

# Contents

---

---

## Chapter 1

### Agency or Fiduciary Causes of Action

1-A	Introduction to Agency or Fiduciary Causes of Action.....	1
1-1	Agent Breaching Fiduciary Duty to Principal .....	2
1-2	Agent Negligent In Collecting Debt.....	2
1-3	Agent’s Liability for Principal’s Obligation.....	3
1-4	Agent’s Negligence Causing Harm to Others .....	3
1-5	Agent’s Personal Liability on Contract.....	4
1-6	Bailments .....	4
1-7	Caring for Collateral or Security .....	5
1-8	Charitable Organization Liable for Wrongdoing.....	6
1-9	Consignee Liability for Damaged Art .....	6
1-10	Co-Sureties Contributing on Debt Default.....	6
1-11	Escrow Agent Improperly Disbursing Funds .....	7
1-12	Faithless Servant Doctrine.....	7
1-13	Fiduciary Breaching Duty.....	12
1-14	Fiduciary Relationship.....	13
1-15	Fraudulent Concealment by Fiduciary .....	13
1-16	Obligor Aiding Agent Disloyalty to Principal .....	14
1-17	Warehouseman or Carrier Liability for Goods.....	14
1-18	Warehouseman or Carrier Lien on Goods .....	15
1-19	Warehouseman Elements.....	15

## Chapter 2

### Attorney and Legal Services Causes of Action

2-A	Introduction to Attorney and Legal Services Causes of Action .....	17
2-1	Attorney Malpractice .....	17

2-2	Attorney Increasing Inadequate Contingency Fee .....	19
2-3	Claim for Attorney's Fees .....	19
2-4	Judiciary Law § 487 (Attorney Deceit).....	20
2-5	Legal Fraud .....	21
2-6	Legal Malpractice In Criminal Cases .....	22

**Chapter 3**

**Banking, Commercial Paper and Creditor Causes of Action**

3-A	Introduction to Banking, Commercial Paper and Creditor Causes of Action.....	23
3-1	Bank Leaving Funds Transfer Incomplete .....	23
3-2	Bank Misconduct When Relying on Power of Attorney .....	24
3-3	Bank Mishandling Funds Transfer .....	24
3-4	Bankrupt's Voiding of Preferential Transfer of Property .....	24
3-5	Bank's Wrongful Dishonor of Negotiable Instrument .....	25
3-6	Bank's Wrongful Payment of Negotiable Instrument .....	25
3-7	Bounced Check Causing Damage.....	25
3-8	Certified or Cashier's Check Wrongfully Dishonored .....	26
3-9	Checking Account Funds Misappropriated by Fiduciary .....	27
3-10	Collecting Bank Late Objection to Negotiable Instrument .....	28
3-11	Collecting Bank Mishandling Negotiable Instrument .....	28
3-12	Credit Issuer Dishonoring or Repudiating.....	28
3-13	Debtor Lying to Creditor About Assets.....	29
3-14	Debtor's Fraudulent Conveyance .....	29
3-15	Electronic Fund Transfer Privacy or Safety Violation.....	29
3-16	Enforcement of Security Interest Delegating Seller's Performance .....	30
3-17	Fraudulent Negotiable Instrument Paid or Taken .....	30
3-18	Lessee's Default on Lease of Goods.....	30
3-19	Lessor's Breach of Implied Warranty on Goods.....	31
3-20	Lessor's Breach of Express Warranty on Goods .....	32
3-21	Lessor's Default on Lease of Goods .....	32
3-22	Letter of Credit Obligation Breached.....	33

3-23	Mistaken Payment on Draft Returned .....	33
3-24	Mortgage Contingency Loan Exacting Illegal Commission.....	34
3-25	Mortgage Exacting Illegal Points and Prepayments Fees.....	34
3-26	Mortgage Holder Breaching Escrow Obligations.....	35
3-27	Mortgagee Failing to Cancel Redeemed Mortgage .....	35
3-28	Negotiable Instrument .....	36
3-29	Negotiable Instrument Forged or Stolen.....	37
3-30	Negotiable Instrument Signed for Accommodation.....	37
3-31	Noncompliance With Secured Transactions Laws.....	38
3-32	Spouse Liable for Other Spouse's Debt .....	38
3-33	Registration of Investment Security Transfer Denied.....	39
3-34	Summary Judgment in Lieu of Complaint (New York Civil Practice Law and Rules § 3213).....	40

