

PREFACE TO THE 2026-2027 EDITION

This work, consisting of 31 chapters, gives the reader a comprehensive treatise on what I consider to be the basic and fundamental areas of Florida law relating to personal injury and wrongful death actions. Obviously, I would have preferred to include many more chapters on other topics relating to this area of the law, but such an undertaking would have spanned many more years of work and effort on my part and encompassed an enormous amount of material that space constraints would not allow to be included in this book.

The first part of the book deals with the general principles of negligence that form the basis for any personal injury action. The book also deals with more specific principles of liability in separate chapters. For example, strict liability, joint and several liability, government tort liability, premises liability, medical malpractice, products liability, and liability for punitive damages are some of the topics that are extensively discussed in separate chapters. A separate part of the book is devoted to wrongful death actions primarily because there is little written on this subject in Florida and because it has grown into a more specialized field of practice over recent years. Eight chapters are devoted to wrongful death actions. The other parts of the book contain chapters dealing with burden of proof, discovery, attorney-client relations and post-trial motions.

This book is written for attorneys who specialize in personal injury and wrongful death cases, the general practitioner who handles these types of cases once in a while, judges assigned to hear these cases, and law professors and students. The book contains extensive citation of authority for each principle discussed in each chapter, and I sincerely hope that it will prove to be a valuable and useful research tool for the user.

As with previous editions of this book, I spent a considerable amount of time incorporating many new and relevant decisions rendered by the Florida courts that I believe add to the substantive discussion in each chapter. The research is current through June 11, 2026. I also spent a considerable amount of time revising and rewriting several sections to discuss new developments in the law. Some of the new material includes the following:

—§ 13.18(C) has been revised and is now found in § 13.19(c).
This section discusses the Cassisi/Greco inference of prod-

uct defect that may apply in products liability cases. The revision includes a new subsection that discusses jury instructions. There is no standard jury instruction that addresses application of the inference and this subsection discusses giving special instructions when the inference applies.

- § 13:10 is a new section. It discusses the instances that may occur when a product that is the subject of a products liability action has been lost or destroyed and is not available for examination or testing to determine whether a defect existed. In these cases the injured or deceased plaintiff may have both a cause of action for product liability and a cause of action for spoliation of evidence. This section addresses the order in which the causes of action should be filed and tried.
- § 1:6 has been revised to include new material. This section discusses duty of care created by contract. The revision incorporates many new cases and includes a discussion of the Undertaker's Doctrine. It also addresses how the contract defines the parameters of the duty of care and why the contract provisions should be properly pleaded or why written contracts should be attached to the complaint. A discussion of privity and third party beneficiaries is also included.
- § 9:15 is a new section. It discusses when sovereign immunity may be asserted. Some cases hold that sovereign immunity is an affirmative defense. Other cases treat sovereign immunity like subject matter jurisdiction and conclude it may be asserted at any time. This section also addresses who has the initial burden of establishing a waiver of sovereign immunity.
- § 9:12(A) (2) is a new subsection. It discusses the operative date that a notice pursuant to Fla. Stat. § 768.28(6) (a) is presented by the claimant. The decision in *Simmons v. Pub. Health Tr. of Miami-Dade Cnty.*, 338 So. 3d 1057 (Fla. 3d DCA 2022) is discussed because the court gave a specific definition of the statutory term "presents".
- § 9:6(A) has been substantially revised. It discusses the two step analysis that courts must apply when deciding whether a case against a governmental entity may proceed. The two step analysis applies to sovereign immunity cases based on negligence. This section also discusses why a different analysis may apply when an intentional tort is alleged.
- § 9:2(A) has been revised and a new subsection has been included dealing with noneconomic damages in cases brought under Fla. Stat. § 728.68(1). Other statutes that provide a limited waiver of sovereign immunity may specify the categories of damages that may be recovered. The pertinent provisions of each statute must be examined to make this determination.

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- § 15:10(A) (1) has been revised to include a discussion of the cases addressing the “reasonable basis” requirement under Fla. Stat. § 768.21 to plead a claim for punitive damages. The Fourth District rendered an opinion in *Federal Insurance Co. v. Perlmutter*, 376 So. 3d 24 (Fla. 4th DCA 2023) that conflicts with decisions from other district courts. In *Perlmutter v. Federal Insurance Co.*, 434 So.3d 681 (Fla. June 11, 2026), the Florida Supreme Court quashed that decision and held that only the claimant’s evidence or proffer should be considered. The court further held that the clear and convincing standard does not apply to determine whether a reasonable basis has been established to plead a claim for punitive damages.
- § 9:1(A) discusses the common law relating to sovereign Immunity. It has been revised to include new material relevant to the discussion.
- Several hundred new citations of authority.

I want to express my sincere appreciation to those who have taken time to provide constructive suggestions for additions to this book and to those who have pointed out errors that need to be corrected. Their efforts have undoubtedly assisted me in improving this book and I hope that they and others will do so in the future.

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