2014

Virginia Practice Series: Jury Instructions

Ronald J. Bacigal  
*University of Richmond, rbacigal@richmond.edu*

Margaret Ivey Bacigal  
*University of Richmond, mbacigal@richmond.edu*

Follow this and additional works at: [http://scholarship.richmond.edu/law-faculty-publications](http://scholarship.richmond.edu/law-faculty-publications)  
Part of the [Civil Procedure Commons](http://scholarship.richmond.edu/law-faculty-publications), and the [Criminal Procedure Commons](http://scholarship.richmond.edu/law-faculty-publications)

**Recommended Citation**  
For authorization to photocopy, please contact the Copyright Clearance Center at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400; fax (978) 646-8600 or Copyright Services at 610 Opperman Drive, Eagan, MN 55123, fax (651) 687-7551. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.
Acknowledgment

Author Margaret Ivey Bacigal would like to express her appreciation to Christopher Bascom, her student research assistant, for his help with this book.
Preface

Virginia Practice Series—Jury Instructions is a continuation and update of previous editions, which won widespread approval among the bench and bar for almost 40 years.

As in the past, this book is primarily confined to the most common areas of jury trial work, torts and criminal law. Where possible, the language of the instructions is taken directly from reported cases or case records. Where this is not possible, we have set out instructions that should meet both the general rules regarding the form of instructions and the specific substantive legal rules. In the latter cases, close attention has been paid to statements that the Supreme Court and the Court of Appeals have made indicating how a proffered instruction might be improved. The suggested instructions try to balance specificity with flexibility, so that they can readily be adapted to the precise circumstances of each case. Nearly every suggested instruction is followed by a comment that sets forth the legal authority underlying the instruction and, in some cases, an extensive discussion of the law.

This publication will be recompiled on an annual basis. Any changes or expansions of the law will be included in amended or additional instructions, comments, and citations. We look forward to carrying on a tradition that, since 1964, has been of great assistance to the bench and bar of Virginia.

RONALD J. BACIGAL
MARGARET IVEY BACIGAL

October 2014
WestlawNext™

THE NEXT GENERATION OF ONLINE RESEARCH

WestlawNext is the world's most advanced legal research system. By leveraging more than a century of information and legal analysis from Westlaw, this easy-to-use system not only helps you find the information you need quickly, but offers time-saving tools to organize and annotate your research online. As with Westlaw.com, WestlawNext includes the editorial enhancements (e.g., case headnotes, topics, key numbers) that make it a perfect complement to West print resources.

- FIND ANYTHING by entering citations, descriptive terms, or Boolean terms and connectors into the WestSearch™ box at the top of every page.

- USE KEYCITE® to determine whether a case, statute, regulation, or administrative decision is good law.

- BROWSE DATABASES right from the home page.

- SAVE DOCUMENTS to folders and add notes and highlighting online.

SIGN ON: next.westlaw.com
LEARN MORE: store.westlaw.com/westlawnext
FOR HELP: 1-800-WESTLAW (1-800-937-8529)
Related Products

VIRGINIA PRACTICE SERIES™

Business Entities
William R. Waddell and Lee A. Handford

Civil Discovery
Jeffrey S. Kinsler and Jay E. Grenig

Construction Law
Michael A. Branca and Mark R. Berry

Criminal Offenses and Defenses in Virginia
Ronald J. Bacigal

Criminal Procedure
Ronald J. Bacigal

Criminal Procedure Forms
Ronald J. Bacigal

Family Law: Theory, Practice, and Forms
Peter N. Swisher, Lawrence D. Diehl, and James R. Cottrell

Jury Instructions
Ronald J. Bacigal and Margaret Ivey Bacigal

Landlord-Tenant Handbook
Jerome P. Friedlander, II

Probate Handbook
Frank O. Brown, Jr.
Products Liability
Gary J. Spahn, Robert E. Draim, Dabney J. Carr, IV, Heather Hays Lockerman, and Nicholas R. Klaiber

Real Estate Closings
W. Wade Berryhill
Michael V. Hernandez

Tort and Personal Injury Law
Peter Nash Swisher, Robert E. Draim, and David D. Hudgins

Trial Handbook for Virginia Lawyers
Craig D. Johnston

Virginia DUI Law: Understanding the Scientific, Medical, Technological, and Legal Aspects of a DUI Case
Michael C. Tillotson and Jeff Martin

Workers’ Compensation
Linda D. Slough

OTHER WEST PRODUCTS

Virginia Reporter and West’s Annotated Code of Virginia (CD-ROM)

South Eastern Reporter
Virginia Court of Appeals Reports
West’s Annotated Code of Virginia
Virginia Administrative Code
Virginia and West Virginia Digest
Virginia Court Rules and Procedure, State and Federal
Virginia Blue and White Book
Westlaw®
WIN®
WESTCheck®
WestDoc
West CD-ROM Libraries™
KeyCite®

Thomson Reuters® thanks you for subscribing to this product. Should you have any questions regarding this product please contact Customer Service at 1-800-328-4880 or by fax at 1-800-340-9378. If you would like to inquire about related publications or place an order, please contact us at 1-800-344-5009.

Thomson Reuters
610 Opperman Drive
Eagan, MN 55123

legalsolutions.thomsonreuters.com
Summary of Contents

PART I. PRINCIPLES GOVERNING INSTRUCTIONS TO JURY (CONTINUED)
Chapter 1. In General
Chapter 2. Province of the Court and Jury
Chapter 3. Subject Matter of Instructions
Chapter 4. Sufficiency and Correctness
Chapter 5. Relevancy to the Case
Chapter 6. Construction and Operation
Chapter 7. Cautionary Instructions
Chapter 8. Requests for Instructions
Chapter 9. Objections and Exceptions

PART II. NEGLIGENCE—FORMS OF INSTRUCTIONS

SUBPART A. IN GENERAL
Chapter 10. Weighing the Evidence
Chapter 11. Definitions
Chapter 12. Negligence; Causation; Burden of Proof

SUBPART B. SPECIAL RELATIONS AND PERSONS
Chapter 13. Agency
Chapter 14. Joint Enterprise
Chapter 15. Infants
Chapter 16. Intoxicated Persons

SUBPART C. SPECIAL DOCTRINES
Chapter 17. Last Clear Chance
Chapter 18. Res Ipsa Loquitur
Chapter 19. Sudden Emergency
Chapter 20. Entrustment
Chapter 21. Voluntary Assumption of Risk
Chapter 22. Rescue
SUBPART D. DAMAGES
Chapter 23. Damages

SUBPART E. AUTOMOBILES
Chapter 24. Uninsured Motorist
Chapter 25. Lookout; Control; Speed
Chapter 26. Lanes of Travel; Following, Overtaking and Passing
Chapter 27. Starting, Stopping, Backing and Turning
Chapter 28. Obstructing Highway
Chapter 29. Equipment
Chapter 30. Intersections
Chapter 31. Emergency Vehicles
Chapter 32. Pedestrians
Chapter 33. Guests and Passengers

SUBPART F. OTHER AREAS OF NEGLIGENCE
Chapter 34. Special Relationships, Including Owners and Occupiers
Chapter 35. Railroad Crossings and Tracks
Chapter 36. Carriers
Chapter 37. Sidewalks and Streets
Chapter 38. Hazardous Undertakings
Chapter 39. Products Liability
Chapter 40. Federal Employers’ Liability Act
Chapter 41. Malpractice
Chapter 42. Animals
Chapter 43. Airplanes
Chapter 44. Amusements, Sports and Spectators
Chapter 45. Emotional Disturbance

PART III. INTENTIONAL TORTS—FORMS OF INSTRUCTIONS
Chapter 46. Assault and Battery
Chapter 47. False Imprisonment
Chapter 48. Libel and Slander
Summary of Contents

Chapter 49. Malicious Prosecution
Chapter 50. Interference with Contractual Rights
Chapter 51. Civil Conspiracy
Chapter 52. Fraud
Chapter 53. Stalking
Chapter 54. Interference with Parental Rights

PART IV. CONTRACTS—FORMS OF INSTRUCTIONS
Chapter 55. Contracts—In General

PART V. WILLS—FORMS OF INSTRUCTIONS
Chapter 56. Will Contests

PART VI. CRIMES—FORMS OF INSTRUCTIONS
Chapter 57. Weighing the Evidence—In General
Chapter 58. Weighing the Evidence—Particular Matters
Chapter 59. Parties
Chapter 60. Capacity
Chapter 61. Attempts
Chapter 62. Self-Defense
Chapter 63. Alibi
Chapter 64. Duress
Chapter 65. Entrapment
Chapter 66. Abduction and Kidnapping
Chapter 67. Abortion
Chapter 68. Arson
Chapter 69. Bigamy
Chapter 70. Bribery
Chapter 71. Burglary
Chapter 72. Conspiracy
Chapter 73. Disorderly Conduct
Chapter 74. Driving While Intoxicated
Chapter 75. Drugs
Chapter 76. Forgery
Chapter 77. Illegal Gambling
Chapter 78. Hit and Run
Chapter 79. Homicide
Chapter 80. Indecent Exposure
Chapter 81. Intoxicating Liquors (A.B.C. Law)
Chapter 82. Larceny; Receiving Stolen Goods; Embezzlement
Chapter 83. Mayhem (Felonious Woundings)
Chapter 84. Obscenity
Chapter 85. Perjury
Chapter 86. Rape
Chapter 87. Robbery
Chapter 88. Sexual Offenses