**Chapter 4**

**Constitutional Causes of Action**

4-A	Introduction to Constitutional Causes of Action .....	41
4-1	Challenging Condemnation.....	41
4-2	Grand Jury Proceedings Unlawfully Disclosed .....	42
4-3	Inverse Condemnation.....	42
4-4	Privacy Invasion.....	43
4-5	State Constitutional Rights Violation.....	43
4-6	State Destruction of Private Property .....	44
4-7	State Taking Land Requiring Compensation .....	44
4-8	Taking.....	45
4-9	De Facto Taking .....	46
4-10	Regulatory Taking.....	46

**Chapter 5**

**Contract or Quasi-Contract Causes of Action**

5-A	Introduction to Contract or Quasi-Contract Causes of Action .....	47
5-1	Accounting.....	47
5-2	Account Stated.....	48

5-3	Anticipatory Breach of Contract.....	48
5-4	Breach of Contract Causing Damage .....	49
5-5	Breach of Implied Covenant of Good Faith and Fair Dealing.....	51
5-6	Buyer Recovering Specifically Identified Goods.....	52
5-7	Careless Contractual Work .....	53
5-8	Child's Right to Rescind Contract .....	53
5-9	Confusing Language In Written Contract .....	53
5-10	Constructive Fraud In Contract.....	54
5-11	Consumer Contract Containing Unlawful Provision .....	55
5-12	Consumer Credit Billing Error .....	56
5-13	Consumer Goods Leased Under Unconscionable Circumstances.....	56
5-14	Consumer Loan Broker Acting Improperly .....	57
5-15	Contract.....	57
5-16	Contract Performance Interfered With by Outsider .....	58
5-17	Contract Rescission .....	59
5-18	Coverage for Causes Extending From Insured Risk.....	59
5-19	Duress Permitting Contract Rescission.....	60
5-20	Fraud by Others Outside Contract .....	61
5-21	Fraud Permitting Reformation or Rescission .....	61
5-22	Goods Sold and Delivered.....	61
5-23	Guaranty.....	62
5-24	Implied Contract.....	62
5-25	Insane Party Rescinding Contract.....	63
5-26	Insolvent Buyer Having Bought Goods.....	63
5-27	Insolvent Lessor Having Leased Goods.....	64
5-28	Insolvent Seller Having Sold Goods .....	64
5-29	Intentional Interference With Contractual Relationship .....	64
5-30	Intentional Interference With Prospective Economic Advantage .....	65
5-31	Limited Partnership Certificate Containing Falsehood.....	65
5-32	Malicious Interference With Contract Rights .....	66
5-33	Malicious Interference With Prospective Economic Advantage.....	66

5-34	Money Had and Received .....	67
5-35	Mutual Mistake In Contract .....	67
5-36	Obligation to Pay Services Sought for Other .....	68
5-37	Overpayment on Contract Recovered .....	68
5-38	Promise Causing Detrimental Reliance.....	68
5-39	Promissory Estoppel.....	69
5-40	Quantum Meruit.....	69
5-41	Quasi-Contract.....	70
5-42	Recoupment for Contract Breach Harming Outsider .....	71
5-43	Reliance on Another’s Conduct (Estoppel) .....	71
5-44	Rescission and Cancellation of Written Instruments (Fraud).....	71
5-45	Rescission and Cancellation of Written Instruments (Misrepresentations).....	72
5-46	Sale of Goods Breached by Buyer .....	72
5-47	Sale of Goods Breached by Seller .....	73
5-48	Sale of Personal Property .....	73
5-49	Statute of Frauds .....	73
5-50	Substantial Performance of Contract Allowing Recovery .....	74
5-51	Third-Party Beneficiary .....	75
5-52	Unconscionability Permitting Contract Rescission .....	76
	5-52:1 Substantive Unconscionability.....	76
	5-52:2 Procedural Unconscionability .....	76
5-53	Unilateral Mistake In Contract.....	77
5-54	Unjust Enrichment.....	77
5-55	Warranty on Goods Breached by Seller.....	78

