

Index

ABANDONED PROPERTY

Search and seizure, § 30:14

ABSENCE

Conduct of trial

counsel, appearance of, § 2:2

judge, presence of, § 2:5

parties and counsel, presence of, § 2:2

parties and witnesses, two-way audio and video conferencing, § 2:2

Continuance or adjournment

attorney's absence, § 3:4

parties absence, § 3:5

Dead man's statute, absent persons not protected, § 17:3

Mistrial, absence of accused or juror, § 33:2

Presumption of death after seven years' absence, § 20:9

ABUSE

Circumstantial evidence of abuse of defendant by victim in prosecutions for injury or death, exceptions in child abuse cases, § 31:11

Privileged communications, exceptions in child abuse cases, § 18:5

ACCOMPLICES

Testimony in criminal trial, § 4:22

ADDITIONAL JURORS

Generally, § 6:18

ADDITUR

Generally, § 39:12

ADJOURNMENT OR CONTINUANCE

Absence

attorney, § 3:4

parties, § 3:5

witnesses, § 3:3, 11:4

Discovery, motions during trial on matters involving, § 3:9

Evidence and witnesses

failure of witness to attend, § 11:4

interview of newly discovered witness, § 11:5

late-arriving witness, recess to confer, § 11:6

Inadequacy of counsel, § 3:10

Jurors, continuance affecting availability, § 3:10

Long-arm statute, continuance for actions, § 3:10

Military orders, motion for continuance on grounds, § 3:6

Motions, § 3:2 et seq.

ADJOURNMENT OR CONTINUANCE—Cont'd

- Notice of insanity defense, § 3:10
- Publicity, motion for continuance during trial because, § 3:8
- Time and procedure for requesting continuance, § 3:2

ADMISSIBILITY OF EVIDENCE

See index heading EVIDENCE

ADMISSIONS AND DECLARATIONS

- Generally, § 28:6 et seq.
- Adoptive admissions, § 28:15
- Agents, admissions, § 28:12
- Annulment cases, § 28:11
- Best and secondary evidence, § 24:13
- Coconspirators, admissions, § 28:23
- Coparties as interested persons, § 28:22
- Divorce and annulment cases, § 28:11
- Employees, admissions, § 28:12
- Flight or escape as admission, § 28:13
- Guilty plea, § 28:20
- Hearsay, generally, § 28:6 et seq.
- Judicial admissions, § 28:8 et seq.
- Massie v Firmstone, § 28:9
- Negligence, subsequent measures not admissible to prove, § 28:18
- Nolo contendere plea, § 28:20
- Objections to evidence, conditional admissions, § 32:4
- Offers to plead, § 28:21
- Party's testimony at trial, judicial admissions, § 28:9
- Pleadings, judicial admissions, § 28:10
- Pleas, withdrawn, § 28:21
- Predecessors, admissions, § 28:22
- Prior inconsistent statements distinguished, § 28:7
- Prior owners of real and personal property as interested persons, § 28:22
- Self-serving statements, § 28:17
- Silence, admission, § 28:14
- Spouses, admissions, § 28:22
- Statements
 - against interest, § 28:37
 - prior inconsistent statements distinguished, § 28:7
 - self-serving statements, § 28:17
 - written statements, failure to reply as admission, § 28:16
- Transcript of admission, requirements for introduction, § 28:24
- Written statements, failure to reply as admission, § 28:16

AFFIDAVITS

- Issuance of search warrant, contents of affidavit, § 30:16

AFFIRMATION

- Jury, § 6:23
- Witnesses, § 11:13

INDEX

AGE

- Confessions, age of accused, § 29:7
- Non-expert opinion as to apparent age, § 26:15

AGENTS

- Admissions by agents, § 28:12

AGREEMENTS

- Breach of contract cases, damages, § 35:19
- Construction contract cases, damages, § 35:23
- Damages
 - breach of contract cases, § 35:19
 - construction contract cases, § 35:23
 - direct and consequential damages, § 35:20
 - lost profits, § 35:21
- Direct and consequential damages, § 35:20
- Lost profits, damages, § 35:21
- Statute of frauds, best evidence rule distinguished, § 24:17

AIRCRAFT

- Search and seizure, surveillance from aircraft, § 30:11

ALCOHOLIC BEVERAGES

- Competency of witnesses, § 12:9
- Defenses, § 4:12
- Driving while impaired or under the influence of drugs
 - blood and breath tests, § 22:5
 - punitive damages in cases involving intoxicated drivers, § 35:9
- Non-expert opinion as to drunkenness prohibited, § 26:14
- Presumptions from blood-alcohol content, § 20:17

ALIBI

- Burden of proof in criminal cases, § 9:18

ALLEN CHARGE

- Instructions to jury, § 37:19

ALTERNATE JURORS

- Generally, § 6:18

AMBIGUITY

- Parol evidence rule, ambiguous instruments and evidence to explain, § 25:4,
25:12

AMENDMENT

- Instructions to jury, modification, § 37:17
- Verdict, review and amendment by court or jury, § 39:4

AMOUNT OF JUDGMENT

- Generally, § 40:3

AMOUNT SUED FOR

- Instructions to jury, reference in instruction, § 37:15

ANCIENT DOCUMENTS

Evidence, § 23:12

ANNULMENT

Admissions in divorce and annulment cases, § 28:11

ANTICIPATORY WARRANT

Search and seizure, § 30:19

APPEAL

Contempt of court, procedure on appeal to Circuit Court, § 5:5

Criminal trials, appeals from District to Circuit Court, § 4:33

Hearsay evidence, harmless error, § 28:41

Modification of general district court order during appeal to circuit court, § 4:31

APPEARANCE

Conduct of trial

counsel, § 2:2

Counsel, conduct of trial, § 2:2

Parties and witnesses

two-way audio and video conferencing, § 2:2

ARGUMENT OF COUNSEL

Generally, § 7:1 to 7:4

Closing

generally, § 36:1 to 36:18

appropriate sentence argued, § 36:16

conduct of opposition, comments, § 36:11

correcting improper conduct of counsel, § 36:18

court's control, § 36:2

damages

generally, § 36:8

golden rule argument improper, § 36:9

pain and suffering, § 36:10

disparaging remarks, § 36:12

failure of accused or spouse to testify, comment, § 36:14

general rules governing, § 36:5

golden rule argument improper, § 36:9

improper remarks, § 36:11 et seq.

instructions, comments, § 36:7

liability insurance, remarks, § 36:13

limitations on time or number of counsel, § 36:3

new matter argued in closing summation, § 36:6

objection to improper remarks, § 36:17

opening and closing argument, § 36:4

pain and suffering, § 36:10

Content of opening statement, § 7:2

Court's control of opening statement, § 7:4

Evidence promised in opening statement, failure to produce, § 7:3

Golden rule argument improper, § 36:9

INDEX

ARGUMENT OF COUNSEL—Cont'd

Opening

- generally, § 7:1 to 7:4
- content of opening statement, § 7:2
- court's control of opening statement, § 7:4
- evidence promised in opening statement, failure to produce, § 7:3
- right to make opening statement, § 7:1
- Right to make opening statement, § 7:1

ARREST

- Confession following illegal arrest, § 29:15
- Probable cause to arrest for different crime, § 30:31
- Search and seizure
 - citation, search incident to, § 30:33
 - lawful arrest, search and seizure pursuant, § 30:28, 30:30
 - probable cause to arrest for different crime, § 30:31
 - protective sweep in conjunction with arrest, § 30:35
 - what may be searched, § 30:32

ARTIFICE OR DECEPTION

- Confessions, § 29:5

ATTORNEYS

- Generally, § 1:1 to 1:8
- Admission to practice in State, need, § 1:4
- Appearance of counsel, § 2:2
- Argument of counsel
 - generally, § 36:1 to 36:18
 - appropriate sentence argued, § 36:16
 - conduct of opposition, comments, § 36:11
 - correcting improper conduct of counsel, § 36:18
 - court's control, § 36:2
 - damages
 - generally, § 36:8
 - golden rule argument improper, § 36:9
 - pain and suffering, § 36:10
 - disparaging remarks, § 36:12
 - failure of accused or spouse to testify, comment, § 36:14
 - golden rule argument improper, § 36:9
 - improper remarks, § 36:11 et seq.
 - instructions, comments, § 36:7
 - liability insurance, remarks, § 36:13
 - limitations on time or number of counsel, § 36:3
 - new matter argued in closing summation, § 36:6
 - objection to improper remarks, § 36:17
 - opening and closing argument, § 36:4
 - pain and suffering, § 36:10
- Assistance of counsel, right, § 1:3

ATTORNEYS—Cont'd

- Attorney-client privilege. See “Privileged communications” in this index heading
- Competency of attorney to testify, § 12:8
- Conduct of attorney, § 1:6
- Consultation with counsel, right, § 1:5
- Contempt of court, § 5:2
- Continuance due to inadequacy of counsel, § 3:10
- Corporate counsel, right to at civil trial, § 2:3
- Criminal trials, § 4:23 et seq.
- Damages, arguing. See “Argument of counsel” in this index heading
- Discipline of attorney for improper conduct, § 1:7
- Gag orders, § 2:28
- Hybrid representation in criminal cases, § 4:26
- Privileged communications
 - generally, § 18:8 to 18:13
 - claiming and waiving privilege, § 18:12
 - existence of relationship, § 18:10
 - intent to commit perjury or other crime or fraud not privileged, § 18:9
 - termination, § 18:13
- Right to counsel, § 1:2, 1:3
- Standby counsel in criminal cases, § 4:26
- Termination of attorney-client privilege, § 18:13
- Waiver and estoppel
 - attorney-client privilege, waiving, § 18:12
 - criminal cases, waiver of right to counsel, § 4:23
- Withdrawal of counsel, § 1:8

ATTORNEYS' FEES

- Contempt, power to award attorneys' fees for contempt, § 5:6
- Damages, § 35:26

AUDIO AND VIDEO

- Parties and witnesses
 - two-way audio and video conferencing, § 2:2
- Testimony
 - two-way conferencing, § 4:21
- Two-way audio and video conferencing
 - parties and witnesses, § 2:2

AUTHENTICATION OF EVIDENCE

- Best evidence rule distinguished, § 23:10
- Excusing authentication of documentary evidence, § 23:4
- Official documents exception to authentication rules, § 23:9
- Public documents, general rules concerning authentication, § 23:5

AUTOMOBILES

- Driving while impaired or under the influence of drugs
 - blood and breath tests, § 22:5
 - punitive damages in cases involving intoxicated drivers, § 35:9

INDEX

AUTOMOBILES—Cont'd

- Radar, § 22:7
- Search and seizure
 - impounded vehicles, inventory searches, § 30:53
 - investigative stops
 - generally, § 30:36
 - basis for stop, § 30:37
 - drug courier profile, § 30:43
 - length of stop, § 30:39
 - Miranda warnings required during, § 30:44
 - persons in vehicles, § 30:42
 - pretext, basis for stop, § 30:38
 - roadblocks, § 30:41
 - traffic stops, § 30:40
 - mobile homes, § 30:54
 - plain view doctrine, items in vehicle, § 30:47
 - warrantless search, § 30:51
- Speed of vehicles based on skid marks, § 22:2

BAGGAGE

- Search and seizure without warrant, § 30:48

BAILMENTS

- Burden of proof, § 9:12

BEST EVIDENCE RULE

- Generally, § 24:1 to 24:17
- Admissions by party opponent, § 24:13
- Application of rule, § 24:2
- Collateral matters, § 24:9
- Contents of writing not in issue, § 24:9
- Court records, § 24:12
- Cure of error, § 24:15
- Documentary evidence, authentication requirements distinguished from best evidence, § 23:10
- Exceptions to the best evidence rule, generally, § 24:5 to 24:13
- Function of court and jury, § 24:16
- Jury function, § 24:16
- Loss or destruction of original, § 24:7
- Opponent, original in possession, § 24:8
- Original document defined, § 24:4
- Parol evidence rule distinguished, § 24:17
- Public records, § 24:11
- Statute of frauds distinguished, § 24:17
- Statutes permitting copies in lieu of originals, § 24:3
- Sufficiency of secondary evidence, § 24:15
- Summaries of voluminous documents, § 24:14
- Unobtainable original, § 24:7
- Voluminous records, § 24:14

BEST EVIDENCE RULE—Cont'd

Waiver of rule, § 24:15

BIAS

See index heading PREJUDICE OR BIAS

BITE-MARK IDENTIFICATION

Generally, § 22:10

BLOOD TESTS

Examination of witnesses, blood samples required, § 13:15

Paternity cases, blood tests, § 22:3

Presumptions of intoxication from alcoholic content of blood, § 20:17

BRIBERY

Jurors, § 38:4

BROADCASTING TESTIMONY

Generally, § 11:15

BURDEN OF PROOF

Generally, § 9:1 to 9:21

Alibi in criminal cases, § 9:18

Bailment cases, § 9:12

Civil cases

generally, § 9:4

affirmative defenses, § 9:5 et seq.

defendant, burden, § 9:7

degrees of proof, § 9:2

equitable claims and defenses, § 9:9

negative averments, § 9:6

shifting burden of proof, § 9:8

Corpus delicti, § 9:16

Criminal cases

generally, § 9:14

alibi, § 9:18

competency of accused, § 9:17

corpus delicti, § 9:16

defendant, burden, § 9:21

identity of accused, § 9:19

photographic identification procedure, § 9:20

roadblocks, § 30:41

venue, § 9:15

Defendant, burden, § 9:7, 9:21

Degrees of proof

generally, § 9:2

criminal and civil cases, § 9:2

Equitable claims and defenses, § 9:9

Fraud and misrepresentation cases, § 9:11

Going forward, burden, § 9:1

Identity of accused in criminal cases, § 9:19, 9:20

INDEX

BURDEN OF PROOF—Cont'd

- Negative averments, burden of proving, § 9:6
- Resulting and constructive trust cases, § 9:10
- Roadblocks, § 30:41
- Sanity, § 9:13, 9:17
- Shifting burden of proof, § 9:8
- Venue in criminal cases, § 9:15

BUSINESSES

- Hearsay evidence, records of a regularly conducted activity, § 28:26
- Search without warrant, § 30:50

CAMERAS IN COURT

- Generally, § 2:12

CANCELLATION

- Attorney-client privilege, termination, § 18:13

CHANGE

- Instructions to jury, modification, § 37:17
- Verdict, review and amendment by court or jury, § 39:4

CHARACTER

- Circumstantial evidence of character, § 31:3, 31:4
- Confessions, character of accused, § 29:7
- Impeachment of witnesses, bad reputation for truthfulness, § 16:9

CHARGE TO JURY

- Generally, § 37:1 to 37:21
- Abstract instructions, § 37:8
- Allen charge, § 37:19
- Amount sued for, reference, § 37:15
- Cautionary instructions, § 16:11, 37:5
- Closing arguments, comments on court's instructions, § 36:7
- Conditional ruling excluding evidence, objections and exceptions, § 32:5
- Contemporaneous objection, § 37:16
- Court's power and duty to instruct, § 37:2
- Evidence lacking to support instruction, § 37:8
- Impeachment of witnesses, cautionary instructions, § 16:11
- Incomplete, inaccurate, unclear, or otherwise incorrect instructions, § 37:10
- Inconsistent or conflicting instructions, § 37:12
- Individual parties entitled to instructions on own theory of case, § 37:6
- Invading jury's role by assuming existence of disputed fact, § 37:13
- Lesser included offenses, § 37:20
- Model jury instructions, § 37:4
- Modification of requested instructions, § 37:17
- Objections and exceptions
 - conditional ruling excluding evidence, § 32:5
 - contemporaneous objection, § 37:16
 - evidence, objecting to instructions to disregard, § 32:5
 - grounds for objection, § 37:7

