# **TABLE OF CONTENTS**

# **INTRODUCTORY MATERIAL**

General Directions for Use Colorado Rules of Civil Procedure Relating to Jury Instructions Statutes and Rules of Civil Procedure Governing Qualifications of Jurors

# CHAPTER 1. GENERAL INSTRUCTIONS PRIOR TO OR DURING TRIAL AND UPON DISCHARGE OF JURY

# A. JURY ORIENTATION

- 1:1 Introductory Remarks to Jury Panel
- 1:2 Explanation to Jury Panel of Voir Dire
- 1:3 Remarks to Jury Panel on Voir Dire
- 1:4 Jurors' Conduct During Trial Pre-Deliberation Discussions, Prohibition on Communications with Others
- 1:5 Jurors' Conduct During Trial Prohibition on Outside Information and Electronic Communications
- 1:6 Pretrial Publicity
- 1:7 General Outline of Trial Procedures to Jury
- 1:8 Note-Taking by Jurors
- 1:9 Juror Notebooks
- 1:10 Admonition at Recess

# **B. INSTRUCTIONS DURING TRIAL**

- 1:11 Evidence Admissible for Particular Purpose Only
- 1:12 Stricken Evidence
- 1:13 Stipulation or Admission of a Fact
- 1:14 Stipulation Concerning Witness's Testimony
- 1:15 Directions Upon Authorized Jury View
- 1:16 Court's Questions to Witnesses
- 1:17 Questions by Jurors of Witnesses

# C. DISCHARGE OF JURY

1:18 Mandatory Instruction Upon Discharge

# D. OATHS

- 1:19 Oath on Voir Dire
- 1:20 Oath of Jurors
- 1:21 Oath or Affirmation of Witnesses
- 1:22 Oath of Interpreter
- 1:23 Oath of Bailiff on Retirement of Jury

# **CHAPTER 2. STATEMENT OF THE CASE TO BE DETERMINED**

- 2:1 Liability in Issue No Counterclaim
- 2:2 Liability in Issue Counterclaim
- 2:3 Liability in Issue Third-Party Complaint
- 2:4 Admitted Liability
- 2:5 Directed Verdict as to Liability Damages Only in Issue General
- 2:6 Directed Verdict as to Liability Damages Only in Issue Negligence

# **CHAPTER 3. EVIDENCE**

# A. BURDENS OF PROOF

- 3:1 Burden of Proof and Preponderance of Evidence Defined
- 3:2 Clear and Convincing Evidence Defined
- 3:3 Reasonable Doubt Defined
- 3:4 No Speculation

# **B. PRESUMPTIONS AND PARTICULAR INFERENCES**

- 3:5 Permissible Inference Arising from Rebuttable Presumption
- 3:5A Inference Arising from Invocation of Fifth Amendment Privilege
- 3:6 Statutory Presumptions That Shift the Burden of Proof
- 3:7 Constructive Knowledge Based on Duty to Inquire

# C. WEIGHING OF EVIDENCE

- 3:8 Evidence in the Case Stipulations Judicial Notice —Inferences Permitted and Defined
- 3:9 Direct and Indirect (Circumstantial) Evidence Defined
- 3:10 Depositions as Evidence

- 3:11 Testimony Read from Transcript
- 3:12 Preponderance Not Determined by Number of Witnesses
- 3:13 Adverse Inference from the Loss or Destruction of Evidence
- 3:14 Sympathy Prejudice
- 3:15 Expert Witnesses
- 3:16 Determining Credibility of Witnesses
- 3:17 Highlighted Exhibits

# **CHAPTER 4. JURY DELIBERATIONS; VERDICT FORMS**

# A. DELIBERATIONS

- 4:1 Summary Closing Instruction
- 4:1A Applying Law to the Evidence
- 4:2 Duties Upon Retiring Selection of Foreperson
- 4:2A Questions During Deliberations
- 4:3 Instruction When Jury Appears Deadlocked or Deliberations Are Unusually Prolonged

# **B. VERDICTS**

- 4:4 Verdict Form for Plaintiff Single Plaintiff and Single Defendant Actual or Nominal Damages Only
- 4:5 Verdict Form for Plaintiff Single Plaintiff and Single Defendant Actual and Punitive Damages
- 4:6 Verdict Form for Defendant Single Plaintiff and Single Defendant
- 4:7 Verdict Forms for Single Plaintiff and Multiple Defendants, Multiple Plaintiffs and Single Defendant, and Multiple Plaintiffs and Multiple Defendants
- 4:8 Verdict Form for Plaintiff on Counterclaim
- 4:9 Verdict Form for Defendant on Counterclaim
- 4:10 Verdict Form for Third-Party Plaintiff
- 4:11 Verdict Form for Third-Party Defendant
- 4:12 Verdict Form for Cross-Claimant
- 4:13 Verdict Form Against Cross-Claimant
- 4:14 Rendering a Sealed Verdict
- 4:15 Special Verdict (or Special Interrogatories) Sample of Mechanics for Submitting
- 4:16 Special Verdict (or Special Interrogatories) Form Sample
- 4:17 Reserved for Future Use
- 4:18 Reserved for Future Use

- 4:19 Reserved for Future Use
- 4:20 Model Unified Verdict Form

## **CHAPTER 5. GENERAL INSTRUCTIONS RELATING TO DAMAGES**

- 5:1 Damages Not to Be Inferred
- 5:2 Affirmative Defense Failure to Mitigate
- 5:3 Affirmative Defense Nonuse of Safety Belt
- 5:4 Exemplary or Punitive Damages
- 5:5 Determining Life Expectancy Mortality Table
- 5:6 Uncertainty as to Amount of Damages
- 5:7 Damages for Wrong of Another