**Chapter 6**

**Corporate and Partnership Causes of Action**

6-A	Introduction to Corporate and Partnership Causes of Action .....	79
6-1	Association and Membership Liability .....	80
6-2	Association Membership Wrongfully Interfered With .....	80
6-3	Avoiding the Corporate Liability Shield or Piercing the Corporate Veil .....	80

6-4	Business Judgment Rule .....	81
6-5	Business Partner Breaching Fiduciary Duty to Co-Partner .....	82
6-6	Corporate Officer Participating In Tort .....	82
6-7	Cost of Defending Against Derivative Suit .....	83
6-8	Demand Futility .....	83
6-9	Director's Liability to Shareholders.....	84
6-10	Dissolution for Deadlock .....	84
6-11	Dissolution of Limited Liability Company .....	85
6-12	Dissolution for Oppression .....	85
6-13	Improperly Buying Securities During Corporate Takeover .....	86
6-14	Member Liability In Joint Enterprise.....	86
6-15	Minority Shareholder Freeze-Out .....	87
6-16	Partner Breaching Duty to Co-Partner .....	87
6-17	Partnership Liability for Debts.....	88
6-18	Partnership Liability for Injury .....	88
6-19	Principal/Promoter Liability for Post-Incorporation Debt .....	88
6-20	Principal's/Promoter's Bad Faith Liability for Real Estate Broker's Commission .....	89
6-21	Redeeming Shares In Company Merger Or Sale .....	89
6-22	Right of Inspection.....	90
6-23	Sales Commission Due From Principal.....	90
6-24	Successor Corporation Liable for Predecessor .....	90
6-25	Usurpation of Corporate Opportunity .....	91

**Chapter 7**

**Damage-Related Causes of Action**

7-A	Introduction to Damage-Related Causes of Action .....	93
7-1	Breach of Contract Lost Profits Damages.....	93
7-2	Contribution.....	94
7-3	Economic Loss Rule .....	94
7-4	Indemnification From Person Ordering Tort.....	95
7-5	Interest Awarded on Damages .....	96

7-6	Punitive Damages Due From Tortfeasor .....	96
7-7	Recovery or Contribution From Tortfeasor .....	97
7-8	Tortious Conduct Lost Profits Damages .....	98

**Chapter 8**  
**Employer-Employee Causes of Action**

8-A	Introduction to Employer-Employee Causes of Action .....	99
8-1	Competition With Employer or Principal .....	99
8-1:1	Claim for Employee Breach of Fiduciary Duty .....	100
8-1:2	Claim for Misappropriation and Unfair Competition.....	101
8-2	Contractual Covenant Not to Compete Violated .....	101
8-3	Employer Breach of Employee Manual.....	101
8-4	Employer Improperly Handling Employee Wages.....	102
8-5	Employer Liability for Employee Act.....	102
8-6	Employer Retaliation Against Employee .....	103
8-7	Hostile Work Environment—Sexual Harassment .....	104
8-8	Negligent Hiring.....	104
8-9	New York City Human Rights Law.....	105
8-10	New York Labor Law § 193.....	105
8-11	New York State Human Rights Law .....	106
8-12	Quid Pro Quo Sexual Harassment.....	106
8-13	Sex Discrimination In Wage Payment.....	107
8-14	Work Environment Harassment .....	108
8-15	Work, Labor and Services (Quantum Meruit).....	108
8-16	Wrongful Discharge In Violation of Company Policy .....	109

**Chapter 9**  
**Equitable Causes of Action**

9-A	Introduction to Equitable Causes of Action .....	111
9-1	Equitable Estoppel .....	111
9-2	Equitable Fraud .....	112
9-3	Equitable Subrogation .....	112
9-4	Estoppel by Deed .....	112

9-5	Estoppel in Pais.....	112
9-6	Incorporation (or Corporation) By Estoppel.....	113
9-7	Implied Indemnification.....	113
9-8	Impounding Property to Pay Debt .....	114
9-9	Impress a Trust .....	114
9-10	Reformation of Written Instruments .....	114
9-11	Restitution Despite Contract Breach.....	115
9-12	Resulting Trust .....	115
9-13	Specific Performance.....	116

