

Contents

Chapter 1:	
Agency or Fiduciary Based Causes of Action	1
1-1 Agent Breaching Fiduciary Duty to Principal.....	1
1-2 Agent’s Liability to Third Parties.....	2
1-3 Bailments.....	2
1-4 Breach of Fiduciary Duty.....	3
1-5 Charitable Organization Liable for Wrongdoing	4
1-6 Co-Sureties Contributing on Debt Default.....	4
1-7 Escrow Agent Improperly Disbursing Funds	5
Chapter 2:	
Attorney and Legal Services Causes of Action	7
2-1 Attorney Malpractice	7
2-2 Legal Fraud	9
2-3 Claim for Attorneys’ Fees	11
2-4 Attorney Charging Lien	11
Chapter 3:	
Banking, Commercial Paper	13
3-1 Wrongful Refusal to Honor Check	13
3-2 Letters of Credit	13
3-3 Holder in Due Course.....	13
3-4 Enforcement of Lost, Destroyed or Stolen Instrument	14
3-5 Employer’s Responsibility for Fraudulent Endorsement by Employee	14
3-6 Collecting Bank Late Objection to Negotiable Instrument	15
3-7 Bank’s Wrongful Failure to Honor Stop Payment	16
3-8 Death or Incapacity of Customer	16
3-9 Liability for Improper Payment by Bank Because of Revoked or Limited Power of Attorney	16
3-10 Liability for Payment of Forged or Altered Checks	17
3-11 Modification or Revocation of Letters of Credit	17
3-12 Letters of Credit: Fraud and Forgery.....	18

Contents

Chapter 4:	
Constitutional Causes of Action	19
4-1	Eminent Domain 19
4-2	Invasion of Privacy 19
4-3	Inverse Condemnation (aka “ <i>De Facto</i> Taking”) 20
4-4	Waiver of Sovereign Immunity 21
4-5	Claim for Violation of Free Speech Rights 23
Chapter 5:	
Contract or Quasi-Contract Causes of Action	25
5-1	Accounting 25
5-2	Account Stated 25
5-3	Anticipatory Breach of Contract 26
5-4	Avoidance of Contract by Child 27
5-5	Breach of Contract 28
5-6	Buyer’s Damages for Accepted Goods 29
5-7	Buyer’s Damages for Non-Delivery or Repudiation 30
5-8	Buyer’s Recovering Specifically Identified Goods 31
5-9	Buyer’s Remedies for Breach in General 32
5-10	Buyer’s Right to Replevy Goods Identified to the Contract 33
5-11	Confusing Language in Written Contract 34
5-12	Contract 35
5-13	Enforceability of Contract for Sale of Goods for the Price of \$500 or More (Statute of Frauds) 36
5-14	Constructive Fraud in Contract 37
5-15	Contract Rescission Based on Misrepresentation 38
5-16	Duress 38
5-17	Express Warranty 39
5-18	Failure to Cooperate in Performance 40
5-19	Firm Offers 41
5-20	Gist of the Action Doctrine 42
5-21	Implied-In-Fact Contract 43
5-22	Implied-In-Law Contract/Quasi-contract 44
5-23	Implied Covenant of Good Faith and Fair Dealing 44
5-24	Implied Warranty of Fitness for Particular Purpose 45
5-25	Implied Warranty of Merchantability 46
5-26	Intentional Interference with Contractual Relations 47
5-27	Mutual Mistake 48
5-28	Open Price Term 49
5-29	Output and Requirements Contracts 49
5-30	Promissory Estoppel (Detrimental Reliance) 49
5-31	Seller’s Action for the Price 50

5-32	Seller's Remedies for Breach in General	51
5-33	Seller's Remedies Upon Discovery of Buyer's Insolvency	52
5-34	Settlement Agreements as Contracts	53
5-35	Specific Performance	53
5-36	Substantial Performance.....	54
5-37	Suretyship.....	55
5-38	Unconscionability	56
5-39	Unilateral Mistake	57
5-40	Unjust Enrichment and Quantum Meruit	58
5-41	Warranty of Title	59

Chapter 6:

Corporate- and Partnership-Based Causes of Action 61

6-1	Association and Membership Liability	61
6-2	Breach of Fiduciary Duty.....	62
6-3	Business Judgment Rule	63
6-4	Corporate Liability in Tort	64
6-5	Custodians	65
6-6	Derivative Suits	66
6-7	Involuntary Dissolution	68
6-8	Participation Theory of Liability.....	69
6-9	Partnership Liability	70
6-10	Piercing the Corporate Veil	70
6-11	Receivers	72
6-12	Shareholder Access to Corporate Records	73
6-13	Shareholder Oppression	74
6-14	Successor Liability	74
6-15	Venue.....	76
6-16	Forum Non Conveniens.....	77

