

South Carolina Damages
Second Edition

TABLE OF CONTENTS

PART I
DAMAGES IN GENERAL

Chapter 1 - DAMAGES IN GENERAL	1
A. Necessity of Damages In Actions At Law	1
1. Actions at Law Versus Actions in Equity	2
2. Recovery is Premised on the Existence of Damages	2
3. Restrictions on the Right to Recover Damages	3
B. Types of Damages and the Purposes They Serve	4
1. Compensatory Damages	4
2. Nominal Damages	5
3. Punitive Damages	6
C. Proof Required for Recovery of Damages	6
1. Actual Damages	6
2. Nominal Damages	9
D. New Trial <i>Nisi</i> , New Trial Absolute, and the Thirteenth Juror	10

PART II
COMPENSATORY DAMAGES

Chapter 2 - SOUTH CAROLINA MODIFIED COMPARATIVE NEGLIGENCE	15
A. Introduction	15
B. Contributory Negligence as a Total Bar to Recovery	16
1. Assumption of the Risk	17
2. Last Clear Chance Doctrine	19
3. Concepts Clouded by the Adoption of Comparative Fault	19
C. Adoption of Comparative Negligence: Reducing Rather Than Barring Recovery	19
1. Apportionment of Responsibility	20

Table of Contents

2.	Multiple Defendants	20
3.	Computation of Damages	21
4.	Limits on Liability	21
5.	Comparative Negligence and Minors	22
D.	Exceptions to Comparative Negligence	23
1.	Assumption of the Risk	23
2.	Last Clear Chance Doctrine	23
3.	Intentional Torts	24
4.	Defendant’s Reckless Behavior	24
5.	Violation of Statute	25
6.	Defendant’s Special Duty to Protect Plaintiff Against Plaintiff’s Own Negligence	25
E.	Distinguishing Between Failure of Causation and Comparative Negligence	28
F.	Application of Comparative Negligence to Strict Products Liability Claims	29
G.	Imputed Contributory Negligence and Comparative Negligence	29
H.	Jury Instructions	30
1.	Jury Instructions When There is One Plaintiff and One Defendant ...	31
2.	Special Verdict Form in a One Plaintiff v. One Defendant Comparative Negligence Case	32
I.	Conclusion	32
Chapter 3 - PERSONAL INJURY DAMAGES		33
A.	Tangible Losses Available for Personal Injury	33
1.	Medical Expenses	33
2.	Lost Earnings	48
B.	Intangible Losses Available in Personal Injury Cases	52
1.	Pain and Suffering	52
2.	Disfigurement and Disability	56
3.	Emotional/Mental Distress	61
4.	Loss of Consortium	72
5.	Loss of Enjoyment of Life	79

