

Table of Contents

CHAPTER 1. ROLE OF ATTORNEY

- § 1:1 Responsibility of attorney
- § 1:2 Practice of law
- § 1:3 Right to counsel
- § 1:4 Appointment of counsel
- § 1:5 Attorney's creed
- § 1:6 Standards for appellate conduct

CHAPTER 2. ATTORNEY-CLIENT RELATIONSHIP

I. REPRESENTATION AND FEES

- § 2:1 Legal basis and nature of relationship
- § 2:2 Terms of agreement
- § 2:3 Client intake checklist
- § 2:4 Client release authorization
- § 2:5 Fees
- § 2:6 —Contingency fees
- § 2:7 —Fee splitting and association of other counsel
- § 2:8 —Forfeiture of fee for breach of duty
- § 2:9 Engagement letter
- § 2:10 Declining representation
- § 2:11 Termination of relationship; withdrawal
- § 2:12 —Disqualification of attorney

II. CLIENT EDUCATION

- § 2:13 Initial interview
- § 2:14 Documents and correspondence
- § 2:15 Confidentiality
- § 2:16 Attorney-client privilege
- § 2:17 Settlement
- § 2:18 Attorney liens

III. FORMS

- § 2:19 New client appointment letter
- § 2:20 Client information intake report
- § 2:21 Client release authorization
- § 2:22 Client referral acknowledgment

- § 2:23 Engagement letter
- § 2:24 Straight contingency fee retainer agreement
- § 2:25 Contingent fee—Letter agreement
- § 2:26 Graduated contingency fee provision
- § 2:27 Sliding scale contingency fee provision
- § 2:28 Hourly fee representation agreement
- § 2:29 Hourly fee provision
- § 2:30 Independent lien agreement
- § 2:31 Financing statement under UCC Article 9 (Form UCC1)—Official form
- § 2:32 Conflict of interest disclosure
- § 2:33 Letter declining representation
- § 2:34 Motion by attorney of record to withdraw from case
- § 2:35 Employment by lead counsel of associate counsel
- § 2:36 Special retainer
- § 2:37 Motion to disqualify attorney
- § 2:38 Order disqualifying counsel

CHAPTER 3. ATTORNEY MALPRACTICE

I. MALPRACTICE

A. BASES

- § 3:1 Overview
- § 3:2 Negligence and negligent misrepresentation
- § 3:3 Fraud
- § 3:4 Breach of fiduciary duty
- § 3:5 Breach of contract
- § 3:6 Abuse of process and malicious prosecution
- § 3:7 Deceptive Trade Practices Act
- § 3:8 Representation issues

B. DEFENSES

- § 3:9 Statute of limitations
- § 3:10 Proportionate responsibility
- § 3:11 Release
- § 3:12 Res judicata and collateral estoppel
- § 3:13 Miscellaneous
- § 3:14 Arbitration of malpractice claims

C. DAMAGES

- § 3:15 Compensatory damages
- § 3:16 Emotional distress

TABLE OF CONTENTS

§ 3:17 Exemplary damages

II. DECEPTIVE TRADE PRACTICES ACT

§ 3:18 Application to attorneys

§ 3:19 Liability

§ 3:20 Defenses

§ 3:21 Damages

III. FORMS

§ 3:22 Checklist for matters to be considered in drafting petition seeking damages for legal malpractice

§ 3:23 Petition alleging attorney's negligent failure to file action in timely manner

§ 3:24 Defense allegation—Refusal to represent plaintiff

§ 3:25 DTPA cause of action demand letter

§ 3:26 Petition for negligence action arising from sale of business

§ 3:27 Answer—Affirmative defense of statute of limitations

§ 3:28 —Affirmative defense of release

§ 3:29 —Affirmative defense of res judicata

CHAPTER 4. JURISDICTION AND VENUE

I. JURISDICTION

A. COURT STRUCTURE

§ 4:1 Generally

§ 4:2 Constitutional and statutory courts

§ 4:3 Powers

§ 4:4 Impact of improper court selection

B. JURISDICTIONAL CONCEPTS

§ 4:5 Generally

§ 4:6 Real property actions

§ 4:7 Actions seeking equitable relief

§ 4:8 Torts

§ 4:9 Contracts

§ 4:10 Forum non conveniens

C. DETERMINATION OF JURISDICTION

1. Amount in Controversy

§ 4:11 Generally—Principal sum

- § 4:12 —Interest and costs
- § 4:13 Jurisdictional amounts—Generally
- § 4:14 —District court
- § 4:15 —Constitutional county courts
- § 4:16 —Statutory courts
- § 4:17 —Justice courts

2. Specific Causes

- § 4:18 Land matters
- § 4:19 Probate
- § 4:20 Divorce
- § 4:21 Other causes

3. Personal Jurisdiction

- § 4:22 Generally
- § 4:23 —Minors
- § 4:24 Long arm jurisdiction
- § 4:25 Corporations
- § 4:26 Special appearance

II. VENUE

A. OVERVIEW

- § 4:27 Generally—Accrual of cause of action
- § 4:28 —Residence of party
- § 4:29 —Multiple plaintiffs, defendants or claims
- § 4:30 —Counterclaims, cross-claims, and third-party claims

B. EXCEPTIONS

1. Priorities

- § 4:31 Determination

2. Mandatory Venue

- § 4:32 Real property suits
- § 4:33 Suits against governmental bodies
- § 4:34 Other suits

3. Permissive Venue

- § 4:35 Suits involving written contracts
- § 4:36 Other suits

C. PROCEDURE TO ESTABLISH VENUE

- § 4:37 Burden

TABLE OF CONTENTS

- § 4:38 Proof
- § 4:39 Response to motion to transfer and hearing on motion
- § 4:40 Jurisdiction
- § 4:41 Venue

III. FORMS

- § 4:42 Motion to transfer venue
- § 4:43 Plaintiff's response to motion to transfer venue
- § 4:44 Motion for substituted service
- § 4:45 Statement in support of motion for substituted service
- § 4:46 Cover letter conveying statement in support of substituted service of officer attempting service
- § 4:47 Special appearance by defendant
- § 4:48 Motion for default judgment
- § 4:49 Answer—General denial

