

Index of Subjects

(references are to page numbers)

A

Accident reconstruction, 204
Accident scene, 1–2
Actions. *See* Lawsuits
Admission requests, 159–160
Admissions of fault, 1
Advertising legal services, 25, 29
Air bag claims, 55–56
Alcoholic beverages liability, 72
Alternate dispute resolution, 132–134
“Ambulance chasers,” 24, 195–196
Answer to complaint, 146
Appeals, 191–192
 Social Security disability benefit decisions,
 67–68
Arbitration of disputes, 132–134, 145
Argumentative questions, 186
“Asked and answered” objection, 186–187
Assuming facts not in evidence, 187
Assumption of risk, 183–184
Attorneys
 “ambulance chasers,” 24, 195–196
 changing, 35–38
 clients. *See* Attracting clients; Clients
 dissatisfaction with, 35
 double-checking by clients, 43
 errors, 140
 expressions of concern about, 36–37
 fee agreements. *See* Fee agreements
 Internet advertising, 25
 Internet research, 25–26
 law firms, 39–41

 law school graduates (recent). *See* Law
 school graduates (recent)
 locating on the Internet, 204
 malpractice, 61–63
 malpractice insurance, 62, 217
 perfection and, 43
 referrals by clients, 23–24
 referring cases to other lawyers. *See*
 Referring cases to other lawyers
 reputation of, 101
 voir dire, role in, 164–165
Attracting clients, 23, 29–30
 advertisements, 25, 29
 “ambulance chasers,” 24, 195–196
 bar association records, 25
 Internet sites, 25
 legal journals, 25
Attractive nuisance, 48, 50

B

Bar association records, 25
Bench trials, 140
“Beyond the scope” objection, 186
Bites. *See* Dog bites
Brain injuries, 73–75
Burden of proof, 167–168
 intentional injuries, 70
 jury instructions, 189

C

Catastrophic injuries, 101
Causation, 176

342 Winning Personal Injury Cases

- medical malpractice, 81
 - proof of, 20
- Charge to jury, 189
- Children
 - differences from adults, 46
 - injuries to, 46
 - negligence, 46–47
 - settlement of claims, 46
 - support liens, 47–48
 - trespassers, 48
- Child support liens, 47–48
- Chiropractors. *See* Doctors
- Claims representatives. *See* Insurance adjusters/representatives
- Clients
 - attorney recommendations by, 23–24
 - attracting. *See* Attracting clients
 - choosing, 25–27
 - “do not sign anything” advice, 4–5
 - initial consultation, 30–31
 - insurance companies of, 3
 - problem clients, 41
 - reputation, 101
 - testimony of, 168
- Closing argument, 188–189
- Collecting from uninsured defendants, 192–193
- Colossus claim assessment software, 108–109
- Comparative negligence, 20, 183
 - fall-down accidents, 50
- Complaints, 142–144
 - answers to, 146
 - post-filing battles, 146
- Consortium, loss of, 175
- Contingency fee agreements. *See* Fee agreements
- Costs of litigation, 33
 - attorneys’ fees. *See* Fee agreements
 - medical malpractice, 78
 - products liability, 68–69
- Courts
 - E-filing in, 141–142
 - formal courts, 17–18
 - small claims courts, 17
 - Websites, 203
- Crime victims’ compensation funds, 70
- Cross-examination, 169–171
 - defense doctors, 177–181
 - recross examination, 171
 - “beyond the scope” objection, 186
- D**
- Damages, 95, 174
 - age and, 100
 - attorney’s reputation and, 101
 - catastrophic injuries, 101
 - consortium, loss of, 175
 - defendant’s personality and actions, 101
 - doctor’s reputation and, 101
 - earning capacity, 174–175
 - emotional damages, 148, 172
 - enhanced damages, 97
 - intentional injuries, 69
 - jury research, 104
 - loss of earnings, 174
 - medical malpractice, 79, 81–82
 - medical records, 100
 - medical treatment, 100
 - missed work time, 101
 - monetary value of injury, 95
 - issues affecting, 98
 - plaintiff’s credibility and, 100
 - pre-existing injuries, 98
 - aggravation of prior condition, 98–99
 - professional medical opinion, 98
 - proof of, 20–21
 - property damage, 100–101
 - punitive damages, 97–98
 - serious injuries, 96
 - settlements. *See* Settlement of claims
 - severity of injury, 101
 - soft tissue injuries, 96
 - surgery damages, 96
- Deadlines
 - keeping track of, 5–6
 - limitation of actions. *See* Statutes of limitations
- Death notices, 201
- Deception in negotiations, 111–112
- Defamation, 70–71

