

Table of Contents

CHAPTER 1. THE ROLE OF THE ATTORNEY

- § 1:1 Attorney and client relationship
- § 1:2 Solicitation by or for attorneys
- § 1:3 Liability and duties of attorney
- § 1:4 Contracts for compensation
- § 1:5 Measure and amount of compensation
- § 1:6 Authority to compromise
- § 1:7 Remedies to obtain payment
- § 1:8 Misconduct of attorney
- § 1:9 Trial publicity
- § 1:10 Lawyer as witness
- § 1:11 Advertising
- § 1:12 Preliminary preparation for trial
- § 1:13 Familial relationship of defense counsel to victim
- § 1:14 Prosecutor disqualification when formally acted as defense attorney
- § 1:15 Lawyer disqualification
- § 1:16 Ineffective assistance of counsel
- § 1:17 Attorney's fees
- § 1:18 Attorney lien for fee
- § 1:19 Legal malpractice
- § 1:20 Attorney reinstatement

CHAPTER 2. THE CONDUCT OF THE TRIAL

- § 2:1 Conduct of the trial, generally
- § 2:2 Role of judge in commenting on the evidence
- § 2:3 Powers and duties of trial judges
- § 2:4 Assessing costs
- § 2:5 Discovery
- § 2:6 Discovery pretrial procedure
- § 2:7 Discovery protocol procedure
- § 2:8 Criminal cases—Bifurcation
- § 2:9 Civil cases—Bifurcation
- § 2:10 Hearing—Necessary elements
- § 2:11 Requirements of preparation before hearing
- § 2:12 Procedural requirements of hearings
- § 2:13 Order of proof, generally

- § 2:14 Order of proof for particular proceedings—Civil cases, generally
- § 2:15 Questions of law and fact
- § 2:16 Procedural distinctions between law and equity abolished
- § 2:17 Change of venue
- § 2:18 Forum nonconveniens
- § 2:19 Magistrate trial
- § 2:20 Class certification
- § 2:21 Presuit notice of claim vs. health care provider

CHAPTER 3. MOTIONS DURING TRIAL WHICH MAY RESULT IN CONTINUANCE, DEFAULT, OR DISMISSAL

- § 3:1 Continuances, generally
- § 3:2 Motions during trial, generally
- § 3:3 Continuance in criminal cases, generally
- § 3:4 Voluntary dismissal
- § 3:5 Involuntary dismissal
- § 3:6 Dismissal of criminal cases
- § 3:7 Default judgments
- § 3:8 Setting aside default judgments
- § 3:9 Summary judgments
- § 3:10 Sanctions
- § 3:11 Dismissal in civil cases
- § 3:12 Presuit notice of claim to health care provider

CHAPTER 4. CRIMINAL TRIALS

- § 4:1 Constitutional right of the defendant to counsel
- § 4:2 Defendant appearing pro se
- § 4:3 Obligations of defense counsel
- § 4:4 Obligations of prosecutor
- § 4:5 Preparation for trial
- § 4:6 Arraignment and pleas
- § 4:7 Pleadings and motions before trial
- § 4:8 Appeal from magistrate court
- § 4:9 Trials—Defenses, generally
- § 4:10 Entrapment
- § 4:11 Duress or compulsion
- § 4:12 Capacity to commit a criminal act
- § 4:13 Double jeopardy
- § 4:14 Voluntary intoxication
- § 4:15 Diminished capacity defense
- § 4:16 Alibi
- § 4:17 Self-defense
- § 4:18 Intervening cause of death

TABLE OF CONTENTS

- § 4:19 Posttrial motions
- § 4:20 Judgment, sentence, and final commitment
- § 4:21 Probation
- § 4:22 Defense of another doctrine
- § 4:23 Concerted action principle
- § 4:24 Mistrial
- § 4:25 Instructions
- § 4:26 Statute of limitations defense
- § 4:27 Medical necessity defense
- § 4:28 Restraint of defense witnesses
- § 4:29 Foundation for blood test
- § 4:30 Sentencing and punishment
- § 4:31 Young Adult Offenders Act W. Va. Code § 25-4-1
- § 4:32 Special interrogatories prohibited
- § 4:33 Foundation for Horizontal Gaze Nystagmus Test (HGN test)
- § 4:34 Involuntary hospitalization of an incarcerated person
- § 4:35 Delay between commission of crime and arrest
- § 4:36 Judges obligation in addressing jurors
- § 4:37 Jury costs assessment for conviction
- § 4:38 Verdict form
- § 4:39 Inability to retreat
- § 4:40 Inference of malice
- § 4:41 Prison clothing at sentencing
- § 4:42 Failure of prosecutor to disclose rebuttal witness
- § 4:43 Guilt of coconspirator as evidence
- § 4:44 Prison clothing by defense witnesses
- § 4:45 DNA testing
- § 4:46 Removal for cause
- § 4:47 “Mercy phase” proceeding
- § 4:48 Requirement to cross-examine sexual assault victim
- § 4:49 Suppressed evidence
- § 4:50 False testimony presented by prosecutor
- § 4:51 Due process
- § 4:52 Miranda rights to counsel
- § 4:53 Proof of conspiracy
- § 4:54 Plain error
- § 4:55 Parole
- § 4:56 Felon in possession of firearms statute