**Chapter 10**

**Family and Matrimonial Causes of Action**

10-A	Introduction to Family and Matrimonial Causes of Action.....	117
10-1	Adoption.....	117
10-2	Annulment .....	118
10-3	Custody and Visitation.....	120
10-3:1	Custody.....	120
10-3:2	Visitation Rights of Sibling .....	120
10-3:3	Visitation of Grandparents .....	121
10-3:4	Enforcement of Visitation.....	121
10-3:5	Enforcement of Visitation—Temporary Order.....	122
10-3:6	Parental Alienation .....	123
10-4	Divorce.....	123
10-4:1	No-Fault Divorce .....	123
10-4:2	Fault Divorce.....	123
10-4:3	Abandonment .....	124
10-4:4	Adultery .....	125
10-4:5	Cruel and Inhuman Treatment.....	126
10-4:6	Imprisonment.....	127
10-4:7	Living Apart Pursuant to Separation Agreement.....	127
10-4:8	Living Apart Pursuant to Separation Decree.....	128
10-5	Guardianship .....	129
10-5:1	Guardianship of Minor .....	129



10-5:2	Guardianship of Mentally Retarded/Developmentally Disabled .....	132
10-5:3	Guardianship of Adult .....	132
10-5:4	Waste of Assets .....	134
10-6	Separation From Bed and Board .....	134
10-7	Paternity .....	135
10-8	Matrimonial Emergency Applications.....	136
10-8:1	Automatic Orders.....	136
10-8:2	General Requirements for Matrimonial Motions.....	136
10-8:3	Temporary Maintenance .....	136
10-8:4	Temporary Child Support.....	137
10-8:5	Temporary Custody.....	138
10-8:6	Relocation .....	139
10-8:7	Orders of Protection .....	140
10-8:8	Restraint of Assets .....	141
10-8:9	Exclusive Use and Occupancy .....	142
10-8:10	Counsel and Expert Fees.....	143

## Chapter 11

### Insurance Causes of Action

11-A	Introduction to Insurance Causes of Action.....	145
11-1	Insurance Policy .....	145
11-2	Insurance Broker Liability.....	146
11-3	Insurance Broker Malpractice.....	147
11-4	Insurance Carrier Defrauded or Exploited .....	147
11-5	Insurance Carrier Supplying Defense of Suit .....	148
11-6	Insurance Carrier's Bad Faith.....	148
11-7	Insurance Claim Wrongfully Delayed or Denied.....	149
11-8	Insurance Policy Rescission.....	149
11-9	Insurance Policy Terminated Without Notice to Insured .....	150
11-10	Insurer Wrongfully Disclosing Confidential Information.....	150
11-11	Life or Health Insurance Obtained by Fraud.....	151
11-12	New York State Disclaimer Statute.....	151

11-13	Disclaimer for Lack of Cooperation .....	151
11-14	New York State Prompt Pay Law.....	152
11-15	No-Fault Claim.....	152
11-16	Subrogation.....	153

**Chapter 12**

**Judicial Causes of Action**

12-A	Introduction to Judicial Causes of Action.....	155
12-1	Abuse of Process.....	155
12-2	Capias Ad Respondendum .....	155
12-3	Concealment or Destruction of Evidence (Spoliation of Evidence).....	156
12-4	Concert of Action.....	156
12-5	Contempt .....	157
12-6	Court Sanctions for Delay .....	157
12-7	Malicious Abuse of Legal Process (Malicious Prosecution) .....	158
12-8	Notary Public Officer Liable for Negligent Acknowledgment.....	158

