

Table of Contents

Volume 1

PART 1. PATTERN INTERROGATORIES

A. IN GENERAL

CHAPTER 1. HOW TO HANDLE WRITTEN INTERROGATORIES—RULE 33

- § 1:1 Overview
- § 1:2 Rule 33 verbatim
- § 1:3 Advantages of interrogatories
- § 1:4 Disadvantages of interrogatories
- § 1:5 Procedures and strategy
- § 1:6 Drafting interrogatories
- § 1:7 Subject matters
- § 1:8 Answering interrogatories
- § 1:9 Supplementation of interrogatories
- § 1:10 Use at trial

B. TORT ACTIONS

CHAPTER 2. PEOPLE INVOLVED/SOURCES OF INFORMATION

- § 2:1 Identification of adult
- § 2:2 Identification of minor by next friend
- § 2:3 Identification of fiduciary in death action
- § 2:4 Identification of corporate officer
- § 2:5 Identification of business proprietor
- § 2:6 Identification of firm/corporation
- § 2:7 Identification of physician
- § 2:8 Identification of expert witness
- § 2:9 Birth, age and citizenship
- § 2:10 Name
- § 2:11 Addresses
- § 2:12 Marriage and divorce
- § 2:13 Children

- § 2:14 Parents and relatives
- § 2:15 Education
- § 2:16 Employment record
- § 2:17 Military service
- § 2:18 Criminal record
- § 2:19 Miscellaneous
- § 2:20 Witnesses
- § 2:21 Sources of knowledge about occurrence
- § 2:22 Third parties

CHAPTER 3. CIRCUMSTANCES OF THE OCCURRENCE

- § 3:1 Time of occurrence
- § 3:2 Place of occurrence
- § 3:3 Control of premises—Ownership or possession
- § 3:4 Agency
- § 3:5 Weather
- § 3:6 Visibility and lighting
- § 3:7 Physical and mental condition just before occurrence
- § 3:8 Warnings or precautions
- § 3:9 Prior awareness of hazard or danger
- § 3:10 Prior illness, injury or disability
- § 3:11 Government standards and regulations
- § 3:12 Industry, professional and trade association standards
- § 3:13 Defendant's knowledge of plaintiff's sensitivity/impairment
- § 3:14 Plaintiff's sensitivity/impairment
- § 3:15 Alcohol and drugs—Plaintiff to defendant
- § 3:16 —Defendant to plaintiff

CHAPTER 4. THE OCCURRENCE

- § 4:1 Description of occurrence
- § 4:2 Conduct of plaintiff—Plaintiff to defendant
- § 4:3 —Defendant to plaintiff
- § 4:4 Conduct of defendant—Plaintiff to defendant
- § 4:5 —Defendant to plaintiff

CHAPTER 5. INJURY, LOSS AND TREATMENT—TO PLAINTIFF

- § 5:1 Injuries—General
- § 5:2 Disability
- § 5:3 Permanent injury
- § 5:4 Doctor's care and treatment
- § 5:5 Hospital, clinical or institutional care and treatment
- § 5:6 Nursing and other care and treatment

TABLE OF CONTENTS

- § 5:7 Medical history
- § 5:8 Physical condition
- § 5:9 Diagnosis
- § 5:10 Use of diagnostic aids
- § 5:11 Prognosis
- § 5:12 Failure to follow medical advice
- § 5:13 Loss of consciousness
- § 5:14 Death and conscious suffering
- § 5:15 Mental or emotional suffering
- § 5:16 Financial losses—General
- § 5:17 Medical expenses and costs
- § 5:18 Loss of earning capacity
- § 5:19 Loss of consortium

CHAPTER 6. EVENTS AFTER THE OCCURRENCE

- § 6:1 Subsequent disability or occurrence
- § 6:2 Oral conversations and admissions
- § 6:3 Written statements and reports

CHAPTER 7. RE: THE LAWSUIT

- § 7:1 Legal status of plaintiff—Plaintiff to defendant
- § 7:2 —Defendant to plaintiff
- § 7:3 Other claims or actions
- § 7:4 Receipt of notice
- § 7:5 Giving of notice
- § 7:6 Tangible evidence
- § 7:7 Insurance of the defendant
- § 7:8 Defenses and denials
- § 7:9 Asserted basis of liability
- § 7:10 Expert witness employed or consulted by party
- § 7:11 Doing business in jurisdiction
- § 7:12 Statute of limitations

CHAPTER 8. COMPREHENSIVE SETS

- § 8:1 Abuse of process—Plaintiff to defendant
- § 8:2 —Defendant to plaintiff
- § 8:3 Automobile: Intersection—Plaintiff to defendant
- § 8:4 —Defendant to plaintiff
- § 8:5 Deceit and misrepresentation—Plaintiff to defendant
- § 8:6 —Defendant to plaintiff
- § 8:7 Defamation—Plaintiff to defendant
- § 8:8 —Defendant to plaintiff
- § 8:9 False arrest—Plaintiff to defendant
- § 8:10 —Defendant to plaintiff

PATTERN DISCOVERY: TORT ACTIONS

- § 8:11 False imprisonment—Plaintiff to defendant
- § 8:12 —Defendant to plaintiff
- § 8:13 Interference with contractual relations—Plaintiff to defendant
- § 8:14 —Defendant to plaintiff
- § 8:15 Invasion of privacy—Plaintiff to defendant
- § 8:16 —Defendant to plaintiff
- § 8:17 Malicious prosecution—Plaintiff to defendant
- § 8:18 —Defendant to plaintiff
- § 8:19 Medical malpractice—Plaintiff to defendant
- § 8:20 —Defendant to plaintiff
- § 8:21 Mental and emotional distress—Plaintiff to defendant
- § 8:22 —Defendant to plaintiff
- § 8:23 Nuisance—Plaintiff to defendant
- § 8:24 —Defendant to plaintiff
- § 8:25 Outrage—Plaintiff to defendant
- § 8:26 —Defendant to plaintiff
- § 8:27 Premises liability: Foreign substance—Plaintiff to defendant
- § 8:28 —Defendant to plaintiff
- § 8:29 Products liability—Plaintiff to defendant manufacturer
- § 8:30 —Defendant manufacturer to plaintiff
- § 8:31 Wrongful birth—Plaintiff to defendant
- § 8:32 —Defendant to plaintiff
- § 8:33 Wrongful life—Plaintiff to defendant
- § 8:34 —Defendant to plaintiff
- § 8:35 Wrongful death—Defendant to plaintiff fiduciary
- § 8:36 Sterilization (minor or incompetent)—Plaintiff to defendant
- § 8:37 —Defendant to plaintiff
- § 8:38 Invasion of privacy by computer-unauthorized invasion of data base—Plaintiff to defendant
- § 8:39 —Defendant to plaintiff
- § 8:40 Invasion of privacy by computer-publication of confidential data—Plaintiff to defendant
- § 8:41 —Defendant to plaintiff
- § 8:42 Copyright infringement—Plaintiff to defendant
- § 8:43 —Defendant to plaintiff
- § 8:44 Worker’s compensation—Plaintiff to defendant
- § 8:45 —Defendant to plaintiff
- § 8:46 Real estate broker-professional liability—Plaintiff to defendant
- § 8:47 —Defendant to plaintiff
- § 8:48 Accountants-professional liability—Plaintiff to defendant
- § 8:49 —Defendant to plaintiff
- § 8:50 Lender liability—Plaintiff to defendant

TABLE OF CONTENTS

- § 8:51 —Defendant to plaintiff
- § 8:52 Stockbroker liability—Plaintiff to defendant
- § 8:53 —Defendant to plaintiff
- § 8:54 Insurance agent/broker liability—Plaintiff to defendant
- § 8:55 —Defendant to plaintiff
- § 8:56 Architect liability—Plaintiff to defendant
- § 8:57 —Defendant to plaintiff
- § 8:58 Police misconduct—Plaintiff to defendant
- § 8:59 —Defendant to plaintiff
- § 8:60 Veterinary malpractice—Plaintiff to defendant
- § 8:61 —Defendant to plaintiff
- § 8:62 Funeral director liability—Plaintiff to defendant
- § 8:63 —Defendant to plaintiff
- § 8:64 Computer software copyright infringement—Plaintiff to defendant
- § 8:65 —Defendant to plaintiff
- § 8:66 Common-law trademark infringement—Plaintiff to defendant
- § 8:67 —Defendant to plaintiff
- § 8:68 Trade secret misappropriation—Plaintiff to defendant
- § 8:69 —Defendant to plaintiff

CHAPTER 8A. COMPREHENSIVE SETS— CONTINUED

- § 8A:1 Misuse of intellectual property—Plaintiff intellectual property owner to defendant alleged infringer
- § 8A:2 —Defendant alleged infringer to plaintiff intellectual property owner
- § 8A:3 Architect liability—Plaintiff to defendant
- § 8A:4 —Defendant to Plaintiff
- § 8A:5 Land surveyor liability—Plaintiff to defendant
- § 8A:6 —Defendant to plaintiff
- § 8A:7 Churning securities—Plaintiff to defendant
- § 8A:8 —Defendant to plaintiff
- § 8A:9 Freedom of Information Act (FOIA)—Plaintiff to defendant
- § 8A:10 —Defendant to plaintiff
- § 8A:11 AIDS litigation—Plaintiff to defendant
- § 8A:12 —Defendant to plaintiff
- § 8A:13 Mishandling of hazardous waste—Plaintiff to defendant
- § 8A:14 —Defendant to plaintiff
- § 8A:15 Intentional spoliation of evidence—Plaintiff to defendant
- § 8A:16 —Defendant to plaintiff
- § 8A:17 Illness from foodborne pathogens—Plaintiff to defendant

- § 8A:18 —Defendant to plaintiff
- § 8A:19 Day care/nursery school liability—Plaintiff to defendant
- § 8A:20 —Defendant to plaintiff
- § 8A:21 Media outrage—Plaintiff to defendant
- § 8A:22 —Defendant to plaintiff
- § 8A:23 Liability for hospital-acquired infections—Plaintiff to defendant
- § 8A:24 —Defendant to plaintiff
- § 8A:25 Liability for nursing medication error—Plaintiff to defendant
- § 8A:26 —Defendant to plaintiff
- § 8A:27 Liability of investment promoter—Plaintiff to defendant
- § 8A:28 —Defendant to plaintiff
- § 8A:29 Negligent shooting by hunter—Plaintiff to defendant
- § 8A:30 —Defendant to plaintiff
- § 8A:31 False advertising under the Lanham Act—Plaintiff to defendant
- § 8A:32 —Defendant to plaintiff
- § 8A:33 Foreign substance in food or beverage—Plaintiff to defendant
- § 8A:34 —Defendant to plaintiff
- § 8A:35 Liability for roadside hazard—Plaintiff to defendant
- § 8A:36 —Defendant to plaintiff
- § 8A:37 Liability of public authority for injury caused by pothole—Plaintiff to defendant
- § 8A:38 —Defendant to plaintiff
- § 8A:39 Sports injuries resulting from negligent supervision—Plaintiff to defendant
- § 8A:40 —Defendant to plaintiff
- § 8A:41 Liability of practitioner using alternative medicine—Plaintiff to defendant
- § 8A:42 —Defendant to plaintiff
- § 8A:43 Negligence in carbon monoxide poisoning in RVs—Plaintiff to defendant
- § 8A:44 —Defendant to plaintiff