Table of Laws and Rules
Table of Cases
Index
Table of Contents

PART I. PRINCIPLES GOVERNING INSTRUCTIONS TO JURY (CONTINUED)

CHAPTER 1. IN GENERAL
§ 1:1 Office of the instruction
§ 1:2 The model instruction
§ 1:3 Form and manner of instructing
§ 1:4 Time of giving instructions

CHAPTER 2. PROVINCE OF THE COURT AND JURY
§ 2:1 Duty of the court
§ 2:2 Questions of law
§ 2:3 Mixed questions of law and fact
§ 2:4 Uncontroverted facts
§ 2:5 Function of the jury to ascertain the facts
§ 2:6 —Invasion by the court
§ 2:7 Function of the jury to weigh the evidence
§ 2:8 —Invasion by the court

CHAPTER 3. SUBJECT MATTER OF INSTRUCTIONS
§ 3:1 Theory of the case
§ 3:2 Issues of fact
§ 3:3 Principles of law
§ 3:4 Presumptions—Burden of proof
§ 3:5 Weighing the evidence
§ 3:6 Clear and convincing evidence
§ 3:7 Excluding, limiting or explaining the evidence
§ 3:8 Credibility of witnesses
§ 3:9 Definitions
§ 3:10 Use of electronic media during trial
§ 3:11 Cautionary instructions

CHAPTER 4. SUFFICIENCY AND CORRECTNESS
§ 4:1 In general
§ 4:2 Appellate statements
§ 4:3 Generality
§ 4:4 Argumentative instructions
§ 4:5 Completeness
§ 4:6 Clarity
§ 4:7 Diversion
§ 4:8 Repetition
§ 4:9 Rhetorical words
§ 4:10 Contradictions
§ 4:11 Language

CHAPTER 5. RELEVANCY TO THE CASE
§ 5:1 Abstract statements
§ 5:2 Hypothetical instructions
§ 5:3 Ignoring issues
§ 5:4 Withdrawing issues
§ 5:5 Instructions must be based upon the evidence
§ 5:6 Partial view of the evidence
§ 5:7 Singling out evidence
§ 5:8 Assumption of facts

CHAPTER 6. CONSTRUCTION AND OPERATION
§ 6:1 Instructions to be read in light of the evidence
§ 6:2 Instructions to be read as a whole
§ 6:3 Curative effect of other instructions
§ 6:4 Commingled theories

CHAPTER 7. CAUTIONARY INSTRUCTIONS
§ 7:1 Reaching a verdict (Allen charge)
§ 7:2 Hanging instructions
§ 7:3 Instruction to disregard
§ 7:4 Unnecessary cautions
§ 7:5 View of the scene
§ 7:6 Jury to avoid outside comment
§ 7:7 Use of electronic technology to communicate about a case
§ 7:8 Multi-day case instruction
§ 7:9 Jury to avoid outside contact
§ 7:10 Insurance

CHAPTER 8. REQUESTS FOR INSTRUCTIONS
§ 8:1 Duty to prepare and request
TABLE OF CONTENTS

§ 8:2 Right to tendered instructions
§ 8:3 Inconsequential requests
§ 8:4 Defects waived

CHAPTER 9. OBJECTIONS AND EXCEPTIONS
§ 9:1 Necessity
§ 9:2 Effect of error
§ 9:3 Motion for new trial

PART II. NEGLIGENCE—FORMS OF INSTRUCTIONS

SUBPART A. IN GENERAL

CHAPTER 10. WEIGHING THE EVIDENCE
§ 10:1 Instructions to be considered as a whole
§ 10:2 Jury to judge credibility of witnesses
§ 10:3 When jury may reject all testimony of a witness
§ 10:4 Verdict not to be based on surmise, conjecture or sympathy
§ 10:5 Most favorable testimony may be accepted
§ 10:6 Negative testimony—Probative value
§ 10:7 Circumstantial evidence
§ 10:8 Party litigant bound by his or her own testimony
§ 10:9 Inconsistent statements by witness
§ 10:10 Prior inconsistent statement of witness
§ 10:11 Failure to produce material witness
§ 10:12 Failure to testify to material facts
§ 10:13 Failure to produce evidence
§ 10:14 Adverse witness
§ 10:15 Intoxication of witness at time of event
§ 10:16 Expert’s testimony (if hypothetical question used)
§ 10:17 Weighing expert testimony
§ 10:18 Statements of counsel

CHAPTER 11. DEFINITIONS
§ 11:1 Preponderance of the evidence
§ 11:2 Negligence
§ 11:3 Contributory negligence
§ 11:4 Reasonable care—Ordinary care
§ 11:5 Gross negligence
§ 11:6  Malice—Actual (common law definition)
§ 11:7  Willful and wanton negligence (Kaltman)
§ 11:8  Willful and wanton negligence (Clohessy and Griffin)
§ 11:9  Proximate cause
§ 11:10 Business and residence district
§ 11:11 Unsound mind

CHAPTER 12. NEGLIGENCE; CAUSATION; BURDEN OF PROOF

§ 12:1  Ordinary care does not contemplate absolutely safe action
§ 12:2  Burden on plaintiff to prove defendant's negligence
§ 12:3  Unavoidable accident
§ 12:4  Negligence as a matter of law—Per se negligence
§ 12:5  Proof of negligence by circumstantial evidence
§ 12:6  Contributory negligence a bar to recovery
§ 12:7  Contributory negligence of parents in wrongful death of child
§ 12:8  Contributory negligence—Passenger
§ 12:9  When negligence of the plaintiff not a bar to recovery
§ 12:10 Burden on defendant to prove contributory negligence
§ 12:11 Plaintiff's negligence immaterial unless a proximate cause of injury
§ 12:12 Plaintiff's negligence must be a proximate cause to bar recovery
§ 12:13 Proximate cause—Burden of proof
§ 12:14 —Definition in connection with an event
§ 12:15 —Definition in connection with an injury, accident, or damage
§ 12:16 Multiple proximate causes—Definition in connection with an injury accident or damage
§ 12:17 Proximate cause—Uncertainty as to cause of injury
§ 12:18 —Precise injury need not be foreseen
§ 12:19 —Concurrent (multiple) sufficient causes (multiple exposure mesothelioma cases)
§ 12:20 Intervening cause—When defendant excused
§ 12:21 —When defendant not excused
§ 12:22 —Defendant's negligence not excused by prior negligence of third party
§ 12:23 Concurrent liability of codefendants
§ 12:24 Single indivisible injury resulting from independent negligence of two defendants in two accidents
## Table of Contents

**SUBPART B. SPECIAL RELATIONS AND PERSONS**

### CHAPTER 13. AGENCY

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 13:1</td>
<td>Independent contractor or agent—Test for</td>
</tr>
<tr>
<td>§ 13:2</td>
<td>Agency—Test for</td>
</tr>
<tr>
<td>§ 13:3</td>
<td>Defendant not liable for acts of independent contractor</td>
</tr>
<tr>
<td>§ 13:4</td>
<td>Negligent retention of independent contractor</td>
</tr>
<tr>
<td>§ 13:5</td>
<td>Power of control</td>
</tr>
<tr>
<td>§ 13:6</td>
<td>Defendant liable for agent's negligence</td>
</tr>
<tr>
<td>§ 13:7</td>
<td>Liability of principal for acts of agent acting contrary to instructions</td>
</tr>
<tr>
<td>§ 13:8</td>
<td>Principal's liability for malicious act of agent</td>
</tr>
<tr>
<td>§ 13:9</td>
<td>Burden of proof upon plaintiff to prove agency</td>
</tr>
<tr>
<td>§ 13:10</td>
<td>Course of agent's employment—Test for</td>
</tr>
<tr>
<td>§ 13:11</td>
<td>——Short form</td>
</tr>
<tr>
<td>§ 13:12</td>
<td>Apparent scope of agent's authority</td>
</tr>
<tr>
<td>§ 13:13</td>
<td>Course of agent's employment—Presumption that agent's acts were within scope of employment</td>
</tr>
<tr>
<td>§ 13:14</td>
<td>——When presumption of agency is rebutted</td>
</tr>
<tr>
<td>§ 13:15</td>
<td>——Agent's temporary departure from scope of employment</td>
</tr>
<tr>
<td>§ 13:16</td>
<td>——When agent's deviation does not suspend agency</td>
</tr>
<tr>
<td>§ 13:17</td>
<td>——Principal's liability for agent's use of his own motor vehicle</td>
</tr>
<tr>
<td>§ 13:18</td>
<td>Loaned employee—When borrower liable for employee's actions</td>
</tr>
<tr>
<td>§ 13:19</td>
<td>——When no liability for employee's actions</td>
</tr>
<tr>
<td>§ 13:20</td>
<td>Principal's liability for acts of subagent</td>
</tr>
<tr>
<td>§ 13:21</td>
<td>——When a subemployee is not agent of the principal</td>
</tr>
<tr>
<td>§ 13:22</td>
<td>Agent combining own business with that of principal</td>
</tr>
<tr>
<td>§ 13:23</td>
<td>Owner's liability to occupant of motor vehicle invited to ride by employee</td>
</tr>
<tr>
<td>§ 13:24</td>
<td>Duty of gratuitous bailee</td>
</tr>
<tr>
<td>§ 13:25</td>
<td>Negligent hiring</td>
</tr>
<tr>
<td>§ 13:26</td>
<td>——Imputed knowledge</td>
</tr>
</tbody>
</table>

