

# TABLE OF CONTENTS

## CHAPTER 1

### Contracting in the Electronic Environment

§ 1.01	Introduction . . . . .	1-2
	[1] Sources of Law . . . . .	1-3
	[a] The Uniform Commercial Code (UCC) . . . . .	1-3
	[b] The Uniform Computer Information Transactions Act (UCITA) . . . . .	1-4
	[c] The Uniform Electronic Transactions Act (UETA) . . . . .	1-6
	[d] The Electronic Signatures in Global and National Commerce Act (E-Sign) . . . . .	1-7
	[2] The Statute of Frauds. . . . .	1-11
§ 1.02	Nontraditional Means of Contracting. . . . .	1-14
	[1] Agreements Formed in Earlier Times via Telegram, Telex and Tape Recordings . . . . .	1-14
	[a] Telegrams and Telexes . . . . .	1-15
	[b] Recorded Verbal Messages . . . . .	1-17
	[2] The Modern Approach to Signatures . . . . .	1-18
	[a] Facsimile Transmissions . . . . .	1-18
	[b] E-Mail and Electronic Messaging . . . . .	1-19
	[3] Shrink-Wrap, Click-Wrap, Browse-Wrap, Scrollwrap, and Sign-in-Wrap Agreements . . . . .	1-20
	[a] History of “Wrap” Agreements . . . . .	1-20
	[b] Current Status of “Wrap” Agreements . . . . .	1-23
	[4] Hybrid Agreements . . . . .	1-34.2
	[5] Blockchain Technology and Smart Contracts . . . . .	1-34.4
	[a] Early “Smart Contracts” . . . . .	1-34.4

## INTERNET AND ONLINE LAW

[b]	Blockchain-Based Contracting . . . . .	1-34.4
[c]	The Future of Blockchain-Based Technology . . . . .	1-38
[6]	Contractual Issues of Particular Concern in an Online Context . . . . .	1-39
[a]	The “Battle of the Forms” . . . . .	1-39
[b]	The Parol Evidence Rule . . . . .	1-40
[c]	The “Mailbox” Rule . . . . .	1-42
[d]	Unilateral Modification Clauses and Disclaimers . . . . .	1-43
[e]	Online Consumer Contracts . . . . .	1-45
[f]	Authority to Bind, Legal Capacity, and Minors Who Contract Online. . . . .	1-49

## CHAPTER 2

### The Online Transformation of Defamation Law

§ 2.01	Common Law Defamation . . . . .	2-2
[1]	Publication . . . . .	2-2
[2]	False Statement. . . . .	2-4
[3]	Malice. . . . .	2-5
[4]	Injury to Reputation. . . . .	2-6
[5]	Not Privileged . . . . .	2-7
§ 2.02	State Codification of Various Aspects of Defamation Law . . . . .	2-10.1
§ 2.03	First Amendment Constraints on Common Law Defamation. . . . .	2-18
§ 2.04	The Communications Decency Act: How a Defamation Case Transformed the Internet . . . . .	2-21
[1]	CDA Immunity Applies to All Types of “Providers” . . . . .	2-27
[2]	CDA Immunity Applies to Ordinary Users as Well as Online Providers. . . . .	2-31
[3]	CDA Immunity Applies to More Than Just User-Posted Content. . . . .	2-32
[4]	Exceptions to CDA Statutory Immunity . . . . .	2-34
[5]	Limits of CDA Immunity . . . . .	2-36
§ 2.05	The State of Online Defamation Law . . . . .	2-39
[1]	Online Journalism . . . . .	2-39
[2]	Reputation Management . . . . .	2-41