Table of Contents

Chapter 4 - TORT DAMAGES INVOLVING PROPERTY 82

 A. Injury/Invasion of Real Property 82

 1. Nuisance 82

 2. Trespass 85

 3. Strict Liability 86

 4. Negligence 87

 B. Physical Injury to or Loss to Chattels 87

 1. Introduction 87

 2. General Damages—Chattel Has a Fair Market Value 87

 3. General Damages—Chattel Has No Fair Market Value or Fair
 Market Value Will Not Compensate Plaintiff For Loss 93

 4. Loss of Use 94

 5. Conversion 96

 C. Eminent Domain/Condemnation 98

 1. Origins of Condemnation 98

 2. South Carolina’s Statutory Scheme 98

 3. Just Compensation 99

 4. The Process of Valuation 104

 5. Attorney Fees and Interest 106

Chapter 5 - CONTRACT DAMAGES 107

 A. Elements of Damages 107

 1. Actual or General Damages 107

 2. Special Damages for Breach of Contract 108

 3. Incidental and Consequential Damages 108

 4. Punitive Damages for Breach of Contract 110

 5. Goodwill 111

 6. Attorney’s Fees and Costs 111

 B. Measure of Contract Damages 113

 1. Mitigation of Damages 113

 2. Lost Profits and New Business Rule 114

 3. Liquidated Damages 117

 4. Economic Loss Doctrine 119

Table of Contents

C. Issues Related to Contract Damages 124

 1. Promissory Estoppel 124

 2. Quantum Meruit 125

**PART III
PUNITIVE DAMAGES**

Chapter 6 - PUNITIVE DAMAGES 131

 A. Nature and Purpose of Punitive Damages 131

 1. Historical roots of punitive damages 131

 2. Goals of punitive damages 133

 B. Grounds for and Limits Upon Punitive Damages 138

 1. Statutory theories 138

 2. Common law theory 146

 C. Amount of Award 147

 D. Bifurcation and Trifurcation of Cases 152

 1. State Court 152

 2. Federal Court 153

 E. Constitutional Issues 154

 1. Reprehensibility 154

 2. Ratio between actual harm and punitive award 158

 3. Punitive damage award versus civil penalties
 imposed in similar cases 161

 4. Other issues 161

 F. Review of Punitive Damages on Appeal 164

 1. Federal Court 164

 2. State Court 166

 G. Punitive Damages in Federal Maritime Cases 168

 H. Conclusion 171

**PART IV
MISCELLANEOUS DAMAGES TOPICS**

**Chapter 7 - SET-OFF OF SETTLEMENT AGAINST VERDICT IN
WRONGFUL DEATH AND SURVIVAL ACTIONS** 175

Table of Contents

Chapter 8 - PREJUDGMENT AND POST-JUDGMENT INTEREST 181

 A. Prejudgment Interest: General Rule and Theories of Recovery 181

 1. Statutory Legal Rate of Interest 181

 2. Interest in Contractual Agreements 181

 B. Simple Versus Compound Interest 182

 C. “Account Stated” and “Sum Certain” for Statutory Interest 182

 D. Discount and Setoff 184

 E. Pleading Prejudgment Interest 184

 F. Specific Actions 185

 1. Eminent Domain 185

 2. Consumer Protection Code: (1) Interest on the Use of Money
 or Commodities, (2) “Legal Rate of Interest” Defined, and
 (3) Interest on Life Insurance Policy Loans 185