# **CHAPTER 6. DAMAGES FOR INJURIES TO PERSONS OR PROPERTY**

Introductory Note

## A. PERSONAL INJURIES

- 6:1 Personal Injuries Adults
- 6:1A Special Interrogatories to the Jury to Determine the Amount of Damages Awarded for Economic and Noneconomic Losses or Injuries and for Physical Impairment or Disfigurement — Mechanics for Submitting
- 6:1B Answers to Special Interrogatories to the Jury Set Forth in Instruction 6:1A
- 6:2 Personal Injuries Minor Child
- 6:3 Personal Injuries Minor Child Measure of Parents' Damages
- 6:4 Personal Injuries Minor Child Loss of Earnings Distinction Between Parents' and Child's Claims
- 6:5 Loss of Consortium Elements of Liability
- 6:6 Loss of Consortium Defined Damages
- 6:7 Personal Injuries Non-Reduction of Damages "Thin Skull" Doctrine
- 6:8 Aggravation of Preexisting Condition
- 6:9 Damages Caused by Unrelated Second Event
- 6:10 Effect Of Income Tax and Other Economic Factors on Award of Damages

# B. DAMAGES FOR LOSS OR DESTRUCTION OF PERSONAL PROPERTY

- 6:11 Personal Property Difference in Market Value
- 6:12 Personal Property Cost of Repairs

6:13 Personal Property — Loss of Use

# C. MULTIPLE RECOVERY

6:14 Multiple Recovery Prohibited (When Plaintiff Suing on Alternative But Duplicative Claims for Relief)

# **CHAPTER 7. LEGAL RELATIONSHIPS**

# A. MINORS

- 7:1 Minor Child Defined Right to Sue or Defend
- 7:2 Emancipation Defined

# **B. PARTNERSHIPS AND JOINT VENTURES**

- 7:3 General Partnership Defined
- 7:4 Joint Venture Defined
- 7:5 Joint Venture in Operation of Vehicle or Other Instrumentality Defined
- 7:6 Joint Venture Imputing Negligence Among Joint Venturers

# C. ENTITIES

7:7 Entity Acts Through Individuals

# CHAPTER 8. LIABILITY BASED ON AGENCY AND RESPONDEAT SUPERIOR

# A. DEFINITIONS

- 8:1 Agency Relationship Defined
- 8:2 Disclosed or Unidentified Principal Defined
- 8:3 Undisclosed Principal Defined
- 8:4 Employer and Employee Defined
- 8:5 Independent Contractor Definition
- 8:6 Loaned Employee
- 8:7 Loaned Employee Determination
- 8:8 Scope of Employment of Employee Defined
- 8:9 Scope of Authority of Agent Defined
- 8:9A Actual Authority

- 8:9B Express Authority
- 8:10 Incidental Authority Defined
- 8:11 Implied Authority Defined
- 8:12 Apparent Authority (Agency by Estoppel) Definition and Effect
- 8:13 Scope of Authority or Employment Departure
- 8:14 Ratification Definition and Effect
- 8:15 Knowledge of Agent Imputable to Principal
- 8:16 Termination of Agent's Authority
- 8:17 Termination of Agent's Authority Notice to Third Parties

# B. LIABILITY ARISING FROM AGENCY

Introductory Note

- 8:18 Principal and Agent Both Parties Sued Issue as to Relationship and/or Scope of Authority
- 8:19 Principal and Agent Both Parties Sued No Issue as to Relationship and Scope of Authority
- 8:20 Principal and Agent Only Principal Sued Issue as to Relationship and/or Scope of Authority
- 8:21 Principal and Agent Only Principal Sued —No Issue as to Relationship and Scope of Authority

# C. LIABILITY ARISING FROM RESPONDEAT SUPERIOR

- 8:22 Employer and Employee Both Parties Sued Issue as to Relationship and/or Scope of Employment
- 8:23 Employer and Employee Both Parties Sued No Issue as to Relationship and Scope of Employment
- 8:24 Employer and Employee Only Employer Sued Issue as to Relationship and/or Scope of Employment
- 8:25 Employer and Employee Only Employer Sued No Issue as to Relationship and Scope of Employment

# CHAPTER 9. NEGLIGENCE — GENERAL CONCEPTS

Introductory Note

# A. NEGLIGENCE AND DUTY OF CARE

9:1 Elements of Liability — No Negligence of the Plaintiff

- 9:2 Negligent Infliction of Emotional Distress Elements of Liability
- 9:3 Negligent Misrepresentation Causing Physical Harm Elements of Liability
- 9:4 Negligent Misrepresentation Causing Financial Loss in a Business Transaction Elements of Liability
- 9:5 Negligent Misrepresentation Causing Financial Loss in a Business Transaction Unreasonable Reliance — Defined
- 9:6 Negligence Defined (Including Assumption of the Risk and Comparative Negligence Cases)
- 9:7 Negligence Defined Inherently Dangerous Activities
- 9:7A Ultrahazardous Activities Resulting in Strict Liability
- 9:8 Reasonable Care Defined
- 9:9 Children Standard of Care Negligence (Including Comparative Negligence Cases)
- 9:10 Volunteer Duty of Care
- 9:11 Sudden Emergency
- 9:12 Happening of Accident Not Presumptive Negligence
- 9:13 Looking But Failing to See as Negligence
- 9:14 Negligence Per Se Violation of Statute or Ordinance
- 9:15 Conduct in Compliance with Statute or Ordinance and Justifiable Violation of Statute
- 9:16 Unknowing Violation of Statute or Ordinance
- 9:17 Res Ipsa Loquitur Permissible Inference Arising from Rebuttable Presumption of Negligence

#### **B. CAUSATION**

#### Special Note

- 9:18 Cause When Only One Cause Is Alleged Defined
- 9:19 Concurrent Causes (Excluding Designated Nonparty Fault Cases)
- 9:20 Cause Concurrent Causes Intervening Causes
- 9:21 Cause Foreseeability Limitation