CHAPTER 5. ALTERNATIVE DISPUTE RESOLUTION

I. IN GENERAL

- § 5:1 Overview
- § 5:2 Statutory ADR scheme
- § 5:3 Referral
- § 5:4 Impartial third parties
- § 5:5 Confidentiality of communications
- § 5:6 Settlement

II. MEDIATION

- § 5:7 Definition
- § 5:8 Procedural steps
- § 5:9 Advantages
- § 5:10 Mediator techniques
- § 5:11 Trial attorney techniques
- § 5:12 New trends in mediation
- § 5:13 Effect of settlement through mediation
- § 5:14 SBOT ethical guidelines for mediators
- § 5:15 The Texas mediation trainer roundtable standards

III. MINITRIAL

- § 5:16 Generally
- § 5:17 Procedure
- § 5:18 Opinions

IV. MODERATED SETTLEMENT CONFERENCE

- § 5:19 Generally
- § 5:20 Procedure
- § 5:21 Opinions

V. SUMMARY JURY TRIAL

- § 5:22 Generally
- § 5:23 Procedure
- § 5:24 Opinions

VI. ARBITRATION

- § 5:25 Generally
- § 5:26 The Texas Arbitration Act
- § 5:27 Employment law claims
- § 5:28 Health care liability claims
- § 5:29 Challenging validity of arbitration agreement
- § 5:30 Confirmation, modification or vacation of arbitration
award
- § 5:31 Effect of award

VII. TRIAL BY SPECIAL JUDGE

- § 5:32 Generally
- § 5:33 Referral procedure
- § 5:34 Special judge
- § 5:35 Procedure
- § 5:36 New trial and appeal

VIII. SETTLEMENT WEEKS

- § 5:37 Generally
- § 5:38 Orders

IX. FORMS

- § 5:39 Motion for referral of cause to mediation by party
- § 5:40 Order granting motion to refer cause to mediation
- § 5:41 Mini-trial agreement
- § 5:42 Notice of referral to alternative dispute resolution
procedure
- § 5:43 Objection to referral to alternative dispute resolution
procedure
- § 5:44 Objection to appointment of impartial third party—
Bias
- § 5:45 —Qualifications

TABLE OF CONTENTS

- § 5:46 Agreement to submit to binding arbitration
- § 5:47 Notice of appointment as arbitrator
- § 5:48 Checklist—Submission to arbitration
- § 5:49 —Arbitrator's award

CHAPTER 6. SETTLEMENT

I. GENERAL CONSIDERATIONS

- § 6:1 Overview
- § 6:2 Policy
- § 6:3 Mary Carter agreements
- § 6:4 Loan receipt agreements
- § 6:5 Admissibility as evidence

II. NEGOTIATION AND STRATEGY

- § 6:6 Strategy
- § 6:7 Settlement value
- § 6:8 Parties and multiple party suits
- § 6:9 Tax consequences
- § 6:10 Knowledge of opposing party
- § 6:11 Knowledge of opposing counsel
- § 6:12 Settlement brochure
- § 6:13 Terms of offer
- § 6:14 Publicity terms

III. SETTLEMENTS INVOLVING MINORS AND INCOMPETENTS

- § 6:15 Authorized settlor
- § 6:16 Fairness of settlement
- § 6:17 Disposition of proceeds

IV. STRUCTURED SETTLEMENTS

- § 6:18 Nature
- § 6:19 Advantages
- § 6:20 Disadvantages
- § 6:21 Tax consequences
- § 6:22 Negotiation
- § 6:23 Terms of payment
- § 6:24 Goals of attorney
- § 6:25 Structured Settlement Protection Act

V. SETTLEMENT PROCEDURE

- § 6:26 Execution

- § 6:27 Withdrawal
- § 6:28 Role of court

VI. APPEAL AND ENFORCEMENT

- § 6:29 Grounds to set aside settlement
- § 6:30 Estoppel
- § 6:31 Construction and enforcement

VII. FORMS

- § 6:32 Notice of claim to opposing party
- § 6:33 Notice to insurance carrier
- § 6:34 Damages evaluation checklist
- § 6:35 Suggested settlement conference statement outline
- § 6:36 Complete settlement brochure
- § 6:37 Release agreement
- § 6:38 Publicity clause
- § 6:39 Policy limits demand letter, attorney malpractice
- § 6:40 Joint motion to dismiss

CHAPTER 7. DISCOVERY

I. OVERVIEW

A. GENERAL DISCOVERY REQUIREMENTS

- § 7:1 Generally
- § 7:2 Permissible forms of discovery
- § 7:3 Scope of discovery
- § 7:4 Format of discovery devices
- § 7:5 —Signatures and certifications
- § 7:6 —Filing and retention of discovery
- § 7:7 —Discovery subpoenas
- § 7:8 Modification of discovery procedures
- § 7:9 Responses and objections
- § 7:10 —Duty to supplement
- § 7:11 Failure to timely respond or supplement
- § 7:12 Production of documents self-authenticating
- § 7:13 Filing discovery responses
- § 7:14 Retention of documents

B. EXCEPTIONS TO DISCOVERY

- § 7:15 Privileges and exemptions
- § 7:16 —Work product now defined by rule
- § 7:17 —Specific privileges

TABLE OF CONTENTS

- § 7:18 —Waiver
- § 7:19 —No waiver by inadvertent disclosure
- § 7:20 Asserting privilege claims
- § 7:21 Hearing on privilege claims

II. DISCOVERY CONTROL PLANS

- § 7:22 Three tier system for discovery control plans
- § 7:23 Individualized discovery plans
- § 7:24 Level 1 discovery—Suits under \$50,000
- § 7:25 —Exceptions to Level 1 plans
- § 7:26 —Discovery limits
- § 7:27 —Effect of disqualifying pleadings
- § 7:28 Level 2 discovery—Default level
- § 7:29 —Discovery limits
- § 7:30 Level 3 discovery—Customized for complex cases
- § 7:31 —Contents of court-ordered plan
- § 7:32 Modification of discovery control plans