 3. Overpayment of Child Support 186

 4. Corporations, Partnerships, and Associations 186

 5. South Carolina Tort Claims Act 187

 6. South Carolina Unfair Trade Practices Act 188

 7. Claims for the Improvement of Real Estate 188

 8. Uniform Land Sales Practice Act 189

 9. Disbursements from the Military Fund 189

 10. Delinquent Tax Sales 190

 11. Diversity Actions in Federal Court 190

 G. Interest and Damages 191

 1. General Rule 191

 2. Inverse Condemnation 191

 3. Failure to Pay Amount Due Under Fire Insurance Policy 192

 H. Post-judgment Interest: Purpose and Theories of Recovery 193

 1. Statutory Rate of Post-Judgment Interest 193

 2. Interest in Contractual Agreements 194

 I. Pleading Post-judgment Interest 195

 J. Interest Accrual in Appeals 195

 K. Stay of Interest Accrual under Rule 67, SCRCP 196

 1. Payment of Money into Court under Rule 67 196

Table of Contents

2.	Terms of Contract Prevail Over Rule 67, SCRCP	197
3.	Matter of Discretion	198
L.	Specific Cases	198
1.	Equitable Distribution Awards	198
2.	Interest from Time of Verdict or Report	198
3.	Interest on Judgments by Confession	199
4.	Tender of Arbitration Award	199
5.	Attorneys' Fees	200
6.	Eminent Domain	200
M.	Conclusion	200
Chapter 9 - COLLATERAL SOURCE RULE	.....	201
A.	History and Purpose of the Collateral Source Rule	201
1.	History	201
2.	Purposes/Justifications	202
B.	South Carolina Law	204
1.	General	204
2.	Jury Charges	204
3.	Applications	205
C.	Future of the Collateral Source Rule	210
1.	Proposed changes in South Carolina	210
2.	National Trends	211
Chapter 10 - THE TAXATION OF SETTLEMENTS AND JUDGMENTS	.....	213
A.	Introduction	213
1.	Taxpayer's Burden of Proof	213
2.	Unexpected Tax Results of Payments	213
3.	Lack of Deference for Delayed Resolution of Tax Issues	214
4.	IRS Scrutiny of Settlements and Judgments	214
5.	Ability to Utilize Tax Treatment of Payment in Negotiations	214
6.	Tax Treatment of Payment Must be Determined at Some Point	214
B.	Origin of the Claim Doctrine	215

Table of Contents

C.	Plaintiff’s Characterization of the Payment: Non-Taxable Payment or Taxable Payment (as Ordinary Income or Capital Gains)	215
D.	Defendant’s Characterization of the Payment: Deductible Expense, Capital Expenditure or Non-Deductible, Non-Capital Payment	218
E.	Cases Involving Multiple Claims	219
F.	Miscellaneous Tax Issues	220
	1. Identifying the Payor	220
	2. Employment-Related Lawsuits	220
	3. Tax Reporting	222
	4. Tax Treatment of Attorney Fees	223
G.	Additional Authorities	225
 Chapter 11 - LIMITATIONS ON DAMAGES AGAINST THE STATE OF SOUTH CAROLINA AND CHARITABLE ORGANIZATIONS		
A.	The Abolition of Sovereign Immunity in South Carolina	227
	1. Background	227
	2. Waiver of Sovereign Immunity	228
B.	Statutory Limitations on Damages in Tort Actions Against the State	229
	1. The South Carolina Tort Claims Act	229
	2. Judicial Interpretation of Statutory Caps and Legislative Responses	230
	3. Constitutionality of Statutory Caps	232
	4. Current Limits on Damages	232
C.	Limitations on Damages Against Charitable Organizations	233
 PART V		
PERMISSIBLE ARGUMENTS ON DAMAGES IN CLOSING ARGUMENTS		
 Chapter 12 - PERMISSIBLE ARGUMENTS ON DAMAGES IN CLOSING ARGUMENTS		
A.	Right to Closing Argument	239
B.	Permissible Scope of Closing Argument	240
	1. What is Allowed	240
	2. What is Prohibited	243

