CHAPTER 1. PREPARING FOR TRIAL

I. JURY

- § 1:1 Jury demand
- § 1:2 —Reasonable time
- § 1:3 Jury fee

II. SUPPLEMENTATION OF DISCOVERY

- § 1:4 When supplementing discovery is required
- § 1:5 Deadline for supplementing discovery
- § 1:6 —Good cause exception factors
- § 1:7 ——Burden of establishing exception
- § 1:8 ——Inadvertence
- § 1:9 ——Lack of surprise
- § 1:10 ——Previously deposed
- § 1:11 ——Nature of exception
- § 1:12 —Change in expert's testimony
- 1:13 Refinement

III. AMENDMENT OF PLEADINGS

- § 1:14 Generally
- § 1:15 No surprise
- § 1:16 Leave of court
- § 1:17 Reasons for amendment
- § 1:18 —Eliminate parties
- § 1:19 ——Credibility
- § 1:20 ——Multiparty case
- § 1:21 —Eliminate causes of action
- § 1:22 ——Use by opponent
- § 1:23 —Review damages
- § 1:24 —Review other relief requested
- § 1:25 —Addition of claims, defenses
- § 1:26 ——Motion for continuance danger

IV. REVIEW OF OPPONENT'S PLEADINGS

- § 1:27 Motion in limine
- § 1:28 —Purpose
- § 1:29 —Strategy

§ 1:30 -Effect of motion § 1:31 —Informing the judge § 1:32 Motions to exclude evidence V. PROOF CHARTS § 1:33 Your case -Each element of each claim or defense on which you § 1:34 have the burden of proof § 1:35 —Exhibits which support each element § 1:36 —Testimony which supports each element § 1:37 Opponent's case § 1:38 -Each element of each claim or defense on which opponent has the burden of proof § 1:39 —Exhibits which support each element § 1:40 —Testimony which supports each element § 1:41 —Rebuttal —Objections § 1:42 VI. JURY CONSULTANTS Witness preparation § 1:43 § 1:44 —Formulate testimony § 1:45 —Expert witnesses § 1:46 Demonstrative exhibits § 1:47 Testing opening arguments § 1:48 Jury selection § 1:49 —Pretrial § 1:50 —At trial § 1:51 Juror questionnaires VII. WITNESSES § 1:52 Current list Notification of trial setting in writing § 1:53 § 1:54 Witness preparation § 1:55 —Preparation for trial § 1:56 —Jury consultant § 1:57 Witness subpoenas and subpoenas duces tecum § 1:58 -Witness subpoenaed § 1:59 —Form of subpoena § 1:60 ——Style

§ 1:61 § 1:62

§ 1:63

§ 1:64

—Service of subpoenas

— — Objections and protective orders

--Signed

§ 1:65 Videotape trial § 1:66 Designate deposition selections and objections thereto VIII. RECORDS § 1:67 Subpoena duces tecum § 1:68 Authentication of records -Requirement of authentication or identification § 1:69 § 1:70 —Self-authentication § 1:71 — — Domestic public documents under seal § 1:72 — — Domestic public documents not under seal § 1:73 — —Foreign public documents § 1:74 — — — Certification § 1:75 — — — Without certification --- Certified copies of public records § 1:76 — — Official publications § 1:77 § 1:78 — — Newspapers and periodicals § 1:79 — —Trade inscriptions and the like § 1:80 ——Acknowledged documents § 1:81 ——Commercial paper and related documents § 1:82 —Business records accompanied by affidavit § 1:83 — — Affidavit — —Filed with clerk § 1:84 § 1:85 — Notice to other parties IX. EXHIBITS § 1:86 Exhibit list § 1:87 -Before trial § 1:88 -Numbering § 1:89 Exchanging exhibits before trial § 1:90 Preadmission of exhibits

X. MATTERS ON JUDICIAL NOTICE

§ 1:102 Kinds of facts

-Disadvantage

Number of sets of exhibits

Exhibits on compact disc

Exhibit notebooks for witnesses

Exhibit notebooks for judges and jurors

—Alternative

—Examples

-- Documents

——Depositions

--- Cartoons

Paperless trial

§ 1:91

§ 1:92

§ 1:93

§ 1:94

§ 1:95

§ 1:96 § 1:97

§ 1:98

§ 1:99

§ 1:100

§ 1:101

§ 1:103 —Subjective standard § 1:104 —Before trial § 1:105 Whether discretionary or mandatory § 1:106 -Mandatory —Necessary information § 1:107 § 1:108 Hearing required § 1:109 Time of taking notice § 1:110 Instructing the jury § 1:111 Marking as exhibit

XI. NOTICE OF LAWS OF OTHER STATES

- § 1:112 Rule 201 procedures
- § 1:113 Court's motion
- § 1:114 Party's motion
- § 1:115 —Sufficient information
- § 1:116 —Only issue
- § 1:117 —Applicability

XII. FINAL PRETRIAL CONFERENCE

- § 1:118 Distinction
- § 1:119 Purposes
- § 1:120 —All pending dilatory pleas, motions, and exceptions
- § 1:121 —The necessity or desirability of amendments to the pleadings
- § 1:122 —Discovery schedule
- § 1:123 —Requiring written statements of the parties' contentions
- § 1:124 —Contested issues of fact and simplification of the issues
- § 1:125 —The possibility of obtaining stipulations of fact
- \S 1:126 —The identification of legal matters to be ruled on or decided by the court
- § 1:127 —The exchange of a list of direct fact witnesses
- § 1:128 —The exchange of a list of testifying experts
- § 1:129 —Agreed applicable propositions of law and contested issues of law
- § 1:130 —Proposed jury instructions or findings of fact and conclusions of law
- § 1:131 —Marking and exchanging of all exhibits that any party may use at trial and stipulation to the authenticity and admissibility of exhibits to be used at trial
- § 1:132 —Written trial objections to the opposite party's exhibits, stating the basis for each objection

- § 1:133 —Advisability of preliminary reference to master or auditor
- § 1:134 —The settlement of the case, and to aid consideration, the court may encourage settlement
- § 1:135 —Such other matters as may aid in the disposition of the matter
- § 1:136 Order

XIII. TRIAL BRIEFS

- § 1:137 Questions of law
- § 1:138 —Concise
- § 1:139 —Presentation
- § 1:140 Evidentiary matters
- § 1:141 —Direct judge's attention
- § 1:142 —Presentation
- § 1:143 Several short briefs
- § 1:144 Copies of cases, statutes, etc.

XIV. WITNESS FOLDERS

- § 1:145 Witnesses, generally
- § 1:146 Depositions
- § 1:147 —Witness called by deposition
- § 1:148 —Examples of deposition start-stops
- § 1:149 ——Exchange with opposing counsel
- § 1:150 ——Video depositions
- $\S 1:151$ ——Deposition transcripts
- § 1:152 —Live witness
- § 1:153 ——Cross-examination
- § 1:154 ——Own witnesses
- § 1:155 Written discovery responses
- § 1:156 —Witness on direct
- § 1:157 —Cross-examination
- § 1:158 Exhibits
- § 1:159 —Number of copies
- § 1:160 —Efficiency
- § 1:161 Witness statements
- § 1:162 Script of questions

XV. DEMONSTRATIVE EVIDENCE

- § 1:163 Compact discs
- § 1:164 —Multiple documents
- § 1:165 —Deposition
- § 1:166 —Access

§ 1:167 —Cost factor
§ 1:168 Blowups
§ 1:169 Graphs and illustrations
§ 1:170 Videos
§ 1:171 Projectors

XVI. LOCAL AND COURT RULES

- § 1:172 Local rules
- § 1:173 —Discovery procedures
- § 1:174 —Entire trial team
- § 1:175 Court rules
- § 1:176 —Entire trial team
- § 1:177 —Unwritten rules
- § 1:178 —Motion-by-motion basis
- § 1:179 Scope of local rules
- § 1:180 —Not inconsistent
- § 1:181 —No alteration of time periods
- § 1:182 —Approval
- § 1:183 —Publication
- § 1:184 —Availability
- § 1:185 —Not substantive rules

XVII. TRIAL NOTEBOOK

§ 1:186 Organize and summarize trial information

XVIII. FORMS

- § 1:187 Form—Affidavit for business records
- § 1:188 —Motion in limine
- § 1:189 —Motion to exclude evidence
- § 1:190 —Trial subpoena

CHAPTER 2. SCHEDULING THE TRIAL

I. TRIAL SCHEDULING

- § 2:1 Assignment of cases
- § 2:2 —Contested cases
- § 2:3 ——Court's own motion
- § 2:4 ——Any party
- § 2:5 ——Agreement of the parties
- § 2:6 Notice
- § 2:7 —Contested cases
- § 2:8 —Parties' agreement

§ 2:9 —Presumption of notice § 2:10 —Rebuttal of presumption § 2:11 — Evidence § 2:12 — —No rebuttal—Examples § 2:13 ——Successful rebuttal ———Example § 2:14 § 2:15 —Precise setting § 2:16 Resetting cases § 2:17 —Reasonable notice § 2:18 -Continuance § 2:19 Uncontested cases § 2:20 —Trial § 2:21 —Setting § 2:22 Request for trial setting § 2:23 Representations § 2:24 —No additional representations required § 2:25 —When additional representations are required § 2:26 Variation in method § 2:27 Local rules -Supreme Court approval § 2:28 § 2:29 —May not vary time limits

II. NOTICE OF TRIAL SETTING

§ 2:30 Reasonable notice § 2:31 -No discretion § 2:32 —Due Process § 2:33 Furnishing notice -Entitlement § 2:34 § 2:35 — Pro se litigant § 2:36 —Other counsel § 2:37 —Uncontested cases § 2:38 —Waiver of citation § 2:39 -Form of notice § 2:40 —Other forms § 2:41 — Rule 21a § 2:42 Failure to provide notice -Proof of notice § 2:43 § 2:44 -Evidence of notice sent to wrong address § 2:45 —Waiver on appeal § 2:46 — — Motion for continuance § 2:47 — — Motion for new trial § 2:48 Presumption and burden of proof § 2:49 Constitutional implications

- § 2:50 —Not all improper notice situations violate due process
- § 2:51 —Meritorious defense

III. CONTINUANCE

- § 2:52 Grounds in general
- § 2:53 Discretion of the court
- § 2:54 Sua sponte
- § 2:55 Standard of review on appeal
- § 2:56 —Sufficient information
- § 2:57 —Noncompliance with Rule 251
- § 2:58 Entire record
- § 2:59 Sufficient cause
- § 2:60 —Inadequate discovery
- § 2:61 —Want of testimony
- § 2:62 —Absence of party
- § 2:63 ——Harm
- § 2:64 ——Good grounds or reasonable excuse
- § 2:65 ——Materiality of testimony
- § 2:66 ——Due diligence
- § 2:67 ——Medical excuse
- § 2:68 ——Time period of absence
- § 2:69 —Absence of witness
- § 2:70 ——Affidavit
- § 2:71 ——Affidavit must be based upon personal knowledge
- § 2:72 —Absence of counsel
- § 2:73 ——No negligence
- § 2:74 ——Party discharges attorney
- § 2:75 ——Counsel voluntarily withdraws
- § 2:76 ——Time to secure new counsel
- § 2:77 ——Pattern of neglect
- § 2:78 ——Improper conduct of parties
- § 2:79 ——Surprise
- § 2:80 ——No denial of Fifth Amendment rights
- § 2:81 Attendance on legislature
- § 2:82 —When rule applies
- § 2:83 —Supporting affidavit
- § 2:84 —Corroboration
- § 2:85 ——Effect of motion
- § 2:86 ——Absolute right
- § 2:87 ——Mandatory
- § 2:88 ——Exception
- § 2:89 ———Hearing

§ 2:90 — — — Discretion § 2:91 — — Type of injury necessary § 2:92 — —Legislator's participation at trial § 2:93 —Applicability § 2:94 — —Temporary restraining orders --- Enforcement of judgment § 2:95 § 2:96 ——Contempt § 2:97 —Constitutionality -Review of decision § 2:98 § 2:99 Sufficient cause § 2:100 Dismissal docket § 2:101 —Authority to dismiss for want of prosecution § 2:102 —Notice must be given § 2:103 Ready for trial § 2:104 First motion § 2:105 Open courts § 2:106 Written motion § 2:107 No affidavit § 2:108 —Presumption § 2:109 —Pro se litigants § 2:110 Verified motion § 2:111 Statement of grounds -Absence of attorney § 2:112 § 2:113 —Materiality of testimony § 2:114 **Timeliness** § 2:115 Tried when called § 2:116 Conflicting settings -Control of docket § 2:117 § 2:118 -Vacation of order § 2:119 —Responsibility of the party —Standard of review on appeal § 2:120 § 2:121 Preservation of error § 2:122 -Incomplete record § 2:123 —Ruling on motion § 2:124 —Waiver of grounds on appeal Resetting the case § 2:125 § 2:126 -Procedure § 2:127 —Required notice § 2:128 -Reasonable notice

IV. REQUEST FOR JURY

§ 2:129 Right to a jury trial
§ 2:130 —Two requirements
§ 2:131 No guarantee of jury trial

TEXAS PRACTICE GUIDE: CIVIL TRIAL

```
§ 2:132
         —Arbitration
§ 2:133
         —Contractual waiver of jury trial
§ 2:134
         —No material fact issues
         —Preliminary motions
§ 2:135
§ 2:136
         —Plea in abatement
§ 2:137
         —Family violence protective order
§ 2:138
         —Where jury's verdict is advisory
§ 2:139
         —Motion to transfer venue
§ 2:140
         —Appointment of temporary guardian
§ 2:141
         —Attorney's fees as sanction for failure to comply
          with Medical Liability Act
§ 2:142
         Standard of review on appeal
§ 2:143
         Failure to appear
§ 2:144
         —Exception
§ 2:145
         Request
§ 2:146
         —Interaction with Rule 245
         — —Insufficient excuse
§ 2:147
         ——Sufficient excuse
§ 2:148
§ 2:149
         —Form of request
§ 2:150
         —Request contained in petition
         — Cover letter for jury fee
§ 2:151
§ 2:152
         ——Certification request form
§ 2:153
         ——Setting request
§ 2:154
         -No request made
         —Timeliness as a matter of law
§ 2:155
§ 2:156
         ——Presumption
         ——Example of abuse of trial court discretion
§ 2:157
§ 2:158
         ---Rebuttal
         — Definition of "reasonable time"
§ 2:159
§ 2:160
         ——Certification on nonjury docket
         —Discretion of the trial court
§ 2:161
         — —Considerations
§ 2:162
         ——Request withdrawn
§ 2:163
§ 2:164
         —Continuance
         —Effect of resetting the trial
§ 2:165
§ 2:166
         —Availability of jury panel
§ 2:167
         Jury fee
§ 2:168
         -Amount
§ 2:169
         — Exception
§ 2:170
         -Notation
§ 2:171
         —Oath of inability to pay
         —Time limits
§ 2:172
§ 2:173
         —Payor of jury fee
§ 2:174
         Waiver
```

- § 2:175 Court's order
 § 2:176 Preservation of error on appeal
 § 2:177 —Exception
 § 2:178 —Withdrawal from the jury docket
 § 2:179 —Mandamus
 § 2:180 —Unopposed withdrawal
- § 2:181 —Harmless error

V. FORMS

- § 2:182 Form—Request for trial setting
- § 2:183 —Request for jury
- § 2:184 Motion for continuance

CHAPTER 3. TRIAL STRUCTURE AND CONDUCT

I. GENERAL RULES

- § 3:1 Trial conducted in open court
- § 3:2 Media coverage
- § 3:3 —Media coverage of trial
- § 3:4 —Coverage by consent
- § 3:5 ——Motion
- § 3:6 ——Consent
- $\S 3:7$ —Coverage without consent
- § 3:8 ——Procedure
- § 3:9 ———Media's motion
- § 3:10 ———Copy of motion
- § 3:11 ———Hearing
- § 3:12 ———Subject of hearing
- $\S 3:13$ — Written order
- § 3:14 —Off limits to media
- § 3:15 ——Conferences with court
- § 3:16 ——Attorney conferences
- § 3:17 ——In camera
- § 3:18 Jury
- § 3:19 Reporting of court proceedings
- § 3:20 —Portions recorded
- § 3:21 —Custody of records
- § 3:22 —Importance of record
- § 3:23 —Electronic recording of court proceedings
- § 3:24 Courts closed to the public
- § 3:25 Court records
- § 3:26 —Contents of court records

§ 3:27 ——Preliminary inquiry § 3:28 — —Non-filed discovery § 3:29 — —Trade secrets § 3:30 —May be sealed § 3:31 —Criteria for sealing § 3:32 -Procedure for sealing a court record § 3:33 — —Contents ——Hearing § 3:34 § 3:35 --Notice § 3:36 ——Contents § 3:37 — — Verified copy — Evidentiary hearing § 3:38 --Finding § 3:39 § 3:40 — Order -Burden of proof § 3:41 § 3:42 —Standard of review

II. STRUCTURE OF THE TRIAL

- § 3:43 Usual order of a jury trial
- § 3:44 —Pretrial conference
- § 3:45 —Jury selection
- § 3:46 —Opening statements
- $\S 3:47$ First to speak
- $\S 3:48$ Other party
- § 3:49 —Plaintiff's case in chief
- § 3:50 —Motion for directed verdict
- § 3:51 —Defendant's case in chief
- § 3:52 —Plaintiff's rebuttal
- § 3:53 —Plaintiff closes
- § 3:54 —Defense rebuttal
- § 3:55 —Charge conference
- § 3:56 ——Informal conference
- § 3:57 ——Matters discussed
- § 3:58 ——Formal conference
- § 3:59 —Final arguments
- § 3:60 —Charge read to jury
- § 3:61 —Jury deliberation
- § 3:62 —Announcement of verdict
- § 3:63 —Judgment
- § 3:64 —Postjudgment motions
- § 3:65 —Collection of judgment
- § 3:66 Pretrial motions
- § 3:67 —Motion in limine
- § 3:68 ——Evidence to be excluded

```
§ 3:69
         ——Approach the bench
§ 3:70
         ---Ruling on objection
§ 3:71
         — Order
§ 3:72
         ——Preservation of error
§ 3:73
         -Motion to strike evidence or pleadings or for other
          sanctions for discovery abuse
§ 3:74
         -Motion to exclude expert testimony or to strike
          designation of expert
§ 3:75
         — Expansion of exclusion
§ 3:76
         ——Preliminary determination
§ 3:77
         — —Timing of motion
         --- Response to motion and hearing-Establishing
§ 3:78
          reliability
§ 3:79
         — —Establishing relevance
§ 3:80
         -Motion to bifurcate the trial
§ 3:81
         — —Automatic
§ 3:82
         — First trial
§ 3:83
         ——Second trial
§ 3:84
         Jury selection
         -Purpose
§ 3:85
§ 3:86
         —Goal
§ 3:87
         —Scope
§ 3:88
         -Method
§ 3:89
         —Challenges for cause
§ 3:90
         ——Cannot follow law
         — —Fair and impartial
§ 3:91
§ 3:92
         —Peremptory strikes
§ 3:93
         ——Racial motivation
§ 3:94
         — —Number of strikes
§ 3:95
         Opening statements
§ 3:96
         —General procedure
§ 3:97
         -Contents
§ 3:98
         —Inappropriate matters
         -Order
§ 3:99
         — Party with burden of proof
§ 3:100
§ 3:101
         — —Adversary
§ 3:102
         — Other parties
§ 3:103
         Introduction of evidence
§ 3:104
         —Plaintiff's case in chief
         — —Task
§ 3:105
         — — Method
§ 3:106
         — —Theme of case
§ 3:107
         —Direct examination
§ 3:108
§ 3:109
         — —Lay witnesses
§ 3:110
         — Expert witnesses
```

```
§ 3:111
        — — — Opinion
        ———Qualifying an expert
§ 3:112
§ 3:113
        ———Leading questions
        — — — Admissibility of underlying data
§ 3:114
§ 3:115
        — Other evidence
§ 3:116
        — Exceptions
§ 3:117
        — — Judicial notice
         ———Self-authenticating
§ 3:118
        ———Certified copy
§ 3:119
§ 3:120
        — —Conclusion of direct examination
        ——Cross-examination
§ 3:121
        ———Scope
§ 3:122
        --- Redirect examination
§ 3:123
§ 3:124
        — —Conclusion of plaintiff's case-in-chief
        —Defendant's case in chief
§ 3:125
§ 3:126
        — — Motion for instructed verdict
        — — Grounds
§ 3:127
§ 3:128
        ———Court's ruling
§ 3:129
        — — Ordinary defenses
        — — Affirmative defenses
§ 3:130
        — —Counterclaim
§ 3:131
        — —Conclusion of defendant's case
§ 3:132
§ 3:133
         -Rebuttal
§ 3:134
        — —Conclusion of plaintiff's rebuttal
        —Re-rebuttal
§ 3:135
         — —Conclusion of re-rebuttal
§ 3:136
§ 3:137
        The jury charge
§ 3:138
        —Conduct of jury
§ 3:139
        — — Definitions and instructions
§ 3:140
        ——Questions
        — —Verdict form
§ 3:141
§ 3:142
        — —Broad form
§ 3:143
        —The charge conference
§ 3:144
        — —Informal preconference
        — —Formal conference
§ 3:145
§ 3:146
        ——Responsibility for the charge
§ 3:147
        ——Refusal by the court
        — —Finalizing the charge
§ 3:148
§ 3:149
        — — Objections
        — — —Presentation
§ 3:150
§ 3:151
        — — Form of objection
        --Ruling
§ 3:152
§ 3:153
         —Charge read to jury
§ 3:154
         Closing statements or closing arguments
```

```
§ 3:155
         —Permissible content
§ 3:156
         ——Comment on witnesses
§ 3:157
        ——Outside record
        --- No criticism
§ 3:158
§ 3:159
        — Order
§ 3:160
        ——Subject matter
§ 3:161
        — —Time limits
§ 3:162
         Jury deliberation
        -Given charge
§ 3:163
§ 3:164
        -Nontestimonial evidence
§ 3:165
         -Presiding juror
§ 3:166
        -Matters properly considered
§ 3:167
        —Testimony
§ 3:168
        —Length of deliberations
§ 3:169
        —If a jury deadlocks
§ 3:170
         Verdict
§ 3:171
        -Read aloud
§ 3:172
         —Jurors polled
§ 3:173
        Judgment
§ 3:174
        —Preparation and signature
§ 3:175
        —Contents
§ 3:176
        --Conform
§ 3:177
         — —Finality
§ 3:178
         ——Date
        Postverdict motions
§ 3:179
§ 3:180
        -Motion to disregard
§ 3:181
        -Motion for judgment notwithstanding the verdict
§ 3:182
         — —Legal standard
§ 3:183
        — —Time for filing
§ 3:184
        Postjudgment motion
        -Motion for new trial
§ 3:185
        ——New trial
§ 3:186
        ——Preservation of error
§ 3:187
§ 3:188
        ———Factual insufficiency
        ———Against great weight
§ 3:189
§ 3:190
         ———Erroneous damages
         ———Jury argument
§ 3:191
        ———New evidence
§ 3:192
§ 3:193
        — —Contents
§ 3:194
         —Time for postjudgment motions
§ 3:195
         — Exception
§ 3:196
        Collection of judgment
§ 3:197
        —Power to enforce judgment
§ 3:198
        — Exemption
```

```
§ 3:199
         — —Continuing jurisdiction
         -Suspension or enforcement of judgment
§ 3:200
         ——Suspension
§ 3:201
         — Enforcement
§ 3:202
§ 3:203
         —Order of execution
§ 3:204
         ——Application and timeliness
§ 3:205
         -Attachment
§ 3:206
         -Garnishment
§ 3:207
         — —Definition
         --- Notice and hearing
§ 3:208
         --- Nature of property
§ 3:209
         — —Bond
§ 3:210
§ 3:211
         —Turnover order
§ 3:212
         --- Mechanism
         -Postjudgment discovery
§ 3:213
§ 3:214
         ——Same rules as pretrial
         — — When applicable
§ 3:215
         Variations in trial proceedings
§ 3:216
§ 3:217
         —Discretion
§ 3:218
         —Convenience of participants
§ 3:219
         —Multiple parties
§ 3:220
         —Separate (bifurcated) trial on separate issues
§ 3:221
         — — Distinction between separate trials and severed
          claims
§ 3:222
         ——Severance
         ———Separate trials
§ 3:223
         — — — Mechanics
§ 3:224
         — — Rationale
§ 3:225
         — — —Any issue or claim
§ 3:226
§ 3:227
         ———Standard of review
§ 3:228
         — — Liability and damages may not be separated
          in a personal injury case
         ———Standards for allowing separate trials
§ 3:229
         ———Exceptional circumstance
§ 3:230
§ 3:231
         ———Simplify proceedings
         ———To avoid prejudice
§ 3:232
§ 3:233
         ———Limiting instructions
§ 3:234
         — — Written court order
§ 3:235
         ——Same jury used
         — — —Admit same evidence
§ 3:236
         — — —Concurrence of same jurors
§ 3:237
§ 3:238
         —One final judgment
```