PART 2. REQUESTS FOR PRODUCTION AND ADMISSIONS

CHAPTER 9. RULE 34 REQUESTS FOR PRODUCTION OF DOCUMENTS

I. IN GENERAL

- § 9:1 Introduction to Rule 34—General

TABLE OF CONTENTS

- § 9:2 —Federal Rule of Civil Procedure No. 34 (Complete Text)
- § 9:3 —How Rule 34 works
- § 9:4 —Drafting and Serving Rule 34 Document Request
- § 9:5 —Responding to Rule 34 Document Requests
- § 9:6 Statutory and rule references for requests for production
- § 9:7 Medical records—Plaintiff to defendant
- § 9:8 Employment records—Plaintiff to defendant
- § 9:9 General—Plaintiff to defendant physician
- § 9:10 Insurance—Plaintiff to defendant physician
- § 9:11 Hospital—Plaintiff to defendant physician
- § 9:12 General corporate—Plaintiff to defendant
- § 9:13 General personal injury—Defendant to plaintiff
- § 9:14 Medical records—Defendant to plaintiff
- § 9:15 Employment records—Defendant to plaintiff
- § 9:16 Education records—Defendant to plaintiff
- § 9:17 Minor plaintiff in school—Defendant to plaintiff
- § 9:18 Damages and losses—Defendant to plaintiff
- § 9:19 Decedent—Defendant to Plaintiff

II. MOTOR VEHICLE ACCIDENT CASES

- § 9:20 Defendant to plaintiff

III. PRODUCTS LIABILITY CASES

A. PLAINTIFF TO DEFENDANT MANUFACTURER

- § 9:21 Fact of sale
- § 9:22 Manufacturer
- § 9:23 Installation and servicing
- § 9:24 Warranties and representations
- § 9:25 Composition of product
- § 9:26 Alteration/design changes
- § 9:27 Defective condition
- § 9:28 Maintenance, repairs, recalls
- § 9:29 Intended/foreseeable use of product
- § 9:30 Scierter
- § 9:31 Precautions
- § 9:32 Written warnings, instructions, labels, directions
- § 9:33 Production process
- § 9:34 Use of component parts
- § 9:35 Tests and inspections performed by defendant
- § 9:36 Packaging
- § 9:37 Distribution
- § 9:38 Design of the product
- § 9:39 Patents and trademarks

- § 9:40 Government standards and regulations
- § 9:41 Industry, professional and trade association standards
- § 9:42 Proposed industry, professional and trade association standards
- § 9:43 Advertising and promotion
- § 9:44 Technical literature and publications
- § 9:45 Consumer reports and others
- § 9:46 Independent quality certificates
- § 9:47 Prior occurrences and claims
- § 9:48 Subsequent occurrences and claims
- § 9:49 Written statements and reports
- § 9:50 Examination and inspection after the occurrence
- § 9:51 Notice
- § 9:52 Comprehensive set—Plaintiff to defendant manufacturer

B. DEFENDANT MANUFACTURER TO PLAINTIFF

- § 9:53 Product
- § 9:54 Purchase or acquisition
- § 9:55 Warranties
- § 9:56 Advertising
- § 9:57 Written warnings, instructions, labels, directions
- § 9:58 Packaging
- § 9:59 Inspections and tests
- § 9:60 Medical records
- § 9:61 Employment records
- § 9:62 Education records
- § 9:63 Decedent's records
- § 9:64 Comprehensive set—Defendant manufacturer to plaintiff

Volume 2

CHAPTER 10. REQUESTS FOR ADMISSION OF FACTS—RULE 36

- § 10:1 Overview
- § 10:2 Strategy
- § 10:3 Advantages and disadvantages
- § 10:4 Drafting and service
- § 10:5 Sanctions for improper refusal to admit
- § 10:6 Use of admissions at trial
- § 10:7 Responding to requests
- § 10:8 Pattern forms

PART 3. DEPOSITION CHECKLISTS

A. IN GENERAL

CHAPTER 11. HOW TO HANDLE A DEPOSITION—RULES 27–32

I. OVERVIEW

- § 11:1 Introduction
- § 11:2 Purposes
- § 11:3 Deposing the adverse party
- § 11:4 Deposing witnesses
- § 11:5 Deposing one’s own client
- § 11:6 When to take depositions
- § 11:7 Preparation by examining counsel
- § 11:8 Preparation by counsel for deponent
- § 11:9 Medical literature
- § 11:10 How to ask questions

II. PREPARATION OF DEPONENTS

- § 11:11 General instructions for deponents
- § 11:12 Suggestion sheet for deposition witnesses
- § 11:13 Preparation of plaintiff for deposition—Common “traps”
- § 11:14 Preparation of the defendant for testimony
- § 11:15 A primer for the defendant and the plaintiff as a deponent
- § 11:16 Do’s and don’ts of testimony

III. PRE-DEPOSITION MATTERS

- § 11:17 Production of documents and records
- § 11:18 Pre-deposition protective orders
- § 11:19 Scheduling procedures, notice and stipulations
- § 11:20 Subpoena duces tecum

IV. CONDUCTING THE EXAMINATION

- § 11:21 Thoroughness
- § 11:22 Demeanor of examining counsel
- § 11:23 Making an accurate record
- § 11:24 Preliminary statement to deponent
- § 11:25 Leading questions to adverse party
- § 11:26 False answers—Possibility of error
- § 11:27 Letting the witness ramble

- § 11:28 Chronological questioning versus skipping around
- § 11:29 Form of questions
- § 11:30 Deponent's answers
- § 11:31 Prior inconsistent statements
- § 11:32 Repetition
- § 11:33 Objections and refusal to answer questions
- § 11:34 Off-the-record comments
- § 11:35 Reading into the record
- § 11:36 Using an interpreter
- § 11:37 Deposition exhibits
- § 11:38 Concluding the questioning
- § 11:39 Cross-examination by deponent's counsel

V. DEPOSITIONS OF EXPERTS

- § 11:40 Deposing an expert under the federal rules
- § 11:41 Preparation of the retained expert for deposition—Generally
- § 11:42 The retained expert's familiarity with the case, past writings, statements and testimony
- § 11:43 Materials for expert to bring (or not) to the deposition
- § 11:44 Expected areas of inquiry
- § 11:45 Do's and don'ts of expert testimony—A letter from counsel to the retained expert
- § 11:46 Deposing the opposing expert—Generally
- § 11:47 Discovery of relevant facts and obtaining leads from opposing expert
- § 11:48 The opposing expert's opinion and the bases for that opinion
- § 11:49 Preparation for cross-examination and impeachment of opposing expert
- § 11:50 Use of the retained expert in preparation for the deposition of the opposing expert
- § 11:51 Use of hypothetical questions to opposing expert
- § 11:52 Checklist for deposition of opposing expert

VI. OTHER DEPOSITIONS

- § 11:53 The non-expert treating physician's deposition
- § 11:54 Depositions of agents, officers and recordkeepers
- § 11:55 The non-party witness deposition
- § 11:56 The videotape deposition

VII. POST-DEPOSITION FOLLOW-UP

- § 11:57 Post-deposition procedures
- § 11:58 Further investigation
- § 11:59 Motion for summary judgment

TABLE OF CONTENTS

- § 11:60 Interrogatories
- § 11:61 Request for admission of facts

VIII. USE OF DEPOSITIONS AT TRIAL

- § 11:62 Use at trial—Generally
- § 11:63 Depositions offered in place of live testimony
- § 11:64 Depositions used to impeach or refresh recollection

B. TORT ACTIONS

CHAPTER 12. IN GENERAL

I. PERSONS INVOLVED/SOURCES OF INFORMATION

- § 12:1 Identification of deponent
- § 12:2 Identification of child by deponent
- § 12:3 Identification of next friend
- § 12:4 Identification of fiduciary
- § 12:5 Identification of witnesses
- § 12:6 Identification of deponent—Corporate officer/Business representative
- § 12:7 —Agent
- § 12:8 Identification of physician
- § 12:9 Identification of expert witness
- § 12:10 Identification of marriages and divorces
- § 12:11 Identification of children
- § 12:12 Identification of parents, relatives and significant others
- § 12:13 Relationship to legal action
- § 12:14 Sources of knowledge about occurrence
- § 12:15 Third parties
- § 12:16 Education
- § 12:17 Asset valuation
- § 12:18 Employment history
- § 12:19 Wage and salary history

II. FINANCIAL CIRCUMSTANCES OF DEFENDANT

- § 12:20 Financial information regarding sole proprietorship
- § 12:21 Financial information regarding partnership
- § 12:22 Financial information regarding corporation
- § 12:23 Income tax history
- § 12:24 Employee benefits
- § 12:25 Pension and retirement funds
- § 12:26 Bonus and incentive plans

- § 12:27 Real property owned
- § 12:28 Intangible property owned and goodwill
- § 12:29 Bank accounts
- § 12:30 Securities and stock ownership
- § 12:31 Insurance policies
- § 12:32 Trusts
- § 12:33 Inheritances and gifts
- § 12:34 Personal assets
- § 12:35 Other sources of income
- § 12:36 Personal debts and obligations
- § 12:37 Business debts and obligations
- § 12:38 Household expenses
- § 12:39 Educational expenses
- § 12:40 Medical and dental expenses
- § 12:41 Clothing expenses
- § 12:42 Entertainment and travel expenses
- § 12:43 Charitable and political expenses
- § 12:44 Other personal expenses
- § 12:45 Military service
- § 12:46 Drug use: Prescription, non-prescription and unlawful
- § 12:47 Alcohol use
- § 12:48 Smoking habits
- § 12:49 Gambling habits
- § 12:50 Arrest and conviction record

III. CIRCUMSTANCES OF THE OCCURRENCE

- § 12:51 Time of occurrence
- § 12:52 Place of occurrence
- § 12:53 Control of premises
- § 12:54 Agency
- § 12:55 Weather
- § 12:56 Visibility and lighting
- § 12:57 Physical and mental condition just before occurrence
- § 12:58 Precautions
- § 12:59 Warnings by parties
- § 12:60 Warning signs, etc
- § 12:61 Prior awareness of hazard or danger
- § 12:62 Prior accidents and civil actions
- § 12:63 Prior illness, injury or disability
- § 12:64 Government standards and regulations
- § 12:65 Industry, professional and trade association standards
- § 12:66 Defendant's knowledge of plaintiff's sensitivity/impairment
- § 12:67 Plaintiff's sensitivity/impairment
- § 12:68 Alcohol and drug consumption