Table of Contents

C. Curing Improper Arguments 246

 1. Timely Objections 246

 2. Curative Instructions 247

PART VI
DAMAGES FOR SPECIFIC CAUSES OF ACTION

Chapter 13 - ADMIRALTY 251

 A. Introduction 251

 1. Scope of Chapter 251

 2. Pleading Maritime Damages 254

 3. Forum 254

 4. Basic Maxim of Damages in Admiralty 255

 B. Allocation of Damages in Admiralty 256

 1. Vessel Solely at Fault 256

 2. Proportionate Fault: Proportionate Damages 256

 3. Proportionate Damages in Cases Involving Third Parties 256

 C. Damages for Injury to Vessel—Total Loss 257

 1. Measure of Recovery 257

 2. Valuation of Vessel 257

 3. Net Freight Pending 258

 4. Loss of Use 259

 5. Prejudgment Interest 259

 6. Expenses of Raising and Removal (Recovery Costs) 263

 D. Damages for Injury to Vessel—Partial Loss 264

 1. Measure of Recovery 264

 2. Repair Costs 264

 3. Miscellaneous Expenses Incidental to Repair Costs 265

 4. Recovery Costs 266

 5. Prejudgment Interest 266

 6. Loss of Use or Lost Profits 267

 7. Incidental Expenses 279

Table of Contents

E.	Damages for Injury to Land-Based Structure	281
1.	General Principles	281
2.	New-for-Old, Betterment, and Depreciation	281
F.	Additional Property Damage Rules in Admiralty	283
1.	Nominal Damages	283
2.	Punitive Damages	283
3.	Attorney Fees	284
4.	Mitigation of Damages	285
G.	Research Aids	285
1.	Bibliography	285
2.	Finding the Maritime Case	286
Chapter 14 - ANTI-TRUST DAMAGES UNDER SOUTH CAROLINA ANTI-TRUST STATUTE		287
A.	Introduction	287
B.	Limits on Damages Under Present Precedent	288
1.	The Intrastate Commerce Requirement	288
2.	The Direct Purchaser Requirement	288
3.	Prohibition of Class Actions	289
C.	Potential Theories of Recovery	289
1.	Recovery Under Federal Law	289
2.	Recovery Under State Law	290
D.	Conclusion	291
Chapter 15 - AUTO ACCIDENTS		293
A.	Scope of Chapter	293
B.	Compensable Damages	293
1.	Property Damage	293
2.	Punitive Damages	295
C.	Mitigation and Reduction of Damages	295
1.	Duty to Minimize Vehicle Rental Costs	296
2.	Duty to Wear Seat Belt	296

Table of Contents

3. Comparative Negligence	296
4. Pre-Existing Condition	297
D. Finding Resources to Satisfy Damages	297
Chapter 16 - CIVIL CONSPIRACY	299
A. Introduction	299
B. Civil Conspiracy Defined	299
C. Special Damages Defined	300
1. The <i>Todd/Vaught</i> Definition	300
2. Recent Developments	300
3. Summary	303
D. Requesting Damages Makes the Action One at Law	304
E. Damages in the Damages Phase	304
1. General Tort Principles Apply	304
2. Specific Items of Damage	304
3. Each Conspirator Liable for Wrongful Acts of All	306
4. Punitive Damages	306
Chapter 17 - CIVIL RIGHTS	309
A. Introduction	309
B. Potential Defendants	309
1. States	311
2. Official and Individual Capacities	311
3. State Officials	312
4. Local Governmental Entities and Officials	313
5. “State” vs. “Local” Status	313
C. Damages	315
1. Actual Damages	315
2. Punitive Damages	318
D. Attorney’s Fees and Costs	320
1. Entitlement to Fees: “Prevailing Party” Status	321
2. Reasonableness of Fees	323
3. Costs	327