III. CONDUCT OF THE JUDGE

§ 3:239 General powers

```
§ 3:240
         —Constitutional and statutory powers
§ 3:241
         —Implied and inherent powers
§ 3:242
         ——Purpose
§ 3:243
        Duties, generally
§ 3:244
        —Standard of conduct
§ 3:245
        -Management of the trial
§ 3:246
         —Duty to see trial reaches correct legal conclusion
§ 3:247
         —Rule on admissibility of evidence
§ 3:248
        ——Qualification of witnesses
§ 3:249
        — Restrict consideration of evidence
§ 3:250
        — —Judicial notice
        — Exclude evidence
§ 3:251
        —Charge the jury
§ 3:252
§ 3:253
        — —Court's discretion
        -- Requirements
§ 3:254
§ 3:255
        ——Charge read to jury
§ 3:256
        -- No comment on the weight of the evidence
§ 3:257
        ———Reversible error
§ 3:258
        Conduct during trial
        —Maintain control of the courtroom
§ 3:259
§ 3:260
        ——Inherent power
§ 3:261
        ——Punish by contempt
§ 3:262
        —Impartiality
§ 3:263
        — —Due and orderly trial
        — Neutral and detached judge
§ 3:264
§ 3:265
        —Not an adversary
§ 3:266
        ——Appearance of impartiality
        ——Permissible contacts
§ 3:267
§ 3:268
        — — No ex parte communication
§ 3:269
        ———Settlement efforts
        ———Procedural and administrative matters
§ 3:270
§ 3:271
        ———Due process
§ 3:272
        — Not an advocate
        --Attorney's role
§ 3:273
§ 3:274
        — — Not just umpire
§ 3:275
        ——Permissible comments of judge
§ 3:276
         ——Prohibited comments
        --Reversible error
§ 3:277
§ 3:278
        ———Harmless remarks
        ——Comments on evidence or credibility of witnesses
§ 3:279
        — — Judge's opinion
§ 3:280
        --Incidental comment
§ 3:281
§ 3:282
        — — Reversible error
§ 3:283
        ——Questioning of witnesses by court
```

\$ 3:284 — Duty to clarify \$ 3:285 — Questioning in front of jury \$ 3:286 — Disallowed \$ 3:287 — Permitted \$ 3:288 — Must act without request of party

IV. CONDUCT OF THE ATTORNEY

§ 3:289 § 3:290 § 3:291 § 3:292	Decorum, generally Texas Lawyer's Creed Physical location in the courtroom —Closest to jury
§ 3:293 § 3:294	—Adversary —Local rules and custom
§ 3:294 § 3:295	Meet court personnel
§ 3.235 § 3:296	Duties of the attorney
§ 3:297	—Minimum standards
§ 3:298	—Violations
§ 3:299	—Candor toward the tribunal
§ 3:300	——False statements of material fact or law
§ 3:301	— — False statements of fact
§ 3:302	———Duty to correct
§ 3:303	— — Legal authority
§ 3:304	———Sanctions
§ 3:305	——Failure to disclose—Fact necessary to avoid
	illegal, fraudulent, or criminal act by client
§ 3:306	———Contrary legal authority
§ 3:307	— — Offer false evidence
§ 3:308	— — Remedial measures
§ 3:309	———Continuing duty
§ 3:310	———Client proffers false evidence
§ 3:311	— — Cross-examination
§ 3:312	———Attorney's discretion
§ 3:313	 — Failure to disclose material fact that may mislead tribunal
§ 3:314	———Duty to disclose
§ 3:315	——Fairness to opposing party and counsel
§ 3:316	———Reason
§ 3:317	———Fair competition
§ 3:318	— — Destruction of document
§ 3:319	— — Falsification of evidence
§ 3:320	———Sanctions
§ 3:321	——Disobey obligations imposed by tribunal
§ 3:322	— — Disobedience of client
§ 3:323	——Allude to any matter not relevant

```
§ 3:324
         — — Evidence not relevant
§ 3:325
         — — Criticism
§ 3:326
        ——Allude to any matter unsupported by admissible
         evidence
§ 3:327
         ———Outside record
        ——Assert personal knowledge of facts
§ 3:328
§ 3:329
         — — Personal knowledge if not testifying
         — — —Attorney's fees
§ 3:330
§ 3:331
         ——State a personal opinion
        ———Justness of cause
§ 3:332
§ 3:333
        ———Reasonable deduction
         --Credibility of witness
§ 3:334
         — — Evidence and deduction
§ 3:335
§ 3:336
         — — Culpability
§ 3:337
         — Request a witness to refrain from giving
          information
§ 3:338
         ———Exception for relative, agent, or employee of
          client
§ 3:339
        ———No harm to witness
§ 3:340
        — — —Inapplicable to subpoenas
§ 3:341
        —Trial publicity
§ 3:342
        — — Prejudicial statements
§ 3:343
        — —Balancing of rights
§ 3:344
        ——Right to a fair trial
         --- Assisting another
§ 3:345
        — — —Gag orders
§ 3:346
§ 3:347
        ——Purpose
§ 3:348
        — — Validity
§ 3:349
         — — Supporting evidence
§ 3:350
        — — Procedure
§ 3:351
        - Prohibition against prejudicial statements
§ 3:352
         — — — Character, credibility, or reputation of a party
          or witness
         ———Tests or examinations
§ 3:353
         — — —Inadmissible evidence
§ 3:354
§ 3:355
         ——Permitted statements
§ 3:356
         — — General nature of claim or defense
        — — — Public record
§ 3:357
§ 3:358
        — — —Investigation in progress
§ 3:359
         ———Result of step in litigation
§ 3:360
        ———Request for assistance
        ———Warning of danger
§ 3:361
§ 3:362
        —Respect for rights of third persons
§ 3:363
        — Exceptions
§ 3:364
        ———Decision to represent
```

\$ 3:365 — — Confidential communication
\$ 3:366 — — Jury selection
\$ 3:367 — — Comment on issues
\$ 3:368 — — Judicial obligation
\$ 3:369 — Contact with jurors
\$ 3:370 — Disclosure of contact
\$ 3:371 — Dealings with court personnel

V. CONDUCT OF JURORS

§ 3:372 Sequestration of jurors during trial § 3:373 Separate during trial § 3:374 —Usual rule § 3:375 —Discussion prohibited -Policy § 3:376 § 3:377 —Discretion § 3:378 Misconduct § 3:379 -Evidence admissible —Mental processes § 3:380 § 3:381 — —Policy § 3:382 —Definition of outside influence § 3:383 —Must occur during deliberations § 3:384 —Concealed bias of a juror § 3:385 —Information from juror § 3:386 — —Court officials affecting jury § 3:387 — —Bailiff—General rule § 3:388 — —Communication through bailiff § 3:389 --- Misconduct of bailiff ——Probable injury § 3:390 § 3:391 —Coercion of a deadlocked jury § 3:392 ——Improper influence § 3:393 ——Dynamite charge § 3:394 — —Limits § 3:395 —Contact with parties or witnesses § 3:396 — —Duty of juror ——Balancing test § 3:397 § 3:398 — Outside influence § 3:399 ——Contact with parties or witnesses ——Reversible error § 3:400 § 3:401 — —Harm required ——Test § 3:402 § 3:403 -Note taking — —Improper to read to other jurors § 3:404 --- Not misconduct § 3:405

——Instruction by the court

§ 3:406

§ 3:407	-Exposure to case through media
§ 3:408	— —General rule
§ 3:409	— —Newspaper articles
§ 3:410	Procedure for jury misconduct
§ 3:411	—Contents
§ 3:412	—Evidentiary affidavits
§ 3:413	—Hearing
§ 3:414	—Questions of law and fact
§ 3:415	—Burden of proof
§ 3:416	—Conflicting evidence
§ 3:417	—Finding of injury
§ 3:418	—Altered result

VI. FORMS

§ 3:419	Motion to strike evidence or pleadings for discovery
	abuse
§ 3:420	Affidavit in support of motion to strike evidence or
	pleadings for discovery abuse
§ 3:421	Order striking evidence or pleadings for discovery
	abuse
§ 3:422	Motion to strike designation of expert or to exclude
	expert testimony
§ 3:423	Motion to bifurcate trial

CHAPTER 4. JURY SELECTION

I. JURY SELECTION

§ 4:1 Introduction

II. RIGHT TO A CIVIL JURY TRIAL

- § 4:2 General rule § 4:3 Exceptions
- § 4:4 —Civil contempt
- § 4:5 —Election contests
- § 4:6 —Failure to appear for trial
- § 4:7 —Appeal from administrative decision
- § 4:8 —Family violence protective order

III. PROCEDURES TO OBTAIN A JURY TRIAL

- § 4:9 Two requirements for a civil jury trial
- § 4:10 Payment of jury fee
- § 4:11 —Mandatory

§ 4:12 -Amount —Variation § 4:13 § 4:14 Written request -Mandatory § 4:15 § 4:16 -In pleadings § 4:17 **Timeliness** § 4:18 —Presumption of reasonableness § 4:19 ——Rebutting the presumption § 4:20 -Notice of trial setting § 4:21 —Remedy for untimeliness § 4:22 Refusal to grant jury trial § 4:23 Not per se reversible —Harmless error § 4:24 § 4:25 Withdrawal of request —Objection by other parties § 4:26 § 4:27 —Preservation of error -Waiver § 4:28

IV. ASSEMBLING THE JURY PANEL

§ 4:29 Definitions § 4:30 —Array § 4:31 —Venire panel § 4:32 —Jury § 4:33 — — Jury list and jury information sheets § 4:34 Master list -Source § 4:35 § 4:36 —Combination of lists § 4:37 -Random selection of array § 4:38 General array § 4:39 —Two district courts § 4:40 -No general panel § 4:41 —Notice to potential jurors § 4:42 Challenge to the array § 4:43 —In writing § 4:44 —Hearing § 4:45 —Challenge sustained § 4:46 Length of service —Local rules § 4:47 § 4:48 Summons and qualifications —Presiding judge § 4:49 § 4:50 —Determination of qualifications § 4:51 -Economic reasons —Impairment § 4:52 ——Blindness and deafness § 4:53

```
§ 4:54
§ 4:55
       — — — Application
§ 4:56
       ———Effect on peremptory strikes
§ 4:57
       — —Low intelligence
§ 4:58
       Statutory qualifications
§ 4:59
       —Age
§ 4:60
       —Citizenship
§ 4:61
       —Qualified
       -Sound mind and character
§ 4:62
§ 4:63
       -English literacy
§ 4:64
       ——Suspension of qualification
§ 4:65
       — —Fluent in English
§ 4:66
       —Previous service
§ 4:67
       —No conviction
       -No indictment
§ 4:68
§ 4:69
       Exemption from jury service
§ 4:70
       —Grounds
§ 4:71
       — — Age
§ 4:72
       — Children younger than 12
§ 4:73
       ——Secondary student
§ 4:74
       ——Student of higher education
§ 4:75
       — Legislative employee
       ——Previous service
§ 4:76
§ 4:77
       --Caretaker
§ 4:78
       — — Member of military
§ 4:79
       —Claiming the exemption
§ 4:80
       — — Method of claiming
§ 4:81
       --Clerk
       --Other officials
§ 4:82
§ 4:83
       ——Duration of exemption
§ 4:84
       ——Permanent exemption
§ 4:85
       ——Affidavit and physician's statement
§ 4:86
       ———Rescission
§ 4:87
       --Non-English speaker
       --- Religious holy day
§ 4:88
§ 4:89
       ———Release from array
§ 4:90
       Disqualification to serve in a particular case
§ 4:91
       -Witness
§ 4:92
       —Interested in subject matter
§ 4:93
       -Relationship
§ 4:94
       — Friendship
       -Employee of governmental entity
§ 4:95
§ 4:96
       Bias or prejudice
§ 4:97
       —Previous service
```

- § 4:98 —Unfit to serve
- § 4:99 —Preservation of error

V. CHALLENGES FOR CAUSE BEFORE VOIR DIRE

- § 4:100 Rationale and grounds
- § 4:101 —Challenge to qualification
- § 4:102 —Power of presiding judge
- § 4:103 —Court to whom assigned
- § 4:104 —Counsel questions
- § 4:105 Request for jury shuffle

VI. VOIR DIRE

- § 4:106 Importance
- § 4:107 —Not just fact gathering
- § 4:108 —Focus of attention
- § 4:109 —First impressions
- § 4:110 —Rapport
- § 4:111 Juror information documents
- § 4:112 —Juror cards
- § 4:113 —Juror questionnaires
- § 4:114 Jury consultants
- § 4:115 Opening
- § 4:116 Scope
- § 4:117 —Great latitude
- § 4:118 —Sound discretion of the court
- § 4:119 —Information for challenges
- § 4:120 —Preserving error for appeal
- § 4:121 Voir dire questioning technique—Practice pointers
- § 4:122 —Be yourself
- § 4:123 —Establish rapport
- § 4:124 ——Be prepared
- § 4:125 ——Introduce yourself and your client
- § 4:126 ——Address jurors by name
- § 4:127 Use appropriate manner of address
- § 4:128 ——Explain importance of jury service
- $\S 4:129$ ——Explain purpose of questions
- § 4:130 ——Explain purpose of challenges
- § 4:131 ——Explain your demeanor toward jurors during trial
- § 4:132 ——Know where to stand
- § 4:133 ——Examine jurors in sequence
- § 4:134 ——Try to establish eye contact
- § 4:135 — Use humor if appropriate

§ 4:136	——Never embarrass a juror
§ 4:137	——Avoid admonitions from the court
§ 4:138	—Encourage jurors to talk—Try to spot negative
	jurors
§ 4:139	— —Use opening questions to break the ice
§ 4:140	— —Use open-ended questions
§ 4:141	— Encourage additional responses
§ 4:142	——Probe and follow up on matters critical to your
	case
§ 4:143	——Ask for views on jury service
§ 4:144	——If you represent a corporation, probe for anti-
	corporate bias
§ 4:145	o v
§ 4:146	
§ 4:147	—Be up front about weaknesses in your case
§ 4:148	—Secure jurors' commitment to follow the law as
	instructed by the court
§ 4:149	—Explain burdens of proof and the meaning of
	preponderance of the evidence
§ 4:150	—Plaintiff's conditioning on damages
§ 4:151	—Defendant's conditioning on liability
§ 4:152	—Be an effective questioner
§ 4:153	——Keep it simple
§ 4:154	——Speak up
§ 4:155	——Speak slowly
§ 4:156	——One on one
§ 4:157	——Vary questions
§ 4:158	— —Avoid contaminating other jurors
§ 4:159	——Develop imaginative wrap-up questions
§ 4:160	—Listen closely to jurors' answers
§ 4:161	— — Take notes—Use shorthand
§ 4:162	——Keep your eye on all jurors
ŭ	

VII. CHALLENGES FOR CAUSE

§ 4:163 Rationale and grounds § 4:164 —Challenge to qualification § 4:165 —Power of presiding judge —Court to whom assigned § 4:166 § 4:167 —Counsel questions § 4:168 Impermissible inquiries § 4:169 —Legal effect of answers § 4:170 —Liability insurance § 4:171 — Relationship to an insurance company § 4:172 —Inadmissible evidence

TEXAS PRACTICE GUIDE: CIVIL TRIAL

```
§ 4:173
         —Commitment to result
§ 4:174
         —Felony conviction
§ 4:175
         — —Contradiction
§ 4:176
         ——Reversal of judgment
§ 4:177
         — No waiver
§ 4:178
         —Duration of voir dire
§ 4:179
         -Full inquiry
§ 4:180
         —Responsibility of counsel
         -Vague and confusing
§ 4:181
§ 4:182
         —Identity of responding panel members
         Specific examples of grounds for disqualification
§ 4:183
§ 4:184
         —Relationship of potential juror to case or parties
§ 4:185
         — —General rule
§ 4:186
         -Witness
§ 4:187
         —Pecuniary interest
§ 4:188
         — Stockholders
§ 4:189
         ——Residents and taxpayers
§ 4:190
         —Relationship by consanguinity/affinity
         — —Termination of relationship
§ 4:191
§ 4:192
         —Service as a prior juror in the same or similar case
§ 4:193
         — Grand jury service
         --\!-\!\!\mathrm{Spectator}
§ 4:194
§ 4:195
         —Bias or prejudice
§ 4:196
         ——Basis
         ——Definition of bias
§ 4:197
§ 4:198
         — — Rehabilitation permitted
§ 4:199
         ——Question of fact
         — Broad discretion
§ 4:200
§ 4:201
         ——Standard of review
§ 4:202
         — Matter of law
§ 4:203
         —Cannot follow law
§ 4:204
         —Jury panelist unfit to serve
         ---Broad discretion
§ 4:205
         ---Standard of review
§ 4:206
§ 4:207
         Procedure to urge challenges for cause and
          preservation of error
§ 4:208
         -Burden of proof
§ 4:209
         —Definition
§ 4:210
         —No limitation
§ 4:211
         -When made
§ 4:212
         -Evidence
§ 4:213
         -State grounds
§ 4:214
         —Trial court questions
§ 4:215
         —Opposing evidence
```

§ 4:233

§ 4:216 —Court ruling § 4:217 -Removal of name § 4:218 —Timeliness —Preservation of error § 4:219 § 4:220 — Exhaustion of strikes § 4:221 — — Objectionable juror § 4:222 —Identification § 4:223 —Trial court discretion —Evidence of disqualification § 4:224 § 4:225 -Reversal § 4:226 -Harmless error § 4:227 —Additional venirepersons -Waiver § 4:228 § 4:229 ——Comprehensive voir dire ——Concealment or deceit § 4:230 § 4:231 —Reversible error § 4:232 — —Burden of proof

— —Injury

VIII. PEREMPTORY CHALLENGES

§ 4:234 Historical use § 4:235 —Arbitrary exclusion § 4:236 —Limitations § 4:237 Number and allocation of peremptory strikes § 4:238 —Timeliness § 4:239 —Adequate venire panel § 4:240 --- Number of venirepersons — Other venirepersons § 4:241 § 4:242 ——Source —Questions and challenges § 4:243 § 4:244 -Number of strikes § 4:245 ——Alternates, generally — —Two alternates § 4:246 § 4:247 — —Three or four alternates — —Use of challenges § 4:248 § 4:249 —Multiple party cases § 4:250 — — Equalization of challenges — —Definition of side § 4:251 ——Discretion § 4:252 — — Determination § 4:253 ———Statements in pleadings § 4:254 --Question of law § 4:255 — — Definition of antagonistic § 4:256 ———Legal determination § 4:257

§ 4:258 -No antagonism § 4:259 — —Number § 4:260 —Finding of antagonism § 4:261 — Equality defined — No unfair advantage § 4:262 § 4:263 -- Unfair as a matter of law § 4:264 -- Own strikes § 4:265 Procedure to urge peremptory challenge or strike § 4:266 —Timeliness § 4:267 -Method § 4:268 — —Less than all challenges permitted § 4:269 — —When all challenges required § 4:270 —Rationale of challenge § 4:271 — — Opponent's strikes — —Limitation on time § 4:272 § 4:273 — Return and part of record § 4:274 — First 12 names in district court § 4:275 —First six names in county court § 4:276 Preservation of error § 4:277 -No harmful error rule § 4:278 —Required showing § 4:279 — — Hotly contested trial -- Evidence not sharply conflicting § 4:280 § 4:281 —Incomplete panel § 4:282 — —Guarantee § 4:283 ——Less than required number

IX. RESTRICTIONS ON PEREMPTORY STRIKES

§ 4:284 Law § 4:285 —Ancient right § 4:286 -Former rule § 4:287 —Texas rules § 4:288 ——Requirements § 4:289 — —Definition § 4:290 ——Purpose § 4:291 — —No stated reason § 4:292 Batson v. Kentucky § 4:293 -Equal Protection Clause § 4:294 —Fairness of justice system § 4:295 Applicability in criminal proceedings § 4:296 —Due Process Clause § 4:297 —Texas application U.S. Supreme Court expansion of Batson principles § 4:298 § 4:299 —Civil cases

§ 4:300 -Not same race § 4:301 —Defense counsel selection methods § 4:302 —Gender § 4:303 Texas expansion of principles § 4:304 —Civil case —Religious affiliation § 4:305 § 4:306 Further possible extension of Batson § 4:307 —Corporate parties § 4:308 —White jurors § 4:309 -Strikes made on the basis of political statement § 4:310 —Jury shuffle § 4:311 Future of peremptory strikes

X. PROCEDURES APPLICABLE TO A BATSON CHALLENGE

§ 4:312 Texas procedure § 4:313 Transcription § 4:314 Timing of challenge § 4:315 —No procedural rules in *Batson* § 4:316 -Waiver § 4:317 —Timeliness § 4:318 —Form of objection § 4:319 — Proposed objection § 4:320 ——Adequate objection § 4:321 —Record for appeal — —Initial description § 4:322 § 4:323 — —Protected class § 4:324 ——Panelist improperly struck § 4:325 ———Definition of position § 4:326 — — —Importance of identification § 4:327 — Part of record — — Jury list § 4:328 — — Juror information cards § 4:329 — — Jury questionnaires § 4:330 § 4:331 Proof of violation § 4:332 —Hearing § 4:333 — —Cross-examination § 4:334 — — Documentary evidence § 4:335 — Testimony § 4:336 -Open court § 4:337 Batson challenge is a three step process § 4:338 Step one—Prima facie case of discrimination § 4:339 —Burdens of complaining party § 4:340 — Establish prima facie case

```
§ 4:341
         ——Definition of prima facie case
         -No prima facie showing
§ 4:342
§ 4:343
         — — Opponent must object
§ 4:344
         —Ultimate inquiry
         —Failure to strike all members of protected group
§ 4:345
§ 4:346
         —Overall composition of the venire
§ 4:347
         —Federal versus state
§ 4:348
         — Racially motivated reason
         Step two—Rebuttal—A neutral explanation
§ 4:349
§ 4:350
         -Burden of proof
§ 4:351
         ---Burden shifts
§ 4:352
         ——Purposeful discrimination finding
§ 4:353
         -Standard
§ 4:354
         Step three—Proof of purposeful discrimination
§ 4:355
         —Evaluation by the trial court
§ 4:356
         —Inference of discrimination
§ 4:357
         —Unacceptable reasons for peremptory strikes
§ 4:358
         — —Unrelated to facts of case
§ 4:359
         — No questions
§ 4:360
         — — Certain responses elicited
§ 4:361
         ——Patently false reason
         ——Civil rights claims
§ 4:362
         ——Eye contact
§ 4:363
§ 4:364
         — Lack of attention
§ 4:365
         — —Haircut
         —Neutral explanations supporting peremptory
§ 4:366
          strikes
§ 4:367
         — — Opinion of the venireperson (stated or perceived)
§ 4:368
         — —Demeanor
         — — Opinion of the venireperson (stated or
§ 4:369
          perceived)—Gunowner
§ 4:370
         ———Death penalty
§ 4:371
         — — Application of death penalty
              —Heightened evidence
§ 4:372
         — — — Circumstantial evidence
§ 4:373
         — — — Opinion about scientific evidence
§ 4:374
§ 4:375
         — — — Opinion about police errors
         — — —Rehabilitation
§ 4:376
         — — —Liberal attitudes regarding subject of case
§ 4:377
§ 4:378
         — — Sentence
         — Employment of the venireperson
§ 4:379
§ 4:380
         -- Journalist
         ———Social worker
§ 4:381
         ———Legal community
§ 4:382
§ 4:383
         ———Cabdriver with friends in prison
```

```
§ 4:384
        — — — Unemployed
§ 4:385
        — — —Teacher
§ 4:386
        ———Hospital worker
§ 4:387
        ———Postal employee
§ 4:388
        ———Commercial artist
        — — —Librarian
§ 4:389
        — — Nightclub employee
§ 4:390
        ———Low income
§ 4:391
        — — Welfare
§ 4:392
§ 4:393
        — — —Trucker
§ 4:394
        ——Attitude of the venireperson
§ 4:395
        ——Jury service
        --Displeasure about service
§ 4:396
§ 4:397
        — — Sequestration
        ———Sleep
§ 4:398
§ 4:399
        ———Follow law
§ 4:400
        — — Negative body language
§ 4:401
        — — —Lack of attention
        ———Eve contact
§ 4:402
§ 4:403
        — — No rapport
§ 4:404
        — — — Gum
        --Toothpick
§ 4:405
        ———Unable to complete service
§ 4:406
§ 4:407
        — —Intelligence and literacy
§ 4:408
        ———Poor skills
§ 4:409
        — — Lack of understanding issues
§ 4:410
        — — —Incomplete juror information card
§ 4:411
        — — Failure to follow instructions
        -- — Illegibility
§ 4:412
§ 4:413
        — — —Inconsistencies
§ 4:414
        ———Spelling difficulties
§ 4:415
        ——Acquaintance of venireperson
§ 4:416
        — —Communication with opponent
§ 4:417
        --- Health and personal characteristics
        — — — Medication
§ 4:418
§ 4:419
        ———Youth
§ 4:420
        ———Same age as defendant
        — — —Same poor financial circumstances
§ 4:421
§ 4:422
        — — — Objectionable age
        — — Sunglasses
§ 4:423
§ 4:424
        — — — T-shirt
        — — — Ponytail
§ 4:425
§ 4:426
        — — Marital and parental status
        — — — Unmarried
§ 4:427
```