III. DISCLOSURES

- § 7:33 Generally
- § 7:34 —One of exclusive methods for testifying expert discovery
- § 7:35 Initial disclosures
- § 7:36 Testifying expert disclosures
- § 7:37 No objection or assertion of work product
- § 7:38 Pretrial disclosures
- § 7:39 Certain responses not admissible
- § 7:40 Requests for disclosure in suits governed by the Family Code

IV. INTERROGATORIES

- § 7:41 Generally
- § 7:42 Scope and number
- § 7:43 Service
- § 7:44 Signature and verification of response
- § 7:45 Areas of inquiry
- § 7:46 Response
- § 7:47 Objections

V. REQUESTS FOR ADMISSION

- § 7:48 Generally
- § 7:49 Scope
- § 7:50 Types of requests

- § 7:51 Time
- § 7:52 Form
- § 7:53 Response
- § 7:54 Objections
- § 7:55 Use of admissions

VI. REQUESTS FOR PRODUCTION

- § 7:56 Generally
- § 7:57 Scope and content
- § 7:58 Types of requests
- § 7:59 Time
- § 7:60 Response
- § 7:61 Objections and protective orders
- § 7:62 Methods of production
- § 7:63 Documents produced are self-authenticating
- § 7:64 Requests to nonparties
- § 7:65 Entry on land

VII. ORAL DEPOSITIONS

A. OVERVIEW

- § 7:66 Generally
- § 7:67 Scope
- § 7:68 Advantages and disadvantages

B. PROCEDURE

- § 7:69 Notice
- § 7:70 Who may be deposed
- § 7:71 —Legal entities
- § 7:72 Officer taking deposition
- § 7:73 Place and time
- § 7:74 Compelling attendance
- § 7:75 Examination, objection, and conduct during deposition
- § 7:76 —Scheduling depositions
- § 7:77 —Discovery control plan limits and time limits
- § 7:78 —Conduct during deposition
- § 7:79 —Objections during deposition
- § 7:80 —Instructions not to answer
- § 7:81 —Cross-examination
- § 7:82 —Hearing
- § 7:83 Transcript
- § 7:84 Certification and return
- § 7:85 Supplementation

TABLE OF CONTENTS

§ 7:86 Motion to suppress

C. ANCILLARY ISSUES

§ 7:87 Depositions in other states and foreign countries

§ 7:88 Depositions before suit or to investigate claims

§ 7:89 Use in court proceedings

D. DEPOSITIONS UPON WRITTEN QUESTIONS

§ 7:90 Generally

§ 7:91 Notice

§ 7:92 Cross-examination procedure

VIII. PHYSICAL AND MENTAL EXAMINATION

§ 7:93 Generally

§ 7:94 Motion and notice

§ 7:95 Report

IX. DISCOVERY DISPUTES

§ 7:96 Compelling discovery

§ 7:97 Resisting discovery

§ 7:98 Pleadings

§ 7:99 In camera inspection

§ 7:100 Protective orders

X. SANCTIONS

§ 7:101 Generally

§ 7:102 Available sanctions and grounds

§ 7:103 Procedure

XI. FORMS

A. INTERROGATORIES

§ 7:104 Interrogatories—General form

§ 7:105 —To establish identity of all adverse parties

§ 7:106 —Automobile accident

§ 7:107 —Premises liability

§ 7:108 —With request for admissions

§ 7:109 Response to interrogatories

§ 7:110 Objections to interrogatories

§ 7:111 Motion to extend time for answering interrogatories

§ 7:112 Affidavit in support of motion to extend time to
answer interrogatories

- § 7:113 Order granting motion to extend time for responding to interrogatories
- § 7:114 Motion to enlarge number of interrogatories
- § 7:115 Motion for leave to amend or correct answers to interrogatories
- § 7:116 Motion to permit untimely objections to interrogatories
- § 7:117 Requests for disclosure

B. ADMISSIONS

- § 7:118 Request for admission—With genuineness of documents
- § 7:119 Plaintiff's request for admission—Sworn account
- § 7:120 Responses to requests for admissions
- § 7:121 —Genuineness of document
- § 7:122 Notice of deemed admissions
- § 7:123 Motion to extend time to respond to requests for admissions
- § 7:124 Motion to amend admissions
- § 7:125 Motion to strike deemed admissions
- § 7:126 Motion to determine sufficiency of responses to requests for admissions
- § 7:127 Order requiring party to serve amended answer to request for admission

C. PRODUCTION OF DOCUMENTS AND THINGS

- § 7:128 Request for production of documents—General form
- § 7:129 —Inspection, sampling, and testing
- § 7:130 Request for entry on land to inspect and photograph
- § 7:131 Response to request for production—General form
- § 7:132 Objection to request for production
- § 7:133 Response to request for entry on land
- § 7:134 Medical release for use with production requests

D. DEPOSITIONS

- § 7:135 Notice of oral deposition—including document production and corporate representative options
- § 7:136 Notice of videotaped deposition
- § 7:137 Notice of audiotape deposition
- § 7:138 Notice of non-stenographic recording of deposition—
With document production and motion to dispense with written record
- § 7:139 Stipulation to take oral deposition
- § 7:140 Stipulation to videotape deposition

TABLE OF CONTENTS

§ 7:141	Motion for telephonic deposition
§ 7:142	Petition for deposition to perpetuate testimony
§ 7:143	Notice to interested parties of petition for deposition to perpetuate testimony
§ 7:144	Order authorizing deposition to perpetuate testimony
§ 7:145	Motion by deponent to shorten time for taking of deposition to perpetuate testimony
§ 7:146	Affidavit by physician in support of motion to shorten time for taking of deposition to perpetuate testimony of terminally ill witness
§ 7:147	Order granting motion to shorten time for taking of deposition to perpetuate testimony
§ 7:148	Request for letter rogatory for foreign deposition; order; and letter rogatory
§ 7:149	Affidavit in support of letters rogatory to take foreign deposition
§ 7:150	Stipulation to take foreign deposition
§ 7:151	Notice of intention to take deposition on written questions—With production
§ 7:152	Notice of deposition on written questions—Physician
§ 7:153	Notice of cross questions
§ 7:154	Stipulation for deposition on written questions
§ 7:155	Motion for protective order and to quash deposition
§ 7:156	Objection to notice of deposition
§ 7:157	Deposition subpoena—General form