#### C. COMPARATIVE NEGLIGENCE AND COMPARATIVE FAULT

#### Special Note

- 9:22 Elements of Liability Comparative Negligence
- 9:23 Affirmative Defense Comparative Negligence of the Plaintiff
- 9:24 Affirmative Defense Negligence or Fault of Designated Nonparty
- 9:25 Negligence of Parents Not Imputable to Children

- 9:26 Comparative Negligence of Plaintiff Single Defendant No Designated Nonparty Involved
- 9:26A Special Verdict Questions Mechanics for Submitting Comparative Negligence of the Plaintiff Single Defendant No Designated Nonparty
- 9:26B Special Verdict Forms Comparative Negligence of the Plaintiff No Counterclaim — Single Defendant — No Designated Nonparty — Forms A and B
- 9:26C Special Verdict Questions Mechanics for Submitting Comparative Negligence of the Plaintiff — No Counterclaim — Single Defendant — No Designated Nonparty (Alternative to Instruction 9:26A)
- 9:26D Special Verdict Forms Comparative Negligence of the Plaintiff No Counterclaim — Single Defendant — No Designated Nonparty — Forms A and B (Alternative to Instruction 9:26B)
- 9:27 Comparative Negligence of the Plaintiff Multiple Defendants No Designated Nonparty Involved
- 9:27A Special Verdict Questions Mechanics for Submitting Comparative Negligence of the Plaintiff Multiple Defendants No Designated Nonparty
- 9:27B Special Verdict Forms Comparative Negligence of the Plaintiff Multiple Defendants No Designated Nonparty Forms A and B
- 9:27C Special Verdict Questions Mechanics for Submitting Comparative Negligence of the Plaintiff Multiple Defendants No Designated Nonparty (Alternative to Instruction 9:27A)
- 9:27D Special Verdict Forms Comparative Negligence of the Plaintiff Multiple Defendants — No Designated Nonparty — Forms A and B (Alternative to Instruction 9:27B)
- 9:28 Comparative Negligence of Plaintiff Single Defendant or Multiple Defendants Designated Nonparty or Nonparties Involved
- 9:28A Special Verdict Questions Mechanics for Submitting Comparative Negligence of the Plaintiff — Single Defendant or Multiple Defendants — Designated Nonparty or Nonparties Involved
- 9:28B Special Verdict Forms Comparative Negligence of the Plaintiff Single Defendant or Multiple Defendants — Designated Nonparty or Nonparties Involved — Forms A and B
- 9:28C Special Verdict Questions Mechanics for Submitting Comparative Negligence of the Plaintiff — Single Defendant or Multiple Defendants — Designated Nonparty or Nonparties Involved (Alternative to Instruction 9:28A)
- 9:28D Special Verdict Forms Comparative Negligence of the Plaintiff Single Defendant or Multiple Defendants — Designated Nonparty or Nonparties Involved — Forms A and B (Alternative to Instruction 9:28B)
- 9:29 Elements Multiple Defendants or One or More Defendants and One or More Designated Nonparties No Negligence or Fault of Plaintiff

- 9:29A Special Verdict Questions Mechanics for Submitting Multiple Defendants or One or More Defendants and One or More Designated Nonparties — No Negligence or Fault of Plaintiff
- 9:29B Special Verdict Forms Multiple Defendants or One or More Defendants and One or More Designated Nonparties — No Negligence or Fault of Plaintiff — Forms A and B
- D. WILLFUL AND WANTON NEGLIGENCE
- 9:30 Willful and Wanton Conduct or Willful and Reckless Disregard Defined

#### E. SUBJECTS ON WHICH NO SEPARATE INSTRUCTIONS HAVE BEEN PREPARED

9:31 Contributory Negligence, Contributory Negligence of (Spouse) (Parent) (Child), and Assumption of Risk

#### F. SUBJECTS ON WHICH NO SEPARATE INSTRUCTIONS SHOULD BE GIVEN

9:32 Rescue Doctrine, Unavoidable Accident, and Last Clear Chance

## **CHAPTER 10. WRONGFUL DEATH**

- 10:1 Contributory Negligence of a Decedent
- 10:2 Contributory Negligence of a Plaintiff
- 10:3 Damages for Wrongful Death
- 10:4 Wrongful Death of Child Determining Pecuniary Loss

# **CHAPTER 11. MOTOR VEHICLES AND HIGHWAY TRAFFIC**

#### A. DUTY OF CARE

- 11:1 Duty to Maintain Lookout
- 11:2 Duty of Care of Driver Having Right of Way
- 11:3 Duty of Care of Pedestrian or Bicycle Operator Having Right of Way
- 11:4 Pedestrian in Crosswalk
- 11:5 Duty of Care of Minor Operating Motor Vehicle
- 11:6 Duty of Care of Physically or Mentally Handicapped Driver
- 11:7 Duty of Care of Unlicensed Driver
- 11:8 Duty of Care as to Speed of Vehicle
- 11:9 Right to Assume Others Will Obey the Law

- 11:10 Driving on Wrong Side of Road as Negligence
- 11:11 Right to Assume That Driver on Wrong Side of Road Will Return
- 11:12 Rear-End Collision Presumption of Negligence
- 11:13 Brake or Other Equipment Failure
- 11:14 Driving Under the Influence Defined

# B. RESERVED FOR FUTURE USE

# C. VICARIOUS LIABILITY — MOTOR VEHICLES

- 11:15 Family Car Doctrine
- 11:16 Head of Household Defined
- 11:17 Household or Family Defined
- 11:18 Imputation of Driver's Negligence to Owner or Co-Owner Presumption of Control

# **CHAPTER 12. PREMISES LIABILITY**

Introductory Note

# A. PERSONS INJURED ON THE PREMISES

- 12:1 Liability of Owner or Occupant to a Trespasser Injured on Premises Elements of Liability
- 12:2 Liability of Owner or Occupant to a Licensee Injured on Premises Elements of Liability
- 12:3 Liability of Owner or Occupant to an Invitee Injured on Premises Elements of Liability
- 12:4 Liability of Owner or Occupant to Children Injured on Premises Attractive Nuisance Doctrine Elements of Liability
- 12:5 Attractive Nuisance Doctrine Child Between 14 and 18 Presumption of Competency