Table of Contents

Chapter 18 - CLASS ACTIONS 329

 A. Overview of Class Action Theory 329

 B. The Substantive Law of Damages Applies to Class Actions 332

 C. The Remedy Requested Will Control the
 Class Action Procedure Utilized in Every Case 333

 D. The Damages in a Class Action Must Exceed
 One Hundred Dollars for Each Class Member 333

 E. Class Action Damages Determination and
 Distribution Through Litigation 335

 F. Formulating a Trial Plan that Contemplates Damages Calculation 335

 G. Proving Aggregate Monetary Damages on a Class-Wide Basis 336

 H. Distribution of Proceeds after Judgment 337

 I. Procedures for Awarding Damages Dependent Upon Type of Injury 338

 J. Injury and Damages to Individuals 338

 K. Pre-Judgment Interest 338

 L. The Claims Filing or Damage Distribution
 Process—Notice to Members 340

 M. Members Must Prove Entitlement 340

 N. Distribution Only to Current Members 340

 O. Class Action Damage Distribution by Settlement 341

 P. Aggregate Damages and “Fluid Verdicts” 341

 Q. Unclaimed Balances 341

 1. *Cy Pres* Distributions 342

 2. Pro Rata Distributions to Class Members 343

 3. Escheat of Funds 344

 4. Reversion Back to Defendant 344

 R. Arbitration of Class Action Damages 344

 S. Shareholder Derivative Action Litigation 345

 T. Defendant Class Actions 346

Chapter 19 - CONSTRUCTION CONTRACTS 349

 A. Introduction 349

 B. Damages Generally 349

Table of Contents

C.	Owner v. Contractor	350
1.	Breach of Contract	350
2.	Negligence	351
3.	Warranties	352
4.	Miscellaneous—Damage or Destruction of the Building	353
D.	Contractor v. Owner	354
1.	Contract Balances	354
2.	Contract Interference	354
3.	Increase Scope of the Work	354
E.	Limitations on Damages	355
1.	Liquidated Damages	355
2.	No Damage for Delay Clause	355
3.	Arbitration Clause	355
4.	The Economic Loss Rule	356
F.	Mechanic’s Liens	356
1.	Supplier of Labor or Materials	357
2.	Notice of Project Commencement	357
G.	Conclusion	357
Chapter 20 - DEFAMATION AND INVASION OF PRIVACY		359
A.	Defamation	359
1.	Definitions and Distinctions	360
2.	Alleging Damages	363
3.	Evidence and Burden of Proof	364
4.	Elements and Measure of Damages	368
5.	Mitigation of Damages	369
6.	Constitutional Restrictions on Recovery of Damages	370
B.	Invasion of Privacy	371
1.	Forms of Invasion of Privacy	371
2.	Elements and Measure of Damages	375
3.	Constitutional Considerations	376

Table of Contents

Chapter 21 - DRAM SHOP LIABILITY 377

- A. Introduction 377
- B. Scope of Liability 377
- C. Dram Shop Liability Based on Common Law Negligence 379
- D. Dram Shop Liability Based on Negligence Per Se 381
- E. Defenses to Dram Shop Liability 382
- F. Damages for Dram Shop Liability 383

Chapter 22 - FRAUD AND MISREPRESENTATION 385

- A. Fraud 385
- B. Negligent Misrepresentation 386
- C. Breach of Contract Accompanied by a Fraudulent Act 387
- D. Damages 388
- E. Punitive Damages for Fraud and Misrepresentation 389

Chapter 23 - INSURANCE BAD FAITH 393

- A. Introduction 393
- B. Actual and Consequential Damages 399
- C. Unsettled Questions on the Scope of Consequential Damages 401
 - 1. Acceleration of Future Benefits 401
 - 2. Physical, Mental, and Emotional Distress 405
 - 3. Attorneys' Fees 405
- D. Prejudgment Interest 406
- E. Punitive Damages 407
- F. Limitations 409
- G. Conclusion 412

Chapter 24 - INSURANCE STACKING 413

- A. Automobile Insurance in South Carolina 413
- B. Introduction to Stacking 414
- C. Class I Insured v. Class II Insured 415
- D. Ownership of a Vehicle and Involvement in an Accident 415
- E. Mandatory and Optional Insurance Coverages 416

Table of Contents

F.	Liability Insurance	416
1.	Liability Insurance for Owned Vehicles	416
2.	Liability Coverage for Non-owned Vehicles	417
G.	Uninsured Motorist Coverage	418
H.	Underinsured Motorist Coverage	419
1.	“Basic” UIM	419
I.	The Rules of Stacking	422
1.	What type of coverage is available?	423
2.	What is the status or “class” of the individual making the claim?	424
3.	Was there an “owned vehicle” “involved” in the accident?	428
4.	How much coverage may be stacked?	429
J.	Stacking of Excess UIM or UM by Class I Insured	431
1.	Per policy cap on excess UIM	431
2.	Stacking UIM and liability from same policy	432
3.	Stacking UIM and liability from different policies	432
K.	Case Law Concerning Set-Off	433
L.	Single Limits Policies and Personal Injury Protection Policies	434
1.	Single limits policies	434
2.	Personal injury protection policies	435
3.	Stacking of PIP and set-off	435
	Chapter 25 - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS	437
A.	The Tort of Outrage: Defining Damages	437
B.	Proof of Emotional Distress	438
1.	Physical v. Emotional Manifestation	438
2.	Expert Testimony	439
C.	Nominal Damages	440
D.	Punitive Damages	440
E.	Alternative Remedies	441
	Chapter 26 - INTERFERENCE WITH CONTRACTUAL AND BUSINESS RELATIONS	443
A.	Introduction	443

