and perfecting appeals
- § 78:8 Mistake as to remedy
- § 78:9 Time for appeal and cross appeal
- § 78:10 Service and subsequent filing
- § 78:11 Record on appeal
- § 78:12 Combined certificate
- § 78:13 Time tables
- § 78:14 Content and form of briefs
- § 78:15 The court of appeals
- § 78:16 Rehearing
- § 78:17 Costs

TABLE OF CONTENTS

CHAPTER 79. MISCELLANEOUS TRIAL MATTERS

- § 79:1 Conduct of trial within the court's discretion
- § 79:2 Parties entitled to fair but not perfect trial (harmless error)
- § 79:3 Presence of parties
- § 79:4 The right of the parties and public to a public trial
- § 79:5 Exception to right to public trial
- § 79:6 Excluding or admitting a party's family
- § 79:7 Persons permitted at counsel table
- § 79:8 In chamber hearings and bench conferences
- § 79:9 Expanded media coverage—Cameras in the courtroom
- § 79:10 Establishing the record when proceedings occur outside the presence of the court reporter
- § 79:11 Pro se representation by a party
- § 79:12 Plain error doctrine
- § 79:13 Lost pleadings and exhibits
- § 79:14 Trial publicity
- § 79:15 Demeanor and attire of counsel
- § 79:16 Withdrawal of counsel/termination of counsel
- § 79:17 Settlement obtained by fraud
- § 79:18 Pro hac vice procedures
- § 79:19 Jury trial late settlement
- § 79:20 Subpoenas of witnesses

CHAPTER 80. EXPEDITED CIVIL ACTIONS

- § 80:1 Introduction—The Expedited Civil Action option
- § 80:2 Eligible actions
- § 80:3 Election to proceed
- § 80:4 Termination
- § 80:5 Counterclaims
- § 80:6 Applicability of Rules
- § 80:7 Pretrial procedure—Preanswer motions
- § 80:8 —Pretrial motions for summary judgment
- § 80:9 —Discovery
- § 80:10 Pretrial Procedure—Pretrial Submissions
- § 80:11 Pretrial procedure—Notice of documentary evidence
- § 80:12 —Mediation
- § 80:13 Trial procedure—Jury trial
- § 80:14 —Instructions
- § 80:15 —Trial to the court
- § 80:16 —Evidence
- § 80:17 —Health Care Provider Statement

- § 80:18 —Time allocations
§ 80:19 Judgment not conclusive

APPENDICES

- Appendix A. Client Interview Checklist
Appendix B. Statutes of Limitations Table
Appendix C. Criteria Considered for Class Actions (Rule
1.263, I.R.C.P.)
Appendix D. Pleadings Requiring Verification
Appendix E. Standards for Professional Conduct
Appendix F. Voir Dire Outline
Appendix G. Personal Injury Opening Statements
Appendix H. Time Standards for Case Processing
Appendix I. Mortality Tables

Glossary

Table of Laws and Rules

Table of Cases

Index