CHARGE TO JURY—Cont'd

- Order of instructions, § 37:18
- Published opinion, quoting, § 37:14
- Refusal to instruct, § 37:7
- Statute, quoting, § 37:14
- Time and manner of requesting instructions, § 37:3
- Undue or improper emphasis, § 37:11

CHILDREN

- Competency of children to testify, § 12:4
- Criminal trials
 - juvenile transferred to Circuit Court, § 4:3
 - two-way audio and video conferencing, testimony, § 4:21
- Excited utterances, § 28:20
- Legitimacy
 - blood tests in paternity cases, § 22:3
 - demonstrative evidence, exhibiting child in paternity cases, § 21:15
 - presumptions concerning, § 20:15
- Presumptions concerning, § 20:15
- Privileged communications, exceptions in child abuse cases, § 18:5
- Testimony
 - two-way audio and video conferencing, § 4:21

CIRCUIT COURTS

- Appeals from District to Circuit Court, § 4:33
- Juvenile transferred to Circuit Court in criminal trial, § 4:3

CIRCUMSTANTIAL EVIDENCE

- Generally, § 31:1 to 31:18
- Admissibility, § 31:1, 31:14
- Character, § 31:3, 31:4
- Civil case, other offenses of defendant, § 31:13
- Collateral issues, admissibility of evidence, § 31:14
- Guilt, circumstantial evidence, § 31:2
- Habit or custom, § 31:15
- Intent or motive, § 31:8
- Modus operandi, § 31:7
- Other offenses of accused, reasons for offering, § 31:6
- Prejudice to accused and probative value, balancing, § 31:5
- Previous accidents, § 31:16
- Rape, evidence of victim's prior sexual conduct in sexual assault cases, § 31:12
- Scheme or plan, § 31:9
- Telephone conversations, § 31:18
- Usage of trade and course of dealing, § 31:15
- Victim, other offenses committed by, § 31:10 to 31:12
- Witness, other offenses committed by, § 31:10

CITATION

- Search incident to citation, § 30:33

INDEX

CLAIM PRECLUSION

Generally, § 3:15

CLASSES OF OFFENSES

Criminal trials, § 4:1

CLERGY

Privileged communications, § 18:15

CLERKS OF COURT

Competency of clerk as witnesses, § 12:7

CLOSING ARGUMENTS

Generally, § 36:1 to 36:18

Appropriate sentence argued, § 36:16

Conduct of opposition, comments, § 36:11

Correcting improper conduct of counsel, § 36:18

Court's control, § 36:2

Damages

generally, § 36:8

golden rule argument improper, § 36:9

pain and suffering, § 36:10

Disparaging remarks, § 36:12

Failure of accused or spouse to testify, comment, § 36:14

General rules governing, § 36:5

Golden rule argument improper, § 36:9

Improper remarks, § 36:11 et seq.

Instructions, comments, § 36:7

Liability insurance, remarks, § 36:13

Limitations on time or number of counsel, § 36:3

New matter argued in closing summation, § 36:6

Objection to improper remarks, § 36:17

Opening and closing argument, § 36:4

Pain and suffering, § 36:10

COERCION

Defenses, § 4:15

Parol evidence rule, § 25:5

Threats or intimidation

confessions through force or threats, § 29:4

jury conduct, § 38:4

COLLATERAL ESTOPPEL

Generally, § 3:15

COLLATERAL SOURCE RULE

Damages, § 35:18

COLLECTIVE FACTS RULE

Expert and opinion evidence, § 26:9

COMMERCIAL CODE

- Parol evidence rule
 - commercial paper, § 25:10
 - sales of goods, § 25:9

COMMUNICATIONS

- Jurors, communication, § 38:3

COMMUNITY CARETAKER

- Search and seizure, emergency aid exceptions, § 30:27

COMPENSATION

- Witnesses, § 11:11

COMPETENCY OF WITNESSES

- Generally, § 12:1 to 12:11
- Attorney's competency to testify, § 12:8
- Children, competency to testify, § 12:4
- Felon as competent to testify, § 12:2
- Hypnotized witnesses, competency, § 12:11
- Insane or mentally deficient witnesses, § 12:5
- Interrogatories, competency omitted from answers, § 12:10
- Intoxication or influence of drugs, § 12:9
- Judge, juror, magistrate or clerk to testify, § 12:7
- Spouse as competent to testify for or against other spouse, § 12:6
- Time for objecting to competency, § 12:3

COMPROMISE

- Offers of compromise inadmissible, § 28:19

CONDITIONS PRECEDENT

- Parol evidence rule, § 25:5

CONDUCT OF TRIAL

- Generally, § 2:1 to 2:29

CONFESSIONS

- Generally, § 29:1 to 29:26
- Admissibility of confessions, § 29:2, 29:25
- Age of accused, § 29:7
- Artifice or deception used, § 29:5
- Attorneys
 - confession after counsel is retained or requested, § 29:11
 - request for counsel, what constitutes, § 29:11
 - resumption of questioning, whether and when questioning may resume after request to remain silent or for counsel, § 29:12
- Benefit, reward, immunity or leniency, promises, § 29:6
- Character of accused, § 29:7
- Corroboration of confession, § 29:18
- Court determining admissibility of confession, § 29:25
- Custodial interrogation, § 29:8 et seq.
- Education of accused, § 29:7

INDEX

CONFESSIONS—Cont'd

- Entire confession, use, § 29:22
- Exculpating accused in confession by others, § 29:21
- Fellow prisoners, statements, § 29:16
- Force or threats used, § 29:4
- Illegal arrest or search, confession following, § 29:15
- Impeachment of defendant, use of illegally obtained confession, § 29:23
- Incriminating statements
 - fellow prisoners, statements, § 29:16
 - other cases, incriminating statement made in testimony, § 29:24
- Inculpating accused in confession by others, § 29:20
- Invocation of right to remain silent
 - generally, § 29:26
 - resumption of questioning, whether and when questioning may resume after request to remain silent, § 29:12
- Mental or physical condition of accused, § 29:7
- Miranda warning
 - generally, § 29:9
 - confession after counsel retained or appointed, § 29:14
 - waiver of Miranda rights, § 29:13
 - when Miranda does not apply, § 29:16
- More than one confession by accused, § 29:19
- Other cases, confession or incriminating statement made in testimony, § 29:24
- Resumption of questioning, whether and when questioning may resume after request to remain silent or for counsel, § 29:12
- Suppression motions, § 29:25
- Voluntariness of confession, § 29:3

CONFESSORS

- Privileged communications, § 18:15

CONFIDENTIAL COMMUNICATIONS

- Generally, § 18:1 to 18:17
- Attorneys
 - generally, § 18:8 et seq.
 - claiming and waiving privilege, § 18:12
 - existence of relationship, § 18:10
 - intent to commit perjury or other crime or fraud not privileged, § 18:9
 - termination, § 18:13
- Child abuse cases, exceptions, § 18:5
- Claiming privilege, § 18:7, 18:12
- Clergymen, § 18:15
- Communication defined, § 18:4
- Dead Man's Statute, § 17:1
- Exceptions, § 18:5
- Husband and wife, communications between, § 18:2, 18:3, 18:5
- Interpreter's communication with deaf person as privileged, § 18:17
- Marital relationship, existence, § 18:3
- One spouse against the other, actions involving, § 18:5

CONFIDENTIAL COMMUNICATIONS—Cont'd

- Physician-patient privilege, § 18:14
- Private conversation defined, § 18:6
- Psychologists, social workers, or counselors, § 18:16
- Waiving privilege, § 18:7, 18:12

CONFLICTS

- Instructions to jury, inconsistent or conflicting instructions, § 37:12
- Presumptions, § 20:6

CONSENT TO SEARCH

- Owner, § 30:4
- Third person, § 30:5
- Voluntariness, § 30:6

CONSEQUENTIAL DAMAGES

- Generally, § 35:20

CONSIDERATION

- Parol evidence rule, consideration may be proven, § 25:7

CONSPIRACY

- Admissions by coconspirators, § 28:23

CONSTITUTIONAL ISSUES

- Attorney, right to counsel, § 1:2, 1:3, 4:23
- Confrontation of witnesses
 - generally, § 4:20
 - denial of right to cross-examination, § 14:8
- Double jeopardy, waiver of right to mistrial, § 33:5
- Jury trial, § 6:1
- Miranda warnings
 - generally, § 29:9
 - confession after counsel retained or appointed, § 29:14
 - waiver of Miranda rights, § 29:13
 - when Miranda does not apply, § 29:17
- Mistrial, right to, § 33:5
- Self-incrimination. See index heading SELF-INCRIMINATION
- Speedy trial, § 4:28

CONSTRUCTION AND INTERPRETATION

- Stipulations, § 10:5
- Verdicts, § 39:6

CONSTRUCTION CONTRACTS

- Damages in construction contract cases, § 35:23

CONSTRUCTIVE TRUST

- Burden of proof in resulting and constructive trust cases, § 9:10

CONSTRUING VERDICT

- Generally, § 39:6

INDEX

CONTEMPT OF COURT

- Generally, § 5:1 to 5:6
- Appeal to Circuit Court, procedure, § 5:5
- Attorney, contempt, § 5:2
- Attorney's fees, power to award for contempt, § 5:6
- Civil and criminal contempt, § 5:4
- Costs, power to award for contempt, § 5:6
- Court's power to punish, § 5:1
- Defenses to contempt charge, § 5:3

CONTINGENT DAMAGES

- Generally, § 35:6

CONTINUANCE OR ADJOURNMENT

- Absence or presence
 - attorney's absence, § 3:4
 - parties absent, § 3:5
 - witnesses, absence, § 3:3, 11:4
- Discovery, motions during trial on matters involving, § 3:9
- Evidence and witnesses
 - failure of witness to attend, § 11:4
 - interview of newly discovered witness, § 11:5
 - late-arriving witness, recess to confer, § 11:6
- Inadequacy of counsel, § 3:10
- Jurors, continuance affecting availability, § 3:10
- Long-arm statute, continuance for actions, § 3:10
- Military orders, motion for continuance on grounds, § 3:6
- Motions, § 3:2 et seq.
- Notice of insanity defense, § 3:10
- Publicity, motion for continuance during trial because, § 3:8
- Time and procedure for requesting continuance, § 3:2

CONTRACTS AND AGREEMENTS

- Ambiguities, admissibility of parol evidence to explain, § 25:12
- Breach of contract cases, damages, § 35:19
- Construction contract cases, damages, § 35:23
- Damages
 - breach of contract cases, § 35:19
 - construction contract cases, § 35:23
 - direct and consequential damages, § 35:20
 - lost profits, § 35:21
- Direct and consequential damages, § 35:20
- Lost profits, damages, § 35:21
- Statute of frauds, best evidence rule distinguished, § 24:17

CONVICTS

- Confessions, incriminating statements to fellow prisoners, § 29:16
- Witnesses, § 11:2

COPIES

Best evidence rule, copies in lieu of originals, § 24:3

CORPORATIONS

Dead man's statute, corporations not protected, § 17:4

Documentary evidence, corporate documents, § 23:13

CORPUS DELICTI

Burden of proof, § 9:16

Confession, requirement that substance of the crime charged be proved independently from accused's, § 29:2, 29:18

CORRECTIONS

Redirect examination, correcting testimony, § 15:3

CORRESPONDENCE

Documentary evidence, § 23:11

COSTS

Attorneys' fees, § 5:6

Contempt, power to award costs for contempt, § 5:6

Judgment, allowance of costs, § 40:5

Witnesses, compensation, § 11:11

COUNSELORS

Privileged communications, § 18:16

COURSE OF DEALING

Circumstantial evidence, § 31:15

COURT REPORTER

Transcription of testimony, § 2:24

CRIMES CLASSIFICATION

Classes of offenses, § 4:1

CRIME VICTIMS

Circumstantial evidence of other offenses committed by victim, § 31:10 to 31:12

Two-way audio and video conferencing, testimony, § 4:21

CRIMINAL TRIALS

Generally, § 4:1 to 4:33

Appeals from District to Circuit Court, § 4:33

Attorneys, § 4:23 et seq.

Bifurcated trial, evidence at sentencing, § 4:32

Children

juvenile transferred to Circuit Court, § 4:3

Classes of offenses, § 4:1

Discovery, failure to provide, § 4:17, 4:18

Double jeopardy, § 4:4

Evidence and witnesses

accomplice testimony, § 4:22

bifurcated trial, evidence at sentencing, § 4:32

INDEX

CRIMINAL TRIALS—Cont'd

- Evidence and witnesses—Cont'd
 - right to confront witnesses, § 4:20
 - two-way audio and video conferencing, testimony, § 4:21
- Guilty pleas, § 4:5
- Investigators and experts, appointment, § 4:29
- Joint trials of codefendants, § 4:30
- Judge, conduct, § 4:19
- Juvenile transferred to Circuit Court, § 4:3
- Modification of general district court order during appeal to circuit court, § 4:31
- More than one offense tried in single trial, § 4:27
- Physical restraint of defendant or witness during trial, § 4:6
- Preliminary hearings, § 4:2
- Procedure, § 4:1
- Prosecution, conduct, § 4:19
- Pro se defendant
 - generally, § 4:23, 4:24
 - procedure when counsel has been waived, § 4:25
- Raising defenses, § 4:8 et seq.
- Restraint of defendant or witness during trial, § 4:6
- Speedy trial, right, § 4:28
- Timeliness of request to proceed pro se, § 4:24 et seq.
- Waiver of right to counsel, § 4:23
- Withdrawal of guilty pleas, § 4:5

CROSS-EXAMINATION

- Generally, § 14:1 to 14:8
- Additional matters proper on cross-examination, § 14:3
- Conducting cross-examination, § 14:5
- Denial of right to cross-examination, § 14:8
- Form of questions on cross-examination, § 14:4
- Recalling witness for further cross-examination, § 14:7
- Recross-examination, § 15:5
- Scope of cross-examination, § 14:2
- Testing witness's knowledge and accuracy, § 14:6

CURATIVE ACTS AND MATTERS

- Best and secondary evidence. cure of error, § 24:15

CURTILAGE

- Search beyond, § 30:10

CUSTOM

- Circumstantial evidence, § 31:15
- Parol evidence rule, § 25:4, 25:8

DAMAGES

- Generally, § 35:1 to 35:27
- Attorneys' fees, § 35:26

DAMAGES—Cont'd

- Closing arguments
 - generally, § 36:8
 - golden rule argument improper, § 36:9
 - pain and suffering, § 36:10
- Collateral source rule, § 35:18
- Contracts
 - breach of contract cases, § 35:19
 - construction contract cases, § 35:23
 - direct and consequential damages, § 35:20
 - lost profits, § 35:21
- Damnum absque injuria, § 35:2
- Direct and consequential damages, § 35:20
- Disability, § 35:16
- Disfigurement, § 35:14
- Earnings
 - impaired earning capacity, § 35:16
 - lost earnings, § 35:11
- Emotional distress, § 35:15
- Excessive or inadequate damages, § 35:17
- Feelings, injury, § 35:15
- General and special damages, § 35:4
- Humiliation, § 35:15
- Interest on damages, § 35:27
- Intoxicated drivers, punitive damages in cases involving, § 35:9
- Liquidated damages and penalties, § 35:22
- Lost earnings, § 35:11
- Medical expenses, past and future, § 35:12
- Mental anguish, § 35:15
- Mitigation of damages, § 35:7
- Nominal damages, § 35:3
- Non-expert opinion permitted, § 26:12
- Pain and suffering, § 35:13
- Permanent injury, § 35:16
- Personal injury, § 35:10
- Personal property, § 35:24
- Punitive or exemplary damages, § 35:8, 35:9
- Real property, § 35:25
- Speculative, contingent, uncertain, and remote damages, § 35:6

DEAD MAN'S STATUTE

- Generally, § 17:1 to 17:6
- Absent or unknown persons not protected, § 17:3
- Application, § 17:1
- Corporations not protected, § 17:4
- Corroboration required of witnesses, § 17:4 to 17:6
- Protections, entitlement, § 17:2
- Striking uncorroborated statements, § 17:6

INDEX

DEAD MAN'S STATUTE—Cont'd

Will contests, § 17:1

DEATH

Admissions by predecessors, § 28:22

Circumstantial evidence of abuse of defendant by victim in prosecutions for injury or death, exceptions in child abuse cases, § 31:11

Presumption of death after seven years' absence, § 20:9

DECEIT

Burden of proof, § 9:11

Parol evidence rule, § 25:5

DECEPTION OR ARTIFICE

Confessions, § 29:5

DECLARATIONS AND ADMISSIONS

Generally, § 28:6 et seq.