Table of Contents

B.	Intentional Interference with Existing Contract	443
1.	Theory of Tort	443
2.	Elements of Cause of Action	445
C.	Intentional Interference with Prospective Contractual Relations	446
1.	Theory of Tort	446
2.	Elements of Cause of Action	448
D.	Damages and Other Relief	449
1.	Elements of Damages and Other Relief	449
2.	Degree of Certainty or Specificity Required	451
3.	Duty to Mitigate	454
4.	Lost Profits	455
5.	Lost Volume Seller Doctrine	456
6.	Punitive Damages	457
7.	Disallowance of Double Recovery	458
E.	Parties, Joint and Several Liability, Burden of Proof, and Evidence	458
1.	Parties to Action	458
2.	Joint and Several Liability	459
3.	Burden of Proof and Evidence	461
Chapter 27 - LAND SALE CONTRACTS	. . . . .	463
A.	Introduction	463
B.	Recovery by the Seller	463
1.	Breach of Contract	463
2.	Rescission	474
3.	Seller’s Retention of Both Land and Payments	480
C.	Recovery by the Buyer	481
1.	Introduction	481
2.	Breach of Contract	482
3.	Rescission	491
4.	Equitable Conversion	499
Chapter 28 - LEGAL MALPRACTICE	. . . . .	501
A.	Types of Legal Malpractice	501

Table of Contents

B.	Method of Determining Damages	501
1.	Attorney Negligence in Prosecuting or Defending a Claim: The Case-Within-a-Case Method	501
2.	Expert Testimony	504
3.	Negligently Drafted Documents	506
4.	Damages in Malpractice Cases as a Result of Conflict of Interest ...	507
C.	Types of Damages Recoverable	508
D.	Damages Not Recoverable under Legal Malpractice	508
Chapter 29 -	MARITAL AND RELATIONAL TORTS	511
A.	Introduction	511
B.	Marital and Family Torts	512
1.	Alienation of Affection and Criminal Conversation	512
2.	Assault and Battery	512
3.	False Imprisonment	514
4.	Negligent Transmission of Sexual Disease	514
5.	Wrongful Death	515
6.	Abuse of Process	516
7.	Defamation	516
8.	Invasion of Privacy	517
9.	Intentional Infliction of Emotional Distress	518
10.	Breach of Fiduciary Duty	519
11.	Constructive Trust	521
12.	Fraudulent Conveyance/Statute of Elizabeth	521
13.	Civil Conspiracy	522
14.	Tortious Interference with Parental Rights	523
15.	Intentional Interference with Inheritance	524
16.	Undue Influence/Influenced Transactions	525
17.	Violation of the Omnibus Adult Protection Act (South Carolina Code sections 43-35-5 through 43-35-350)	527
18.	Wiretapping, Violation of the Stored Communications Privacy Act	528

Table of Contents

19. Other Potential Claims	529
C. Conclusion	530
Chapter 30 - MEDICAL MALPRACTICE	531
A. Overview	531
B. Actual Damages	532
1. Negligence	533
2. Breach of Contract	539
C. Punitive Damages	540
D. Offer of Judgment	541
Chapter 31 - PREMISES LIABILITY	543
A. Introduction	543
B. Injuries Arising From Breaches of Common-Law Duties Owed by a Possessor of Land and From Negligence: Actual Damages for Personal Injury	544
1. Generally	544
2. Duty to Mitigate Damages	546
3. Pre-Existing Condition	546
4. Nominal Damages for Violations of Legal Rights, <i>De Minimus Non Curat Lex</i> , and Punitive Damages as They Relate to Nominal Damages	546
5. Particular Types of Personal Injuries on Premises	549
C. Injuries Caused by Dangerous Substances or Conditions on Real Property, Including Nuisance	552
D. Permanent Impairment Versus Disability	552
E. Attorneys' Fees	553
F. Practical Tips on Proving Damages	554
Chapter 32 - QUI TAM DAMAGES	557
A. Introduction	557
1. False Claims Act	557
2. Qui Tam Provisions of the False Claims Act	560
3. Damage Provisions of the False Claims Act	561