Chapter 7:

Damage-Related Causes of Action 79

7-1	Contribution	79
7-2	Indemnification	79
7-3	Delay Damages/Interest	80
7-4	Punitive Damages.....	81
7-5	Damages Against Political Subdivisions.....	82
7-6	Declaratory Relief; Unresolved Damages.....	83

Chapter 8:

Employer- and Employee-Based Causes of Action 85

8-1	Discrimination.....	85
8-2	Hostile Work Environment.....	87

Contents

8-3	Negligent Hiring and Negligent Supervision	89
8-4	Pennsylvania Human Relations Act	90
8-5	Quantum Meruit	92
8-6	Quid Pro Quo Sexual Harassment	93
8-7	Respondeat Superior Liability	94
8-8	Restrictive Covenants	95
8-9	Retaliation	97
8-10	Vicarious Liability	98
8-11	Wage Payment and Collection Law	98
8-12	Wrongful Discharge	100

Chapter 9:

Equitable Causes of Action 105

9-1	Equitable Rescission and Reformation of Contract	105
9-2	Economic Duress	105
9-3	Unconscionability	106
9-4	Action for Specific Performance of Contract	106
9-5	Action to Enforce Restrictive Covenant	107
9-6	Action on Contract Implied-In-Law	107
9-7	Promissory Estoppel	107
9-8	Unjust Enrichment	108
9-9	Reformation of Contracts	108
9-10	Constructive Trust	109
9-11	Injunctions	109
9-12	Equitable Subrogation	110
9-13	Implied Indemnification	111

Chapter 10:

Family and Matrimonial Causes of Action 113

10-1	Adoption	113
10-2	Annulment	114
	10-2:1 Void Marriages	115
	10-2:2 Voidable Marriages	115
10-3	Custody	116
	10-3:1 Types of Custody	116
	10-3:2 Custody Factors	117
	10-3:3 Grandparents	119
	10-3:4 Enforcement of Visitation	120
	10-3:5 Relocation	120
10-4	Divorce	120
	10-4:1 Jurisdiction	120
	10-4:2 Grounds for Divorce	121
	10-4:3 Fault Grounds	121
	10-4:4 Institutionalization	122
	10-4:5 Mutual Consent	122

10-4:6	Irretrievable Breakdown.....	123
10-4:7	Marital Property.....	123
10-5	Protection from Abuse.....	124
10-5:1	Requirements	124
10-5:2	Temporary Orders	124
10-5:3	Relief.....	124
10-6	Standby Guardianship	125
10-7	Support.....	126
Chapter 11:		
Insurance-Based Causes of Action		127
11-1	Insurance-Carrier Bad-Faith Actions	127
11-2	Insurance Carrier’s Duty to Defend/Declaratory Judgment Action.....	129
11-3	Insurance Policy Terminated Without Notice to Insured.....	130
11-4	Insurer’s Fraudulent-Misrepresentation Defense	131
11-5	Negligence.....	131
11-6	Negligent Misrepresentation	132
11-7	Subrogation	133
Chapter 12:		
Judicial Based Causes of Action		135
12-1	Abuse of Process	135
12-2	Agricultural Crop Destruction.....	136
12-3	Alteration or Destruction of Evidence (Spoliation of Evidence)	137
12-4	Assault with Biological Agent on Animal, Fowl, or Honey Bees	138
12-5	Civil Rights Violations	138
12-6	Concert of Action	139
12-7	Commemorative Service Demonstrations.....	140
12-8	Conversion of Timber.....	140
12-9	Dilatory, Obdurate or Vexatious Conduct	141
12-10	Disgorgement of Criminal Profits	142
12-11	Drug-Related Nuisances.....	143
12-12	Ecoterrorism	143
12-13	Extraordinary Jurisdiction of Supreme Court	144
12-14	Invalidity of Agreements with Injured Persons.....	144
12-15	King’s Bench Petitions.....	145
12-16	Malicious Use of Process (Dragonetti Act Violation)	145
12-17	Mandamus and Prohibition	147
12-18	Quo Warranto	148
12-19	Sale of Drugs to Minors	148
12-20	Special Damages for Passing Bad Checks	148