**Chapter 13**

**Real Property Causes of Action**

13-A	Introduction to Real Property Causes of Action.....	161
13-1	Land-Related Causes of Action .....	161
13-1:1	Abnormal Dangers on Land .....	161
13-1:2	Adverse Possession of Property .....	162
13-1:3	Broker’s Liability for Injury at Open House.....	163
13-1:4	Buyer In Breach Liable for Real Estate Broker’s Commission .....	163
13-1:5	Buyer Recovering Costs Due to Title Defect.....	163
13-1:6	Co-Tenant’s Share of Profits and Expenses .....	164
13-1:7	Covenant in Deed Violated .....	164
13-1:8	Customer Injured Off Leased Premises.....	164
13-1:9	Discharge of Mortgage.....	164
13-1:10	Easement After Property Divided .....	165
13-1:11	Easement by Implication .....	165
13-1:12	Easement by Necessity .....	166
13-1:13	Easement by Prescription.....	166

13-1:14	Ejectment (Ejectment for Wrongful Possession of Claim On Land).....	166
13-1:15	Injury Off Owner’s Land.....	167
13-1:16	Injury on Owner’s Land .....	167
13-1:17	Landowner Excluding Patron for Discriminatory Reasons.....	168
13-1:18	Landowner’s Servant or Contractor Causing Injury .....	168
13-1:19	Private Nuisance .....	168
13-1:20	Public Nuisance .....	169
13-1:21	Real Estate Broker’s Commission Due After Termination .....	169
13-1:22	Real Property Defect Concealed by Seller.....	169
13-1:23	Slander of Title .....	170
13-1:24	Warranty of Habitability by Home Seller.....	170
13-1:25	Waste.....	170
13-2	Landlord-Tenant Causes of Action .....	171
13-2:1	Constructive Eviction of Tenant.....	171
13-2:2	Eviction for Illegal Occupancy .....	171
13-2:3	Landlord Failing to Protect Tenant From Crime .....	172
13-2:4	Landlord’s Retaliatory Eviction of Tenant.....	172
13-2:5	Rent Implied by Tenant’s Occupation .....	172
13-2:6	Security Deposit Not Returned To Tenant.....	173
13-2:7	Subtenant Liable to Landlord for Rent .....	173
13-2:8	Tenant Equitable Relief for Renewal Options .....	173
13-2:9	Tenant Unlawfully Evicted .....	174
13-2:10	Warranty of Habitability.....	174
13-2:11	Yellowstone Injunctions.....	175

**Chapter 14**  
**Statutory Causes of Action**

14-A	Introduction to Statutory Causes of Action.....	177
14-1	Champerty and Maintenance .....	177
14-2	Construction or Mechanics Lien Law.....	178
14-3	Consumer Fraud .....	179

14-4	Dram-Shop Act .....	179
14-5	Emergency Aid Not Given or Not Properly Given (Good Samaritan Law) .....	180
14-6	Fair Credit Reporting Act.....	180
14-7	Martin Act Claims.....	181
14-8	New York Anti-SLAPP Law.....	181
14-9	New York Arts and Cultural Affairs Law.....	182
14-10	New York Antitrust Statute—Donnelly Act.....	183
14-11	New York City Snow and Ice Claims.....	183
14-12	New York Equal Access to Justice Act .....	184
14-13	New York Franchise Law.....	184
14-14	New York Labor Law § 240.....	185
14-15	New York Labor Law § 241 .....	186
14-16	Physician Violating Patient Confidentiality .....	186
14-17	Social Host Liability.....	187
14-18	Son of Sam Law.....	187
14-19	Theft of Personal Identifying Information/Identity Theft .....	187
14-20	Trademark and Trade Dress Dilution.....	188
14-21	Trademark and Trade Dress Infringement .....	188
14-22	Voluntary Rescuer Injured by Negligence of Other (Rescue Doctrine) .....	189
14-23	New York City Victims of Gender-Motivated Violence Protection Act.....	189
14-24	Medical, Dental or Podiatric Malpractice Based on Lack of Informed Consent .....	190

## Chapter 15

### Tort Causes of Action

15-A	Introduction to Tort Causes of Action .....	191
15-1	Business Torts.....	191
15-1:1	Accountant Malpractice.....	191
15-1:2	Business Intentionally Interfered With by Outsider .....	192
15-1:3	Computer Malpractice .....	192
15-1:4	Unfair Competition .....	193