E. PHYSICAL AND MENTAL EXAMINATIONS

§ 7:158	Notice of motion for physical examination of plaintiff
§ 7:159	Motion for physical examination of plaintiff
§ 7:160	Stipulation for physical examination of plaintiff
§ 7:161	Motion for order directing parties and child to submit to blood-grouping tests
§ 7:162	Affidavit in support of motion for order directing parties and child to submit to blood-grouping test
§ 7:163	Order granting motion for parties and child to submit to blood-grouping test
§ 7:164	Client's confidential report to attorney following independent physical examination
§ 7:165	Motion to require mental examination
§ 7:166	Order to submit to mental examination

F. MISCELLANEOUS DISCOVERY MOTIONS

§ 7:167	Notice of motion for protective order
§ 7:168	Motion for protective order

- § 7:169 Protective order
- § 7:170 Motion to compel and for imposition of sanctions
- § 7:171 Motion for sanctions
- § 7:172 Motion to strike pleadings and for default judgment
for discovery abuses
- § 7:173 Affidavit in opposition to motion for order striking
pleadings and entry of default judgment
- § 7:174 Motion for order finding person in contempt of court
for refusing to answer question after order
- § 7:175 In-camera submission of documents
- § 7:176 Motion for written report of expert

CHAPTER 8. WITNESS PREPARATION

I. OVERVIEW

- § 8:1 Preparation
- § 8:2 Evaluating the witness
- § 8:3 Examination plan

II. TESTIMONIAL WITNESS

A. PREPARATION

- § 8:4 Generally
- § 8:5 Time of preparation
- § 8:6 Appearance—Generally
- § 8:7 —Demeanor
- § 8:8 —Checklist
- § 8:9 —Building witness self-confidence
- § 8:10 —Visiting the courtroom
- § 8:11 Direct examination questions
- § 8:12 Cross-examination
- § 8:13 Redirect examination
- § 8:14 Mock trial

B. ATTENDANCE AND COMPENSATION

- § 8:15 Voluntary attendance; subpoena
- § 8:16 Compensation
- § 8:17 Interpreters

III. ADVERSE WITNESSES

- § 8:18 Review deposition
- § 8:19 Update qualifications of experts

TABLE OF CONTENTS

IV. FORMS

- § 8:20 Witness statement checklist
- § 8:21 Checklist for locating missing persons
- § 8:22 Subpoena
- § 8:23 Subpoena duces tecum

CHAPTER 9. EXPERTS

I. RETAINING EXPERT WITNESSES

- § 9:1 Overview
- § 9:2 When to retain expert
- § 9:3 Qualifications
- § 9:4 Fees

II. EXPERT REPORTS AND PRE-TRIAL DISCOVERY

- § 9:5 Rules governing expert discovery and reports
- § 9:6 Types of expert witnesses retained for litigation
- § 9:7 Discoverable information from experts
- § 9:8 Forms of discovery from testifying experts
- § 9:9 Designation of experts
- § 9:10 Requests for disclosure for experts
- § 9:11 Expert reports
- § 9:12 Expert reports in health care liability cases
- § 9:13 Expert depositions
- § 9:14 —Time limit for making expert available for deposition

III. PREPARATION OF EXPERTS FOR DISCOVERY AND TRIAL

- § 9:15 Educating expert
- § 9:16 Preparing for direct examination
- § 9:17 —Use of documentary evidence
- § 9:18 Preparing for cross-examination
- § 9:19 Preparing for cross-examination of opposing expert

IV. FORMS

- § 9:20 Letter to expert confirming availability to appear at trial
- § 9:21 Letter to expert scheduling pretrial preparation
- § 9:22 Motion for written report of expert
- § 9:23 Motion to dismiss for failure to file expert report

§ 9:24 Motion to dismiss for filing inadequate expert report

CHAPTER 10. PRETRIAL PROCEDURES AND ISSUES

I. PRETRIAL CONFERENCE

A. SCOPE AND USE

- § 10:1 Legal basis
- § 10:2 Nature and function
- § 10:3 Procedures
- § 10:4 Order and sanctions

B. ISSUE PRECLUSION OR LIMITATION

- § 10:5 Generally
- § 10:6 Motions and pleas
- § 10:7 Settlement or ADR

C. REFERENCES

- § 10:8 Masters in chancery
- § 10:9 —Hearing
- § 10:10 —Report
- § 10:11 —Fees
- § 10:12 Auditors
- § 10:13 —Report
- § 10:14 —Exceptions

D. CONSOLIDATION AND SEVERANCE

- § 10:15 Consolidation and separate trials
- § 10:16 Severance

II. TRIAL SETTING

A. GENERALLY

- § 10:17 Generally
- § 10:18 Basis
- § 10:19 Procedure—Generally
- § 10:20 —Dismissal for want of prosecution; reinstatement
- § 10:21 —Docket calls
- § 10:22 Continuances
- § 10:23 —Grounds
- § 10:24 Jury demand

TABLE OF CONTENTS

III. FORMS

- § 10:25 Motion for pretrial conference
- § 10:26 Agreement by counsel to set cause for pretrial conference
- § 10:27 Order setting pretrial conference
- § 10:28 Pretrial statement by plaintiff
- § 10:29 Defendant's motion to dismiss for plaintiff's failure to attend pretrial conference
- § 10:30 Motion for appointment of master
- § 10:31 Pretrial conference order
- § 10:32 Order appointing master
- § 10:33 Report of master
- § 10:34 Motion to consolidate
- § 10:35 Order consolidating separate suits
- § 10:36 Order consolidating separate suits providing for separate judgments
- § 10:37 Motion for severance
- § 10:38 Order granting severance
- § 10:39 Motion for preferential setting
- § 10:40 Motion for continuance

CHAPTER 11. DOCUMENT MANAGEMENT

- § 11:1 Overview
- § 11:2 Document collection
- § 11:3 Compliance with discovery
- § 11:4 Copies
- § 11:5 Editing, numbering, and tracking
- § 11:6 Computer databases
- § 11:7 Trial records

CHAPTER 12. THE JURY

I. GENERAL

- § 12:1 Right to jury trial
- § 12:2 Definitions and terms
- § 12:3 Selection of jury or bench trial
- § 12:4 Use of jury consultants