# **B. PERSONS INJURED OFF THE PREMISES**

- 12:6 Liability of Owner or Occupant to Persons Injured Off the Premises Elements of Liability
- 12:7 Duty of Owner or Occupant to Persons Injured Off the Premises

## C. LESSOR'S DUTY OF CARE

- 12:8 No Implied Warranty of Fitness
- 12:9 Lessor's Liability for Injury from Latent Defect
- 12:10 Lessor's Liability for Injury When Premises Leased for Public or Semi-Public Use and Were Defective at Time of Lease
- 12:11 Lessor's Liability as Affected By Lessor's Promise to Repair Premises
- 12:12 Liability of Lessor Who Commences Repair of Premises
- D. AMUSEMENT PARK DEVICES SKI LIFTS OPERATOR'S DUTY OF CARE
- 12:13 Amusement Devices and Ski Lifts Duty of Care Where User Lacks Freedom of Movement

## E. LATERAL AND SUBJACENT SUPPORT

12:14 Landowner's Right to Lateral and Subjacent Support

## F. PUBLIC PLACES

- 12:15 Colorado Governmental Immunity Act
- 12:16 Duty of Care By User of Public Way
- 12:17 Negligent Choice of Route

## G. VIOLATION OF STATUTE OR ORDINANCE

12:18 Violation of Statute or Ordinance — Evidence of Failure to Exercise Reasonable Care

# **CHAPTER 13. ANIMALS**

- 13:1 Domestic Animals Dangerous or Vicious Tendencies Elements of Liability
- 13:2 Wild Animals Elements of Liability
- 13:3 Serious Bodily Injury or Death Resulting from Being Bitten by a Dog Elements of Liability
- 13:4 Serious Bodily Injury Defined
- 13:5 Damages

#### **CHAPTER 14. PRODUCT LIABILITY**

Introductory Note

## A. STRICT PRODUCT LIABILITY

- 14:1 Elements of Liability
- 14:2 Manufacturer Defined
- 14:3 Defective, Unreasonably Dangerous Defined
- 14:4 Warnings and Instructions
- 14:5 Presumptions Noncompliance with Governmental Standards
- 14:5A Presumptions Compliance with Governmental Standards
- 14:5B Presumptions Ten-Year Use of Product
- 14:6 State-of-the-Art
- 14:7 Damage Alone Not Proof Product Was Defective or Unreasonably Dangerous

#### B. PRODUCT LIABILITY FOR BREACH OF WARRANTY

- 14:8 Breach of Express Warranty Under U.C.C. Elements of Liability
- 14:9 Express Warranty Defined
- 14:10 Breach of Implied Warranty of Merchantability Elements of Liability
- 14:11 Implied Warranty of Merchantability Defined
- 14:12 Implied Warranty of Wholesomeness of Food Defined
- 14:13 Breach of Implied Warranty of Fitness for a Particular Purpose Elements of Liability
- 14:14 Implied Warranty of Fitness for a Particular Purpose Defined
- 14:15 Notice of Breach of Warranty What Constitutes
- 14:16 Implied Warranties Creation and Exclusion or Modification

#### C. PRODUCT LIABILITY FOR NEGLIGENCE

- 14:17 Manufacturer's Liability Based on Negligence Elements of Liability
- 14:18 Manufacturer's Duty as to Parts Obtained from Other Sources
- 14:19 Manufacturer's/Seller's Duty to Warn
- 14:20 Liability for Injury from Food or Beverage in Sealed Container Elements of Liability
- 14:21 Prima Facie Negligence Liability for Injury from Food or Beverage in Sealed Container (Res Ipsa Loquitur)

## D. STRICT PRODUCT LIABILITY FOR MISREPRESENTATION

- 14:22 Elements of Liability
- 14:23 Misrepresentation of Material Fact Defined
- 14:24 Reasonable Reliance Defined

# E. AFFIRMATIVE DEFENSES AND DEFENSE CONSIDERATIONS

14:25	Affirmative Defense — Unreasonable, Knowing Use of Defective Product or Product Not in Compliance with Warranty	
14:26	Affirmative Defense — Risk of an Unavoidably Unsafe Product	
14:27	Affirmative Defense — Misuse of Product	
14:28	Affirmative Defense — Comparative Fault Based on Unreasonable, Knowing Use of Product Involving Negligently Created Risk, Product Not in Compliance with Warranty r Defective or Misrepresented Product	y,
14:29	Affirmative Defense — Comparative Fault Based on Negligence	
14:30	Comparative Fault — Elements and Effect — No Counterclaim — Single Defendant	
14:30A	Special Verdict — Mechanics for Submitting — No Counterclaim — Single Defendant	
14:30B	Special Verdict Forms — No Counterclaim — Single Defendant — Forms A, B, an C	ıd
14:31	Comparative Fault — Elements and Effect — No Counterclaim — Multiple Defendants	
14:31A	Special Verdict — Mechanics for Submitting — No Counterclaim — Multiple Defendants	
14:31B	Special Verdict Forms — No Counterclaim — Multiple Defendants — Forms A, B and C	,
14:32	Comparative Fault — Elements and Effect — No Counterclaim — Single Defendar — Designated Nonparty or Nonparties Involved	nt
14:32A	Special Verdict — Mechanics for Submitting — No Counterclaim — Single Defendant — Designated Nonparty or Nonparties Involved	
14:32B	Special Verdict Forms — No Counterclaim — Single Defendant — Designated Nonparty or Nonparties Involved — Forms A, B, and C	
14:33	Comparative Fault — Elements and Effect — Multiple Defendants — Designated Nonparty or Nonparties Involved	
14:33A	Special Verdict — Mechanics for Submitting — No Counterclaim — Multiple Defendants — Designated Nonparty or Nonparties Involved	
14:33B	Special Verdict Forms — No Counterclaim — Multiple Defendants — Designated Nonparty or Nonparties Involved — Forms A, B, and C	