### CHAPTER 14. JOINT ENTERPRISE

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 14:1</td>
<td>Negligence imputed</td>
</tr>
<tr>
<td>§ 14:2</td>
<td>Imputed negligence bars recovery</td>
</tr>
<tr>
<td>§ 14:3</td>
<td>Voice in control necessary</td>
</tr>
<tr>
<td>§ 14:4</td>
<td>Retention of right of control</td>
</tr>
</tbody>
</table>
§ 14:5 Actual ability to control immaterial
§ 14:6 Husband's negligence not imputed to wife
§ 14:7 Bailee's negligence not imputed to bailor
§ 14:8 Bailee's negligence sole proximate cause

CHAPTER 15. INFANTS
§ 15:1 Under seven years of age
§ 15:2 Between seven and 14 years of age
§ 15:3 —Presumption of incapacity rebuttable
§ 15:4 Duty of care—Over 14 years of age
§ 15:5 —Motor vehicle operator
§ 15:6 Standard of care owed by motorist to child
§ 15:7 Duty of defendant to anticipate child's thoughtlessness
§ 15:8 No right to assume that child will cross only at intersection
§ 15:9 When not justified in assuming that infant will not cross street
§ 15:10 No right to assume that child will operate bicycle carefully
§ 15:11 Child suddenly entering street—Obstruction
§ 15:12 —No opportunity to avoid accident
§ 15:13 Duty of motorist to investigate child's presence
§ 15:14 —Notice

CHAPTER 16. INTOXICATED PERSONS
§ 16:1 Driving under influence of intoxicants—General instruction
§ 16:2 —Proximate cause
§ 16:3 —Ordinary care
§ 16:4 Definition of operating a motor vehicle
§ 16:5 Burden on plaintiff
§ 16:6 Driving while intoxicated—Punitive damages
§ 16:7 —No blood alcohol test

SUBPART C. SPECIAL DOCTRINES

CHAPTER 17. LAST CLEAR CHANCE
§ 17:1 Class 1—Plaintiff physically unable to avoid injury
§ 17:2 —When defendant not liable
§ 17:3 Class 2—Plaintiff unconscious of his peril
§ 17:4 —When defendant not liable
§ 17:5 Defendant's prior negligence immaterial
# Table of Contents

## CHAPTER 18. RES IPSA LOQUITUR
- § 18:1 When defendant's negligence inferred
- § 18:2 Presumption rebuttable

## CHAPTER 19. SUDDEN EMERGENCY
- § 19:1 Sudden emergency—Definition or standard of care
- § 19:2 Standard of care required
- § 19:3 Sudden emergency after collision
- § 19:4 Emergency situation must be unexpected and unforeseeable
- § 19:5 Defendant must be without fault
- § 19:6 Sudden illness

## CHAPTER 20. ENTRUSTMENT
- § 20:1 Permitting unfit person to drive
- § 20:2 —Requirements for liability
- § 20:3 Permitting intoxicated person to drive
- § 20:4 —Requirements for liability

## CHAPTER 21. VOLUNTARY ASSUMPTION OF RISK
- § 21:1 Voluntary assumption of risk

## CHAPTER 22. RESCUE
- § 22:1 When plaintiff not negligent
- § 22:2 When plaintiff negligent
- § 22:3 Plaintiff's negligence in creating the peril

## SUBPART D. DAMAGES

## CHAPTER 23. DAMAGES
- § 23:1 Elements
- § 23:2 Damage to personal property
- § 23:3 Damages for concern of dog or cat are not allowed
- § 23:4 Mathematical certainty not required
- § 23:5 All injurious consequences are recoverable
- § 23:6 Damages resulting from two causes
- § 23:7 Damage from two causes—Burden of proof
- § 23:8 Aggravation of preexisting disability
- § 23:9 No recovery for preexisting disability
- § 23:10 Burden on plaintiff
- § 23:11 Duty of plaintiff to mitigate damages
§ 23:12 Negligence of physician
§ 23:13 Death by wrongful act
§ 23:14 —Adverse inference instruction for discovery abuse
§ 23:15 Death of unborn child—Mother's action
§ 23:16 Child injured during birth—Child's action
§ 23:17 —Mother's action for distress caused by injury to fetus
§ 23:18 Punitive damages
§ 23:19 —Wrongful Death Act
§ 23:20 —Driving while intoxicated
§ 23:21 —No blood alcohol test
§ 23:22 —Burden of proof
§ 23:23 Life expectancy table
§ 23:24 Damages—Growing crops

SUBPART E. AUTOMOBILES

CHAPTER 24. UNINSURED MOTORIST
§ 24:1 Burden of proof

CHAPTER 25. LOOKOUT; CONTROL; SPEED
§ 25:1 Lookout; control; reasonable speed
§ 25:2 Duty to keep lookout in all directions
§ 25:3 Duty to keep lookout to the rear
§ 25:4 Duty to see that which is in plain sight
§ 25:5 No absolute duty to see
§ 25:6 Momentary looking in rear view mirror
§ 25:7 Windshield covered with frost
§ 25:8 Motorist blinded by lights of approaching vehicle
§ 25:9 Confused condition on highway
§ 25:10 Approaching a stopped vehicle
§ 25:11 Duty of motorist approaching horse
§ 25:12 Falling asleep
§ 25:13 Continuous driving over 13 hours
§ 25:14 Skidding
§ 25:15 —Slippery road sole cause
§ 25:16 Hazardous circumstances
§ 25:17 Exceeding speed limit
§ 25:18 Right to assume that other driver not speeding
§ 25:19 Tables of speed and stopping distances—Autos
§ 25:20 —Trucks
§ 25:21 Impeding traffic by slow speed
TABLE OF CONTENTS

§ 25:22 Approaching stopped school bus
§ 25:23 —Duty not to pass
§ 25:24 —A warning of danger
§ 25:25 —Duty to stop and remain stopped
§ 25:26 —Duty of lookout for children
§ 25:27 —Duty of bus operator to signal for intended stop
§ 25:28 —Bus operator's duty to exercise reasonable care and give signals
§ 25:29 —When operator of bus not negligent
§ 25:30 —Not stopped for purpose of discharging school children, etc
§ 25:31 Driving on private premises

CHAPTER 26. LANCES OF TRAVEL; FOLLOWING, OVERTAKING AND PASSING

§ 26:1 Driving on wrong side of highway—Prima facie negligence
§ 26:2 Driving in another's lane of travel—Prima facie negligence
§ 26:3 Driving on wrong side of highway—Presumption rebuttable
§ 26:4 Right to assume driver will return to right lane
§ 26:5 —When driver first seen
§ 26:6 Driving too close to center line
§ 26:7 Overtaking and passing
§ 26:8 Changing lanes of travel
§ 26:9 Following too closely
§ 26:10 —Lookout
§ 26:11 Assumption with regard to traffic in the rear—Right to assume that traffic will not follow too closely

CHAPTER 27. STARTING, STOPPING, BACKING AND TURNING

§ 27:1 Stopping; starting; backing
§ 27:2 Inspecting behind or under vehicle before starting
§ 27:3 When duty to inspect behind or under vehicle arises
§ 27:4 Turning from direct line of travel
§ 27:5 Pulling out from curb or edge of highway
§ 27:6 Signal to another motorist to pass or turn
§ 27:7 Signals—Method of giving
§ 27:8 —Failure to give signal
§ 27:9 —Duty of driver receiving signals
JURY INSTRUCTIONS

§ 27:10  Left turn—Approach in left hand lane
§ 27:11  —Two-way road
§ 27:12  —Impossibility to make turn from left lane
§ 27:13  —In an intersection—Right of way
§ 27:14  Right turn—Approach next to right curb

CHAPTER 28. OBSTRUCTING HIGHWAY

§ 28:1  Stopping on highway
§ 28:2  Stopping on highway to sell goods
§ 28:3  Duty not to obstruct highway
§ 28:4  Stopping on highway must render it dangerous
§ 28:5  Emergency stopping
§ 28:6  Stopping to avoid collision
§ 28:7  Momentary stopping
§ 28:8  Right to assume lane of travel unobstructed
§ 28:9  Duty to remove disabled vehicle
§ 28:10 Commercial vehicle stopped on highway—Operator to place warning devices
§ 28:11 Inspecting disabled vehicle
§ 28:12 —Right to assume drivers will keep proper lookout
§ 28:13 Pushing disabled vehicle—With another vehicle
§ 28:14 —By hand
§ 28:15 Removing disabled vehicle with wrecking truck