II. PROCEDURES TO OBTAIN JURY TRIAL

- § 12:5 Request for jury trial
- § 12:6 —Payment of fee
- § 12:7 —Benefits all parties
- § 12:8 —Withdrawal of jury request

§ 12:9 —Untimely request

III. JUROR QUALIFICATIONS

- § 12:10 Judicial discretion to determine qualifications
- § 12:11 Juror qualifications
- § 12:12 Disqualifications to serve in a specific case
- § 12:13 —Determining consanguinity and affinity
- § 12:14 Exemptions from service

IV. JURY SELECTION PROCESS

A. GENERALLY

- § 12:15 Assembling the jury panel
- § 12:16 Challenges in general
- § 12:17 —Challenges to the array
- § 12:18 Challenges for cause
- § 12:19 Peremptory challenges
- § 12:20 —Equalizing number of challenges
- § 12:21 —Restrictions of peremptory challenges
- § 12:22 —Procedure for a Batson-Edmonson challenge

B. CONDUCTING VOIR DIRE

- § 12:23 Voir dire procedure
- § 12:24 —Right to voir dire
- § 12:25 —Preparation
- § 12:26 —Role of trial judge
- § 12:27 —Role of client
- § 12:28 Court reporter
- § 12:29 Jury chart
- § 12:30 Voir dire techniques
- § 12:31 —Limitations on scope of questions
- § 12:32 —Cumulative impact of repetitive questions
- § 12:33 —Embarrassing questions
- § 12:34 —Follow-up on opposing counsel's questions
- § 12:35 Objections to opposing counsel's voir dire
- § 12:36 Improper restriction of voir dire
- § 12:37 Rehabilitation of prospective juror
- § 12:38 Reopening voir dire

C. SPECIFIC CASES

- § 12:39 Ideal plaintiff's juror
- § 12:40 Ideal defendant's juror
- § 12:41 Sample voir dire questions—Overview

TABLE OF CONTENTS

- § 12:42 —General questions
- § 12:43 —Plaintiff's questions
- § 12:44 —Defendant's questions

V. FORMS

- § 12:45 Demand for jury trial
- § 12:46 Affidavit of contempt based upon juror's perjury during voir dire
- § 12:47 Affidavit of contempt based upon juror's discussion of merits of pending action
- § 12:48 Order to show cause why juror should not be held in contempt
- § 12:49 Supporting argument for Batson-Edmondson challenge
- § 12:50 Written juror questionnaire

CHAPTER 13. TRIAL PROCEDURE

I. MOTIONS IN LIMINE

- § 13:1 Purpose and authority
- § 13:2 Scope
- § 13:3 Advantages
- § 13:4 Procedure
- § 13:5 Preservation of error—Motion granted or denied
- § 13:6 —Violation of order in limine

II. OPENING STATEMENTS

- § 13:7 Generally
- § 13:8 —Right to open
- § 13:9 Nature and purpose
- § 13:10 Contents
- § 13:11 Presentation

III. ORDER OF PROOF

- § 13:12 Right to open and close
- § 13:13 Evidence in chief
- § 13:14 Rebuttal evidence
- § 13:15 Right to reopen case

IV. TRIAL MANAGEMENT

- § 13:16 Generally
- § 13:17 Consolidation

- § 13:18 Consolidation in mass tort exposure cases
- § 13:19 Severance
- § 13:20 Separate trial
- § 13:21 Trial order

V. BURDEN OF PROOF

- § 13:22 Definition
- § 13:23 Party on whom burden rests
- § 13:24 Presumptions
- § 13:25 Inferences
- § 13:26 Civil action—Contract cases
- § 13:27 —Negligence cases
- § 13:28 —Claims against estate
- § 13:29 —Fraud cases
- § 13:30 —Bailment cases
- § 13:31 Exemplary damages—Generally
- § 13:32 —Amount of award
- § 13:33 —Bifurcation of trial

VI. PROOF OF FACTS

- § 13:34 Instances when proof unnecessary
- § 13:35 Stipulations

VII. RULES OF EVIDENCE

A. GENERAL ADMISSIBILITY

- § 13:36 Generally
- § 13:37 Pleadings as evidence
- § 13:38 Remoteness
- § 13:39 Relevancy and materiality
- § 13:40 Weight and sufficiency

B. HEARSAY

- § 13:41 Defined
- § 13:42 Application
- § 13:43 Exceptions—Availability of declarant immaterial
- § 13:44 —Declarant unavailable
- § 13:45 Hearsay within hearsay

C. BEST EVIDENCE RULE

- § 13:46 Definitions
- § 13:47 Application

TABLE OF CONTENTS

- § 13:48 Exceptions—Duplicates or copies
- § 13:49 —Admissibility of secondary evidence
- § 13:50 Public records
- § 13:51 —Summaries
- § 13:52 —Party testimony or admissions
- § 13:53 Functions of court and jury
- § 13:54 Waiver of right to best evidence

D. COMPETENCY OF WITNESSES

1. Dead Man's Rule

- § 13:55 Generally
- § 13:56 Scope of rule—Inadmissible statements
- § 13:57 —Admissible statements
- § 13:58 —Affected persons
- § 13:59 Waiver
- § 13:60 Instruction by court

2. Incompetents

- § 13:61 Insane persons
- § 13:62 Children

E. JUDICIAL NOTICE

- § 13:63 Generally
- § 13:64 Procedure
- § 13:65 Facts—Judicially noticed
- § 13:66 —Not judicially noticed
- § 13:67 Court and judicial or administrative proceeding matters
- § 13:68 Laws of Texas
- § 13:69 Laws of other states
- § 13:70 Laws of foreign countries

VIII. MOTIONS TO TERMINATE TRIAL

A. MISTRIAL

- § 13:71 Generally
- § 13:72 Grounds
- § 13:73 Procedure
- § 13:74 —Sample oral motion
- § 13:75 Determination
- § 13:76 Effect of granting motion
- § 13:77 Appealability

B. NONSUIT

- § 13:78 Generally

- § 13:79 Procedure
- § 13:80 Effect of request
- § 13:81 Reinstatement

C. DIRECTED VERDICT

- § 13:82 Generally
- § 13:83 Procedure
- § 13:84 Verdict—For plaintiff
- § 13:85 —For defendant