Contents

12-21	Terrorism	149
12-22	Theft of Leased Property	149
12-23	Unauthorized Use of Name or Likeness	150

Chapter 13:

Real Property Causes of Action **153**

13-1	Land-Related Causes of Action.....	153
13-1:1	Adverse Possession.....	153
13-1:2	Action to Enjoin Conveyance of Land Dedicated to Public Use.....	153
13-1:3	Express Easement	154
13-1:4	Prescriptive Easement	154
13-1:5	Implied Easement	155
13-1:6	Easement by Necessity	155
13-1:7	Violation of Restrictive Covenant in Deed.....	156
13-1:8	Replevin of Wrongfully Severed Fixtures	156
13-1:9	Action to Quiet Title	157
13-1:10	Abandonment of Easement.....	157
13-1:11	Claim for Broker's Commission.....	158
13-1:12	Partition of Real Property	158
13-1:13	Action to Prevent Waste.....	158
13-2	Landlord-Tenant Causes of Action.....	159
13-2:1	Breach of the Implied Warranty of Habitability	159
13-2:2	Breach of Covenant of Quiet Enjoyment.....	159
13-2:3	Breach of Landlord's Obligation to Provide Security.....	160
13-2:4	Condemnation of Leased Premises.....	160
13-2:5	Claim for Security Deposit	160
13-2:6	Claim for Slander of Title.....	161
13-2:7	Claim for Public Nuisance.....	161
13-2:8	Claim for Private Nuisance.....	162
13-2:9	Constructive Eviction.....	162
13-2:10	Injuries to Third Persons	162
13-2:11	Action in Ejectment	163
13-2:12	Fixtures	163
13-2:13	Eviction by Landlord	164
13-2:14	Liability of Landlord for Repairs by Tenant	164
13-2:15	Liability for Wrongful Subletting.....	164

Chapter 14:

Statutory Causes of Action **165**

14-1	Dilution of Trademark.....	165
14-2	Action to Enjoin Trademark Infringement.....	165

14-3	Misappropriation of Trade Secrets	166
14-4	Unfair Trade Practices and Consumer Protection	167
14-5	Mechanics Lien	168
14-6	Wrongful Use of Civil Proceedings (Dragonetti Act)	169
14-7	Dram Shop Act Liability	169
14-8	Fair Credit Extension Uniformity Act.....	170
14-9	Consumer Protection Against Computer Spyware Act	170
14-10	Pennsylvania Automobile Lemon Law	171
14-11	Pennsylvania Home Improvement Consumer Protection Law	172

Chapter 15:

Tort Causes of Action 175

15-1	Business Torts	175
15-1:1	Professional Malpractice.....	175
15-1:2	Accountant Malpractice.....	176
15-1:3	Tortious Interference with Business Relations and Prospective Business Relations	177
15-1:3.1	Tortious Interference with Prospective Business Relations	178
15-1:3.2	Tortious Interference with Business Relations	178
15-2	Defamation Torts	179
15-2:1	Injurious Falsehood.....	179
15-2:2	Libel	179
15-2:3	Slander	180
15-2:4	Commercial Disparagement	181
15-2:5	Negligent Misrepresentation.....	182
15-3	Fraud Torts	183
15-3:1	Conversion	183
15-3:2	Deceit	183
15-3:3	Fraud	184
15-4	Intellectual Property Torts.....	185
15-4:1	Common Law Copyright Infringement	185
15-4:2	Idea Misappropriation.....	185
15-4:3	Trade Secret Misappropriation	186
15-5	Personal Injury Torts	186
15-5:1	Assault	186
15-5:2	Battery.....	187
15-5:3	Dram Shop—Liability for Service of Alcoholic Beverages	187