CHAPTER 29. EQUIPMENT

§ 29:1  Headlights—Single-beam
§ 29:2  —Multiple-beam
§ 29:3  Rear lights
§ 29:4  Stop light
§ 29:5  When lights to be displayed on vehicles
§ 29:6  Horn
§ 29:7  Brakes
§ 29:8  —Duty to apply
§ 29:9  Mirrors
§ 29:10 Steering equipment

CHAPTER 30. INTERSECTIONS

§ 30:1  Duty of driver on the left to yield
§ 30:2  Right of way not forfeited by stopping before entering
§ 30:3  Excessive speed
§ 30:4  Right to assume that driver will yield
§ 30:5  Right to assume that driver will stop and yield
Table of Contents

§ 30:6 Duty of favored driver when right of way not being yielded
§ 30:7 Duty to keep lookout
§ 30:8 Duty of driver approaching an intersection
§ 30:9 Duty of driver approaching a four way stop sign
§ 30:10 Heedless driver
§ 30:11 Right of way does not relieve driver of duty of due care
§ 30:12 Red, green and amber lights
§ 30:13 Vehicles not entering intersection at approximately same time
§ 30:14 Green light—Change to amber
§ 30:15 Amber light
§ 30:16 Stop light—Duty of driver
§ 30:17 Green light
§ 30:18 Traffic light not working properly
§ 30:19 Yield sign
§ 30:20 Stop sign—Where to stop
§ 30:21 —When not negligence to proceed
§ 30:22 Entering from private road
§ 30:23 —When duties performed
§ 30:24 Entering improved highway from side road
§ 30:25 Right to assume that vehicle will remain stopped
§ 30:26 Bicyclist (pedestrian) crossing an intersection

CHAPTER 31. EMERGENCY VEHICLES

§ 31:1 Duties of other motorists
§ 31:2 Duties of drivers
§ 31:3 Burden of proof

CHAPTER 32. PEDESTRIANS

§ 32:1 Right of way at unregulated intersection
§ 32:2 Right of way at regulated intersection
§ 32:3 Pedestrian’s right to cross entire street
§ 32:4 Turning vehicles
§ 32:5 Pedestrian not required to await passage of all vehicles
§ 32:6 Duties of motorist
§ 32:7 Pedestrian’s lookout
§ 32:8 —Duty to keep a lookout
§ 32:9 Stepping into path of oncoming vehicle
§ 32:10 Right to assume that adult pedestrian will remain in place of safety
§ 32:11 Duty to cross at crosswalks
JURY INSTRUCTIONS

CHAPTER 33. GUESTS AND PASSENGERS
§ 33:1 Negligence of host driver sole proximate cause (1)
§ 33:2 Right to trust host driver (1)
§ 33:3 Duty of guest riding with negligent host (1)
§ 33:4 Occupant asleep (2)
§ 33:5 Duties of occupant of automobile being driven by another (2)
§ 33:6 Inability to warn driver of danger (2)
§ 33:7 Alighting from street side of automobile (2)
§ 33:8 Passenger alighting from a bus (2)

SUBPART F. OTHER AREAS OF NEGLIGENCE

CHAPTER 34. SPECIAL RELATIONSHIPS, INCLUDING OWNERS AND OCCUPIERS
§ 34:1 Duties owed to invitees (2)
§ 34:2 —By hospital—Violent patient (2)
§ 34:3 Duties owed other patients by hospital—Violent patients (2)
§ 34:4 Business invitor's duty to protect against criminal assault (2)
§ 34:5 Right to assume premises safe (2)
§ 34:6 Lookout—Duty to invitee (2)
§ 34:7 Dangerous activities (2)
§ 34:8 Failure to remove foreign objects (2)
§ 34:9 Reasonable time allowed to remove foreign object or warn invitee (2)
§ 34:10 Open and obvious danger (2)
§ 34:11 Injury to invitee must be reasonably foreseeable (2)
§ 34:12 Duty of owner as to part of premises to which plaintiff not invited (2)
§ 34:13 Anticipating improper use of appliances (2)
§ 34:14 —Improper use of appliances by invitee (2)
§ 34:15 Installing and maintaining equipment (2)
§ 34:16 —Burden of proof (2)
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 34:17</td>
<td>Social guests—Duty of host as to activities conducted on premises(1)</td>
</tr>
<tr>
<td>§ 34:18</td>
<td>—Duty of host as to condition of premises(2)</td>
</tr>
<tr>
<td>§ 34:19</td>
<td>Trespasser and bare licensee(3)</td>
</tr>
<tr>
<td>§ 34:20</td>
<td>—Duty of owner in use of equipment and appliances(4)</td>
</tr>
<tr>
<td>§ 34:21</td>
<td>—No duty to warn as to obvious dangerous condition(5)</td>
</tr>
<tr>
<td>§ 34:22</td>
<td>Officially privileged persons: fireman, policeman, etc—Duty owed(6)</td>
</tr>
<tr>
<td>§ 34:23</td>
<td>Dangerous instrument—Duty to children(7)</td>
</tr>
<tr>
<td>§ 34:24</td>
<td>Entrance to premises closed(8)</td>
</tr>
<tr>
<td>§ 34:25</td>
<td>Slippery condition existing prior to storm(9)</td>
</tr>
<tr>
<td>§ 34:26</td>
<td>Slippery condition due to ice and snow(10)</td>
</tr>
<tr>
<td>§ 34:27</td>
<td>Duty to remove ice and snow from outdoor entrance walk(11)</td>
</tr>
<tr>
<td>§ 34:28</td>
<td>Slippery walks(12)</td>
</tr>
<tr>
<td>§ 34:29</td>
<td>Liability of landlord upon surrender of control(13)</td>
</tr>
<tr>
<td>§ 34:30</td>
<td>Landlord’s duty in maintaining common approaches(14)</td>
</tr>
<tr>
<td>§ 34:31</td>
<td>Common approaches, duty of landlord—Burden of proof(15)</td>
</tr>
<tr>
<td>§ 34:32</td>
<td>Common approaches—Putting premises to an unintended use(16)</td>
</tr>
<tr>
<td>§ 34:33</td>
<td>Landlord’s duty to protect against criminal assault(17)</td>
</tr>
<tr>
<td>§ 34:34</td>
<td>Inspection by landlord(18)</td>
</tr>
<tr>
<td>§ 34:35</td>
<td>Duty of landlord upon entering to make repairs(19)</td>
</tr>
<tr>
<td>§ 34:36</td>
<td>Agents of landlord—Duty to invitee(20)</td>
</tr>
<tr>
<td>§ 34:37</td>
<td>—Burden of proof(21)</td>
</tr>
<tr>
<td>§ 34:38</td>
<td>Innkeepers—Duty to guests(22)</td>
</tr>
<tr>
<td>§ 34:39</td>
<td>—Burden of proof(23)</td>
</tr>
<tr>
<td>§ 34:40</td>
<td>—Right of guest to assume safe premises(24)</td>
</tr>
<tr>
<td>§ 34:41</td>
<td>Criminal conduct by third persons—Duty; foreseeability of which(25)</td>
</tr>
<tr>
<td>§ 34:42</td>
<td>Amusement place owner—Duty to patrons(26)</td>
</tr>
<tr>
<td>§ 34:43</td>
<td>—Burden of proof(27)</td>
</tr>
<tr>
<td>§ 34:44</td>
<td>Liability of tenant for damage to property—Burden of proof(28)</td>
</tr>
<tr>
<td>§ 34:45</td>
<td>—Cause undetermined(29)</td>
</tr>
<tr>
<td>§ 34:46</td>
<td>When tenant not liable for damage to property(30)</td>
</tr>
<tr>
<td>§ 34:47</td>
<td>Damages to property by tenant—Absent covenant(31)</td>
</tr>
</tbody>
</table>

### CHAPTER 35. RAILROAD CROSSINGS AND TRACKS

§ 35:1 In general
§ 35:2 Bell, whistle or horn
§ 35:3 Duties of railroad—Statutory
§ 35:4 —Common-law
§ 35:5 —Common-law duty to warn of approaching train
§ 35:6 Extra hazardous crossings—Additional warnings required
§ 35:7 —Burden of proof
§ 35:8 Duty of traveler to look and listen
§ 35:9 —When duty arises
§ 35:10 Duty of passenger in vehicle to look and listen and to warn driver
§ 35:11 Contributory negligence of passenger in vehicle—Burden of proof
§ 35:12 Physical impairment of traveler
§ 35:13 Unfamiliarity with crossing
§ 35:14 Right to assume that traveler will stop
§ 35:15 Negligence of railroad—Burden of proof
§ 35:16 Positive and negative testimony
§ 35:17 —Three prong
§ 35:18 Failure or silence of signals, mechanical devices, etc
§ 35:19 —Effect
§ 35:20 Omnibus finding instruction
§ 35:21 Duty owed to anticipated trespassers or bare licensees on track
§ 35:22 No special duty of prevision owed to trespassers or bare licensees
§ 35:23 Trespassers—Duty owed after discovery
§ 35:24 Objects on track—Duty of railroad after discovering
§ 35:25 Trespassers—No duty to discover
§ 35:26 —When duty discharged
§ 35:27 Last clear chance
§ 35:28 —When railroad not liable
§ 35:29 Pushing of train
§ 35:30 Automobile stalled on crossing—When plaintiff not negligent
§ 35:31 —When plaintiff negligent