Adoptive admissions, § 28:15

Agents, admissions, § 28:12

Annulment cases, § 28:11

Coconspirators, admissions, § 28:23

Coparties as interested persons, § 28:22

Divorce and annulment cases, § 28:11

Employees, admissions, § 28:12

Flight or escape as admission, § 28:13

Guilty plea, § 28:20

Hearsay, generally, § 28:6 et seq.

Judicial admissions, § 28:8 et seq.

Massie v Firmstone, § 28:9

Negligence, subsequent measures not admissible to prove, § 28:18

Nolo contendere plea, § 28:20

Objections to evidence, conditional admissions, § 32:4

Party opponent, admission, § 28:6

Party's testimony at trial, judicial admissions, § 28:9

Pleadings, judicial admissions, § 28:10

Predecessors, admissions, § 28:22

Prior inconsistent statements distinguished, § 28:7

Prior owners of real and personal property as interested persons, § 28:22

Self-serving statements, § 28:17

Silence, admission, § 28:14

Spouses, admissions, § 28:22

Statements

against interest, § 28:37

prior inconsistent statements distinguished, § 28:7

self-serving statements, § 28:17

written statements, failure to reply as admission, § 28:16

Transcript of admission, requirements for introduction, § 28:24

Written statements, failure to reply as admission, § 28:16

DEFAULT JUDGMENTS

Motions during trial resulting, § 3:14

DEFENSES

Burden of proof in civil cases, § 9:5 et seq.
Contempt of court, defenses, § 5:3
Criminal cases, raising defenses, § 4:8 et seq.
Duress, § 4:15
Entrapment, § 4:9
Impossibility, § 4:14
Insanity, § 4:10, 4:11
Intoxication, § 4:12
Necessity, § 4:16
Persons or property, defense, § 4:13
Self-defense, § 4:13

DEFINITIONS

Communication, § 18:4
Hearsay evidence, § 28:1
Judgment, § 40:1
Original document, § 24:4
Private conversation, § 18:6

DELIVERY

Presumptions of delivery of letters or telegrams, § 20:13, 20:14

DEMONSTRATIVE EVIDENCE

Generally, § 21:1 to 21:15
Connecting tangible articles to accused, § 21:4
Displaying personal injuries to jury, § 21:5
Maps, drawings, diagrams and displays, § 21:12
Marks or notations on real or demonstrative evidence, § 21:14
Paternity cases, exhibiting child, § 21:15
Photographs, § 21:7, 21:9
Sound recordings, § 21:10
Static models or casts, § 21:13
Tangible articles, § 21:2 et seq.
Transaction in question, tangible articles having bearing, § 21:2
Videotapes or motion pictures, § 21:8
X-ray photographs, § 21:9

DESCRIPTIONS

Warrants, § 30:17, 30:18

DESTRUCTION OF EVIDENCE

Best evidence rule, loss or destruction of original, § 24:7
Presumptions, § 20:11

DIRECT AND CONSEQUENTIAL DAMAGES

Generally, § 35:20

INDEX

DIRECTED VERDICT

Prohibited, § 34:1

DISABLED PERSONS

Damages for disability, § 35:16

DISCIPLINARY ACTIONS

Attorneys, discipline for improper conduct, § 1:7

DISCOVERY AND DISCLOSURE

Continuance, motions during trial on matters involving discovery, § 3:9

Criminal cases, failure to provide discovery, § 4:17, 4:18

Exculpatory evidence, failure to provide discovery in criminal cases, § 4:18

Mistrial, disclosure of liability insurance, § 33:3

DISCRIMINATORY SELECTION OF JURY

Challenges, § 6:4

Neutral reasons for use of peremptory challenges, § 6:9

Racial or sexual discrimination in selection, § 6:4

Sufficiency of reason for exercise of peremptory challenge, § 6:8

DISFIGUREMENT

Damages, § 35:14

DISMISSAL

Involuntary dismissal, § 3:13

Motions during trial resulting in dismissal, § 3:11 et seq.

Nolle prosequi, § 3:12

Voluntary dismissal, § 3:11

DISPARAGING REMARKS

Closing arguments, § 36:12

DISPLAYS

Demonstrative evidence, § 21:12

DISTRICT ATTORNEYS

Conduct, § 4:19

DIVORCE

Admissions in divorce and annulment cases, § 28:11

DNA TESTING

Evidence, § 22:11

DOCUMENTARY EVIDENCE

Generally, § 23:1 to 23:15

Ancient documents, § 23:12

Authentication

best evidence rule distinguished, § 23:10

excusing authentication of documentary evidence, § 23:4

official documents exception to authentication rules, § 23:9

public documents, general rules concerning authentication, § 23:5

Best evidence rule, authentication requirements distinguished, § 23:10

DOCUMENTARY EVIDENCE—Cont'd

- Corporate documents, § 23:13
- Court papers, records, and recorded documents, § 23:7
- Electronically transmitted information, § 23:14
- E-mails, § 23:14
- Failure to offer documents for admission, § 23:3
- Hearsay rules, § 23:9, 23:10
- Lengthy documents, excerpts from, § 23:15
- Letters, notices, and other correspondence, § 23:11
- Nonjudicial public records, § 23:8
- Offering and admitting documents into evidence, procedure, § 23:2
- Official documents exception to authentication and hearsay rules, § 23:9
- Public documents
 - court papers, records, and recorded documents, § 23:7
 - general rules concerning authentication, § 23:5
 - nonjudicial public records, § 23:8
 - statutes and ordinances, § 23:6
- Public officials, records and reports prepared, § 23:9
- Requirements relating, § 23:1
- Statutes and ordinances, § 23:6
- Text messages, § 23:14
- Tweets, § 23:14
- Verification. See “Authentication” in this index heading

DOGS

- Search and seizure, dogs used to detect narcotics, § 30:12

DOMICILE

- Continuance for actions under long-arm statutes, § 3:10
- Nonresident witnesses, § 11:3
- Search and seizure under plain view doctrine, § 30:46

DOUBLE JEOPARDY

- Generally, § 4:4
- Waiver of right to mistrial, § 33:5

DRAWINGS

- Demonstrative evidence, § 21:12

DRIVING WHILE IMPAIRED OR UNDER THE INFLUENCE OF DRUGS

- Blood and breath tests, § 22:5
- Punitive damages in cases involving intoxicated drivers, § 35:9

DRUGS

- Competency of witnesses, § 12:9
- Driving under the influence. See index heading **DRIVING WHILE IMPAIRED OR UNDER THE INFLUENCE OF DRUGS**
- Search and seizure
 - dogs used to detect narcotics, § 30:12
 - drug courier profile, § 30:43

INDEX

DUID

See index heading DRIVING WHILE IMPAIRED OR UNDER THE INFLUENCE OF DRUGS

DUPLICATES

Best evidence rule, copies in lieu of originals, § 24:3

DURESS

Defenses, § 4:15

Expert testimony, ultimate issue and legal issue, § 26:5

Parol evidence rule, § 25:5

Threats or intimidation

confessions through force or threats, § 29:4

jury, conduct, § 38:4

DWI

See index heading DRIVING WHILE IMPAIRED OR UNDER THE INFLUENCE OF DRUGS

EARNINGS

Impaired earning capacity, § 35:16

Lost earnings, § 35:11

EDUCATION

Confessions, education of accused, § 29:7

ELECTRONICALLY TRANSMITTED INFORMATION

Documentary evidence, § 23:14

E-MAILS

Documentary evidence, § 23:14

EMOTIONAL DISTRESS

Damages, § 35:15

EMPLOYEES

Admissions by employees, § 28:12

ENDORSEMENT OF JUDGMENT

Generally, § 40:2

ENTRAPMENT

Defenses, § 4:9

ESCAPE

Admissions, flight or escape, § 28:13

ESTOPPEL AND WAIVER

Attorneys

attorney-client privilege, waiving, § 18:12

criminal cases, waiver of right to counsel, § 4:23

Best and secondary evidence, waiver of rule, § 24:15

Collateral estoppel, § 3:15

Criminal trial, waiver of right to counsel, § 4:23

Miranda rights, waiver of, § 29:13

Mistrial, waiver of right, § 33:5

ESTOPPEL AND WAIVER—Cont'd

- Privileged communications, waiving of privilege, § 18:7, 18:12
- Right to jury trial, waiver, § 6:1
- Self-incrimination privilege, § 13:17

EVIDENCE

- Absence of witness, continuance, § 3:3, 11:4
- Accomplice testimony, § 4:22
- Admissibility
 - circumstantial evidence, § 31:1, 31:14
 - confessions, § 29:2, 29:25
 - contracts and agreements, admissibility of parol evidence to explain ambiguities, § 25:12
 - hearsay, § 28:3, 28:25
 - hypnotism, § 22:8
 - lie detector tests, § 22:9
 - no knock entry, admissibility of items omitted from inventory, § 30:23
 - offers of compromise, § 28:19
 - rulings, § 2:15, 2:16
 - settlement negotiations, § 28:19
- Admissions and declarations
 - adoptive admissions, § 28:15
 - agents, admissions, § 28:12
 - coconspirators, admissions, § 28:23
 - coparties as interested persons, § 28:22
 - divorce and annulment cases, § 28:11
 - employees, admissions, § 28:12
 - flight or escape as admission, § 28:13
 - guilty plea, § 28:20
 - hearsay, generally, § 28:6 et seq.
 - judicial admissions, § 28:8 et seq.
 - limited purpose, § 28:2
 - Massie v Firmstone, § 28:9
 - negligence, subsequent measures not admissible to prove, § 28:18
 - nolo contendere plea, § 28:20
 - objections to evidence, conditional admissions, § 32:4
 - offers to plead, § 28:21
 - party opponent, admission, § 28:6
 - party's testimony at trial, judicial admissions, § 28:9
 - pleadings, judicial admissions, § 28:10
 - pleas, withdrawn, § 28:21
 - predecessors, admissions, § 28:22
 - prior inconsistent statements distinguished, § 28:7
 - prior owners of real and personal property as interested persons, § 28:22
 - self-serving statements, § 28:17
 - silence, admission, § 28:14
 - spouses, admissions, § 28:22

INDEX

EVIDENCE—Cont'd

- Admissions and declarations—Cont'd
 - statements
 - against interest, § 28:37
 - prior inconsistent statements distinguished, § 28:7
 - self-serving statements, § 28:17
 - written statements, failure to reply as admission, § 28:16
 - transcript of admission, requirements for introduction, § 28:24
 - written statements, failure to reply as admission, § 28:16
- Alternative methods of removing case from jury, § 34:1
- Answer prior to objection to evidence, effect, § 32:4
- Attorneys, gag orders, § 2:28
- Best evidence rule
 - generally, § 24:1 to 24:17
 - for detailed treatment see index heading **BEST EVIDENCE RULE**
- Broadcasting testimony, § 11:15
- Burden of proof
 - generally, § 9:1 to 9:21
 - alibi in criminal cases, § 9:18
 - bailment cases, § 9:12
 - civil cases
 - generally, § 9:4
 - affirmative defenses, § 9:5 et seq.
 - defendant, burden, § 9:7
 - degrees of proof, § 9:2
 - equitable claims and defenses, § 9:9
 - negative averments, § 9:6
 - shifting burden of proof, § 9:8
- corpus delicti, § 9:16
- criminal cases
 - generally, § 9:14
 - alibi, § 9:18
 - competency of accused, § 9:17
 - corpus delicti, § 9:16
 - defendant, burden, § 9:21
 - identity of accused, § 9:19
 - photographic identification procedure, § 9:20
 - venue, § 9:15
- defendant, burden, § 9:7, 9:21
- degrees of proof
 - generally, § 9:2
 - criminal and civil cases, § 9:2
- equitable claims and defenses, § 9:9
- fraud and misrepresentation cases, § 9:11
- going forward, burden, § 9:1
- identity of accused in criminal cases, § 9:19, 9:20
- negative averments, burden of proving, § 9:6

EVIDENCE—Cont'd

Burden of proof—Cont'd

- resulting and constructive trust cases, § 9:10
- sanity, § 9:13, 9:17
- shifting burden of proof, § 9:8
- venue in criminal cases, § 9:15

Chancery cases, motion to strike evidence, § 34:4

Circumstantial evidence

- generally, § 31:1 to 31:18
- admissibility, § 31:1, 31:14
- character, § 31:3, 31:4
- civil case, other offenses of defendant, § 31:13
- collateral issues, admissibility of evidence, § 31:14
- guilt, circumstantial evidence, § 31:2
- habit or custom, § 31:15
- intent or motive, § 31:8
- modus operandi, § 31:7
- other offenses of accused, reasons for offering, § 31:6
- prejudice to accused and probative value, balancing, § 31:5
- previous accidents, § 31:16
- scheme or plan, § 31:9
- telephone conversations, § 31:18
- usage of trade and course of dealing, § 31:15
- victim, other offenses committed by, § 31:10 to 31:12
- witness, other offenses committed by, § 31:10

Compensation of witnesses, § 11:11

Competency of witnesses

- generally, § 12:1 to 12:11
- attorney's competency to testify, § 12:8
- children, competency to testify, § 12:4
- felon as competent to testify, § 12:2
- hypnotized witnesses, competency, § 12:11
- insane or mentally deficient witnesses, § 12:5
- interrogatories, competency omitted from answers, § 12:10
- intoxication or influence of drugs, § 12:9
- judge, juror, magistrate or clerk to testify, § 12:7
- spouse as competent to testify for or against other spouse, § 12:6
- time for objecting to competency, § 12:3

Conditional admissions, § 32:4

Conditional ruling, excluding, § 32:5

Conferring with witnesses, § 11:6, 11:10

Confessions

- generally, § 29:1 to 29:26
- admissibility of confessions, § 29:2, 29:25
- age of accused, § 29:7
- artifice or deception used, § 29:5

INDEX

EVIDENCE—Cont'd

Confessions—Cont'd

attorneys

confession after counsel is retained or requested, § 29:11

request for counsel, what constitutes, § 29:11

resumption of questioning, whether and when questioning may resume after request to remain silent or four counsel, § 29:12

benefit, reward, immunity or leniency, promises, § 29:6

character of accused, § 29:7

corroboration of confession, § 29:18

court determining admissibility of confession, § 29:25

custodial interrogation, § 29:8 et seq.

