

## **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
- 3:14A Bias — Unconscious Bias
- 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 — Defined
- 8:9B Express Authority — Defined
- 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, or Defective or Misrepresented Product
- 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, and C
- 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 Defendant — Designated Nonparty or Nonparties Involved
- 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 AND PRIVATE NUISANCE**

- 18:1 Trespass — Elements of Liability
- 18:2 Intentionally — Defined
- 18:3 Consent
- 18:4 Actual or Nominal Damages
- 18:5 Private Nuisance — Elements of Liability
- 18:6 Intentionally or Negligently — Defined
- 18:7 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
- 24:7 Actual or Nominal Damages

## **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
- 30:54 Damages — Landlord for Tenant's Breach of Commercial Lease

## F. PARTICULAR CONTRACTS

- 30:55 Claim — Building Contractor's Breach of Implied Warranty — Elements of Liability
- 30:56 Definition — Building Contractor's Implied Warranties
- 30:57 Claim — Real Estate Commission — Elements of Liability

## G. CLAIMS BASED ON IMPLIED AGREEMENTS

- 30:58 Goods and Services Rendered (Quantum Meruit/Quantum Valebat)

## **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

## C. REPLEVIN

- 32:8 Elements of Liability
- 32:9 Possession and Damages — If the Property can be Returned in the Same Condition
- 32:10 Damages — Where the Property Cannot be Returned to the Plaintiff
- 32:11 Damages — Where the Property can be Returned but not in the Same Condition

## **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 Notarized Will — All Wills Except Self-Proved and Holographic
- 34:3 Conscious Presence — Defined
- 34:3A Testator — Defined
- 34:3B Devisee — 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, Canceling, Obliterating, or Destroying — Defined
- 34:9 Presumption of Revocation of Lost Will or Unavailable Will
- 34:10 Burden of Proof on Issues of Sound Mind, Testamentary Capacity, Undue Influence, and Insane Delusion
- 34:11 Testamentary Capacity and Sound Mind — Defined
- 34:12 Insane Delusion — Defined
- 34:13 Elements of Proof of Insane Delusion
- 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 Born Affected by Alcohol or Substance Exposure
- 41:18 Newborn Child’s Health or Welfare Threatened by Substance Use
- 41:19 Special Verdict — Mechanics for Submitting
- 41:20 Special Verdict Form
- 41:21 Use of Present Tense — Dependency and Neglect