- Defendant's actions, 101
 - Defendant's personality, 101
 - Defenses
 - assumption of risk, 183–184
 - comparative negligence. *See* Comparative negligence
 - dog bite claims, 56–57
 - Demand letter. *See* Settlement of claims
 - Depositions, 19–20, 43, 150–151
 - acting appropriately at, 155
 - answering questions at, 153–155
 - dressing appropriately at, 155
 - exaggerating injuries to losses at, 155
 - “fishing expeditions,” 153–154
 - guessing during, 153
 - instructing client not to answer, 154–155
 - preparing for, 151–153
 - settlement of claims, 112–113
 - speaking clearly at, 154
 - taking time to answer, 154
 - telling the truth of, 153
 - understanding the question, 154
 - Direct examination, 168
 - redirect examination, 171
 - “beyond the scope” objection, 186
 - Discovery, 19
 - admission requests, 159–160
 - depositions. *See* Depositions
 - document requests, 147–149
 - interrogatories, 147
 - delay in answering, 149
 - multi-defendant, 150
 - process, 147–160
 - subpoenaing records, 149–150
 - Doctors
 - choosing, 89
 - cross-examination of defense doctors, 177–181
 - examinations. *See* Medical examinations
 - letters of protection, 123–124
 - malpractice. *See* Medical malpractice
 - records. *See* Medical records
 - reluctant doctors, 92–93
 - reports, 91
 - reputation of, 101
 - Documentation
 - requests for, 147–149
 - settlement of claims, 108, 116–118
 - Dog bites, 56
 - defenses to claims, 56–57
 - “one free bite” rule, 56
 - photographs, 57
 - veterinary records, 57
 - witnesses, 57
 - Dram shop liability, 72
 - Driving records, 201–202
 - Driving under the influence, 72–73
 - Dropping a case, 130–132
 - Drunk driving, 72–73
 - DUI cases, 72–73
- E**
- Earning capacity, 174–175
 - Earnings, loss of, 174–175
 - E-filing in court, 141–142
 - E-mail usage, 207–208
 - Emergency room treatment, 2
 - Emotional damages, 148, 172
 - Enhanced damages, 97
 - ER treatment, 2
 - Evidence
 - burden of proof. *See* Burden of proof
 - hearsay, 187
 - objections to, 185–188
 - preponderance of, 167–168, 189
 - proving your case, 20–21
 - Expert witnesses, 172
 - fees, 172–173
 - capping, 173–174
 - medical malpractice, 83–84
 - medical opinion, 98
 - professional, 156
 - Eye injuries, 51–52
 - LASIK eye surgery cases, 53
 - Eyewitness statements, 2, 9–11
- F**
- Fall-down accidents, 48
 - comparative negligence, 50
 - invitees, 49