TABLE OF CONTENTS

IV. THE OCCURRENCE

§ 12:69 Description of occurrence

§ 12:70 Conduct of party or agent

V. INJURY, LOSS AND TREATMENT

§ 12:71 Injuries suffered by defendant

§ 12:72 Injuries observed by deponent

§ 12:73 Medical treatment for injuries

§ 12:74 Medical treatment by defendant or agent

§ 12:75 Emergency services

§ 12:76 Medical history

§ 12:77 Avoidable consequences

§ 12:78 Mental or emotional suffering

§ 12:79 Death action—Conscious suffering

§ 12:80 Financial losses due to occurrence

§ 12:81 Financial losses from prior injury, illness or disability

§ 12:82 Loss of spousal consortium

§ 12:83 Loss of parental consortium

VI. EVENTS AFTER THE OCCURRENCE

§ 12:84 Subsequent accidents and civil actions

§ 12:85 Subsequent illness, injury or disability

§ 12:86 Subsequent similar occurrences

§ 12:87 Conversations and oral admissions

§ 12:88 Written statements and reports

VII. REGARDING THE LAWSUIT

§ 12:89 Legal status of plaintiff

§ 12:90 Other claims resulting from occurrence

§ 12:91 Receipt of notice

§ 12:92 Giving of notice

§ 12:93 Tangible evidence

§ 12:94 Insurance of defendant

§ 12:95 Defenses and denials

§ 12:96 Asserted basis of liability

§ 12:97 Expert witnesses

§ 12:98 Doing business in jurisdiction

§ 12:99 Statute of limitations

CHAPTER 13. PARTICULAR CAUSES OF ACTION—COMPREHENSIVE SETS

§ 13:1 Abuse of process—Plaintiff to defendant

§ 13:2 —Defendant to plaintiff

- § 13:3 Deceit and misrepresentation—Plaintiff to defendant
- § 13:4 —Defendant to plaintiff
- § 13:5 Defamation—Plaintiff to defendant
- § 13:6 —Defendant to plaintiff
- § 13:7 False arrest—Plaintiff to defendant
- § 13:8 —Defendant to plaintiff
- § 13:9 False imprisonment—Plaintiff to defendant
- § 13:10 —Defendant to plaintiff
- § 13:11 Interference with contractual relations—Plaintiff to defendant
- § 13:12 —Defendant to plaintiff
- § 13:13 Invasion of privacy—Plaintiff to defendant
- § 13:14 —Defendant to plaintiff
- § 13:15 Malicious prosecution—Plaintiff to defendant
- § 13:16 —Defendant to plaintiff
- § 13:17 Mental and emotional distress—Plaintiff to defendant
- § 13:18 —Defendant to plaintiff
- § 13:19 Nuisance—Plaintiff to Defendant
- § 13:20 —Defendant to plaintiff
- § 13:21 Outrage—Plaintiff to defendant
- § 13:22 —Defendant to plaintiff
- § 13:23 Wrongful Birth—Plaintiff to defendant
- § 13:24 —Defendant to plaintiff
- § 13:25 Wrongful life—Plaintiff to defendant
- § 13:26 —Defendant to plaintiff
- § 13:27 Wrongful death—Defendant to plaintiff fiduciary
- § 13:28 Sterilization (minor or incompetent)—Plaintiff to defendant
- § 13:29 —Defendant to plaintiff
- § 13:30 Invasion of privacy by computer-unauthorized invasion of data base—Plaintiff to defendant
- § 13:31 —Defendant to plaintiff
- § 13:32 Invasion of privacy by computer-publication of confidential data—Plaintiff to defendant
- § 13:33 —Defendant to plaintiff
- § 13:34 Copyright infringement—Plaintiff to defendant
- § 13:35 —Defendant to plaintiff
- § 13:36 Workers' compensation—Plaintiff to defendant
- § 13:37 —Defendant to plaintiff
- § 13:38 Real estate broker-professional liability—Plaintiff to defendant
- § 13:39 —Defendant to plaintiff
- § 13:40 Doing business in jurisdiction
- § 13:41 Failure to warn—Plaintiff to defendant
- § 13:42 —Defendant to plaintiff

TABLE OF CONTENTS

§ 13:43	Accountants-professional liability—Plaintiff to defendant
§ 13:44	—Defendant to plaintiff
§ 13:45	Lender liability—Plaintiff to defendant
§ 13:46	—Defendant to plaintiff
§ 13:47	Stockbroker liability—Plaintiff to defendant
§ 13:48	—Defendant to plaintiff
§ 13:49	Insurance agent/broker liability—Plaintiff to defendant
§ 13:50	—Defendant to plaintiff
§ 13:51	Architect’s liability—Plaintiff to defendant
§ 13:52	—Defendant to plaintiff
§ 13:53	Police misconduct—Plaintiff to defendant
§ 13:54	—Defendant to plaintiff
§ 13:55	Veterinary malpractice—Plaintiff to defendant
§ 13:56	—Defendant to plaintiff
§ 13:57	Funeral director liability—Plaintiff to defendant
§ 13:58	—Defendant to plaintiff
§ 13:59	Computer software copyright infringement— Plaintiff to defendant
§ 13:60	—Defendant to plaintiff
§ 13:61	Common-law trademark infringement—Plaintiff to defendant
§ 13:62	—Defendant to plaintiff
§ 13:63	Trade secret misappropriation—Plaintiff to defendant
§ 13:64	—Defendant to plaintiff
§ 13:65	Misuse of intellectual property—Plaintiff intellectual property owner to defendant alleged infringer
§ 13:66	—Defendant alleged infringer to plaintiff intellectual property owner
§ 13:67	Architect liability—Plaintiff to defendant
§ 13:68	—Defendant to plaintiff
§ 13:69	Land surveyor’s liability—Plaintiff to defendant
§ 13:70	—Defendant to plaintiff
§ 13:71	Churning securities—Plaintiff to defendant
§ 13:72	—Defendant to plaintiff
§ 13:73	Freedom of Information Act (FOIA)—Plaintiff to defendant
§ 13:74	—Defendant to plaintiff
§ 13:75	AIDS litigation—Plaintiff to defendant
§ 13:76	—Defendant to plaintiff
§ 13:77	Mishandling of hazardous waste—Plaintiff to defendant
§ 13:78	—Defendant to plaintiff
§ 13:79	Intentional spoliation of evidence—Plaintiff to defendant

- § 13:80 —Defendant to plaintiff
- § 13:81 Illness from foodborne pathogens—Plaintiff to defendant
- § 13:82 —Defendant to plaintiff
- § 13:83 Day care/nursery school liability—Plaintiff to defendant
- § 13:84 —Defendant to plaintiff
- § 13:85 Media outrage—Plaintiff to defendant
- § 13:86 —Defendant to plaintiff
- § 13:87 Liability for hospital-acquired infection—Plaintiff to defendant
- § 13:88 —Defendant to plaintiff
- § 13:89 Liability for nursing medication error—Plaintiff to defendant
- § 13:90 —Defendant to plaintiff
- § 13:91 Liability of investment promoter—Plaintiff to defendant
- § 13:92 —Defendant to plaintiff
- § 13:93 Negligent shooting by hunter—Plaintiff to defendant
- § 13:94 —Defendant to plaintiff
- § 13:95 False advertising under the Lanham Act—Plaintiff to defendant
- § 13:96 —Defendant to plaintiff
- § 13:97 Foreign substance in food or beverage—Plaintiff to defendant
- § 13:98 —Defendant to plaintiff
- § 13:99 Liability for roadside hazard—Plaintiff to defendant
- § 13:100 —Defendant to plaintiff
- § 13:101 Liability of public authority for injury caused by pothole—Plaintiff to defendant
- § 13:102 —Defendant to plaintiff
- § 13:103 Sports injuries resulting from negligent supervision—Plaintiff to defendant
- § 13:104 —Defendant to plaintiff
- § 13:105 Liability of practitioner using alternative medicine—Plaintiff to defendant
- § 13:106 —Defendant to plaintiff
- § 13:107 Negligence in carbon monoxide poisoning in RVs—Plaintiff to defendant
- § 13:108 —Defendant to plaintiff

PART 4. TORT ACTIONS

CHAPTER 14. UNIQUE ASPECTS OF GENERAL TORT ACTIONS

- § 14:1 Overview

TABLE OF CONTENTS

§ 14:2	Outline of the legal process—Introduction
§ 14:3	—Complaint and answer
§ 14:4	—Interrogatories
§ 14:5	—Depositions
§ 14:6	—Experts
§ 14:7	—Trial
§ 14:8	—Directed verdict or nonsuit
§ 14:9	—Jury instructions
§ 14:10	—Appeal
§ 14:11	—Jury verdicts
§ 14:12	—Settlement
§ 14:13	Criteria for successful plaintiff's case—General
§ 14:14	—Positive characteristics—Checklist
§ 14:15	—Negative characteristics—Checklist
§ 14:16	How court action will affect plaintiff and plaintiff's family—Time requirements
§ 14:17	—Plaintiff's report form—Checklist
§ 14:18	—Checklist for plaintiff's counsel
§ 14:19	How court action will affect defendant—General
§ 14:20	—Things not to do immediately—Checklist
§ 14:21	—Things to do immediately—Checklist
§ 14:22	—Defendant's report form—Checklist
§ 14:23	—Time requirements
§ 14:24	—Defense counsel
§ 14:25	—Settlement

Volume 3

CHAPTER 15. LEGAL DOCTRINES

I. LEGAL DOCTRINES OF TORT LIABILITY

§ 15:1	Overview
§ 15:2	Basis of liability—Scope; Basis of liability
§ 15:3	Defamation
§ 15:4	False imprisonment
§ 15:5	Outrage
§ 15:6	Workers' compensation
§ 15:7	Legal causation of injury—Burden of proof
§ 15:8	—Hypothetical questions for proof of causation
§ 15:9	—Source of professional misunderstanding
§ 15:10	Punitive damages

II. DEFENSES TO TORT LIABILITY

§ 15:11	Overview
---------	----------

- § 15:12 Plaintiff's burden of proof
- § 15:13 Defendant's burden of persuasion
- § 15:14 Improper or inadequate expert opinions
- § 15:15 Contributory or comparative negligence
- § 15:16 Assumption of risk
- § 15:17 Intervening cause
- § 15:18 Statutes of limitations
- § 15:19 Denial of administration
- § 15:20 Immunity
- § 15:21 Aggravation of preexisting condition
- § 15:22 Trial to empty chair
- § 15:23 Damages—Objective v. Subjective, and Punitive

CHAPTER 16. PLAINTIFF'S CASE

I. THE NEW CASE—REPRESENTING THE PLAINTIFF

- § 16:1 Overview
- § 16:2 Initial meeting with plaintiff—Preparation for initial meeting
- § 16:3 —Preliminary advice for new client from plaintiff's attorney—Checklist
- § 16:4 —Interviewing the client—Checklist
- § 16:5 —Relations with the client
- § 16:6 —After the initial meeting—Checklist
- § 16:7 —Further investigation
- § 16:8 Case finances and client communication
- § 16:9 —Fee arrangements, client contract, and billing—Checklist
- § 16:10 —Communicating with the client
- § 16:11 Matters referred from other counsel
- § 16:12 Maintaining docket and calendar
- § 16:13 Matters involving multiple clients and attorneys
- § 16:14 Preliminary legal research
- § 16:15 Evaluating the merit and value of plaintiff's case

II. PREPARING THE PLAINTIFF'S CASE

- § 16:16 Overview—Checklist
- § 16:17 —General considerations
- § 16:18 —Ethical and legal restrictions on bringing suit
- § 16:19 Choosing the defendant(s)
- § 16:20 Choosing a forum—Checklist
- § 16:21 Drafting the complaint—Checklist
- § 16:22 —Overview
- § 16:23 —Form of the complaint