CHAPTER 5. CONTEMPT OF COURT

- § 5:1 Nature of contempt
- § 5:2 Conduct constituting contempt
- § 5:3 Procedure
- § 5:4 Right to trial by jury
- § 5:5 Civil contempt—Review

- § 5:6 —Sanctions
- § 5:7 Assignment of contempt remedy

CHAPTER 6. SELECTION OF THE JURY

- § 6:1 Introduction
- § 6:2 Right to an impartial jury
- § 6:3 Right to jury in particular actions, proceedings
- § 6:4 Right to jury trial in criminal prosecutions
- § 6:5 Right to jury in civil cases
- § 6:6 Qualifications of jurors
- § 6:7 Selecting, drawing, and summoning
- § 6:8 Jury list
- § 6:9 Selecting jury panel
- § 6:10 Securing attendance by writ
- § 6:11 Challenges and voir dire, generally
- § 6:12 Determining number of peremptory challenges
- § 6:13 Challenges for cause
- § 6:14 General rules for disqualification
- § 6:15 Examination of jurors
- § 6:16 Rejection of a juror
- § 6:17 Objections and exceptions, generally
- § 6:18 Swearing the jury
- § 6:19 Conduct of jury
- § 6:20 Communications with jury
- § 6:21 Communications between judge and jury
- § 6:22 Separation of jury—Civil cases
- § 6:23 Matter for jury deliberation
- § 6:24 Discharge of jury
- § 6:25 Special juries
- § 6:26 Jury view
- § 6:27 Change of venue

CHAPTER 7. OPENING STATEMENTS

- § 7:1 The purpose of an opening statement
- § 7:2 Dismissal as a result of opening statement

CHAPTER 8. ORDER OF PROOF

- § 8:1 Right to open and close, generally
- § 8:2 Order of producing testimony
- § 8:3 Rebuttal
- § 8:4 Surrebuttal
- § 8:5 Right to introduce testimony at later stage

CHAPTER 9. BURDEN OF PROOF

- § 9:1 Burden of proof, generally

TABLE OF CONTENTS

- § 9:2 Degrees of proof
- § 9:3 Prima facie cases
- § 9:4 Directed verdicts
- § 9:5 Burden of proof in civil cases
- § 9:6 Burden of proof in criminal cases
- § 9:7 Defendant's requirement to present proof in criminal cases
- § 9:8 Alibi
- § 9:9 Sanity
- § 9:10 Entrapment
- § 9:11 Selective prosecution
- § 9:12 Circumstantial evidence and the burden of proof
- § 9:13 Requirement of corroboration in criminal cases
- § 9:14 Testimony of victims
- § 9:15 Burden of proof in child delinquency matters
- § 9:16 Proof of employer's deliberate intent "subjective realization"
- § 9:17 Retaliation for exercising right
- § 9:18 Standard of proof in Child Protective Service proceedings
- § 9:19 Evidence for conviction of sexual offense

CHAPTER 10. PROOF OF FACTS

- § 10:1 Situations where proof is excused before trial
- § 10:2 Situations where proof is excused during trial
- § 10:3 Methods of proving facts
- § 10:4 Stipulations
- § 10:5 Construction and enforcement of stipulations

CHAPTER 11. WITNESSES

- § 11:1 Summons of witnesses
- § 11:2 Convicts as witnesses
- § 11:3 Witnesses from out of state
- § 11:4 Continuance due to failure of witness to attend
- § 11:5 Production of documents and objects
- § 11:6 Influencing or harassing of witnesses
- § 11:7 Right to confer with witness on stand
- § 11:8 Right to interview witnesses
- § 11:9 Compensation of witnesses
- § 11:10 Exclusion of witnesses
- § 11:11 Swearing of witnesses
- § 11:12 Use of an interpreter
- § 11:13 Broadcasting or recording of testimony
- § 11:14 Judges as witnesses
- § 11:15 Witness immunity

CHAPTER 12. COMPETENCY OF WITNESSES

- § 12:1 Competency of witnesses, generally
- § 12:2 A felon competent to testify
- § 12:3 Competency of a child to testify
- § 12:4 Insane or mentally deficient witnesses
- § 12:5 A spouse competent to testify for or against the other spouse
- § 12:6 Competency of an accused to testify
- § 12:7 Competency of a juror as a witness
- § 12:8 Competency of attorneys and judges to testify
- § 12:9 Competency of chiropractors as witnesses
- § 12:10 Time for objecting to competency