§ 4:428	— — —Unmarried and no children
§ 4:429	— — —Unmarried with child
§ 4:430	— — — Divorced
§ 4:431	— — No children
§ 4:432	——Previous—Litigation experience
§ 4:433	— — Witness
§ 4:434	— — Jury experience
§ 4:435	— — Party
§ 4:436	——Religion
§ 4:437	——Batson challenge
§ 4:438	———Church of Christ
§ 4:439	— — Seventh Day Adventist
§ 4:440	— — Catholic
§ 4:441	——Familiarity with case or subject matter
§ 4:442	— — —Pretrial publicity
§ 4:443	— —Geographic origin
§ 4:444	— — New York
§ 4:445	— — —Haiti
§ 4:446	——Striking prospective juror to get to a better juror
	down the line
-	— — Mistaken strike
§ 4:448	——Appellate review
§ 4:449	·
§ 4:450	—Dismiss array
	—Reinstate improperly struck jurors
§ 4:452	Failure to follow procedure
VI F	ORMS

XI. FORMS

§ 4:453 Form—Confidential jury questionnaire
§ 4:454 —Juror questionnaire
§ 4:455 — Complex cases

CHAPTER 5. OPENING STATEMENTS

I. OPENING STATEMENT

- § 5:1 Significance
- § 5:2 Jury attention
- $\S 5:3$ Credibility
- § 5:4 First chance to persuade
- § 5:5 Pattern for closing argument

II. GENERAL CONSIDERATIONS

§ 5:6 Right to make an opening statement

```
§ 5:7
        Purpose of the opening statement
§ 5:8
        -Not a limit on evidence to be introduced
§ 5:9
§ 5:10
       —General rule
§ 5:11
       -- Party with burden of proof
§ 5:12
       ——Plaintiff
§ 5:13
       — — —Improper realignment
§ 5:14
       ——Adverse party
       — —Intervenors and other parties
§ 5:15
§ 5:16
       ——Several parties
§ 5:17
       —Reservation of opening statement
§ 5:18
       ——Adverse party
       — Intervenor
§ 5:19
§ 5:20
       —Nonjury trials
§ 5:21
       —No rebuttal by plaintiff
§ 5:22
       —Time allowed
§ 5:23
       -Waiver
§ 5:24
       —Multiparty cases
§ 5:25
       —Realignment of parties
§ 5:26
       —Unable to agree
§ 5:27
       —Considerations if the parties can agree
§ 5:28
       ——Strongest theme
§ 5:29
       — —Lawyer's capability
§ 5:30
       ——Incompatible positions
§ 5:31
       ——Splitting opening positions
§ 5:32
       —Considerations when the coparties cannot agree
§ 5:33
       — —Financial interest
       --Burden of proof
§ 5:34
§ 5:35
       ——Avoiding duplication
§ 5:36
       — Order named in the pleadings
§ 5:37
       Defendant's right to reserve its opening statement
§ 5:38
       —Reasons to make the opening statement immediately
         after plaintiff
§ 5:39
        — —Tentative opinions
       — —No rebuttal permitted
§ 5:40
§ 5:41
       —Reasons to reserve the opening statement
§ 5:42
       — — Multiple defendants
       ———Different times
§ 5:43
       --Trial court discretion
§ 5:44
       ———Surprise evidence
§ 5:45
       ———Caveat—Surprise unlikely
§ 5:46
§ 5:47
       —Request appropriate jury admonition
§ 5:48
       Limitations on opening statements
§ 5:49
       —Inadmissible matters
```

§ 5:50 —Unable to prove § 5:51 —Personal knowledge § 5:52 —Cannot detail evidence -Not evidence § 5:53 § 5:54 -Standard of review § 5:55 Recording opening statements § 5:56 —Expedited transcript § 5:57 —Independent notes

III. PREPARATION OF THE OPENING STATEMENT

§ 5:58 Establishing a theme of the case § 5:59 Key facts § 5:60 **Demographics** § 5:61 Impact of time permitted § 5:62 —Short opening § 5:63 —Time ——Small cases § 5:64 § 5:65 ——Complex cases § 5:66 — Problem with length § 5:67 ——Plaintiff's caveat § 5:68 —Several lengths § 5:69 Topics and order of presentation § 5:70 —Topics § 5:71 --- Introduction § 5:72 — Explanation § 5:73 ——Case story ——Support § 5:74 § 5:75 — Problems — —Procedure § 5:76 § 5:77 — —Damages ——Conclusion § 5:78 § 5:79 -Introductions § 5:80 —Summary of case theme § 5:81 — Jury attention span § 5:82 —Dramatic impact § 5:83 — —Chronological order § 5:84 ———Benefits of this approach -- Dramatic evidence before chronology § 5:85 — — Return to chronology § 5:86 § 5:87 — — —Advantage ———Graphics § 5:88 § 5:89 — — Dramatic evidence/flashbacks/convergence approach

```
§ 5:90
         — — —Advantage
         — — Variation
§ 5:91
§ 5:92
         —Identification of players
§ 5:93
         ---Method
§ 5:94
         — — — Advantage of separate explanation
§ 5:95
         ———Keep it simple
         ———Alert jurors to deposition testimony
§ 5:96
         ———Expert witnesses
§ 5:97
§ 5:98
         — — —Adverse witnesses
§ 5:99
         —Case weaknesses
        — — Use by plaintiff
§ 5:100
§ 5:101
        — Use by defendant
        ——Soften negative impact
§ 5:102
§ 5:103
        —Matters of procedure
§ 5:104
         — Burden of proof and evidence
§ 5:105
        — —Interpreters or translators
§ 5:106
        — —Guardians
§ 5:107
        — Jury views
§ 5:108
        --- Experiments and demonstrations
§ 5:109
        —Damages
§ 5:110
        ——Specific amount
§ 5:111
         — —General terms
         - Fact of damage and causal relationship
§ 5:112
§ 5:113
         ——Defendant's opening statement
        —Conclusion
§ 5:114
§ 5:115
        ——Story
        --Relief
§ 5:116
§ 5:117
         ——Appreciation
§ 5:118
         Outline
§ 5:119
        -Purpose
§ 5:120
         — —Organization
        ---Key words
§ 5:121
§ 5:122
        —Index cards
§ 5:123
         ——Each topic
        --Order
§ 5:124
§ 5:125
         ---Boldface
§ 5:126
        Graphic and visual aids
§ 5:127
         —Court permission
§ 5:128
        Rehearsals
§ 5:129
        —Nonlawyers preferable
§ 5:130
        —Jury consultant
§ 5:131
        -Feedback
§ 5:132
        -Inquiries
§ 5:133
        -Videotape
```

IV. PRESENTATION OF THE OPENING STATEMENT

```
§ 5:134
         Demeanor and appearance
§ 5:135
        —Dress
§ 5:136
        — —Anonymity
§ 5:137
         — —Court's power to regulate
        ———Due process implications
§ 5:138
        ———Trial court's displeasure
§ 5:139
§ 5:140
        -Tone of voice
         — -Volume
§ 5:141
        — —Do not shout
§ 5:142
§ 5:143
        — — Modulation
§ 5:144
        — —Tempo
        —Emotional displays
§ 5:145
§ 5:146
        ——Premature emotion
§ 5:147
        — —Balance
§ 5:148
         —Distracting habits
§ 5:149
         § 5:150
        --- Rehearsal
§ 5:151
        —Eye contact with jurors
         ---Reason
§ 5:152
§ 5:153
        — Technique
        —Where to stand
§ 5:154
§ 5:155
        --- Moving around
         ——Avoid intrusion
§ 5:156
         — —Use of lectern
§ 5:157
§ 5:158
        ——Reading the opening statement
        —Never read the opening statement
§ 5:159
        —Reading own pleadings
§ 5:160
§ 5:161
        — Legalese
§ 5:162
        — —Admissions
§ 5:163
         -Reading opponent's pleadings
         Use of graphics
§ 5:164
§ 5:165
        —Prior leave of court
§ 5:166
        —Tactic
§ 5:167
        —Alternative—Blackboard or butcher paper
§ 5:168
        — —Advantages
        ——Advance preparation
§ 5:169
§ 5:170
        ——Strippers
§ 5:171
        —Size considerations
§ 5:172
        —Mechanical considerations
§ 5:173
        -Removing graphic materials
        — —Leaving visual aids
§ 5:174
        ——Taking them down
§ 5:175
```

§ 5:176	Effective advocacy techniques
§ 5:177	—Extent of promises
§ 5:178	—No exaggeration
§ 5:179	—Simplicity
§ 5:180	—Plain English
§ 5:181	——Preferred expressions
§ 5:182	— —Conversational manner
§ 5:183	— —Humor
§ 5:184	— —Equivocation
§ 5:185	———Expressions to avoid
§ 5:186	———Positive expressions
§ 5:187	— Explanations rather than denials
§ 5:188	— Emphasizing key testimony
§ 5:189	——Pauses for emphasis
§ 5:190	— Watching the audience
§ 5:191	——Ignoring distractions
§ 5:192	— — —Handling interruptions
§ 5:193	— — —Handling objections
§ 5:194	——Demeanor of parties and counsel
§ 5:195	— —Getting too personal with jurors

V. IMPROPER OPENING STATEMENT

§ 5:196	Limitations
§ 5:197	Excluded matters
§ 5:198	No good-faith belief in evidentiary support
§ 5:199	
§ 5:200	—Distinction
§ 5:201	— —Rationale
§ 5:202	——Improper matters
§ 5:203	—Trial court discretion
§ 5:204	—Showing of harm
§ 5:205	Irrelevant matters
§ 5:206	—Size and wealth of corporate defendant
§ 5:207	—Settlement offers
§ 5:208	—Subsequent repairs
§ 5:209	—Liability insurance
§ 5:210	Arguing the case
§ 5:211	—Distinction
§ 5:212	Discussion of applicable law
§ 5:213	—Trial court discretion
§ 5:214	— —False impression
§ 5:215	——Misstatement of the law
§ 5:216	—Exception
§ 5:217	Statements of personal belief or opinion

VI. OBJECTING TO IMPROPER OPENING STATEMENTS

§ 5:218 Whether to object—Strategy considerations § 5:219 —Possible advantages § 5:220 ---Prevention — Deterrence § 5:221 § 5:222 — —Interruption § 5:223 —Caveat § 5:224 -Possible disadvantages § 5:225 — —Annovance § 5:226 ——Embarrassing criticism § 5:227 ——Strategic loss § 5:228 Preservation of error § 5:229 —Procedural considerations § 5:230 —Timeliness § 5:231 — Effect of delay § 5:232 -Objection § 5:233 —Request jury admonishment § 5:234 —Request for other curative orders — —Additional instructions § 5:235 — — Mistrial § 5:236 § 5:237 ---Sanctions § 5:238 Responding to objections during the opening statement § 5:239 —Response to the court § 5:240 —Appearance of control § 5:241 — — Withdraw or restate § 5:242 — — Opposing the objection § 5:243 ——Regain momentum § 5:244 ———Objection overruled § 5:245 — — — Objection sustained —Repeated objections § 5:246 § 5:247 — Juror expectation § 5:248 ——Appropriate response § 5:249 — — Unmeritorious objections

VII. REMEDIES FOR MISCONDUCT DURING OPENING STATEMENT

§ 5:250 Jury admonition
§ 5:251 Counsel reprimanded by court
§ 5:252 Counsel cited for contempt
§ 5:253 Mistrial
§ 5:254 New trial

Appeal § 5:255 § 5:256 —Curable jury argument § 5:257 —Incurable jury argument — —Elements § 5:258 § 5:259 —Consider all of record § 5:260 —Timely objection and request for admonishment required — Exception for incurable argument § 5:261 § 5:262 ——Prejudice determined by appellate courts

CHAPTER 6. EVIDENCE: BURDEN OF PROOF, ADMISSIBILITY, PRIVILEGES, AND OBJECTIONS

I. BURDEN AND STANDARDS OF PROOF

§ 6:1 Definition of burden of proof Burden of proof § 6:2 § 6:3 —Allocation of burden § 6:4 —Prima facie standard § 6:5 —Shift of burden § 6:6 —Overcoming a prima facie case § 6:7 —Rebuttable presumption § 6:8 Burden of proof § 6:9 —Who bears burden § 6:10 — — Determined by pleadings § 6:11 — —Knowledge of adverse party § 6:12 — No affirmative evidence required to negate § 6:13 —Burden of persuasion does not shift § 6:14 —Allocation as to every issue § 6:15 —Plaintiff — —Title VII cases § 6:16 § 6:17 —Defendant § 6:18 Standards of proof § 6:19 —Preponderance of the evidence standard § 6:20 —Clear and convincing standard § 6:21 **Presumptions** § 6:22 —Source of presumption § 6:23 —Purpose and effect § 6:24 —Types of presumptions ——Irrebuttable presumptions § 6:25 ——Rebuttable presumptions § 6:26 § 6:27 — — — Absence of contradiction § 6:28 ———Opposing evidence introduced

- § 6:29 Inferences
- § 6:30 —Opposing inferences from same facts
- § 6:31 —Supported by the evidence
- § 6:32 —No inference stacked on inference

II. ADMISSIBILITY OF EVIDENCE

- § 6:33 Applicability of Texas Rules of Evidence
- § 6:34 Construction of Rules of Civil Evidence
- § 6:35 —Goal
- § 6:36 —Use
- § 6:37 Preliminary questions
- § 6:38 —Judge's determination
- § 6:39 —Scope of determination
- § 6:40 ——Qualification as expert witness
- § 6:41 ——Admissibility of evidence
- § 6:42 ——Existence of privilege
- § 6:43 ——Gatekeeping function
- § 6:44 —Standard of review
- § 6:45 —Court not bound by Rules of Evidence
- § 6:46 —Hearing
- § 6:47 —Conditional relevancy
- § 6:48 —Weight and credibility
- § 6:49 Limited admissibility
- § 6:50 —As to certain party
- $\S 6:51$ —As to certain purpose
- $\S~6:52$ —Limited admission procedure
- § 6:53 ——Party must make limited offer
- § 6:54 ——Court restricts scope
- § 6:55 ——Instruction of jury
- § 6:56 —Waiver
- § 6:57 ——Evidence is excluded
- § 6:58 ——Evidence is admitted without limiting instruction
- § 6:59 Rule of optional completeness
- § 6:60 —Definition
- § 6:61 —Scope of rule
- § 6:62 —Basis for rule
- § 6:63 —Video deposition editing
- § 6:64 —Opponent's remedy
- § 6:65 —Another document
- § 6:66 Relevancy
- § 6:67 —Definition of relevancy
- § 6:68 ——Probative value
- § 6:69 ——Definition of probative

```
§ 6:70
         — Fact of consequence
§ 6:71
         --Ultimate issue
         ———Ability to rebut
§ 6:72
         ———Collateral matters
§ 6:73
§ 6:74
         --- Relevant evidence under Rule 401
         ———Similar statements to others
§ 6:75
§ 6:76
         — — Duties of employment
§ 6:77
         — Evidence not relevant under Rule 401
         ———Unrelated research
§ 6:78
§ 6:79
         — — No evidence of negligence
§ 6:80
         —Distinguish materiality
§ 6:81
         —Determination of relevance
         --- Abuse of discretion
§ 6:82
§ 6:83
         —General rule for relevant evidence
§ 6:84
         —General rule for irrelevant evidence
§ 6:85
         —Relevant evidence under Rule 402—Example—
          Circumstances of meeting
§ 6:86
         -Irrelevant evidence under Rule 402-Example-
          Violation of bar rules
§ 6:87
         —Special rules governing admission of relevant
          evidence
§ 6:88
         — — Unfair prejudice
         ———Trial court discretion
§ 6:89
§ 6:90
         ———Balancing test
         ———Test not adopted by all courts
§ 6:91
         ——Confusing the issues
§ 6:92
§ 6:93
         ——Misleading the jury
§ 6:94
         — — —Improper basis for verdict
§ 6:95
         — — Undue delay and cumulative evidence—Rule 402
§ 6:96
         ——Application of Rule 403
§ 6:97
         — — — Psychological condition of plaintiff
         — — Prior accidents
§ 6:98
§ 6:99
         ————Products liability cases
         ———Drug test results
§ 6:100
         — — — Alcohol use and DWI arrest
§ 6:101
         ———Previous sexual assault
§ 6:102
§ 6:103
         — — Sexual abuse of a child
         ———Photographs
§ 6:104
         ————Photographs of child
§ 6:105
         — — —Insurance
§ 6:106
         ———Loss of evidence used by expert
§ 6:107
§ 6:108
         Character evidence
§ 6:109
         -Agreements
§ 6:110
         —Exceptions
§ 6:111
         — — Moral turpitude
```

```
§ 6:112
         — —Definition
§ 6:113

    — Victim of assaultive conduct

§ 6:114
         — —Impeaching and rehabilitating witnesses
§ 6:115
         — —General rule
§ 6:116
         -- Character and conduct of witness
§ 6:117
         ——Specific acts
§ 6:118
         — —Conviction of crime
§ 6:119
         — —Time limit
         ——Pardon, probation, and annulment
§ 6:120
§ 6:121
         — Juvenile adjudications
§ 6:122
         ——Pending appeal
§ 6:123
         ---Notice
         -Evidence of other wrongs or acts
§ 6:124
§ 6:125
         — Foundation for bad act
         — —Intent/Malice
§ 6:126
§ 6:127
         ---State of mind
§ 6:128
         — — Motive
         --- Evidence of family violence
§ 6:129
§ 6:130
         — —Admissibility test
         —Methods of proving character
§ 6:131
§ 6:132
         — —Inadmissible evidence on character
         ——Specific instances of conduct
§ 6:133
§ 6:134
         Evidence of habit or routine practice
§ 6:135
         —Distinguished from character
         -Admissible evidence
§ 6:136
§ 6:137
         — —Drug use
        — — Termination following compensation claims
§ 6:138
§ 6:139
         ——Rare infection
         — —Denial of claims
§ 6:140
§ 6:141
         — Evidence of assault
         — Evidence of custom
§ 6:142
§ 6:143
         ——Similar occurrences
§ 6:144
         —Inadmissible evidence
§ 6:145
         —Only two instances
         — —Three low-speed accidents
§ 6:146
§ 6:147
         — —Inattentiveness
§ 6:148
         Evidence of subsequent remedial measures
§ 6:149
         -Rationale of rule
§ 6:150
         —Must be offered against a party
§ 6:151
         ——Measures taken by third parties
§ 6:152
         -Exceptions: Admissible under Rule 407
§ 6:153
         ——Another purpose
§ 6:154
         — — Other purpose must be controverted
        ———Ownership and control
§ 6:155
```

```
———Feasibility of precautionary measures
§ 6:156
         ———To show accident scene
§ 6:157
§ 6:158
         ——Impeachment
§ 6:159
         ———Instruction to employee
§ 6:160
         ——Strict liability
         ———Defective manufacture
§ 6:161
§ 6:162
         —Inadmissible evidence under Rule 407
§ 6:163
         — —Negligence
         — — Dangerous condition
§ 6:164
§ 6:165
         —Notification of defect
§ 6:166
         — —Defect and failure to warn
§ 6:167
         Compromise and offers to compromise
§ 6:168
         -Exception
§ 6:169
         —Offered for other purposes
§ 6:170
         —Trial court discretion
§ 6:171
         —Classification as settlement offer
§ 6:172
         -Mary Carter agreements
§ 6:173
         —Bias, prejudice, and interest
§ 6:174
         —Separate trials
         Evidence of payment of medical and similar expenses
§ 6:175
§ 6:176
         -Exception
§ 6:177
         Pleas, plea discussions, and related statements
§ 6:178
         -Withdrawn plea
§ 6:179
         -Nolo contendere
§ 6:180
         —Statement in criminal proceedings
§ 6:181
         —Statement in plea discussions
§ 6:182
         —Exception
         -Nolo contendere admission
§ 6:183
§ 6:184
         —Traffic violation
§ 6:185
         Liability insurance
§ 6:186
         —Exception
§ 6:187
         —Error analysis
§ 6:188
         -No per se error
§ 6:189
         —Opening the door
§ 6:190
         —Parental immunity doctrine
§ 6:191
         —Property insurance
         -Proof of control
§ 6:192
§ 6:193
         —Employee status
§ 6:194
         —Suggestion of insurance
§ 6:195
         Statutory exceptions to the Rules of Evidence
§ 6:196
         -Hearsay statement of certain abuse victims
§ 6:197
         —Hearsay statement of child abuse victim—
          Conditions
§ 6:198
         — Notice and hearing requirements
```

§ 6:199 —Arbitration

III. PRIVILEGES

111. 1	
§ 6:200	Definition
§ 6:201	Burden of proof
§ 6:202	Privileges recognized only as provided
§ 6:203	—Coverage
§ 6:204	—Privileges provided by rules
§ 6:205	— Evidentiary privileges
§ 6:206	——Discovery privileges
§ 6:207	— — —Attorney work product
§ 6:208	———Consulting, nontestifying expert
§ 6:209	—Privileges provided by constitution
§ 6:210	— — Privilege against self-incrimination
§ 6:211	— —Journalist's privilege
§ 6:212	— — — Holding privilege exists
§ 6:213	— — Free Flow of Information Act
§ 6:214	—Privileges granted by statute
§ 6:215	——Banking department records
§ 6:216	———Disclosure by banking department prohibited
§ 6:217	— — — Disclosures to finance commission
§ 6:218	———Disclosures to other agencies
§ 6:219	— — Other disclosures not allowed
§ 6:220	— — — Discovery of confidential financial information
	limited pursuant to Finance Code provisions
§ 6:221	— — —Investigative information
§ 6:222	———Employment information
§ 6:223	———Shareholder inspection rights
§ 6:224	——Information possessed, received, or gathered by
	the Texas Board of Medical Examiners
§ 6:225	——Traffic accident reports
§ 6:226	——Reports regarding court-ordered, divorce-related
	marriage counseling and reports regarding child
\$ C.007	abuse — —Medical committee
§ 6:227	
§ 6:228	— — Medical peer review
§ 6:229	— — Medical committee and medical peer review privileges together—Construing together
§ 6:230	— — Medical committee and medical privileges peer
g 0.250	review—Regular course of business
§ 6:231	— — Exceptions
§ 6:232	——Nursing peer review
§ 6:233	——Nursing feel review ——Nursing facility quality assessment and
გ 0.200	assurance committee

211020 01	Oliviania
§ 6:234	——Ongoing criminal investigation
§ 6:235	— —Attorney general's corporate investigation of
	corporation
§ 6:236	——Communications between citizens and elected
° C 007	officials
§ 6:237	—Party must plead specific source of privilege
§ 6:238	—Trial court may not create privileges
§ 6:239	Waiver of privilege
§ 6:240	—Manner of waiver
§ 6:241	— — Disclosure or consent
§ 6:242	— — Disclosure privileged
§ 6:243	——Calling witness
§ 6:244	 —Nature of act purporting to waive privilege — —Inadvertent disclosure
§ 6:245 § 6:246	— — Involuntary disclosure
§ 6:246 § 6:247	——Involuntary disclosure —Offensive use
§ 6.247 § 6:248	Procedural safeguards
§ 6:249	-Wrongfully compelled disclosure
§ 6:249 § 6:250	— —Erroneous court order
§ 6:251	—No opportunity to claim
§ 6:252	Comment or inference from exercise of privilege
§ 6:253	—Comment or inference not permitted
§ 6:254	— Exception to general presumption
§ 6:255	—Outside jury's knowledge
§ 6:256	——Only to the extent practicable
§ 6:257	—Exception for privilege against self-incrimination
§ 6:258	Privilege against self-incrimination
§ 6:259	—Prevention of involuntary self-incrimination
§ 6:260	——Physical compulsion
§ 6:261	— — Mental compulsion
§ 6:262	—Who may invoke privilege
§ 6:263	—Civil proceedings distinguished
§ 6:264	—Negative inference permitted
§ 6:265	—Not absolute
§ 6:266	—Waiver
§ 6:267	— —What constitutes waiver
§ 6:268	— —What does not constitute waiver
§ 6:269	—When the privilege must be raised
§ 6:270	—Immunity
§ 6:271	—Evidentiary limitation
§ 6:272	—Offensive use compared
§ 6:273	— Effect of offensive use
§ 6:274	——Severity of the sanctions
§ 6:275	—Unavailability of witness
§ 6:276	—Spousal privilege