CHAPTER 36. CARRIERS
§ 36:1 Degree of care owed to passengers
§ 36:2 Duty of operator
§ 36:3 Presumption of negligence
§ 36:4 Common carrier not an insurer
§ 36:5 Jerks and jolts
§ 36:6 Duration of carrier—Passenger relation
JURY INSTRUCTIONS

Table of Contents

§ 36:7 Duty upon termination of relation
§ 36:8 Alighting from conveyance
§ 36:9 Assault on passenger by employee
§ 36:10 Removing disorderly passengers—Duty of defendant
§ 36:11 Right of defendant
§ 36:12 Intoxicated passenger—Duty of carrier
§ 36:13 —Burden of proof
§ 36:14 Injury to passenger by intoxicated passenger—Duty of carrier
§ 36:15 —When carrier not liable
§ 36:16 Unexpected injury to passenger
§ 36:17 Fires
§ 36:18 —Cause of fire on defendant's right-of-way
§ 36:19 —Fire spreading from defendant's right-of-way
§ 36:20 —Burden of proof
§ 36:21 Duty of initial freight carrier to consignee unloader
§ 36:22 Duty of delivering freight carrier to inspect and warn consignee unloader
§ 36:23 Inspection required of delivering freight carrier

CHAPTER 37. SIDEWALKS AND STREETS

§ 37:1 Duty and liability of city for defects
§ 37:2 Obstruction
§ 37:3 Right to assume sidewalk safe
§ 37:4 Defendant not insurer
§ 37:5 Defect in sidewalk; contributory negligence
§ 37:6 Burden of proof
§ 37:7 Notice, actual or constructive
§ 37:8 Public nuisance

CHAPTER 38. HAZARDOUS UNDERTAKINGS

§ 38:1 Electricity—Duty to insulate wires
§ 38:2 —Duty to inspect wires and repair defects
§ 38:3 —Broken wires—Presumption of negligence
§ 38:4 —When presumption of negligence not rebutted
§ 38:5 —Presumption of negligence rebuttable
§ 38:6 —Contributory negligence
§ 38:7 —When no duty to insulate wires
§ 38:8 —When no duty to insulate wires above streets
§ 38:9 —Dangerous condition created by another
§ 38:10 —Furnishing current for another's line
§ 38:11 —No duty to inspect nonowned wires
§ 38:12  Explosives—Duty when used

§ 38:13  —When duty performed in use

§ 38:14  —Negligence not inferred from use

§ 38:15  —Absolute liability for direct damage

§ 38:16  —Absolute liability for vibration or concussion damage

§ 38:17  Gas—Duty to prevent escape

§ 38:18  —Furnishing to defective pipes

§ 38:19  —Burden of proof

§ 38:20  —Contributory negligence

§ 38:21  Loaded weapon

CHAPTER 39. PRODUCTS LIABILITY

§ 39:1  Sealed food packages and bottled beverages—
  Negligence of manufacturer

§ 39:2  —Prima facie negligence of manufacturer

§ 39:3  —When presumption of negligence rebutted

§ 39:4  —Burden of proof

§ 39:5  —Implied warranty by manufacturer

§ 39:6  Implied warranty of wholesomeness by manufacturer;
  burden of proof

§ 39:7  Implied warranty of seller of food

§ 39:8  Obvious defects in food products

§ 39:9  Retailer's implied warranty of fitness for particular
  purpose

§ 39:10  Implied warranty—Fitness for a particular purpose

§ 39:11  Duty of druggist

§ 39:12  Duty of manufacturer to warn user

§ 39:13  Manufacturer's duty in design of product

§ 39:14  Manufacturer not an insurer in design of product

§ 39:15  Manufacturer's implied warranty of fitness

§ 39:16  Manufacturer's liability—Burden of proof

§ 39:17  Insecticides—Duty to warn as to use

§ 39:18  —When no warning label required

§ 39:19  —Negligent use

§ 39:20  Failure to use product in reasonably intelligent
  manner

§ 39:21  Contractor's implied warranty of fitness of material

§ 39:22  New dwellings—Implied warranty of habitability

CHAPTER 40. FEDERAL EMPLOYERS' LIABILITY ACT

§ 40:1  Duty of railroad to provide safe place and equipment

§ 40:2  Contributory negligence
JURY INSTRUCTIONS

TABLE OF CONTENTS

§ 40:3 What risks not assumed
§ 40:4 What risks assumed
§ 40:5 Negligence of employee—Sole proximate cause
§ 40:6 Negligence of railroad—Burden of proof
§ 40:7 Calculation of lost future earnings—Burden of proof

CHAPTER 41. MALPRACTICE

§ 41:1 Explanatory Note
§ 41:2 Duty of physicians
§ 41:3 Aggravating original injury
§ 41:4 Duty of patient
§ 41:5 Standard of care required
§ 41:6 Duty of physician to inform patient of risks
§ 41:7 Proof of proximate cause
§ 41:8 Expert and lay evidence
§ 41:9 Duty of physicians—Continuing duty
§ 41:10 Directions to patient
§ 41:11 Physicians not insurers
§ 41:12 Negligence of physician—Burden of proof
§ 41:13 Proof of negligence—Expert testimony
§ 41:14 Duty of physician to inform patient of risks; proof by expert testimony necessary
§ 41:15 Duty of dentists
§ 41:16 Duty of nurses
§ 41:17 Duty of health care provider
§ 41:18 Duty of hospital
§ 41:19 Duty of attorney at law
§ 41:20 Gratuitous services
§ 41:21 Burden of proof

CHAPTER 42. ANIMALS

§ 42:1 Domestic animals—Duties of owners
§ 42:2 Not livestock
§ 42:3 When defendant not liable
§ 42:4 Violation of ordinance
§ 42:5 Knowingly permitting them to stray
§ 42:6 Knowledge of propensities
§ 42:7 Wild animals—Duties of owner
§ 42:8 Contributory negligence

CHAPTER 43. AIRPLANES

§ 43:1 Duty owed to guest passenger
§ 43:2 Lookout
§ 43:3 Duty owed to other aircraft
§ 43:4  Lookout for other aircraft
§ 43:5  —When impossible to see
§ 43:6  Right to assume other pilot will obey air traffic regulations

CHAPTER 44. AMUSEMENTS, SPORTS AND SPECTATORS
§ 44:1  Amusement grounds

CHAPTER 45. EMOTIONAL DISTURBANCE
§ 45:1  Physical injury resulting from emotional disturbance
§ 45:2  Burden of proof
§ 45:3  No recovery for emotional disturbance alone
§ 45:4  Where plaintiff is a person of unusual sensitivity
§ 45:5  Emotional disturbance resulting from outrageous conduct
§ 45:6  —Burden of proof
§ 45:7  —Clear and convincing evidence
§ 45:8  Emotional distress resulting from negligent conduct—Unaccompanied by physical injury

PART III. INTENTIONAL TORTS—FORMS OF INSTRUCTIONS

CHAPTER 46. ASSAULT AND BATTERY
§ 46:1  Battery—Definition
§ 46:2  —Unauthorized operation by surgeon
§ 46:3  Assault—Definition
§ 46:4  Liability for unlawful assault and battery
§ 46:5  Self-defense
§ 46:6  —Force used must be reasonable and attack necessary
§ 46:7  —Apparent necessity
§ 46:8  —When not justified
§ 46:9  Right to prevent arrest
§ 46:10  Arrest for past misdemeanor
§ 46:11  Lawful arrest—Without warrant
§ 46:12  —Duty to submit peaceably
§ 46:13  Excessive force in making arrest
§ 46:14  Reasonable force in making arrest
§ 46:15  Officer is judge of force necessary
§ 46:16  Officer using excessive force in bad faith
§ 46:17  Compensatory damages
CHAPTER 47. FALSE IMPRISONMENT

§ 47:1 In general
§ 47:2 Illegal restraint
§ 47:3 Good faith or probable cause
§ 47:4 Probable cause in shoplifting cases
§ 47:5 Arrest without warrant—Delay in procuring warrant
§ 47:6 —When delay in procuring warrant excusable
§ 47:7 —Duty of officer to exercise discretion
§ 47:8 Reasonable suspicion that offense is being committed
§ 47:9 Probable cause that offense is being committed
§ 47:10 Lawful arrest—Burden of proof
§ 47:11 Damages