## **CHAPTER 15. PROFESSIONAL LIABILITY**

# I. PHYSICIANS AND PRACTITIONERS OF OTHER HEALING ARTS

#### A. MALPRACTICE

- 15:1 Elements of Liability
- 15:2 Negligence Nonspecialist Defined
- 15:3 Negligence Specialist or One Who Has or Claims to Have Special Skill Defined
- 15:4 No Implied Warranty of Successful Outcome
- 15:5 Referral of Patient to Another Physician
- 15:6 Contributory Negligence of Patient Defined

# B. BATTERY

- 15:7 Operation or Treatment Without Consent of Patient
- 15:8 Affirmative Defense Consent, Express or Implied
- 15:9 Affirmative Defense Implied Consent Based on Emergency

#### C. UNINFORMED CONSENT

- 15:10 Uninformed Consent Elements of Liability
- 15:11 Information Required
- 15:12 Substantial Risk Defined
- 15:13 Proof of Negligent Failure to Obtain Informed Consent

# D. DAMAGES INSTRUCTIONS AND SPECIAL VERDICTS IN ACTIONS AGAINST HEALTH CARE PROFESSIONALS OR HEALTH CARE INSTITUTIONS

- 15:14 Special Verdict Mechanics For Submitting Tort Actions Against Health Care Professionals or Health Care Institutions
- 15:15 Special Verdict Forms Tort Actions Against Health Care Professionals or Health Care Institutions — Forms A and B
- 15:16 Determining Present Value of Future Damages
- 15:17 Determining Lifelong Future Damages Shortened Life Expectancy

#### II. ATTORNEYS — MALPRACTICE

- 15:18 Elements of Liability of Attorneys Not Involving an Underlying Claim or Case
- 15:19 Elements of Liability of Attorneys Involving an Underlying Matter (Case-Within-a-Case)

- 15:20 Elements of Liability of Attorneys Involving an Underlying Matter (Case-Within-a-Case) — Determining Whether Plaintiff Should Have Prevailed in the Underlying Matter
- 15:21 Negligence Attorneys Defined
- 15:22 No Implied Warranty of Successful Outcome
- 15:23 Referral of Client to Another Attorney
- 15:24 Contributory Negligence of Client Defined

# III. OTHER PROFESSIONAL MALPRACTICE (ACCOUNTANTS, ARCHITECTS, ETC.)

- 15:25 Elements of Liability Accountants, Architects, Etc.
- 15:26 Negligence Other Professionals Defined
- 15:27 Causation Real Estate Brokers Transactional Malpractice Defined
- 15:28 No Implied Warranty of Successful Outcome Other Professionals
- 15:29 Referral of Client to Another Professional Person
- 15:30 Contributory Negligence of Client Defined

## **CHAPTER 16. BAILORS AND BAILEES**

- 16:1 Bailment Bailor Bailee Defined
- 16:2 Bailor Not Liable to Third Persons for Negligence of Bailee
- 16:3 Gratuitous Bailment Duty of Bailor to Warn Bailee Definition of Negligence
- 16:4 Non-Gratuitous Bailment Duty of Non-Commercial Bailor to Bailee Definition of Negligence
- 16:5 Duty of Bailee to Bailor
- 16:6 Failure of Bailee to Return Property or Return It in Undamaged Condition Presumption of Negligence

# **CHAPTER 17. MALICIOUS PROSECUTION AND ABUSE OF PROCESS**

#### A. MALICIOUS PROSECUTION

- 17:1 Elements of Liability
- 17:2 Probable Cause Defined
- 17:3 Probable Cause Not Dependent on Result of Criminal Case
- 17:4 Presence of Malice
- 17:5 Proof of Malice
- 17:6 Lack of Probable Cause Not to Be Inferred from Malice Alone

- 17:7 Affirmative Defense Advice of Attorney
- 17:8 Affirmative Defense Advice of Prosecuting Attorney
- 17:9 Actual Damages

#### **B. ABUSE OF PROCESS**

- 17:10 Elements of Liability
- 17:11 Actual Damages
- 17:12 Ulterior Purpose Defined

#### **CHAPTER 18. TRESPASS TO LAND**

- 18:1 Trespass Elements of Liability
- 18:2 Intentionally Defined
- 18:3 Consent
- 18:4 Actual or Nominal Damages

## **CHAPTER 19. DECEIT BASED ON FRAUD**

- 19:1 False Representation Elements of Liability
- 19:2 Nondisclosure or Concealment Elements of Liability
- 19:3 False Representation Defined
- 19:4 Material Fact Defined
- 19:5 Nondisclosure Duty to Disclose
- 19:6 Concealment Defined
- 19:7 False Representation Reliance Defined
- 19:8 Justifiable Reliance on False Representation Defined
- 19:9 Justifiable Reliance Nondisclosure or Concealment Defined
- 19:10 Justifiable Reliance No General Duty to Investigate
- 19:11 Reliance After Investigation
- 19:12 Statements of Future Intention or Promises as False Representations
- 19:13 Statements About the Future as False Representations
- 19:14 Statements of Law as False Representations
- 19:15 Statements of Opinion as False Representations
- 19:16 Affirmative Defense Waiver by Plaintiff Before Plaintiff's Complete Performance
- 19:17 Actual Damages

# **CHAPTER 20. ASSAULT AND BATTERY**

## A. ASSAULT

- 20:1 Elements of Liability
- 20:2 Apprehension Defined
- 20:3 Intent to Place Another in Apprehension Defined
- 20:4 Actual or Nominal Damages

## **B. BATTERY**

- 20:5 Elements of Liability
- 20:6 Contact Defined
- 20:7 Intent Defined
- 20:8 Transferred Intent
- 20:9 Actual or Nominal Damages

