

# Table of Contents

<b>Chapter 1: Securities Litigation .....</b>	<b>1</b>
1-1 INTRODUCTION.....	1
1-2 SECURITIES EXCHANGE ACT OF 1934—SECURITIES FRAUD.....	2
1-2:1 Section 10(b) and Rule 10b-5 Generally.....	2
1-2:2 Material Misrepresentation or Omission .....	3
1-2:2.1 Opinions .....	7
1-2:2.2 Materiality.....	8
1-2:2.3 Omission—Duty to Disclose.....	9
1-2:3 Scienter.....	10
1-2:3.1 Pleading with Particularity .....	11
1-2:3.2 Motive and Opportunity.....	13
1-2:3.3 Conscious Misbehavior or Recklessness .....	14
1-2:4 Purchase and Sale of Securities.....	17
1-2:5 Reliance or Transaction Causation .....	18
1-2:5.1 Generally .....	18
1-2:5.2 Fraud-on-the-Market.....	19
1-2:6 Loss Causation .....	20
1-2:7 Control Person Liability .....	21
1-2:8 Aiding and Abetting .....	23
1-2:9 Statute of Limitations.....	24
1-2:9.1 Generally .....	24
1-2:9.2 Inquiry Notice .....	24
1-2:10 Remedies .....	25
1-3 THE SECURITIES ACT OF 1933 .....	26
1-3:1 Section 11 .....	27
1-3:2 Section 12(a)(2).....	29
1-3:3 Section 11 and Section 12(a)(2) Liability.....	30
1-3:3.1 Section 13 .....	32
1-3:4 Section 15 .....	33
1-4 INVESTMENT COMPANY ACT OF 1940.....	34
1-4:1 Generally .....	34
1-4:2 Section 36(b)—Fiduciary Duty.....	35

## Table of Contents

1-5	THE INVESTMENT ADVISERS ACT OF 1940.....	38
1-6	CONNECTICUT UNIFORM SECURITIES ACT .....	39
1-6:1	Generally .....	39
1-6:2	Liability .....	40
	1-6:2.1    Generally .....	40
	1-6:2.2    Statute of Limitations.....	41
1-6:3	Secondary Liability .....	42
	1-6:3.1    Aider and Abettor Liability .....	42
	1-6:3.2    Control Person Liability .....	42
1-6:4	Remedies .....	43
	<b>Chapter 2: Director and Officer Liability .....</b>	<b>45</b>
2-1	INTRODUCTION.....	45
2-2	FIDUCIARY RELATIONSHIP AND DUTIES .....	45
	2-2:1    Fiduciary Status.....	45
	2-2:2    Duties of a Fiduciary.....	46
2-3	USURPING BUSINESS OPPORTUNITIES.....	48
	2-3:1    Diversion of Business Opportunity.....	48
	2-3:1.1    Existence of Corporate Opportunity .....	49
	2-3:1.2    Defenses .....	50
	2-3:2    Other Improper Dealings.....	51
2-4	INDIVIDUAL DIRECTOR AND OFFICER LIABILITY .....	53
	2-4:1    Business Judgment Rule.....	53
	2-4:2    Unlawful Distribution.....	54
	2-4:3    Tort.....	54
	2-4:4    Indemnification.....	55
2-5	CORPORATE LIABILITY FOR ACTS OF DIRECTOR .....	57
2-6	PIERCING THE CORPORATE VEIL .....	58
	2-6:1    Generally .....	58
	2-6:2    Instrumentality Rule.....	59
	2-6:3    Identity Rule.....	60
2-7	TYPES OF DIRECTOR AND OFFICER ACTIONS.....	61
	2-7:1    Shareholder Derivative Suit .....	61
	2-7:1.1    Standing .....	62
	2-7:1.2    Demand.....	63
	2-7:1.3    Demand Futility .....	63
	2-7:1.4    Dismissal of Derivative Suit .....	64
	2-7:2    Direct Actions .....	65
	2-7:3    Class Actions .....	66
2-8	DIRECTOR AND OFFICER INSURANCE POLICIES .....	67
	2-8:1    Policies Generally .....	67
	2-8:2    Exclusions.....	67