TEXAS PRACTICE GUIDE: CIVIL TRIAL

```
§ 6:277
         -Exception
§ 6:278
         Lawyer-client privilege
§ 6:279
        —Definitions
        ——Client
§ 6:280
§ 6:281
        — Trustee
§ 6:282
        — — Nonprofit corporation
§ 6:283
         -- Insured and insurance carrier
§ 6:284
         — Representative of client
        --Definition
§ 6:285
§ 6:286
        ———Subject matter test
         ——Burden of proof
§ 6:287
§ 6:288
        — —Lawyer
        — —Representative of lawyer
§ 6:289
§ 6:290
        — — — Assistant
        — — —Accountant
§ 6:291
§ 6:292
         — — — Psychiatrist
        --Proof
§ 6:293
        — — Private investigator
§ 6:294
§ 6:295
         — —Confidential communication
§ 6:296
        ———Test for determining
         ———Burden of proof
§ 6:297
§ 6:298
         ———Scope of communication covered
         ———Entire document covered
§ 6:299
§ 6:300
        —Scope of privilege
         - Participants in the communication
§ 6:301
§ 6:302
         — — Joint defense privilege
§ 6:303
        — — — Common interest privilege
§ 6:304
         — —Lawyer-client relationship required
§ 6:305
         — —Lawyer and representative
§ 6:306
         —Who may claim privilege
§ 6:307
        - —Claimants
        — — Not in lawyer's individual capacity
§ 6:308
§ 6:309
        ———On behalf of client
§ 6:310
        -Exceptions to lawyer-client privilege
         ---Furtherance of crime or fraud
§ 6:311
§ 6:312
        — — Prima facie proof required
         — — —Intent
§ 6:313
§ 6:314
        — Claimants through same deceased client
§ 6:315
         — Breach of duty by lawyer or client
§ 6:316
         — — Document attested by a lawyer
§ 6:317
         — Joint clients
§ 6:318
        -Waiver through offensive use
        — —Factors to determine waiver
§ 6:319
        — — — Affirmative relief
§ 6:320
```

```
— — Outcome determinative
§ 6:321
§ 6:322
         — — — Alternative sources
§ 6:323
         Husband-wife privilege
§ 6:324
         —Definition of confidential communication
§ 6:325
         ——Acts are not privileged
§ 6:326
         — — Distinction between civil and criminal cases
§ 6:327
         —Definition of marriage
§ 6:328
         ——Ceremonial marriage
§ 6:329
         — —Divorce
§ 6:330
         — —Common-law marriage
§ 6:331
         — — — Declaration
§ 6:332
         — — —Agreement
§ 6:333
         —Scope of privilege
         — Not restricted to parties
§ 6:334
         —Who may claim the privilege
§ 6:335
§ 6:336
         — Privilege not to testify in criminal case
§ 6:337
         —Exceptions to the privilege
§ 6:338
         - Furtherance of crime or fraud
§ 6:339
         ——Proceedings between spouses
§ 6:340
         ——Commitment or other proceeding
§ 6:341
         ——Proceeding to establish competence
§ 6:342
         ---Proceeding regarding the abuse or neglect of a
          child
§ 6:343
         Communications to clergy
§ 6:344
         —Purpose of privilege
§ 6:345
         —Definition of clergyman
§ 6:346
         — —Employer not controlling
§ 6:347
         —Definition of confidential communication
§ 6:348
         ——Clergyman must be acting in capacity as
          spiritual advisor
§ 6:349
         — — Possible conflict in interpretation of privilege
§ 6:350
         —When the privilege attaches
         -Factors to consider
§ 6:351
         -Confidential nature not required
§ 6:352
§ 6:353
         —Communication before third party
§ 6:354
         —Determination not clergy's
§ 6:355
         —Identity of communicant
§ 6:356
         —No offensive use doctrine
§ 6:357
         —Disclosure permitted
§ 6:358
         — Proceedings involving child abuse or neglect
§ 6:359
         ——Clergyman is character witness
         Political vote
§ 6:360
         —Self-incrimination
§ 6:361
         Trade secrets
§ 6:362
§ 6:363
         —Definition of trade secret
```

```
§ 6:364
         ---Patents not included
         —No fraud or injustice
§ 6:365
§ 6:366
         —Disclosure
§ 6:367
         —Qualified privilege
§ 6:368
         —Competing interests—Balancing test
§ 6:369
         -Standard of review
§ 6:370
         -Burden of proof
§ 6:371
         — Expert testimony
         --- Affidavits
§ 6:372
§ 6:373
         — —In camera review
         — —Factors to consider
§ 6:374
§ 6:375
         —Shift of burden
§ 6:376
         — More than mere relevancy required
§ 6:377
         — —Injustice requirement
§ 6:378
         Identity of informer
§ 6:379
         —Only identity
§ 6:380
         -Predicate
§ 6:381
         — Form of proof
§ 6:382
         ——In camera inspection
§ 6:383
         —Who may claim the privilege
§ 6:384
         -Exceptions
         — — Voluntary disclosure; informer as witness
§ 6:385
§ 6:386
         — — — Voluntary disclosure
§ 6:387
         ———Informer as witness
§ 6:388
         ——Testimony on merits
§ 6:389
         — — — Plausible showing of need
§ 6:390
         ——Burden of proof
§ 6:391
         ———Purpose of review
§ 6:392
         — — Protective order
§ 6:393
         — — Legality of obtaining evidence
§ 6:394
         Physician-patient privilege
§ 6:395
         —Definition of patient
§ 6:396
         — —Nature of relationship
§ 6:397
         ——Capacity of patient
         —Definition of physician
§ 6:398
§ 6:399
         —Definition of confidential communication
§ 6:400
         —Scope of privilege
§ 6:401
         — —Confidential communications
§ 6:402
         ——Physician's records
§ 6:403
         — — Not all records
§ 6:404
         ——Pleading and proof
§ 6:405
         — Retroactivity
§ 6:406
         —Who may claim privilege
§ 6:407
         ——Patient's estate
```

```
——Attorney not representing witness
§ 6:409
         — —Only on patient's behalf
§ 6:410
        ———Presumption of authority
         ———Own purposes
§ 6:411
§ 6:412
         -Exceptions to privilege
§ 6:413
         --- Relevant to claim or defense
§ 6:414
         — Patient's condition at issue—At issue in
          pleadings
§ 6:415
         — — —In camera inspection of records
         --- Ultimate issue
§ 6:416
§ 6:417
         ———Who may rely
§ 6:418
         ——Patient's consent
         — —Collection for medical services rendered
§ 6:419
§ 6:420
         ——Disciplinary investigation
§ 6:421
         ——Commitment proceeding
         ——Elderly abuse proceeding
§ 6:422
§ 6:423
         —Offensive use doctrine not applicable
         —Confidential communications
§ 6:424
§ 6:425
         — Exceptions in court and administrative
          proceedings
§ 6:426
         ——Exceptions in other proceedings
§ 6:427
         — —Cause of action for breach
§ 6:428
         Confidentiality of mental health information
         —Definition of professional
§ 6:429
§ 6:430
         —Definition of patient
§ 6:431
         —Definition of representative of patient
§ 6:432
         —Definition of confidential communication
§ 6:433
         —Purpose of the privilege
§ 6:434
         —Scope of the privilege
§ 6:435
         — —Communication
         --Records
§ 6:436
§ 6:437
         —Third-party receipt of confidential communications
         —Who may claim privilege
§ 6:438
§ 6:439
         — — Patient or representative
         ---Professional
§ 6:440
§ 6:441
         -Must plead and prove privilege
§ 6:442
         —Exceptions to the privilege
§ 6:443
         ——Proceedings by patient against professional
         ———At issue from pleading
§ 6:444
§ 6:445
         — —Written waiver
         ——Collection proceedings
§ 6:446
§ 6:447
         — — Certain statements made during court-ordered
          examinations
         ——Party relies on condition for defense or claim
§ 6:448
         ———Either party
§ 6:449
```

§ 6:450 — — Patient need not be a party
§ 6:451 — — Not impeachment
§ 6:452 — — Suits affecting parent-child relationship
§ 6:453 — — Applies to nonparties
§ 6:454 — — Relevant documents
§ 6:455 — Elderly abuse proceedings
§ 6:456 — Interaction between Rule 509 and Rule 510

IV. EXCLUSION OF EVIDENCE

- § 6:457 Admitted without objection
- § 6:458 Support of finding of fact
- § 6:459 —Incompetent evidence
- § 6:460 Harmless error
- § 6:461 Pretrial devices for the exclusion of evidence
- § 6:462 —Pleadings
- § 6:463 ——Avoid surprise
- § 6:464 ——Fair notice
- § 6:465 —Special exceptions
- § 6:466 ——Plead more specifically
- § 6:467 ——Cause of action
- § 6:468 ——Opportunity to amend
- § 6:469 ——Extrinsic evidence
- § 6:470 Object at trial
- § 6:471 —Motion for summary judgment
- § 6:472 ——No evidence
- § 6:473 —Stipulations of liability
- § 6:474 ——Definition
- § 6:475 —Request for admission
- § 6:476 ——Conclusively established
- § 6:477 ——No further proof
- § 6:478 —Motion in limine
- § 6:479 ——Traditional motion in limine
- § 6:480 ———Motion granted
- § 6:481 ———Motion denied
- § 6:482 ——Actual ruling
- § 6:483 ———Evidence admitted
- § 6:484 ———Evidence excluded
- § 6:485 Trial devices for exclusion of evidence
- § 6:486 —Objections
- § 6:487 ——Waiver
- § 6:488 ——Specific grounds
- § 6:489 ——Limited purpose
- § 6:490 ——Same objection on appeal
- § 6:491 ——Time for objections

```
§ 6:492
         ———When offered
§ 6:493
         ———Before answer
        --If too late
§ 6:494
§ 6:495
        —Preserving error for appeal
§ 6:496
        — —Offer of proof
§ 6:497
        — —Bill of exception
§ 6:498
        — Types of objections
§ 6:499
         — — —General objections
§ 6:500
        ———Specific objections
§ 6:501
        — — — Appellate requirements
§ 6:502
         ———Proper overruling
§ 6:503
        ———Improperly sustained
§ 6:504
        — Repeated objections
§ 6:505
        — — Duty to get a ruling
        — — Meeting error with error
§ 6:506
         -Mistrial
§ 6:507
§ 6:508
        —Motion for limiting instruction
§ 6:509
        ——Purpose of motion
§ 6:510
        ———Evidence offered for more than one purpose
§ 6:511
        —Formal bill of exception
§ 6:512
        -Form and specificity
        --- Method of showing evidence
§ 6:513
        — Procedure
§ 6:514
§ 6:515
        ———Presentation to the trial court
§ 6:516
        ———When parties agree
§ 6:517
        ———When parties disagree
        ———Filing of original bill
§ 6:518
§ 6:519
         — — Determination of truth
§ 6:520
        ———Conflict
        ———Time to file
§ 6:521
§ 6:522
        ———Inclusion in record
        — — —Informal bill of exceptions
§ 6:523
         — — — Method
§ 6:524
         — — Purpose
§ 6:525
```

V. FORMS

§ 6:526 Trial devices for exclusion of evidence—Formal bill of exception

CHAPTER 7. WITNESSES AND TESTIMONY

I. GENERAL RULES FOR TAKING TESTIMONY

§ 7:1 Governing rules

§ 7:2 Form of taking testimony § 7:3 —Primary responsibility of parties § 7:4 —Control by court § 7:5 — —Reasonable control § 7:6 ——Ascertainment of truth § 7:7 § 7:8 ——Narrative testimony in nonjury trials § 7:9 — Protect witness from harassment or undue embarrassment —Verbatim record § 7:10 § 7:11 Use of interpreters § 7:12 —Authority to appoint interpreter in specific instances § 7:13 —Must be qualified § 7:14 ——Interpreter certification § 7:15 —Border county interpreters —Oath or affirmation to interpret accurately § 7:16 § 7:17 Calling and interrogation of witness by judge § 7:18 —Policy of restraint § 7:19 — —Consent of all parties—Objections § 7:20 —Sequestration of witnesses § 7:21 ——Purpose of the rule § 7:22 ——Request by party § 7:23 ---Persons who may not be excluded § 7:24 — Expert witnesses § 7:25 — — Violations of the rule ——Sanctions for violations § 7:26

II. PREREQUISITES TO TESTIFYING

——Appellate review

§ 7:28 Restrictions § 7:29 Competency § 7:30 —All witnesses generally competent § 7:31 — Exceptions ———Insane persons § 7:32 § 7:33 — — Children § 7:34 ——Inability to appreciate truth or falsity § 7:35 ———Burden of proof § 7:36 —Competency of specific persons — — Disqualification of judge as witness § 7:37 § 7:38 — Lawyer as witness § 7:39 — — Limitations on lawyer being both advocate and witness ———Exceptions to general rule of disqualification § 7:40 ———Effect of other lawyer in firm as witness § 7:41

§ 7:27

TABLE OF CONTENTS

§	7:42	——Competency of juror as witness
-	7:43	— — Prohibition at trial
Š	7:44	——Impeachment of verdict
Š	7:45	——Person having transaction with decedent—Dead
		Man's statute
§	7:46	— — —Narrow construction
§	7:47	— — —Corroboration of oral testimony required
_	7:48	— — Witness' interest not a bar
~	7:49	— — —Instruction to jury
~	7:50	—Procedure to challenge competency
~	7:51	— — Object to witness' qualifications
_	7:52	——Preliminary hearing on ability to testify
_	7:53	Witness must possess personal knowledge
_	7:54	—Experts
Ş	7:55	—Demonstration of personal knowledge as prerequisite
e	7.50	to testimony
	7:56	— —By witness
_	7:57	— — Other evidence
-	7:58	Necessity of oath or affirmation
-	7:59	—Time for taking —Form of oath
	7:60 7:61	—Form of oath —Effect of religious belief
8	7.01	—Effect of rengious benef
Ι	II.	DIRECT EXAMINATION
8	7:62	Party offering witness conducts direct examination
-	7:63	Purpose and objectives of direct examination
-	7:64	Preparation for direct examination—A checklist
-	7:65	Conducting the direct examination
	7:66	—Use of leading questions
	7:67	——Defined
§	7:68	 —Usually prohibited during direct examination
§	7:69	——Exceptions to prohibition
§	7:70	— — Hostile witness
§	7.71	
_	7:71	— — — Multiparty or multi-issue litigation
§	7:71 7:72	— — — Multiparty or multi-issue litigation — — — Adverse party witness
_		
§	7:72	— — —Adverse party witness
§ §	7:72 7:73	———Adverse party witness ———Person identified with adverse party
§ § §	7:72 7:73 7:74	 — — Adverse party witness — — Person identified with adverse party — — — Harmless error
§ § §	7:72 7:73 7:74 7:75	 — — Adverse party witness — — Person identified with adverse party — — — Harmless error — Procedure for direct examination
\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	7:72 7:73 7:74 7:75 7:76	 — — — Adverse party witness — — — Person identified with adverse party — — — Harmless error — Procedure for direct examination — Conducting the direct examination
\$ \$ \$ \$ \$ \$	7:72 7:73 7:74 7:75 7:76 7:77	 — — — Adverse party witness — — — Person identified with adverse party — — — Harmless error — Procedure for direct examination — Conducting the direct examination — Call witness
888888	7:72 7:73 7:74 7:75 7:76 7:77 7:78	 — — — Adverse party witness — — — Person identified with adverse party — — — Harmless error — Procedure for direct examination — Conducting the direct examination — — Call witness — — Oath or affirmation
8888888	7:72 7:73 7:74 7:75 7:76 7:77 7:78 7:79	 — — Adverse party witness — — Person identified with adverse party — — Harmless error — Procedure for direct examination — Conducting the direct examination — Call witness — Oath or affirmation — Preliminary questions

```
§ 7:82
         ———Competency of witness
         ————Bolstering not allowed
§ 7:83
§ 7:84
         — —Testimony on subject matter
§ 7:85
         ———Logical progression
§ 7:86
         ———Simple questions
         ———Witness' response
§ 7:87
§ 7:88
         ———Ensure question answered
§ 7:89
         — — Ensure complete answer
         — —Use of exhibits
§ 7:90
§ 7:91
         ———Permission to approach witness
         ———Distribute copies of exhibit
§ 7:92
§ 7:93
         — — Foundation for admission of exhibit
         — — Offer exhibit into evidence
§ 7:94
§ 7:95
         Dealing with objections
§ 7:96
         —Avoid improper reaction
§ 7:97
         —Anticipate objections in advance of trial
§ 7:98
         —Request bench conference
§ 7:99
         —Request basis for objection
§ 7:100
         Refreshing witness recollection
§ 7:101
         —Time for refreshing memory
§ 7:102
         —Production of writing used prior to testifying
§ 7:103
         ——Sanction for failure to produce
§ 7:104
         — — Use of writing by adverse party
§ 7:105
         ——Inspection by adverse party
§ 7:106
         — — Attorney-client privilege
         — Excise of unrelated portions in camera
§ 7:107
§ 7:108
         — —Cross-examination
         --- Introduction into evidence
§ 7:109
§ 7:110
         -Procedure
§ 7:111
         — —Give writing to witness
§ 7:112
         ——Identify writing
§ 7:113
         --- Memory refreshed
§ 7:114
         — Testify without aid of writing
§ 7:115
         Recorded recollection
§ 7:116
         —Distinguished from refreshing recollection
§ 7:117
         —Exception to hearsay rule
         -Requirements
§ 7:118
§ 7:119
         --- Concerns matter of which witness once had
          knowledge
         — — Witness recollection insufficient to testify
§ 7:120
§ 7:121
         -- Made at the time when fact occurred
§ 7:122
         — — Made or adopted by witness
§ 7:123
         —Admission of contents of writing
§ 7:124
         ——Portion not remembered read into evidence
```

§ 7:125 — May not be introduced into evidence as exhibit over objection
§ 7:126 — Disclosure of statements to opposing counsel
§ 7:127 — Procedure
§ 7:128 — Witness identifies writing
§ 7:129 — Move to admit
§ 7:130 — Read writing

IV. TESTIMONY THROUGH DEPOSITIONS AND OTHER PRETRIAL MATERIALS

- § 7:131 When utilized
- § 7:132 Use of depositions at trial
- § 7:133 —Form of deposition
- $\ \ \, \$\ 7{:}134\ \ \ --$ Depositions taken in another proceeding must be otherwise admissible
- § 7:135 ———Parties joined after the deposition was taken
- § 7:136 — Unavailability of deponent not a requirement
- § 7:137 ——Procedure for reading deposition into the record
- § 7:138 ———Presentation
- § 7:139 ———Theatrics
- § 7:140 —Motions to suppress
- § 7:141 ——Time and manner of making motion
- § 7:142 ——Waiver
- § 7:143 Answers to interrogatories
- § 7:144 Admissions
- § 7:145 —In pleadings or testimony or in response to request for admission
- § 7:146 Judicial admissions and quasi-admissions
- § 7:147 —Other types of admissions are exceptions to hearsay
- § 7:148 —Conclusive effect—Multiple parties
- § 7:149 —Withdrawal or amendment
- § 7:150 ——Good cause
- § 7:151 —Limitation of use
- § 7:152 —Objection to controverting evidence

V. CROSS-EXAMINATION

- § 7:153 Definition
- § 7:154 Right to cross-examine
- § 7:155 —Purpose
- § 7:156 —Court's discretion
- § 7:157 ——Court may not unduly deny or restrict
- § 7:158 —Whose right
- § 7:159 —Effect of witness' failure or inability to answer

```
§ 7:160
         ——Claim of privilege
         --Contempt
§ 7:161
§ 7:162
         —Timing of cross-examination
§ 7:163
         — —Court's discretion—To postpone
§ 7:164
         ———To interrupt
         Purpose and objectives of cross-examination
§ 7:165
§ 7:166
         —Preliminary matters
§ 7:167
         ——Refreshing memory
         ——Ignorant or illiterate persons, children, elderly
§ 7:168
§ 7:169
         Scope of cross-examination
§ 7:170
         —Collateral matter
§ 7:171
         ——Relevancy limitation
         ——Court's discretion to expand scope
§ 7:172
§ 7:173
         — —Character witness
         ——Expert witness
§ 7:174
§ 7:175
         ——Scope on cross-examination
         ———Scope of cross-examination where both parties
§ 7:176
          designate same expert witness
§ 7:177
         ——Subject matter of direct testimony
§ 7:178
         ——Credibility of witness
§ 7:179
         ——Subject matter of cross-examination
§ 7:180
         Conducting the cross-examination
§ 7:181
         —Limit number of questions
§ 7:182
         —Assert control over witness
         —Project confidence
§ 7:183
§ 7:184
         Form of question
§ 7:185
         -Leading questions generally acceptable
§ 7:186
         —Not absolute right
         — —Trial court discretion
§ 7:187
§ 7:188
         — Reversible error
§ 7:189
         —Improper questions
§ 7:190
         — — Argumentative
§ 7:191
         — —Assumes facts not in evidence
§ 7:192
         — —Misstates evidence
         — —Cumulative
§ 7:193
§ 7:194
         ——Harassing
§ 7:195
         — — Unduly prejudicial
§ 7:196
         -Additional limitations on form of the question
§ 7:197
         — No interrupting witness' answer
§ 7:198
         — No repeating witness' answer
§ 7:199
         — —No familiarity with witness
§ 7:200
         ——Short, clear, simple questions
§ 7:201
         — Know probable answer to question
§ 7:202
         Witness' answer to question
```

```
§ 7:203
         -Listen to answer
§ 7:204
         —Move to strike if nonresponsive
§ 7:205
         —Request judge to direct witness to answer question
§ 7:206
         Effective cross-examination strategy
§ 7:207
         -Elicit favorable testimony
         — General plan must be formulated prior to trial
§ 7:208
§ 7:209
         — Repeat favorable parts of direct testimony
§ 7:210
         — Exhibits
         --- Admissions
§ 7:211
§ 7:212
         —Impeachment
§ 7:213
         — —Effect
§ 7:214
         — — Cross-examination versus independent evidence
§ 7:215
         — —No impeachment on collateral matters
§ 7:216
         —Challenging witness' perception, memory,
          competency
         —Discredit unfavorable testimony
§ 7:217
§ 7:218
         -Does not require destruction of witness
§ 7:219
         —Testimony not accurate or truthful
§ 7:220
         —Challenging bias
§ 7:221
         — — Different forms
§ 7:222
         — — — Motive
§ 7:223
         — — Prejudice
         --Interest
§ 7:224
§ 7:225
         --Compensation
§ 7:226
         — —Court's discretion
§ 7:227
         —Methods for discrediting
§ 7:228
         ——Attack perception
§ 7:229
         ———Ability to observe
         ——Perception not complete
§ 7:230
§ 7:231
         — Attack conduct as inconsistent with testimony
§ 7:232
         — — Prior inconsistent statement
§ 7:233
         ———When not hearsay
§ 7:234
         ——-Use
§ 7:235
         ———What constitutes prior statement
         ———Statement shown to witness
§ 7:236
§ 7:237
         —Other grounds of impeachment
§ 7:238
         — —Felony conviction
§ 7:239
         — — Untruthful character
§ 7:240
         — —Implausible testimony
§ 7:241
         — —Testimony contrary to facts
§ 7:242
         Preparing for cross-examination
§ 7:243
         -Witness folder
§ 7:244
         -Kev issues
§ 7:245
         —Script key questions
```

§ 7:246 -Outline —Organize strategically § 7:247 § 7:248 -Rehearse § 7:249 —A checklist § 7:250 Procedural considerations § 7:251 —Where cross-examiner stands § 7:252 —Sitting or standing § 7:253 —Demeanor or style § 7:254 —Personal style § 7:255 Cross-examining a problem witness § 7:256 —Evasive witness —Argumentative witness § 7:257 —Forgetful witness § 7:258 § 7:259 —Child witness —Elderly witness § 7:260 § 7:261 —Non-English-speaking witness § 7:262 —Hearing impaired § 7:263 —Expert witness § 7:264 Permitting jurors to question witnesses

VI. REDIRECT AND RECROSS-EXAMINATION

§ 7:265 Governing rules § 7:266 When permitted § 7:267 Purpose § 7:268 —Rehabilitate witness § 7:269 —Reimpeach witness -Explore issues-Not fully explained § 7:270 § 7:271 ——Opened by opponent § 7:272 Scope of examination § 7:273 -Redirect § 7:274 -Recross

VII. IMPEACHING AND REHABILITATING A WITNESS

§ 7:275 When credibility is impeached § 7:276 Who may impeach witness § 7:277 —Any party § 7:278 — Type of evidence § 7:279 ——Party calling witness § 7:280 —Ethical consideration § 7:281 Use of prior inconsistent statement —Exception to hearsay rule § 7:282 § 7:283 —Examining witness concerning prior statement

