# 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, 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

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

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

# 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