## Table of Contents

<b>Chapter 3: Limited Liability Company and Partnership Litigation .....</b>	<b>69</b>
3-1 INTRODUCTION.....	69
3-2 THE LIMITED LIABILITY COMPANY .....	69
3-2:1 The Connecticut Limited Liability Company Act .....	69
3-2:2 The Connecticut Uniform Limited Liability Company Act .....	70
3-2:3 LLC Generally.....	71
3-2:4 Operating Agreement.....	72
3-2:5 Members.....	73
3-2:6 Managers.....	74
3-2:7 Duties of Members and Managers .....	75
3-2:7.1 Generally .....	75
3-2:7.2 Fiduciary Duties.....	75
3-2:7.2a CLLCA .....	76
3-2:7.2b CT ULLCA.....	76
3-3 LIABILITY OF MEMBERS AND MANAGERS OF LLC.....	78
3-3:1 Torts .....	79
3-3:2 Piercing the Corporate Veil .....	80
3-4 DISSOCIATION AND DISSOLUTION OF LLC.....	80
3-4:1 Dissociation.....	80
3-4:2 Dissolution and Winding Up.....	81
3-5 FOREIGN LLC.....	83
3-6 PARTNERSHIPS.....	83
3-6:1 Application of Uniform Partnership Law .....	84
3-6:2 The Uniform Partnership Act.....	85
3-6:3 The Uniform Limited Partnership Act.....	86
3-6:4 Limited Liability Partnerships .....	86
3-6:5 Partnership Agreement .....	87
3-7 DUTIES OF PARTNERS.....	87
3-7:1 Duty of Loyalty.....	87
3-7:2 Duty of Care .....	88
3-7:3 Duty of Good Faith and Fair Dealing.....	88
3-8 RIGHTS OF PARTNERS .....	88
3-8:1 Partnerships.....	88
3-8:2 Limited Partnerships .....	89
3-8:3 Limited Liability Partnerships .....	90
3-9 PARTNERSHIP LIABILITY .....	90
3-9:1 Individual Partner Liability .....	91
3-9:1.1 Generally .....	91
3-9:1.2 Partner Liability in an LLP.....	92
3-9:2 Partnership's Liability for the Acts of Its Partners .....	92

## Table of Contents

3-9:3	Liability of a Purported Partner .....	93
3-9:4	Suits Among Partners .....	93
3-10	<b>DISSOCIATION AND DISSOLUTION</b>	
	<b>OF PARTNERSHIP .....</b>	<b>94</b>
3-10:1	Dissociation .....	94
3-10:2	Dissolution and Winding Up .....	96
	<b>Chapter 4: Antitrust Litigation .....</b>	<b>97</b>
4-1	INTRODUCTION .....	97
4-2	ANTITRUST STANDING .....	98
4-2:1	Antitrust Injury .....	98
4-2:2	Proper Plaintiff .....	99
4-2:3	Government Enforcement .....	101
4-3	SHERMAN ACT LITIGATION .....	102
4-3:1	Section 1 .....	102
4-3:1.1	Concerted Conduct .....	103
4-3:1.2	Rule of Reason Analysis and Per Se Violations .....	104
4-3:2	Section 2 .....	106
4-3:2.1	Monopolization .....	107
4-3:2.1a	Monopoly Power .....	107
4-3:2.1b	Relevant Product Market .....	108
4-3:2.1c	Anticompetitive Conduct .....	109
4-3:2.2	Attempted Monopolization .....	110
4-4	CLAYTON ACT LITIGATION .....	111
4-4:1	Section 2—Robinson-Patman Antidiscrimination Act .....	111
4-4:2	Section 3 .....	112
4-4:3	Section 7 .....	113
4-5	AVAILABLE REMEDIES .....	114
4-5:1	Damages—Section 4 of the Clayton Act .....	114
4-5:2	Injunctive Relief—Section 16 of the Clayton Act .....	115
4-6	CONNECTICUT ANTITRUST ACT .....	115
4-6:1	Construction with Federal Law .....	116
4-6:2	Actions and Available Remedies .....	117
	<b>Chapter 5: Business Torts .....</b>	<b>119</b>
5-1	INTRODUCTION .....	119
5-2	TORTIOUS INTERFERENCE .....	119
5-2:1	Tortious Interference with Business Expectancies .....	121