education of accused, § 29:7

entire confession, use, § 29:22

exculpating accused in confession by others, § 29:21

fellow prisoners, statements, § 29:16

force or threats used, § 29:4

illegal arrest or search, confession following, § 29:15

impeachment of defendant, use of illegally obtained confession, § 29:23

incriminating statements

fellow prisoners, statements, § 29:16

other cases, incriminating statement made in testimony, § 29:24

inculcating accused in confession by others, § 29:20

invocation of right to remain silent, § 29:26

mental or physical condition of accused, § 29:7

Miranda warning

generally, § 29:9

confession after counsel retained or appointed, § 29:14

when Miranda does not apply, § 29:17

more than one confession by accused, § 29:19

other cases, confession or incriminating statement made in testimony, § 29:24

suppression motions, § 29:25

voluntariness of confession, § 29:3

Confusing evidence, excluding relevant evidence, § 13:5

Construction and enforcement of stipulations, § 10:5

Continuance or adjournment

failure of witness to attend, § 11:4

interview of newly discovered witness, § 11:5

late-arriving witness, recess to confer, § 11:6

Convicts as witnesses, § 11:2

Court's witnesses, § 2:21

Criminal trials

accomplice testimony, § 4:22

bifurcated trial, evidence at sentencing, § 4:32

right to confront witnesses, § 4:20

two-way audio and video conferencing, testimony, § 4:21

Cumulative evidence, § 13:5

EVIDENCE—Cont'd

Dead man's statute

- generally, § 17:1 to 17:6
- absent or unknown persons not protected, § 17:3
- application, § 17:1
- corporations not protected, § 17:4
- corroboration required of witnesses, § 17:4 to 17:6
- protections, entitlement, § 17:2
- striking uncorroborated statements, § 17:6
- will contests, § 17:1

Directed verdict prohibited, § 34:1

Discovery and disclosure

- continuance, motions during trial on matters involving discovery, § 3:9
- criminal cases, failure to provide discovery, § 4:17, 4:18
- exculpatory evidence, failure to provide discovery in criminal cases, § 4:18
- mistrial, disclosure of liability insurance, § 33:3

Disparaging remarks towards witnesses during closing argument, § 36:12

Documentary evidence

- ancient documents, § 23:12
- authentication
 - best evidence rule distinguished, § 23:10
 - excusing authentication of documentary evidence, § 23:4
 - official documents exception to authentication rules, § 23:9
 - public documents, general rules concerning authentication, § 23:5
- best evidence rule, authentication requirements distinguished, § 23:10
- corporate documents, § 23:13
- court papers, records, and recorded documents, § 23:7
- failure to offer documents for admission, § 23:3
- hearsay rules, § 23:9, 23:10
- letters, notices, and other correspondence, § 23:11
- nonjudicial public records, § 23:8
- offering and admitting documents into evidence, procedure, § 23:2
- official documents exception to authentication and hearsay rules, § 23:9
- public documents
 - court papers, records, and recorded documents, § 23:7
 - general rules concerning authentication, § 23:5
 - nonjudicial public records, § 23:8
 - statutes and ordinances, § 23:6
- public officials, records and reports prepared, § 23:9
- requirements relating, § 23:1
- statutes and ordinances, § 23:6
- verification. See "Authentication" in this index heading

Examination of witnesses

- generally, § 13:1 to 13:18
- adverse party called as witnesses, § 13:11
- blood samples, § 13:15
- correcting testimony on redirect, § 15:3

INDEX

EVIDENCE—Cont'd

Examination of witnesses—Cont'd

cross-examination

generally, § 14:1 to 14:8

additional matters proper on cross-examination, § 14:3

conducting cross-examination, § 14:5

denial of right to cross-examination, § 14:8

form of questions on cross-examination, § 14:4

recalling witness for further cross-examination, § 14:7

recross-examination, § 15:5

scope of cross-examination, § 14:2

testing witness's knowledge and accuracy, § 14:6

direct examination of witnesses, § 13:1 to 13:18

explaining and correcting testimony on redirect, § 15:3

fingerprint samples required, § 13:15

handwriting samples required, § 13:15

incriminating witness, testimony tending towards, § 13:13

judge's control, § 2:13

perjury, intent to commit, § 13:12

present recollection refreshed, § 13:10

redirect examination

explaining and correcting testimony on redirect, § 15:3

form and content of questions on redirect, § 15:2

rehabilitation of witnesses, § 15:4

scope of redirect examination, § 15:1

refreshing recollection, § 13:10

rehabilitation of witnesses on redirect examination, § 15:4

relevancy of evidence, § 13:3 to 13:5

res inter alios acta, § 13:7

responsive answers based on personal knowledge required of witnesses,
§ 13:2

self-incrimination privilege

civil case, effect of asserting privilege in, § 13:18

compulsory testimony, § 13:15

extent of privilege, § 13:14

invocation of right to remain silent, constitutional issues, § 29:26

waiver of privilege, § 13:17

who may invoke the privilege against self-incrimination, § 13:16

Exclusions

conditional ruling, § 32:5

court's own motion, improper evidence, § 2:18

witnesses, § 11:12

Expert testimony

generally, § 26:1 to 26:22

age, non-expert opinion usually permitted, § 26:15

allowance of expert and non-expert opinion, § 26:3

basis for expert's opinion, § 26:19

causation, testimony as to actual cause but not legal cause, § 26:16

EVIDENCE—Cont'd

Expert testimony—Cont'd

- collective facts rule, § 26:9
- criminal trials, appointment of experts, § 4:29
- damages and value, non-expert opinion permitted, § 26:12
- disability, non-expert opinion permitted, § 26:13
- drunkenness, non-expert opinion prohibited, § 26:14
- facts distinguished from opinions, § 26:2
- guilt, prohibiting opinions concerning, § 26:7
- handwriting, expert and opinion evidence permitted, § 26:17, 26:21
- hypothetical questions, § 26:20
- mental state or capacity, § 26:11
- negligence, prohibiting opinions concerning, § 26:6
- non-expert opinions, § 26:8
- pain, § 26:11
- requirement of expert opinion, § 26:4
- speed, distance, time, § 26:10
- treatises, introduction, § 26:22
- ultimate issue and legal issue, opinions concerning, § 26:5
- who is an expert, § 26:18

Facts, proof

- generally, § 10:1 to 10:5
- construction and enforcement of stipulations, § 10:5
- methods of proving facts, § 10:3
- proof excused before or during trial, § 10:1, 10:2
- stipulations used to excuse proof of facts, § 10:1, 10:2, 10:4

Hearsay

- generally, § 28:1 to 28:41
- admissibility, § 28:3, 28:25
- admissions and declarations, above
- attacking and supporting hearsay declarant hearsay, § 28:40
- availability of declarant, generally, § 28:5, 28:33
- business records (regularly conducted activity, records of), § 28:26
- confusion, sources, § 28:4
- definitions, § 28:1
- documentary evidence, § 23:9, 23:10
- double hearsay, § 28:4
- dying declarations, § 28:36
- emotional state or condition, § 28:30
- evidence admitted for a limited purpose, § 28:2
- excited utterances, § 28:29
- family bibles, § 28:38
- former testimony, § 28:35
- harmless error, § 28:41
- hearsay within hearsay, § 28:39
- medical treatment, statements for purpose of, § 28:31
- mental and physical state or condition, § 28:30

INDEX

EVIDENCE—Cont'd

Hearsay—Cont'd

- out-of-court statements or writings which are not hearsay, § **28:2**
- partial writing or recorded statement offered, admissibility of remainder, § **28:25**
- past recollection recorded, § **28:32**
- pedigree, § **28:38**
- present sense impression, § **28:28**
- prior testimony, § **28:35**
- res gestae, § **28:27**
- search warrant, hearsay as probable cause, § **30:20**
- self-serving statements, § **28:4**
- shopbook rule (regularly conducted activity, records of), § **28:26**

Impeachment of witnesses

- generally, § **16:1 to 16:13**
- bad reputation for truthfulness, § **16:9**
- bias, § **16:7**
- capacity, § **16:8**
- cautionary jury instructions, § **16:11**
- collateral issues, impeachment, § **16:2**
- conduct, prior inconsistencies, § **16:6**
- conviction of crime, § **16:10**
- illegally obtained confession used to impeach defendant, § **29:23**
- laying foundation for impeachment, § **16:4**
- one's own witness, impeachment, § **16:12**
- prior inconsistent statements, writings, or conduct, § **16:5, 16:6**
- rehabilitation of impeached witness, § **16:13**
- substantive evidence distinguished from impeachment evidence, § **16:3**

Improper ruling on admissibility of evidence, § **2:16**

Influencing or harassing witnesses, § **11:8**

Interpreters, use, § **11:14**

Interviews

- newly discovered witness, continuance to interview, § **11:5**
- right to interview witnesses, § **11:9**

Jury questions, § **38:9**

Late-arriving witness, recess to confer, § **11:6**

Limitations and restrictions

- admitted evidence, restricting use, § **2:17**
- number of witnesses, limitation, § **2:14**

Limited purpose, evidence admitted for, § **13:4, 28:2**

Misleading evidence, excluding relevant evidence, § **13:5**

Motions in limine, § **32:10**

Motions to strike

- chancery cases, § **34:4**
- grounds for motion, § **34:3**
- time and manner of making motion, § **34:2**

Newly discovered witness, continuance to interview, § **11:5**

EVIDENCE—Cont'd

Objections to evidence

- generally, § 32:1 to 32:11
- answer prior to objection, effect, § 32:4
- conditional ruling excluding evidence, § 32:5
- improper evidence, need for objection, § 32:1
- motions in limine, § 32:10
- no formal exception required, § 32:8
- offer of proof, § 32:6
- ruling on objection, § 32:5
- stating grounds, § 32:3
- timeliness of objection, § 32:2
- variances between pleading and proof, § 32:9
- waiver by failing to object or introducing same evidence, § 32:7

Offer of proof, objections, § 32:6

Opening arguments, failure to produce evidence promised, § 7:3

Order of proof

- generally, § 8:1 to 8:85
- later stage, right to introduce testimony, § 8:5
- producing testimony, order, § 8:2
- rebuttal testimony, § 8:3
- right to open and close, § 8:1
- surrebuttal, § 8:4

Out-of-state, witnesses, § 11:3

Parol evidence rule

- generally, § 25:1 to 25:12
- ambiguous instruments and evidence to explain, § 25:4, 25:12
- best evidence rule distinguished, § 24:17
- collateral and subsequent agreements not affected, § 25:6
- complete instruments and evidence admissible, § 25:3
- conditions precedent, § 25:5
- consideration and other recitals may be proven, § 25:7
- fraud, duress, and other equitable defenses not affected, § 25:5
- incomplete instrument, § 25:3
- instruments to which parol evidence rule applies, § 25:2
- merger clauses, § 25:3
- partial integration, applicability to verbal agreements where there is some written evidence of contract, § 25:11
- persuasiveness of parol evidence, § 25:12
- strangers to writings not affected, § 25:8

UCC

- commercial paper, § 25:10
- sales of goods, § 25:9

Prejudice or bias. See index heading PREJUDICE OR BIAS

Presumptions

- generally, § 20:1 to 20:21
- children and minors, presumptions concerning, § 20:15
- conclusive presumptions, § 20:2

INDEX

EVIDENCE—Cont'd

Presumptions—Cont'd

- conflicting presumptions, § 20:6
- continuance of a condition or fact, presumption, § 20:18
- death after seven years' absence, § 20:9
- gifts, presumptions about, § 20:19
- inference upon inference, § 20:5
- intentions, presumptions, § 20:16
- intoxication from blood-alcohol content, § 20:17
- letters, presumption of delivery, § 20:13
- marriage, presumption of validity, § 20:10
- other presumptions and inferences, § 20:21
- permitted inferences, presumptions, § 20:4
- possession of recently stolen goods, presumption arising, § 20:12
- public and judicial officers and their acts, presumptions concerning, § 20:20
- rebuttable presumptions, § 20:3
- res ipsa loquitur, § 20:8
- sanity, presumptions, § 20:16
- suppression, destruction, or non-production of evidence, § 20:11

Production of documents and objects, § 11:7

Questioning of witnesses by judge, § 2:19

Real and demonstrative evidence

- generally, § 21:1 to 21:15
- connecting tangible articles to accused, § 21:4
- displaying personal injuries to jury, § 21:5
- maps, drawings, diagrams and displays, § 21:12
- marks or notations on real or demonstrative evidence, § 21:14
- paternity cases, exhibiting child, § 21:15
- photographs, § 21:7, 21:9
- sound recordings, § 21:10
- static models or casts, § 21:13
- tangible articles, § 21:2 et seq.
- transaction in question, tangible articles having bearing, § 21:2
- videotapes or motion pictures, § 21:8
- x-ray photographs, § 21:9

Recording testimony. See index heading RECORDING TESTIMONY

Relevancy of evidence, § 13:3 to 13:5

Search and seizure, § 30:1 to 30:60

Secondary evidence. See index heading SECONDARY EVIDENCE

Stipulations used to excuse proof of facts, § 10:1, 10:2, 10:4

Striking evidence. See "Motions to strike" in this index heading

Summons of witnesses, § 11:1

Swearing witnesses, § 11:13

Tests, analyses and experiments

- accident reconstruction, § 22:2
- bite-mark identification, § 22:10
- challenging testing procedures, § 22:6

EVIDENCE—Cont'd

Tests, analyses and experiments—Cont'd

DNA tests, § 22:11

driving while impaired or under the influence of drugs, blood and breath tests, § 22:5

hypnosis as inadmissible, § 22:8

jurors, unauthorized experiments, § 38:6

lie detector tests inadmissible, § 22:9

paternity cases, blood tests, § 22:3

radar, § 22:7

scientific tests, § 22:1 to 22:12

speed of vehicles based on skid marks, § 22:2

truth serum, § 22:8

Time or date

continuance or adjournment. See “Continuance or adjournment” in this index heading

motions to strike evidence, time, § 34:2

objections to evidence, timeliness, § 32:2

proof of facts, § 10:1, 10:2

Transcription of testimony, § 2:24

Two-way audio and video conferencing, testimony, § 4:21

Variations between pleading and proof, objections, § 32:9

Waiver by failure to object, § 32:7

EXAMINATION OF WITNESSES

Generally, § 13:1 to 13:18

Adverse party called as witnesses, § 13:11

Blood samples, § 13:15

Correcting testimony on redirect, § 15:3

Cross-examination

generally, § 14:1 to 14:8

additional matters proper on cross-examination, § 14:3

conducting cross-examination, § 14:5

denial of right to cross-examination, § 14:8

form of questions on cross-examination, § 14:4

recalling witness for further cross-examination, § 14:7

recross-examination, § 15:5

scope of cross-examination, § 14:2

testing witness's knowledge and accuracy, § 14:6

Direct examination of witnesses, § 13:1 to 13:18

Explaining and correcting testimony on redirect, § 15:3

Fingerprint samples required, § 13:15

Handwriting samples required, § 13:15

Incriminating witness, testimony tending towards, § 13:13

Judge's control, § 2:13

Jurors, questioning of witnesses by, § 2:20

Perjury, intent to commit, § 13:12

Present recollection refreshed, § 13:10

INDEX

EXAMINATION OF WITNESSES—Cont'd

Redirect examination

- explaining and correcting testimony on redirect, § 15:3
- form and content of questions on redirect, § 15:2
- rehabilitation of witnesses, § 15:4
- scope of redirect examination, § 15:1

Refreshing recollection, § 13:10

Rehabilitation of witnesses on redirect examination, § 15:4

Relevancy of evidence, § 13:3 to 13:5

Res inter alios acta, § 13:7

Responsive answers based on personal knowledge required of witnesses, § 13:2

Self-incrimination privilege

- civil case, effect of asserting privilege in, § 13:18
- compulsory testimony, § 13:15
- extent of privilege, § 13:14
- invocation of right to remain silent, constitutional issues, § 29:26
- waiver of privilege, § 13:17
- who may invoke the privilege against self-incrimination, § 13:16