CHAPTER 13. EXAMINATION OF WITNESSES AND RELEVANCY OF EVIDENCE

- § 13:1 General principles of relevancy
- § 13:2 Relevancy of evidence
- § 13:3 Exclusion of relevant evidence
- § 13:4 Form and content of questions on direct examination—Leading questions
- § 13:5 Refreshing a witness's recollection
- § 13:6 Exceptions to leading questions on direct
- § 13:7 Calling on adverse witness or person as a witness
- § 13:8 Improper conduct of counsel in examining witnesses
- § 13:9 Requirements of the witness's answer
- § 13:10 The witness's first-hand knowledge
- § 13:11 Testimony which tends to incriminate the witness
- § 13:12 Extent of privilege against self-incrimination
- § 13:13 Who may invoke the privilege against self-incrimination
- § 13:14 Waiver of privilege
- § 13:15 Inspection of person of accused or witness

CHAPTER 14. CROSS-EXAMINATION

- § 14:1 Right to cross-examination of witnesses
- § 14:2 The scope of cross-examination
- § 14:3 Form of questions on cross-examination
- § 14:4 Additional matters proper on cross-examination
- § 14:5 Manner of conducting cross-examination
- § 14:6 Testing the witness's knowledge and accuracy
- § 14:7 Right to recall witness for further cross-examination
- § 14:8 Effect of denial of right to cross-examination

TABLE OF CONTENTS

CHAPTER 15. REDIRECT AND RECROSS-EXAMINATIONS

- § 15:1 Scope of redirect examination
- § 15:2 Form and control of question on redirect examination
- § 15:3 Explaining and correcting testimony on redirect examination
- § 15:4 Rehabilitation on redirect examination
- § 15:5 Right and scope of recross-examination
- § 15:6 Questions by the court

CHAPTER 16. IMPEACHMENT

- § 16:1 The impeachment of witnesses, generally
- § 16:2 Impeachment on collateral issue
- § 16:3 Impeachment evidence distinguished from substantive evidence
- § 16:4 Laying the foundation for impeaching a witness
- § 16:5 Prior inconsistent statements or writings
- § 16:6 Prior inconsistent conduct
- § 16:7 Bias
- § 16:8 Capacity
- § 16:9 Bad reputation for truthfulness
- § 16:10 Conviction of crime; other crimes, wrongs, or acts
- § 16:11 Limiting instructions
- § 16:12 Impeachment of own witness
- § 16:13 Rehabilitation of impeached witness
- § 16:14 Exclusionary rule exception
- § 16:15 Disclosure of inducements to witnesses
- § 16:16 Juvenile law enforcement records

CHAPTER 17. DEAD MAN'S ACT

- § 17:1 Application of Dead Man's Act, generally
- § 17:2 Persons entitled to protection of Dead Man's Act
- § 17:3 Persons not precluded—Corporations
- § 17:4 Waiver of Dead Man's Act
- § 17:5 Raising the issue of competency
- § 17:6 Medical malpractice application

CHAPTER 18. PRIVILEGED COMMUNICATIONS

- § 18:1 The nature of privileged communications, generally
- § 18:2 Self-incrimination
- § 18:3 Corporations, associations, etc
- § 18:4 Waiver of privilege
- § 18:5 Immunity statute
- § 18:6 Husband-wife privilege

- § 18:7 Attorney-client privilege
- § 18:8 Clergyman-penitent privilege
- § 18:9 Physician-patient privilege
- § 18:10 Informant privilege
- § 18:11 Journalistic privileges
- § 18:12 Governmental secret privilege
- § 18:13 Peer review privilege
- § 18:14 Hospital review committee
- § 18:15 Personal qualified privilege
- § 18:16 Production of privileged statement in criminal trial
- § 18:17 Apex-deposition rule
- § 18:18 Judicial deliberative privilege

CHAPTER 19. JUDICIAL NOTICE

- § 19:1 Purpose and effect of judicial notice
- § 19:2 Matters which may be judicially noticed, generally
- § 19:3 Judicial notice of statutes, ordinances, rules, and regulations
- § 19:4 Scientific facts, well-documented facts, court records, and decisions

CHAPTER 20. PRESUMPTIONS

- § 20:1 The nature of presumptions
- § 20:2 Irrebuttable presumptions
- § 20:3 Rebuttable presumptions
- § 20:4 Inferences
- § 20:5 Instructions concerning presumptions
- § 20:6 Conflicting presumptions
- § 20:7 Rebutting a presumption
- § 20:8 Res ipsa loquitur
- § 20:9 Presumption of death after seven years' absence
- § 20:10 Presumption of knowledge of law
- § 20:11 Presumption of delivery of mail
- § 20:12 Presumption of intoxication from alcoholic content of blood
- § 20:13 Presumption of natural consequences of act intended
- § 20:14 Presumption of custody of children
- § 20:15 Presumption of continuation of existing facts
- § 20:16 Presumption of constitutionality of a statute
- § 20:17 Presumption of payment of debt
- § 20:18 Presumption of possession of property
- § 20:19 Presumption of competency of grantor
- § 20:20 Presumption of intestacy
- § 20:21 Presumption of negligence
- § 20:22 Presumption of joint funds
- § 20:23 Presumption that all people are sane