## Table of Contents

5-2:2	Tortious Interference with Contractual Relations.....	122
5-2:3	Common Elements .....	123
5-2:3.1	Knowledge of Beneficial Relationship .....	123
5-2:3.2	Improper Interference.....	123
5-2:3.3	Actual Loss.....	125
5-2:4	Defenses .....	127
5-2:5	Damages.....	128
5-3	<b>COMMERCIAL DISPARAGEMENT AND DEFAMATION</b> .....	129
5-3:1	Generally .....	129
5-3:2	Liability .....	131
5-3:3	Defenses .....	132
5-3:3.1	Generally .....	132
5-3:3.2	Absolute Privilege.....	133
5-3:4	Damages .....	134
5-4	<b>FRAUD</b> .....	135
5-4:1	Fraudulent Misrepresentation.....	135
5-4:1.1	Fraudulent Nondisclosure .....	137
5-4:1.2	Defenses .....	138
5-4:1.3	Damages.....	138
5-4:2	Negligent Misrepresentation.....	139
5-4:2.1	Generally .....	139
5-4:2.2	Defenses .....	141
5-4:3	Innocent Misrepresentation .....	142
5-5	<b>STATUTE OF LIMITATIONS</b> .....	143
5-5:1	Generally .....	143
5-5:2	Fraudulent Concealment .....	145
<b>Chapter 6: Connecticut Unfair Trade Practices Act.....</b>		<b>147</b>
6-1	INTRODUCTION.....	147
6-2	GENERALLY .....	147
6-3	UNFAIR OR DECEPTIVE ACTS OR PRACTICES .....	149
6-3:1	Generally .....	149
6-3:2	Cigarette Rule.....	149
6-3:2.1	Deceptive Acts .....	151
6-3:2.2	Substantial Injury .....	153
6-4	TRADE OR COMMERCE .....	154
6-4:1	Intracorporate Disputes.....	155
6-4:2	Employment Relationships .....	155
6-4:3	Individual Officer Liability .....	156
6-4:4	Professional Services.....	157