TABLE OF CONTENTS

TABLE OF CONTENTS		
§ 7:284	—Disclosure of statement	
§ 7:285	—Extrinsic evidence	
§ 7:286	—Opportunity to explain or deny statement	
§ 7:287	—Opportunity for opposing counsel to interrogate on statement	
§ 7:288	What constitutes bias, interest, or motive	
§ 7:289	Attacking credibility by character evidence—	
Ü	Reputation for veracity	
§ 7:290	—Form of evidence	
§ 7:291	——Opinion and reputation	
§ 7:292	——Specific instances of conduct	
§ 7:293	—Limitations	
§ 7:294	— —Evidence relating only to veracity	
§ 7:295	——Character traits cannot be proven by specific	
	conduct	
§ 7:296	— —Exception—Criminal conviction	
§ 7:297	Evidence of conviction of crime	
§ 7:298	—Evidence of date of conviction and type of crime	
§ 7:299	——Arrest distinguished	
§ 7:300	—Details not admissible	
§ 7:301	—Types of crimes	
§ 7:302	— —Felonies	
§ 7:303	— — Moral turpitude	
§ 7:304	——Question of law	
§ 7:305	— — —General categories of moral turpitude crimes	
§ 7:306	— Juvenile adjudications	
§ 7:307	-Effect of pardon, annulment, certificate of	
	rehabilitation	
§ 7:308	—Effect of pending appeal	
§ 7:309	—Method of proving conviction	
§ 7:310	— —Examination	
§ 7:311	——Production of record	
§ 7:312	Notice	
§ 7:313	—Exclusion of evidence; remoteness	
§ 7:314	Religious beliefs or opinions irrelevant	
§ 7:315	Rehabilitating witness' credibility	
§ 7:316	—Prior consistent statement	
§ 7:317	——Exception to hearsay rule	
§ 7:318	— — Charge of fabrication or improper influence or	
	motive	
§ 7:319	—Truthful character	
§ 7:320	——Requires attack on character	
§ 7:321	———Opinion and reputation	
§ 7:322	———Specific instances of conduct	

CHAPTER 8. OPINION AND EXPERT TESTIMONY

I. OPINION TESTIMONY BY LAY WITNESSES

§ 8:1	Prerequisites
§ 8:2	
§ 8:3	—Rationally based on perception of witness
§ 8:4	—Helpfulness standard
§ 8:5	Procedure for presenting opinion testimony
§ 8:6	—Establish foundation
§ 8:7	——Personal knowledge
§ 8:8	——Experience to form opinion
§ 8:9	—Elicit opinion
§ 8:10	—Lay opinion on ultimate issue
§ 8:11	— — Opinion on negligence
§ 8:12	——Opinion on causation
§ 8:13	—Conclusions
§ 8:14	—Lay opinions on specific issues
§ 8:15	——Speed
§ 8:16	— —Handwriting
§ 8:17	— —Value of property
§ 8:18	— — —Market value
§ 8:19	— — Value of automobile
§ 8:20	——Reasonableness of attorney's fees
§ 8:21	——Physical health
§ 8:22	——Mental health
§ 8:23	— —Intoxication
§ 8:24	——State of mind
§ 8:25	——Lay opinions excluded
§ 8:26	— — Expert opinions
§ 8:27	— — —Conclusions
§ 8:28	——Standard of review

II. EXPERT TESTIMONY

§ 8:29	Requirement for admissibility
§ 8:30	Qualification
§ 8:31	Court's discretion
§ 8:32	—Requirement of expert testimony
§ 8:33	——Medical experts
§ 8:34	——Product liability cases
§ 8:35	Prerequisites for admission
§ 8:36	—Proper subjects
8 8.37	— Scientific knowledge

TABLE OF CONTENTS

§ 8:38	— — — Hearing — — — Burden of proof — — — Standard of review on appeal — — — Preliminary determination — — Relevance
§ 8:39	— — Burden of proof
§ 8:40	———Standard of review on appeal
§ 8:41	———Preliminary determination
§ 8:42	— — Relevance
§ 8:43	— — Reliability — — Factors to consider
§ 8:44	— — Factors to consider
§ 8:45	———Not an exclusive list
§ 8:46	— — — Probative value versus prejudice
§ 8:47	———Burden to establish admissibility
§ 8:48	—Technical knowledge
§ 8:49	—Definition of technical
§ 8:50	—Blood alcohol concentration
§ 8:51	—Business aspects
§ 8:52	—Net worth
§ 8:53	—Nonscientific expertise
§ 8:54	—Other specialized knowledge
§ 8:55	——Jury equally competent
§ 8:56	——Special knowledge
§ 8:57	—Assist trier of fact
§ 8:58	——Determine facts in issue
§ 8:59	——Helpful testimony
§ 8:60	— — —Impact of punitive damages
§ 8:61	———Cause of accident
§ 8:62	— — Attorney's fees
§ 8:63	———Security precautions
§ 8:64	— — Real estate issues
§ 8:65	——Testimony not helpful
§ 8:66	— — —Psychological autopsy
§ 8:67	— — Value of relationship
§ 8:68	— — — Motivation
§ 8:69	———Whether conduct is outrageous
§ 8:70	—Court determines if expert is needed
§ 8:71	-Examination of qualifications
§ 8:72	— —Determination
§ 8:73	Opinion as to specific issues
§ 8:74	—Meaning of contract term
§ 8:75	—Value of services
§ 8:76	—Value of real estate
§ 8:77	—Reconstruction of accident
§ 8:78	
§ 8:79	
§ 8:80	
-	
§ 8:81	——Subjects common to all fields

```
§ 8:82
         -Legal conclusions
§ 8:83
         — —Duty
§ 8:84
         — —Legal opinions
§ 8:85
         ———Rationale
§ 8:86
         — — Exception
         -Foreign law
§ 8:87
§ 8:88
         — —Truthfulness of a witness
§ 8:89
         — —Legal capacity
         Opinion on ultimate issue
§ 8:90
§ 8:91
         -Predicate
§ 8:92
         Foundation testimony
         —Expert must be qualified as expert
§ 8:93
§ 8:94
         — — By knowledge, skill, experience
§ 8:95
         — — General knowledge or experience not
          sufficient
§ 8:96
         — —By training or education
§ 8:97
         --- Requirement of licensing
§ 8:98
         ———License required
§ 8:99
         — — No license requirement
§ 8:100
         ———Similar field
         — — Medical liability cases
§ 8:101
§ 8:102
         — — General rule—Cases against physicians
§ 8:103
         ——— "Practicing medicine" or "medical practice"
§ 8:104
         ———Training and experience
§ 8:105
         ———Board certification
         ————Must not be a specialist
§ 8:106
         ————Nonphysician witness
§ 8:107
§ 8:108
         — — Defendant in medical malpractice case
         ———Objections to qualifications
§ 8:109
§ 8:110
         — — Cases against licensed or registered
          professionals
§ 8:111
         —Subjects of examination
         -- Name and personal background
§ 8:112
         — — Occupation
§ 8:113
         — —Knowledge
§ 8:114
         ——Subject for expert testimony
§ 8:115
§ 8:116
         — Expert's opinion relevant and reliable
         § 8:117
§ 8:118
         Objection at trial
§ 8:119
         —Complaint regarding reliability
         ——Speculative or conclusory testimony
§ 8:120
§ 8:121
         Conducting the voir dire of an opposing expert
§ 8:122
         —Sequestration of expert during trial
         Bases of opinion testimony
§ 8:123
§ 8:124
         —Facts perceived by the expert
```

```
—Facts disclosed to expert at or before trial
§ 8:125
§ 8:126
         —Type of facts reasonably relied upon by experts
§ 8:127
         — Focus of Rule 703
§ 8:128
         — Physician
§ 8:129
         --- Reliability
         ——Determination of facts "reasonably relied upon"
§ 8:130
§ 8:131
         —Disclosure of underlying facts
§ 8:132
         ——Expert may testify without disclosure
§ 8:133
         — Court may require or exclude disclosure
§ 8:134
         — Expert may disclose on direct examination
         — — Disclosure on cross-examination
§ 8:135
§ 8:136
         Hypothetical questions
§ 8:137
         —Purposes
         —Proper use
§ 8:138
§ 8:139
         — Facts in evidence
§ 8:140
         — Facts later introduced
         — —Inferences
§ 8:141
§ 8:142
         — —Consequence of variation
§ 8:143
         —Form
         — Trial court discretion
§ 8:144
§ 8:145
         — —Usual method
§ 8:146
         Conducting the direct examination
§ 8:147
         —Foundation for expert's testimony
§ 8:148
         —Elicit expert's opinion
§ 8:149
         -Experiment, demonstration, or models
§ 8:150
         ——Admissibility of experiments
§ 8:151
         — Reliability
§ 8:152
         — — Unpredictability
§ 8:153
         Conducting cross-examination of experts
         —Method
§ 8:154
§ 8:155
         —Scope of cross-examination
§ 8:156
         —Attack foundation of expert's opinion
§ 8:157
         --- Facts or assumptions not reasonably relied upon
          by other experts
§ 8:158
         — Failure to consider other facts or data
         --- Consideration of erroneous facts or data
§ 8:159
§ 8:160
         -Attack expert's opinion
         — Lack of skill, experience, education
§ 8:161
§ 8:162
         — — Opinion changes with different facts
§ 8:163
         — — Hypothetical questions
         — — Prior inconsistent statement
§ 8:164
         -- --- Method
§ 8:165
§ 8:166
         ———Deposition
         ——Other cases
§ 8:167
```

§ 8:168 ———Public speeches or published works § 8:169 ———Use of treatise or article § 8:170 — — Financial interest § 8:171 Audit report § 8:172 —Offering party —Appointment of auditor § 8:173 § 8:174 — —Verified reports to be filed § 8:175 — —Contradiction allowed § 8:176 —Court-appointed experts § 8:177 — Exception § 8:178 ———Civil commitment § 8:179 ———Paternity suits § 8:180 --Surveyors — — — Appraisers § 8:181

CHAPTER 9. HEARSAY

I. THE HEARSAY RULE

§ 9:1 General rule § 9:2 -Exclusionary rule § 9:3 —Not best evidence § 9:4 —When probative § 9:5 — —Previous law ——Significance of change § 9:6 § 9:7 —Standard of review on appeal § 9:8 —When not probative § 9:9 Exceptions to rule against hearsay § 9:10 —Statutory hearsay exception § 9:11 Rationale for the rule excluding hearsay § 9:12 —Right of confrontation § 9:13 —Not the best evidence § 9:14 Hearsay within hearsay § 9:15 —Excited utterance § 9:16 —Statement against interest —Eyewitness statements § 9:17 § 9:18 -Report of another's statement § 9:19 —Prejudicial error

II. DEFINITION OF HEARSAY

- § 9:20 General definition
- § 9:21 Statement
- § 9:22 Oral or written verbal expression
- § 9:23 Nonverbal conduct

§ 9:24 -Head nod § 9:25 -Gesture § 9:26 -Silence § 9:27 —Crying § 9:28 Preliminary question § 9:29 Matter asserted § 9:30 Declarant § 9:31 Not made while testifying Offered to prove truth of matter asserted § 9:32 § 9:33 -Unpaid rent § 9:34 -Ownership —Interpreter's translation § 9:35 Other reasons to offer evidence § 9:36 § 9:37 —Proof statement was made —Offered to prove attitude § 9:38 § 9:39 —Offered to establish notice § 9:40 —Offered to establish existence § 9:41 —Offered to prove knowledge § 9:42 —Offered to prove state of mind § 9:43 —Offered to prove compliance § 9:44 —Offered to support opinion § 9:45 — Gesture offered to prove business operating without license § 9:46 —Limited purpose admissions § 9:47 -Verbal acts § 9:48 — Offer or acceptance § 9:49 — —Agency § 9:50 ——Conveyance § 9:51 — —Legal significance § 9:52 Avoiding hearsay problems § 9:53 —Key words § 9:54 —Outside personal knowledge § 9:55 —Failure to object § 9:56 —Nonhearsay or exception

III. STATEMENTS THAT ARE NOT HEARSAY

§ 9:57 General distinction § 9:58 Nonhearsay statements § 9:59 Rationale for admissibility § 9:60 Types of nonhearsay testimony § 9:61 —Prior statements by witness § 9:62 — —Inconsistent testimony § 9:63 ——Consistent testimony § 9:64 — —Identification

Texas Practice Guide: Civil Trial

```
§ 9:65
        —Prior inconsistent statements
        — —Limited applicability
§ 9:66
§ 9:67
        — —Under oath
§ 9:68
        — —Interrogatory answers
§ 9:69
        ——Impeaching own witness
§ 9:70
        — —Inadmissible impeachment evidence
§ 9:71
        ——Requirements for examination
§ 9:72
        —Prior consistent statements
        — —Limitation
§ 9:73
§ 9:74
        — Fabrication, improper influence or motive
§ 9:75
        --Requirements
§ 9:76
        — — Rationale
        --Timing
§ 9:77
§ 9:78
        —Identification of a person
§ 9:79
        —Use in civil cases
§ 9:80
        — Requirements
§ 9:81
        —Admission by party opponent
§ 9:82
        — —Definition
§ 9:83
        ———Own statement
§ 9:84
        — — —Adoption
        — — —Authorization
§ 9:85
        ———Agency or employment
§ 9:86
§ 9:87
        ————Determination of agency
§ 9:88
        — — — Coconspirator
§ 9:89
        — Rationale behind rule
§ 9:90
        - Distinguishing declarations against interest
        — — Offered against party
§ 9:91
§ 9:92
        ———Prior trial testimony
§ 9:93
        ———Prior injury
§ 9:94
        — — — Deposition
§ 9:95
        ———Transcript of meeting
        ———Reverse admissions
§ 9:96
        ———Through representative
§ 9:97
§ 9:98
        ———Statement adopted by party
§ 9:99
        ———Patent application
§ 9:100
        ———Statement by former party not admissible
        — — Statement by party in privity in interest
§ 9:101
§ 9:102
        ——Statement by authorized person
        -- Distinction
§ 9:103
§ 9:104
        ———Preliminary question
§ 9:105
        ———Express authorized admissions
§ 9:106
        — — — Implied authorized admissions
        ———Party communications as authorized
§ 9:107
          admissions
```

```
——Statement by employee
§ 9:108
§ 9:109
         — Necessity of agency
§ 9:110
        — Establishing agency
§ 9:111
         — —After termination
§ 9:112
         --Burden of proof
         ——Special problems with statements by employees
§ 9:113
§ 9:114
         ——Statements of attorneys
§ 9:115
         ——Statement by public employees
§ 9:116
         —Statement by coconspirator
§ 9:117
         — — Decided by the court
§ 9:118
         — No requirement that a conspiracy be pleaded
§ 9:119
         — —Limiting instruction
§ 9:120
         — Requirement of tangible, material evidence
§ 9:121
         — — During the course of conspiracy
§ 9:122
         Depositions
§ 9:123
         -Predicate facts
§ 9:124
         -Rule 203.6(b)
§ 9:125
         --Use
§ 9:126
         —Distinction
§ 9:127
        —Same proceeding
§ 9:128
         ——Same parties
         --Substitution
§ 9:129
         ———Parties later joined
§ 9:130
         Judicial admissions
§ 9:131
         -Elements
§ 9:132
§ 9:133
         —Conclusive
§ 9:134
        —Maker
§ 9:135
        — Not binding on co-party
§ 9:136
         -Requirements for judicial admissions
§ 9:137
         — Judicial proceeding
§ 9:138
         ——Contrary to essential fact
§ 9:139
        ——Nature of statement
§ 9:140
         — — Public policy
         ——Opponent's recovery
§ 9:141
§ 9:142
         -Who makes a judicial admission
§ 9:143
         ——Statements made by party
§ 9:144
         ——Statements made by lawyer
         — — Arguments to the court
§ 9:145
§ 9:146
         ———In live pleadings
§ 9:147
         — — —In superseded pleadings
         ———In stipulations
§ 9:148
§ 9:149
         —Effect of judicial admission
§ 9:150
         — —No contradiction or exclusion
§ 9:151
         Quasi-judicial admissions
```

IV. EXCEPTIONS TO THE HEARSAY RULE

§ 9:152	Burden of establishing exception
§ 9:153	Declarant's unavailability
§ 9:154	Present sense impression
§ 9:155	—Type of statement
§ 9:156	—Observation
§ 9:157	—Description or explanation
§ 9:158	—During event
§ 9:159	— —Inference
§ 9:160	—Immediately after event
§ 9:161	—No opportunity to fabricate
§ 9:162	—Participation by the declarant
§ 9:163	Excited utterance
§ 9:164	—Startling event or condition
§ 9:165	—Type of statement
§ 9:166	—Response to a question
§ 9:167	—Time of statement
§ 9:168	—Tenor of statement
§ 9:169	—Time of statement—Admissible
§ 9:170	— —Inadmissible
§ 9:171	— —Duration
§ 9:172	— — Too remote
§ 9:173	— No opportunity to fabricate or deliberate
§ 9:174	Then existing mental, emotional, or physical
	condition
§ 9:175	—Conditions contemplated
§ 9:176	—Statements of present bodily condition
§ 9:177	—Statements of present state of mind, emotion, or
	sensation
§ 9:178	—Statements offered to prove a state of mind or
	emotion that is in issue
§ 9:179	—When admissible
§ 9:180	— —Belief party was divorced
§ 9:181	——State of mind of testator
§ 9:182	—When inadmissible
§ 9:183	——Statements too remote
§ 9:184	— Not evidence of existing emotional condition
§ 9:185	—Statements offered to prove subsequent conduct in
3	accordance with state of mind
§ 9:186	—Joint conduct
§ 9:187	—Not to prove belief or memory
§ 9:188	-Wills exception
§ 9:189	Statements for purposes of medical diagnosis or
3 0.100	treatment

```
§ 9:190
         —Statement of medical condition
§ 9:191
         —Made for purpose of treatment
§ 9:192
         —Basis of the exception
§ 9:193
         —Nontreating physicians
§ 9:194
         -Nonphysician medical personnel
         —Admissible
§ 9:195
§ 9:196
         ——Psychotherapist
§ 9:197
         ---Sexual assault victim
§ 9:198
         ——Emergency room nurse
§ 9:199
         — Other recipients
§ 9:200
         — — Statements by medical personnel to the
          patient
§ 9:201
         — — —Inception or general character of cause
         ————Identification of abuser
§ 9:202
         ————Cause of injury
§ 9:203
         ————Reasonably pertinent to treatment
§ 9:204
         —————Statements made to nontreating
§ 9:205
          physicians
§ 9:206
         Recorded recollection
§ 9:207
         -Method of admission
§ 9:208
         —Used to admit substance of record
         —Witness recollection insufficient to testify
§ 9:209
§ 9:210
         —Made or adopted at time when event occurred
         -Writings made by or at direction of witness
§ 9:211
         -Personal knowledge
§ 9:212
§ 9:213
         —Trustworthiness
§ 9:214
         —Unremembered portions read into evidence
§ 9:215
         —May not be introduced over objections
§ 9:216
         —Admissibility of writing
§ 9:217
         Records of regularly conducted activity
§ 9:218
         —Business records
§ 9:219
         ---Reports
§ 9:220
         ---Invoices
         ——Computer records
§ 9:221
§ 9:222
         ——Asbestos letters
§ 9:223
         ---Bank documents
§ 9:224
         --- Credit card statements and policy
         ——Partnership income tax records
§ 9:225
         --Contracts
§ 9:226
         — Test core results
§ 9:227
         — — Medical records
§ 9:228
§ 9:229
         —Requirements of predicate
§ 9:230
         — — Regular course of business
         — Regular practice
§ 9:231
         — —Time recorded
§ 9:232
```

```
§ 9:233
         § 9:234
         —Who must establish
         — — Affidavit
§ 9:235
§ 9:236
         —Custodian must be qualified witness
§ 9:237
         —Information supplied by person with actual
          knowledge
         —Person routinely acting for business when reporting
§ 9:238
§ 9:239
         — —Distinction
§ 9:240
         —Circumstances under which statement would not
          otherwise be excluded as hearsay
§ 9:241
         —Record made at or near time of the recorded event
§ 9:242
         —Record made in regular course of business
§ 9:243
         ---Summaries
§ 9:244
         — —Compilations
         —Definition of business
§ 9:245
§ 9:246
         —Exclusion of public records
§ 9:247
         —Regular practice to make record
§ 9:248
         —Trustworthiness
§ 9:249
         -Records of entity subsumed by another entity
§ 9:250
         Absence of entry in records kept in accordance with
          the provisions of paragraph (6)
§ 9:251
         —Rationale of the rule
         -Nonoccurrence
§ 9:252
§ 9:253
         -Nonexistence
         —Type of record usually regularly kept in course of
§ 9:254
          business
§ 9:255
         Public records and reports
§ 9:256
         —Distinction
§ 9:257
         —Foundation for public record exception
§ 9:258
         —No personal knowledge required
         —Types of activities
§ 9:259
§ 9:260
         ——Activities of the office or agency
         -- Not regular activity
§ 9:261
§ 9:262
         — — Duty to report
§ 9:263
         ——From an investigation
§ 9:264
         ———Factual findings
§ 9:265
         — —Lack of trustworthiness
         ——Double hearsay
§ 9:266
§ 9:267
         Records of vital statistics
§ 9:268
         —Particular types of records
         —Statutory authority
§ 9:269
         —Reports required by law
§ 9:270
         Absence of public record or entry
§ 9:271
§ 9:272
         -Proof of absence of record
§ 9:273
         -Requirement
```

```
§ 9:274
         —Diligent search was made
§ 9:275
         Records of religious organizations
§ 9:276
         —Overlap of rules
§ 9:277
         —Particular types of records
§ 9:278
         Marriage, baptismal, and similar certificates
§ 9:279
         —Overlap of rules
§ 9:280
         —Particular types of records
§ 9:281
         —Made by proper person
         —Time of statement
§ 9:282
§ 9:283
         Family records
§ 9:284
         —Particular items
§ 9:285
         Records of documents affecting an interest in
          property
§ 9:286
         —Coverage of rule
§ 9:287
         —Other legislation authorizing their recording
§ 9:288
         —Particular types of
§ 9:289
         —Statements in such documents
         — Matter must be relevant to document
§ 9:290
§ 9:291
         ——Inconsistent subsequent dealings
§ 9:292
         Statements in ancient documents
§ 9:293
         —Requisite age
§ 9:294
         — —Letters
§ 9:295
         — —Will
§ 9:296
         ——Recorded documents
§ 9:297
         — —Establishing authenticity
§ 9:298
         Market reports, commercial compilations
§ 9:299
         —Generally used and relied upon
§ 9:300
         —Distinction from learned treatise
         —Method of proof
§ 9:301
§ 9:302
         —Authentication
         — Testimony
§ 9:303
§ 9:304
         —Judicial notice
§ 9:305
         Learned treatises
§ 9:306
         —Use only with experts
§ 9:307
         -Expert reliance
§ 9:308
         —Contrary authority
§ 9:309
         —Admission into evidence
§ 9:310
         —Established as a reliable authority
§ 9:311
         —Status of evidence as a treatise
§ 9:312
         Reputation concerning personal or family history
§ 9:313
         —Nature of family relationship
§ 9:314
         —Relation to Rule 804(b)(3)
§ 9:315
         Reputation or judgments concerning boundaries or
          general history
§ 9:316
         Reputation as to character
```

§ 9:317 —Limitation Judgment of previous conviction § 9:318 § 9:319 —Nolo contendere plea § 9:320 —Murder of insured § 9:321 —Check kiting § 9:322 —Felony convictions § 9:323 —No explanation § 9:324 —Civil judgment -Not admissions § 9:325 § 9:326 —Collateral estoppel —Essential facts § 9:327 § 9:328 —Effect of pending appeal Judgment as to personal, family, or general history or § 9:329 boundaries § 9:330 -Corollary -Not limited to felonies § 9:331 § 9:332 —Limitation Statement against interest § 9:333 § 9:334 —Ownership § 9:335 —Personal injury liability —Inheritance § 9:336 § 9:337 — —Election contest — Time requirement § 9:338 § 9:339 -Mixed statements § 9:340 — — Culpable driver — —Ownership § 9:341 —Offered against declarant § 9:342 § 9:343 —Only against declarant's interest -Must be relevant § 9:344 § 9:345 Hearsay statements by child abuse victims

V. AVAILABILITY OF DECLARANT

General definition § 9:346 What is unavailable § 9:347 § 9:348 —Definition —Declarant's testimony exempted on ground of § 9:349 privilege § 9:350 — — Voluntary testimony § 9:351 — — Grand jury testimony § 9:352 —Refuses to testify despite court order —Death or then existing physical/mental infirmity § 9:353 —Proponent unable to compel attendance § 9:354 -Standard of review § 9:355 § 9:356 —Sufficient showing

§ 9:357 —Effect of unavailability being procured § 9:358 Former testimony § 9:359 —Same or different proceeding § 9:360 ——Deposition § 9:361 — — Retrial —Opponent had opportunity to develop testimony § 9:362 —Opponent had similar motive to develop testimony § 9:363 § 9:364 —Person with similar interest § 9:365 Dying declarations § 9:366 —Declarant's belief § 9:367 —Circumstances —Subject matter § 9:368 —At issue § 9:369 § 9:370 —Preliminary questions of fact Statement of personal or family history § 9:371 § 9:372 —Timing of statement —Statement by declarant concerning family members § 9:373