TABLE OF CONTENTS

- § 16:24 —Stating the factual basis for the complaint
- § 16:25 —Request for monetary relief
- § 16:26 Filing the complaint—Checklist
- § 16:27 —Filing with the court
- § 16:28 —Service of process
- § 16:29 Voluntary dismissal—Checklist
- § 16:30 Amending the complaint, motion to strike for insufficient defense, and reply to answer
- § 16:31 Plaintiff’s comprehensive interview and investigative checklist for a tort action
- § 16:32 Plaintiff’s interview and investigative checklist for minor child
- § 16:33 Plaintiff personal representative’s interview and investigative checklist for decedent

CHAPTER 17. DEFENDANT’S CASE

I. THE NEW CASE—REPRESENTING THE DEFENDANT

- § 17:1 Overview
- § 17:2 Defense counsel’s early activity—Checklist
- § 17:3 Early contact with the defendant—Preparation for initial meeting
- § 17:4 —Interviewing the client
- § 17:5 —The recorded statement—Checklist
- § 17:6 —Other investigation—Checklist
- § 17:7 —The nonprofit defendant
- § 17:8 —The corporate defendant
- § 17:9 —After the initial meeting
- § 17:10 Role of insurance company—Overview
- § 17:11 —Knowledge of details of coverage
- § 17:12 —Early Inquiry into Coverage Details
- § 17:13 —Insurance policy
- § 17:14 —Conduct by insurance company—Checklist
- § 17:15 —Claim handling by insurance company claim representative—Checklist
- § 17:16 —Personal counsel—Inadequate coverage—Demand for settlement within the policy limits
- § 17:17 Role of defense counsel
- § 17:18 —Choice of counsel and fee arrangements
- § 17:19 —Intellectual approach
- § 17:20 —Maintaining docket and calendar—Checklist
- § 17:21 —Use of personnel and equipment
- § 17:22 Matters involving multiple parties and attorneys
- § 17:23 Contact with plaintiff’s attorney
- § 17:24 Medicolegal library

II. PREPARING THE DEFENDANT'S CASE

- § 17:25 Overview
- § 17:26 Reviewing complaint—Checklist
- § 17:27 Alternative responses: Dispositive and non-dispositive motions
- § 17:28 —Motion to dismiss—Checklist
- § 17:29 —Motion for more definite statement—Checklist
- § 17:30 —Motion for judgment on pleadings—Checklist
- § 17:31 —Motion to strike—Checklist
- § 17:32 Answering complaint and jury demand—Checklist
- § 17:33 Counterclaims, cross-claims, third-party practice, impleader, joinder of parties, and claims
- § 17:34 —Counterclaims and cross-claims—Checklist
- § 17:35 —Third-party practice and impleader—Checklist
- § 17:36 —Joinder of parties and claims—Checklist
- § 17:37 Consolidation, severance, transfer, and removal of case
- § 17:38 —Consolidation of cases—Checklist
- § 17:39 —Severance of claims or parties—Checklist
- § 17:40 —Transfer of case—Checklist
- § 17:41 —Removal of case—Checklist
- § 17:42 Defendant's comprehensive interview and investigative checklist for a tort action case
- § 17:43 Bibliography

CHAPTER 18. INVESTIGATION AND EVALUATION

- § 18:1 Preliminary investigation
- § 18:2 —Overview—Checklist
- § 18:3 —Preliminary witness interviews
- § 18:4 —Contacting employees and former employees of a corporate defendant
- § 18:5 —Investigating damages
- § 18:6 —Evaluating the case and estimating damages
- § 18:7 —Pretrial strategy
- § 18:8 Information gathering—General
- § 18:9 —Conducting the investigation
- § 18:10 —Information from the client
- § 18:11 —Accident scene
- § 18:12 —Preserving physical evidence
- § 18:13 —The product
- § 18:14 —Publicly available information—Checklist
- § 18:15 Interviewing witnesses—General
- § 18:16 —Conducting the interview
- § 18:17 —Illustrative letter and questionnaire to lay witness
- § 18:18 Researching codes and standards—Overview

TABLE OF CONTENTS

- § 18:19 —Investigating codes and standards
- § 18:20 —Standards organizations
- § 18:21 —Federal statutes
- § 18:22 —Government agency reports
- § 18:23 Determining insurance coverage
- § 18:24 Chronology
- § 18:25 Understanding medical records
- § 18:26 Experts

PART 5. DISCOVERY

CHAPTER 19. DISCOVERY

I. DISCOVERY—GENERALLY

- § 19:1 Overview
- § 19:2 Discovery options—Checklist—Oral depositions
- § 19:3 —Document requests
- § 19:4 —Interrogatories
- § 19:5 —Mental or physical examination
- § 19:6 —Deposition on written questions
- § 19:7 —Requests for admission
- § 19:8 Discovery strategy—Checklist
- § 19:9 Sequence and timing—Checklist
- § 19:10 Scope of discovery and privileges—Checklist
- § 19:11 Judicial regulation of discovery and pretrial activities—General
- § 19:12 —Discovery and scheduling conferences and orders—Checklist

II. OTHER SOURCES

- § 19:13 Overview
- § 19:14 Defendant’s investigation of plaintiff
- § 19:15 Prior cases
- § 19:16 Other sources of information—Information on plaintiff’s care
- § 19:17 —Litigation resources

III. SANCTIONS

- § 19:18 Overview
- § 19:19 Protective orders
- § 19:20 Motions to compel discovery
- § 19:21 —Moving directly for sanctions without filing a motion to compel
- § 19:22 —Drafting the motion

- § 19:23 —Service of motion
- § 19:24 —Expenses for obtaining orders to compel discovery
- § 19:25 Sanctions motions—Sanctions for failure to comply with court order under Rule 37
- § 19:26 —Expenses on failure to admit to genuineness of documents or matters which were subject of request for admission
- § 19:27 —Drafting motion for sanctions
- § 19:28 Sanctions for violation of Rule 26(g)
- § 19:29 —Requirements of Rule 26(g)
- § 19:30 —Consequences of failure to comply
- § 19:31 Duty to supplement discovery responses—Requirements of Rule 26(e)
- § 19:32 —Consequences of failure to supplement responses
- § 19:33 —Drafting supplemental responses
- § 19:34 Pattern form

IV. APPEALING RULINGS

- § 19:35 Overview
- § 19:36 —Who can hear the appeal
- § 19:37 —Effect of order
- § 19:38 —Client’s interests
- § 19:39 —Preparing the appeal
- § 19:40 Pattern form

V. REFERENCES

- § 19:41 Bibliography

CHAPTER 20. DISCOVERY—OPTIONS

I. WRITTEN INTERROGATORIES—RULE 33

- § 20:1 Overview
- § 20:2 Subject matters—Checklists

II. REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND—RULE 34

- § 20:3 Introduction to Rule 34
- § 20:4 Pattern requests
- § 20:5 —Abuse of process—Harassment of debtor—Plaintiff to defendant
- § 20:6 —Harassment of debtor—Defendant to plaintiff
- § 20:7 —Motor vehicle accident—Plaintiff to defendant
- § 20:8 —Automobile warranty—Plaintiff to defendant manufacturer

TABLE OF CONTENTS

§ 20:9	— —Plaintiff to defendant dealer
§ 20:10	—Defamation—Plaintiff to defendant
§ 20:11	— —Defendant to plaintiff
§ 20:12	—Premises liability—Landlord liability for criminal acts of third parties—Plaintiff to defendant
§ 20:13	—Products liability—Breast implant—Plaintiff to defendant manufacturer
§ 20:14	—Software copyright infringement—Defendant to plaintiff
§ 20:15	—Professional liability—Accountant—Plaintiff self-discovery
§ 20:16	— — —Plaintiff to defendant accounting firm
§ 20:17	— — —Plaintiff to defendant promoter
§ 20:18	—Lender liability—Plaintiff to defendant
§ 20:19	— —Defendant to plaintiff
§ 20:20	Use of subpoena duces tecum
§ 20:20.10	Common-Law trademark infringement—Defendant to plaintiff

III. PHYSICAL AND MENTAL EXAMINATION— RULE 35

§ 20:21	Overview—Checklist
§ 20:22	Use in tort cases
§ 20:23	Pattern form

IV. DEPOSITION ON ORAL QUESTIONS—RULES 26–30

§ 20:24	Overview
§ 20:25	Deposition by plaintiff's counsel of defendant
§ 20:26	Expected deposition questions for defendant—Checklist
§ 20:27	—Identification
§ 20:28	—Identification of all persons and records involved
§ 20:29	—Your preparation for your deposition testimony
§ 20:30	—Your alleged liability
§ 20:31	—Plaintiff's comparative negligence
§ 20:32	—Liability of others
§ 20:33	—Causation
§ 20:34	—Defense experts
§ 20:35	—Defense counsel
§ 20:36	—Expected deposition questions for defendant—Checklist
§ 20:37	Deposition by defense counsel of plaintiff
§ 20:38	Pattern questions to plaintiff—Checklist

V. DEPOSITION ON WRITTEN QUESTIONS—RULE 31

- § 20:39 Overview—Checklist
- § 20:40 Advantages/Disadvantages—Checklist
- § 20:41 When to use Rule 31 depositions on written questions
- § 20:42 Pattern form

VI. REQUESTS FOR ADMISSION

- § 20:43 Overview—Checklist

VII. REFERENCES

- § 20:44 Bibliography

PART 6. EXPERTS & OTHER WITNESSES

CHAPTER 21. EXPERTS

- § 21:1 Introduction
- § 21:2 Deciding to use an expert witness—General
- § 21:3 Expert witness roles—General considerations—
Overview
- § 21:4 —Legal requirements
- § 21:5 —Selection and preparation
- § 21:6 Locating an expert witness—General
- § 21:7 Selecting an expert witness—General
- § 21:8 Expert witness and pretrial preparation—Checklist
- § 21:9 Preliminary conference with expert witness—General
- § 21:10 Clarification of terminology and definitions
- § 21:11 Technique for using defense expert in a tort case
- § 21:12 Pretrial discovery of experts—Checklist
- § 21:13 Preparing expert for deposition—Checklist
- § 21:14 Deposing opponent's expert—Checklist
- § 21:15 Cross-examination—Checklist
- § 21:16 Deposing plaintiff's attending physician
- § 21:17 Objections to expert testimony—General
- § 21:18 —Federal Rule of Civil Procedure 26(b)(4) (“Rule 26”)
- § 21:19 —Inappropriate subject matter for expert testimony
- § 21:20 —Qualifications
- § 21:21 —Hypothetical questions
- § 21:22 —Improper standards
- § 21:23 —Causation
- § 21:24 Use of expert during trial preparation—General
- § 21:25 Direct examination of experts—Overview

TABLE OF CONTENTS

- § 21:26 —Qualifying the expert—Checklist
- § 21:27 —Direct examination—Checklist
- § 21:28 Preparation of the expert for
cross-examination—General
- § 21:29 Cross-examination of opposing expert—Checklist
- § 21:30 Direct examination of hypothetical medical expert—
Author’s comments
- § 21:31 Direct examination of defense hypothetical
expert—Checklist
- § 21:32 Direct examination of treating physician—Checklist
- § 21:33 Cross-examination of hypothetical
physician—Checklist
- § 21:34 Cross-examination of plaintiff’s hypothetical
expert—Checklist
- § 21:35 Bibliography