**Table of Contents**

6-4:4.1 Legal Profession ..... 157

6-4:4.2 Medical Profession ..... 159

6-5 ASCERTAINABLE LOSS ..... 160

6-5:1 Generally ..... 160

6-5:2 Causation ..... 162

6-6 DEFENSES ..... 163

6-6:1 Exemptions..... 163

6-6:2 Exclusivity Provisions ..... 166

6-6:3 Contributory Negligence ..... 167

6-7 STATUTE OF LIMITATIONS ..... 168

6-8 REMEDIES ..... 170

6-8:1 Damages..... 170

6-8:2 Equitable Relief ..... 172

**Chapter 7: Trade Secrets and Restrictive Covenant Litigation ..... 173**

7-1 INTRODUCTION..... 173

7-2 CONNECTICUT UNIFORM TRADE  
SECRETS ACT ..... 173

7-2:1 Generally ..... 173

7-2:2 Trade Secrets Defined ..... 174

7-2:2.1 Independent Economic Value  
and Not Readily Ascertainable ..... 176

7-2:2.2 Secrecy Afforded the Information..... 177

7-2:2.3 Customer Lists as Trade Secrets..... 178

7-3 MISAPPROPRIATION OF TRADE SECRETS ..... 179

7-3:1 Generally ..... 179

7-3:2 Inevitable Disclosure Doctrine..... 180

7-4 DEFEND TRADE SECRETS ACT ..... 180

7-4:1 Generally ..... 180

7-4:2 Similarities Between DTSA and CUTSA..... 181

7-4:3 Differences Between DTSA and CUTSA..... 182

7-5 RESTRICTIVE COVENANTS ..... 183

7-5:1 Non-Competition ..... 184

7-5:2 Non-Solicitation ..... 184

7-5:3 Non-Disclosure..... 184

7-6 ENFORCEABILITY OF RESTRICTIVE COVENANTS..... 185

7-6:1 Reasonableness of Covenant ..... 185

7-6:1.1 Length of Time and Geographic  
Restrictions..... 186

7-6:1.2 Fairness of Protection to Employer ..... 188

7-6:1.3 Employee’s Ability to Pursue  
Occupation ..... 188

## Table of Contents

7-6:1.4	Interference with Public Interest .....	189
7-6:2	Blue-Pencil Doctrine.....	189
7-6:3	Consideration .....	190
7-7	AVAILABLE REMEDIES.....	191
7-7:1	Injunctive Relief .....	191
7-7:2	Damages.....	193
 <b>Chapter 8: Intellectual Property Litigation .....</b>		<b>195</b>
8-1	INTRODUCTION.....	195
8-2	THE LANHAM ACT .....	196
8-2:1	Trademarks.....	196
8-2:1.1	Generally .....	196
8-2:1.2	Trademark Infringement.....	198
8-2:1.2a	Entitlement to Protection.....	199
8-2:1.2b	Likelihood of Confusion .....	206
8-2:1.2c	Nominative Fair Use Doctrines.....	216
8-2:1.3	Connecticut Trademark Law .....	217
8-2:2	False Designation of Origin.....	219
8-2:2.1	Generally .....	219
8-2:2.2	Passing Off .....	220
8-2:3	False Advertising .....	221
8-2:3.1	Standing .....	221
8-2:3.2	Falsity.....	222
8-2:3.2a	Literal Falsity .....	223
8-2:3.2b	Implied Falsity.....	224
8-2:3.2c	Puffery .....	226
8-2:3.3	Materiality.....	227
8-2:3.4	Commercial Advertising or Promotion....	228
8-2:4	Trade Dress.....	229
8-2:5	Dilution .....	231
8-2:5.1	Dilution by Blurring .....	233
8-2:5.2	Dilution by Tarnishment.....	235
8-2:5.3	Exceptions .....	236
8-2:6	Anticybersquatting .....	237
8-2:7	Defenses .....	238
8-2:7.1	Fair Use.....	238
8-2:7.2	Laches .....	239
8-2:7.3	Acquiescence .....	240
8-2:7.4	Abandonment.....	241
8-2:7.5	Prior Use .....	242
8-2:7.6	Innocent Use .....	242

## Table of Contents

	8-2:7.7	Functionality .....	242
		8-2:7.7a Utilitarian Functionality.....	243
		8-2:7.7b Aesthetic Functionality.....	243
	8-2:7.8	Unclean Hands .....	244
8-2:8	Remedies .....		244
	8-2:8.1	Injunctive Relief .....	244
	8-2:8.2	Damages .....	245
8-3	THE COPYRIGHT ACT .....		248
8-3:1	Copyright Protection—Generally .....		248
8-3:2	Copyright Protection—Subject Matter .....		250
	8-3:2.1	Originality .....	252
	8-3:2.2	Idea/Expression Dichotomy.....	253
8-3:3	Copyright Infringement .....		254
	8-3:3.1	Ownership of a Valid Copyright .....	255
		8-3:3.1a Generally .....	255
		8-3:3.1b Work for Hire .....	258
	8-3:3.2	Unauthorized Copying .....	258
		8-3:3.2a Actual Copying.....	259
		8-3:3.2b Substantial Similarity .....	260
8-3:4	Defenses .....		263
	8-3:4.1	Fair Use .....	263
	8-3:4.2	First Sale Doctrine.....	265
	8-3:4.3	Statute of Limitations.....	266
	8-3:4.4	Estoppel.....	266
8-3:5	Remedies .....		267
	8-3:5.1	Damages .....	267
		8-3:5.1a Actual Damages and Profits .....	267
		8-3:5.1b Statutory Damages .....	269
		8-3:5.1c Attorney’s Fees .....	271
	8-3:5.2	Injunctive Relief .....	272
	8-3:5.3	Impounding and Destruction of Infringing Materials .....	273
8-4	THE PATENT ACT .....		273
8-4:1	Generally .....		273
8-4:2	Leahy-Smith America Invents Act .....		276
	8-4:2.1	AIA Proceedings.....	277
8-4:3	Patentable Subject Matter .....		281
	8-4:3.1	Process .....	282
	8-4:3.2	Machine.....	283
	8-4:3.3	Manufacture .....	283
	8-4:3.4	Composition of Matter.....	284



## Table of Contents

	8-4:3.5 Exceptions .....	284
8-4:4	Conditions for Patentability .....	287
	8-4:4.1 Utility .....	288
	8-4:4.2 Novelty—Prior Art .....	289
	8-4:4.2a Pre-AIA Provisions .....	289
	8-4:4.2b AIA Provisions .....	289
	8-4:4.2c Anticipation .....	291
	8-4:4.3 Nonobviousness .....	292
	8-4:4.4 Specification .....	294
8-4:5	Patent Infringement .....	295
	8-4:5.1 Claim Construction .....	297
	8-4:5.2 Claim Infringement .....	301
	8-4:5.2a Direct Infringement .....	302
	8-4:5.2b Indirect Infringement .....	305
	8-4:5.3 Jurisdiction .....	306
8-4:6	Defenses .....	307
8-4:7	Remedies .....	308
	8-4:7.1 Damages .....	308
	8-4:7.1a Lost Profits .....	310
	8-4:7.1b Reasonable Royalty Damages .....	310
	8-4:7.1c Enhanced Damages .....	311
	8-4:7.1d Attorney’s Fees .....	312
	8-4:7.2 Injunctive Relief .....	313