EXCESSIVE DAMAGES

Generally, § 35:17

EXCITED UTTERANCES

Hearsay evidence, § 28:29

EXCLUSION FROM TRIAL

Public excluded from trial, § 2:10

EXEMPLARY OR PUNITIVE DAMAGES

Generally, § 35:8, 35:9

EXEMPTION FROM JURY SERVICE

Generally, § 6:20

EXPEDITING TRIAL

Judge's right and duty, § 2:26

EXPENSES

Damages for past and future medical expenses, § 35:12

EXPERIMENTS AND TESTS

Accident reconstruction, § 22:2

Bite-mark identification, § 22:10

Challenging testing procedures, § 22:6

DNA tests, § 22:11

Driving while impaired or under the influence of drugs, blood and breath tests, § 22:5

Hypnosis as inadmissible, § 22:8

Jurors, unauthorized experiments, § 38:6

Lie detector tests inadmissible, § 22:9

Paternity cases, blood tests, § 22:3

Radar, § 22:7

EXPERIMENTS AND TESTS—Cont'd

- Scientific tests, § 22:1 to 22:12
- Speed of vehicles based on skid marks, § 22:2
- Truth serum, § 22:8

EXPERT TESTIMONY

- Generally, § 26:1 to 26:22
- Accident experts, § 26:19
- Age, non-expert opinion usually permitted, § 26:15
- Allowance of expert and non-expert opinion, § 26:3
- Basis for expert's opinion, § 26:19
- Causation, testimony as to actual cause but not legal cause, § 26:16
- Collective facts rule, § 26:9
- Criminal trials, appointment of experts, § 4:29
- Damages and value, non-expert opinion permitted, § 26:12
- Disability, non-expert opinion permitted, § 26:13
- Drunkenness, non-expert opinion prohibited, § 26:14
- Facts distinguished from opinions, § 26:2
- Guilt, prohibiting opinions concerning, § 26:7
- Handwriting, expert and opinion evidence permitted, § 26:17, 26:21
- Hypothetical questions, § 26:20
- Mental state or capacity, § 26:11
- Negligence, prohibiting opinions concerning, § 26:6
- Non-expert opinions, § 26:8
- Pain, § 26:11
- Requirement of expert opinion, § 26:4
- Speed, distance, time, § 26:10
- Treatises, introduction, § 26:22
- Ultimate issue and legal issue, opinions concerning, § 26:5
- Who is an expert, § 26:18

FAILURE TO PROSECUTE

- Dismissal, § 3:12

FEEES

- Attorneys' fees, § 35:26
- Judgment, allowance of costs, § 40:5
- Witnesses, compensation, § 11:11

FINGERPRINTING

- Examination of witnesses, fingerprint samples required, § 13:15

FLIGHT

- Admissions, flight or escape, § 28:13

FOREIGN STATE

- Witnesses from out-of-state, § 11:3

FORMER JEOPARDY

- Generally, § 4:4
- Waiver of right to mistrial, § 33:5

INDEX

FRAUD

- Attorney-client privilege, intent to commit perjury or other crime or fraud not privileged, § 18:9
- Burden of proof, § 9:11
- Parol evidence rule, § 25:5

FRUIT OF THE POISONOUS TREE

- Generally, § 30:55, 30:56
- Secondary proceeding, use of illegally obtained evidence, § 30:60

FUGITIVES

- Admissions, flight or escape, § 28:13

GAG ORDERS

- Generally, § 2:27, 2:28

GIFTS

- Presumptions about gifts, § 20:19

GOLDEN RULE ARGUMENT

- Generally, § 36:9

GOOD FAITH

- Search and seizure, good faith exception, § 30:8, 30:57

GUILT

- Circumstantial evidence of guilt, § 31:2
- Opinion evidence concerning guilt, § 26:7

GUILTY PLEA

- Generally, § 4:5
- Admissions, § 28:20
- Withdrawal of guilty plea, § 4:5

HABIT

- Circumstantial evidence, § 31:15

HANDWRITING

- Examination of witnesses, handwriting samples required, § 13:15
- Expert testimony as to handwriting permitted, § 26:17, 26:21

HEARING IMPAIRED

- Interpreter's communications with deaf person as privileged, § 18:17

HEARINGS

- Preliminary hearings in criminal trials, § 4:2

HEARSAY

- Generally, § 28:1 to 28:41
- Admissibility, § 28:3, 28:25
- Admissions and declarations. See index heading **ADMISSIONS AND DECLARATIONS**
- Attacking and supporting hearsay declarant hearsay, § 28:40
- Availability of declarant, generally, § 28:5, 28:33
- Business records (regularly conducted activity, records of), § 28:26

HEARSAY—Cont'd

- Confusion, sources, § 28:4
- Definitions, § 28:1
- Documentary evidence, § 23:9, 23:10
- Double hearsay, § 28:4
- Dying declarations, § 28:36
- Emotional state or condition, § 28:30
- Excited utterances, § 28:29
- Family bibles, § 28:38
- Former testimony, § 28:35
- Harmless error, § 28:41
- Hearsay within hearsay, § 28:39
- Limited purpose, evidence admitted for, § 28:2
- Medical treatment, statements for purpose of, § 28:31
- Mental and physical state or condition, § 28:30
- Out-of-court statements or writings which are not hearsay, § 28:2
- Partial writing or recorded statement offered, admissibility of remainder, § 28:25
- Past recollection recorded, § 28:32
- Pedigree, § 28:38
- Physical state or condition, § 28:30
- Present sense impression, § 28:28
- Prior testimony, § 28:35
- Regularly conducted activity, records of, § 28:26
- Res gestae, § 28:27
- Search warrant, hearsay as probable cause, § 30:20
- Self-serving statements, § 28:4
- Shopbook rule (regularly conducted activity, records of), § 28:26
- Verbal facts, § 28:2

HOT PURSUIT

- Search and seizure without warrant, § 30:25

HUMILIATION

- Damages, § 35:15

HUSBAND AND WIFE

- Admissions, § 28:22
- Closing arguments, comments upon failure of spouse to testify, § 36:14
- Competency of spouse to testify for or against other spouse, § 12:6
- Marriage, presumption of validity, § 20:10
- Privileged and confidential communications between husband and wife, § 18:2, 18:3

HYPNOTISM

- Admissibility of evidence, § 22:8
- Competency of hypnotized witness, § 12:11

HYPOTHETICAL QUESTIONS

- Expert and opinion evidence, § 26:20
- Selection of jury, § 6:12

INDEX

IDENTIFICATION

- Bite-mark identification, § 22:10
- Burden of proof in criminal cases, § 9:19, 9:20
- Informant, § 30:21

ILLEGALLY OBTAINED EVIDENCE

- Generally, § 30:55, 30:56
- Use in secondary proceeding, § 30:60

ILLEGITIMACY OF CHILDREN

- Blood tests in paternity cases, § 22:3
- Demonstrative evidence, exhibiting child in paternity cases, § 21:15
- Presumptions concerning, § 20:15

IMMUNITY FROM PROSECUTION

- Confession, § 29:6

IMPEACHMENT OF DEFENDANT

- Use of illegally obtained evidence, § 30:59

IMPEACHMENT OF VERDICT

- Generally, § 39:8

IMPEACHMENT OF WITNESSES

- Generally, § 16:1 to 16:13
- Bad reputation for truthfulness, § 16:9
- Bias, § 16:7
- Capacity, § 16:8
- Cautionary jury instructions, § 16:11
- Collateral issues, impeachment, § 16:2
- Conduct, prior inconsistencies, § 16:6
- Conviction of crime, § 16:10
- Illegally obtained confession used to impeach defendant, § 29:23
- Laying foundation for impeachment, § 16:4
- One's own witness, impeachment, § 16:12
- Prior inconsistent statements, writings, or conduct, § 16:5, 16:6
- Rehabilitation of impeached witness, § 16:13
- Substantive evidence distinguished from impeachment evidence, § 16:3

IMPOSSIBILITY DEFENSE

- Generally, § 4:14

INCOMPETENT PERSONS

- Burden of proof in sanity cases, § 9:13, 9:17
- Confessions, mental condition of accused, § 29:7
- Expert and opinion evidence as to mental state or capacity, § 26:11
- Hearsay evidence as to mental state, § 28:30
- Insane or mentally deficient witnesses, § 12:5
- Insanity defense, § 4:10, 4:11
- Presumptions as to sanity, § 20:16

INCONSISTENCIES

- Impeachment of witnesses, § 16:5, 16:6
- Instructions to jury, inconsistencies, § 37:12
- Prior inconsistent statements, § 16:5, 16:6, 28:7
- Verdicts, § 39:11

INCRIMINATING STATEMENTS

- Fellow prisoners, incriminating statements, § 29:16
- Other cases, incriminating statement made in testimony, § 29:24

INFORMANTS

- Generally, § 30:20, 30:21

INMATES

- Confessions, incriminating statements to fellow prisoners, § 29:16
- Search of inmates' property, § 30:34
- Witnesses, § 11:2

INNOCENCE

- Circumstantial evidence of guilt, § 31:2
- Opinion evidence concerning guilt, § 26:7

INSANITY

- Burden of proof in sanity cases, § 9:13, 9:17
- Confessions, mental condition of accused, § 29:7
- Expert and opinion evidence as to mental state or capacity, § 26:11
- Hearsay evidence as to mental state, § 28:30
- Insane or mentally deficient witnesses, § 12:5
- Insanity defense, § 4:10, 4:11
- Presumptions as to sanity, § 20:16

INSTRUCTIONS TO JURY

- Generally, § 37:1 to 37:21
- Abstract instructions, § 37:8
- Allen charge, § 37:19
- Amount sued for, reference, § 37:15
- Cautionary instructions, § 16:11, 37:5
- Closing arguments, comments on court's instructions, § 36:7
- Contemporaneous objection, § 37:16
- Court's power and duty to instruct, § 37:2
- Evidence lacking to support instruction, § 37:8
- Impeachment of witnesses, cautionary instructions, § 16:11
- Incomplete, inaccurate, unclear, or otherwise incorrect instructions, § 37:10
- Inconsistent or conflicting instructions, § 37:12
- Individual parties entitled to instructions on own theory of case, § 37:6
- Invading jury's role by assuming existence of disputed fact, § 37:13
- Lesser included offenses, § 37:20
- Model jury instructions, § 37:4
- Modification of requested instructions, § 37:17

INDEX

INSTRUCTIONS TO JURY—Cont'd

- Objections and exceptions
 - contemporaneous objection, § 37:16
 - evidence, objecting to instructions to disregard, § 32:5
 - grounds for objection, § 37:7
- Order of instructions, § 37:18
- Parole, eligibility for in non-capital cases, § 37:21
- Published opinion, quoting, § 37:14
- Refusal to instruct, § 37:7
- Statute, quoting, § 37:14
- Time and manner of requesting instructions, § 37:3
- Undue or improper emphasis, § 37:11

INSURANCE

- Closing arguments, remarks about liability insurance, § 36:13
- Collateral estoppel, § 3:15
- Jury selection, questioning of jurors regarding insurance, § 6:15
- Mistrial, disclosure of liability insurance, § 33:3

INTENT

- Attorney-client privilege, intent to commit perjury or other crime or fraud not privileged, § 18:9
- Circumstantial evidence, § 31:8
- Perjury, intent to commit, § 13:12

INTEREST ON DAMAGES

- Generally, § 35:27

INTEREST ON JUDGMENTS

- Generally, § 40:4

INTERPRETERS

- Communications with deaf person as privileged, § 18:17
- Witnesses, § 11:14

INTERROGATION

- Confessions, custodial interrogation, § 29:8 et seq.

INTERROGATORIES

- Competency of witness omitted from answers, § 12:10
- Verdict, interrogatories rarely used in State, § 39:5

INTERVIEWS

- Newly discovered witness, continuance to interview, § 11:5
- Right to interview witnesses, § 11:9

INTIMIDATION

- Confessions through force or threats, § 29:4
- Jury, conduct, § 38:4

INTOXICATING BEVERAGES

- Competency of witnesses, § 12:9
- Defenses, § 4:12

INTOXICATING BEVERAGES—Cont'd

- Driving while impaired or under the influence of drugs
 - blood and breath tests, § 22:5
 - punitive damages in cases involving intoxicated drivers, § 35:9
- Non-expert opinion as to drunkenness prohibited, § 26:14
- Parties' absence, § 3:5
- Presumptions from blood-alcohol content, § 20:17

INVENTORY

- Impounded vehicles, inventory searches, § 30:53
- No knock entry, admissibility of items omitted from inventory, § 30:23

INVESTIGATIVE STOPS

- Generally, § 30:36
- Basis for stop, § 30:37
- Drug courier profile, § 30:43
- Length of stop, § 30:39
- Miranda warnings required during, § 30:44
- Persons in vehicles, § 30:42
- Pretext, basis for stop, § 30:38
- Roadblocks, § 30:41
- Traffic stops, § 30:40

INVESTIGATORS

- Criminal trials, appointment of investigators, § 4:29

JOINT TRIALS

- Criminal trials, § 4:30

JUDGES

- Closing arguments, court's control, § 36:2
- Competency of judge as witnesses, § 12:7
- Control of judge, § 2:7
- Criminal trials, conduct of judge, § 4:19
- Demeanor of, and statements, § 2:7
- Expediting trial, judge's right and duty, § 2:26
- Opening arguments, court's control, § 7:4
- Presence of judge at trial, § 2:5
- Questioning of witnesses by judge, § 2:19
- Statements by judge, § 2:8
- Substitution of judge, § 2:5
- Trial, § 2:5 et seq.
- Trier of facts, judge, § 2:25
- Verdict, amendment, § 39:4

JUDGMENTS

- Generally, § 40:1 to 40:7
- Allowance of costs in judgment, § 40:5
- Definitions, § 40:1
- Endorsement of judgment distinguished, § 40:2
- Entry of judgment distinguished, § 40:2

INDEX

JUDGMENTS—Cont'd

- Gag orders, § 2:27, 2:28
- Interest on judgments, § 40:4
- Judgment notwithstanding verdict, § 40:6
- Mistrial, reversal of order, § 33:6
- Pretrial orders, control of proceedings, § 2:22
- Reconsideration upon final judgment, motion, § 40:7
- Rendition of judgment distinguished, § 40:2
- Vacation of judgment, motions, § 40:7

JUDICIAL ESTOPPEL

- Generally, § 3:15

JUDICIAL NOTICE

- Generally, § 19:1 to 19:5
- Geographical facts, § 19:4
- Jurisdictional limits, § 19:4
- Matters which may be judicially noticed, § 19:2
- Purpose and effect, § 19:1
- Signatures and seals of officials and agencies, § 19:5
- Statutes, ordinances, rules, and regulations, § 19:3

JURISDICTIONAL LIMITS

- Judicial notice, § 19:4

JURY

- Generally, § 38:1 to 38:9
- Alternative methods of removing case from jury, § 34:1
- Communications with jurors, § 38:3
- Competency of juror as witnesses, § 12:7
- Conduct of jury, § 38:1 to 38:9
- Continuance affecting availability of jurors, § 3:10
- Hung jury, mistrial, § 33:4
- Instructions
 - generally, § 37:1 to 37:21
 - abstract instructions, § 37:8
 - Allen charge, § 37:19
 - amount sued for, reference, § 37:15
 - cautionary instructions, § 16:11, 37:5
 - closing arguments, comments on court's instructions, § 36:7
 - contemporaneous objection, § 37:16
 - court's power and duty to instruct, § 37:2
 - evidence lacking to support instruction, § 37:8
 - impeachment of witnesses, cautionary instructions, § 16:11
 - incomplete, inaccurate, unclear, or otherwise incorrect instructions, § 37:10
 - inconsistent or conflicting instructions, § 37:12
 - individual parties entitled to instructions on own theory of case, § 37:6
 - invading jury's role by assuming existence of disputed fact, § 37:13
 - lesser included offenses, § 37:20
 - model jury instructions, § 37:4