TABLE OF CONTENTS

- § 20:24 Presumption—Hospital records
- § 20:25 Presumption of letter being mailed
- § 20:26 Violation of OSHA Regulation creation of duty
- § 20:27 Spoliation rebuttal presumption
- § 20:28 Violation of rules and regulations of PSC constitutes prima facie negligence
- § 20:29 Occupational Safety and Health Act of 1970, Duty of safety

CHAPTER 21. REAL AND DEMONSTRATIVE EVIDENCE

- § 21:1 Real and demonstrative evidence distinguished
- § 21:2 Real and demonstrative evidence—Requirement of relevancy
- § 21:3 Authentication of evidence
- § 21:4 Demonstrative evidence, generally
- § 21:5 Experiments
- § 21:6 Videotapes and motion pictures
- § 21:7 Photographs
- § 21:8 X-rays
- § 21:9 Inflammatory evidence
- § 21:10 Maps, diagrams, and blackboards
- § 21:11 Physical demonstrations
- § 21:12 Views by jury
- § 21:13 Tape recordings
- § 21:14 Spoliation of evidence
- § 21:15 Pretrial procedure

CHAPTER 22. TESTS, ANALYSES, AND EXPERIMENTS

- § 22:1 Scientific tests, generally
- § 22:2 Distance required to stop train
- § 22:3 Polygraph results
- § 22:4 Blood stains
- § 22:5 Handwriting comparison
- § 22:6 Distance of distinct vision
- § 22:7 Capacity of a child to fire a pistol
- § 22:8 Blood tests—Postmortem in motor vehicle accidents
- § 22:9 Radar and vascar
- § 22:10 Breath, blood, and urine tests

CHAPTER 23. DOCUMENTARY EVIDENCE

- § 23:1 General requirements relating to documentary evidence
- § 23:2 Procedure in offering and admitting documentary evidence

- § 23:3 When authentication of documentary evidence is presumed—Public documents, records
- § 23:4 Statutes and ordinances
- § 23:5 Subscribing witness's testimony unnecessary
- § 23:6 Authentication requirements and the best evidence rule
- § 23:7 Exceptions to the best evidence rule, secondary evidence
- § 23:8 Functions of court and jury
- § 23:9 Hospital records; admissibility of copies and affidavits
- § 23:10 Hospital records; obtaining personal attendance of the custodian
- § 23:11 Autopsies; admissibility of reports when duly attested by medical examiner
- § 23:12 Criminal history records
- § 23:13 Freedom of Information Act
- § 23:14 Maintenance and certification records of breath test machines

CHAPTER 24. THE PAROL EVIDENCE RULE

- § 24:1 The parol evidence rule, generally
- § 24:2 Instruments to which parol evidence rule applies
- § 24:3 Contract ambiguous and subject to more than one interpretation
- § 24:4 Uniform Commercial Code
- § 24:5 —Sales
- § 24:6 Exceptions to and limitations of rule
- § 24:7 Subsequent parol, distinct and collateral agreements
- § 24:8 Fraud, illegality, accident, mistake, or insufficiency of consideration
- § 24:9 Waiver

CHAPTER 25. EXPERT AND OPINION EVIDENCE

- § 25:1 Opinion evidence by lay witnesses
- § 25:2 Testimony by experts
- § 25:3 Expert testimony on two schools of thought
- § 25:4 Foundation for expert testimony
- § 25:5 Basis of opinion testimony by experts
- § 25:6 Disclosure of facts or data underlying expert opinion
- § 25:7 Opinion on ultimate issue
- § 25:8 Court-appointed experts
- § 25:9 Compensation of expert witnesses
- § 25:10 Contingent fee contracts
- § 25:11 Expert witness for indigents in criminal cases

TABLE OF CONTENTS

- § 25:12 Effect of expert testimony, generally
- § 25:13 Exception to general rule as to weight of expert testimony
- § 25:14 Experts on handwriting
- § 25:15 Medical experts requirements on proximate cause
- § 25:16 Real-estate appraisers
- § 25:17 Expert witness testimony in criminal case
- § 25:18 Medical malpractice experts not required
- § 25:19 Medical malpractice experts not required-common knowledge exception
- § 25:20 Disqualifying experts
- § 25:21 Proximate cause
- § 25:22 Sexual harassment expert or lay testimony
- § 25:23 Immunity of expert witness
- § 25:24 Work product doctrine
- § 25:25 Learned intermediary doctrine
- § 25:26 Immunity of adult protective services caseworker