CHAPTER 3

Online Crimes and Abuses

§ 3.01	Introduction . . . . .	3-2
§ 3.02	Criminal Federal Law Regarding Electronic Communications . . . . .	3-3
	[1] Wiretap Act . . . . .	3-3
	[2] Electronic Communications Privacy Act. . . . .	3-3
	[3] Stored Communications Act . . . . .	3-6
	[4] The Pen Register Act. . . . .	3-8
	[5] The Computer Fraud and Abuse Act . . . . .	3-9
	[a] Determining What “Without Authorization or Exceeding Authorized Access” Means. . . . .	3-12
	[b] Can Violations of a Private Company’s Online Terms of Service Constitute a Criminal Violation of the CFAA? . . . . .	3-18
	[6] Identity Theft and Assumption Deterrence Act. . . . .	3-22
	[7] The CAN SPAM Act. . . . .	3-23
	[8] The Telephone Consumer Protection Act (TCPA) . . . . .	3-24
	[9] The Economic Espionage Act. . . . .	3-26
	[10] Access Device Fraud Statute . . . . .	3-28
§ 3.03	The Current State of Online Crimes and Abuses. . . . .	3-29
	[1] Online Crimes and Abuses Based on Hacking . . . . .	3-29
	[a] Generally . . . . .	3-29
	[b] The Goals of Hackers . . . . .	3-32
	[2] Online Crimes and Abuses Not Necessarily Involving Hacking . . . . .	3-34
	[a] Platform-Based Cybercrime and the Dark Web . . . . .	3-34
	[b] Cybercrime for Reasons Other than Financial Gain. . . . .	3-35
	[c] Abuses Targeting Masses of People . . . . .	3-36

## CHAPTER 4

**Obscenity, Child Pornography,  
Revenge Porn, Electronic Voyeurism,  
and Other Sex-Related Issues**

§ 4.01	Introduction . . . . .	4-2
§ 4.02	The Cessation of Obscenity Prosecutions and the Shift to Child Pornography Prosecutions . . . . .	4-5
§ 4.03	The Current Statutory Framework . . . . .	4-6
	[1] Title 18 Criminal Statutes . . . . .	4-8
	[2] Title 18 Provisions Applicable to Online Service Providers . . . . .	4-12
§ 4.04	Section 230(d) Obligation of Online Providers to Provide Notice Regarding Filters . . . . .	4-14
§ 4.05	Revenge Porn . . . . .	4-15
§ 4.06	Types of Online Activities That Could Trigger Liability for Violations of Obscenity, Indecency or Child Pornography Laws . . . . .	4-20
	[1] Uploading and Downloading of Child Pornography . . . . .	4-20
	[2] Providing Access to Third Party Materials or Servers Through an Online Provider's Network . . . . .	4-20
	[3] Receiving, Sending or Storing E-Mail . . . . .	4-21
	[4] Selling Products Online . . . . .	4-22
	[5] Facilitating Criminal Activity . . . . .	4-22
§ 4.07	Approaches to Complying with Obscenity, Indecency, and Child Pornography Laws . . . . .	4-23
	[1] Doing Nothing . . . . .	4-23
	[2] Providing Warnings to Users . . . . .	4-24
	[3] Providing Filtering Software to Users . . . . .	4-24
	[4] Special Considerations for Libraries and Schools . . . . .	4-26
§ 4.08	Sexting and the Culture Clash Between Technology and Law . . . . .	4-29
§ 4.09	Online Sexual Harassment . . . . .	4-37

CHAPTER 5

**Privacy, Data Protection and Related Issues**

§ 5.01	Introduction . . . . .	5-3
§ 5.02	The Constitutional and Statutory Framework . . . . .	5-9
	[1] Fourth Amendment . . . . .	5-9
	[a] Transformation of “Search and Seizure” from Physical to Conceptual . . . . .	5-9
	[b] Development of the Content/Non-Content Distinction . . . . .	5-11
	[2] Fifth Amendment . . . . .	5-18
	[a] Cases Holding that the Fifth Amendment Privilege Applies . . . . .	5-21
	[b] Cases Rejecting Fifth Amendment Privilege Claims . . . . .	5-22
	[i] Generally . . . . .	5-22
	[ii] Distinguishing Between Fingerprint and Password . . . . .	5-23
	[iii] “Foregone Conclusion” Doctrine . . . . .	5-23
§ 5.03	Major Federal Privacy Statutes . . . . .	5-25
	[1] Wiretap Act . . . . .	5-25
	[2] Electronic Communications Privacy Act . . . . .	5-26
	[3] Stored Communications Act . . . . .	5-29
	[a] Making Sense of the Distinction Between “in Electronic Storage” and “in a Remote Computing Service” . . . . .	5-32
	[b] Disclosures of Transactional Data . . . . .	5-35
	[4] Computer Fraud and Abuse Act . . . . .	5-37
	[5] Communications Assistance for Law Enforcement Act (CALEA) . . . . .	5-42
	[6] USA Patriot Act . . . . .	5-43
	[7] Foreign Intelligence Surveillance Act . . . . .	5-44
	[8] Privacy Protection Act . . . . .	5-44
§ 5.04	Other Federal Statutes Relevant to Online Privacy . . . . .	5-45
	[1] Federal Trade Commission Act . . . . .	5-45
	[2] Federal Communications Commission Act . . . . .	5-45