CHAPTER 22. EXAMINATION OF OTHER WITNESSES

- § 22:1 Direct examination—Overview
- § 22:2 Cross-examination—Overview
- § 22:3 Basic cross-examination procedure, tactics, and
strategy—Checklist
- § 22:4 Impeaching the witness—Checklist
- § 22:5 Direct examination of plaintiff—Checklist
- § 22:6 Direct examination of defendant—Checklist
- § 22:7 Bibliography

PART 7. TRIAL

CHAPTER 23. NEGOTIATIONS AND SETTLEMENT

- § 23:1 Overview
- § 23:2 Communications with client
- § 23:3 Classical approaches to evaluation—Practical limits
- § 23:4 —Median verdict discounted by liability
- § 23:5 —Verdict by special questions to jury
- § 23:6 —Special damages evaluation
- § 23:7 —Small case evaluation
- § 23:8 Evaluation for settlement—General
- § 23:9 —Elements of cause of action—Checklist
- § 23:10 —Other potentially significant factors—Checklist
- § 23:11 Negotiations—Checklist—Overview
- § 23:12 —Preparation
- § 23:13 —Conditions of a substantial settlement offer in a
tort case

- § 23:14 —Commonly used negotiation techniques
- § 23:15 —Negotiation preparation form
- § 23:16 —Conduct of counsel
- § 23:17 —Amount of opening demand or offer
- § 23:18 —Continuing negotiation
- § 23:19 —The demand letter and settlement brochure
- § 23:20 —Information not to be disclosed
- § 23:21 —Settlement timing
- § 23:22 —Structured settlements
- § 23:23 —Offer of judgment
- § 23:24 —The settlement conference
- § 23:25 —The settlement agreement
- § 23:26 Alternative dispute resolution
- § 23:27 Bibliography

CHAPTER 24. TRIAL—GENERALLY

- § 24:1 Overview
- § 24:2 Trial procedure
- § 24:3 Bifurcated trials
- § 24:4 Trial preparation strategy
- § 24:5 Trial exhibit preparation—Checklist
- § 24:6 Trial preparation schedule—Checklist
- § 24:7 Bibliography

CHAPTER 25. MOTIONS

- § 25:1 Options, strategy, and procedures—Checklist
- § 25:2 Motion for summary judgment
- § 25:3 Brief in support of motion for summary judgment—
Pattern form
- § 25:4 Pretrial conferences
- § 25:5 Trial and post-trial motion practice
- § 25:6 Motion in limine
- § 25:7 Motion to bifurcate
- § 25:8 Motion for mistrial
- § 25:9 Motion to dismiss
- § 25:10 Motion for directed verdict
- § 25:11 Motion for judgment notwithstanding
verdict—J.N.O.V
- § 25:12 Motion for new trial
- § 25:13 Motion to amend judgment
- § 25:14 Motion to disqualify judge
- § 25:15 Motion to reopen record
- § 25:16 Motion for continuance
- § 25:17 Bibliography

CHAPTER 26. JURY—SELECTION AND INSTRUCTIONS

I. SELECTION OF JURY

- § 26:1 General
- § 26:2 Investigating the panel—Checklist
- § 26:3 Voir dire strategy and procedure—Checklist
- § 26:4 Questioning the jurors—Checklist
- § 26:5 Peremptory challenges
- § 26:6 Jury chart
- § 26:7 After selection

II. JURY INSTRUCTIONS

- § 26:8 General—Checklist
- § 26:9 Preliminary instructions
- § 26:10 Plaintiff's pattern jury instructions—Checklist—
Overview
- § 26:11 —Negligence
- § 26:12 —Multiple defendants—Joint and several liability
- § 26:13 —Admissions
- § 26:14 —Plaintiff's burden of proof
- § 26:15 —Causation
- § 26:16 —Contributory or comparative negligence
- § 26:17 —Statute of limitations
- § 26:18 —Take plaintiff as you find him or her
- § 26:19 —Credibility of witnesses and experts
- § 26:20 —Damages—General
- § 26:21 — —Loss of earning capacity
- § 26:22 — —Loss of consortium
- § 26:23 — —Death action
- § 26:24 —Punitive damages
- § 26:25 Defendant's pattern jury instructions—Checklist—
Overview
- § 26:26 —Negligence
- § 26:27 —Violation of statute—Some evidence of
negligence
- § 26:28 —New and independent cause
- § 26:29 —Admissions
- § 26:30 —Contributory or comparative negligence
- § 26:31 —Assumption of the risk
- § 26:32 —Statute of limitations
- § 26:33 —Jury not to use hindsight or retrospective
judgment
- § 26:34 —Defendants to be judged separately
- § 26:35 —Burden of proof—No speculation

- § 26:36 —Preponderance of evidence
- § 26:37 —Liability to be decided first
- § 26:38 —Expert testimony
- § 26:39 —Credibility of witnesses
- § 26:40 —Plaintiff's bias or prejudice
- § 26:41 —Proximate cause requirement
- § 26:42 —Two or more probable causes
- § 26:43 —Prohibition against punitive damages
- § 26:44 —Damages
- § 26:45 Pattern jury instructions in specific tort actions—
Abuse of process
- § 26:46 —Auto/Motor vehicle
- § 26:47 —Deceit and misrepresentation
- § 26:48 —Defamation
- § 26:49 —False arrest and imprisonment
- § 26:50 —Interference with contractual relations
- § 26:51 —Invasion of privacy
- § 26:52 —Malicious prosecution
- § 26:53 —Medical malpractice—Plaintiff's pattern jury
instructions
- § 26:54 — —Defendant's pattern jury instructions
- § 26:55 —Intentional and negligent infliction of emotional
distress/outrage
- § 26:56 —Premises liability—Plaintiff's pattern jury
instructions
- § 26:57 — —Defendant's pattern jury instructions
- § 26:58 —Products liability—Plaintiff's pattern jury
instructions
- § 26:59 — —Defendant's pattern jury instructions
- § 26:60 Special questions for jury
- § 26:60.10 Pattern jury instructions—Copyright
- § 26:60.20 —Trademark, trade dress, unfair competition and false
advertising
- § 26:60.30 Pattern jury instructions in specific tort actions—Private
Antitrust Action

III. REFERENCES

- § 26:61 Bibliography

CHAPTER 27. OPENING STATEMENT AND CLOSING ARGUMENT

I. OPENING STATEMENT

- § 27:1 Overview
- § 27:2 Purpose

TABLE OF CONTENTS

- § 27:3 Importance
- § 27:4 Comparison of opening statement to final summation
- § 27:5 The law and court rules
- § 27:6 Preparation of opening statement
- § 27:7 Contents of opening statement—Checklist
- § 27:8 Techniques of effective presentation—Checklist

II. CLOSING ARGUMENT

- § 27:9 Overview
- § 27:10 Delivery
- § 27:11 Objections
- § 27:12 Common argument structures
- § 27:13 Argument techniques

III. REFERENCES

- § 27:14 Bibliography

CHAPTER 28. EVIDENCE AND OBJECTIONS

I. OTHER EVIDENCE

- § 28:1 Overview
- § 28:2 Real evidence
- § 28:3 Demonstrative evidence
- § 28:4 Documentary exhibits
- § 28:5 Learned treatises
- § 28:6 Cumulative evidence
- § 28:7 Judicial notice
- § 28:8 Presumptions
- § 28:9 Proving official records
- § 28:10 Proving foreign law
- § 28:11 Views by court and jury

II. OBJECTIONS

- § 28:12 Overview
- § 28:13 Tactics of making objections—Purposes of objections
- § 28:14 —Anticipating objections
- § 28:15 —Whether to object
- § 28:16 —Ethics of objections
- § 28:17 Procedure for making objections—Overview
- § 28:18 —Timeliness
- § 28:19 —Manner of objecting
- § 28:20 —Form of objection
- § 28:21 —General objection

PATTERN DISCOVERY: TORT ACTIONS

- § 28:22 —Specific objection
- § 28:23 —Arguing objection in and out of jury presence
- § 28:24 —Be sure to obtain ruling
- § 28:25 —Do not bicker with judge following adverse ruling
- § 28:26 —Motion to strike
- § 28:27 —Continuing objection
- § 28:28 Objection to form of question—Leading
- § 28:29 —Argumentative
- § 28:30 —Ambiguous and/or unintelligible
- § 28:31 —Compound
- § 28:32 —Narrative or too broad
- § 28:33 —Asked and answered
- § 28:34 —Misquoting witness or prior evidence
- § 28:35 —Assumes facts not in evidence
- § 28:36 —Improper hypothetical or opinion question
- § 28:37 Objections to substance of evidence—Irrelevant and immaterial
- § 28:38 —Incompetent
- § 28:39 —Hearsay
- § 28:40 —Inadmissible opinion
- § 28:41 —Insufficient foundation
- § 28:42 —Improper impeachment
- § 28:43 —Not the best evidence
- § 28:44 —Beyond scope of prior examinations
- § 28:45 —Privileged communication
- § 28:46 —Document speaks for itself
- § 28:47 —Violation of court order or court rule
- § 28:48 —Improper conduct of counsel
- § 28:49 —Improper witness conduct
- § 28:50 —Improper juror conduct
- § 28:51 —Statement or action of court
- § 28:52 —Prejudicial evidence
- § 28:53 Grounds for objections to expert testimony
- § 28:54 Tactics of responding to objections—General
- § 28:55 —Whether to respond
- § 28:56 —How to respond
- § 28:57 Rulings on objections—Voir dire
- § 28:58 —Offer of proof
- § 28:59 —Request for ruling
- § 28:60 —Disposition of objection
- § 28:61 —Reserved or de bene rulings
- § 28:62 Particular situations—Jury voir dire examination
- § 28:63 —Objections to opening statements and closing arguments
- § 28:64 —Objections to demonstrative evidence
- § 28:65 —Offering evidence for limited purpose
- § 28:66 —Objections to jury instructions and deliberations

TABLE OF CONTENTS

§ 28:67 Perfecting the record

III. REFERENCES

§ 28:68 Bibliography

CHAPTER 29. VERDICT AND JUDGMENT

§ 29:1 Proposed findings of fact and conclusions of law

§ 29:2 Verdict and judgment—Overview

§ 29:3 Verdict

§ 29:4 Judgment

§ 29:5 Appeal timing

§ 29:6 Bibliography

CHAPTER 30. POST-TRIAL ACTIVITIES

§ 30:1 Post-trial briefs

§ 30:2 Amending pleadings to conform to proof

§ 30:3 Petitions for fees and costs

§ 30:4 Securing the judgment

§ 30:5 Satisfaction of the judgment

§ 30:6 Execution of the judgment

§ 30:7 Stays pending appeal

§ 30:8 Relief from judgment

§ 30:9 Action on the judgment

§ 30:10 Interest on the judgment

§ 30:11 Default judgment

§ 30:12 Appeals—General

§ 30:13 Interlocutory appeals

§ 30:14 Appeal of right after judgment

§ 30:15 Bibliography

CHAPTER 31. BAD FAITH

§ 31:1 Introduction

§ 31:2 Law

§ 31:3 Client interview and investigative checklists

§ 31:4 Interrogatories—Plaintiff to defendant

§ 31:5 Deposition checklists

§ 31:6 Plaintiff's request for production of documents and things pursuant to Rule 34