Contents

15-5:4	Emotional Distress (Intentionally Inflicted).....	189
15-5:5	Emotional Distress (Negligently Inflicted).....	190
15-5:5.1	Close Family Member Circumstance	191
15-5:5.2	Zone of Danger Circumstance....	192
15-5:6	Failure to Warn and Protect from a Violent Patient.....	192
15-5:7	False Arrest and Imprisonment	193
15-5:8	Loss of Consortium.....	194
15-5:9	Medical Malpractice	194
15-5:10	Negligence	200
15-5:10.1	Corporate Negligence	200
15-5:11	Negligence—Condition of Premises	201
15-5:11.1	Invitee Injured.....	201
15-5:11.1a	Independent Contractor Exception.....	203
15-5:11.1b	Commercial Property Owner.....	203
15-5:11.2	Licensee Injured	205
15-5:11.3	Trespasser Injured.....	206
15-5:12	Negligent Performance of Undertaking To Render Services	206
15-5:13	Liability to Third Person for Negligent Performance of Undertaking.....	207
15-5:14	Ultrahazardous Activity	208
15-5:15	Products Liability.....	208
15-5:15.1	Theories of Product Defect.....	209
15-5:16	Negligent Design Defect.....	215
15-5:17	Adverse Events from Vaccines.....	217
15-5:18	Survival Action	219
15-5:19	Wrongful Death	220
15-5:20	Wrongful Birth.....	222
15-5:21	Wrongful Life	222
15-5:22	Automobile Accidents—Recovery of Damages Where Limited Tort Option is Applicable	223
15-5:23	Automobile Accidents—Uninsured and Underinsured Motorist Actions After <i>Koken</i>	224
15-5:24	Automobile Accidents—Motor Vehicle Financial Responsibility Law	226
15-5:25	Automobile Accidents—Distracted Driving....	226
15-6	Personal Property Torts	227
15-6:1	Hotel Liability for Personalty Loss.....	227

15-6:2	Property Disparagement	228
15-6:3	Property Tortiously Damaged	228
15-6:4	Recovery of a Chattel (Replevin).....	228
15-6:5	Repossessing/Reclamation of Goods.....	228
15-6:6	Trespass on Land	229
15-6:7	Trespass to Personal Property/Chattel	230
15-7	Status Torts	230
15-7:1	Aiding and Abetting the Commission of a Tort (Concerted Tortious Conduct)	230
15-7:2	Common Carrier Liability	231
15-7:3	Conspiracy	231
15-7:4	Indivisible Harm Caused by Separate Tortfeasors.....	232
15-7:5	Negligent Entrustment	233
15-7:6	Respondeat Superior.....	234
15-7:7	Vicarious Liability	234
15-7:8	Pennsylvania Whistleblower Law	235
15-8	Actions Against State, Local and Federal Governments	236
15-8:1	Actions Against the Federal Government	236
15-8:2	Actions Against the State and Local Municipalities	237

Chapter 16:

Trust and Estate Causes of Action 241

16-1	Removal of Executor for Waste and Mismanagement	241
16-2	Wrongful Action of Trustee	241
16-3	Action for Accounting from Trustee	242
16-4	Torts Committed by Trustee.....	242
16-5	Claim Against Trustee for Mismanagement of Trust Assets	242
16-6	Claim for Undue Influence.....	243
16-7	Claim for Undue Influence Based on Confidential Relationship.....	243
16-8	Removal of Executor for Antagonism to Beneficiaries	244
16-9	Removal of Executor for Self-Dealing Without Court Approval.....	244
16-10	Removal for Failure to File Account.....	244
16-11	Creditor Claim Against Estate.....	245
16-12	Executor Claim for Compensation	245
16-13	Gifts Causa Mortis	245
16-14	Gifts Inter Vivos	246

Contents

Chapter 17:	
Defenses	247
17-1 Absolute Privilege	247
17-2 Accord and Satisfaction	247
17-3 Acquiescence.....	248
17-4 Adverse Possession	248
17-5 Arbitration and Award	249
17-6 Assumption of the Risk.....	249
17-7 Champerty and Maintenance.....	250
17-8 Collateral Estoppel	251
17-9 Comparative Negligence	251
17-10 Conditional Privilege.....	251
17-11 Contributory Negligence	252
17-12 Discharge in Bankruptcy	252
17-13 Economic Loss Doctrine	252
17-14 Equitable Estoppel	252
17-15 Estoppel by Deed	253
17-16 Failure of Consideration.....	253
17-17 Fair Share Act (2011)	253
17-18 Gist of the Action Doctrine	254
17-19 Good Samaritan Immunity	255
17-20 Impossibility of Performance.....	256
17-21 In Pari Delicto	256
17-22 Justification	257
17-23 Laches	257
17-24 New Matter.....	258
17-25 Novation	258
17-26 Recoupment.....	259
17-27 Res Judicata.....	259
17-28 Statute of Frauds	260
17-29 Statute of Limitations	260
17-30 Statute of Repose.....	262
17-31 Release	264
17-32 Unclean Hands	265
17-33 Waiver	265
17-34 Federal Tort Claim Act Defenses	265
17-35 Sophisticated User/Purchaser.....	267
17-36 Learned Intermediary	269
17-37 Statutory Employer	270
Index to Causes of Action	275
Table of Statutes	305
Table of Cases	313