IX. FORMS

- § 13:86 Checklist of possible subjects for motion in limine
- § 13:87 Motion in limine
- § 13:88 Exclusion based upon protective orders
- § 13:89 Exclusion provision relating to personal habits
- § 13:90 Exclusion provision relating to collateral sources
- § 13:91 Exclusion provision relating to prior criminal record
- § 13:92 Exclusion provision relating to workers' compensation concerning death of decedent
- § 13:93 Exclusion provision relating to eminent domain proceeding
- § 13:94 Exclusion provision requiring court permission before mentioning insurance
- § 13:95 Exclusion provision regarding remarriage
- § 13:96 Exclusion provision regarding failure to call witnesses
- § 13:97 Exclusion provision regarding settlement
- § 13:98 Exclusion provision relating to issuance or payment of traffic citation
- § 13:99 Order in limine requiring court permission before mentioning certain matters
- § 13:100 Order in limine prohibiting mention of certain matters
- § 13:101 Checklist for opening statement
- § 13:102 —Personal injury case
- § 13:103 Checklist of matters to avoid in opening statement
- § 13:104 Checklist of objections to opponent's opening statement
- § 13:105 Motion to consolidate
- § 13:106 Order consolidating separate suits
- § 13:107 Order consolidating separate suits providing for separate judgments
- § 13:108 Motion for severance
- § 13:109 Affidavit in support of motion for severance

TABLE OF CONTENTS

§ 13:110	Motion for severance by defendant alleging adverse interests of defendants
§ 13:111	Motion for severance due to misjoinder of parties
§ 13:112	Order granting severance
§ 13:113	Motion for separate trial
§ 13:114	Motion for separate trial on issue of liability
§ 13:115	Motion for separate trial of affirmative defense
§ 13:116	Affidavit in support of motion for separate trial
§ 13:117	Order granting motion for separate trial
§ 13:118	Motion to take judicial notice of law of foreign jurisdiction
§ 13:119	Stipulation to admission of records
§ 13:120	Checklist in drafting motion for mistrial
§ 13:121	Motion for mistrial
§ 13:122	—Misconduct of counsel
§ 13:123	—Misconduct of witness
§ 13:124	—Misconduct of judge
§ 13:125	—Misconduct of juror
§ 13:126	—Misconduct of outsider
§ 13:127	Order—Declaring mistrial and discharging jury
§ 13:128	Motion for directed verdict following opening statement
§ 13:129	Motion for directed verdict
§ 13:130	Order granting motion for directed verdict

Table of Contents

CHAPTER 14. DEMONSTRATIVE AND DOCUMENTARY EVIDENCE

I. PLANNING AND USE

- § 14:1 Overview
- § 14:2 Recent developments
- § 14:3 Preparation—Generally
- § 14:4 —Outside specialists
- § 14:5 Settlement
- § 14:6 Education
- § 14:7 Response preparation

II. TRIAL PRESENTATION

A. PROCEDURE

- § 14:8 In general
- § 14:9 Marking exhibits
- § 14:10 Offering as evidence
- § 14:11 Reoffering after excision
- § 14:12 Authentication

B. RULES OF EVIDENCE

- § 14:13 Relevant evidence
- § 14:14 Exclusion of relevant evidence
- § 14:15 Authentication requirements
- § 14:16 —Self-authentication
- § 14:17 Best Evidence Rule

C. TYPES OF EVIDENCE

- § 14:18 Blackboards
- § 14:19 Business records
- § 14:20 Recorded recollections
- § 14:21 Computer graphics/animation
- § 14:22 Diagrams, maps, or plats
- § 14:23 Experiments
- § 14:24 Medical models and illustrations
- § 14:25 Motion pictures and photographs
- § 14:26 Physical objects
- § 14:27 Summaries

- § 14:28 Tape recordings
- § 14:29 Videotapes
- § 14:30 X-rays

III. FORMS

- § 14:31 Affidavit providing foundation for business records
- § 14:32 Affidavit for authentication of hospital records

CHAPTER 15. EXAMINATION OF EXPERTS

I. GENERALLY

- § 15:1 Overview
- § 15:2 Expert testimony—Generally
- § 15:3 —Basis for opinion
- § 15:4 —Disclosure of facts

II. QUALIFICATION OF EXPERT WITNESS

- § 15:5 Generally
- § 15:6 Relevance
- § 15:7 Reliability
- § 15:8 Specialized knowledge; credentials
- § 15:9 Experience
- § 15:10 Procedure
- § 15:11 —Basic qualification outline
- § 15:12 Admissibility of testimony
- § 15:13 Hypothetical questions
- § 15:14 Objections and rebuttal

III. SPECIFIC AREAS OF EXPERT EXAMINATION

- § 15:15 Automobiles
- § 15:16 Boundaries and surveys
- § 15:17 Buildings and construction
- § 15:18 Crops
- § 15:19 Meaning of terms of contract
- § 15:20 Value of services
- § 15:21 Due care and proper conduct
- § 15:22 Experimental evidence
- § 15:23 Handwriting
- § 15:24 Land values
- § 15:25 Personal property
- § 15:26 Livestock
- § 15:27 Medical malpractice

TABLE OF CONTENTS

- § 15:28 Mental condition or capacity
- § 15:29 Mineral or water development

IV. EXAMINATION

- § 15:30 Direct examination
- § 15:31 Cross-examination—Generally
- § 15:32 Credibility

CHAPTER 16. WITNESSES

I. GENERALLY

- § 16:1 Overview
- § 16:2 Witness exclusion
- § 16:3 —Violation
- § 16:4 Oath
- § 16:5 Determination of competency
- § 16:6 —Competency of child
- § 16:7 —Competency of judge as witness
- § 16:8 —Competency of juror as witness
- § 16:9 —Competency of lawyer as witness
- § 16:10 Interpreters—Foreign language
- § 16:11 —Deaf persons