§ 31:7 Requests for admission of facts

§ 31:8 Jury instructions—Bad faith or wrongful failure to settle

CHAPTER 32. POLICE MISCONDUCT

§ 32:1 Introduction

§ 32:2 Law

- § 32:3 Client interview and investigative checklists
- § 32:4 Deposition checklists
- § 32:5 Interrogatories
- § 32:6 Request for production of documents
- § 32:7 Requests for admission of facts
- § 32:8 Jury instructions—Background
- § 32:9 —Plaintiff
- § 32:10 —Defendant

CHAPTER 33. COPYRIGHT INFRINGEMENT

- § 33:1 Introduction
- § 33:2 Law
- § 33:3 Client interview—Plaintiff Interview
- § 33:4 —Defendant Interview
- § 33:5 Deposition checklists—Copyright Infringement—
Plaintiff to Defendant
- § 33:6 — —Defendant to Plaintiff
- § 33:7 Interrogatories—Copyright Infringement—Plaintiff to
Defendant
- § 33:8 — —Defendant to Plaintiff
- § 33:9 Rule 34 request for production of documents
- § 33:10 Requests for admission of facts
- § 33:11 Jury instructions for copyright cases

CHAPTER 34. FALSE IMPRISONMENT

- § 34:1 Introduction
- § 34:2 Law
- § 34:3 Client interview and investigative checklists
- § 34:4 Pleadings
- § 34:5 Deposition checklists
- § 34:6 Interrogatories
- § 34:7 Request for production of documents
- § 34:8 Request for admission of facts
- § 34:9 Jury instructions

CHAPTER 35. MALICIOUS PROSECUTION

- § 35:1 Introduction
- § 35:2 Law
- § 35:3 Investigation and client interview
- § 35:4 Pleadings
- § 35:5 Deposition checklists
- § 35:6 Interrogatories
- § 35:7 Request for production of documents
- § 35:8 Request for admission of facts
- § 35:9 Jury instructions

TABLE OF CONTENTS

**CHAPTER 36. SPECIAL STUDIES:
ATTRACTIVE NUISANCE**

- § 36:1 Introduction
- § 36:2 Law
- § 36:3 Client interview and case investigation
- § 36:4 Pleadings
- § 36:5 Deposition checklists
- § 36:6 Interrogatories
- § 36:7 Request for production of documents
- § 36:8 Request for admission of facts
- § 36:9 Jury instructions

Volume 4

CHAPTER 37. DEFAMATION

- § 37:1 Introduction—In general
- § 37:2 Law—Types of defamation—Defamation defined
- § 37:3 — —Libel
- § 37:4 — —Slander
- § 37:5 —Malice
- § 37:6 —New York times standard
- § 37:7 —Publication
- § 37:8 —Identification of plaintiff
- § 37:9 —Members of group or class
- § 37:10 —Intention to defame
- § 37:11 —Defamation by employer—Generally
- § 37:12 —Defenses—Privileged matter
- § 37:13 — —Truth
- § 37:14 — —Fair comment
- § 37:15 — —Consent, invitation or request
- § 37:16 — —Retraction
- § 37:17 — —Action by an employee
- § 37:18 — —Mistake or inadvertence—Negligence
- § 37:19 — —Affirmative defenses—Libel
- § 37:20 —Limitation of action
- § 37:21 —Damages
- § 37:22 —Elements of proof—Actual malice
- § 37:23 — —Identity of individual defamed
- § 37:24 — —Defamation by employer
- § 37:25 — —Affirmative defenses—libel
- § 37:26 — —Damages
- § 37:27 Client interview—Plaintiff
- § 37:28 —Defendant
- § 37:29 Pleadings—Complaint—In general
- § 37:30 — —Checklist for drafting complaint

- § 37:31 — —Complaint against publisher
- § 37:32 — —Slanderous words
- § 37:33 —Motion to dismiss
- § 37:34 —Answer—Guidelines
- § 37:35 — —Form
- § 37:36 —Retraction—Drafting guide
- § 37:37 — —Demand for retraction—Form
- § 37:38 — —Expression of regret—Form
- § 37:39 Deposition checklists—Plaintiff to defendant
- § 37:40 —Defendant to plaintiff
- § 37:41 Interrogatories—Plaintiff to defendant
- § 37:42 —Defendant to plaintiff
- § 37:43 Request for production of documents
- § 37:44 Request for admission of facts—Generally
- § 37:45 —Injury to business reputation
- § 37:46 Jury instructions—Plaintiff
- § 37:47 — —Libel and slander defined
- § 37:48 — —Definition of publication
- § 37:49 — —Defamation action per se
- § 37:50 — —Newspaper’s liability
- § 37:51 — —Right to make defensive declarations
- § 37:52 — —Damages
- § 37:53 —Defendant—Existence of injury
- § 37:54 — —Proper interpretation of published matter
- § 37:55 — —Presumption of good reputation
- § 37:56 — —Truth as defense
- § 37:57 — —Damages

CHAPTER 38. ASSAULT AND BATTERY

I. INTRODUCTION

- § 38:1 Introduction

II. LAW

- § 38:2 Assault—Definition
- § 38:3 Battery—Definition
- § 38:4 Criminal assault contrasted with civil assault
- § 38:5 Consent
- § 38:6 Spoken words
- § 38:7 Privilege
- § 38:8 —Peace officer
- § 38:9 —Persons in *loco parentis*
- § 38:10 —Teachers
- § 38:11 Evidentiary considerations
- § 38:12 Defense considerations—Self-defense

TABLE OF CONTENTS

- § 38:13 —Defense of others
- § 38:14 —Defense of property
- § 38:15 —Mistake of fact
- § 38:16 Damages—Compensatory
- § 38:17 —Punitive
- § 38:18 —Provocation as mitigating damages
- § 38:19 Elements of proof—Assault
- § 38:20 —Battery
- § 38:21 —Use of excessive force by person privileged to use force
- § 38:22 —Damages
- § 38:23 —Provocation to mitigate damages

III. CLIENT INTERVIEW AND INVESTIGATIVE CHECKLISTS

- § 38:24 Client interview
- § 38:25 —Defense counsel
- § 38:26 —Eyewitness identification
- § 38:27 —Information bearing on assaultive acts
- § 38:28 Investigation—Determining the facts
- § 38:29 —Locating and interviewing witnesses

IV. PLEADINGS

- § 38:30 Form of complaint—Checklist
- § 38:31 —General form
- § 38:32 —Mutual combat
- § 38:33 —Use of firearm
- § 38:34 —Use of unreasonable force by police officer
- § 38:35 —Claim for medical expenses
- § 38:36 —Punitive damages
- § 38:37 Defense—Answer—Denial of assault and battery
- § 38:38 — —Defendant smaller than plaintiff
- § 38:39 — —Force used necessary for self-protection
- § 38:40 — —Use of force reasonably necessary to protect third person
- § 38:41 — —Force used necessary to defend property
- § 38:42 — —Plaintiff provoked assault
- § 38:43 — —Self-defense—Mutual combat
- § 38:44 — —Force used reasonably necessary to make arrest
- § 38:45 — —Action for assault and battery barred by statute of limitations

V. DEPOSITION CHECKLISTS

- § 38:46 Plaintiff to defendant
- § 38:47 Defendant to plaintiff

VI. INTERROGATORIES

§ 38:48 Plaintiff to defendant

§ 38:49 Defendant to plaintiff

VII. REQUEST FOR PRODUCTION OF DOCUMENTS

§ 38:50 Document requests—Generally

VIII. REQUEST FOR ADMISSION OF FACTS

§ 38:51 Request for admissions—Generally

IX. JURY INSTRUCTIONS

§ 38:52 Definitions—Assault

§ 38:53 —Battery

§ 38:54 —Assault and battery distinguished

§ 38:55 —Malice

§ 38:56 —Willfully

§ 38:57 Intent and malice presumed

§ 38:58 Defense of property—Elements and degree of proof necessary to sustain affirmative defense

§ 38:59 —Justifiable amount of force used

§ 38:60 —Trespasser may be ejected after refusing request to leave

§ 38:61 —Right to use reasonable force to eject disorderly person from business premises

§ 38:62 Privilege of police officer—Right to repel attack made during resistance to arrest

§ 38:63 —Degree or amount of force allowed to overcome resistance to lawful arrest

§ 38:64 Self-defense—Elements

§ 38:65 —Burden of proof

§ 38:66 —Requirement that defendant retreat before using force

§ 38:67 Use of reasonable force for self-protection—Belief that danger exists—Reasonable person standard

§ 38:68 —Apparent danger sufficient

§ 38:69 —Justifiable amount or degree of force used

§ 38:70 —Plaintiff was the aggressor

§ 38:71 —No duty to retreat

§ 38:72 —Duty to retreat before resorting to use of deadly or dangerous weapon

§ 38:73 —Unavoidable accident

§ 38:74 Mutual combat—Consent to engage not a defense

§ 38:75 Damages—Mitigation of damages based on plaintiff's consent to engage in mutual combat

TABLE OF CONTENTS

§ 38:76 —Damages following finding of liability

CHAPTER 39. EXCESSIVE FORCE

I. INTRODUCTION

§ 39:1 Generally

II. LAW

- § 39:2 Privileged use of force by police officers
- § 39:3 Arresting officer's right of self-defense
- § 39:4 State law claims
- § 39:5 Federal claims
- § 39:6 Actions against Federal Law Enforcement Officers
- § 39:7 Employer liability issues
- § 39:8 Excessive force in use of firearm
- § 39:9 Excessive force in beating case
- § 39:10 Use of an expert witness
- § 39:11 Defense considerations
- § 39:12 Measure of damages
- § 39:13 Elements of proof

III. CLIENT INTERVIEW AND INVESTIGATION

- § 39:14 Client interview
- § 39:15 Investigating the case

IV. PLEADINGS

- § 39:16 Form complaints
- § 39:17 Form answers

V. DEPOSITION CHECKLISTS

- § 39:18 Plaintiff to defendant
- § 39:19 Defendant to plaintiff
- § 39:20 Plaintiff's expert

VI. INTERROGATORIES

- § 39:21 Plaintiff to defendant
- § 39:22 Defendant to plaintiff

VII. REQUEST FOR PRODUCTION OF DOCUMENTS

- § 39:23 Plaintiff to defendant
- § 39:24 Defendant to plaintiff

VIII. REQUEST FOR ADMISSION OF FACTS

§ 39:25 Requests for admissions—Generally

IX. JURY INSTRUCTIONS

§ 39:26 Generally

§ 39:27 Violation of civil rights

§ 39:28 Plaintiff instructions—Damages

§ 39:29 Defendant instructions—Reasonable use of force

CHAPTER 40. ABUSE OF PROCESS

I. INTRODUCTION

§ 40:1 In general

II. LAW

§ 40:2 Elements of an actionable abuse of process

§ 40:3 Abuse of process in collection of debt

§ 40:4 Abuse in the discovery process

§ 40:5 Proof of abuse; defenses

§ 40:6 Elements of proof

III. CLIENT INTERVIEW AND INVESTIGATION

§ 40:7 Client interview—Generally

§ 40:8 Case investigation

IV. DEPOSITION CHECKLISTS

§ 40:9 Plaintiff to defendant

§ 40:10 Defendant to plaintiff

V. INTERROGATORIES

§ 40:11 Plaintiff to defendant

§ 40:12 Defendant to plaintiff

VI. PLEADINGS

§ 40:13 Complaints—Generally

§ 40:14 Form complaints

§ 40:15 Answer—Mitigation of damages-advice of counsel

VII. REQUEST FOR PRODUCTION OF DOCUMENTS

§ 40:16 Document requests—Generally

VIII. REQUEST FOR ADMISSION OF FACTS

§ 40:17 Request for admissions—Generally

TABLE OF CONTENTS

IX. JURY INSTRUCTIONS

- § 40:18 Abuse of process
- § 40:19 Elements of abuse of process
- § 40:20 Malice
- § 40:21 Damages