## C. AFFIRMATIVE DEFENSES

- 20:10 Words Alone Do Not Justify
- 20:11 Consent
- 20:12 Self-Defense of Person
- 20:13 Self-Defense Force Calculated to Inflict Death or Serious Bodily Injury
- 20:14 Defense of Another Person
- 20:15 Battery Defenses Defense of Real Property
- 20:16 Battery Defenses Defense of Personal Property
- 20:17 Battery Defenses Recapture of Personal Property

#### **CHAPTER 21. FALSE IMPRISONMENT OR ARREST**

## A. LIABILITY

- 21:1 Elements of Liability
- 21:2 Restriction of Freedom of Movement Defined
- 21:3 Intent Defined
- 21:4 Intent to Restrict by Failure to Release
- 21:5 Actual or Nominal Damages

## **B. AFFIRMATIVE DEFENSES**

- 21:6 Consent
- 21:7 Statutory Privilege to Detain for Investigation
- 21:8 Common-Law Privilege to Detain for Investigation
- 21:9 Privilege to Defend Person or Property
- 21:10 Privilege of Any Person to Arrest Without a Warrant
- 21:11 Privilege of Peace Officer to Arrest Without a Warrant
- 21:12 Arrest Defined
- 21:13 Reasonable Grounds for Believing and Probable Cause to Believe Defined
- 21:14 Fresh Pursuit Defined
- 21:15 Privilege to Arrest with a Warrant
- 21:16 Indication of Intent to Arrest When Excused
- 21:17 Valid Warrant or Warrant Fair on Its Face Defined
- 21:18 Guilt of Person Arrested
- 21:19 Abuse of a Privilege to Arrest

## **CHAPTER 22. DEFAMATION (LIBEL AND SLANDER)**

Introductory Note

- 22:1 Libel or Slander Per Se Where the Plaintiff Is a Public Official or Public Person or, If a Private Person, the Statement Pertained to a Matter of Public Interest or General Concern Elements of Liability
- 22:2 Libel or Slander Per Quod Where the Plaintiff Is a Public Official or Public Person or, If a Private Person, the Statement Pertained to a Matter of Public Interest or General Concern — Elements of Liability
- 22:3 Reckless Disregard Defined Where the Plaintiff Is a Public Official or Public Person or, If a Private Person, the Statement Pertained to a Matter of Public Interest or General Concern
- 22:4 Libel or Slander Per Se In a Private Matter Where Plaintiff Is a Private Person Elements of Liability
- 22:5 Libel or Slander Per Quod In a Private Matter Where Plaintiff Is a Private Person Elements of Liability
- 22:6 Incremental Harm
- 22:7 Published Defined
- 22:8 Defamatory Defined
- 22:9 About the Plaintiff Defined
- 22:10 Determination of Meaning of Statement How Understood by Others
- 22:11 Determination of Meaning of Statement Publication to Be Considered as a Whole

- 22:12 Determination of Meaning of Statement Publication to Be Considered In Light of Surrounding Circumstances
- 22:13 False Defined
- 22:14 Special Damages Defined
- 22:15 Actual Damage Defined
- 22:16 Affirmative Defense Substantial Truth
- 22:17 Affirmative Defense Absolute Privilege
- 22:18 Affirmative Defense Qualified Privilege When Lost
- 22:19 Affirmative Defense Privilege to Report Official or Public Meeting Proceedings
- 22:20 Affirmative Defense Privilege to Provider of Means of Communication
- 22:21 Affirmative Defense Fair Comment
- 22:22 Affirmative Defense Consent
- 22:23 Affirmative Defense Statute of Limitations
- 22:24 Repetition by Third Persons as an Element of Damages
- 22:25 Damages Recovery of
- 22:26 Circumstances That Mitigate Damages
- 22:27 Exemplary or Punitive Damages

# CHAPTER 23. EXTREME AND OUTRAGEOUS CONDUCT — EMOTIONAL DISTRESS

- 23:1 Elements of Liability
- 23:2 Extreme and Outrageous Conduct Defined
- 23:3 Recklessly or with Intent Defined
- 23:4 Severe Emotional Distress Defined
- 23:5 Exercising Legal Rights in Permissible Manner
- 23:6 Actual Damages

# CHAPTER 24. INTENTIONAL INTERFERENCE WITH CONTRACTUAL OBLIGATIONS

- 24:1 Elements of Liability
- 24:2 Intentional Conduct Defined
- 24:3 Improper Defined
- 24:4 Interference Defined
- 24:5 Contracts Terminable at Will or Voidable
- 24:6 Affirmative Defense Privilege When Existent When Lost

## **CHAPTER 25. BAD FAITH BREACH OF INSURANCE CONTRACT**

- 25:1 Elements of Liability Third-Party Claims
- 25:2 Elements of Liability First-Party Common-Law Claims
- 25:3 Unreasonable Conduct/Unreasonable Position Common-Law Claims Defined
- 25:4 Elements of Liability First-Party Statutory Claims
- 25:5 Unreasonable Delay or Denial
- 25:6 Unreasonable Conduct/Unreasonable Position Statutory Violations Defined
- 25:7 Reckless Disregard Defined
- 25:8 Duty of Good Faith and Fair Dealing
- 25:9 Actual Damages Common-Law Claims
- 25:10 Benefit Amount First-Party Statutory Claims
- 25:11 Punitive Damages

#### **CHAPTER 26. BREACH OF FIDUCIARY DUTY**

- 26:1 Elements of Liability
- 26:2 Fiduciary Relationship Defined
- 26:3 Fiduciary Relationship Arising Out of a Confidential Relationship
- 26:4 Confidential Relationship Defined
- 26:5 Actual Damages

#### **CHAPTER 27. CIVIL CONSPIRACY**

- 27:1 Elements of Liability
- 27:2 Unlawful Means Defined
- 27:3 Unlawful Goal Defined