VI. CREDIBILITY OF ABSENT DECLARANTS

§ 9:374 Generally
§ 9:375 Attacking the credibility of declarant
§ 9:376 Applicability
§ 9:377 Only admissible evidence
§ 9:378 As if under cross-examination

CHAPTER 10. DOCUMENTARY EVIDENCE

I. BUSINESS RECORDS

§ 10:1	Admissibility of business records
§ 10:2	—Authentication by custodian
§ 10:3	—Predicate
§ 10:4	—Regular or ordinary course
§ 10:5	—Time of making
§ 10:6	—Preparer
§ 10:7	— Required level of knowledge
§ 10:8	— —Custodian of the record
§ 10:9	———Documents from a third party
§ 10:10	——Liberal interpretation of personal knowledge
§ 10:11	———Obtaining knowledge from source with
	personal knowledge
§ 10:12	— — — Attorney time sheets
§ 10:13	———Payroll audit records
§ 10:14	———Invoices of subcontractors
§ 10:15	—Business records
§ 10:16	——Invoices
§ 10:17	——Banking documents
§ 10:18	——Financial statements and tax returns
§ 10:19	——Partnership income tax returns
§ 10:20	——Contracts
§ 10:21	——Test core results
§ 10:22	——Medical records
§ 10:23	——Reports
§ 10:24	——Computer records
§ 10:25	—Documents not admitted as business records
§ 10:26	——Employment records
§ 10:27	——Physician and claim progress report
§ 10:28	——Alleged police reports
§ 10:29	—Trustworthiness
§ 10:30	——Preparer
§ 10:31	——Burden of proof
§ 10:32	Authentication, generally
§ 10:33	Authentication by affidavit
§ 10:34	—Sample affidavit
§ 10:35	—Predicate for authentication
8 10:36	On file

Texas Practice Guide: Civil Trial

```
§ 10:37
         — Notice
§ 10:38
         — —Availability
§ 10:39
         — —Business records compliance
         Other forms of authentication
§ 10:40
§ 10:41
         -Request for admissions
§ 10:42
         — — Authentication requirement
§ 10:43
         —Admission at pretrial conference
§ 10:44
         —Stipulations
         —Admission by party opponent
§ 10:45
§ 10:46
         —Declaration against interest
§ 10:47
         —Excited utterance
§ 10:48
         —Dying declaration
§ 10:49
         Business records
§ 10:50
         —Authority
         -Elements of admissibility
§ 10:51
§ 10:52
         — —Voluminous
§ 10:53
         — —Admissible
         ——Available for inspection
§ 10:54
§ 10:55
         — —Authentication
§ 10:56
         — —Compilation
§ 10:57
         — Form of summary
§ 10:58
         -Necessity of predicate
         — — Admissibility of underlying documents
§ 10:59
§ 10:60
         — — Voluminous
         ——Available to opponent
§ 10:61
§ 10:62
         —Objection required
§ 10:63
         ——Specific
         — —Waiver
§ 10:64
§ 10:65
         Absence of entry in records
§ 10:66
         —Nature of the report
§ 10:67
         —Trustworthiness
§ 10:68
         —Nonoccurrence or nonexistence
§ 10:69
         Exclusion of business records
§ 10:70
         —Lack of authentication
§ 10:71
         —Lack of relevance and probative value
§ 10:72
         —Improper or missing predicate
§ 10:73
         —Lack of trustworthiness
         —Defective affidavit
§ 10:74
§ 10:75
         -Making objection
§ 10:76
         —Specific objection
§ 10:77
         -Burden of segregation
§ 10:78
         Methods of excluding evidence
         -Motion in limine
§ 10:79
         — —Effect
§ 10:80
```

§ 10:81 — —Preservation of error § 10:82 — Procedure at trial § 10:83 — —Waiver § 10:84 —Limiting instruction § 10:85 —One party only ---Single purpose § 10:86 § 10:87 ——Certain portions § 10:88 —Pretrial order Preservation of error § 10:89 § 10:90 —Offer of proof § 10:91 -Bill of exception § 10:92 — Procedure — —Waiver § 10:93 § 10:94 — —Formal exceptions

II. MEDICAL RECORDS

Admissibility of medical records § 10:95 § 10:96 —Authenticity requirements § 10:97 ——Coverage of Rule 803 § 10:98 —Authentication by affidavit § 10:99 — Cost and necessity of services ———Scope § 10:100 --Effect § 10:101 ——Content § 10:102 § 10:103 --Reasonable — — Necessary § 10:104 § 10:105 --Other requirements --Sworn § 10:106 § 10:107 — — — Affiant — — —Itemization § 10:108 — — — Filing § 10:109 § 10:110 — — Service § 10:111 --Timeliness --Counteraffidavit § 10:112 — — — Filing § 10:113 § 10:114 — — Service § 10:115 -- -Timeliness § 10:116 --Contents ———Sworn § 10:117 — — — Affiant § 10:118 § 10:119 — Effect of affidavit § 10:120 — Effect of counteraffidavit § 10:121 ——Continuing services ——Deadlines may be altered § 10:122

§ 10:123 —Other methods of authentication § 10:124 Methods of excluding medical records § 10:125 Mental health records § 10:126 —Exceptions under Rule 510 § 10:127 —Judicial or administrative proceedings § 10:128 —General privilege § 10:129 Hospital committee reports § 10:130 —Hospital charts § 10:131 —Included discoverable documents § 10:132 —Improper disclosure § 10:133 -Membership

III. GOVERNMENT RECORDS

§ 10:134 General rule § 10:135 —Contrast with business records § 10:136 —Coverage of rule -Foundation for public record exception § 10:137 § 10:138 —Trustworthiness Self-authentication of government records § 10:139 § 10:140 —Domestic public documents under seal § 10:141 ——Seal § 10:142 ---Signature § 10:143 — —Authenticity § 10:144 ——Site where documents prepared § 10:145 —Domestic public documents not under seal § 10:146 ——Signature § 10:147 — —Certification ——Self-authenticated documents § 10:148 § 10:149 ———Passport ———Foreign judgment § 10:150 § 10:151 -Foreign public documents — —Authentication § 10:152 --Certification § 10:153 § 10:154 — —Final certification — Not necessary § 10:155 § 10:156 —Certified copies of public records § 10:157 ——Recordation or filing — — Certification § 10:158 § 10:159 — —Coverage of rule --Probable cause affidavit § 10:160 § 10:161 Certified copies of public records § 10:162 Authentication of public records or reports § 10:163 -Writings authorized by law to be recorded § 10:164 Public record, report, statement, or data compilation

TABLE OF CONTENTS

§ 10:165	Nonexclusivity of authentication method
§ 10:166	Absence of public record
§ 10:167	Other applicable rules
§ 10:168	—Judgment of previous conviction
§ 10:169	— Not guilty plea and probated sentence
§ 10:170	—Market reports and commercial publications
§ 10:171	—Statements in documents affecting an interest in property
§ 10:172	——Statement must be relevant
§ 10:173	—Records of documents affecting an interest in real property
§ 10:174	— — Type of documents
§ 10:175	—Family records
§ 10:176	-Marriage, baptismal, and similar certificates
§ 10:177	—Records of religious organizations
§ 10:178	—Records of vital statistics
§ 10:179	—Statements in ancient documents
§ 10:180	——Authenticity
§ 10:181	——Location of document
§ 10:182	—Learned treatises
§ 10:183	——Relied on by expert
§ 10:184	——Expert recognizes as authoritative
§ 10:185	——Status of evidence as a treatise
§ 10:186	—Photographs and video recordings
IV. FO	ORMS
§ 10:187	Form—Sample request for admission
§ 10:188	—Sample predicate questions for admission of business records
§ 10:189	—Sample predicate questions for admission of
0 10 100	summaries
§ 10:190	—Sample predicate questions for admission of medical records
§ 10:191	—Sample form affidavit from Tex. R. Evid. 902
§ 10:192	—Sample form affidavit—Alternative form
§ 10:193	—Stipulation as to admission of records
§ 10:194	—Stipulation as to admission of documentary

—Affidavit authenticating hospital records

—Affidavit authenticating x-ray pictures taken at hospital

evidence

§ 10:195

§ 10:196

CHAPTER 11. OTHER TYPES OF EVIDENCE

I. JUDICIAL NOTICE

§ 11:1	Purpose of judicial notice
§ 11:2	Defined
§ 11:3	—Rationale
§ 11:4	—Strategy considerations
§ 11:5	—Requirement
§ 11:6	—Type of facts covered
§ 11:7	—Categories
§ 11:8	—Adjudicative facts
§ 11:9	 — Kinds of facts susceptible to judicial notice
§ 11:10	— —Verifiable certainty
§ 11:11	— —Indisputable facts
§ 11:12	— — —Generally known
§ 11:13	— — Capable of determination using standard
Ü	sources
§ 11:14	— — —Record
§ 11:15	————May not take judicial notice that
	allegations contained in pleadings or file are true
§ 11:16	— — —Unpublished appellate opinions
§ 11:17	— — Records of governmental agencies
§ 11:18	— — —Holiday
§ 11:19	— — —Holiday — — —Population
§ 11:20	— — —Bankruptcy status
§ 11:21	— — — Necessities
§ 11:22	— — —Attorney's fees
§ 11:23	— — —Animal behavior
§ 11:24	———Part of the dispute
§ 11:25	— — —Interest rates
§ 11:26	———Stopping distance and speed
§ 11:27	— — —Statistical facts
§ 11:28	— — —Geography
§ 11:29	Matters not subject to judicial notice
§ 11:30	—Communications between counsel and trial court's
Ü	staff
§ 11:31	—Local court rules not filed with Texas Supreme
	Court
§ 11:32	—Degree of illness
§ 11:33	—Other causes of action
§ 11:34	Discretionary judicial notice
§ 11:35	—Not required
§ 11:36	Mandatory judicial notice

```
§ 11:37
         -Necessary information
§ 11:38
         -Personal knowledge not standard
§ 11:39
         —Requesting that court take judicial notice
§ 11:40
         — —Timeliness
§ 11:41
         —Opportunity to be heard
§ 11:42
         — Right to hearing
§ 11:43
         — — Due process implications
§ 11:44
         —Time of taking notice
§ 11:45
         —Jury instruction
§ 11:46
         --- No comment on weight of the evidence
         Judicial notice of legal matters
§ 11:47
§ 11:48
         —Law of Texas and other states
§ 11:49
        —Choice of law
§ 11:50
        ——Presumption
         — —Overcoming the presumption
§ 11:51
§ 11:52
         ——Pleading not necessary
§ 11:53
         —On motion by court or party
§ 11:54
         — — Which laws noticed
§ 11:55
         ———No request
         — — —Waiver
§ 11:56
         — — Presumption can't be used to sister state
§ 11:57
          judgment
         ——Sufficiency of information
§ 11:58
§ 11:59
         ———Specific request
§ 11:60
         ———Court's own motion
§ 11:61
         ———Verified copies
§ 11:62
         ———Citation of applicable law
§ 11:63
         ———Broad request
         — —Opportunity to be heard
§ 11:64
§ 11:65
         -- Notification
§ 11:66
         — Review of court's determination
§ 11:67
        —Law of foreign countries
§ 11:68
         — —Notice required
§ 11:69
         ——Summary judgment
§ 11:70
         ——Compare to Rule 202
         --- Notice in pleadings--- Other reasonable notice
§ 11:71
§ 11:72
         — — Timing of notice and provision of copies
§ 11:73
         — —Language considerations
§ 11:74
         --- Other evidence considered
§ 11:75
         ———Opportunity to review
§ 11:76
         ——Absence of request or proof
§ 11:77
         — — Marriage or parent-child relationship
§ 11:78
         —Ordinances, Texas Register, agency rules
§ 11:79
         — —Texas statutes
```

- § 11:80 — — Mandatory duty § 11:81 — Motion by court or party § 11:82 ——Sufficiency of evidence —Notice § 11:83 § 11:84 ——Opportunity to be heard — Review of court's determination § 11:85 § 11:86 — —Ordinances ———Court took notice of maintenance § 11:87 responsibilities — — Refusal to take notice of municipal ordinance § 11:88 ———Contents of the Texas Register § 11:89 § 11:90 — — —Administrative Code § 11:91 ————Effect of judicial notice of legislative facts § 11:92 Improper judicial notice VIEW BY JURY II. § 11:93 Generally § 11:94 Permissibility § 11:95 Availability Practical considerations § 11:96 § 11:97 Procedure Court's direction § 11:98 § 11:99 Safeguards § 11:100 No evidence presented during view III. STIPULATIONS
- § 11:102 When to effectively use § 11:103 Strategy considerations Time when made § 11:104 § 11:105 Effect § 11:106 Construction § 11:107 Judgment § 11:108 —Jurisdiction § 11:109 -Rescission § 11:110 —Remittitur § 11:111 Method of presentation

Definition

- -Not an ultimate issue
- § 11:112
- § 11:113 -Inferences
- § 11:114 Written stipulations
- § 11:115 Oral stipulations
- § 11:116 Withdrawal of stipulations

§ 11:101

IV. FORMS

§ 11:117 Plaintiff's motion for judicial notice of adjudicative facts
§ 11:118 Plaintiff's motion for judicial notice of law of sister state
§ 11:119 Stipulation as to certain facts
§ 11:120 Motion to set aside stipulation
§ 11:121 Affidavit in support of motion to set aside

CHAPTER 12. MOTIONS DURING TRIAL

I. GENERALLY

- § 12:1 Definition
- § 12:2 Procedure for making motions

stipulation

- § 12:3 Written
- § 12:4 Oral
- § 12:5 Content
- § 12:6 —Accompanying affidavits

II. MOTION FOR TRIAL AMENDMENT OF PLEADING

- § 12:7 When motion is applicable
- § 12:8 Effect of trial amendment
- § 12:9 Governing rules
- § 12:10 Purposes
- § 12:11 —Amend pleading when no pleadings support evidence
- § 12:12 —Correct any defect, fault, or omission in the pleading
- § 12:13 —Conform the pleadings to proof
- § 12:14 ——Objection
- § 12:15 ——Issues tried by consent
- § 12:16 ———Determination
- § 12:17 ——Trial by consent—Examples
- § 12:18 ——No trial by consent—Examples
- § 12:19 ——Issues not objected to
- § 12:20 Permission of the court
- § 12:21 —Leave of court required
- § 12:22 —Liberal amendment policy
- § 12:23 Surprise and prejudice
- § 12:24 —Prejudicial
- § 12:25 —Prejudicial on its face

—New or independent cause of action § 12:26 § 12:27 —Burden rests on party opposing motion § 12:28 — —Timeliness — Form § 12:29 —Procedural versus substantive amendments § 12:30 § 12:31 Time for filing § 12:32 -No amendment after judgment is rendered § 12:33 Procedure § 12:34 -Oral § 12:35 -Written § 12:36 Denial of motion -Prejudice § 12:37 § 12:38 — —How to show prejudice ——Prejudicial on its face § 12:39 § 12:40 —Lack of diligence § 12:41 -Burden of movant -Presumption if record does not show motion § 12:42 granted

III. MOTION FOR DIRECTED VERDICT

- § 12:43 Governing rule
- § 12:44 Directed versus instructed
- § 12:45 Preservation of error on appeal
- § 12:46 Purpose
- § 12:47 Grounds
- § 12:48 Time to make motion
- § 12:49 —Close of evidence of opponent's case
- § 12:50 —Before plaintiff presents all evidence
- § 12:51 —At close of all evidence
- § 12:52 —After jury discharged because unable to reach a verdict
- § 12:53 Form
- § 12:54 —Writing
- § 12:55 —Grounds stated with specificity
- § 12:56 Circumstances in which verdict is instructed
- § 12:57 Test to determine jury issue
- § 12:58 Appellate review
- § 12:59 —Evidence viewed in light most favorable to losing party
- § 12:60 —Probative evidence to raise fact issue
- § 12:61 —Fact issue versus legal issue
- § 12:62 —Grounds not stated

IV. MOTION FOR DISMISSAL OR NONSUIT

§ 12:63 Governing rules

§ 12	:64	Unqualified and absolute right to take nonsuit
§ 12	:65	—What qualifies as claim for affirmative relief
§ 12	:66	—Court may only nonsuit parties as requested in
		motion
§ 12	:67	—Demand for arbitration
§ 12	:68	Procedure
§ 12	:69	—Motion considered filed when tendered
§ 12	:70	—Time for filing
§ 12	:71	— —Before introducing all evidence other than rebuttal evidence
§ 12	:72	——Before hearing on summary judgment motion
§ 12	:73	— —After partial summary judgment granted
§ 12	:74	——In a bench trial
§ 12	:75	— —Temporary restraining order
§ 12	:76	—Effect
§ 12	:77	—Notice served on all parties
§ 12	:78	—Taxing of costs
§ 12	:79	—Matters unaffected by nonsuit
§ 12	:80	Strategic reasons for filing
§ 12	:81	Pending claims of defendant for affirmative relief survive
§ 12	:82	Sanctions following nonsuit
§ 12	:83	Continued viability of claim
§ 12	:84	—Reinstatement of plaintiff's cause on timely motion where voluntarily nonsuited
§ 12	:85	—Refiling suit
§ 12	:86	——Statute of limitations
§ 12	:87	Mandamus available
§ 12	:88	When nonsuit becomes final, appealable judgment
V.	MO	TION FOR MISTRIAL
8 19	.89	General considerations

§ 12:89	General considerations
§ 12:90	Purpose
§ 12:91	Strategy considerations regarding motions for mistrial
§ 12:92	—Strategic importance
§ 12:93	—Tactical considerations
§ 12:94	—Alternatives to motion for mistrial
§ 12:95	Grounds
§ 12:96	—Deadlocked jury
§ 12:97	—Exposure to inadmissible evidence
§ 12:98	-Improper voir dire or opening or closing statement
§ 12:99	—Juror's withholding of information
8 12:100	Timeliness

- § 12:101 Procedure for requesting
 § 12:102 Preservation of error
 § 12:103 Policy considerations
 § 12:104 Effect
- VI. FORMS

§ 12:105 Form—Motion to amend pleadings (issue tried but not plead)

- § 12:106 —Motion to amend pleadings (to cure procedural defect)
- § 12:107 —Motion for directed verdict
- § 12:108 —Motion for mistrial
- § 12:109 Motion for nonsuit
- § 12:110 Order granting motion for nonsuit

CHAPTER 13. CLOSING ARGUMENTS

I. INTRODUCTION

- § 13:1 Purpose
- § 13:2 Liberal rules
- § 13:3 Parameters
- § 13:4 Opportunity

II. GENERALLY

- § 13:5 Purpose of closing argument
- § 13:6 —Voir dire
- § 13:7 —Opening statement
- § 13:8 —Testimony
- § 13:9 —Court's charge
- § 13:10 —Assembly of separate parts
- § 13:11 —Stating the obvious
- § 13:12 —Marriage of facts and law
- § 13:13 —Quintessence of trial
- § 13:14 Duty to make argument
- § 13:15 —Applicable rule
- § 13:16 —Whose discretion
- § 13:17 —Error
- § 13:18 —Proper denial by the court
- § 13:19 ——No claim
- § 13:20 ——Waiver
- § 13:21 When argument made
- § 13:22 Order of argument
- § 13:23 —Response and close

§ 13:65

—Keep it simple

§ 13:24 —Multiple parties § 13:25 —Valuable right § 13:26 —Reversible error § 13:27 —Preservation of error § 13:28 ——Made after charge Length of time for argument § 13:29 § 13:30 -Broad discretion § 13:31 — Trial court guidance § 13:32

III. PRESENTATION OF ARGUMENT

§ 13:33 Purpose Avoid reading § 13:34 § 13:35 Be credible § 13:36 Connect with the jury § 13:37 —Beginning the connection § 13:38 —Completing the connection § 13:39 Use eye contact and body language § 13:40 -Assertive-Not aggressive § 13:41 Respect all persons in the courtroom § 13:42 -Benefit of respect § 13:43 —Self-assurance § 13:44 Speak so the jury can hear and understand —Speaking technique § 13:45 § 13:46 —Tempo § 13:47 Consider physical location in the courtroom § 13:48 —Persuasive style —Trial judge preference § 13:49 § 13:50 Use of exhibits § 13:51 Use of transcripts of testimony during trial § 13:52 Use of depositions and discovery § 13:53 —Video depositions: § 13:54 Use of visual aids (graphs, charts, blow-ups, etc.) -Visual aids admitted into evidence § 13:55 -Visual aids not admitted into evidence § 13:56 § 13:57 — —Enlargements of exhibits § 13:58 — —Enlargements of jury instructions — —Enlargements of verdict forms § 13:59 § 13:60 ——Blackboard, butcher paper § 13:61 -Consider chart of key elements of claim/defense —Disclosure to opposing counsel: § 13:62 § 13:63 Effective communication -Keep it short § 13:64

§ 13:66 -Make it clear § 13:67 —Don't equivocate § 13:68 —Watch your audience Effective advocacy § 13:69 § 13:70 -Establish your own case before attacking opponent's § 13:71 —Look for common-sense analogies § 13:72 —Avoid going on defensive § 13:73 —Argue your own case before answering opponent's questions § 13:74 —Remove opposing counsel's visual aids before arguing § 13:75 —Use rhetorical questions § 13:76 —Use understatement —Do not trash opposing counsel § 13:77 § 13:78 —Avoid reacting during opponent's argument

IV. PREPARING FOR CLOSING ARGUMENT

§ 13:79 When to prepare § 13:80 Develop a plan § 13:81 —Outline—Court's charge § 13:82 —Fit pieces into a picture § 13:83 ——Telling a story § 13:84 — Explanation § 13:85 --Questions -Importance of organization § 13:86 —Plaintiff's rebuttal argument § 13:87 § 13:88 Outlining argument § 13:89 —In writing § 13:90 —How much detail (short vs. long outlines) § 13:91 -Memorize outline § 13:92 -Rehearsal § 13:93 —Preparation of visual aids § 13:94 — —Blow-ups of jury instructions § 13:95 — —Blow-ups of key testimony, exhibits § 13:96 Content of argument —Introduction—Breaking the ice § 13:97 § 13:98 —Reiterate case theme —Burdens of proof and standard of proof § 13:99 § 13:100 —Burden of proof § 13:101 Permissible evidence § 13:102 —Matters addressed and unaddressed by the evidence — — Texas Civil Procedure Rule 269 § 13:103

211111111111111111111111111111111111111	O STITEMEN
§ 13:104	—Argument must be based on the evidence
§ 13:105	— —Latitude
§ 13:106	— —Puffing
§ 13:107	— —Limitation
§ 13:108	
§ 13:109	-
Ü	error
§ 13:110	—Credibility of witnesses
§ 13:111	—Rehabilitating own witnesses
§ 13:112	—Opposing party's failure to produce evidence or
	witness
§ 13:113	—Expert testimony
§ 13:114	——Argument can address what the opponent
	failed to prove
§ 13:115	—Unfulfilled promise
§ 13:116	•
§ 13:117	· ·
§ 13:118	9
§ 13:119	
§ 13:120	
§ 13:121	e e
§ 13:122	
§ 13:123	
§ 13:124	
§ 13:125	
§ 13:126	e e e e e e e e e e e e e e e e e e e
§ 13:127	—Arguing the law and legal conclusions
§ 13:128	—Conclusion of argument
§ 13:129	Impermissible arguments
§ 13:130	—Common denominator of impermissible arguments
§ 13:131	· · · · · · · · · · · · · · · · · · ·
§ 13:132	•
§ 13:133	
§ 13:134	
§ 13:135	v
§ 13:136	——Insurance
§ 13:137	———Rare reversal
§ 13:138	———Standard of review
§ 13:139	— — Urging jurors to place themselves in shoes of
	litigant
§ 13:140	Objecting to and preserving error on improper
	argument
§ 13:141	Strategy considerations regarding objections
§ 13:142	—Elements of improper argument
§ 13:143	—Most important elements

§ 13:144 —Preservation of error
§ 13:145 —Objection required
§ 13:146 —Objection not required
§ 13:147 —Responding to incurable argument
§ 13:148 Handling objections during your closing argument

V. CONCLUSION

- § 13:149 Opportunity
- § 13:150 Lawyer's decency

CHAPTER 14. TRIAL TO THE COURT

I. WHEN TRIAL WILL BE TO THE COURT

§ 14:1 In general § 14:2 Involuntary bench trial § 14:3 —No request for a jury trial § 14:4 — —Form of request ———General rule § 14:5 --Trial certification form § 14:6 — — —Pleadings § 14:7 --Cover letter § 14:8 ———Deposit of fee § 14:9 — —Timeliness of request § 14:10 § 14:11 — — —Interpretation of reasonable time ——Not less than 30 days § 14:12 ———Caveat § 14:13 --Presumption § 14:14 § 14:15 — — — After nonjury trial has commenced § 14:16 — — Rebuttal § 14:17 ———Reset of trial date — Untimely request sufficient if court violates Rule § 14:18 245 ———Excuse for untimely request § 14:19 — — No excuse § 14:20 § 14:21 — —Jury trial without request § 14:22 — Effect of certification for trial on nonjury docket § 14:23 ———Trial court may grant § 14:24 ———30 days before trial § 14:25 ——Request binding all parties -No jury fee paid § 14:26 § 14:27 — Effect of nonpayment § 14:28 — Noted on docket sheet