CHAPTER 26. THE VIEW

- § 26:1 Right to view the scene
- § 26:2 Request for view
- § 26:3 Expenses for conduct of view
- § 26:4 View in eminent domain
- § 26:5 Conduct of the view
- § 26:6 View as evidence

CHAPTER 27. HEARSAY EVIDENCE

- § 27:1 Definition of hearsay evidence
- § 27:2 Hearsay evidence not admissible
- § 27:3 Statements which are not hearsay
- § 27:4 Hearsay—Exceptions; availability of declarant immaterial
- § 27:5 Hearsay exceptions; declarant unavailable
- § 27:6 Hearsay within hearsay
- § 27:7 Attacking or supporting credibility of declarant
- § 27:8 Conclusion

CHAPTER 28. ADMISSIONS

- § 28:1 Admissions, generally
- § 28:2 Judicial admissions in criminal cases
- § 28:3 Judicial admissions in civil cases
- § 28:4 Admissions implied from conduct
- § 28:5 Admissions by failure to produce evidence
- § 28:6 Admissions by obstruction of justice
- § 28:7 Admissions by failure to dispute account
- § 28:8 Admissions by failure to reply to letters

- § 28:9 Admissions by flight
- § 28:10 False pretrial statement
- § 28:11 Admissions by agents with authority to speak
- § 28:12 Absence of express authority to speak
- § 28:13 Adoptive admissions
- § 28:14 Admissions by the insured
- § 28:15 Admissions by representatives
- § 28:16 Admissions by predecessor in title
- § 28:17 Self-serving declarations
- § 28:18 Declaration of co-conspirator

CHAPTER 29. CONFESSIONS

- § 29:1 Nature of confessions
- § 29:2 Requirements for admissibility of confessions, generally
- § 29:3 The protection of constitutional rights in obtaining confessions
- § 29:4 The voluntariness of a confession
- § 29:5 The burden of proof in determining voluntariness
- § 29:6 Repeated confessions
- § 29:7 Confessions to persons in authority
- § 29:8 Necessity of warning
- § 29:9 Intoxication and drugs
- § 29:10 Juvenile confessions
- § 29:11 Spontaneous admissions
- § 29:12 Confession by silence
- § 29:13 Confessions while asleep
- § 29:14 Confessions upon legal examination
- § 29:15 Confessions of third persons
- § 29:16 Confessions establishing corpus delicti
- § 29:17 Illegally seized evidence
- § 29:18 Role of the jury

CHAPTER 30. SEARCH AND SEIZURE

- § 30:1 The prohibition against illegal searches and seizures
- § 30:2 Exceptions to exclusionary rule
- § 30:3 Extent of protection against searches and seizures
- § 30:4 The fruit of the poisonous tree doctrine
- § 30:5 Search beyond curtilage—The open fields doctrine
- § 30:6 The standing necessary to invoke the privilege against unlawful search and seizure
- § 30:7 Search warrant procedure—Probable cause
- § 30:8 Contents of warrant and affidavit
- § 30:9 The description of the premises
- § 30:10 Description of property to be seized
- § 30:11 Search warrant based upon informants—Hearsay

TABLE OF CONTENTS

§ 30:12	Emergency doctrine
§ 30:13	No knock entry
§ 30:14	Search and seizure without a warrant, generally
§ 30:15	Inevitable discovery
§ 30:16	Search and seizure pursuant to a lawful arrest
§ 30:17	Stop and frisk searches, investigative stops
§ 30:18	Good faith exception
§ 30:19	Plain view
§ 30:20	Search of automobile without warrant
§ 30:21	Consent of a third person
§ 30:22	The voluntariness of the consent
§ 30:23	Exigent circumstances: hot pursuit, protection of self or others
§ 30:24	Search by private individuals
§ 30:25	Abandoned property
§ 30:26	Search of a briefcase, luggage, and other containers without a warrant
§ 30:27	Inventory searches
§ 30:28	Search of a business premises without a warrant
§ 30:29	Listening devices
§ 30:30	Compelled surgery
§ 30:31	Disposition of evidence obtained pursuant to warrant
§ 30:32	Motion to suppress illegally seized evidence
§ 30:33	Requirement of hearing for admissibility of evidence
§ 30:34	Arrest by off-duty police officer
§ 30:35	Extradition and detainers
§ 30:36	Citizen's arrest
§ 30:37	All persons warrant

CHAPTER 31. CIRCUMSTANTIAL EVIDENCE

§ 31:1	Nature and admissibility of circumstantial evidence
§ 31:2	The effect of circumstantial evidence on burden of proof
§ 31:3	Admissibility of evidence on collateral issues
§ 31:4	Habit, routine practice, and business customs
§ 31:5	Subsequent remedial measures
§ 31:6	Compromise and offers to compromise
§ 31:7	Prior accidents, similar happenings, and transactions in civil cases
§ 31:8	Exceptions
§ 31:9	Evidence of character and reputation in civil and criminal cases
§ 31:10	Liability insurance
§ 31:11	Evidence of previous crimes
§ 31:12	Rape—Past conduct