Table of Contents

B.	Calculating Damages under the False Claims Act	569
1.	Procurement Fraud	569
2.	Government Contract for Services/Products	570
3.	Kickbacks	572
4.	Health Care	572
5.	Reverse False Claims Provision	574
6.	Use of Statistical Sampling to Estimate Damages and Penalties	574
7.	Limitations on Damages/Penalties	576
C.	Determining the Relator’s Share	578
1.	Factors Considered for a Possible Increase in the Percentage	578
2.	Factors for Consideration for a Possible Decrease in the Percentage	579
D.	Alternative/Simultaneous Remedies	580
1.	Administrative Actions	580
2.	Other Civil Statutes	581
3.	Equitable Remedies	582
4.	Criminal Prosecution	583
Chapter 33 - SALE OF GOODS / UNIFORM COMMERCIAL CODE	.....	585
A.	Article 2—Sales	585
1.	Seller’s Damages under Article 2	585
2.	Buyer’s Damages under Article 2	588
B.	Damages as a Remedy under Article 9 of the UCC	592
1.	Consumer Provisions Under Article 9	593
2.	Damages Relating to Enforcement Issues Under Article 9	594
Chapter 34 - SECURITIES LAWS	.....	601
A.	Introduction	601
B.	Damages for Individual Claims Brought Under the Securities Act of 1933	601
1.	Registration Statement Misrepresentation Under Section 11: Title 15, Section 77k of the United States Code	601
2.	Section 12(a)(1) for Section 5 Violations	602

Table of Contents

- 3. Section 12(a)(2) for Prospectus Misrepresentations 603
- 4. Control Person Liability Under § 15 603
- C. Damages for Individual Claims Brought Under the Securities Exchange Act of 1934 604
 - 1. Stock Manipulation Liability Under § 9(e) 604
 - 2. Misrepresentation in Filed Reports Under § 18 604
 - 3. Proxy Statement Misrepresentation Under Rule 14a-9 604
 - 4. Tender Offer Fraud Under § 14(e) and Rule 14e-3 606
 - 5. Short Swing Trading Under § 16(b) 607
 - 6. 10b-5 Causes of Action 608
- D. Damages in Securities Class Actions 616
 - 1. Impact of the Public Securities Litigation Reform Act of 1995 616
 - 2. Impact of Securities Litigation Uniform Standards Act of 1998 618
- E. Civil RICO’s Tiny Open Window 619
- F. State Law Securities Causes of Action 619
 - 1. Express Civil Remedies 619
 - 2. Shareholders’ Remedies for Misleading Proxies Under Section 33-7-220(i) of the South Carolina Code 620
- G. Common Law Remedies 620
- H. Mitigation Issues 621
- I. Prejudgment Interest 622
- J. Contribution and Indemnity Issues 622
 - 1. Contribution 622
 - 2. Indemnity 623
- Chapter 35 - SERVICE CONTRACTS 625**
 - A. Scope of Chapter 625
 - B. Theories of Recovery 625
 - 1. Damages Proximately Caused by the Breach 626
 - 2. Reasonable Value of Services Rendered 626
 - 3. Cost of Replacement 627
 - 4. Case Specific Examples 627
 - 5. Statutory Requirements 630