——Affidavit of inability to pay

§ 14:29

§ 14:30 ——Benefit of all parties § 14:31 -Waiver § 14:32 ——Agreement § 14:33 — — — Knowing and voluntary waiver § 14:34 ———Proof in support — Failure to make court aware of request § 14:35 § 14:36 ——Failure to appear § 14:37 —Withdrawal from jury docket § 14:38 — Objection of adverse party § 14:39 — —Trial court withdrawal ---Withdraw fee § 14:40 § 14:41 —Preservation of error § 14:42 —Appellate review ——Discretion in noncompliance § 14:43 ——Review for abuse of discretion § 14:44 § 14:45 — —Complaining party's burden ——Harmless error § 14:46 § 14:47 Voluntary bench trial § 14:48 —Strategy considerations § 14:49 — The judge § 14:50 — — What would a jury be like? ——How soon the case can be tried § 14:51 § 14:52 — — — Availability of client § 14:53 ———Expedited disposition ———Priority setting § 14:54 § 14:55 — Use of an agreed statement of facts § 14:56 ———Evidentiary factors ——Strength or weakness of case § 14:57 § 14:58 ——Complexity of case — —Counsel's convenience § 14:59 — Cost and time § 14:60

II. HOW A CASE IS TRIED TO THE COURT

§ 14:61 Procedure § 14:62 —Order of proceeding § 14:63 —Closing argument § 14:64 — —Timing § 14:65 — — Opening and closing § 14:66 — — Multiple parties § 14:67 The role of the judge -Trier of fact § 14:68 § 14:69 —Asking spontaneous questions § 14:70 — —Contrast with juror questions § 14:71 — — Procedural safeguards

§ 14:72 — —Inapplicable to judges § 14:73 —Objections to judge's questions § 14:74 —Submission of an agreed case § 14:75 — —Court renders judgment § 14:76 — — —Inapplicable in jury trial -Findings of fact as opposed to special issues § 14:77 § 14:78 — —Jury function — —Greater number § 14:79 § 14:80 — Effect of findings § 14:81 —Liberality re admissibility of evidence § 14:82 ---Reasons § 14:83 ———Exposure to inadmissible evidence § 14:84 — — — Disregard inadmissible evidence ———Contrast with jury trial § 14:85 — — — Appellate review § 14:86 § 14:87 — — No presumption in jury trial ———Limiting instruction § 14:88 § 14:89 —Commenting on the evidence § 14:90 ——Comments improper in jury trial ———Comment on weight of evidence § 14:91 ——Contrast with bench trial § 14:92

III. MOTION FOR JUDGMENT

§ 14:93 In general—Strategy considerations § 14:94 -Consider settlement offer to avoid appeal § 14:95 —Consider motion for partial judgment § 14:96 —Consider result of educating opponent § 14:97 Form § 14:98 —Written motion preferred § 14:99 —Denomination § 14:100 Timing

IV. MOTION FOR NEW TRIAL

§ 14:101 In general § 14:102 When a party must file a motion for new trial § 14:103 Form of motion § 14:104 —Description of objection § 14:105 —No general allegations § 14:106 **Timeliness** § 14:107 —Untimely motions for new trial Standard for granting § 14:108 § 14:109 —Damages § 14:110 —Severable issue

§ 14:111 —Unliquidated damages
§ 14:112 Overrule by operation of law
§ 14:113 —Plenary power—No motion for new trial
§ 14:114 — Motion for new trial

V. REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

§ 14:115 In general § 14:116 Form § 14:117 **Timeliness** § 14:118 —Untimely request § 14:119 —Duty of the clerk § 14:120 —Effect of prematurity § 14:121 Effect of failure to request § 14:122 Proper content of findings —Evidentiary matters § 14:123 § 14:124 -Level of detail § 14:125 Duty of the judge § 14:126 —Remedy for noncompliance of untimely findings § 14:127 ——Showing harm § 14:128 — — Undisputed facts § 14:129 —Copy to all parties —Eligible cases § 14:130 § 14:131 ——Bench trial on all issues $-- Hybrid\ trial$ § 14:132 — — —Inconsistent judgments § 14:133 § 14:134 -Ineligible cases § 14:135 — — Dismissal § 14:136 — —Directed verdict § 14:137 — Judgment notwithstanding the verdict § 14:138 ——Summary judgment § 14:139 — — Default judgment --- No jurisdiction § 14:140 ———Special appearance § 14:141 § 14:142 ——Appeal from administrative agency § 14:143 ——Postjudgment hearing § 14:144 --- Interlocutory order — —Jury trial § 14:145 § 14:146 — — No injury § 14:147 ——Appellate review Failure to comply § 14:148 § 14:149 —Contents § 14:150 —Duty of the clerk § 14:151 —New deadline

VI. FORMAT OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

§ 14:152 In general § 14:153 In writing —Letter § 14:154 § 14:155 —Oral statements § 14:156 —Reporter's record § 14:157 ——Docket sheet entry § 14:158 Requirement of separateness § 14:159 —Not considered on appeal —Considered on appeal § 14:160 § 14:161 Who makes the findings? § 14:162 -Successor judge § 14:163 —Reversal

VII. IF TRIAL COURT FAILS TO RESPOND

§ 14:164 Preservation of error § 14:165 Harmful error § 14:166 —Presumption § 14:167 -Showing of no harm § 14:168 —The test Appellate disposition § 14:169 —Dilemma § 14:170 § 14:171 —Recent trend § 14:172 —Supreme court authority

VIII. REQUEST FOR ADDITIONAL OR AMENDED FINDINGS OR CONCLUSIONS

§ 14:173 In general § 14:174 Procedure § 14:175 Timeliness § 14:176 Effect of failure to request Duty of the judge § 14:177 § 14:178 —Ultimate issue § 14:179 —Evidentiary matter § 14:180 —Contrary to original findings § 14:181 —Unsupported by the record —Copies to parties § 14:182 § 14:183 Effect of court's failure to honor request § 14:184 Appellate review § 14:185 —Contrary finding —Not ultimate issue § 14:186 § 14:187 —Undisputed matters

§ 14:202

§ 14:203

§ 14:217 § 14:218

§ 14:219

§ 14:188 —Effect of refusal

IX. APPELLATE REVIEW OF A BENCH TRIAL

§ 14:189 In general § 14:190 -No findings of fact and conclusions of law requested § 14:191 —Any correct theory to affirm § 14:192 —Trial court made necessary findings § 14:193 —Proof supported judgment § 14:194 —Automatic extension of deadline to perfect appeal § 14:195 — —Failure to file request § 14:196 -Agreed case When a party requested findings of fact and § 14:197 conclusions of law —Trial court made omitted findings § 14:198 — —If no element included § 14:199 § 14:200 ——Deemed findings § 14:201 —Competent evidence supported all findings

X. ATTACKING FINDINGS OF FACT

—Parties tried issues by consent

—The trial court made negative findings

§ 14:204 In general —When finding is binding § 14:205 § 14:206 —Unchallenged findings § 14:207 Grounds for attacking findings § 14:208 —Matter of law § 14:209 —Effect of findings of fact § 14:210 —Order of review § 14:211 —Standard of review on appeal § 14:212 — Legal sufficiency review § 14:213 — — — Disregard contrary evidence § 14:214 ———More than a scintilla § 14:215 — Factual sufficiency review -----Against great weight and preponderance § 14:216

———State basis of finding

——Implied findings

XI. ATTACKING CONCLUSIONS OF LAW

When finding of fact is mislabeled conclusion of law

- § 14:220 Method of attack§ 14:221 —Factual insufficiency not a valid basis
- § 14:222 Standard of review on appeal

§ 14:223 —No deference
 § 14:224 —De novo review
 § 14:225 —Erroneous conclusion

XII. CONFLICTS IN FINDINGS OR CONCLUSIONS

- § 14:226 When findings of fact conflict with each other
- § 14:227 When findings of fact conflict with the judgment
- § 14:228 When findings of fact conflict with trial court's oral statements
- § 14:229 When findings of fact conflict with amended findings of fact
- § 14:230 When findings of fact conflict with conclusions of law
- § 14:231 When conclusions of law conflict with the judgment

XIII. FORMS

§ 14:232 Form—Request for findings of fact and conclusions of law

CHAPTER 15. JURY CHARGE, DELIBERATION, AND VERDICT

I. PROVINCE OF THE COURT AND OF THE JURY

- § 15:1 Generally
- § 15:2 Court
- § 15:3 —Discretion
- § 15:4 —Instruct the jury
- § 15:5 —Questions of law
- § 15:6 ——Deciding legal effect
- § 15:7 ——Application of legal principle
- § 15:8 ——Conclusive issues of fact
- § 15:9 —When verdict is directed
- § 15:10 Jury
- § 15:11 —Weight of the evidence
- § 15:12 ——No comment on the weight of the evidence
- § 15:13 ——Incidental comment
- § 15:14 —Credibility of witnesses
- § 15:15 Procedure where court and jury have issues to decide

II. JURY CHARGE

- § 15:16 Developed by trial court
- § 15:17 Simplicity

```
§ 15:18
          General requirements
§ 15:19
          Controlling issues
§ 15:20
          —Definition of controlling
§ 15:21
          —Evidentiary issue
§ 15:22
          —Legal insufficiency
§ 15:23
          -Refusal to submit
§ 15:24
          —Discretion not limitless
§ 15:25
          Preparation of draft charge at outset of case
§ 15:26
          —Roadmap for case and evidence development
§ 15:27
          -Keeping track of changing issues
§ 15:28
          —Pretrial conference
§ 15:29
          Use of charge at trial
§ 15:30
          -Use in voir dire
§ 15:31
          ——Applications
§ 15:32
          —Use in opening statement
§ 15:33
          — — Checklist
§ 15:34
          —Use in closing argument
§ 15:35
          Form of questions, instructions, omissions
§ 15:36
          —Danger
§ 15:37
          -Broad-form submission
§ 15:38
          — Required when feasible
§ 15:39
          — —Limits trial court discretion
          — — Whenever feasible
§ 15:40
§ 15:41
          — —Limitations of broad-form practice
§ 15:42
          ——Questions or instructions
§ 15:43
          — — No granulated issues
          ———Harmless error standard
§ 15:44
§ 15:45
          — — Great deference
§ 15:46
          — — — Disjunctive
§ 15:47
          ———Damages question
§ 15:48
          — — No reduction
          ———Predicated on liability
§ 15:49
§ 15:50
          ———Preserving error
§ 15:51
          — —Instructions
          — — — Discretion
§ 15:52
§ 15:53
          — — — Abuse of discretion standard
          — — —Form
§ 15:54
          — — Parties' entitlement
§ 15:55
          ———Misstatement of the law
§ 15:56
          ———Necessity
§ 15:57
          — — Criteria for submission
§ 15:58
§ 15:59
          ———Refusal to submit
          ———Elimination of theory of recovery
§ 15:60
          — — Definitions
§ 15:61
```

TEXAS PRACTICE GUIDE: CIVIL TRIAL

```
§ 15:62
          — — — Abuse of discretion standard
§ 15:63
          — — Proper form
§ 15:64
          ———Unnecessary definitions
          ———Effect of answers
§ 15:65
§ 15:66
          ———Enable jury to reach verdict
          — — Sufficiency of explanation
§ 15:67
§ 15:68
          — —Burden of proof
§ 15:69
          — — — Difficulty
§ 15:70
          Subject matter-Matters in pleading and in
           evidence
§ 15:71
          — Broad discretion
§ 15:72
          — — Multiple elements
          -Questions of fact and questions of law
§ 15:73
§ 15:74
          — Fact question
§ 15:75
          — —Harmless error
          -- Mixed question
§ 15:76
§ 15:77
          -Effect of omissions
          — —Waiver
§ 15:78
§ 15:79
          ———Written findings
§ 15:80
          ———Deemed findings
          -Comment on the weight of the evidence
§ 15:81
§ 15:82
          ——Incidental comment
§ 15:83
          — —Definition
§ 15:84
          —Inferential rebuttal
          --- Not permitted
§ 15:85
§ 15:86
          —Pattern jury charge
§ 15:87
          — — Applicability
§ 15:88
          --- Nonbinding guide
§ 15:89
          — —Not automatic error
§ 15:90
          ——Question of law
          --- Not exhaustive list
§ 15:91
          ---Refusal
§ 15:92
§ 15:93
          -Damages
§ 15:94
          — No reduction
          — Predicate on liability
§ 15:95
§ 15:96
          Drafting the charge
§ 15:97
          —Limitation
§ 15:98
          —Statutory language
§ 15:99
          —Formal requirements
§ 15:100
          —Pretrial conference
§ 15:101
          — Purpose
§ 15:102
          --- Consideration of proposed charge
§ 15:103
          —Charge conference
§ 15:104
          — —Informal
```

TABLE OF CONTENTS

§ 15:105	— — Objections
§ 15:106	— —Formal
§ 15:107	—Draft charge distribution
§ 15:108	—Examination of objections
§ 15:109	——Reasonable time to examine
§ 15:110	—Trial court ruling
§ 15:111	— Endorsement—Accept or reject
§ 15:112	— ——Accepted
§ 15:113	— ——Accepted — ——Refused
§ 15:114	— — — Modified
§ 15:115	———Preservation of error
§ 15:116	——Signature
§ 15:117	—Submission to the jury
§ 15:118	Preservation of charge error
§ 15:119	—General requirements
§ 15:120	——Substantially correct
§ 15:121	— —General test
§ 15:122	—Reasonable time to examine
§ 15:123	——Bill of exceptions
§ 15:124	——Grounds
§ 15:125	—Timing of objections
§ 15:126	——Basic rule
§ 15:127	——Error preserved
§ 15:128	——Agreements to object later
§ 15:129	—Dilemma—Object or request
§ 15:130	——Question—Party's burden
§ 15:131	— — Consequence
§ 15:132	— — Opponent's burden
§ 15:133	———Opposing party objects
§ 15:134	———Defective submission of an element
§ 15:135	 —Submission of erroneous or defective
	instruction or definition
§ 15:136	———Unrelated to burden of proof
§ 15:137	— — —Waiver
§ 15:138	———Previous submission
§ 15:139	— Omission of instruction or definition
§ 15:140	— — Request
§ 15:141	— — Dictating objection
§ 15:142	———Written instruction
§ 15:143	———Failure to note refused
§ 15:144	
§ 15:145	
§ 15:146	•
§ 15:147	
	-

```
§ 15:148
          — —Announcement of ruling
§ 15:149
         — — Noting objection
§ 15:150
         ---Method
          — — Dictation
§ 15:151
§ 15:152
         ——Specificity
§ 15:153
          ———Identify objectionable part of charge
§ 15:154
          — — — Identify violated legal principle
§ 15:155
          ———Explain why legal principle is violated
         --Timeliness
§ 15:156
§ 15:157
          — — Written findings
          ——Deemed findings
§ 15:158
§ 15:159
         — No adoption by reference
         ——Purpose of objections
§ 15:160
§ 15:161
          — — — Objectionable objections
         — — Too many objections
§ 15:162
§ 15:163
          -Requests
          --- Requirements
§ 15:164
         — — —Writing
§ 15:165
§ 15:166
          ———Separate from objections
         ———Tendered to the court
§ 15:167
          — — Not voluminous or obscure
§ 15:168
§ 15:169
          ———Substantially correct
          — — Not substantially correct
§ 15:170
          --Not en masse
§ 15:171
§ 15:172
         — Relaxation of the rules
          ——Payne in reverse
§ 15:173
§ 15:174
         —Ruling by the court; timing
§ 15:175
         ——Court to inform parties
§ 15:176
         — — Refused
          — — — Modified
§ 15:177
III. VERDICT
```

```
§ 15:178
          Overview
§ 15:179
          -General rules
§ 15:180
          -Method of reaching verdict
§ 15:181
          —No required form
§ 15:182
          —Material questions
§ 15:183
          —Only one
§ 15:184
          —Procedure for rendition and reception
§ 15:185
          — — Objection
§ 15:186
          ——Content
§ 15:187
          ———Court's direction and instructions
§ 15:188
          General or special verdict
§ 15:189
          General verdict
```

§ 15:190 Special verdict
§ 15:191 —Rationale
§ 15:192 Conflict in jury findings; test
§ 15:193 —Reconciliation of conflict
§ 15:194 —Waiver
§ 15:195 —Incomplete verdict

IV. JURY DELIBERATIONS

§ 15:196	Jury kept together during deliberations
§ 15:197	—Jury deliberation room
§ 15:198	—Selection of foreperson
§ 15:199	· ·
§ 15:200	——Collectively
§ 15:201	— With open minds
§ 15:202	· ·
§ 15:203	
§ 15:204	———Trial court discretion
§ 15:205	—Secrecy of deliberations
§ 15:206	Rules of conduct
§ 15:207	—Use of personal knowledge
§ 15:208	——Individual investigations
§ 15:209	—Rereading testimony
§ 15:210	——Depositions
§ 15:211	—Communication with party
§ 15:212	Duration of deliberation
§ 15:213	Taking papers, exhibits, instructions to jury room
§ 15:214	—Notes
§ 15:215	—What is permitted
§ 15:216	——Depositions
§ 15:217	 — Detachable exhibits received in evidence
§ 15:218	——All parties
§ 15:219	— —Mandatory rule
§ 15:220	——Demonstrative aids
§ 15:221	— —Juror experimentation with exhibits
§ 15:222	Jury's communication with the court
§ 15:223	—Submitted through bailiff
§ 15:224	—In open court
§ 15:225	—Oral or in writing
§ 15:226	—Notice to counsel and parties
§ 15:227	—Additional argument
§ 15:228	—Harm analysis
§ 15:229	—Request for review of testimony or other evidence
§ 15:230	——Specificity of request
§ 15.230 § 15:231	——————————————————————————————————————
2 10.701	— — Disagreement

——Request for deposition § 15:232 ——Consultation with parties § 15:233 § 15:234 ——Procedure for reading testimony § 15:235 ——Court's response § 15:236 —For additional instructions § 15:237 —In conformity with charge § 15:238 On-site viewing § 15:239 —As a group — —General rule § 15:240 § 15:241 ——Caveat § 15:242 —Notice to parties Care and custody of jurors during deliberations § 15:243 § 15:244 —Juror meals § 15:245 —Sequestering arrangements § 15:246 Replacing jurors before deliberation § 15:247 —After deliberations begin § 15:248 Inability of jury to reach a verdict § 15:249 —Length of time § 15:250 —Dynamite charge § 15:251 -Mistrial § 15:252 Juror misconduct during deliberations § 15:253 —Improper communication during deliberations § 15:254 — —Limited communication with attending officer § 15:255 —Unauthorized separation during deliberations § 15:256 —Obtaining information from outside sources § 15:257 —Juror experiments -Considering matters outside the record § 15:258 § 15:259 —Arriving at verdict improperly § 15:260 — — Chance verdict § 15:261 --Quotient verdict —Procedure for challenging misconduct § 15:262 § 15:263 ——Sufficiency of challenge § 15:264 ——Prohibited testimony § 15:265 — Evidence of outside influence — — Definition of outside influence § 15:266 § 15:267 — —Juror's misgivings § 15:268 -Remedies for jury misconduct § 15:269 — Prejudice required for mistrial or new trial § 15:270 ——Hearing held § 15:271 ——Discretion of the court

V. POST-DELIBERATION PROCEEDINGS

- § 15:272 Vote required for verdict
- § 15:273 —Three disabled

§ 15:274 —Jury of six jurors § 15:275 —Signing verdict § 15:276 —Exemplary damages § 15:277 Failure to return verdict § 15:278 —Instructions to resume deliberations § 15:279 Receipt of verdict § 15:280 -Examining, accepting, and filing § 15:281 —Presentation of verdict -Waiver § 15:282 § 15:283 ——Approval as to form § 15:284 Polling the jury § 15:285 -Request § 15:286 —Waiver § 15:287 —Effect of poll if verdict not correct; further deliberations — — Discharge § 15:288 § 15:289 Entry of verdict § 15:290 Correction of verdict § 15:291 —Specific defects § 15:292 ——Ambiguous verdict § 15:293 ——Inconsistent findings in special verdict ——Failure to answer questions § 15:294

CHAPTER 16. JUDGMENTS

I. DEFINITION OF JUDGMENT

§ 16:1 In general

II. JUDGMENT ON THE JURY VERDICT

§ 16:2 Duty of the court § 16:3 -Verdict must be sufficient for judge to enter judgment § 16:4 —Sufficiency of verdict § 16:5 - Judgment notwithstanding the verdict § 16:6 — — No evidence § 16:7 — — — Contrary fact established ———Appellant's burden when trial court does not § 16:8 specify reasons for JNOV - Judgment notwithstanding one or more jury § 16:9 findings § 16:10 —Verdict on alternative theories of recovery § 16:11 Motion for entry of judgment § 16:12 —Request for judgment for particular amount

§ 16:13	—When mandamus relief is available
§ 16:14	Judgment after nonjury trial
§ 16:15	—Requesting findings of fact and conclusions of law
§ 16:16	— — Trial court plenary power
§ 16:17	——Effect on appellate timetable
§ 16:18	* *
§ 16:19	·
§ 16:20	— —When court fails to timely file findings and conclusions
§ 16:21	—When no findings of fact and conclusions of law requested
§ 16:22	—Omitted unrequested findings
§ 16:23	—Additional or amended findings of fact and conclusions of law
§ 16:24	——Allowed for ultimate issues only
§ 16:25	— — No recital in judgment
III. E	NTRY OF JUDGMENT

In general § 16:26 § 16:27 Rendition § 16:28 —In open court — — Words must indicate intent to render judgment § 16:29 § 16:30 ——Spoken words § 16:31 —Written memorandum § 16:32 —Public announcement § 16:33 Contents of judgment § 16:34 -Names of parties § 16:35 — —When remand unnecessary § 16:36 —Description of property § 16:37 —Designation of amount recovered § 16:38 -Signature § 16:39 Procedure for entry of judgment § 16:40 —Preparation by counsel ——Service on other parties § 16:41 § 16:42 —Signing § 16:43 —Approval of form of judgment -Notice of judgment § 16:44

IV. REQUIREMENTS FOR VALID JUDGMENT

-Mandamus to compel entry

— —Interlocutory or final default judgment

§ 16:47 Jurisdiction § 16:48 —Personal jurisdiction

§ 16:45

§ 16:46

—Jurisdiction to render judgment § 16:50 § 16:51 —Capacity to act as a court § 16:52 Qualified judge —Grounds for disqualification § 16:53 § 16:54 —Grounds for recusal —Constitutional disqualification § 16:55 § 16:56 — Effect of disqualification § 16:57 Definite and certain § 16:58 Conformity to pleadings § 16:59 —Settlement agreement -Relief granted § 16:60 § 16:61 Pleadings sufficient § 16:62 —General rule—Pleadings must support relief § 16:63 —Amendment of pleadings § 16:64 -Exception-Issues tried by express or implied consent § 16:65 ——Agreed judgment

V. INVALID JUDGMENT

§ 16:67 Distinction between void and voidable judgment

Evidence must be sufficient to support judgment

§ 16:68 Void judgment

§ 16:66

- § 16:69 —Attacked at any time
- § 16:70 —Circumstances under which judgment void
- § 16:71 ——No personal jurisdiction
- § 16:72 ——No subject matter jurisdiction
- § 16:73 ——No jurisdiction to render judgment
- § 16:74 ——No capacity to act as a court
- § 16:75 —Evidence of invalidity on the face of the judgment
- § 16:76 —Official misinformation does not void judgment
- § 16:77 —Procedure for attack
- § 16:78 ——Direct
- $\S 16:79$ ——Collateral
- § 16:80 —Appeal from void judgment
- § 16:81 Partially void judgment
- § 16:82 Voidable judgment
- § 16:83 —Facially regular but erroneous
- § 16:84 —Effective unless attacked
- § 16:85 —Procedure to attack
- § 16:86 ——Motion for new trial
- § 16:87 ——Normal appeals process
- § 16:88 ——Bill of review
- § 16:89 —Not open to collateral attack

VI. FINALITY OF JUDGMENT

- § 16:90 Definition
- § 16:91 —Need not resolve pending sanctions
- § 16:92 —Expiration of time limits
- § 16:93 One final judgment
- § 16:94 —Probate and guardianship cases
- § 16:95 Final versus interlocutory
- § 16:96 —Appeal lies only from final judgment
- § 16:97 ——Appealable interlocutory orders
- § 16:98 —Foreign judgments
- § 16:99 —Judgment lien
- § 16:100 —Res judicata
- § 16:101 —Default judgments
- § 16:102 Intent of court
- § 16:103 Mother Hubbard clause
- § 16:104 —In summary judgment context
- § 16:105 —Presumption of finality—Trial on merits
- § 16:106 Other types of judgments
- § 16:107 ——Bases for different presumptions
- § 16:108 ——Determination of finality
- § 16:109 Appellate implications
- § 16:110 —Date appellate timetable begins to run