## INTERNET AND ONLINE LAW

	[3] Privacy Act . . . . .	5-46
	[4] Children’s Online Privacy Protection Act . . . . .	5-46
	[5] Family Education Rights and Privacy Act . . . . .	5-52
	[6] Cable Privacy Act . . . . .	5-52
	[7] Video Privacy Protection Act . . . . .	5-53
	[8] Telephone Records and Privacy Protection Act . . . . .	5-55
	[9] Health Insurance Portability and Accountability Act . . . . .	5-55
	[10] Health Information Technology for Economic and Clinical Health Act . . . . .	5-56
	[11] Fair Credit Reporting Act . . . . .	5-58
	[12] Fair and Accurate Credit Transactions Act . . . . .	5-60
	[13] Gramm-Leach-Bliley Act . . . . .	5-61
	[14] Restore Online Shoppers’ Confidence Act . . . . .	5-65
	[15] Driver’s Privacy Protection Act . . . . .	5-66
	[16] REAL ID Act . . . . .	5-67
	[17] E-Government Act . . . . .	5-68
§ 5.05	State Privacy Laws . . . . .	5-69
	[1] Generally . . . . .	5-69
	[2] California . . . . .	5-69
	[a] The California Online Privacy Protection Act (CALOPPA) . . . . .	5-70
	[b] The California Consumer Privacy Act (CCPA) . . . . .	5-71
	[i] Definitional Complexity . . . . .	5-72
	[ii] How to Comply with the CCPA . . . . .	5-79
	[iii] Notification Obligations . . . . .	5-79
	[iv] Obligations to Respond to Consumer Requests for Information . . . . .	5-82
	[v] Data Handling Obligations . . . . .	5-84.2
	[vi] Opt-Out . . . . .	5-84.3
	[vii] Data Deletion . . . . .	5-84.3
	[viii] The CCPA’s Built-in Flexibility Regarding Opt-Outs and Data Deletion . . . . .	5-84.5
	[ix] Enforcement and Remedies . . . . .	5-84.7
	[c] Other California Privacy Laws . . . . .	5-84.8

## TABLE OF CONTENTS

xxv

	[3] Other State Privacy Laws . . . . .	5-84.9
	[4] Biometric Privacy Laws . . . . .	5-84.11
	[5] State Data Breach Laws . . . . .	5-84.13
§ 5.06	The Common Law of Privacy . . . . .	5-84.15
§ 5.07	Online Privacy and Public Policy Issues . . . . .	5-84.18
	[1] Anonymity . . . . .	5-84.18
	[2] Clashes Between the Private Sector and Government . . . . .	5-92
	[3] Consumer Privacy . . . . .	5-93
	[4] Workplace Privacy . . . . .	5-96
	[5] Journalism and Privacy . . . . .	5-99
	[6] Expungement . . . . .	5-101

## CHAPTER 6

### Copyright

§ 6.01	Introduction . . . . .	6-4
§ 6.02	Copyrightable Material . . . . .	6-6
	[1] Originality and Fixation . . . . .	6-6
	[2] Statutory Categories of Works of Authorship . . . . .	6-7
	[3] The Idea/Expression Dichotomy and Doctrine of Merger . . . . .	6-10
§ 6.03	The Exclusive Rights of the Copyright Owner . . . . .	6-12
	[1] The Right of Reproduction . . . . .	6-14
	[2] The Right of Preparation of Derivative Works . . . . .	6-17
	[3] The Right of Public Distribution . . . . .	6-18
	[a] The Application of the Right to Transmission . . . . .	6-19
	[b] The First Sale Doctrine and Digital File Transfers . . . . .	6-21
	[c] Digital Content Distribution on the Internet . . . . .	6-24
	[i] A Brief History of the Music Industry's Online Copyright Wars . . . . .	6-26
	[4] The Right of Public Performance . . . . .	6-33
	[a] Transmission or Other Communication . . . . .	6-35
	[b] Of a Performance of the Work . . . . .	6-35