344 Winning Personal Injury Cases

- licensees, 50
 - med-pay, 50–51
 - plaintiff classification(s), 49–50
 - trespassers, 50
- Fault, 45
- Fee agreements, 30, 31–32
- flexibility in, 33–34
 - medical malpractice, 82
 - tax disclaimers, 34–35
 - termination of attorney/client relationship, 34
- “Fishing expeditions”
- depositions, 153–154
 - subpoena games, 114
- Food poisoning cases, 63–64
- “Friending” and the law, 208
- G**
- “Good injuries,” 90–91
- Google Desktop, 207
- H**
- Handling your first case, 7–21
- Health insurance, 89–90
- Hearing loss claims, 54–55
- tinnitus, 55–56
- Hearsay, 187
- I**
- Impeachment evidence, 171
- Information
- discovery of. *See* Discovery
 - organizing, 16–17
- Injuries. *See also specific injury*
- catastrophic, 101
 - employee, 64–65
 - “good injuries,” 90–91
 - monetary value of, 95, 98. *See also* Damages
 - previous. *See* Pre-existing injuries
 - serious, 96
 - severity of, 101
 - soft tissue, 96
- Insurance adjusters/representatives
- contacting, 5–6
 - “friendly” adjusters, 3
- Insurance companies
- bad faith cases, 57–60
 - change of counsel, reaction to, 37–38
 - claims representatives, 110
 - client’s company, 3
 - contacting, 3–4, 12–15
 - delay tactics, 113–114
 - first contact with, 12–15
 - improper practices, 196
 - inexperienced counsel, dealing with, 7–8
 - joint and several liability, 72
 - locating on the Internet, 202
 - negotiating with, 16–17. *See also* Settlement of claims
 - “pushing paper” tactics, 115
 - recorded statements, 3, 15–16
 - settlement strategies, 113–115
 - surveillance by, 181–182
 - unfair insurance practice law, 197
- Insurance coverage
- collecting from uninsured defendants, 192–193
 - legal malpractice, 62, 217
 - managed care, 89–90
- Intentional injuries, 69
- burden of proof, 70
 - damages, 69
 - uncollectible claims, 69
- Internet
- advertising, 25
 - E-mail usage, 207–208
 - exposing lies with, 207
 - Google Desktop, 207
 - settlements, 124
 - social networks, 208
- Internet resources
- accident reconstruction, 204
 - appellate courts, 203
 - asset location, 204
 - Association for Justice, 203
 - client’s use of, 25–26
 - corporate information, 203
 - court Websites, 203
 - death notices, 201
 - driving records, 201–202

federal courts, 203
 law school graduates (recent), 223
 lawyer referral services, 27–29
 LegalAidman.com, 206
 legal research sites, 208
 locating attorneys, 27–29, 204
 locating individuals, 200
 locating insurance companies, 202
 maps, 200
 medical information, 206
 medical provider records, 206
 medical terminology, 206
 multiple searches, 205
 political information, 204
 product recalls, 203
 property ownership, 204
 public records, 204
 satellite imagery, 200
 service of process, 208–209
 statutes of limitations, 201
 traffic rash report codes, 204
 weather conditions, 199
 Interrogatories, 147
 delay in answering, 149
 Intoxication liability, 72
 Invitees, 49

J

Joint and several liability, 72
 Journals, 16
 Jury
 runaway juries, 141
 selection of. *See Voir dire*
 trial. *See Trial of case*
 verdicts, 189
 Jury instructions, 189
 Jury research, 104

L

Laser-Assisted Sub-Epithelial Keratectomy, 53
 LASIK eye surgery cases, 53
 Law firms, 39–41
 Law school graduates (recent), 211–212
 bank accounts, 215
 communicating effectively, 221
 confirming matters of importance, 222

dealing with practice realities, 222
 efficiency increases, 219–221
 files
 opening new files, 218
 organizing your files, 218–219
 getting a job, 212
 hanging out your “shingle,” 212
 Internet resources, 223
 learning how to practice, 217–218
 location of practice, 216
 malpractice insurance, 217
 marketing tips, 216–217
 mentors, 221
 office equipment, 212–215
 office help, 217
 reality check, 222
 tax advice, 217

Lawsuits

“biblical basis” for, 104–105
 checklist, 21, 146
 complaints. *See Complaints*
 costs of. *See Costs of litigation*
 E-filing, 141–142
 filing, 17, 141–142
 formal courts, 17–18
 process, 137–146
 service of process. *See Service of process*
 small claims courts, 17
 statutes of limitations. *See Statutes of limitations*
 trial. *See Trial of case*
 venue, 141

Lawyers. *See Attorneys*

Leading questions, 185
 LegalAidman.com, 206
 Legal journals, 25
 Legal malpractice, 61–63
 insurance coverage, 62, 217
 Legal research sites, 208
 Letters of protection, 123–124
 Libel, 70
 Licensees, 50
 Liens
 child support, 47–48
 Medicare, 123
 subrogation, 122–123