CHAPTER 48. LIBEL AND SLANDER

§ 48:1 Defamation—Definition—Attack upon reputation
§ 48:2 —False factual statement
§ 48:3 Defamatory statement by defendant
§ 48:4 Defamation by inference, implication or insinuation from words used
§ 48:5 Indirect reference to plaintiff
§ 48:6 Statutory insulting words
§ 48:7 —With probable cause exception
§ 48:8 Words to be construed in popular sense
§ 48:9 Uttering insulting words—Burden of proof
§ 48:10 Words insulting under statute—Burden of proof
§ 48:11 Publication—Definition
§ 48:12 —Direct or circumstantial evidence
§ 48:13 Words defamatory as a matter of law—Damage presumed from publication
§ 48:14 Actual common-law malice; malice in fact—Definition
§ 48:15 Actual constitutional malice—Definition
§ 48:16 —Test for
§ 48:17 —Distinguished from actual common-law malice
§ 48:18 Actual malice—Newspapers or media—Duty to investigate
§ 48:19 Recovery based upon actual constitutional malice of defendant
§ 48:20 —Burden of proof
JURY INSTRUCTIONS

§ 48:21 Recovery based upon negligence of defendant
§ 48:22 — Burden of proof
§ 48:23 Repetition of defamation — Circumstance tending to show common-law malice
§ 48:24 Privilege — When a jury issue
§ 48:25 — When lost — Privileged occasion
§ 48:26 — Interest or duty in the subject
§ 48:27 — Common interest of defendant and recipient
§ 48:28 — Coemployee
§ 48:29 — Self defense — Abuse of privilege
§ 48:30 — — Loss of privilege — Burden of proof
§ 48:31 Newspapers — Right to comment fairly and honestly on matter of public concern
§ 48:32 — Fair and honest comment on public work
§ 48:33 — Fair and honest comment — Definition
§ 48:34 Statement by corporate employee
§ 48:35 Compensatory damages
§ 48:36 Damages — Reproduction as an element
§ 48:37 Punitive damages
§ 48:38 Evidence of bad reputation in determining damages
§ 48:39 Defamation by newspaper, magazine or periodical — Mitigation of damages
§ 48:40 Apology — Mitigation of damages

CHAPTER 49. MALICIOUS PROSECUTION

§ 49:1 Elements of action
§ 49:2 — Four prong
§ 49:3 Probable cause — Definition
§ 49:4 — Ordinarily prudent person
§ 49:5 Test for probable cause viewed from standpoint of defendant
§ 49:6 Want of probable cause — Reputation of plaintiff
§ 49:7 Want of probable cause not inferred from malice
§ 49:8 Malice — Definition
§ 49:9 — Burden of proof
§ 49:10 When action of defendant not malicious
§ 49:11 Malice inferred from want of probable cause
§ 49:12 Inference of malice rebuttable
§ 49:13 Advice of counsel
§ 49:14 — Failure to disclose all material facts or act on advice
§ 49:15 Probable cause and malice must concur
§ 49:16 Acquittal of plaintiff not evidence of want of probable cause
§ 49:17 Guilt of plaintiff
JURY INSTRUCTIONS

TABLE OF CONTENTS

§ 49:18 Compromise of charge procured or consented to by plaintiff
§ 49:19 Ratification by corporation of arrest and prosecution
§ 49:20 General and special damages
§ 49:21 Punitive damages
§ 49:22 — Burden of proof

CHAPTER 50. INTERFERENCE WITH CONTRACTUAL RIGHTS

§ 50:1 Elements
§ 50:2 Interference with at-will contract
§ 50:3 Interference with contract expectancy
§ 50:4 Conspiracy to interfere with contractual rights
§ 50:5 Defense of privilege and justification
§ 50:6 Defense of legitimate business competition

CHAPTER 51. CIVIL CONSPIRACY

§ 51:1 Elements

CHAPTER 52. FRAUD

§ 52:1 Elements — Actual fraud
§ 52:2 — Four prong
§ 52:3 Constructive fraud — Elements
§ 52:4 Measure of damages

CHAPTER 53. STALKING

§ 53:1 Stalking
§ 53:2 Damages

CHAPTER 54. INTERFERENCE WITH PARENTAL RIGHTS

§ 54:1 Elements — Removing or detaining the child without consent
§ 54:2 — Preventing exercise of parental or custodial rights
§ 54:3 Damages
§ 54:4 Interference with parental rights — Affirmative defense — Good faith
§ 54:5 — Good faith or protection of child
§ 54:6 — Good faith or lack of knowledge
PART IV. CONTRACTS—FORMS OF INSTRUCTIONS

CHAPTER 55. CONTRACTS—IN GENERAL
§ 55:1 Contract interpretation
§ 55:2 Unjust enrichment

PART V. WILLS—FORMS OF INSTRUCTIONS

CHAPTER 56. WILL CONTESTS
§ 56:1 Burden of proof regarding testamentary capacity
§ 56:2 Elements
§ 56:3 Presumption of testamentary capacity
§ 56:4 —No adjudication of insanity
§ 56:5 Rebuttal of testamentary capacity shifts burden of proof to proponent of will
§ 56:6 Determination of verdict based on whether testamentary capacity proven

PART VI. CRIMES—FORMS OF INSTRUCTIONS

CHAPTER 57. WEIGHING THE EVIDENCE—IN GENERAL
§ 57:1 Credibility of witnesses
§ 57:2 Credibility of witnesses (alternate form)
§ 57:3 Credibility of witnesses (alternate form)
§ 57:4 Disregarding uncontradicted testimony
§ 57:5 Informing the jury of the abolition of parole
§ 57:6 Character
§ 57:7 Knowingly false testimony
§ 57:8 Circumstantial evidence—Definition
§ 57:9 —Legal and competent evidence
§ 57:10 —Reception with caution
§ 57:11 —Excluding every reasonable hypothesis except guilt
§ 57:12 Prior conviction
§ 57:13 —Jury determination of weight given to
§ 57:14 Former and subsequent crimes
§ 57:15 Former crimes considered to show identity of criminal
JURY INSTRUCTIONS

FORMS OF

FUNCTION OF

TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>57:16</td>
<td>Former conviction—Evidence as to punishment</td>
<td></td>
</tr>
<tr>
<td>57:17</td>
<td>When evidence may not be considered</td>
<td></td>
</tr>
<tr>
<td>57:18</td>
<td>Former crimes—When disregarded</td>
<td></td>
</tr>
<tr>
<td>57:19</td>
<td>Consequences of act inferred</td>
<td></td>
</tr>
<tr>
<td>57:20</td>
<td>Consequences of act inferred (alternate form)</td>
<td></td>
</tr>
<tr>
<td>57:21</td>
<td>Presumption of innocence</td>
<td></td>
</tr>
<tr>
<td>57:22</td>
<td>Reasonable doubt</td>
<td></td>
</tr>
<tr>
<td>57:23</td>
<td>Alternate instruction</td>
<td></td>
</tr>
<tr>
<td>57:24</td>
<td>Function of jury in fixing punishment</td>
<td></td>
</tr>
<tr>
<td>57:25</td>
<td>Sentencing without regard to race, color, religious beliefs, national origin, or sex of the defendant or victim</td>
<td></td>
</tr>
<tr>
<td>57:26</td>
<td>Remarks of counsel</td>
<td></td>
</tr>
<tr>
<td>57:27</td>
<td>Instructions on drawing legal conclusions</td>
<td></td>
</tr>
<tr>
<td>57:28</td>
<td>Testimony of pro se defendants</td>
<td></td>
</tr>
</tbody>
</table>

CHAPTER 58. WEIGHING THE EVIDENCE—PARTICULAR MATTERS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>58:1</td>
<td>Uncorroborated testimony of an accomplice—Will support a conviction</td>
</tr>
<tr>
<td>58:2</td>
<td>—Danger</td>
</tr>
<tr>
<td>58:3</td>
<td>Unsupported testimony of an accomplice—Caution</td>
</tr>
<tr>
<td>58:4</td>
<td>Failure of evidence to disclose criminal agent</td>
</tr>
<tr>
<td>58:5</td>
<td>Identity of the guilty party</td>
</tr>
<tr>
<td>58:6</td>
<td>Finding of indictment not evidence of guilt</td>
</tr>
<tr>
<td>58:7</td>
<td>Failure of defendant to testify</td>
</tr>
<tr>
<td>58:8</td>
<td>Failure to produce material witness</td>
</tr>
<tr>
<td>58:9</td>
<td>Flight by defendant</td>
</tr>
<tr>
<td>58:10</td>
<td>—No presumption of guilt</td>
</tr>
<tr>
<td>58:11</td>
<td>Intentional use of false name</td>
</tr>
<tr>
<td>58:12</td>
<td>Confessions, weight and credibility</td>
</tr>
<tr>
<td>58:13</td>
<td>Instruction when a video of a confession is played in court</td>
</tr>
<tr>
<td>58:14</td>
<td>Consent</td>
</tr>
<tr>
<td>58:15</td>
<td>Defendant prevented from obtaining evidence</td>
</tr>
<tr>
<td>58:16</td>
<td>Disputed venue</td>
</tr>
<tr>
<td>58:17</td>
<td>Immunity</td>
</tr>
<tr>
<td>58:18</td>
<td>Permissible inferences</td>
</tr>
</tbody>
</table>

CHAPTER 59. PARTIES

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>59:1</td>
<td>Principal in second degree</td>
</tr>
<tr>
<td>59:2</td>
<td>Principals in first and second degree—Test for</td>
</tr>
<tr>
<td>59:3</td>
<td>Principal in first degree—Action through innocent agent</td>
</tr>
</tbody>
</table>
JURY INSTRUCTIONS