## INTERNET AND ONLINE LAW

	[c] To Members of the Public . . . . .	6-38
	[d] Who Are Capable of Receiving the Performance. . . . .	6-38
	[e] Where the Transmission Is Either to a Public or Semi-Public Place, or to Members of the Public Who May Be Separated Geographically or Temporally, or Both. . . . .	6-38
	[5] The Right of Public Display . . . . .	6-40
	[6] The Right of Public Digital Performance in Sound Recordings . . . . .	6-43
	[7] Common Law Copyright and Preemption . . . . .	6-46
	[8] The Fair Use Doctrine . . . . .	6-47
	[a] <i>De Minimis</i> Use. . . . .	6-48.4
	[b] Fair Use and the DMCA. . . . .	6-48.4
	[9] Distance Education: Teach Act. . . . .	6-48.7
	[10] Title I of the Digital Millennium Copyright Act . . . . .	6-48.9
§ 6.04	Duration, Formalities and Works in the Public Domain . . . . .	6-48.12
	[1] Duration of Copyright Protection . . . . .	6-48.12
	[a] Works Created on or after January 1, 1978. . . . .	6-48.12
	[b] Works Created But Not Published or Copyrighted before January 1, 1978. . . . .	6-48.12
	[c] Works Published or Otherwise Copyrighted Prior to January 1, 1978. . . . .	6-48.13
	[2] Copyright Formalities. . . . .	6-48.13
	[3] Works in the Public Domain. . . . .	6-48.15
§ 6.05	Copyright Protection of Specialized Works . . . . .	6-48.17
	[1] Compilations, Collective Works and Derivative Works. . . . .	6-48.17
	[a] General Scope of Protection . . . . .	6-48.17
	[b] Databases . . . . .	6-48.20
	[2] Computer Software. . . . .	6-48.22
§ 6.06	[Reserved] . . . . .	6-48.25
§ 6.07	Copyright Infringement. . . . .	6-48.26
	[1] Direct, Contributory, Vicarious and Intentional Inducement Liability. . . . .	6-48.26

**TABLE OF CONTENTS**

xxvii

	[2] Remedies for Infringement . . . . .	6-48.30
	[a] Registration as a Prerequisite for an Infringement Suit . . . . .	6-48.30
	[b] Types of Remedies for Infringement . . . . .	6-48.32
	[c] Availability of Statutory Damages and Attorney Fees Depends on Timing of the Registration . . . . .	6-48.32
	[d] Injunctive Remedies and Writs of Seizure . . . . .	6-48.34
	[e] Amount of Damage Awards . . . . .	6-48.35
	[f] Limitation of Actions . . . . .	6-48.36
	[g] Criminal Copyright Infringement . . . . .	6-48.37
§ 6.08	Exclusive Rights in the Online Context . . . . .	6-48.38
	[1] The Right of Reproduction . . . . .	6-48.38
	[2] The Right of Preparation of Derivative Works . . . . .	6-50
	[3] The Right of Public Distribution . . . . .	6-51
	[a] The Application of the Right to Transmission . . . . .	6-51
	[b] The First Sale Doctrine and Electronic Transmissions . . . . .	6-54
	[c] MP3 and Other Digital Music Distribution on the Internet . . . . .	6-55
	[4] The Right of Public Performance . . . . .	6-57
	[a] Transmission or Other Communication . . . . .	6-58
	[b] Of a Performance of the Work . . . . .	6-58
	[c] To Members of the Public . . . . .	6-61
	[d] Who Are Capable of Receiving the Performance . . . . .	6-61
	[e] Where the Transmission Either Is to a Public or Semi-Public Place, or Is to Members of the Public Who May Be Separated Geographically or Temporally or Both. . . . .	6-61
	[5] The Right of Public Display . . . . .	6-63
§ 6.09	Copyright Implications of Online Activities . . . . .	6-65
	[1] User Uploads . . . . .	6-65
	[2] Granting Public Access to a Work . . . . .	6-66
	[3] Browsing . . . . .	6-66
	[4] Downloading . . . . .	6-67
	[5] E-Mail and List Servers . . . . .	6-68