Limitation of actions. *See* Statutes of limitations

Litigation. *See* Lawsuits

Loss of earnings, 174–175

M

Malpractice

attorneys. *See* Legal malpractice

doctors. *See* Medical malpractice

Managed health care, 89–90

Mandatory arbitration, 134

Mediation of disputes, 132

Medical authorizations, 30

Medical doctors. *See* Doctors

Medical examinations

defense examination, 156–157

client letter as to, 158

independent examination, 156

Medical malpractice, 77–79

age of plaintiff, 79

causation, 81

client assistance with case, 86

costs of litigation, 78

crisis, 86–87

damages, 79, 81–82

expert witnesses, 83–84

fee agreements, 82

getting started with case, 83

LASIK eye surgery, 53

medical records, 78

negligence, 80–81

nuisance value of, 84

“nuts and bolts” of case, 80

President James Garfield’s case, 87–88

referring cases to other lawyers, 79

settlement of claims, 78, 85–86

valuing the claim, 84–85

Medical records

damages, 100

Internet resources, 206

medical malpractice, 78

veterinary records, 57

Medical reports, 91

Medical treatment, 16. *See also* Doctors

damages, 100

ER treatment, 2

keeping track of, 91

settlements, waiting until treatment

complete, 119

Medicare liens, 123

Med-pay, 50–51

Minors. *See* Children

Missed work time, 101

Monetary value of injury, 95. *See also* Damages

issues affecting, 98

Motion for additur, 191

Motion for delay damages, 191

Motion for judgment notwithstanding the

verdict, 190–191

Motion for new trial, 191

Motion for remittitur, 191

Motion for summary judgment, 160

Motion to compel discovery, 149

Motion to quash subpoena, 149

Motion to transfer case, 203

Motion to withdraw admission, 160

N

Negligence

attorneys. *See* Legal malpractice

children, 46–47

comparative. *See* Comparative negligence

definition of, 45

doctors. *See also* Medical malpractice

proof of, 20

statutes of limitations, 137–139

Negotiations. *See also* Settlement of claims

deception in, 111–112

with insurance companies, 16–17. *See also*

Settlement of claims

No-fault, 45

Notice

death notices, 201

settlement of claims

client notification, 119

court notification, 126–127

O

Objections to evidence, 185–188

Offers of settlement, 112

incomplete proposals, 120–121

notification of client, 119
 opening high demand, 118
 Online settlements, 124
 Opening statements, 166–167

P

Pedestrian dart-out cases, 46
 Pedestrian knock-down cases, 46
 Peremptory challenges, 166
 Photographs
 of accident scene, 9
 dog bites, 57
 Physical therapy, 90
 Physicians. *See* Doctors
 Police reports, 8
 Post-traumatic stress disorder, 71
 Post-trial motions, 190–191
 Pre-existing injuries, 98
 aggravation of, 98–99
 Preliminary objections, 146
 Premises liability cases. *See* Fall-down accidents
 Preponderance of evidence, 167–168, 189
 Private investigators, 12
 Problem clients, 41
 Product recalls, 203
 Products liability, 68
 costs of litigation, 68–69
 product itself, 68
 strict liability, 68
 Proof. *See* Burden of proof; Evidence
 Property damage
 damages, 100–101
 settlement of claims, 8
 Psychological injuries, 71–72
 PTSD, 71
 Public records
 driving records, 201–202
 Internet resources, 204
 Punitive damages, 97–98

R

Recommendations from clients, 23–24
 Recorded statements, 3, 15–16
 Records
 medical. *See* Medical records

public. *See* Public records
 subpoena games, 113–114
 subpoenaing, 149–150
 Recross examination, 171
 “beyond the scope” objection, 186
 Redirect examination, 171
 “beyond the scope” objection, 186
 Referrals from clients, 23–24
 Referring cases to other lawyers, 27–29
 Internet referral services, 27–29
 medical malpractice, 79
 Releases, 3, 125
 Reports
 ER reports, 2
 medical, 91
 rescue reports, 9
 Requests for admissions, 159–160
 Requests for documents, 147–149
 Rescue reports, 9
 Right to trial, 134–135
 Runaway juries, 141