§ 59:4 Joint participants as perpetrators or triggerman
§ 59:5 Principles in first and second degree
§ 59:6 Agency—Test for
§ 59:7 Principal in second degree—Burden of proof
§ 59:8 —Identity and conviction of principal in first degree not necessary
§ 59:9 —Proof of commission of principal crime necessary
§ 59:10 Concert of action
§ 59:11 —Abettor not present
§ 59:12 —Innocent bystander killed
§ 59:13 —Contemplation of crime
§ 59:14 Independent action
§ 59:15 —Reasonable doubt in equal opportunity cases
§ 59:16 Intervening cause—Reasonably foreseen
§ 59:17 Accessory before the fact
§ 59:18 —Burden of proof
§ 59:19 Accessory after the fact
§ 59:20 —Burden of proof
§ 59:21 —Who not deemed

CHAPTER 60. CAPACITY
§ 60:1 Insanity—When a defense
§ 60:2 —Burden of proof
§ 60:3 Irresistible impulse—When a defense
§ 60:4 —Burden of proof
§ 60:5 —When not a defense
§ 60:6 Intoxication—No excuse
§ 60:7 —No excuse
§ 60:8 —No excuse in nonhomicide cases
§ 60:9 —When defense to first degree murder or capital murder
§ 60:10 —Degree required
§ 60:11 —Prior intent to kill
§ 60:12 —No defense to murder in the second degree
§ 60:13 Involuntary intoxication
§ 60:14 Bona fide claim of right

CHAPTER 61. ATTEMPTS
§ 61:1 Elements
§ 61:2 Burden of proof
§ 61:3 Overt act
§ 61:4 Mere preparation
§ 61:5 Intent proven from conduct and words
§ 61:6 Specific intent necessary
TABLE OF CONTENTS

§ 61:7 Solicitation
§ 61:8 Impossibility as a defense

CHAPTER 62. SELF-DEFENSE
§ 62:1 Justifiable homicide
§ 62:2 Self-defense (alternative instruction)
§ 62:3 Defense of others
§ 62:4 Use of deadly force to prevent harm to one's self or others and to prevent escape
§ 62:5 Self-defense—Resisting unlawful arrest
§ 62:6 Retreat not required
§ 62:7 Right to arm
§ 62:8 Self-defense—Brandishing a firearm
§ 62:9 Necessity created by defendant's misconduct
§ 62:10 Necessity by defendant's misconduct
§ 62:11 Fear alone
§ 62:12 — Intention
§ 62:13 Words alone
§ 62:14 Retreat—Excusable homicide
§ 62:15 — —Four prong
§ 62:16 Reputation of deceased for turbulent disposition
§ 62:17 Excessive force

CHAPTER 63. ALIBI
§ 63:1 Alibi
§ 63:2 Sufficiency of evidence
§ 63:3 — Reasonable doubt explanation

CHAPTER 64. DURESS
§ 64:1 When duress a defense
§ 64:2 — Reasonable opportunity to escape
§ 64:3 When duress not a defense
§ 64:4 Necessity as a defense

CHAPTER 65. ENTRAPMENT
§ 65:1 When entrapment a defense
§ 65:2 When entrapment not a defense

CHAPTER 66. ABDUCTION AND KIDNAPPING
§ 66:1 Elements of abduction—In general
§ 66:2 Elements of abduction with intent to extort money or for immoral purpose
§ 66:3 Consent of alleged victim to marry
§ 66:4 Intent of defendant to marry
§ 66:5 Inducing victim to accompany defendant to obtain a pecuniary benefit
§ 66:6 Pecuniary benefit

CHAPTER 67. ABORTION
§ 67:1 Elements

CHAPTER 68. ARSON
§ 68:1 Elements
§ 68:2 Presumption fire caused by accident
§ 68:3 Incriminating circumstances

CHAPTER 69. BIGAMY
§ 69:1 Essential elements
§ 69:2 Bigamous marriage—Exceptions

CHAPTER 70. BRIBERY
§ 70:1 Elements
§ 70:2 Burden of proof

CHAPTER 71. BURGLARY
§ 71:1 Elements
§ 71:2 Actual breaking
§ 71:3 Constructive breaking
§ 71:4 Inference as to intent—Beyond a reasonable doubt
§ 71:5 Inference as to intent
§ 71:6 Entry obtained by consent
§ 71:7 When consent to enter premises not defense
§ 71:8 Doubt as to grade of offense
§ 71:9 Possession of recently stolen goods
§ 71:10 Possession of recently stolen property—Burden of proof
§ 71:11 Possession of tools used in burglary

CHAPTER 72. CONSPIRACY
§ 72:1 Elements
§ 72:2 —Long form
§ 72:3 Liability of conspirators

CHAPTER 73. DISORDERLY CONDUCT
§ 73:1 Elements
CHAPTER 74. DRIVING WHILE INTOXICATED

§ 74:1 Test by observation
§ 74:2 Definition of operating a motor vehicle
§ 74:3 Blood test—Level of alcohol in blood
§ 74:4 —Presumption when test shows excessive alcohol
§ 74:5 Consent or refusal to breath test
§ 74:6 Preliminary breath test

CHAPTER 75. DRUGS

§ 75:1 Constructive possession of drugs
§ 75:2 Elements of possession
§ 75:3 Unlawful possession of drugs
§ 75:4 Distribution of drugs
§ 75:5 Possession with intent to distribute
§ 75:6 Accommodation transfer
§ 75:7 —Burden of proof
§ 75:8 Possession of controlled paraphernalia
§ 75:9 Obtaining a drug by use of a false name or address
§ 75:10 Possession with intent to distribute an imitation controlled substance

CHAPTER 76. FORGERY

§ 76:1 Elements
§ 76:2 Signing an assumed or fictitious name
§ 76:3 Particular form of authority not necessary for agent
§ 76:4 Uttering—Elements
§ 76:5 Possession of forged instrument

CHAPTER 77. ILLEGAL GAMBLING

§ 77:1 Illegal gambling
§ 77:2 Operation of gambling enterprise
§ 77:3 Burden on commonwealth to prove operation

CHAPTER 78. HIT AND RUN

§ 78:1 Duties of driver
§ 78:2 Knowledge of or probability of injury

CHAPTER 79. HOMICIDE

§ 79:1 Possible verdicts
§ 79:2 Reasonable doubt as to grade of offense
§ 79:3 Capital murder
§ 79:4 —Penalty instruction
JURY INSTRUCTIONS

§ 79:5 — Addition of fine
§ 79:6 Time of commission of related felony
§ 79:7 In the commission of arson
§ 79:8 First degree murder
§ 79:9 — Long form
§ 79:10 — Burden of proof
§ 79:11 — Specific statutory acts
§ 79:12 Intent to kill — Time required
§ 79:13 — Definition
§ 79:14 Malice
§ 79:15 — Definition
§ 79:16 Malice not focused on a particular person
§ 79:17 Malice — Inferences and weapons
§ 79:18 Willful
§ 79:19 Deadly weapon — Malice inferred
§ 79:20 — Short form
§ 79:21 — Willful
§ 79:22 — Malice and premeditation inferred
§ 79:23 — Definition
§ 79:24 — Instrument not deadly weapon
§ 79:25 — Burden of proof
§ 79:26 — Jury question
§ 79:27 Passion, anger as defense to first degree murder
§ 79:28 Voluntary intoxication as defense to first degree or capital murder
§ 79:29 Motive
§ 79:30 — Presence or absence
§ 79:31 Lack of motive
§ 79:32 Second degree murder
§ 79:33 — While in commission of felony
§ 79:34 — Assisting in consumption of illegal drug
§ 79:35 — Homicide presumed second degree murder
§ 79:36 — Malice necessary
§ 79:37 Voluntary manslaughter
§ 79:38 — Mutual combat
§ 79:39 — Passion and reasonable provocation
§ 79:40 — Short form
§ 79:41 — Burden of proof
§ 79:42 Cooling off time — Effect
§ 79:43 — Lack of
§ 79:44 Involuntary manslaughter
§ 79:45 — Motor vehicle cases
§ 79:46 — Long form
§ 79:47 Aggravated involuntary manslaughter
Table of Contents

§ 79:48 Criminal negligence
§ 79:49 Homicide—Components of corpus delicti
§ 79:50 Killing newborn baby—Burden of proof
§ 79:51 Accidental killing—Burden of proof not on defendant
§ 79:52 Accidental killing as a defense
§ 79:53 Causation of death
§ 79:54 Proximate cause of death
§ 79:55 Lynching

CHAPTER 80. INDECENT EXPOSURE
§ 80:1 Indecent exposure
§ 80:2 Indecent exposure to a child under fourteen
§ 80:3 Lascivious intent—Definition

CHAPTER 81. INTOXICATING LIQUORS (A.B.C. LAW)
§ 81:1 Illegal manufacture
§ 81:2 Manufacture—Definition
§ 81:3 Burden on commonwealth to prove manufacturing at time and place
§ 81:4 Prima facie presumption of guilt dependent on proof of manufacturing
§ 81:5 Presence at illegal distillery
§ 81:6 Unlawful possession
§ 81:7 Excess of permitted amount of alcohol not bearing ABC stamps