	[6] Caching, Mirroring and Ephemeral Copies .....	6-68
	[7] Hyperlinking .....	6-70
	[8] Framing and Scraping .....	6-73
	[9] Pop-Up Advertising .....	6-76
§ 6.10	Copyright Liability of Online Service Providers .....	6-78
	[1] Direct Infringement .....	6-78
	[2] Contributory Infringement and the Safe Harbor Provisions of the DMCA .....	6-79
	[a] Pre-DMCA Decisions .....	6-79
	[b] DMCA Title II: Notice-and- Takedown Safe Harbor .....	6-82
	[c] Early Post-DMCA Decisions .....	6-86
	[d] The Current State of the DMCA Safe Harbor .....	6-90
	[i] Service Provider Eligibility .....	6-90
	[ii] Reasonably Implemented Repeat Infringer Policy .....	6-92
	[iii] Actual Knowledge of Infringement or Awareness of Facts or Circumstances That Would Make Infringement Apparent .....	6-94
	[iv] Acting Expeditiously to Remove or Disable Access .....	6-97
	[v] No Direct Financial Benefit .....	6-99
	[vi] Works That May Be the Subject of a Valid Takedown Notice .....	6-99
	[vii] Who May Send a Valid Takedown Notice .....	6-103
	[viii] What Constitutes a Valid Takedown Notice .....	6-104
	[ix] Invalid Takedown Notices .....	6-104
	[x] Sending Takedown Notices (and Subpoenas) .....	6-106
	[e] DMCA Title II: Put-Back .....	6-108
	[f] Liability for Bogus Takedown and Put-Back Notices .....	6-112
	[3] Vicarious Liability .....	6-112
	[4] Intentional Inducement Liability .....	6-112
	[5] The Appropriate Standard of Liability for Online Service Providers .....	6-113

**TABLE OF CONTENTS**

xxix

§ 6.11 DMCA Cause of Action for Falsifying  
or Removing Copyright Management  
Information . . . . . 6-118

§ 6.12 Copyright Preemption in the Online and  
New Media Context . . . . . 6-123