II. DIRECT EXAMINATION

A. REQUIREMENTS AND STRATEGY

- § 16:12 Overview
- § 16:13 Demeanor of trial attorney
- § 16:14 Mode of taking testimony
- § 16:15 Examination of witness by judge or jury
- § 16:16 Personal knowledge
- § 16:17 Examination preparation
- § 16:18 Question structure
- § 16:19 —Connectives
- § 16:20 —Nonverbal responses
- § 16:21 Narrative format
- § 16:22 Leading questions
- § 16:23 —Examples
- § 16:24 Present recollection refreshed
- § 16:25 Past recollection recorded
- § 16:26 Answers
- § 16:27 Impeachment of own witness

B. ILLUSTRATIVE QUESTION PATTERNS

- § 16:28 Personal injury

- § 16:29 Probate—Proof of will
- § 16:30 Proof of automobile speed

III. CROSS-EXAMINATION

- § 16:31 Generally
- § 16:32 Right of cross-examination
- § 16:33 Purposes
- § 16:34 Scope
- § 16:35 Refusal of a witness to answer
- § 16:36 Techniques of cross-examination—Generally
- § 16:37 —Leading questions
- § 16:38 —Micro-questioning
- § 16:39 —Probabilities and possibilities
- § 16:40 —Conduct
- § 16:41 Impeachment—Generally
- § 16:42 —Character evidence
- § 16:43 —Criminal conviction
- § 16:44 —Religious beliefs or opinions
- § 16:45 —Bias
- § 16:46 — —Procedure
- § 16:47 — —Sample question pattern
- § 16:48 —Inconsistent statements and conduct
- § 16:49 — —Procedure
- § 16:50 — —Inadmissible statements

IV. REDIRECT AND RECROSS

- § 16:51 Redirect—Generally
- § 16:52 —Rehabilitation of impeached witness
- § 16:53 Recross

V. TRIAL OBJECTIONS

- § 16:54 List by authority
- § 16:55 List by objection

CHAPTER 17. JURY CHARGE

I. LEGAL ANALYSIS

- § 17:1 Overview
- § 17:2 Preliminary instructions
- § 17:3 Broad-form submissions
- § 17:4 —Controlling questions
- § 17:5 —Right to submission

TABLE OF CONTENTS

§ 17:6 —Burden of proof

II. COMPONENTS OF CHARGE

A. QUESTIONS

- § 17:7 Generally
- § 17:8 Conditional submissions
- § 17:9 —Texas pattern jury charge example
- § 17:10 Disjunctive submissions
- § 17:11 —Texas pattern jury charge example
- § 17:12 Inferential rebuttal questions
- § 17:13 Questions for termination of parent-child relationship
- § 17:14 Damages
- § 17:15 —Texas pattern jury charge example—Personal injury
- § 17:16 — —Wrongful death of child
- § 17:17 Illustrative examples—Questions of fact
- § 17:18 —Questions of law
- § 17:19 —Mixed questions of law and fact

B. DEFINITIONS AND INSTRUCTIONS

1. Definitions

- § 17:20 Overview
- § 17:21 Format and location
- § 17:22 Definition checklist—Terms requiring definition
- § 17:23 —Terms not requiring definition

2. Instructions

- § 17:24 Generally
- § 17:25 Illustrative examples—Proper instructions
- § 17:26 —Improper instructions
- § 17:27 Dead Man's Rule

C. SUBMISSION PROCEDURE

- § 17:28 Generally
- § 17:29 —Procedure
- § 17:30 Objections
- § 17:31 —Procedure
- § 17:32 —Checklist of valid objections
- § 17:33 —Checklist of invalid objections

III. PREPARING THE CHARGE

- § 17:34 Generally

- § 17:35 Pattern jury instructions
- § 17:36 Guidelines
- § 17:37 —Assumption of controverted facts
- § 17:38 —Burden of proof

IV. FORMS

- § 17:39 Form for burden of proof
- § 17:40 Form of question for loss of business opportunity
- § 17:41 Form of question for damages
- § 17:42 Request for submission of special charge
- § 17:43 Court's special issue submission charge
- § 17:44 Illustrative definitions and special issue questions
(premises liability)
- § 17:45 Comparative negligence question
- § 17:46 Damages question
- § 17:47 Objection and exceptions to jury charge

CHAPTER 18. ARGUMENT

I. BASIS

- § 18:1 In general
- § 18:2 Right to argument
- § 18:3 Right to open and close
- § 18:4 Procedure
- § 18:5 Court reporter's record

II. SCOPE

- § 18:6 Generally
- § 18:7 Witnesses—Failure to call
- § 18:8 Testimonial evidence
- § 18:9 —Limitations
- § 18:10 —Inferences
- § 18:11 —Excluded testimony
- § 18:12 —Conduct of witnesses or opposing counsel
- § 18:13 —Inconsistencies
- § 18:14 Physical evidence—Demonstrative evidence
- § 18:15 Damages
- § 18:16 Questions of law
- § 18:17 —Jury questions
- § 18:18 Other argument
- § 18:19 Improper argument outline

III. OBJECTIONS

- § 18:20 Basis

TABLE OF CONTENTS

- § 18:21 Procedure
- § 18:22 Reversal

IV. FORMS

- § 18:23 Admission of defendant to open and close argument
- § 18:24 Motion for defendant to open and close argument
- § 18:25 Objection to improper argument arguing facts not in evidence
- § 18:26 Objection to characterization of witness
- § 18:27 Oral motion for mistrial based upon improper argument

CHAPTER 19. JURY DELIBERATION

I. PROCEDURE

- § 19:1 Custody and separation of jury
- § 19:2 Communications with jury—By judge
- § 19:3 —By others
- § 19:4 Conduct of jurors
- § 19:5 Additional instructions

II. DELIBERATIONS

- § 19:6 Subject matter
- § 19:7 Evidence in jury room—Papers
- § 19:8 —Real or demonstrative evidence
- § 19:9 —Pleadings
- § 19:10 —Experiments
- § 19:11 Disagreement as to evidence

III. JURY MISCONDUCT

- § 19:12 Discovery of misconduct
- § 19:13 Discussion of matters outside record
- § 19:14 Quotient verdicts
- § 19:15 Misstatement or misuse of law
- § 19:16 Waiver of misconduct

IV. FORMS

- § 19:17 Motion for mistrial due to misconduct of juror
- § 19:18 Affidavit in support of motion for mistrial