15-1:5	Professional or Tradesperson Malpractice.....	193
15-1:6	Usury .....	193
15-2	Defamation Torts.....	194
15-2:1	Defamatory Injury to Reputation .....	194
15-2:2	Injurious Falsehood .....	195
15-2:3	Libel and Slander .....	195
	15-2:3.1 Libel.....	195
	15-2:3.2 Slander .....	196
15-2:4	Product Disparagement.....	196
15-2:5	Negligent Misrepresentation Causing Harm .....	197
15-2:6	Right of Publicity.....	197
15-2:7	Words Negligently Spoken .....	198
15-3	Fraud Torts .....	198
15-3:1	Conversion .....	198
15-3:2	Deceit .....	200
15-3:3	Breach of Fiduciary Duty .....	201
15-3:4	Fraud and Deceit.....	202
15-4	Intellectual Property Torts .....	203
15-4:1	Artist's Common Law Copyright Violated.....	203
15-4:2	Idea Misappropriation.....	203
	15-4:2.1 Property Claims.....	203
	15-4:2.2 Contract Claims .....	203
15-4:3	Trade Secret Disclosed or Used Wrongfully .....	204
15-4:4	Trafficking Counterfeit Trade or Service Marks.....	204
15-5	Motor Vehicle/Boat Torts .....	205
15-5:1	Automobile Damaged at Parking Facility.....	205
15-5:2	Negligent Entrustment .....	205
15-6	Personal Injury Torts.....	206
15-6:1	Animal Attack Cause of Action.....	206
15-6:2	Assault.....	207
15-6:3	Battery.....	207
15-6:4	Dental Malpractice .....	208
15-6:5	Emotional Distress (Intentionally Inflicted) .....	208
15-6:6	Emotional Distress (Negligently Inflicted) .....	209

15-6:7	Exposing Another to Disease or Toxic Substances Negligently.....	210
15-6:8	Failure to Warn and Protect From a Violent Patient .....	210
15-6:9	False Arrest and Imprisonment .....	211
15-6:10	Future Earning Capacity Damaged by Tort.....	212
15-6:11	Future Injury From Present Tortious Personal Injury .....	212
15-6:12	Future Medical Expenses Resulting From Tort.....	212
15-6:13	Intentional or Malicious Harm to Another (Prima Facie Tort).....	212
15-6:14	Loss of Consortium .....	213
15-6:15	Lost Capacity In Living Resulting From Tort.....	213
15-6:16	Malpractice (or Malfeasance) .....	213
15-6:17	Medical Malpractice.....	214
15-6:18	Medical Provider Liability to Third Parties .....	215
15-6:19	Negligence .....	215
15-6:20	Negligently Caused Economic Loss.....	217
15-6:21	Right of Sepulcher.....	217
15-6:22	Skateboard and Hover Board Liability .....	218
15-6:23	Survivorship .....	218
15-6:24	Wrongful Birth.....	218
15-6:25	Wrongful Death .....	219
15-6:26	Wrongful Life .....	220
15-6:27	Foul Ball Liability.....	220
15-7	Personal Property Torts .....	220
15-7:1	Cruelty to Animals.....	220
15-7:2	Hotel Liability for Personalty Loss .....	221
15-7:3	Lost Property to Be Returned to True Owner.....	221
15-7:4	Property Disparagement .....	222
15-7:5	Property Tortiously Damaged .....	222
15-7:6	Recovery of a Chattel (Replevin) .....	222
15-7:7	Repossessing/Reclamation of Goods .....	223
15-7:8	Trespass .....	223
15-7:9	Trespass on Land .....	223
15-7:10	Trespass to Personal Property/Chattel .....	224
15-7:11	Trover .....	224

15-8	Status Torts.....	225
15-8:1	Administrative Negligence.....	225
15-8:2	Aiding and Abetting the Commission of Tort.....	225
15-8:3	Alternative Liability .....	226
15-8:4	Bystander Emotional Distress .....	226
15-8:5	Car Renter Liable for Injury.....	227
15-8:6	Common Carrier Liability.....	228
15-8:7	Conspiracy .....	228
15-8:8	Conspiracy to Commit a Tort .....	229
15-8:9	Indivisible Harm Caused by Separate Tortfeasors .....	229
15-8:10	Municipal Liability .....	230
15-8:11	Negligent Advice Causing Damage.....	231
15-8:12	Negligent Entrustment .....	231
15-8:13	Opioid Crisis Tort Claims .....	232
15-8:14	Public Utility Liability.....	232
15-8:15	Respondeat Superior .....	232
15-8:16	Vicarious Liability .....	233
15-8:17	Witness to Injury Suffering Emotional Distress .....	234