- § 31:13 Res gestae
- § 31:14 Evidence of lustful disposition

CHAPTER 32. OBJECTIONS TO EVIDENCE

- § 32:1 Need for objections to improper evidence
- § 32:2 The timeliness of the objection
- § 32:3 Effect of answer prior to objection, conditioned admission
- § 32:4 Ruling on the objection, instruction to disregard
- § 32:5 Vouching the record and offer of proof
- § 32:6 Waiver by failing to object or planting an error
- § 32:7 Waiver by failing to object or introducing same evidence
- § 32:8 No formal exception required
- § 32:9 Variance between pleadings and proof
- § 32:10 Motion in limine
- § 32:11 Exceptional circumstances

CHAPTER 33. MISTRIAL

- § 33:1 The nature of a mistrial
- § 33:2 Grounds for a mistrial
- § 33:3 Mistrial in a criminal case
- § 33:4 Time for motion for mistrial
- § 33:5 Waiver of error by failure to move for mistrial

CHAPTER 34. SUMMARY JUDGMENTS, DIRECTED VERDICTS, AND JUDGMENT NOTWITHSTANDING THE VERDICT

- § 34:1 Summary judgment
- § 34:2 Motion for directed verdict and judgment notwithstanding the verdict
- § 34:3 Grounds for motion for directed verdict and judgment notwithstanding the verdict
- § 34:4 Motion for judgment of acquittal
- § 34:5 Family law and review of findings
- § 34:6 West Virginia educational employees grievance board

CHAPTER 35. DAMAGES

- § 35:1 General principles relating to damages
- § 35:2 Damnum absque injuria
- § 35:3 Nominal damages
- § 35:4 General and special damages—Tort cases
- § 35:5 Proximate and remote damages—Tort cases
- § 35:6 Speculative, contingent, uncertain, and remote damages

TABLE OF CONTENTS

§ 35:7	Duty to mitigate damages
§ 35:8	Punitive or exemplary damages
§ 35:9	Personal injury cases, generally
§ 35:10	Lost earnings
§ 35:11	Past and future medical expenses
§ 35:12	Pain and suffering
§ 35:13	Disfigurement
§ 35:14	Mental anguish, humiliation, emotional distress, injury to feelings
§ 35:15	Disability, permanent injury, impaired earning capacity
§ 35:16	Loss of enjoyment of life
§ 35:17	Excessive or inadequate damages
§ 35:18	Loss of consortium
§ 35:19	Parental consortium
§ 35:20	Collateral source rule
§ 35:21	Aggravation of previous injuries
§ 35:22	Breach of contract—General principles
§ 35:23	Direct and consequential damages—Contract cases
§ 35:24	Lost profits—Contract cases
§ 35:25	Liquidated damages and penalties
§ 35:26	Damages to personal property
§ 35:27	Damages to real property
§ 35:28	Attorney's fees
§ 35:29	Interest
§ 35:30	Additur
§ 35:31	Injury to nonviable child
§ 35:32	Unliquidated damages
§ 35:33	Consequential and incidental damages
§ 35:34	Intentional infliction of emotional distress
§ 35:35	Lemon law damages
§ 35:36	Medical monitoring
§ 35:37	Apportionment of liability
§ 35:38	Economic loss from interruption in commerce
§ 35:39	Damages to personal property
§ 35:40	Consumer Credit and Protection Act
§ 35:41	Whistle-blower remedies
§ 35:42	Apportionment of damages
§ 35:43	Securities
§ 35:44	Workers' compensation widow benefit
§ 35:45	Premajority medical expenses
§ 35:46	Estate damages for death in deliberate intent
§ 35:47	Medical malpractice damages
§ 35:48	Front end damages
§ 35:49	Administrative expenses incurred
§ 35:50	Non-compensable preexisting injury
§ 35:51	Restitution to victim of crime

- § 35:52 Injury of inmate not compensable under workers' compensation
- § 35:53 Civil Conspiracy
- § 35:54 Reimbursement of travel expenses for medical exam
- § 35:55 Damages to minority shareholders
- § 35:56 Recovery of overpayment in Workers' Compensation
- § 35:57 Limitation of liability of third party administrator
- § 35:58 Damages for violation of "search and seizure" W. Va. Constitution
- § 35:59 Staffing and hospital policies