## **CHAPTER 28. INVASION OF PRIVACY**

- 28:1 Invasion of Privacy by Intrusion Elements of Liability
- 28:2 Intrusion Very Offensive to a Reasonable Person Defined
- 28:3 Intentional Intrusion Defined
- 28:4 Invasion of Privacy by Appropriation Elements of Liability
- 28:5 Invasion of Privacy by Public Disclosure of Private Facts Elements of Liability

- 28:6 Public Statement or Disclosure Defined
- 28:7 About the Plaintiff Defined
- 28:8 Private Facts Defined
- 28:9 Public Disclosure of Private Facts Very Offensive to a Reasonable Person Defined
- 28:10 Invasion of Privacy by Publicity Placing Plaintiff in a False Light
- 28:11 Invasion of Privacy Affirmative Defense Privilege
- 28:12 Invasion of Privacy Affirmative Defense Statute of Limitations
- 28:13 Invasion of Privacy Affirmative Defense Consent
- 28:14 Invasion of Privacy Damages
- 28:15 Invasion of Privacy Exemplary or Punitive Damages

# **CHAPTER 29. THE COLORADO CONSUMER PROTECTION ACT**

#### Introductory Note

- 29:1 Elements of Liability
- 29:2 Deceptive Trade Practices Defined
- 29:3 False Representation/Misrepresentation Defined
- 29:4 Significant Impact on the Public Defined
- 29:5 Actual Damages
- 29:6 Treble Damages

# **CHAPTER 30. CONTRACTS**

Introductory Note

# A. CONTRACT FORMATION

- 30:1 Contract Formation In Dispute
- 30:2 Contract Formation Need Not Be in Writing
- 30:3 Contract Formation Offer
- 30:4 Contract Formation Revocation of Offer
- 30:5 Contract Formation Counteroffer
- 30:6 Contract Formation Acceptance
- 30:7 Contract Formation Consideration
- 30:8 Contract Formation Modification
- 30:9 Contract Formation Third-Party Beneficiary

## **B. CONTRACT PERFORMANCE**

- 30:10 Contract Performance Breach of Contract Elements of Liability
- 30:11 Contract Performance Breach of Contract Defined
- 30:12 Contract Performance Substantial Performance
- 30:13 Contract Performance Anticipatory Breach
- 30:14 Contract Performance Time of Performance
- 30:15 Contract Performance Conditions Precedent
- 30:16 Contract Performance Implied Duty of Good Faith and Fair Dealing Non-Insurance Contract
- 30:17 Contract Performance Assignment

#### C. DEFENSES

#### Introductory Note

- 30:18 Defense Fraud in the Inducement
- 30:19 Defense Undue Influence
- 30:20 Defense Duress
- 30:21 Defense Minority
- 30:22 Defense Mental Incapacity
- 30:23 Defense Impossibility of Performance
- 30:24 Defense Inducing a Breach by Words or Conduct
- 30:25 Defense Waiver
- 30:26 Defense Statute of Limitations
- 30:27 Defense Cancellation by Agreement
- 30:28 Defense Accord and Satisfaction (Later Contract)
- 30:29 Defense Novation

#### D. CONTRACT INTERPRETATION

#### Introductory Note

- 30:30 Contract Interpretation Disputed Term
- 30:31 Contract Interpretation Parties' Intent
- 30:32 Contract Interpretation Contract as a Whole
- 30:33 Contract Interpretation Ordinary Meaning
- 30:34 Contract Interpretation Use of Technical Words in a Contract
- 30:35 Contract Interpretation Construction Against Drafter
- 30:36 Contract Interpretation Specific and General Clauses

#### E. DAMAGES

Introductory Note

- 30:37 Damages Introduction
- 30:38 Damages General
- 30:39 Damages Special
- 30:40 Damages Liquidated
- 30:41 Damages Nominal
- 30:42 Damages Purchaser's for Breach of Land Purchase Contract
- 30:43 Damages Seller's for Breach of Land Purchase Contract
- 30:44 Damages Employer's for Employee's Breach of Personal Service Contract
- 30:45 Damages Builder's for Breach of Construction Contract by Owner Prior to Completion
- 30:46 Damages Builder's for Substantial Though Not Complete Performance of Construction Contract
- 30:47 Definition Contract Price Agreed Upon
- 30:48 Damages Builder's for Owner's Partial Breach Failure to Make Installment Payment
- 30:49 Damages Owner's for Breach of Construction Contract by Builder
- 30:50 Damages Owner's for Delay in Completion of Construction Contract
- 30:51 Damages Broker's for Breach of Real Estate Commission Contract
- 30:52 Damages Owner's for Wrongful Deprivation of Use of a Chattel
- 30:53 Damages Owner's for Breach of a Covenant Against Encumbrances

#### F. PARTICULAR CONTRACTS

- 30:54 Claim Building Contractor's Breach of Implied Warranty Elements of Liability
- 30:55 Definition Building Contractor's Implied Warranties
- 30:56 Claim Real Estate Commission Elements of Liability

#### **CHAPTER 31. WRONGFUL DISCHARGE**

#### A. BREACH OF CONTRACT CLAIMS

- 31:1 Breach of Employment Contract for a Definite Period of Time Elements of Liability
- 31:2 Employment Contract Providing for Fixed Term Salary Cautionary Instruction
- 31:3 Breach of Employment Contract for an Indefinite Period of Time Requiring Good or Just Cause for Termination — Elements of Liability

- 31:4 Breach of Implied Contract Based on Violation of Employer's Termination Policies or Procedures — Elements of Liability
- 31:5 At-Will Employment Defined
- 31:6 Good or Just Cause Defined
- 31:7 General Damages for Wrongful Discharge Breach of Contract Claim
- 31:8 Mitigation of Damages for Wrongful Discharge
- 31:9 Constructive Discharge Defined
- 31:10 Constructive (Implied) Discharge
- 31:11 Affirmative Defense to Contract Claim After-Acquired Evidence of Fraud or Other Misconduct