CHAPTER 41. SLANDER OF TITLE

I. INTRODUCTION

- § 41:1 In general

II. LAW

- § 41:2 Slander of title—Generally
- § 41:3 Basis for slander of title claim
- § 41:4 Sufficiency of plaintiff's interest in property
- § 41:5 Publication of disparaging statement or claim by defendant
- § 41:6 Falsity of statement or claim of interest
- § 41:7 Malicious intent of defendant
- § 41:8 Specific types of disparaging statements or claims constituting slander of title
- § 41:9 Defenses to action for slander of title
- § 41:10 Alternate theories of relief
- § 41:11 Damages for slander of title
- § 41:12 Elements of proof

III. CLIENT INTERVIEW AND INVESTIGATION

- § 41:13 Client interview—Plaintiff
- § 41:14 —Defendant

IV. DEPOSITION CHECKLISTS

- § 41:15 Plaintiff to defendant
- § 41:16 Defendant to plaintiff

V. INTERROGATORIES

- § 41:17 Plaintiff to defendant
- § 41:18 Defendant to plaintiff

VI. PLEADINGS

- § 41:19 Complaint—Generally
- § 41:20 Form complaint
- § 41:21 Form answer and counterclaim

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 41:22 Document requests—Generally

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 41:23 Admission of facts—Generally

IX. JURY INSTRUCTIONS

§ 41:24 Plaintiff's instructions

§ 41:25 Defendant's instructions

CHAPTER 42. LIABILITY FOR STD

I. INTRODUCTION

§ 42:1 In general

§ 42:2 Most common STDs

II. LAW

§ 42:3 Theories of liability

§ 42:4 Causation

§ 42:5 Defense considerations

§ 42:6 Expert witnesses

§ 42:7 Damages

§ 42:8 Elements of proof

III. CLIENT INTERVIEW AND CASE INVESTIGATION

§ 42:9 Client interview—Generally

§ 42:10 Case investigation

IV. DEPOSITION CHECKLISTS

§ 42:11 Plaintiff to defendant

§ 42:12 Defendant to plaintiff

V. INTERROGATORIES

§ 42:13 Plaintiff to defendant

§ 42:14 Defendant to plaintiff

VI. PLEADINGS

§ 42:15 Model complaint

§ 42:16 Model answer

TABLE OF CONTENTS

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 42:17 Document requests—Generally

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 42:18 Admission of facts—Generally

IX. JURY INSTRUCTIONS

§ 42:19 Plaintiff's instructions

§ 42:20 Defendant's instructions

CHAPTER 43. CLERGY MALPRACTICE

I. INTRODUCTION

§ 43:1 In general

II. LAW

§ 43:2 Legal background

§ 43:3 Theories of liability

§ 43:4 Defense considerations

§ 43:5 Expert witnesses

§ 43:6 Damages

§ 43:7 Elements of proof

III. CLIENT INTERVIEW AND CASE INVESTIGATION

§ 43:8 Client interview—Generally

§ 43:9 Case investigation

IV. DEPOSITION CHECKLISTS

§ 43:10 Plaintiff to defendant

§ 43:11 Defendant to plaintiff

V. INTERROGATORIES

§ 43:12 Plaintiff to defendant

§ 43:13 Defendant to plaintiff

VI. PLEADINGS

§ 43:14 Model complaint

§ 43:15 Model answer

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

- § 43:16 Document requests—Generally
- § 43:17 Plaintiff's request

VIII. REQUESTS FOR ADMISSION OF FACTS

- § 43:18 Admission of facts—Generally

IX. JURY INSTRUCTIONS

- § 43:19 Jury instructions—Generally

CHAPTER 44. INTENTIONAL SPORTS INJURY

I. INTRODUCTION

- § 44:1 In general

II. LAW

- § 44:2 Legal background—In general
- § 44:3 Distinguishing act as part of zealous, hard play v. negligence, recklessness or intentional conduct
- § 44:4 Defense considerations
- § 44:5 Officials, referees and umpires
- § 44:6 Coaches, teams, schools and leagues
- § 44:7 Spectators
- § 44:8 Sovereign and charitable immunity
- § 44:9 Damages
- § 44:10 Elements of proof

III. CLIENT INTERVIEW AND CASE INVESTIGATION

- § 44:11 Client interview—Generally
- § 44:12 Case investigation

IV. DEPOSITION CHECKLISTS

- § 44:13 Plaintiff to defendant
- § 44:14 Defendant to plaintiff

V. INTERROGATORIES

- § 44:15 Plaintiff to defendant
- § 44:16 Defendant to Plaintiff

VI. PLEADINGS

- § 44:17 Model complaint

TABLE OF CONTENTS

§ 44:18 Model answer

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 44:19 Document requests—Generally

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 44:20 Admission of facts—Generally

IX. JURY INSTRUCTIONS

§ 44:21 Jury instructions—Generally

CHAPTER 45. PUBLIC SCHOOL LIABILITY FOR BULLYING

I. INTRODUCTION

§ 45:1 In general

§ 45:2 Bullying and its effects

II. LAW

§ 45:3 Antibullying legislation

§ 45:4 Theories of liability

§ 45:5 Defense considerations

§ 45:6 Remedies and relief; damages

§ 45:7 Elements of proof

III. CLIENT INTERVIEW AND CASE INVESTIGATION

§ 45:8 Client interview—Generally

§ 45:9 Case investigation

IV. DEPOSITION CHECKLISTS

§ 45:10 Plaintiff to defendant

§ 45:11 Defendant to plaintiff

V. INTERROGATORIES

§ 45:12 Plaintiff to Defendant

§ 45:13 Defendant to plaintiff

VI. PLEADINGS

§ 45:14 Notice of claim—Model form

§ 45:15 Complaint—Model form

§ 45:16 Answer—Model form

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 45:17 Document requests—Generally

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 45:18 Admission of facts—Generally

IX. JURY INSTRUCTIONS

§ 45:19 Jury instructions—Generally

CHAPTER 46. UNAUTHORIZED DISCLOSURE OF PRIVATE INFORMATION

I. INTRODUCTION

§ 46:1 In general

II. LAW

§ 46:2 Restatement of torts

§ 46:3 Constitutional right to privacy

§ 46:4 Common-law elements

§ 46:5 Procedural issues

§ 46:6 Medical information

§ 46:7 Federal Privacy Act

§ 46:8 Damages

§ 46:9 Elements of proof

III. CLIENT INTERVIEW AND CASE INVESTIGATION

§ 46:10 Client interview—Generally

§ 46:11 Case investigation

IV. DEPOSITION CHECKLISTS

§ 46:12 Plaintiff to defendant

§ 46:13 Defendant to plaintiff

V. INTERROGATORIES

§ 46:14 Plaintiff to defendant

§ 46:15 Defendant to plaintiff

VI. PLEADINGS

§ 46:16 Complaint—Model form

TABLE OF CONTENTS

§ 46:17 Answer—Model form

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 46:18 Document requests—Generally

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 46:19 Admission of facts—Generally

IX. JURY INSTRUCTIONS

§ 46:20 Jury instructions—Generally

CHAPTER 47. NEGLIGENCE IN AIRCRAFT CRASH

I. INTRODUCTION

§ 47:1 Generally

II. LAW

§ 47:2 Theory of liability

§ 47:3 Defenses to negligence

§ 47:4 Procedural limitations

§ 47:5 Choice of law

§ 47:6 Consolidation

§ 47:7 Class actions

§ 47:8 Warsaw convention

§ 47:9 Montreal liability convention

§ 47:10 Death on the High Seas Act

§ 47:11 International Aviation Transport Association
Intercarrier Agreements

§ 47:12 Terrorism

§ 47:13 Damages

§ 47:14 Victim's Compensation Fund

III. CLIENT INTERVIEW AND INVESTIGATION

§ 47:15 Client interview

§ 47:16 Case investigation

§ 47:17 Use of expert witnesses

IV. DEPOSITION CHECKLISTS

§ 47:18 Plaintiff to defendant

§ 47:19 Defendant to plaintiff

V. INTERROGATORIES

§ 47:20 Plaintiff to defendant

§ 47:21 Defendant to plaintiff

VI. PLEADINGS

§ 47:22 Complaint—Model form

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 47:23 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 47:24 Requests to admit—Model form to manufacturer

IX. JURY INSTRUCTIONS

§ 47:25 Jury instructions—Generally

CHAPTER 48. TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS

I. INTRODUCTION

§ 48:1 Generally

II. LAW

§ 48:2 General analytical considerations

§ 48:3 Elements of tortious interference with prospective contractual relations

§ 48:4 Factors in determining propriety of actor's conduct

§ 48:5 Special instances where conduct is proper

§ 48:6 Damages and other relief

§ 48:7 Elements of proof—Checklist

III. CLIENT INTERVIEW AND INVESTIGATION

§ 48:8 Client interview

§ 48:9 Case investigation

IV. DEPOSITION CHECKLISTS

§ 48:10 Plaintiff to defendant

§ 48:11 Defendant to plaintiff

V. INTERROGATORIES

§ 48:12 Plaintiff to defendant

TABLE OF CONTENTS

§ 48:13 Defendant to plaintiff

VI. PLEADINGS

§ 48:14 Complaint—Model form

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 48:15 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 48:16 Requests to Admit—Model form to Defendant

IX. JURY INSTRUCTIONS

§ 48:17 Jury instructions—Generally

CHAPTER 49. PHARMACIST LIABILITY

I. INTRODUCTION

§ 49:1 In general

II. LAW

§ 49:2 Standard of care

§ 49:3 Theories of liability

§ 49:4 Statutory duty

§ 49:5 Voluntarily assumed duties

§ 49:6 Breach of warranty

§ 49:7 Strict liability

§ 49:8 Fraud and misrepresentation

III. CLIENT INTERVIEW AND CASE INVESTIGATION

§ 49:9 Client interview—Generally

§ 49:10 Case investigation

IV. DEPOSITION CHECKLISTS

§ 49:11 Plaintiff to defendant

§ 49:12 Defendant to plaintiff

V. INTERROGATORIES

§ 49:13 Plaintiff to defendant

§ 49:14 Defendant to plaintiff

VI. PLEADINGS

§ 49:15 Form complaint

§ 49:16 Model Answer

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 49:17 Document requests—Generally

§ 49:18 Plaintiff's request

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 49:19 Admission of facts—Generally

IX. JURY INSTRUCTIONS

§ 49:20 Jury instructions—Generally

CHAPTER 50. CRUISE SHIP PASSENGER INJURY

I. INTRODUCTION

§ 50:1 In general

II. LAW

§ 50:2 Theories of liability

§ 50:3 Defenses

§ 50:4 Procedural matters

§ 50:5 Burden of proof

§ 50:6 Damages

III. CLIENT INTERVIEW AND CASE INVESTIGATION

§ 50:7 Client interview—Generally

§ 50:8 Case investigation

IV. DEPOSITION CHECKLISTS

§ 50:9 Plaintiff to defendant

§ 50:10 Defendant to plaintiff

V. INTERROGATORIES

§ 50:11 Plaintiff to defendant

§ 50:12 Defendant to plaintiff

VI. PLEADINGS

§ 50:13 Complaint—Model form

TABLE OF CONTENTS

§ 50:14 Answer—Model form

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 50:15 Document requests—Generally