### **Chapter 9: Information Technology, E-Commerce, and Computer Litigation ..... 315**

9-1	INTRODUCTION .....	315
9-2	INTERNET AS BASIS FOR PERSONAL JURISDICTION .....	316
	9-2:1 Overview of Personal Jurisdiction .....	316
	9-2:2 Use of the Internet .....	317
9-3	COMPUTER FRAUD AND ABUSE ACT .....	321
	9-3:1 Generally .....	321
	9-3:2 Civil Liability .....	322
	9-3:2.1 Protected Computer .....	323
	9-3:2.2 Without Authorization and Exceeds Authorized Access .....	324
	9-3:2.3 Damage or Loss .....	325
9-4	ANTICYBERSQUATTING CONSUMER PROTECTION ACT .....	328
	9-4:1 Generally .....	328

## Table of Contents

9-4:2	Liability .....	329
9-4:2.1	Distinctive or Famous Mark .....	330
9-4:2.2	Confusingly Similar .....	331
9-4:2.3	Bad Faith Intent to Profit .....	332
9-4:3	Remedies .....	335
9-4:4	In Rem Jurisdiction.....	336
9-5	<b>DIGITAL MILLENNIUM COPYRIGHT</b>	
	<b>ACT OF 1998 .....</b>	<b>337</b>
9-5:1	Generally .....	337
9-5:2	Civil Liability .....	339
9-5:2.1	Anti-Circumvention.....	339
9-5:2.2	Anti-Trafficking .....	340
9-5:3	Remedies .....	341
9-6	<b>CONNECTICUT COMPUTER CRIMES AND</b>	
	<b>CIVIL ACTIONS.....</b>	<b>343</b>
9-7	<b>CONNECTICUT DATA PRIVACY ACT (CTDPA).....</b>	<b>345</b>
	<b>Chapter 10: Insurance Coverage Litigation .....</b>	<b>347</b>
10-1	INTRODUCTION.....	347
10-2	INSURANCE POLICIES.....	347
10-2:1	Construction of Policy Language .....	347
10-2:1.1	Generally .....	347
10-2:1.2	Choice of Law .....	349
10-2:2	Timely Notice .....	350
10-2:3	Condition of Cooperation .....	352
10-3	DUTY TO DEFEND .....	353
10-4	DUTY TO INDEMNIFY .....	355
10-5	COVERAGE ACTIONS .....	356
10-5:1	Generally .....	356
10-5:2	Breach of Implied Covenant of Good Faith and Fair Dealing.....	356
10-5:3	Violation of CUIPA/CUTPA.....	358
10-5:4	Connecticut's Direct Action Statute.....	360
10-6	REMEDIES .....	362
10-6:1	Damages.....	362
10-6:2	Punitive Damages .....	363
10-6:3	Attorney's Fees .....	364
	<b>Chapter 11: ERISA Litigation.....</b>	<b>365</b>
11-1	INTRODUCTION.....	365
11-1:1	Employee Welfare Benefit Plans.....	366
11-1:2	Employee Pension Plans .....	366