**Chapter 16**

**Trust and Estate Causes of Action**

16-A	Introduction to Trust and Estate Causes of Action.....	235
16-1	Breach of Fiduciary Duty by Trustee of Religious Corporation .....	235
16-2	Constructive Trust .....	236
16-3	Curtesy .....	237
16-4	Dower.....	237
16-5	Elective Share .....	237
16-6	Expected Gift Maliciously Interfered With by Other.....	238
16-7	Gifts Causa Mortis.....	238
16-8	Gifts Inter Vivos.....	238
16-9	Mismanagement of Trust Assets by Trustee.....	239
16-10	Presumption of Death From Absence .....	239
16-11	Promise to Make a Will .....	240
16-12	Undue Influence Over Testator or Settlor.....	240
16-13	Wasting Another’s Property or Inheritance.....	241

**Chapter 17**  
**Defenses**

**17-A Introduction to Defenses.....243**

**17-1 Absolute or Qualified Privilege.....244**

**17-1:1 Absolute Privilege ..... 244**

**17-1:2 Fair and True Report Privilege..... 244**

**17-1:3 Qualified Privilege ..... 244**

**17-2 Accord and Satisfaction .....245**

**17-3 Act of God Doctrine .....245**

**17-4 Adverse Possession.....246**

**17-5 Assumption of Risk.....247**

**17-6 Collateral Estoppel .....247**

**17-7 Economic Interest Defense .....248**

**17-8 Emergency Doctrine .....249**

**17-9 Emergency Vehicle Driver Defense.....249**

**17-10 “Empty Chair” .....250**

**17-11 Equitable Estoppel .....250**

**17-12 Force Majeure.....251**

**17-13 Frustration of Purpose Doctrine.....252**

**17-14 General Release .....253**

**17-15 Illegality Doctrine .....253**

**17-16 Impossibility of Performance.....254**

**17-17 In Pari Delicto .....255**

**17-18 Judicial or Litigation Privilege .....256**

**17-19 Laches.....257**

**17-20 Lack of Insurance Coverage .....257**

**17-21 Lack of Standing .....258**

**17-22 New York City Pet Law.....259**

**17-23 Novation.....259**

**17-24 Res Adjudicata.....260**

**17-25 Stale Rent .....260**



17-26 Statute of Limitations.....261

17-27 Statute of Repose .....262

17-28 Storm In Progress.....262

17-29 Wagoner Rule .....263

17-30 Waiver .....264

**Chapter 18**  
**Provisional Remedies**

18-A Introduction to Provisional Remedies.....265

18-1 Attachment .....265

18-2 Order to Show Cause.....267

18-3 Preliminary Injunctions.....269

18-4 Provisional Remedies In the Appellate Division, First Department .....270

    18-4:1 Stays Under New York Civil Practice Law and  
    Rules § 5519(c) or Temporary Restraining Orders/  
    Preliminary Injunctions Under New York Civil  
    Practice Law and Rules § 5518..... 270

    18-4:2 Review of *Ex Parte* Orders Under New York  
    Civil Practice Law and Rules § 5704(a) ..... 271

18-5 Receivership Appointments.....272

    18-5:1 “Necessity” Receiver ..... 272

    18-5:2 Receiver Under “Receiver Clause”..... 273

    18-5:3 Temporary Receivership ..... 273

18-6 Restraining Notice .....275

18-7 Seizure of Chattel Under New York Civil Practice Law and  
Rules § 7102 Before Judgment ..... 275

18-8 Stay of Arbitration.....276

18-9 Stay/Vacatur of Judgment or Order .....277

18-10 “Yellowstone” Injunction .....280

Index to Causes of Action .....283

Table of Statutes.....395

Table of Cases .....405