# **B. TORT CLAIMS**

- 31:12 Tort Claim for Wrongful Discharge Based on Violations of Public Policy Employer's Retaliation Against an Employee for Refusal to Comply with Employer's Improper Directive — Elements of Liability
- 31:13 Tort Claim for Wrongful Discharge Based on Violations of Public Policy Employer's Retaliation Against an Employee for Exercising a Right or Performing a Public Duty Elements of Liability
- 31:14 Advisory Instruction on Wrongful Discharge in Violation of Public Policy
- 31:15 Damages for Wrongful Discharge Tort Claim
- 31:16 Affirmative Defense to Damages for Public-Policy Discharge Claim After-Acquired Evidence of Fraud or Other Misconduct

# **CHAPTER 32. PERSONAL PROPERTY**

# A. CONVERSION

- 32:1 Elements of Liability
- 32:2 Intentional and Substantial Interference Defined
- 32:3 Damages

# **B. CIVIL THEFT**

- 32:4 Elements of Liability
- 32:5 Intentional and Knowingly Defined
- 32:6 Damages Actual
- 32:7 Damages Statutory

### **CHAPTER 33. RESERVED FOR FUTURE USE**

#### **CHAPTER 34. WILLS**

- 34:1 Will Contest Statement of the Case
- 34:2 Elements of Proof of Properly Executed, Signed, and Witnessed or Acknowledged Will — All Wills Except Self-Proved and Holographic
- 34:3 Conscious Presence Defined
- 34:4 Witness Having an Interest Under the Will
- 34:5 Elements of Proof of Properly Executed Will Self-Proved Will
- 34:6 Elements of Proof of Properly Executed Will Holographic Will
- 34:7 Testamentary Intent Defined
- 34:8 Revocation by Burning, Tearing, Cancelling, Obliterating, or Destroying Defined
- 34:9 Presumption of Revocation of Lost Will or of Will or Part(s) of Will Found Burned, Torn, Cancelled, Obliterated, or Destroyed
- 34:10 Burden of Proof on Issues of Sound Mind and Memory (Testamentary Capacity) and Undue Influence
- 34:11 Testamentary Capacity and Sound Mind Defined
- 34:12 Insane Delusion Defined
- 34:13 Effect of Attestation of Will by Witnesses
- 34:14 Undue Influence Defined
- 34:15 Factors to Be Considered in Determining Undue Influence
- 34:16 Undue Influence Presumption When Beneficiary in a Confidential or Fiduciary Relationship
- 34:17 Undue Influence Permissible Inference When Presumption of Undue Influence Is Rebutted
- 34:18 Confidential Relationship Defined
- 34:19 Fiduciary Relationship Defined
- 34:20 Verdict Form for Proponent
- 34:21 Verdict Form for Contestant

# CHAPTER 35. MENTAL HEALTH — PROCEEDINGS FOR SHORT-TERM TREATMENT OR LONG-TERM CARE AND TREATMENT OF THE MENTALLY ILL UNDER C.R.S. TITLE 27, ARTICLE 65

35:1 Statement of the Case and Mechanics for Submitting Special Verdict — Short-Term Treatment

- 35:2 Statement of the Case and Mechanics for Submitting Special Verdict Long-Term Care and Treatment
- 35:3 Person with a Mental Illness or Mental Health Disorder Defined
- 35:4 Gravely Disabled Defined
- 35:5 Danger to Self or Others Defined
- 35:6 Expert Witness Court-Appointed Professional Person
- 35:7 Special Verdict Form Short-Term Treatment
- 35:8 Special Verdict Form Long-Term Care and Treatment

# **CHAPTER 36. EMINENT DOMAIN**

- 36:1 Instruction to Commissioners as to Duties
- 36:2 Burden of Proof as to Issues
- 36:3 Ascertainment of Value of Property Taken
- 36:4 Ascertainment of Damages and Specific Benefits to Residue
- 36:5 Ascertainment of Damages to Residue Limitations
- 36:6 Ascertainment of Market Value, Damages, or Specific Benefits Most Advantageous Uses
- 36:7 Approaches to Valuation
- 36:8 Sales of Comparable Properties
- 36:9 Cost Approach
- 36:10 Income Approach
- 36:11 Report of Commissioners or Verdict Form

# **CHAPTER 37. RESERVED FOR FUTURE USE**

# CHAPTER 38. RESERVED FOR FUTURE USE

# **CHAPTER 39. RESERVED FOR FUTURE USE**

## CHAPTER 40. CHILDREN'S CODE — JUVENILE DELINQUENCY

Introductory Note

- 40:1 Introductory Remarks to Jury Panel
- 40:2 General Outline of Trial Procedures to Jury
- 40:3 Summary Closing Instruction

# CHAPTER 41. CHILDREN'S CODE — DEPENDENCY AND NEGLECT

- 41:1 Introductory Remarks to Jury Panel
- 41:2 General Outline of Trial Procedures to Jury
- 41:3 Explanation of Dependency and Neglect Proceedings
- 41:4 Statement of the Case and Requirements for Establishing Child Dependent and Neglected
- 41:5 Adjudication of No Fault
- 41:6 Abandonment Defined
- 41:7 Proper Parental Care Defined
- 41:8 Mistreatment or Abuse Defined
- 41:9 Mistreatment or Abuse Includes Emotional Abuse
- 41:10 Environment Injurious to Child's Welfare Defined
- 41:11 Treatment of Other Child or Children
- 41:12 Custody Not Required
- 41:13 Run Away from Home Defined
- 41:14 Dependent and Neglected Because of Pattern of Habitual Abuse Elements
- 41:15 Pattern of Habitual Abuse Defined
- 41:16 Prospective Harm
- 41:17 Special Verdict Mechanics for Submitting
- 41:18 Special Verdict Form
- 41:19 Use of Present Tense Dependency and Neglect