**Table of Contents**

11-2 ERISA PREEMPTION ..... 367

11-3 FIDUCIARY STATUS ..... 370

    11-3:1 Definition of Fiduciary ..... 371

    11-3:2 Functional Fiduciary ..... 371

    11-3:3 Investment Advisor as a Fiduciary ..... 373

11-4 DUTIES OF AN ERISA FIDUCIARY ..... 375

    11-4:1 Exclusive Purpose Requirement ..... 375

    11-4:2 Duty of Care—Prudent Man Standard ..... 376

    11-4:3 Duty of Loyalty ..... 378

    11-4:4 Duty to Diversify ..... 379

    11-4:5 Duty to Administer the Plan ..... 380

    11-4:6 Duty to Avoid Material Misrepresentations ..... 380

        11-4:6.1 Generally ..... 380

        11-4:6.2 Disclosure Requirements ..... 382

    11-4:7 Duty to Monitor ..... 383

11-5 CO-FIDUCIARY LIABILITY ..... 384

11-6 PROHIBITED TRANSACTIONS UNDER ERISA ..... 384

11-7 ACTION FOR BREACH OF FIDUCIARY DUTY ..... 386

    11-7:1 Generally ..... 386

    11-7:2 Elements ..... 387

    11-7:3 Jurisdiction ..... 387

    11-7:4 Statute of Limitations ..... 387

    11-7:5 Available Remedies ..... 388

        11-7:5.1 Monetary Redress ..... 389

            11-7:5.1a Restoration ..... 389

            11-7:5.1b Disgorgement ..... 390

            11-7:5.1c Punitive and Compensatory  
                Damages ..... 390

            11-7:5.1d Attorney’s Fees ..... 390

            11-7:5.1e Prejudgment Interest ..... 391

        11-7:5.2 Equitable Relief ..... 392

11-8 ADDITIONAL ENFORCEMENT AND AVAILABLE  
REMEDIES ..... 393

    11-8:1 Section 502 Civil Enforcement Provisions  
    Generally ..... 393

    11-8:2 Action for Recovery of Benefits ..... 393

        11-8:2.1 Exhaustion Requirement ..... 394

        11-8:2.2 Arbitrary and Capricious  
        Standard of Review ..... 395

        11-8:2.3 Statute of Limitations ..... 396

        11-8:2.4 Available Remedies ..... 396

## Table of Contents

11-8:3	Section 510 Action Against Prohibited Discrimination.....	398
11-8:4	Action to Compel Disclosure.....	399
<b>Chapter 12: Anti-Racketeering and RICO .....</b>		<b>401</b>
12-1	INTRODUCTION.....	401
12-2	CIVIL RICO GENERALLY .....	401
12-3	COMMON ELEMENTS OF ALL RICO CLAIMS .....	403
12-3:1	Defendant Is a Person.....	403
12-3:2	Racketeering Activity.....	404
12-3:2.1	Willfully or Knowingly .....	404
12-3:2.2	Predicate Acts .....	405
12-3:2.3	Pattern of Racketeering Activity.....	406
12-3:2.3a	Relatedness .....	407
12-3:2.3b	Continuity.....	409
12-3:3	RICO Enterprise .....	411
12-3:3.1	Generally .....	411
12-3:3.2	Association-in-Fact.....	412
12-3:4	Interstate Commerce.....	413
12-4	SECTION 1962(c)—CONDUCT OR PARTICIPATE IN A RICO ENTERPRISE .....	414
12-4:1	Generally .....	414
12-4:2	Distinction Between Person and Enterprise .....	414
12-4:3	Operation or Management of Enterprise.....	415
12-5	SECTION 1962(a)—INVESTMENT OF RICO INCOME .....	417
12-6	SECTION 1962(b)—ACQUISITION OR CONTROL OF RICO ENTERPRISE .....	418
12-7	SECTION 1962(d)—CONSPIRACY.....	418
12-8	STANDING.....	420
12-8:1	Injury to Business or Property .....	421
12-8:2	Causation .....	423
12-9	CIVIL ACTIONS.....	425
12-9:1	Generally .....	425
12-9:2	Statute of Limitations.....	426
12-9:3	In Pari Delicto Defense.....	427
12-9:4	Aiding and Abetting .....	428
12-9:5	Rule 11 Considerations .....	428
12-10	REMEDIES .....	429
12-10:1	Damages.....	429
12-10:2	Equitable Relief .....	430

Table of Contents

12-11 CONNECTICUT CORRUPT ORGANIZATIONS  
AND RACKETEERING ACT ..... 431

**Chapter 13: Environmental Litigation ..... 433**

13-1 INTRODUCTION..... 433

13-2 COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
COMPENSATION AND LIABILITY ACT ..... 434