JURY—Cont'd

Instructions—Cont'd

- modification of requested instructions, § 37:17
 - objections and exceptions
 - contemporaneous objection, § 37:16
 - evidence, objecting to instructions to disregard, § 32:5
 - grounds for objection, § 37:7
 - order of instructions, § 37:18
 - parole, eligibility for in non-capital cases, § 37:21
 - published opinion, quoting, § 37:14
 - questions concerning instructions, § 38:9
 - refusal to instruct, § 37:7
 - statute, quoting, § 37:14
 - time and manner of requesting instructions, § 37:3
 - undue or improper emphasis, § 37:11
- Intimidation, threats, or bribery of jurors, § 38:4
- Jury questions, § 38:9
- Jury room, what jury may take into, § 38:8
- Mistrial for jury misconduct, § 33:2
- Newspaper accounts of trial, jurors reading, § 38:5
- Outside sources of information, § 39:6
- Questioning of witnesses by jurors, § 2:20
- Questions concerning evidence, instructions, or sentencing, § 38:9
- Selection. See index heading SELECTION OF JURY
- Separation of jury during trial, § 38:7
- Unauthorized experiments or views, § 38:6
- Verdict. See index heading VERDICT
- View by jury. See index heading VIEW BY JURY
- Waiver of right to jury trial, § 6:1

JUVENILE CASES

- Transfer to Circuit Court, § 4:3

KNOWLEDGE

- Cross-examination, testing witness's knowledge and accuracy, § 14:6
- Dead man's statute, unknown persons not protected, § 17:3
- Responsive answers based on personal knowledge required of witnesses, § 13:2

LEGITIMACY OF CHILDREN

- Blood tests in paternity cases, § 22:3
- Demonstrative evidence, exhibiting child in paternity cases, § 21:15
- Presumptions concerning, § 20:15

LESSER INCLUDED OFFENSES

- Instructions to jury, § 37:20

LIE DETECTOR TESTS

- Admissibility of evidence, § 22:9

LIQUIDATED DAMAGES

- Generally, § 35:22

INDEX

LIQUOR

- Competency of witnesses, § 12:9
- Defenses, § 4:12
- Driving while impaired or under the influence of drugs
 - blood and breath tests, § 22:5
 - punitive damages in cases involving intoxicated drivers, § 35:9
- Non-expert opinion as to drunkenness prohibited, § 26:14
- Presumptions from blood-alcohol content, § 20:17

LONG-ARM STATUTES

- Continuance, § 3:10

LOST EARNINGS

- Damages, § 35:11

LOST OR DESTROYED EVIDENCE

- Best evidence rule, loss or destruction of original, § 24:7
- Presumptions as to destruction of evidence, § 20:11

LUGGAGE

- Search and seizure without warrant, § 30:48

MAGISTRATES

- Competency of magistrate as witnesses, § 12:7

MAPS

- Demonstrative evidence, § 21:12

MARKS

- Real and demonstrative evidence, marks or notations, § 21:14

MEDICAL CARE

- Search and seizure, exigent circumstances, § 30:26

MEDICAL EXPENSES

- Damages for past and future medical expenses, § 35:12

MENTAL ANGUISH

- Damages, § 35:15

MENTAL COMPETENCY

- Burden of proof in sanity cases, § 9:13, 9:17
- Confessions, mental condition of accused, § 29:7
- Expert and opinion evidence as to mental state or capacity, § 26:11
- Hearsay evidence as to mental state, § 28:30
- Insane or mentally deficient witnesses, § 12:5
- Insanity defense, § 4:10, 4:11
- Presumptions as to sanity, § 20:16

MILITARY SERVICE

- Continuance on grounds of military orders, motion, § 3:6

MINORS

- Competency of children to testify, § 12:4

MINORS—Cont'd

- Criminal trials
 - juvenile transferred to Circuit Court, § 4:3
- Legitimacy
 - blood tests in paternity cases, § 22:3
 - demonstrative evidence, exhibiting child in paternity cases, § 21:15
 - presumptions concerning, § 20:15
- Presumptions concerning, § 20:15
- Privileged communications, exceptions in child abuse cases, § 18:5

MIRANDA WARNING

- Generally, § 29:9
- Confession after counsel retained or appointed, § 29:14
- Waiver of Miranda rights, § 29:13
- When Miranda does not apply, § 29:17

MISREPRESENTATION

- Burden of proof, § 9:11
- Parol evidence rule, § 25:5

MISTRIAL

- Generally, § 33:1 to 33:6
- Absence of accused or juror, § 33:2
- Allen charge, § 33:4
- Hung jury, § 33:4
- Jury misconduct, § 33:2
- Liability insurance, disclosure, § 33:3
- Prejudicial evidence as grounds, § 33:2
- Reversal of order of mistrial, § 33:6
- Voir dire, juror's incorrect responses on, § 6:19, 6:24
- Waiver of right to mistrial, § 33:5

MITIGATION OF DAMAGES

- Generally, § 35:7

MOBILE HOMES

- Search and seizure, § 30:54

MODELS

- Demonstrative evidence, static models or casts, § 21:13

MODIFICATION

- Appeal to circuit court, modification of general district court order during, § 4:31
- Instructions to jury, § 37:17
- Verdict, review and amendment by court or jury, § 39:4

MODUS OPERANDI

- Circumstantial evidence, § 31:7

MOTION PICTURES

- Demonstrative evidence, § 21:8

INDEX

MOTIONS

- Continuance or adjournment, § 3:2 et seq.
- Dismissal, motions during trial resulting in dismissal, § 3:11 et seq.
- Evidence
 - motions in limine, § 32:10
 - motions to strike, § 34:2 et seq.
- Suppression of confession, § 29:25
- Trial, motions during, § 3:1 to 3:15

MOTIONS TO STRIKE

- Chancery cases, § 34:4

MOTIVE

- Circumstantial evidence, § 31:8
- Perjury, intent to commit, § 13:12

MOTOR VEHICLES

- Driving while impaired or under the influence of drugs
 - blood and breath tests, § 22:5
 - punitive damages in cases involving intoxicated drivers, § 35:9
- Radar, § 22:7
- Search and seizure
 - impounded vehicles, inventory searches, § 30:53
 - investigative stops
 - generally, § 30:36
 - basis for stop, § 30:37
 - drug courier profile, § 30:43
 - length of stop, § 30:39
 - Miranda warnings required during, § 30:44
 - persons in vehicles, § 30:42
 - pretext, basis for stop, § 30:38
 - roadblocks, § 30:41
 - traffic stops, § 30:40
 - mobile homes, § 30:54
 - plain view doctrine, items in vehicle, § 30:47
 - warrantless search, § 30:51
- Speed of vehicles based on skid marks, § 22:2

MOVIES

- Motion pictures as demonstrative evidence, § 21:8

NARCOTICS

- Competency of witnesses, § 12:9
- Search and seizure
 - dogs used to detect narcotics, § 30:12
 - drug courier profile, § 30:43

NEGLIGENCE

- Admissions, subsequent measures not admissible to prove negligence, § 28:18
- Opinion evidence concerning, § 26:6

NEGLIGENCE—Cont'd

Res ipsa loquitur, § 20:8

NEWLY DISCOVERED EVIDENCE

Continuance to interview newly discovered witness, § 11:5

NEWSPAPERS

Jurors reading newspaper accounts of trial, § 38:5

NEW TRIAL

Setting aside verdict, § 39:10

NO-KNOCK ENTRY

Search and seizure, § 30:22, 30:23

NOLLE PROSEQUI

Dismissal, § 3:12

Motions during trial resulting, § 3:12

NOLO CONTENDERE

Admissions, § 28:20

NOMINAL DAMAGES

Damages, § 35:3

NON OBSTANTE VERDICTO

Generally, § 40:6

NONRESIDENTS

Witnesses, § 11:3

NOTATIONS

Real and demonstrative evidence, marks or notations, § 21:14

NOTICE

Documentary evidence, notices, § 23:11

Judicial notice

generally, § 19:1 to 19:5

geographical facts, § 19:4

jurisdictional limits, § 19:4

matters which may be judicially noticed, § 19:2

purpose and effect, § 19:1

signatures and seals of officials and agencies, § 19:5

statutes, ordinances, rules, and regulations, § 19:3

NOTWITHSTANDING VERDICT

Generally, § 40:6

N.O.V. JUDGMENTS

Generally, § 40:6

NUMBER OF CHALLENGES

Peremptory challenges, § 6:19

INDEX

NUMBER OF COUNSEL

Closing argument, § 36:3

NUMBER OF WITNESSES

Limiting number, § 2:14

OATH

Jury, swearing, § 6:23

Witnesses, § 11:13

OBJECTIONS

Closing arguments, objection to improper remarks, § 36:17

Competency of witnesses, time for objecting, § 12:3

Evidence, objections to

generally, § 32:1 to 32:11

answer prior to objection, effect, § 32:4

improper evidence, need for objection, § 32:1

motions in limine, § 32:10

no formal exception required, § 32:8

offer of proof, § 32:6

ruling on objection, § 32:5

stating grounds, § 32:3

timeliness of objection, § 32:2

variances between pleading and proof, § 32:9

waiver by failing to object or introducing same evidence, § 32:7

Jury instructions

contemporaneous objection, § 37:16

evidence, objecting to instructions to disregard, § 32:5

grounds for objection, § 37:7

Verdict, objections to form, § 39:2, 39:3

ODORS

Search and seizure, plain smell doctrine, § 30:49

OFFENSES

Classification, § 4:1

OFFENSIVE LANGUAGE

Trial, controlling offensive language, § 2:29

OPEN FIELDS DOCTRINE

Search and seizure, § 30:10

OPENING ARGUMENTS

Generally, § 7:1 to 7:4

Content of opening statement, § 7:2

Court's control of opening statement, § 7:4

Evidence promised in opening statement, failure to produce, § 7:3

Right to make opening statement, § 7:1

OPINION EVIDENCE

Generally, § 26:1 to 26:22

OPINION EVIDENCE—Cont'd

- Age, non-expert opinion usually permitted, § 26:15
- Allowance of expert and non-expert opinion, § 26:3
- Basis for expert's opinion, § 26:19
- Causation, testimony as to actual cause but not legal cause, § 26:16
- Collective facts rule, § 26:9
- Criminal trials, appointment of experts, § 4:29
- Damages and value, non-expert opinion permitted, § 26:12
- Disability, non-expert opinion permitted, § 26:13
- Drunkenness, non-expert opinion prohibited, § 26:14
- Facts distinguished from opinions, § 26:2
- Guilt, prohibiting opinions concerning, § 26:7
- Handwriting, expert and opinion evidence permitted, § 26:17, 26:21
- Hypothetical questions, § 26:20
- Mental state or capacity, § 26:11
- Negligence, prohibiting opinions concerning, § 26:6
- Non-expert opinions, § 26:8
- Pain, § 26:11
- Requirement of expert opinion, § 26:4
- Speed, distance, time, § 26:10
- Treatises, introduction, § 26:22
- Ultimate issue and legal issue, opinions concerning, § 26:5
- Who is an expert, § 26:18

ORDER OF PROOF

- Generally, § 8:1 to 8:5
- Later stage, right to introduce testimony, § 8:5
- Producing testimony, order, § 8:2
- Rebuttal testimony, § 8:3
- Right to open and close, § 8:1
- Surrebuttal, § 8:4

ORDERS

- Gag orders, § 2:27, 2:28
- Mistrial, reversal of order, § 33:6
- Modification of general district court order during appeal to circuit court, § 4:31
- Pretrial orders, control of proceedings, § 2:22

ORDINANCES

- Documentary evidence, § 23:6
- Judicial notice, § 19:3

OVERSLEEPING

- Parties' absence, § 3:5

PAIN AND SUFFERING

- Closing arguments, § 36:10
- Damages, § 35:13
- Expert and opinion evidence, § 26:11

INDEX

PAROLE

Jury instructions, eligibility for parole in non-capital cases, § 37:21

PAROL EVIDENCE RULE

Generally, § 25:1 to 25:12

Ambiguous instruments and evidence to explain, § 25:4, 25:12

Best evidence rule distinguished, § 24:17

Collateral and subsequent agreements not affected, § 25:6

Complete instruments and evidence admissible, § 25:3

Conditions precedent, § 25:5

Consideration and other recitals may be proven, § 25:7

Fraud, duress, and other equitable defenses not affected, § 25:5

Incomplete instrument, § 25:3

Instruments to which parol evidence rule applies, § 25:2

Merger clauses, § 25:3

Partial integration, applicability to verbal agreements where there is some written evidence of contract, § 25:11

Persuasiveness of parol evidence, § 25:12

Strangers to writings not affected, § 25:8

Trade usage and local custom, § 25:4, 25:8

UCC

commercial paper, § 25:10

sales of goods, § 25:9

PARTIES

Presence of parties at trial, § 2:2

PATERNITY

Blood tests in paternity cases, § 22:3

Demonstrative evidence, exhibiting child in paternity cases, § 21:15

Presumptions concerning, § 20:15

PERJURY

Attorney-client privilege, intent to commit perjury or other crime or fraud not privileged, § 18:9

Witness or defendant intending to commit perjury, § 13:12

PERSONAL INJURY

Damages, § 35:10

Displaying personal injuries to jury, § 21:5

Permanent injuries, § 35:16

PHOTOGRAPHS

Generally, § 21:7

Cameras in court, § 2:12

Identification, burden of proof, § 9:19, 9:20

X-ray photographs, § 21:9

PHYSICAL RESTRAINTS

Defendant or witness at trial, § 4:6

PHYSICIAN-PATIENT PRIVILEGE

Privileged communications, § 18:14

PICTURES

Motion pictures as demonstrative evidence, § 21:8

Photographs

generally, § 21:7

court, photographs, § 2:12

identification, burden of proof, § 9:19, 9:20

x-ray photographs, § 21:9

PLAIN SMELL DOCTRINE

Search and seizure, § 30:49

PLAIN TOUCH DOCTRINE

Search and seizure, § 30:49

PLAIN VIEW DOCTRINE

Search and seizure, § 30:45 to 30:47

PLEADINGS

Judicial admissions in pleadings, § 28:10

Objections to variances between pleading and proof, § 32:9

POLLING JURY

Generally, § 39:9

PRECEDENT CONDITIONS

Parol evidence rule, § 25:5

PREJUDICE OR BIAS

Circumstantial evidence, balancing of probative value and prejudice to accused,
§ 31:5