S

Scene of accident, 1–2
 Serious injuries, 96
 Service of process, 18–19
 Internet resources, 208–209
 Settlement of claims
 appropriate tactics, use of, 119–120
 children’s cases, 46
 claims representatives, 110
 client’s consent, 122
 Colossus claim assessment software,
 108–109
 conferences, 113
 deception in negotiations, 111–112
 demand letter, 108
 getting a response, 110
 incomplete information in, 110–111
 opening high demand, 118
 skipping, 111
 depositions, 112–113
 distribution of proceeds, 128–129
 documentation, 108, 116–118
 dropping a case, 130–132

finalizing, 124–125
 following up, 130
 holding out for a better settlement, 103
 humility and humor in, 119
 insurance company's strategy, 113–115
 knowing what you're up against, 118–119
 letters of protection, 123–124
 medical malpractice, 78, 85–86
 medical treatment, waiting until complete, 119
 Medicare liens, 123
 monetary assessment of value, 104
 notice
 client notification, 119
 court notification, 126–127
 offers of settlement, 112
 incomplete proposals, 120–121
 notification of client, 119
 opening high demand, 118
 online settlements, 124
 opening high demand, 118
 possession as 9/10ths of the law, 121–122
 process, 107–135
 professional appearance and, 108
 property damage, 8
 releases, 125
 silence as “golden,” 120
 storing old files, 130
 strategy, 113
 insurance company's, 113–115
 your strategy, 115–120
 subrogation, 122–123
 waiting out the litigation process, 116
 word usage, 108, 109–110
 Settlement packages, 42
 Slander, 70–71
 “Slip and falls.” *See* Fall-down accidents
 Small claims courts, 17
 Social networks, 208
 Social Security disability benefits, 65–66
 appealing unfavorable decisions, 67–68
 applying for, 66–67
 hearings, 67
 reconsideration of decisions, 67
 Soft tissue injuries, 96

Statements
 of eyewitness, 2, 9–11
 recorded statements, 3, 15–16
 Statutes of limitations, 5, 137–139
 Internet Website, 201
 missing the deadline, 140
 Strict products liability, 68
 Subpoena games, 113–114
 Subpoenaing records, 149–150
 Subrogation
 liens, 122–123
 settlement of claims, 122–123
 Suits. *See* Lawsuits
 Support liens, 47–48
 Surgery damages, 96
 Surveillance of plaintiff, 181–182

T

Testimony. *See* Witnesses and testimony
 Tickler systems, 5–6
 Tinnitus, 55–56
 Tortfeasors, 45
 Torts, 45
 Traffic crash report codes, 204
 Traumatic brain injury (TBI), 73–75
 Trespassers
 children, 48
 fall-down accidents, 50
 Trial of case, 161–162
 bench trials, 140
 choice of trials, 140–141
 closing argument, 188–189
 defense case, 176
 jury. *See* Jury
 opening statements, 166–167
 right to trial, 134–135
 witnesses. *See* Witnesses and testimony

U

Underinsured motorists, 3
 Unfair insurance practice law, 197
 Uninsured motorists, 3

V

Venue, 141

Verdicts, 189

Veterinary records, 57

Vision injuries, 51–52

 LASIK eye surgery cases, 53

Voir dire, 163

 attorney's role in, 164–165

 client's role in, 163–164

 peremptory challenges, 166

 removal for cause, 166

W

Websites. *See* Internet resources

Witnesses and testimony

 argumentative questions, 186

 “asked and answered” objection, 186–187

 assuming facts not in evidence, 187

 client's testimony, 168

 contacting witnesses immediately, 9

 cross-examination. *See* Cross-examination

 direct examination. *See* Direct examination

 dog bite cases, 57

 experts. *See* Expert witnesses

 impeachment of witnesses, 171

 irrelevant questions, 185–186

 leading questions, 185

 preparation for trial, 43

 statements of witnesses, 9–11

Workers' compensation, 64–65