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 50:16 Admission of facts—Generally

IX. JURY INSTRUCTIONS

§ 50:17 Jury instructions—Generally

CHAPTER 51. BREACH OF COVENANT NOT TO COMPETE

I. INTRODUCTION

§ 51:1 Generally

II. LAW

§ 51:2 Nature of noncompete agreement

§ 51:3 Governing Law

§ 51:4 Causes of action—Elements

§ 51:5 Proof necessary to establish a breach—Checklist

§ 51:6 Parties

III. CLIENT INTERVIEW AND INVESTIGATION

§ 51:7 Client interview

§ 51:8 Case investigation

IV. DEPOSITION CHECKLISTS

§ 51:9 Plaintiff to defendant

§ 51:10 Defendant to plaintiff

V. INTERROGATORIES

§ 51:11 Plaintiff to defendant

§ 51:12 Defendant to plaintiff

VI. PLEADINGS

§ 51:13 Complaint—Model form

§ 51:14 Answer—Model form

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 51:15 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 51:16 Requests to Admit—Model form to Defendant

IX. JURY INSTRUCTIONS

§ 51:17 Jury instructions—Generally

CHAPTER 52. FOOTBALL HELMET INJURY

I. INTRODUCTION

§ 52:1 Generally

II. LAW

§ 52:2 Causes of action

§ 52:3 Damages

§ 52:4 Defenses used by manufacturer

§ 52:5 Defenses used by coaches

§ 52:6 Defenses used by football league

III. CLIENT INTERVIEW AND INVESTIGATION

§ 52:7 Client interview

§ 52:8 Case investigation

IV. DEPOSITION CHECKLISTS

§ 52:9 Plaintiff to defendant

§ 52:10 Defendant to plaintiff

V. INTERROGATORIES

§ 52:11 Plaintiff to defendant

§ 52:12 Defendant to plaintiff

VI. PLEADINGS

§ 52:13 Complaint—Model forms

§ 52:14 Answer—Model form

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 52:15 Plaintiff to defendant

TABLE OF CONTENTS

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 52:16 Requests to admit—Model form to defendant

IX. JURY INSTRUCTIONS

§ 52:17 Jury instructions—Generally

**CHAPTER 53. PASSENGER REMOVAL
FROM COMMERCIAL CARRIER**

I. INTRODUCTION

§ 53:1 Generally

II. LAW

§ 53:2 Preparing the case

§ 53:3 Types of claims

§ 53:4 Defenses

§ 53:5 Damages

III. CLIENT INTERVIEW AND INVESTIGATION

§ 53:6 Client Interview

§ 53:7 Case investigation

IV. DEPOSITION CHECKLISTS

§ 53:8 Plaintiff to defendant

§ 53:9 Defendant to plaintiff

V. INTERROGATORIES

§ 53:10 Plaintiff to defendant

§ 53:11 Defendant to Plaintiff

VI. PLEADINGS

§ 53:12 Complaint—Model form

§ 53:13 Answer—Model form

**VII. REQUESTS FOR PRODUCTION OF
DOCUMENTS**

§ 53:14 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 53:15 Admission of facts—Generally

IX. JURY INSTRUCTIONS

§ 53:16 Jury instructions—Generally

CHAPTER 54. ASSERTING CLAIM OF UNCONSTITUTIONAL PRISON CONDITIONS

I. INTRODUCTION

§ 54:1 Generally

II. LAW

§ 54:2 The statute

§ 54:3 Class actions

§ 54:4 Remedies available to prisoner civil rights litigants under 42 USCA § 1983

§ 54:5 Elements and standards of proof of constitutional violations

§ 54:6 Documentary evidence

§ 54:7 Basic considerations of 42 USCA § 1983 liability and defenses

III. CLIENT INTERVIEW AND CASE INVESTIGATION

§ 54:8 Client Interview

§ 54:9 Case investigation

IV. DEPOSITION CHECKLISTS

§ 54:10 Plaintiff to defendant

§ 54:11 Defendant to plaintiff

V. INTERROGATORIES

§ 54:12 Plaintiff to defendant

§ 54:13 Defendant to plaintiff

VI. PLEADINGS

§ 54:14 Complaint—Model form

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 54:15 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 54:16 Requests for admission—Generally

IX. JURY INSTRUCTIONS

§ 54:17 Jury instructions—Generally

TABLE OF CONTENTS

CHAPTER 55. SLANDER OF TITLE

I. INTRODUCTION

§ 55:1 Generally

II. LAW

§ 55:2 Slander of title defined

§ 55:3 Common-law basis

§ 55:4 Statutory basis

§ 55:5 Restatement (Second) of Torts view

§ 55:6 Elements of slander of title claim

§ 55:7 Act constituting slander of title

§ 55:8 Defenses

§ 55:9 Damages

III. CLIENT INTERVIEW AND INVESTIGATION

§ 55:10 Client interview and case intake

IV. PLEADINGS

§ 55:11 Complaint drafting checklist

§ 55:12 Complaint—Model form

V. DEPOSITION CHECKLISTS

§ 55:13 Plaintiff to defendant

§ 55:14 Defendant to plaintiff

VI. INTERROGATORIES

§ 55:15 Plaintiff to defendant

§ 55:16 Defendant to plaintiff

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 55:17 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 55:18 Requests for admission—Generally

IX. JURY INSTRUCTIONS

§ 55:19 Jury instructions

CHAPTER 56. LIABILITY FOR PASSENGER REMOVAL FROM MASS TRANSPORTATION

I. INTRODUCTION

§ 56:1 Generally

II. LAW

§ 56:2 Potential plaintiffs

§ 56:3 Potential defendants

§ 56:4 Considerations before filing an action

§ 56:5 Theories of liability

§ 56:6 Damages

§ 56:7 Defenses

III. CLIENT INTERVIEW AND INVESTIGATION

§ 56:8 Client interview and case intake

IV. PLEADINGS

§ 56:9 Complaint—Model form

§ 56:10 Affirmative defenses

V. DEPOSITION CHECKLISTS

§ 56:11 Plaintiff to defendant

§ 56:12 Defendant to plaintiff

VI. INTERROGATORIES

§ 56:13 Plaintiff to defendant

§ 56:14 Defendant to plaintiff

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 56:15 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 56:16 Requests for admission—Generally

IX. JURY INSTRUCTIONS

§ 56:17 Jury instructions

TABLE OF CONTENTS

CHAPTER 57. LIABILITY FOR HOSPITAL-ACQUIRED INFECTION

I. INTRODUCTION

- § 57:1 Generally
- § 57:2 Infection process
- § 57:3 Types of infectious agents
- § 57:4 Diagnosis of infections
- § 57:5 Treatment
- § 57:6 Prevention
- § 57:7 Hospital reportage of hospital-acquired infection to CDC

II. LAW

- § 57:8 Legal considerations
- § 57:9 Liability of hospitals
- § 57:10 Standard of care
- § 57:11 Specific duties of care
- § 57:12 Breach; acts of neglect
- § 57:13 Causation
- § 57:14 Damages
- § 57:15 Liability of physicians
- § 57:16 Liability of nonphysician healthcare employees of hospital
- § 57:17 The 48-hour rule
- § 57:18 *Res ipsa loquitur*
- § 57:19 Anticipating affirmative defenses

III. CLIENT INTERVIEW AND INVESTIGATION

- § 57:20 Case interview and intake
- § 57:21 Case investigation
- § 57:22 Recruiting and interviewing medical and scientific experts

IV. PLEADINGS

- § 57:23 Complaint—In general
- § 57:24 Model complaint—Complaint for wrongful death damages against defendant hospital in a hospital-acquired infection action
- § 57:25 —Complaint for negligence damages against defendant hospital in a hospital-acquired infection action
- § 57:26 Answer

V. DEPOSITION CHECKLISTS

- § 57:27 Plaintiff to defendant

§ 57:28 Defendant to plaintiff

VI. INTERROGATORIES

§ 57:29 Plaintiff to defendant

§ 57:30 Defendant to plaintiff

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 57:31 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 57:32 Requests for admission—Generally

IX. JURY INSTRUCTIONS

§ 57:33 Jury instructions

CHAPTER 58. LIABILITY OF COMMON CARRIER FOR INJURIES TO BUS PASSENGER

I. INTRODUCTION

§ 58:1 Generally

§ 58:2 Technical aspects of a bus collision

II. LAW

§ 58:3 Safety codes and regulations

§ 58:4 Federal and state law

§ 58:5 Choice of forum

§ 58:6 Diversity jurisdiction and venue

§ 58:7 Statutory notice and sovereign immunity

§ 58:8 Statute of limitations

§ 58:9 Common carrier defined

§ 58:10 Standard of care and duty of care

§ 58:11 Care for special needs passengers

§ 58:12 Negligence

§ 58:13 *Res ipsa loquitur*

§ 58:14 Defenses

§ 58:15 Damages

§ 58:16 Sudden emergency doctrine

§ 58:17 Jerk or jolt doctrine

§ 58:18 Expert witnesses

III. CLIENT INTERVIEW AND INVESTIGATION

§ 58:19 Case interview and intake

TABLE OF CONTENTS

§ 58:20 Case investigation

IV. PLEADINGS

§ 58:21 Model complaints—Federal and state

§ 58:22 Model answer—Federal and state

V. DEPOSITION CHECKLISTS

§ 58:23 Plaintiff to defendant

§ 58:24 Defendant to plaintiff

VI. INTERROGATORIES

§ 58:25 Plaintiff to defendant

§ 58:26 Defendant to plaintiff

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 58:27 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 58:28 Requests for admission—Generally

IX. JURY INSTRUCTIONS

§ 58:29 Jury instructions

CHAPTER 59. FAILURE OF PERFORMANCE IN COMPUTER SYSTEM SALES

I. INTRODUCTION

§ 59:1 Generally

II. LAW

§ 59:2 Computer sale and lease contracts

§ 59:3 Source code escrow agreement

§ 59:4 Theories of liability—Generally

§ 59:5 Causes of action

§ 59:6 Emerging theories of liability

§ 59:7 Accrual of cause of action

§ 59:8 Remedies

III. CASE PREPARATION AND INVESTIGATION

§ 59:9 Case preparation

§ 59:10 Case investigation

IV. PLEADINGS

§ 59:11 Model complaint

§ 59:12 Model answer

V. DEPOSITION CHECKLISTS

§ 59:13 Plaintiff to defendant

§ 59:14 Defendant to plaintiff

VI. INTERROGATORIES

§ 59:15 Plaintiff to defendant

§ 59:16 Defendant to plaintiff

VII. REQUESTS FOR PRODUCTION OF DOCUMENTS

§ 59:17 Plaintiff to defendant

VIII. REQUESTS FOR ADMISSION OF FACTS

§ 59:18 Requests for admission—Generally

IX. JURY INSTRUCTIONS

§ 59:19 Model jury instructions

APPENDIX

Appendix A. Discovery Statutes and Rules

Glossary

Key Number Table

Index