**CHAPTER 7**

**Trademark and Unfair Competition Issues**

§ 7.01 Introduction . . . . . 7-3

§ 7.02 Trademark Infringement . . . . . 7-6

[1] Federal Trademark Infringement and  
False Advertising . . . . . 7-6

[a] Pleading a Cause of Action . . . . . 7-6

[i] Subject Matter Jurisdiction . . . . . 7-11

[ii] Personal Jurisdiction and  
Venue . . . . . 7-14

[iii] Likelihood of Confusion . . . . . 7-23

[iv] Intent . . . . . 7-27

[b] Defenses . . . . . 7-28

[i] No Rights to Trademark . . . . . 7-28

[ii] No Likelihood of Confusion . . . . . 7-35

[iii] Fair Use . . . . . 7-39

[iv] Innocent Infringement . . . . . 7-42

[v] First Amendment . . . . . 7-45

[vi] Service Provider Defenses  
to Liability . . . . . 7-47

[vii] Statutory Defenses . . . . . 7-49

[viii] Equitable Defenses . . . . . 7-49

[c] Remedies for Lanham Act  
Violations . . . . . 7-51

[i] Equitable Relief . . . . . 7-51

[ii] Damages, Attorneys’ Fees  
and Costs . . . . . 7-53

[2] State Trademark Infringement Laws . . . . . 7-56

§ 7.03 Trademark Dilution . . . . . 7-56.2

[1] Pleading a Cause of Action . . . . . 7-57

[a] Fame . . . . . 7-57

[b] Distinctiveness . . . . . 7-59

[c] “Use in Commerce” . . . . . 7-59

[d] “Blurring” and “Tarnishment” . . . . . 7-60

[e] Application of Dilution Act to  
Internet-Related Cases . . . . . 7-62

## INTERNET AND ONLINE LAW

	[2] Defenses . . . . .	7-64.1
	[3] Remedies. . . . .	7-64.3
§ 7.04	False Advertising . . . . .	7-69
	[1] Federal Cause of Action Under Section 43(a) of the Lanham Act . . . . .	7-69
	[a] Pleading a Cause of Action . . . . .	7-70
	[i] False Statement of Fact in Commercial Advertising . . . . .	7-70
	[ii] Likelihood of Confusion . . . . .	7-72
	[b] Defenses to a Section 43(a) False Advertising Claim . . . . .	7-75
	[c] Remedies . . . . .	7-77
	[i] Equitable Relief . . . . .	7-77
	[ii] Monetary Relief . . . . .	7-78
	[2] False Advertising and the Federal Trade Commission . . . . .	7-79
	[3] State False Advertising Laws—UDAP . . . . .	7-83
§ 7.05	Right of Publicity . . . . .	7-86
	[1] Pleading a Cause of Action . . . . .	7-90.5
	[2] Defenses . . . . .	7-90.8
	[3] Remedies. . . . .	7-90.16
§ 7.06	Misappropriation and Other Common Law Unfair Competition Claims . . . . .	7-91
	[1] Passing Off . . . . .	7-91
	[2] Misappropriation . . . . .	7-92
	[3] Other Anticompetitive Practices . . . . .	7-95
§ 7.07	Unique Trademark Issues . . . . .	7-97
	[1] Domain Names . . . . .	7-97
	[a] Early History . . . . .	7-97
	[b] The Theory Behind Application of Trademark Law to Domain Names . . . . .	7-100
	[c] Anti-Cybersquatting Consumer Protection Act . . . . .	7-102
	[d] ICANN's Uniform Dispute Resolution Policy . . . . .	7-115
	[e] Potential Defenses to Cybersquatting Claims . . . . .	7-121
	[2] Metatags . . . . .	7-122
	[3] Linking and Framing . . . . .	7-125
	[4] Gripe Sites and Fan Sites . . . . .	7-127
	[5] Unsolicited Commercial E-Mail . . . . .	7-138

**CHAPTER 8**

**Social Networking**

§ 8.01	Introduction . . . . .	8-1
§ 8.02	Privacy Considerations . . . . .	8-4
§ 8.03	Social Networking and the First Amendment . . . . .	8-5
§ 8.04	Social Networking in the Workplace . . . . .	8-14
	[1] Employee Use of Social Networking . . . . .	8-14
	[2] Employer Use of Social Networking . . . . .	8-17
§ 8.05	Commercial Use of Social Networking . . . . .	8-19
§ 8.06	Children Online . . . . .	8-25
§ 8.07	Other Legal Aspects of Social Networking . . . . .	8-26

**CHAPTER 9**

**eCommerce**

§ 9.01	Government Regulation . . . . .	9-2
	[1] Federal Trade Commission Act . . . . .	9-2
	[1A] State “Mini-FTC” Acts . . . . .	9-5
	[2] Electronic Funds Transfer Act of 1978 . . . . .	9-6
	[3] The Fair and Accurate Credit Transactions Act . . . . .	9-7
	[4] The Restore Online Shoppers’ Confidence Act . . . . .	9-8
	[5] Americans with Disabilities Act . . . . .	9-9
	[6] E-Warranty Act . . . . .	9-14
	[7] Sales and Use Taxes . . . . .	9-15
	[8] “Net Neutrality” . . . . .	9-16
§ 9.02	Private Industry Regulation . . . . .	9-18
§ 9.03	Regulation of Specific Types of eCommerce . . . . .	9-19
	[1] Alcohol Sales . . . . .	9-19
	[2] Cigarettes, e-Cigarettes and Vapes . . . . .	9-20
	[2A] Cannabis . . . . .	9-22
	[3] Payday Lending . . . . .	9-22
	[4] Contact Lenses . . . . .	9-23
	[5] Prescription Drugs . . . . .	9-24
	[6] Automobiles . . . . .	9-26
	[7] Appliance Sales . . . . .	9-27
	[8] Gambling . . . . .	9-28