Excluding relevant evidence, § 13:5

Impeachment of witnesses, bias, § 16:7

Mistrial, prejudicial evidence as grounds, § 33:2

PRELIMINARY HEARINGS

Criminal trials, § 4:2

PRESENCE

Conduct of trial

judge, presence of, § 2:5

parties and counsel, presence of, § 2:2

Continuance or adjournment

attorney's absence, § 3:4

parties absent, § 3:5

witnesses, absence, § 3:3, 11:4

Dead man's statute, absent persons not protected, § 17:3

Mistrial, absence of accused or juror, § 33:2

Presumption of death after seven years' absence, § 20:9

INDEX

PRESENT SENSE IMPRESSIONS

Hearsay evidence, § 28:32

PRESUMPTIONS

Generally, § 20:1 to 20:21

Children and minors, presumptions concerning, § 20:15

Conclusive presumptions, § 20:2

Conflicting presumptions, § 20:6

Continuance of a condition or fact, presumption, § 20:18

Death after seven years' absence, § 20:9

Gifts, presumptions about, § 20:19

Inference upon inference, § 20:5

Intentions, presumptions, § 20:16

Intoxication from blood-alcohol content, § 20:17

Letters, presumption of delivery, § 20:13

Marriage, presumption of validity, § 20:10

Other presumptions and inferences, § 20:21

Permitted inferences, presumptions, § 20:4

Possession of recently stolen goods, presumption arising, § 20:12

Public and judicial officers and their acts, presumptions concerning, § 20:20

Rebuttable presumptions, § 20:3

Res ipsa loquitur, § 20:8

Sanity, presumptions, § 20:16

Suppression, destruction, or non-production of evidence, § 20:11

PRETRIAL HEARING

Preliminary hearings criminal trials, § 4:2

PRETRIAL ORDER

Control of proceedings by pretrial order, § 2:22

PRIESTS

Privileged communications, § 18:15

PRIMA FACIE EVIDENCE

Jury selection, prima facie case of discrimination, § 6:7

PRIOR STATEMENTS

Admissions distinguished, § 28:7

Hearsay evidence, § 28:35

Impeachment of witnesses, § 16:5, 16:6

PRISONERS

Confessions, incriminating statements to fellow prisoners, § 29:16

Search of inmates' property, § 30:34

Witnesses, § 11:2

PRIVACY

Search and seizure, legitimate expectation of privacy, § 30:7

PRIVILEGED COMMUNICATIONS

Generally, § 18:1 to 18:17

PRIVILEGED COMMUNICATIONS—Cont'd

Attorneys

- generally, § 18:8 et seq.
- claiming and waiving privilege, § 18:12
- existence of relationship, § 18:10
- intent to commit perjury or other crime or fraud not privileged, § 18:9
- termination, § 18:13

Child abuse cases, exceptions, § 18:5

Claiming privilege, § 18:7, 18:12

Clergymen, § 18:15

Communication defined, § 18:4

Exceptions, § 18:5

Husband and wife, communications between, § 18:2, 18:3, 18:5

Interpreter's communication with deaf person as privileged, § 18:17

Marital relationship, existence, § 18:3

One spouse against the other, actions involving, § 18:5

Physician-patient privilege, § 18:14

Private conversation defined, § 18:6

Psychologists, social workers, or counselors, § 18:16

Waiving privilege, § 18:7, 18:12

PROBABLE CAUSE FOR WARRANT

Generally, § 30:15

Informant's tip, § 30:20, 30:21

PROBABLE CAUSE TO ARREST

Different crime, § 30:31

PROBATION

Revocation hearings, use of illegally obtained evidence, § 30:59

PRODUCTION OF DOCUMENTS

Generally, § 11:7

PROFITS

Damages, contracts involving lost profits, § 35:21

PROPERTY

Damages, § 35:24, 35:25

Defense of property, § 4:13

Search

- abandoned property, § 30:14

- description of property to be seized, § 30:18

PROSECUTE, FAILURE TO

Dismissal, § 3:12

PROSECUTING ATTORNEYS

Conduct, § 4:19

Criminal trials, conduct, § 4:19

INDEX

PROXIMATE DAMAGES

Generally, § 35:5, 35:6

PSYCHIATRISTS

Insanity defense, appointment of psychiatrist, § 4:11

Privileged communications, § 18:16

PSYCHOLOGISTS

Privileged communications, § 18:16

PUBLICATIONS

Instructions to jury, quoting from published opinions, § 37:14

Jurors reading newspaper accounts of trial, § 38:5

PUBLIC DOCUMENTS AS EVIDENCE

Authentication, § 23:5

Court papers, § 23:7

Nonjudicial public records, § 23:8

Statutes and ordinances, § 23:6

PUBLICITY

Generally, § 2:11

Continuance, motion during trial because of publicity, § 3:8

PUBLIC RECORDS AND REPORTS

Best and secondary evidence, § 24:11

PUNITIVE DAMAGES

Generally, § 35:8, 35:9

RAPE

Circumstantial evidence of victim's prior sexual conduct in sexual assault cases,
§ 31:12

Shield, rape shield, § 31:12

REAL AND DEMONSTRATIVE EVIDENCE

Generally, § 21:1 to 21:15

Connecting tangible articles to accused, § 21:4

Displaying personal injuries to jury, § 21:5

Maps, drawings, diagrams and displays, § 21:12

Marks or notations on real or demonstrative evidence, § 21:14

Paternity cases, exhibiting child, § 21:15

Photographs, § 21:7, 21:9

Sound recordings, § 21:10

Static models or casts, § 21:13

Tangible articles, § 21:2 et seq.

Transaction in question, tangible articles having bearing, § 21:2

Videotapes or motion pictures, § 21:8

X-ray photographs, § 21:9

REBUTTAL TESTIMONY

Order of proof, § 8:3

RECONSIDERATION

Final judgment, motion for reconsideration, § 40:7

RECORDINGS

Sound recordings, demonstrative evidence, § 21:10, 21:11

RECORDING TESTIMONY

Generally, § 11:15

Transcription of testimony, § 2:24

REXCROSS-EXAMINATION

Right and scope, § 15:5

REDIRECT EXAMINATION

Explaining and correcting testimony on redirect, § 15:3

Form and content of questions on redirect, § 15:2

Rehabilitation of witnesses, § 15:4

Scope of redirect examination, § 15:1

REFRESHING RECOLLECTION

Generally, § 13:10

RELIGIOUS ADVISORS

Privileged communications, § 18:15

REMITTITUR

Generally, § 39:12

REMOTE DAMAGES

Generally, § 35:5, 35:6

RENDITION OF JUDGMENT

Generally, § 40:2

REPUTATION

Circumstantial evidence of character, § 31:3, 31:4

Confessions, character of accused, § 29:7

Impeachment of witnesses, bad reputation for truthfulness, § 16:9

RES GESTAE

Hearsay evidence, § 28:27

RESIDENCE

Continuance for actions under long-arm statutes, § 3:10

Nonresident witnesses, § 11:3

Search and seizure under plain view doctrine, § 30:46

RES IPSA LOQUITUR

Presumptions, § 20:8

RES JUDICATA

Generally, § 3:15

RESULTING AND CONSTRUCTIVE TRUSTS

Burden of proof, § 9:10

INDEX

REWARD

Confessions, promises of reward, § 29:6

RIGHT TO COUNSEL

Generally, § 1:2, 1:3, 4:23

ROADBLOCKS

Search and seizure, § 30:41

RULES AND REGULATIONS

Judicial notice, § 19:3

SCHEME OR PLAN

Circumstantial evidence, § 31:9

SEALED VERDICTS

Generally, § 39:7

SEARCH AND SEIZURE

Generally, § 30:1 to 30:60

Abandoned property, § 30:14

Affidavits, contents, § 30:16

Aircraft, surveillance, § 30:11

Anticipatory warrant, § 30:19

Arrest

 citation, search incident to, § 30:33

 lawful arrest, search and seizure pursuant, § 30:28, 30:30

 protective sweep in conjunction with arrest, § 30:35

 what may be searched, § 30:32

Automobiles. See index heading *AUTOMOBILES*

Briefcase searched without warrant, § 30:48

Business premises searched without warrant, § 30:50

Community caretaker, emergency aid exceptions, § 30:27

Compelled surgery, § 30:13

Confession following illegal search, § 29:15

Consent

 good faith exception, § 30:8

 owner's consent, effect, § 30:4

 third person, consent, § 30:5

 voluntariness, § 30:6

Containers searched without warrant, § 30:48

Contents of warrants and affidavits, § 30:16

Curtilage, search beyond, § 30:10

Defendant in custody, search of automobile without warrant, § 30:52

Description and identification

 informant, identity, § 30:21

 warrants, descriptions, § 30:17, 30:18

Dogs used to detect narcotics, § 30:12

Drugs and narcotics

 dogs used to detect narcotics, § 30:12

SEARCH AND SEIZURE—Cont'd

- Drugs and narcotics—Cont'd
 - drug courier profile, § 30:43
- Evidence, § 30:1 to 30:60
- Exemptions and exclusions, § 30:55 et seq.
- Exigent circumstances, § 30:25, 30:26
- Extent of protection against, § 30:9
- Fruit of the poisonous tree
 - generally, § 30:55, 30:56
 - secondary proceeding, use of illegally obtained evidence, § 30:60
- Good faith exception, § 30:8, 30:57
- Government involvement in search by private individual, § 30:3
- Hearsay as probable cause for warrant, § 30:20
- Home or residence, items, § 30:46
- Identification. See “Description and identification” in this index heading
- Illegally obtained evidence
 - generally, § 30:55, 30:56
 - secondary proceeding, use of illegally obtained evidence, § 30:60
- Impeachment of defendant, use of illegally obtained evidence, § 30:59
- Impounded vehicles, inventory searches, § 30:53
- Independent sources, § 30:56
- Inevitable discovery, § 30:56
- Inmates, search of inmates’ property, § 30:34
- Inventory
 - impounded vehicles, inventory searches of, § 30:53
 - no knock entry, admissibility of items omitted from inventory, § 30:23
- Investigative stops
 - generally, § 30:36
 - basis for stop, § 30:37
 - drug courier profile, § 30:43
 - length of stop, § 30:39
 - Miranda warnings required during, § 30:44
 - persons in vehicles, § 30:42
 - pretext, basis for stop, § 30:38
 - roadblocks, § 30:41
 - traffic stops, § 30:40
- Issuance of warrant, § 30:16
- Lawful arrest, search and seizure pursuant, § 30:28 et seq.
- Length of investigative stop, § 30:39
- Luggage searched without warrant, § 30:48
- Medical emergencies, exigent circumstances, § 30:26
- Miranda warnings required during investigative stops, § 30:44
- Mobile homes, § 30:54
- Motor vehicles
 - impounded vehicles, inventory searches, § 30:53
 - investigative stops. See “Investigative stops” in this index heading
 - mobile homes, § 30:54

INDEX

SEARCH AND SEIZURE—Cont'd

Motor vehicles—Cont'd

- plain view doctrine, items in vehicle, § 30:47
- warrantless search, § 30:51

No-knock entry, § 30:22, 30:23

Open fields doctrine, § 30:10

Plain touch/ plain smell doctrine, § 30:49

Plain view doctrine, § 30:45 to 30:47

Premises, description, § 30:17

Prisoners, search of inmates' property, § 30:34

Private individual, search, § 30:3

Private searches, legality, § 30:2

Probable cause for warrant

- generally, § 30:15
- informant's tip, § 30:20, 30:21

Probable cause to arrest for different crime, § 30:31

Probation revocation hearings, use of illegally obtained evidence, § 30:59

Prohibition against illegal searches and seizures, § 30:1

Property

- abandoned property, § 30:14
- description of property to be seized, § 30:18

Protection of self or others, § 30:25

Protective sweep in conjunction with arrest, § 30:35

Secondary proceeding, use of illegally obtained evidence, § 30:60

Standing and legitimate expectation of privacy, § 30:7

State action required, § 30:2

Stop and frisk searches, § 30:36, 30:38

Summons, search and seizure pursuant to, § 30:29

Suppression of illegally seized evidence, motion, § 30:58

Surveillance from aircraft, § 30:11

Third person, consent, § 30:5

Traffic stops, § 30:40

Vehicles. See "Motor vehicles" in this index heading

Voluntariness of consent, § 30:6

Warrant, § 30:15 et seq.

Warrantless search, § 30:24 et seq.

SECONDARY EVIDENCE

Generally, § 24:1 to 24:17

Admissions by party opponent, § 24:13

Application of rule, § 24:2

Collateral matters, § 24:9

Contents of writing not in issue, § 24:9

Copies in lieu of originals, statutes permitting, § 24:3

Court records, § 24:12

Cure of error, § 24:15

Documentary evidence, authentication requirements distinguished from best evidence, § 23:10

SECONDARY EVIDENCE—Cont'd

- Exceptions to the best evidence rule, generally, § 24:5 to 24:13
- Function of court and jury, § 24:16
- Jury function, § 24:16
- Loss or destruction of original, § 24:7
- Opponent, original in possession, § 24:8
- Original document defined, § 24:4
- Parol evidence rule distinguished, § 24:17
- Public records, § 24:11
- Statute of frauds distinguished, § 24:17
- Sufficiency of secondary evidence, § 24:15
- Summaries of voluminous documents, § 24:14
- Unobtainable original, § 24:7
- Voluminous records, § 24:14
- Waiver of rule, § 24:15

SELECTION OF JURY

- Generally, § 6:1 to 6:24
- Additional or alternate jurors, § 6:18
- Challenges. See “Peremptory challenges” in this index heading
- Discrimination
 - challenges, § 6:4
 - neutral reasons for use of peremptory challenges, § 6:9
 - racial or sexual discrimination in selection, § 6:4
 - sufficiency of reason for exercise of peremptory challenge, § 6:8
- Exemption from jury service, § 6:20
- Hypothetical questions, § 6:12
- Insurance, questioning of jurors regarding, § 6:15
- Jury panel, § 6:10
- Leading questions, § 6:14
- Number of peremptory challenges, § 6:19
- Passing upon challenges for cause, § 6:21
- Peremptory challenges
 - generally, § 6:16 et seq.
 - additional or alternate jurors, § 6:18
 - discrimination. See “Discrimination” in this index heading
 - discriminatory use, § 6:5
 - method of selection, grounds for challenging, § 6:3
 - number of peremptory challenges, § 6:19
 - passing upon challenges for cause, § 6:21
 - when challenge must be made, § 6:17
- Prima facie case of discrimination, § 6:7
- Questioning of jurors, § 6:13
- Racial discrimination. See “Discrimination” in this index heading
- Rehabilitation of questionable juror, § 6:14
- Right to jury trial, § 6:1
- Sexual discrimination. See “Discrimination” in this index heading
- Swearing the jury, § 6:23

INDEX

SELECTION OF JURY—Cont'd

- Term of court, method of selecting jury, § 6:2
- Time or date
 - method of selecting jury for term of court, § 6:2
 - peremptory challenges, time, § 6:17
 - trial, discovery of juror disqualification during, § 6:24
- Trial, discovery of juror disqualification during, § 6:24
- Twelve jurors, trial by less than, § 6:22
- Voir dire examination. See index heading VOIR DIRE
- Waiver of right to jury trial, § 6:1

SELF-DEFENSE

- Generally, § 4:13

SELF-INCRIMINATION PRIVILEGE

- Civil case, effect of asserting privilege in, § 13:18
- Compulsory testimony, § 13:15
- Extent of privilege, § 13:14
- Invocation of right to remain silent, constitutional issues, § 29:26
- Waiver of privilege, § 13:17
- Who may invoke the privilege against self-incrimination, § 13:16

SELF-SERVING STATEMENTS

- Admissions, § 28:17
- Hearsay evidence, § 28:4

SENTENCE AND PUNISHMENT

- Bifurcated trial, evidence at sentencing, § 4:32
- Closing arguments, appropriate sentence argued, § 36:16
- Jury questions, § 38:9

SEQUESTRATION OF JURY

- During trial, separation of jury, § 38:7

SETTING ASIDE

- Judgment, motion for vacating, § 40:7
- Verdict, § 39:10

SETTLEMENT

- Inadmissibility of settlement negotiations, § 28:19

SEVEN YEARS' ABSENCE

- Presumption of death after seven years' absence, § 20:9

SHIFTING BURDEN OF PROOF

- Generally, § 9:8

SHOPBOOK RULE

- Hearsay evidence, records of a regularly conducted activity, § 28:26

SIGNATURE

- Judicial notice of signatures of officials and agencies, § 19:5

SILENCE

Admissions by silence, § 28:14

Confessions

invocation of right to remain silent

generally, § 29:26

resumption of questioning, whether and when questioning may resume after
request to remain silent, § 29:12