VII. PLENARY POWER OF THE COURT

- § 16:111 In general
- § 16:112 When period begins to run
- § 16:113 Generally lasts for 30 days
- § 16:114 —Effect of posttrial motions
- § 16:115 ——Motion for sanctions
- § 16:116 Power is full and unqualified
- § 16:117 Bill of review
- § 16:118 Nunc pro tunc

VIII. EFFECT OF JUDGMENT

- § 16:119 In general
- § 16:120 Res judicata (claim preclusion)
- § 16:121 —Requirements
- § 16:122 Collateral estoppel (issue preclusion)
- § 16:123 —Requirements
- § 16:124 —Mutuality not required

IX. COSTS AND INTEREST ON JUDGMENT

§ 16:125 Entitlement to costs

§ 16:126 —Rejected offer of settlement § 16:127 —Discretion of the court § 16:128 —When both parties are successful Costs recoverable § 16:129 § 16:130 Court may otherwise adjudge costs § 16:131 Prejudgment interest § 16:132 —Wrongful death, personal injury, and property damage cases § 16:133 —Future damages

X. FORMS

§ 16:134

§ 16:135

- § 16:136 Form—Final judgment—Jury trial
 § 16:137 —Motion for judgment notwithstanding the verdict
- § 16:138 —Final judgment—Nonjury trial

—Trial court discretion

—Accrual date

CHAPTER 17. POSTVERDICT AND POSTTRIAL MOTIONS

I. MOTION FOR JUDGMENT ON THE VERDICT

- § 17:1 Purpose
- § 17:2 Necessity
- § 17:3 —Ministerial act
- § 17:4 —Preparation by parties
- § 17:5 Advantages
- § 17:6 —Trigger judicial action
- § 17:7 —Meaning of verdict
- § 17:8 ——Strategic clarification, focus, or spin
- § 17:9 Effect of motion
- § 17:10 —Consequence on appeal
- § 17:11 ——Extent of limitation
- § 17:12 ——Rationale for rule
- § 17:13 —Specify jury findings
- § 17:14 —Combination with motion to disregard jury findings
- § 17:15 Responding to the motion for judgment
- § 17:16 —Reasons for opposition
- § 17:17 —Point out errors
- § 17:18 —Interest calculation

II. PROPOSED JUDGMENT

§ 17:19 Form

§ 17:20 —Names of parties
§ 17:21 —Signature and date
§ 17:22 —Notice of Judgment
§ 17:23 —Amount of award
§ 17:24 —Circulation to all parties
§ 17:25 Submitting adverse judgment

III. MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

§ 17:26 In general § 17:27 Purpose —Disregard entire verdict § 17:28 ——Similarity to directed verdict § 17:29 § 17:30 —Preservation of error § 17:31 —Rendition on appeal Procedure § 17:32 § 17:33 —Not on court's own motion —Notice and hearing § 17:34 § 17:35 ---Notice § 17:36 — —Hearing § 17:37 -Both required § 17:38 —Appellate record Grounds supporting motion for judgment § 17:39 notwithstanding the verdict § 17:40 —Directed verdict § 17:41 Granting of motion for judgment notwithstanding the verdict § 17:42 -Evidentiary showing required -No motion for directed verdict necessary as § 17:43 prerequisite to judgment notwithstanding the verdict § 17:44 Form § 17:45 —Refer to rule § 17:46 —In writing —Title § 17:47 § 17:48 -Grounds § 17:49 Time § 17:50 —Before the judgment signed § 17:51 —Court's plenary power § 17:52 Trial court's standard of review § 17:53 Appellate standard of review § 17:54 —Crosspoint on appeal § 17:55 — —Waiver § 17:56 —Prerequisite for appeal

- § 17:57 ——Legal sufficiency
- $\S 17:58$ — Methods of preservation
- § 17:59 —Effect on appellate deadlines

IV. MOTION TO DISREGARD JURY FINDINGS

- § 17:60 In general
- § 17:61 —Purposes
- § 17:62 ——Eliminate specific findings
- § 17:63 ——Preservation of error
- § 17:64 Distinguishing characteristics
- § 17:65 —Breadth of motion
- § 17:66 —Appellate deadlines
- § 17:67 —Specific deadline
- § 17:68 —Legal sufficiency complaints
- § 17:69 —Appropriate relief
- § 17:70 —Trial court standard of review
- § 17:71 —Judgment on remaining findings
- § 17:72 ——Appealable order
- § 17:73 ———Finality defined
- § 17:74 ———Disregard jury findings
- § 17:75 Procedure for filing
- § 17:76 —Not on court's motion
- § 17:77 ——Exception
- § 17:78 ———Immateriality defined
- § 17:79 —Notice and hearing
- § 17:80 ——Error
- § 17:81 —Appellate record
- § 17:82 Basis of motion
- § 17:83 —Grounds
- § 17:84 Form
- § 17:85 —Reference to rule
- § 17:86 —In writing
- § 17:87 —Titled
- § 17:88 —Specify finding
- § 17:89 —Basis for motion
- § 17:90 —Request judgment
- § 17:91 Time for filing
- § 17:92 —Before signing of judgment
- § 17:93 —Court's plenary power
- § 17:94 Trial court's standard of review
- § 17:95 —Any evidence in support
- § 17:96 Appellate court's standard of review
- § 17:97 Prerequisite for appeal
- § 17:98 —Legal sufficiency complaints

§ 17:99 Crosspoint§ 17:100 —Waiver

V. MOTIONS FOR NEW TRIAL

§ 17:101	In general
§ 17:102	—Purpose
§ 17:103	Distinguishing characteristics
§ 17:104	—Specific deadline
§ 17:105	—Legal sufficiency complaints
§ 17:106	—Appellate deadlines
§ 17:107	—Relief on reversal
§ 17:108	—Standard of review
§ 17:109	Motion by party or court's own motion
§ 17:110	—Severability
§ 17:111	Specificity
§ 17:112	—General objections
§ 17:113	Form of motion
§ 17:114	Hearing
§ 17:115	—When required
§ 17:116	Grounds
§ 17:117	—Good cause
§ 17:118	——Default judgment; Unintentional failure to
0.4 = 440	answer
§ 17:119	— — Default judgment; Meritorious defense
§ 17:120	— — Meritorious defense—Exception to meritorious defense
§ 17:121	— —Granting a new trial would not result in injury
	to the prevailing plaintiff
§ 17:122	—Court's discretion
§ 17:123	——Notice by publication
§ 17:124	—Factually insufficient evidence
§ 17:125	——Total weight of evidence
§ 17:126	—Jury misconduct
§ 17:127	——Evidentiary hearing
§ 17:128	——Basis for new trial
§ 17:129	— — Subject matter of deliberations
§ 17:130	— — Definition of outside influence
§ 17:131	—Newly discovered evidence
§ 17:132	——Requirements
§ 17:133	— — Burden
§ 17:134	—Damages
§ 17:135	— — Remittitur
§ 17:136	— — Sufficient probative evidence to support
§ 17:137	Prerequisite for appeal

- § 17:138 —Not necessary generally
- § 17:139 —When required
- § 17:140 —Waiver
- § 17:141 —Legal sufficiency
- § 17:142 ——Remand
- § 17:143 ———Rendition
- § 17:144 Time
- § 17:145 —No extension
- § 17:146 ——No notice
- § 17:147 —Effect of filing
- § 17:148 —Overrule by operation of law
- § 17:149 ——Effect of untimely filing
- § 17:150 ——Amended motion
- § 17:151 Order
- § 17:152 Effect of grant of motion
- § 17:153 Appealability
- § 17:154 —Exceptions
- § 17:155 ——Denial of new trial motion
- § 17:156 —Review of order by mandamus

VI. MOTIONS TO MODIFY, CORRECT, OR REFORM

- § 17:157 In general
- § 17:158 —Purpose
- § 17:159 Form
- § 17:160 Time
- § 17:161 —Effect of filing
- § 17:162 —Overrule by operation of law
- § 17:163 —Action on granting

VII. MOTIONS TO VACATE

- § 17:164 In general
- § 17:165 —Plenary power
- § 17:166 —Duration
- § 17:167 ——Lack of notice
- § 17:168 Requirement of writing

VIII. MOTIONS FOR REMITTITUR

- § 17:169 In general
- § 17:170 —Part of motion for new trial
- § 17:171 —Disposition
- § 17:172 In concert with new trial motion

IX. MOTIONS FOR JUDGMENTS NUNC PRO TUNC

§ 17:173 In general

§ 17:174 —Invocation by court or litigants § 17:175 ——Invocation by nonlitigants § 17:176 Clerical versus judicial errors § 17:177 —Clerical error § 17:178 — —Clerical mistake § 17:179 —Judicial error § 17:180 -Question of law § 17:181 Procedure to correct § 17:182 -Notice § 17:183 —Hearing § 17:184 —Time § 17:185 —Burden of proof —Clear and convincing standard § 17:186 § 17:187 —Appellate timetable § 17:188 — Not extended § 17:189 ———Exception—Outside plenary power

X. ATTACKING DEFAULT JUDGMENTS

§ 17:190 In general § 17:191 —Sanction for failure to appear § 17:192 -No presumption of finality § 17:193 —Justice court § 17:194 — —Vacating --Notice required § 17:195 § 17:196 —Publication § 17:197 ——Statement of facts § 17:198 Motion for new trial § 17:199 —Showing required § 17:200 ——Service of process — — Meritorious defense § 17:201 § 17:202 ———Injury to plaintiff § 17:203 —Meritorious defense § 17:204 — —Facts must be verified —Abuse of discretion § 17:205 Bill of review § 17:206 § 17:207 —Definition § 17:208 -Procedure § 17:209 — — Deadline § 17:210 ———Extrinsic fraud § 17:211 —Showing required § 17:212 — Exception § 17:213 — —Excuse Trial on bill of review § 17:214 § 17:215 —Burden of proof

- § 17:216 When there was no service of process
- § 17:217 —Underlying action
- § 17:218 —Judgment

XI. MOTIONS TO REINSTATE

- § 17:219 In general
- § 17:220 Forced dismissal of suit
- § 17:221 —Duty of court clerk
- § 17:222 Filing deadline for motion to reinstate
- § 17:223 Motion requirements and procedures
- § 17:224 —Content and signature
- § 17:225 Werification
- § 17:226 —Delivery to judge
- § 17:227 —Hearing
- § 17:228 —Notice
- § 17:229 Action on motion
- § 17:230 Effect of motion to reinstate
- § 17:231 —Extension of plenary power
- § 17:232 —Unverified motions
- § 17:233 —Appellate deadlines

XII. CHECKLISTS

- § 17:234 Checklist—Drafting motion for directed verdict
- § 17:235 —Drafting motion for judgment notwithstanding the verdict
- § 17:236 —Drafting motion to disregard certain jury answers
- § 17:237 —Drafting notice of appeal

XIII. FORMS

- § 17:238 Form—Motion for judgment non obstante veredicto (judgment notwithstanding the verdict)
- § 17:239 —Proposed judgment—preserving substantive issue for appeal

CHAPTER 18. SATISFACTION, CANCELLATION, OR EXECUTION OF JUDGMENT

I. JUDGMENT LIENS

- § 18:1 Definition
- § 18:2 Creation of judgment lien
- § 18:3 —Requirements

§ 18:4 Purpose of abstracting a judgment § 18:5 Preparation of abstract of judgment § 18:6 —Justice court abstracting § 18:7 —Substantial compliance § 18:8 — — Meaning of substantial compliance —Contents required § 18:9 § 18:10 ——Names --- Identification of the defendant § 18:11 ——Cause number § 18:12 § 18:13 — —Address or citation information—Abstracts prepared before September 1, 2007 § 18:14 — — Identification numbers § 18:15 — — Date of judgment § 18:16 ——Amount § 18:17 — — Child support arrearage ——Interest rate § 18:18 § 18:19 —Plaintiff's mailing address § 18:20 —Missing information § 18:21 — — Actual knowledge of missing information § 18:22 —Plaintiff as counterdefendant § 18:23 Where to file § 18:24 —County clerk records § 18:25 Requirements for filing § 18:26 —Plaintiff's mailing address § 18:27 —Penalty fee —Validity as between parties § 18:28 —Presumption § 18:29 § 18:30 Index —Information § 18:31 § 18:32 —Purpose of indexing § 18:33 -Mandatory § 18:34 —Responsibility of filing party § 18:35 —Names of both parties § 18:36 —Space for credits § 18:37 Effect of filing judgment liens Foreclosure on a judgment lien § 18:38 § 18:39 Satisfaction of lien § 18:40 Transfer or sale of judgment § 18:41 —Sale is not a credit on the judgment

II. TYPES OF PROPERTY SUBJECT TO SEIZURE

- $\S~18:42$ Owned by debtor
- § 18:43 —Prima facie showing
- § 18:44 —Another resident

```
§ 18:45
         Immovable (real) property
§ 18:46
         —Judgment against record owner
§ 18:47
         Personal property
§ 18:48
         —Lien notes
§ 18:49
         -Proceeds of homestead sale
§ 18:50
         ——Purpose
§ 18:51
         — — Unsecured creditor's claims
§ 18:52
         —Joint interests—Marital property
§ 18:53
         —Scope of judicial review
§ 18:54
         -Partnerships and associations
§ 18:55
         — Each partner
§ 18:56
         — —In association's name
         ——Service on officer
§ 18:57
§ 18:58
        ——Service on members
         § 18:59
         —Contingent interests
§ 18:60
         ——Remote
§ 18:61
         — — Uncertain interests
§ 18:62
§ 18:63
         —Future interests
§ 18:64
        Property fraudulently transferred
§ 18:65
         —Statutory authority
§ 18:66
         ——Purpose of act
§ 18:67
         -What constitutes a fraudulent transfer
§ 18:68
         — —Receipt of equivalent value
§ 18:69
         — —Transfer to insider
§ 18:70
         -Remedies of judgment creditor
§ 18:71
        Levy of property
§ 18:72
         —How seizure is effected
§ 18:73
         ——Shares of stock
§ 18:74
         — —Livestock running at large
§ 18:75
         — —Goods pledged or mortgaged
§ 18:76
         ——Encumbered property
§ 18:77
         — — Mortgaged property
§ 18:78
         --Levy on pledged goods
§ 18:79
         Defenses
§ 18:80
         -Holder in due course
§ 18:81
         -- Good faith
         — — —Inquiry notice of fraud
§ 18:82
§ 18:83
         -Nonvoidable
§ 18:84
         ——Lease
         ——Security interest
§ 18:85
§ 18:86
         —Transfer from antecedent debt
§ 18:87
         Exemptions from seizure
§ 18:88
         -Homesteads
```

§ 18:89 ——Sale of property
 § 18:90 ——Exception
 § 18:91 ——Lien precedes homestead
 § 18:92 ——Homestead ceases
 § 18:93 —Personal property

III. DISCOVERY IN AID OF SATISFYING JUDGMENT

- § 18:94 When discovery is available and what devices are available
- § 18:95 Pleading and notice requirements

IV. EXECUTION

- § 18:96 What is execution § 18:97 —Power to enforce
- § 18:98 Process to satisfy judgment
- § 18:99 —Final stage
- § 18:100 —Any writ
- § 18:101 Types of judgments subject to execution
- § 18:102 Money
- § 18:103 What courts may issue execution
- § 18:104 —Inherent power of the court
- § 18:105 Time when execution may issue
- § 18:106 —Motion for new trial
- § 18:107 —Removal of property
- § 18:108 Issuance of writ by clerk
- § 18:109 Form of writ
- § 18:110 —Legal description of real property required
- § 18:111 Execution of writ by officer (sheriff or constable)
- § 18:112 —Sheriff may require creditor to identify property
- § 18:113 ——First levy
- § 18:114 ———Additional designation
- § 18:115 ——No designation
- § 18:116 Time limits
- § 18:117 —Duty of officer
- § 18:118 —When returnable
- § 18:119 —Evidence of return
- § 18:120 ——Filed with clerk
- § 18:121 Additional writs
- § 18:122 —Alias
- § 18:123 —Pluries
- § 18:124 —Sufficient judgment
- § 18:125 ——Lien lost or dormant

§ 18:126 ——Execution satisfied

V. STAY OF EXECUTION

```
§ 18:127
          Delaying enforcement
          Effect of supersedeas
§ 18:128
§ 18:129
          Effect of appeal
§ 18:130
          Suspension of enforcement of judgment pending
           appeal
§ 18:131
          —Supersedeas bond
§ 18:132
          — — Definition
§ 18:133
          — Requirements
§ 18:134
          ——Approval by the clerk
§ 18:135
          -Written agreement
§ 18:136
          —Deposit in lieu of bond
§ 18:137
          — —General rule
§ 18:138
          — Interest
§ 18:139
          — Types of deposit
§ 18:140
          — — Filing of instrument
          ———Payable to appellee
§ 18:141
§ 18:142
          ———Exception; letter of credit
§ 18:143
          —Alternate security
§ 18:144
          —Conditions of liability
§ 18:145
          — No appeal
§ 18:146
          — Judgment final on appeal
          ——Real or personal property
§ 18:147
§ 18:148
          —Duty of the clerk
§ 18:149
          —Amount of bond, deposit, or security
          — —For recovery of money
§ 18:150
§ 18:151
          — —For recovery of property
§ 18:152
          — Other judgment
          — —Conservatorship or custody
§ 18:153
§ 18:154
          — — — Appellate prerogative
§ 18:155
          — —For a governmental entity
          — — Standard for suspension
§ 18:156
          — — —If security requirement is not suspended
§ 18:157
§ 18:158
          — —Lesser amount
§ 18:159
          — — Authority for lower bond in judgments signed
           before September 1, 2003
          ———Exceptions
§ 18:160
§ 18:161
          — — Conflict with appellate court rules
§ 18:162
          — — No conflict in personal injury suit
          ————Applies only to final judgment signed
§ 18:163
           before September 1, 2003
§ 18:164
          —Continuing trial court jurisdiction
```

§ 18:165 —Duty of the debtor —Appellate review § 18:166 § 18:167 ——Temporary orders ——Action by the appellate court § 18:168 ——Effect of ruling § 18:169 § 18:170 Injunction § 18:171 -Where brought § 18:172 — —Facial validity — —Void on its face § 18:173 § 18:174 —Brought within one year —Absent from state § 18:175 § 18:176 —Void judgment — — Dormant judgment § 18:177 § 18:178 —Equitable grounds, generally § 18:179 —Specific grounds § 18:180 Failure to give notice § 18:181 Right to designate denied —Other property designated § 18:182 § 18:183 —Petition requirements § 18:184 Injunction bond § 18:185 Recovery of executed property before sale

VI. SALE OF PROPERTY AND DISTRIBUTION OF PROCEEDS

§ 18:186 Sale of real property § 18:187 Requirement of notice § 18:188 —Newspaper publication § 18:189 ——Circulation of newspaper § 18:190 —Timing of first publication § 18:191 —Contents of notice § 18:192 ——Amount due § 18:193 —Description of property § 18:194 — — Minimum description § 18:195 —Alternative to newspaper § 18:196 -Notice to debtor § 18:197 Location of sale § 18:198 —Courthouse door § 18:199 — —No courthouse ——Courthouse destroyed § 18:200 — Entrance § 18:201 § 18:202 —Different location voids sale § 18:203 Failure to comply with order voids sale Who may bid § 18:204 § 18:205 —Officer in charge

§ 18:206 —Permissible bidders § 18:207 Sale of multiple parcels § 18:208 —Separate notice unnecessary § 18:209 —All executions § 18:210 —Several lots in town § 18:211 — —Judgment designation § 18:212 § 18:213 Sale of personal property -Location of sale § 18:214 § 18:215 —Property on view § 18:216 -Notice of sale § 18:217 Conveyance to purchaser § 18:218 Payment § 18:219 —Sale complete —Purchaser's liability § 18:220 § 18:221 -Installments § 18:222 —Resale of failure to pay --- Readvertisement and resale § 18:223 § 18:224 ——Penalty § 18:225 ———No good faith exception — — — Sheriff refuses to accept payment § 18:226 § 18:227 — —Deficiency — — Motion § 18:228 § 18:229 Effect of sale § 18:230 —No greater title § 18:231 —Previous foreclosure § 18:232 Sheriff's duty to pay over § 18:233 —Burden of judgment creditor § 18:234 —Burden shifts § 18:235 —Affirmative defenses § 18:236 — Good faith -Common-law defenses § 18:237 § 18:238 -- Mitigation § 18:239 ——Exempt assets Distribution of proceeds § 18:240 § 18:241 Sheriff's return

VII. GARNISHMENT

§ 18:242 Definition
 § 18:243 —Purpose
 § 18:244 Issue presented
 § 18:245 Three parties
 § 18:246 Strict compliance
 § 18:247 —Harsh remedy

```
§ 18:248
          Garnishment of current wages
§ 18:249
          —Definition of wages
§ 18:250
          ——Paychecks
          — Enforcement of court-ordered child support
§ 18:251
§ 18:252
          Issuance
          —Final judgment
§ 18:253
§ 18:254
          — Exception: Prejudgment garnishment
§ 18:255
          ——Appeal
          —Instituted in county in which original judgment
§ 18:256
           rendered
§ 18:257
          —Application for writ
§ 18:258
          — —Affidavits
§ 18:259
          ——Specific facts
§ 18:260
          —Prejudgment writ
§ 18:261
          ——Specific findings
          — —Bond
§ 18:262
§ 18:263
          --- Replevy bond
          ---Several writs
§ 18:264
§ 18:265
          —Proceeding docketed
§ 18:266
          —Immediately issue upon proper request
          —Delivered to officer
§ 18:267
§ 18:268
          -Execution
§ 18:269
          —Contents of writ
§ 18:270
          Service on garnishee
          -Effect of service
§ 18:271
§ 18:272
          -No private process server
          Service on the defendant
§ 18:273
§ 18:274
          —Strict compliance
§ 18:275
          -Waiver
§ 18:276
          —Garnishee's complaint
§ 18:277
          -Notice not garnishee's obligation
§ 18:278
          Defendant may replevy
§ 18:279
          —Time for filing
§ 18:280
          -Meaning of "judgment"
          Dissolution hearing
§ 18:281
§ 18:282
          —Written motion
§ 18:283
          —Stay of proceedings
          —Hearing
§ 18:284
§ 18:285
          —Burdens of proof
§ 18:286
          — —Burden shifts
          — —Standard for dissolution
§ 18:287
          —Timing of hearing
§ 18:288
§ 18:289
          — Extensions of time
§ 18:290
          Answer by garnishee
```

§ 18:291 -Signatory § 18:292 -Contents; no property held § 18:293 —Property held — —Controverting affidavit § 18:294 § 18:295 —Court's order § 18:296 Effect of failure to answer § 18:297 —Unverified answer § 18:298 Judgment when garnishee is indebted Award of fees and costs § 18:299 § 18:300 —Garnishee contests

VIII. TURNOVER ORDERS

§ 18:301 Generally § 18:302 Statutory authority § 18:303 Property subject to order § 18:304 What may be ordered § 18:305 —Property held by financial institutions § 18:306 Enforcement of turnover order § 18:307 Procedures to obtain turnover order § 18:308 Nonexempt property § 18:309 Defending against turnover orders § 18:310 —Exemption § 18:311 —Wages exempt § 18:312 Appellate review

IX. ENFORCEMENT OF NON-MONEY JUDGMENTS

§ 18:313 Enforceability

X. REVIVAL OF DORMANT JUDGMENTS

§ 18:314 Judgment abstracts lapse after 10 years
§ 18:315 Second writ
§ 18:316 Not applicable in child support matters
§ 18:317 Procedure for revival

XI. ENFORCING JUDGMENTS OF OTHER STATES AND COUNTRIES

§ 18:318 Enforcing foreign judgments
§ 18:319 —Affidavit required
§ 18:320 —Notice
§ 18:321 —Stay
§ 18:322 —Fees
§ 18:323 Enforcing foreign-country judgments

TEXAS PRACTICE GUIDE: CIVIL TRIAL

§ 18:324 —Standards for recognition of judgment
 § 18:325 —Courts must have personal jurisdiction over the defendant
 § 18:326 —Procedure
 § 18:327 —Effect of recognition of foreign-country judgment
 § 18:328 —Stay pending appeal of judgment
 § 18:329 —Limitations

XII. FORMS

§ 18:330 Form—Abstract of judgment —Writ of execution—On money judgment § 18:331 —Supersedeas bond—General form § 18:332 § 18:333 -Supersedeas bond pending appeal of judgment-**Property** § 18:334 —Petition—For temporary restraining order and for temporary and permanent injunction—General —Affidavit—In support of ex parte motion for § 18:335 temporary restraining order —Writ of injunction—Temporary restraining order § 18:336 and order to show cause § 18:337 -Judgment-Granting permanent injunction-With damages § 18:338 —Writ of injunction —Application for writ of garnishment § 18:339

Table of Laws and Rules

Table of Cases

Index

Index to Forms