CHAPTER 20. VERDICT AND JUDGMENT

I. JURY TRIAL

A. OVERVIEW

- § 20:1 General considerations
- § 20:2 General verdicts
- § 20:3 Special verdicts
- § 20:4 Unanimity

B. RETURN OF VERDICT

- § 20:5 Acceptance
- § 20:6 —Polling jury
- § 20:7 Defective verdict—Incomplete
- § 20:8 —Conflicting responses
- § 20:9 Judgment
- § 20:10 —Proposed judgment
- § 20:11 —Motions

C. CONSTRUCTION OF VERDICT

- § 20:12 Generally
- § 20:13 Reconcilable conflict
- § 20:14 Irreconcilable conflict—Generally
- § 20:15 Waiver
- § 20:16 Correction of verdict
- § 20:17 Construction and operation of verdict

D. DISCHARGE OF JURY

- § 20:18 After acceptance of verdict
- § 20:19 Without verdict

II. TRIAL BY COURT

- § 20:20 Findings
- § 20:21 —Amended findings
- § 20:22 —Omitted findings
- § 20:23 Filing

III. DEFAULT JUDGMENT

- § 20:24 Generally
- § 20:25 No-answer default judgment
- § 20:26 Post-answer default judgment

TABLE OF CONTENTS

- § 20:27 Prerequisites
- § 20:28 Amendment of petition
- § 20:29 Notice of default judgment
- § 20:30 Procedure for award of liquidated damages
- § 20:31 Procedure for award of unliquidated damages

IV. FORMS

A. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- § 20:32 Notice of filing of request for findings of fact and conclusions of law
- § 20:33 Request for findings of fact and conclusions of law
- § 20:34 Notice of past due findings of fact and conclusions of law
- § 20:35 Request for additional or amended findings of fact and conclusions of law
- § 20:36 Stipulation waiving findings of fact
- § 20:37 Order denying request for additional or amended findings of fact and conclusions of law

B. JUDGMENTS

- § 20:38 Checklist for drafting judgments
- § 20:39 Jury trial judgment
- § 20:40 Bench trial judgment
- § 20:41 Stay of execution of judgment
- § 20:42 Motion for directed verdict
- § 20:43 Directed verdict judgment
- § 20:44 Stipulation for entry of judgment
- § 20:45 Consent judgment
- § 20:46 Motion for mistrial
- § 20:47 Order granting mistrial

C. DEFAULT JUDGMENTS

- § 20:48 Certificate of last known address
- § 20:49 Motion for default judgment
- § 20:50 Order—For entry of default judgment following personal service—On unliquidated claim
- § 20:51 Judgment—By default—Alternative form
- § 20:52 Interlocutory default judgment—Some defendants answered
- § 20:53 —Trial of right to property
- § 20:54 Default judgment—Unliquidated claim—Writ of inquiry

§ 20:55 —Evidence on unliquidated claim heard by court

CHAPTER 21. POSTJUDGMENT MOTIONS

I. MOTION FOR NEW TRIAL

- § 21:1 Overview of post judgment motions, including new trial
- § 21:2 Generally
- § 21:3 Grounds—Generally
- § 21:4 —Default
- § 21:5 — —Bill of review
- § 21:6 —Jury misconduct
- § 21:7 —Size of verdict
- § 21:8 —Newly discovered evidence
- § 21:9 Procedure—Generally
- § 21:10 —Form of motion
- § 21:11 Hearing
- § 21:12 Order

II. MOTION FOR JUDGMENT ON THE VERDICT

- § 21:13 Generally

III. MOTION TO MODIFY, CORRECT, OR REFORM JUDGMENT, AND MOTIONS FOR JUDGMENT NUNC PRO TUNC

- § 21:14 Generally
- § 21:15 Motion—Generally
- § 21:16 —Form of motion
- § 21:17 Hearing and order

IV. MOTION TO VACATE

- § 21:18 Generally

V. MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT

- § 21:19 Generally
- § 21:20 Evidence
- § 21:21 Procedure
- § 21:22 Strategy
- § 21:23 Hearing and order

VI. MOTION TO DISREGARD JURY FINDING

- § 21:24 Generally

TABLE OF CONTENTS

- § 21:25 Procedure
- § 21:26 Tactics
- § 21:27 Notice and hearing

VII. MOTION FOR REMITTITUR

- § 21:28 Generally

VIII. MOTION TO REINSTATE

- § 21:29 Generally
- § 21:30 Procedure
- § 21:31 Proof required
- § 21:32 Hearing and order

IX. FORMS

- § 21:33 Motion for new trial
- § 21:34 Provision seeking new trial on issue of damages
- § 21:35 Amended motion for new trial
- § 21:36 Affidavit in support of motion for new trial based on newly discovered evidence
- § 21:37 Affidavit in support of motion for new trial based on juror misconduct
- § 21:38 Answer to motion for new trial
- § 21:39 Stipulation extending time for hearing motion for new trial
- § 21:40 Order granting new trial
- § 21:41 Order denying new trial contingent upon plaintiff accepting reduced verdict
- § 21:42 Order denying new trial
- § 21:43 Motion to modify judgment
- § 21:44 Order modifying judgment
- § 21:45 Motion for judgment notwithstanding verdict
- § 21:46 Motion to disregard jury's findings to special issues and alternatively for judgment notwithstanding verdict
- § 21:47 Order granting motion for judgment notwithstanding verdict
- § 21:48 Motion to disregard jury findings
- § 21:49 Order on motion to disregard jury findings
- § 21:50 Motion for reinstatement
- § 21:51 Affidavit in support of motion for reinstatement
- § 21:52 Order granting motion for reinstatement
- § 21:53 Proposed judgment
- § 21:54 Motion for judgment on the verdict

- § 21:55 Motion for judgment nunc pro tunc requested within
court's plenary power
- § 21:56 Order granting motion for judgment nunc pro tunc
- § 21:57 Motion to vacate judgment
- § 21:58 Affidavit in support of motion to vacate judgment
- § 21:59 Order granting motion to vacate judgment
- § 21:60 Motion for remittitur
- § 21:61 Order of remittitur

Table of Laws and Rules

Table of Cases

Index