Self-incrimination privilege

civil case, effect of asserting privilege in, § 13:18

compulsory testimony, § 13:15

extent of privilege, § 13:14

invocation of right to remain silent, constitutional issues, § 29:26

waiver of privilege, § 13:17

who may invoke the privilege against self-incrimination, § 13:16

SKID MARKS

Speed of vehicles based on skid marks, § 22:2

SOCIAL WORKERS

Privileged communications, § 18:16

SOUND RECORDINGS

Real and demonstrative evidence, § 21:10

SPECIAL DAMAGES

Generally, § 35:4

SPECIAL VERDICTS

Generally, § 39:5

SPECULATIVE DAMAGES

Generally, § 35:6

SPEED

Expert and opinion evidence as to speed, § 26:10

SPEEDY TRIAL

Generally, § 4:28

SPOUSES

Admissions, § 28:22

Closing arguments, comments upon failure of spouse to testify, § 36:14

Competency of spouse to testify for or against other spouse, § 12:6

Marriage, presumption of validity, § 20:10

Privileged and confidential communications between husband and wife, § 18:2,
18:3

STATUTE OF FRAUDS

Best evidence rule distinguished, § 24:17

STATUTES

Copies in lieu of originals, statutes permitting, § 24:3

INDEX

STATUTES—Cont'd

- Dead man's statute
 - generally, § 17:1 to 17:6
 - absent or unknown persons not protected, § 17:3
 - application, § 17:1
 - corporations not protected, § 17:4
 - corroboration required of witnesses, § 17:4 to 17:6
 - protections, entitlement, § 17:2
 - striking uncorroborated statements, § 17:6
 - will contests, § 17:1
- Documentary evidence, § 23:6
- Instructions to jury, quoting from statute, § 37:14
- Judicial notice, § 19:3
- Long-arm statutes, continuance for actions, § 3:10
- Statute of frauds distinguished, § 24:17

STENOGRAPHERS

- Transcription of testimony, § 2:24

STIPULATIONS

- Construction and enforcement of stipulations, § 10:5
- Proof of facts, stipulations used to excuse proof, § 10:1, 10:2, 10:4
- Trial, control of proceedings by stipulation, § 2:23

STOLEN GOODS

- Presumption arising from possession of recently stolen goods, § 20:12

STOP AND FRISK SEARCHES

- Generally, § 30:36
- Pretext, basis for stop, § 30:38

STRIKING EVIDENCE

- Chancery cases, § 34:4
- Dead man's statute, striking uncorroborated statements, § 17:6
- Grounds for motion, § 34:3
- Time and manner of making motion, § 34:2

SUA SPONTE MOTIONS

- Trial, exclusion of improper evidence on court's own motion, § 2:18

SUBSTITUTION

- Judges, substitution, § 2:6

SUMMATION

- Generally, § 36:1 to 36:18
- Appropriate sentence argued, § 36:16
- Conduct of opposition, comments, § 36:11
- Correcting improper conduct of counsel, § 36:18
- Court's control, § 36:2
- Damages
 - generally, § 36:8
 - golden rule argument improper, § 36:9

SUMMATION—Cont'd

- Damages—Cont'd
 - pain and suffering, § 36:10
- Disparaging remarks, § 36:12
- Failure of accused or spouse to testify, comment, § 36:14
- General rules governing, § 36:5
- Golden rule argument improper, § 36:9
- Improper remarks, § 36:11 et seq.
- Instructions, comments, § 36:7
- Liability insurance, remarks, § 36:13
- Limitations on time or number of counsel, § 36:3
- New matter argued in closing summation, § 36:6
- Objection to improper remarks, § 36:17
- Opening and closing argument, § 36:4
- Pain and suffering, § 36:10

SUMMONS

- Search and seizure pursuant to, § 30:29
- Witnesses, § 11:1

SUPPRESSION OF EVIDENCE

- Illegally seized evidence, motion for suppression, § 30:58

SURGICAL PROCEDURES

- Search and seizure, compelled surgery, § 30:13

SURREBUTTAL

- Order of proof, § 8:4

SURVEILLANCE

- Search and seizure, surveillance from aircraft, § 30:11

SWEARING

- Jury, § 6:23
- Witnesses, § 11:13

TELEGRAMS

- Presumption of delivery, § 20:14

TELEPHONES

- Circumstantial evidence, telephone conversations, § 31:18

TELEVISION

- Trial, television cameras in court, § 2:12
- Videotapes as demonstrative evidence, § 21:8

TERMINATION

- Attorney-client privilege, § 18:13

TERMINATION OR CANCELLATION

- Attorney-client privilege, termination, § 18:13

TESTS, ANALYSES AND EXPERIMENTS

- Accident reconstruction, § 22:1 to 22:12

INDEX

TESTS, ANALYSES AND EXPERIMENTS—Cont'd

- Additional considerations, § 22:12
 - official reports, § 22:12
 - test results, § 22:12
- Bite-mark identification, § 22:10
- Challenging testing procedures, § 22:6
- DNA tests, § 22:11
- Driving while impaired or under the influence of drugs, blood and breath tests, § 22:5
- Hypnosis as inadmissible, § 22:8
- Jurors, unauthorized experiments, § 38:6
- Lie detector tests inadmissible, § 22:9
- Official reports
 - additional considerations, § 22:12
- Paternity cases, blood tests, § 22:3
- Radar, § 22:7
- Scientific tests, § 22:1 to 22:12
- Speed of vehicles based on skid marks, § 22:2
- Test results
 - additional considerations, § 22:12
- Truth serum, § 22:8

TEXT MESSAGES

- Documentary evidence, § 23:14

THIRD PARTIES

- Search and seizure, consent of third persons, § 30:5

THREATS OR INTIMIDATION

- Confessions through force or threats, § 29:4
- Jury, conduct, § 38:4

TIME

- Circumstantial evidence of previous accidents, § 31:16
- Closing argument, limitation on time or number of counsel, § 36:3
- Competency of witnesses, time for objecting, § 12:3
- Continuance, time and procedure for requesting, § 3:2
- Double jeopardy, § 4:4
- Expediting trial, judge's right and duty, § 2:26
- Expert and opinion evidence as to speed, distance, or time, § 26:10
- Instructions to jury, time for requesting, § 37:3
- Parol evidence rule, precedent conditions, § 25:5
- Presumption of death after seven years' absence, § 20:9
- Pro se criminal trials, timeliness of request to proceed pro se, § 4:24 et seq.
- Publicity before and during trial, § 2:11
- Selection of jury
 - method of selecting jury for term of court, § 6:2
 - peremptory challenges, time, § 6:17
- Verdict, time for objections to form, § 39:2

TORTS

- Damages, § 35:4
- Proximate and remote damages, § 35:5

TRAFFIC STOPS

- Search and seizure, § 30:40

TRANSCRIPTION

- Testimony, § 2:24

TRANSCRIPTS

- Demonstrative evidence, transcript of recordings, § 21:11
- Hearsay evidence, former testimony, § 28:35
- Transcribing testimony, § 2:24

TRANSFER OF ACTIONS

- Criminal trial, transfer of juvenile to Circuit Court, § 4:3

TREATISES

- Expert and opinion evidence, introduction of treatises, § 26:22

TRIAL

- Cameras in court, § 2:12
- Conduct of parties and counsel, § 2:4
- Conduct of trial, generally, § 2:1 to 2:29
- Corporate counsel, right to at civil trial, § 2:3
- Counsel, appearance of, § 2:2
- Expediting trial, judge's right and duty, § 2:26
- Offensive language, control, § 2:29
- Photographs in court, § 2:12
- Presence of judge, § 2:5
- Presence of parties and counsel, § 2:2
- Preservation of order, § 2:9
- Pretrial order, control of proceedings, § 2:22
- Publicity before and during trial, § 2:11
- Transcribing testimony, § 2:24

TRUSTS

- Burden of proof in resulting and constructive trust cases, § 9:10

TWEETS

- Documentary evidence, § 23:14

TWELVE JURORS

- Trial by less than twelve jurors, § 6:22

TWO-WAY TELEVISION

- Parties and witnesses, audio and video conferencing, § 2:2

UCC

- Parol evidence rule
 - commercial paper, § 25:10
 - sales of goods, § 25:9

INDEX

ULTIMATE ISSUE

Expert and opinion evidence, § 26:5

UNIFORM COMMERCIAL CODE

Parol evidence rule
commercial paper, § 25:10
sales of goods, § 25:9

UNKNOWN PERSONS

Dead man's statute, unknown persons not protected, § 17:3

USUAL CUSTOM

Circumstantial evidence, § 31:15

VACATING

Judgment, motion for vacating, § 40:7
Verdict, § 39:10

VALUE AND VALUATION

Non-expert opinion permitted, § 26:12

VENUE

Burden of proof in criminal cases, § 9:15
Criminal trial, transfer of juvenile to Circuit Court, § 4:3

VERDICT

Generally, § 39:1 to 39:12
Additur, § 39:12
Construction of verdicts, § 39:6
Directed verdict prohibited, § 34:1
Form of verdict, objections, § 39:2, 39:3
Grounds for objecting to form of verdict, § 39:3
Impeachment of verdict by evidence of jurors, § 39:8
Inconsistent verdicts, § 39:11
Interrogatories rarely used in State, § 39:5
Polling the jury, § 39:9
Remittitur, § 39:12
Revision and amendment of verdict by court or jury, § 39:4
Sealed verdicts not permitted, § 39:7
Setting aside verdict, § 39:10
Special verdicts, § 39:5
Time for objections to form of verdict, § 39:2

VERIFICATION OF EVIDENCE

Best evidence rule distinguished, § 23:10
Excusing authentication of documentary evidence, § 23:4
Official documents exception to authentication rules, § 23:9
Public documents, general rules concerning authentication, § 23:5

VICTIMS

Circumstantial evidence of other offenses committed by victim, § 31:10 to 31:12

VIDEOTAPES

Demonstrative evidence, § 21:8

VIEW

Jury, view by. See index heading **VIEW BY JURY**

Search and seizure, plain view doctrine, § 30:45 to 30:47

VIEW BY JURY

Generally, § 27:1 to 27:4

Conduct of view, § 27:3

Nature of view, § 27:4

Request for view, § 27:2

Right to view, § 27:1

Unauthorized view, § 38:6

VOIR DIRE

Additional or alternate jurors, § 6:18

Challenges. See “Peremptory challenges” in this index heading

Conduct of voir dire examination, generally, § 6:11

Discrimination

challenges, § 6:4

neutral reasons for use of peremptory challenges, § 6:9

racial or sexual discrimination in selection, § 6:4

sufficiency of reason for exercise of peremptory challenge, § 6:8

Exemption from jury service, § 6:20

Hypothetical questions, § 6:12

Insurance, questioning of jurors regarding, § 6:15

Jury panel, § 6:10

Leading questions, § 6:14

Number of peremptory challenges, § 6:19

Passing upon challenges for cause, § 6:21

Peremptory challenges

generally, § 6:16 et seq.

additional or alternate jurors, § 6:18

discrimination. See “Discrimination” in this index heading

discriminatory use, § 6:5

method of selection, grounds for challenging, § 6:3

number of peremptory challenges, § 6:19

passing upon challenges for cause, § 6:21

when challenge must be made, § 6:17

Prima facie case of discrimination, § 6:7

Questioning of jurors, § 6:13

Racial discrimination. See “Discrimination” in this index heading

Rehabilitation of questionable juror, § 6:14

Right to jury trial, § 6:1

Sexual discrimination. See “Discrimination” in this index heading

Swearing the jury, § 6:23

Term of court, method of selecting jury, § 6:2

INDEX

VOIR DIRE—Cont'd

- Time or date
 - method of selecting jury for term of court, § 6:2
 - peremptory challenges, time, § 6:17
- Waiver of right to jury trial, § 6:1

WAIVER AND ESTOPPEL

- Attorneys
 - attorney-client privilege, waiving, § 18:12
 - criminal cases, waiver of right to counsel
 - generally, § 4:23
 - pro se cases, § 4:25
- Collateral estoppel, § 3:15
- Criminal cases, waiver of right to counsel
 - generally, § 4:23
 - pro se cases, § 4:25
- Miranda rights, waiver of, § 29:13
- Mistrial, waiver of right, § 33:5
- Parties' absence, § 3:5
- Privileged communications, waiving of privilege, § 18:7, 18:12
- Right to jury trial, waiver, § 6:1
- Self-incrimination privilege, § 13:17

WARRANTS, SEARCH

- Generally, § 30:15 et seq.
- Anticipatory warrants, § 30:19
- Warrantless search, § 30:24 et seq.

WILLS

- Dead man's statute, § 17:1

WITHDRAWAL

- Attorneys withdrawing from case, § 1:8
- Guilty plea, § 4:5

WITNESSES

- Generally, § 11:1 to 11:15
- Absence of witness, § 3:3, 11:4
- Accomplice testimony, § 4:22
- Admission of party at trial, judicial admissions, § 28:9
- Broadcasting or recording of testimony, § 11:15
- Circumstantial evidence of other offenses committed by witness, § 31:10
- Compensation of witnesses, § 11:11
- Competency. See index heading COMPETENCY OF WITNESSES
- Conferring with witness on stand, right, § 11:10
- Confession or incriminating statement made in testimony, § 29:24
- Confrontation of witnesses, § 4:20
- Convicts as witnesses, § 11:2
- Court's witnesses, § 2:21
- Cross-examination. See index heading CROSS-EXAMINATION

WITNESSES—Cont'd

- Dead man's statute, corroboration required of witnesses, § 17:4 to 17:6
- Disparaging remarks towards witnesses during closing argument, § 36:12
- Examination. See index heading EXAMINATION OF WITNESSES
- Exclusion of witnesses, § 11:12
- Experts. See index heading EXPERT TESTIMONY
- Foreign states, witnesses from, § 11:3
- Impeachment. See index heading IMPEACHMENT OF WITNESSES
- Influencing or harassing witness, § 11:8
- Interpreters, use of, § 11:14
- Interview witness, right to, § 11:9
- Judge, questioning of witnesses by judge, § 2:19
- Jurors, questioning of witnesses by, § 2:20
- Late-arriving witness, recess to confer with, § 11:6
- Limitation on number of witnesses, § 2:14
- Newly discovered witnesses, § 11:5
- Oath or affirmation, § 11:13
- Opinion. See index heading OPINION EVIDENCE
- Production of documents and objects, § 11:7
- Redirect examination. See index heading REDIRECT EXAMINATION
- Restraint of witness during criminal trial, § 4:6
- Self-incrimination. See index heading SELF-INCRIMINATION PRIVILEGE
- Summons of witnesses, § 11:1
- Two-way audio and video conferencing, testimony, § 4:21

WORDS AND PHRASES

- Communication, § 18:4
- Hearsay evidence, § 28:1
- Judgment, § 40:1
- Original document, § 24:4
- Private conversation, § 18:6

WRITING

- Admission, failure to reply to written statements, § 28:16
- Handwriting
 - examination of witnesses, handwriting samples required, § 13:15
 - expert testimony as to handwriting permitted, § 26:17, 26:21
- Impeachment of witnesses, prior inconsistent writings, § 16:5
- Jurors, questioning of witnesses by, § 2:20
- Parol evidence rule, strangers to writings not affected, § 25:8
- Statute of frauds, best evidence rule distinguished, § 24:17