CHAPTER 82. LARCENY; RECEIVING STOLEN GOODS; EMBEZZLEMENT
§ 82:1 Larceny—Elements
§ 82:2 Larceny by false pretenses
§ 82:3 Guilty knowledge and intent to defraud necessary
§ 82:4 Larceny by false pretenses—Title and possession must pass
§ 82:5 Intent to steal—Burden of proof
§ 82:6 Identification of property stolen
§ 82:7 Abandonment
§ 82:8 Asportation
§ 82:9 Possession of recently stolen property
§ 82:10 —Short form
§ 82:11 Possession of recently stolen goods—Burden of proof
§ 82:12 Possession of recently stolen property—Personal and exclusive possession
§ 82:13 Bringing stolen property into the state
§ 82:14 Receiving stolen goods
§ 82:15 —Guilty knowledge—Sufficiency of proof
§ 82:16 —Burden of proof
§ 82:17 —Guilt inferred from recent unexplained possession
§ 82:18 Embezzlement—Elements
§ 82:19 —Elements (long form)
§ 82:20 —Intent necessary
§ 82:21 —Honest belief of bona fide claim to property
§ 82:22 Larceny by Bailee of goods
§ 82:23 Embezzlement by withholding funds due the commonwealth

CHAPTER 83. MAYHEM (FELONIOUS WOUNDINGS)
§ 83:1 Malicious wounding—Possible verdicts
§ 83:2 Hate crime—Assault and battery—Minimum sentence
§ 83:3 Malicious wounding as an offense
§ 83:4 Unlawful wounding
§ 83:5 Specific intent necessary

CHAPTER 84. OBSCENITY
§ 84:1 Elements
§ 84:2 Test for obscenity

CHAPTER 85. PERJURY
§ 85:1 Elements
§ 85:2 Contradictory testimony under oath
§ 85:3 No probable cause for believing truth of testimony
§ 85:4 Knowledge of false statement necessary
§ 85:5 Materiality
§ 85:6 Falsity of statement must be proven by other evidence
§ 85:7 Subornation of perjury, and inducing another to testify falsely

CHAPTER 86. RAPE
§ 86:1 In general
§ 86:2 Spousal rape
§ 86:3 Child under thirteen (13) years of age

xlvi
JURY INSTRUCTIONS

Personal and property

CHAPTER 87. ROBBERY

§ 87:1 Elements
§ 87:2 Violence or intimidation
§ 87:3 —After larceny
§ 87:4 Possession of property stolen during robbery
§ 87:5 Taking during robbery

CHAPTER 88. SEXUAL OFFENSES

§ 88:1 Definition of sexual abuse
§ 88:2 Sexual battery
§ 88:3 Aggravated sexual battery
§ 88:4 Sodomy—General
§ 88:5 —By force
§ 88:6 —Spouse
§ 88:7 —Child under thirteen (13)
§ 88:8 —Penetration
§ 88:9 Nonspousal animate or inanimate object sexual penetration
§ 88:10 Animate or inanimate object sexual penetration—Spouse
§ 88:11 Marital sexual assault
§ 88:12 Definition—Intimate parts
§ 88:13 —Custodial or supervisory relationship with a child

Table of Laws and Rules

Table of Cases

Index
Part I
PRINCIPLES GOVERNING INSTRUCTIONS TO JURY

Chapter 1
In General

§ 1:1 Office of the instruction
§ 1:2 The model instruction
§ 1:3 Form and manner of instructing
§ 1:4 Time of giving instructions

KeyCite®: Cases and other legal materials listed in KeyCite Scope can be researched through the KeyCite service on Westlaw®. Use KeyCite to check citations for form, parallel references, prior and later history, and comprehensive citator information, including citations to other decisions and secondary materials.

§ 1:1 Office of the instruction

Research References
West's Key Number Digest, Criminal Law =>769; Trial =>182.
C.J.S., Criminal Law §§ 1302 to 1304; Trial §§ 484 to 486, 488, 492, 498, 500

The office of an instruction is to enlighten the jury as to the law in a particular case and to assist the jury in understanding the issues.1

It should define for the jury and direct their attention to the legal principles that apply and govern the facts proved or presumed in the case and aid them in reaching a proper verdict.2

[Section 1:1]

1Taylor v. Com., 12 Va. App. 419, 404 S.E.2d 78, 80 (1991) ("The purpose of an instruction is to furnish guidance to the jury in their deliberations, and to aid them in arriving at a proper verdict, so far as it is competent for the court to assist them."); Gaalaas by Gaalaas v. Morrison, 233 Va. 148, 156, 353 S.E.2d 898, 902 (1987); Atwell v. Watson, 304 Va. 624, 633, 133 S.E.2d 552, 559 (1963).

2Adams v. Plaza Theatre, 186 Va. 403, 409, 43 S.E.2d 47, 50 (1947); see also, Gaalaas by Gaalaas v. Morrison, 233 Va. 148, 156, 353 S.E.2d
These principles should be so stated that they will impartially inform the jury in clear, concise and succinct language,\(^6\) complete and without conflict.\(^6\) Where the court can see that this has been accomplished, and the law of the case fairly submitted to the jury, it would be beside the mark to stop and inquire whether it was done by one instruction or by more than one.\(^5\)

§ 1:2 The model instruction

Research References
West's Key Number Digest, Criminal Law \(\Leftrightarrow 805\); Trial \(\Leftrightarrow 228\)
C.J.S., Criminal Law § 1309; Trial §§ 581, 593 to 602

The model instruction is a simple, impartial, clear concise statement of the law applicable to evidence in the case then on trial. Such instructions aid juries in reaching right conclusions, while many others that unfortunately have received judicial sanction are couched in technical language of doubtful meaning that serves only to confuse, mystify and mislead jurors, while they likewise furnish unnecessary and unprofitable exercise for the judges.\(^1\)

In 1992, the General Assembly passed a statute, which stated that it was declaratory of existing law, providing that a proposed jury instruction may not be withheld from the jury merely because it does not conform with the official Model Jury Instructions.\(^2\)

§ 1:3 Form and manner of instructing

Research References
West's Key Number Digest, Criminal Law \(\Leftrightarrow 805\); Trial \(\Leftrightarrow 228\)
C.J.S., Criminal Law § 1309; Trial §§ 581, 593 to 602

The recognized practice in Virginia is for the court to give written instructions requested by the litigants, when satisfied that they correctly state the law applicable to the evidence, and to


\(^{5}\) Gottlieb v. Com., 126 Va. 807, 813, 101 S.E. 872 (1920); see also, Whitmer v. Marcum, 214 Va. 64, 67, 196 S.E.2d 907, 909 (1973).

give oral instructions only if such instructions are requested or to clarify a general statement contained in the written instructions. The giving of oral instructions is not approved. The Supreme Court Rules specifically require that, in a felony case, jury instructions must be in writing.

It is not the practice in Virginia for a court unasked to charge the jury upon the law of the case, although the mere fact that it does so cannot of itself be assigned as error. The practice is a wise one in general, for it is extremely difficult to deliver charges to the jury without conveying to them some intimation of the opinion of the judge upon the evidence, or using some phrase or expression that may constitute ground for just exception.

Trial courts are not infrequently at fault in failing to give precisely in their usual form approved instructions that in a measure have become standardized. The omissions that are sometimes made and the additions that are sometimes inserted in such instructions are the fruitful cause of trouble in many instances and of reversal in others.

§ 1:4 Time of giving instructions

It is always the duty of the court at the proper time to instruct the jury upon all principles of law applicable to the pleadings and the evidence.

In a civil case, the time of giving instructions rests in the sound discretion of the court but the practice is to instruct the jury at the conclusion of the evidence and before argument. In criminal cases, the Supreme Court Rules require the court to instruct the jury before arguments of counsel.

It not only is proper for the court to fully and completely respond to an inquiry that comes from the jury after their retirement and deliberation for information touching their duties, but it has a duty to amend instructions that appear to be erroneous.

[Section 1:3]


[Section 1:4]

3Witt v. Merrick, 210 Va. 70, 74, 168 S.E.2d 517, 520 (1969); Hebner v.
or misleading. 4

Sullivan, 194 Va. 259, 265, 72 S.E.2d 689, 692 (1952); Williams v. Com., 85 Va. 607, 609, 8 S.E. 470, 471 (1889).


See also McLean v. Com., 28 Va. App. 593, 599-600, 507 S.E.2d 640, 643 (1998), opinion withdrawn and vacated on reh'g en banc, 30 Va. App. 322, 516 S.E.2d 717 (1999). Virginia law allows the trial judge “to give a supplemental jury instruction which clarifies an existing instruction or a principle previously existing before the jury.” However, if a supplemental jury instruction “introduces a new theory to the case, the parties should be given an opportunity to argue the new theory.” Defendant’s conviction reversed because (1) defense was not given an opportunity to argue the new theory raised in the instructions; and (2) the instruction was misleading.