13-2:1 Generally ..... 434

13-2:2 Liability ..... 437

13-2:2.1 Facility ..... 440

13-2:2.2 Release or Threat of Release  
of Hazardous Substance ..... 440

13-2:2.3 Recovery of Response Costs ..... 441

13-2:2.3a Generally ..... 441

13-2:2.3b Consistency with the  
National Contingency  
Plan ..... 442

13-2:3 Defenses ..... 443

13-2:4 Remedies ..... 444

13-3 RESOURCE CONSERVATION AND  
RECOVERY ACT ..... 445

13-3:1 Generally ..... 445

13-3:2 Regulation of Hazardous Waste and  
Solid Waste ..... 445

13-3:3 RCRA Enforcement and Remedies..... 447

13-3:3.1 Generally ..... 447

13-3:3.2 Private Citizen Suits..... 447

13-4 THE CLEAN WATER ACT ..... 450

13-4:1 Generally ..... 450

13-4:2 Liability ..... 450

13-4:3 Enforcement and Remedies..... 455

13-4:3.1 Generally ..... 455

13-4:3.2 Private Citizen Suits..... 455

13-5 THE CLEAN AIR ACT ..... 458

13-5:1 Generally ..... 458

13-5:2 Statutory Framework..... 458

13-5:2.1 Generally ..... 458

13-5:2.2 State Implementation Plan..... 460

13-5:3 Enforcement and Remedies..... 460

13-6 STATE ENVIRONMENTAL LAWS..... 462

13-6:1 Connecticut Environmental  
Protection Act..... 462

## Table of Contents

	13-6:1.1	Generally .....	462	
	13-6:1.2	Standing .....	462	
	13-6:1.3	Liability .....	463	
	13-6:1.4	Available Relief .....	465	
13-6:2	The Connecticut Transfer Act.....		466	
	13-6:2.1	Generally .....	466	
	13-6:2.2	Liability .....	468	
	13-6:2.3	Available Remedies .....	468	
13-6:3	Statutory Reimbursement for Containment or Removal Costs.....		469	
13-7	<b>COMMON LAW ENVIRONMENTAL CLAIMS.....</b>		<b>470</b>	
13-7:1	Trespass .....		470	
13-7:2	Nuisance.....		471	
	13-7:2.1	Public Nuisance .....	471	
	13-7:2.2	Private Nuisance .....	472	
13-7:3	Negligence .....		472	
	13-7:3.1	Generally .....	472	
	13-7:3.2	Comparative Negligence .....	473	
	13-7:3.3	Negligence Per Se.....	474	
13-7:4	Strict Liability.....		475	
	13-7:4.1	Generally .....	475	
	13-7:4.2	Ultrahazardous Activity .....	475	
	<b>Chapter 14: Franchise Litigation.....</b>		<b>477</b>	
14-1	INTRODUCTION.....		477	
14-2	CONNECTICUT FRANCHISE ACT GENERALLY .....		477	
14-3	EXISTENCE OF A FRANCHISE.....		479	
	14-3:1	Right to Engage in Business Pursuant to Prescribed Marketing Plan.....	481	
		14-3:1.1	Right to Offer, Sell, or Distribute Goods or Services .....	482
		14-3:1.2	Substantially Prescribed Marketing Plan .....	484
	14-3:2	Substantial Association with Franchisor's Mark.....	486	
14-4	TERMINATION OF FRANCHISE .....		489	
	14-4:1	Good Cause.....	490	
		14-4:1.1	Generally .....	490
		14-4:1.2	Nonrenewal of Franchise.....	491
	14-4:2	Constructive Termination .....	492	
14-5	REMEDIES .....		493	
	14-5:1	Damages.....	493	
	14-5:2	Injunctive Relief .....	494	

**Table of Contents**

**Chapter 15: Arbitration ..... 495**

15-1 INTRODUCTION..... 495

    15-1:1 Potential Advantages ..... 496

    15-1:2 Potential Disadvantages..... 496

15-2 THE FEDERAL ARBITRATION ACT ..... 498

    15-2:1 Generally ..... 498

    15-2:2 Preemption ..... 498

    15-2:3 Application of the FAA ..... 499

    15-2:4 Enforceability Under the FAA ..... 500

    15-2:5 Confirmation and Review of Awards..... 503

15-3 ARBITRATION UNDER CONNECTICUT LAW ..... 505

15-4 ARBITRATION AGREEMENTS MADE  
BEFORE OCTOBER 1, 2018 ..... 506

    15-4:1 Enforceability ..... 506

    15-4:2 Arbitration Awards..... 508

        15-4:2.1 Generally ..... 508

        15-4:2.2 Enforcement of Awards ..... 509

        15-4:2.3 Vacating Awards ..... 509

        15-4:2.4 Appeal of Awards ..... 511

        15-4:2.5 Order Pendente Lite..... 512

15-5 ARBITRATION AGREEMENTS MADE ON OR  
AFTER OCTOBER 1, 2018..... 513

**Table of Cases..... 517**

**Index ..... 599**