Table of Contents

Chapter 36 - SOUTH CAROLINA TORT CLAIMS ACT 631

- A. Background: Sovereign Immunity in South Carolina, 1820-1985 631
- B. Exceptions to Waiver of Immunity: South Carolina
Code Section 15-78-60 632
- C. Limitations on Damages 633
 - 1. South Carolina Code Section 15-78-120 633
 - 2. Maximizing Damages Under the Tort Claims Act 633
- D. Strange Interlude: *Southeastern Freight Lines*, Its Progeny,
and the South Carolina General Assembly’s Responses 639
 - 1. *Southeastern Freight Lines v. City of Hartsville* 639
 - 2. The First Reenactment of the Repealed
Sections: 1994 Act No. 497 640
 - 3. *McClain v. South Carolina Department of Education* 640
 - 4. *Knoke v. South Carolina Dep’t of Parks, Recreation & Tourism* 640
 - 5. The Second Reenactment: 1997 Act No. 155 641
 - 6. *Steinke v. South Carolina Department of Labor,
Licensing & Regulation* 641
 - 7. *Dykema v. Carolina Emergency Physicians, P.C.* 642
 - 8. *Simmons v. Greenville Hospital System* 643
 - 9. *Williamson v. South Carolina Insurance Reserve Fund* 644
- E. The Federal Tort Claims Act 644
 - 1. Background: Sovereign Immunity 645
 - 2. Exceptions to Waiver of Immunity 645
 - 3. Damages Under the Federal Tort Claims Act 646
 - 4. Additional Information about the Federal Tort Claims Act 646

Chapter 37 - SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT 649

- A. Introduction 649
 - 1. Actual Damages 649
 - 2. Treble Damages 650
- C. Attorney Fees and Costs 651
- D. Punitive Damages 655

Table of Contents

Chapter 38 - DAMAGES IN TITLE VII CASES 657

- A. Legal (Monetary) Remedies 657
 - 1. Compensatory and Punitive Damages 657
 - 2. Back Pay 660
 - 3. Interest 664
- B. Equitable Remedies 665
 - 1. Reinstatement 665
 - 2. Front Pay 665
 - 3. Injunctive Relief 666
- C. Attorney’s Fees 666

Chapter 39 - WORKERS’ COMPENSATION 669

- A. History and Purposes 669
- B. Indemnity (or “Wage Loss”) Benefits 670
 - 1. Temporary total disability 671
 - 2. Temporary partial disability 673
 - 3. Permanent partial disability compensation 673
 - 4. Permanent total disability 674
 - 5. Death benefits 675
 - 6. Disfigurement 676
 - 7. “Average weekly wage” and compensation rate 676
- C. Medical Compensation 678
 - 1. Vocational rehabilitation services 679
 - 2. Attendant care services 680
- D. The Future of Workers’ Compensation 682

Chapter 40 - WRONGFUL DEATH & SURVIVAL ACTIONS 685

- A. Historical Evolution 685
- B. Scope of the Wrongful Death Act 686
- C. Who Can Enforce the Wrongful Death Act 686
- D. Beneficiaries 686
- E. Measure of Damages 687
- F. Trial of a Wrongful Death Action 688

Table of Contents

G. Evidentiary Considerations	690
H. Death by Lynching	691
I. Settlement of a Wrongful Death or Survival Action	691
J. Survival Actions	691
1. Measure of Damages	691
2. Consolidation of Wrongful Death and Survival Actions	692
Chapter 41 - WRONGFUL DISCHARGE & EMPLOYMENT CONTRACTS	693
A. Employment Contracts	693
1. Breach of Employment Contract by Employer	693
2. Breach of Employment Contract by Employee	714
3. Violation of Covenants Not to Compete	716
B. Wrongful Discharge in Violation of Public Policy	721
1. Types of Damages Available When Discharge Violates Public Policy	721
2. Tort Damages	725
3. Equitable Remedies	729
C. Additional Considerations	732
1. Other Employment Issues	732
2. Alternative Causes of Action	735
3. Mitigation	738
4. Offsets	741
5. Checklists	746
Index	749