Appendix 35A. Determining the Value of the Firm in a Punitive Damages Case

CHAPTER 36. CLOSING ARGUMENTS

- § 36:1 Right to make closing argument
- § 36:2 Court's control of closing argument
- § 36:3 Limitations on time and number of counsel
- § 36:4 Right to open and close arguments
- § 36:5 General rules governing closing arguments
- § 36:6 Arguing new matter in closing arguments
- § 36:7 Comments on court's instructions
- § 36:8 Arguing damages, generally
- § 36:9 Damages, golden rule argument improper
- § 36:10 Damages, arguing pain and suffering, "per diem" formula prohibited
- § 36:11 Comments on conduct of opposition
- § 36:12 Disparaging remarks toward defendant, other parties, or witnesses
- § 36:13 Remarks in argument about liability insurance
- § 36:14 Motions to disregard
- § 36:15 Necessity of objection to improper remarks
- § 36:16 Correcting improper conduct of counsel
- § 36:17 Arguing specific dollar amounts
- § 36:18 Improper final argument
- § 36:19 Criminal cases
- § 36:20 Prosecution misstatement of the law
- § 36:21 Absent party argument

CHAPTER 37. INSTRUCTIONS

- § 37:1 Jury instructions—General principles
- § 37:2 Power and duty of court to instruct
- § 37:3 Time and manner of requesting instructions
- § 37:4 Cautionary instructions
- § 37:5 Each party entitled to instructions on own theory of case
- § 37:6 Grounds for counsel to object or court to refuse instruction, generally

TABLE OF CONTENTS

- § 37:7 Sufficiency of evidence to support instructions;
abstract instructions
- § 37:8 Instructions already given
- § 37:9 Instructions incomplete, inaccurate, unclear, or
otherwise incorrect
- § 37:10 Binding instructions
- § 37:11 Argumentative, rhetorical, and redundancy
instructions
- § 37:12 Inconsistent or conflicting instructions
- § 37:13 Invading jury's role by assuming existence of
disputed fact
- § 37:14 Quoting from statute or published opinion
- § 37:15 Reference to amount sued for
- § 37:16 Necessity of contemporaneous objection
- § 37:17 Oral instructions by court, written instructions
during trial
- § 37:18 Order of instructions
- § 37:19 Allen charge
- § 37:20 Punitive damage instruction
- § 37:21 Curative instructions
- § 37:22 Insanity instructions
- § 37:23 Limiting instructions
- § 37:24 Erroneous instruction
- § 37:25 Eggshell instruction
- § 37:26 Mistake in judgment
- § 37:27 Multiple treatment methods
- § 37:28 Lesser included offense
- § 37:29 Adverse inference
- § 37:30 Comparative fault
- § 37:31 Failure to subpoena witness
- § 37:32 Presumptions of defendant actions
- § 37:33 Comment by court on scientific evidence
- § 37:34 Spoliation of evidence
- § 37:35 Gross intoxication defense
- § 37:36 Instruction on good character
- § 37:37 Jury instructions viewed with other instructions
- § 37:38 Failure to call non-party witness
- § 37:39 Permissible to comment on flight as evidence of guilt

CHAPTER 38. CONDUCT OF THE JURY

- § 38:1 General conduct of the jury and those dealing with it
- § 38:2 Disclosure by juror of knowledge of facts in issue
- § 38:3 Conduct of jurors during the trial
- § 38:4 Communication with jurors
- § 38:5 Intimidation, threats, or bribery of jurors
- § 38:6 Jurors reading newspaper accounts of the trial

- § 38:7 Unauthorized experiments or views and outside sources of information
- § 38:8 Separation of jury during trial
- § 38:9 What the jury may take to the jury room
- § 38:10 Alternate jurors
- § 38:11 Biased juror
- § 38:12 Number of peremptory challenges

CHAPTER 39. THE VERDICT

- § 39:1 General provisions relating to verdicts
- § 39:2 Time for objections to the form of a verdict
- § 39:3 Grounds for objections to form of verdict
- § 39:4 Revision and amendment of verdict by court or jury
- § 39:5 Special verdicts and interrogatories
- § 39:6 Construction of verdicts
- § 39:7 Sealed verdicts not permitted
- § 39:8 Impeachment of verdict by evidence of jurors
- § 39:9 Polling the jury
- § 39:10 Setting aside verdict; grounds, effect, and new trial
- § 39:11 Motion to alter or amend judgment
- § 39:12 Nonunanimous verdict not required
- § 39:13 Offer of judgment costs

CHAPTER 40. JUDGMENT

- § 40:1 Definition of judgment, generally
- § 40:2 Distinction among rendition, endorsement, and entry of judgment
- § 40:3 Amount of the judgment
- § 40:4 Interest on judgment
- § 40:5 Allowance of costs in judgment
- § 40:6 Judgment notwithstanding the verdict
- § 40:7 Appeal period
- § 40:8 Certified question
- § 40:9 Clearly erroneous
- § 40:10 Judgment as a matter of law
- § 40:11 Declaratory judgment
- § 40:12 Judgment notwithstanding the verdict