**INTERNET AND ONLINE LAW**

	[9] Securities . . . . .	9-28.5
	[a] Crowdfunding . . . . .	9-28.6
	[b] Other Online-Specific Aspects of Securities Law . . . . .	9-28.8
	[10] Penny Auctions . . . . .	9-28.9
§ 9.04	Virtual Currencies . . . . .	9-29
	[1] Introduction . . . . .	9-29
	[2] How Virtual Currencies Work . . . . .	9-31
	[3] Virtual Currencies in the Real World . . . . .	9-34
	[4] Legal and Regulatory Framework . . . . .	9-42
§ 9.05	Product Liability . . . . .	9-45
	[1] Online Marketer Defenses to Strict Product Liability . . . . .	9-46
	[2] Cracks in the Dike . . . . .	9-50

**CHAPTER 9A****Online Legal Ethics**

§ 9A.01	Introduction . . . . .	9A-2
§ 9A.02	Multijurisdictional Practice . . . . .	9A-4
§ 9A.03	Virtual Law Practice . . . . .	9A-8
§ 9A.04	Online Communications and Confidences . . . . .	9A-11
	[1] Competent Use of Electronic Communications . . . . .	9A-12
	[2] Use of Cloud Computing . . . . .	9A-16
	[3] Online Disclosure of Public Information . . . . .	9A-16.3
	[4] Online Disclosure or Receipt of Non-Public Information . . . . .	9A-16.4
	[5] Client Accesses Opposing Party's Privileged Communications . . . . .	9A-21
	[6] Accessing Another's Online Information Without Authorization . . . . .	9A-22
§ 9A.05	Metadata . . . . .	9A-23
§ 9A.06	Online Advertising and Solicitation . . . . .	9A-26
	[1] Generally . . . . .	9A-26
	[2] Online Lawyer Directories and Listings . . . . .	9A-28
	[3] Lawyer Websites . . . . .	9A-29
	[4] Online Newsletters, Articles, Videos and Web Links . . . . .	9A-30
	[5] Promotion via Social Networking . . . . .	9A-32
	[6] Promotion via Blogging and Chat Rooms . . . . .	9A-35

## TABLE OF CONTENTS

xxxiii

[7]	Responding to Adverse Online Reviews . . . . .	9A-36
[8]	Online Discount Coupons . . . . .	9A-38
[9]	Texting . . . . .	9A-39
[10]	Non-Advertising Use of Social Media . . . . .	9A-39
	[a] Identifying Clients and Discussing Client Issues . . . . .	9A-42
	[b] Criticizing Other Attorneys . . . . .	9A-44
	[c] Harassing Other Attorneys . . . . .	9A-45
§ 9A.07	Duty to Refrain from, and to Refrain from Assisting Clients in, Wrongful Conduct . . . . .	9A-46
§ 9A.08	Other Online Ethical Issues . . . . .	9A-47

## CHAPTER 10

### Procedural Issues

§ 10.01	Jurisdiction . . . . .	10-2
§ 10.02	Basis for Exercise of <i>in Personam</i> Jurisdiction . . . . .	10-4
	[1] General Jurisdiction . . . . .	10-5
	[2] Specific Jurisdiction . . . . .	10-5
	[3] No Jurisdiction . . . . .	10-6
§ 10.03	Jurisdiction in an Online Context . . . . .	10-7
§ 10.04	Venue . . . . .	10-12
§ 10.05	Online Service of Process and Service of Documents . . . . .	10-16
§ 10.06	Estate Planning in an Age of Online Assets . . . . .	10-17
	[1] Gathering Information About the Client's Assets . . . . .	10-17
	[a] Identifying the Assets . . . . .	10-18
	[2] Determining the Client's Wishes . . . . .	10-19
	[3] Analyzing the Legal and Tax Issues . . . . .	10-19
	[a] UFADAA . . . . .	10-21
	[b] RUFADAA . . . . .	10-22
	[c] PEAC . . . . .	10-23
	[4] Configuring the Client's Assets to Enable Their Transfer and Otherwise to Carry Out the Client's Wishes . . . . .	10-24
	[a] Ensuring Postmortem Access . . . . .	10-24
	[b] Preventing Unauthorized Postmortem Access . . . . .	10-26
	[5] Taking a Stealthy Approach . . . . .	10-26