CHAPTER 41. FORMS TO BE USED IN PREPARATION FOR AND AT TRIAL

- § 41:1 Pretrial checklist
- § 41:2 Exhibit list
- § 41:3 Witness summary list
- § 41:4 Index to trial notebook
- § 41:5 Juror personal history questionnaire
- § 41:6 Defendant's proposed voir dire

TABLE OF CONTENTS

CHAPTER 42. MEDIATION

- § 42:1 Mediation—General principles
- § 42:2 Enforcement of agreement
- § 42:3 Parties to mediation

CHAPTER 43. QUALIFIED IMMUNITIES

- § 43:1 Government officials
- § 43:2 Administers of blood tests
- § 43:3 Political subdivisions
- § 43:4 —Road, bridge, street, sidewalks, public grounds, etc.
- § 43:5 Mental health professionals
- § 43:6 Judicial immunity
- § 43:7 Defamation and libel
- § 43:8 Parental immunity
- § 43:9 Prosecutorial immunity

CHAPTER 44. CIVIL RIGHTS

- § 44:1 Civil rights
- § 44:2 Hostile work environment
- § 44:3 Age discrimination
- § 44:4 Damages and remedies
- § 44:5 Qualified disabled person
- § 44:6 Employee suit for fraudulent manipulation re
workers' compensation claim
- § 44:7 Hearing prior to discharge of civil servant
- § 44:8 Constitutional due process
- § 44:9 Constructive discharge
- § 44:10 Property right in teaching position
- § 44:11 Property right of county correctional officers
- § 44:12 Wrongful discharge
- § 44:13 Whistleblower protection and antiretaliation
- § 44:14 Reasonable accommodations
- § 44:15 Bona fide occupational qualification
- § 44:16 Proof required in discrimination action
- § 44:17 Appellate court basis for reversal of Civil Rights
Commission
- § 44:18 National origin discrimination
- § 44:19 Discrimination in settling property damage claims
- § 44:20 Statute of limitations
- § 44:21 Retaliatory discharge claims

CHAPTER 45. FAMILY LAW

- § 45:1 Child support and alimony
- § 45:2 Child custody
- § 45:3 Psychological parent

- § 45:4 Laches in seeking child support
- § 45:5 Appeal from final order of divorce
- § 45:6 Division of assets
- § 45:7 Grounds for divorce
- § 45:8 Establishment of paternity
- § 45:9 De facto marriage change of circumstances spousal support
- § 45:10 Prenuptial agreements
- § 45:11 Grandparents' visitation rights
- § 45:12 Adoption
- § 45:13 Separation agreements
- § 45:14 Statute of limitations for enforcement of judgment
- § 45:15 Attorney's and expert witness fees
- § 45:16 Rules of Practice and Procedure for Family Court—
Rule 28(a)
- § 45:17 Grandparent preference statute
- § 45:18 Abandonment
- § 45:19 Caregiver's Consent Act
- § 45:20 Obligation of primary residential parent
- § 45:21 Relocation of parent

CHAPTER 46. EXTRAORDINARY REMEDIES

- § 46:1 Writ of prohibition
- § 46:2 Habeas corpus
- § 46:3 Mandamus
- § 46:4 Extraordinary remedies

CHAPTER 47. SECURITIES LITIGATION

- § 47:1 Arbitration
- § 47:2 Motion to compel arbitration
- § 47:3 Exception to arbitration
- § 47:4 Most common customer cases
- § 47:5 Recommendations
- § 47:6 "Best Execution" rule
- § 47:7 Selecting a forum
- § 47:8 Commencing arbitration
- § 47:9 Documents required by FINRA for filing
- § 47:10 Responsive pleadings
- § 47:11 Motion practice
- § 47:12 Selection of arbitrators
- § 47:13 Discovery
- § 47:14 Prehearing conference
- § 47:15 Twenty-day exchange
- § 47:16 The hearing
- § 47:17 Order of the hearing

TABLE OF CONTENTS

- § 47:18 Awards
- § 47:19 Posthearing
- § 47:20 West Virginia Securities Law
- § 47:21 The issue of suitability in security litigation and computation of losses
- § 47:22 Criteria to determine suitability
- § 47:23 Suitability rule
- § 47:24 Know your customer rule
- § 47:25 Statute of limitations
- § 47:26 Expungement
- § 47:27 Stockbrokers are fiduciaries

CHAPTER 48. ADMINISTRATIVE PRACTICE AND PROCEDURES

- § 48:1 Administrative officer finder of facts
- § 48:2 Circuit court scope of review
- § 48:3 Supreme court scope of review
- § 48:4 Actual prejudice; time requirement limitation in DUI not jurisdictional
- § 48:5 Power of administrative agency
- § 48:6 Legislature rule force and effect
- § 48:7 Power of administrative agency

APPENDIX

Appendix A. West Virginia Rules of Evidence

Table of Laws and Rules

Table of Cases

Index