	[6] Ethical Considerations . . . . .	10-27
	[7] Drafting Estate Planning Documents . . . . .	10-28.1
§ 10.07	Bring-Your-Own-Device (BYOD) . . . . .	10-29
§ 10.08	Employees Working Remotely and the Gig Economy . . . . .	10-32

## CHAPTER 11

### International Aspects of Internet Law

§ 11.01	Introduction . . . . .	11-3
§ 11.02	International Treaties and Legal Conventions Applicable to Online Activity . . . . .	11-5
	[1] World Intellectual Property Organization Treaties . . . . .	11-5
	[a] Berne Copyright Convention . . . . .	11-5
	[b] Rome Convention . . . . .	11-8
	[c] Paris Convention . . . . .	11-8
	[d] Trademark Law Treaty . . . . .	11-8
	[e] Singapore Treaty . . . . .	11-9
	[f] WIPO Copyright Treaty . . . . .	11-9
	[g] WIPO Performances and Phonograms Treaty (WPPT) . . . . .	11-9
	[h] Madrid System . . . . .	11-10
	[2] The World Trade Organization Agreements . . . . .	11-10
	[3] U.N. Convention on Contracts for the International Sale of Goods . . . . .	11-10.1
	[4] Hague Convention on Money Judgments . . . . .	11-10.1
	[5] New York Convention . . . . .	11-10.2
	[6] Online Dispute Resolution . . . . .	11-10.2
	[7] Convention Regarding Automatic Processing of Personal Data . . . . .	11-10.3
§ 11.03	International Conflicts of Law: Online Aspects . . . . .	11-10.4
	[1] Procedural Issues Not Involving Jurisdiction . . . . .	11-11
	[a] Outbound: Subpoenas, Warrants, and Discovery Orders Directed at Persons, or Involving Information Located Abroad . . . . .	11-11
	[i] The Microsoft and Google Warrant Cases . . . . .	11-13
	[ii] The CLOUD Act . . . . .	11-21

**TABLE OF CONTENTS**

xxxv

	[b] Inbound: Subpoenas, Warrants, and Discovery Orders from Abroad Directed at Persons Located in the United States . . . .	11-23
[2]	Jurisdictional Issues . . . . .	11-26
	[a] Outbound: International Long-Arm Jurisdiction of American Courts. . . . .	11-26
	[b] Inbound: Foreign Court Jurisdiction over Persons Within the United States . . . . .	11-31
[3]	Substantive Issues. . . . .	11-32
	[a] Outbound: Extraterritorial Applicability of American Substantive Law . . . . .	11-32
	[b] Inbound: Applying Foreign Substantive Law to Persons Within the United States. . . . .	11-35
	[i] Suppression of Online Information . . . . .	11-35
	[ii] Challenges to Traditional Limits . . . . .	11-43
[4]	Enforcement . . . . .	11-94.5
	[a] Outbound . . . . .	11-94.5
	[b] Inbound . . . . .	11-94.6
§ 11.04	Other Foreign Legal Provisions Affecting International Online Commerce. . . . .	11-95
	[1] Foreign Privacy and Data Protection Laws . . . . .	11-95
	[a] Canadian Privacy and Anti-Spam Laws. . . . .	11-95
	[2] Foreign Data Retention Laws . . . . .	11-96
	[3] Foreign Consumer Protection Laws . . . . .	11-96
	[a] Consumer Goods and Guarantees Directive . . . . .	11-97
	[b] Directive on Consumer Rights . . . . .	11-97
	[c] Other Laws and Rulings. . . . .	11-98
	[4] Other Foreign Legal Provisions of Interest . . . . .	11-98
	[a] EU Legislation. . . . .	11-98
§ 11.05	Resolution of International Disputes: Online Aspects . . . . .	11-100
§ 11.06	Other International and Cross-Border Issues. . . . .	11-101
	[1] Border Crossings . . . . .	11-101
	[2] Border Searches . . . . .	11-101
<b>INDEX</b>	. . . . .	I-1

