

## June 2021 Supplement to North Carolina Pattern Jury Instructions for Civil Cases

This supplement contains a new table of contents for the civil instructions, a number of replacement instructions for civil cases, and a new civil index. Place the instructions in the book in the proper numerical sequence. Old instructions with the same number should be discarded.

**Interim Instructions.** As the Pattern Jury Instructions Committee considers new or updated instructions, it posts Interim Instructions that are too important to wait until June to distribute as part of the annual hard copy supplements to the School of Government website at [sog.unc.edu/programs/ncpji](http://sog.unc.edu/programs/ncpji). You may check the site periodically for these instructions or join the Pattern Jury Interim Instructions Listserv to receive notification when instructions are posted to the website.

Instructions with asterisk (\*) are new instructions. All others replace existing instructions.

The following instructions are included in this supplement:

- 806.40 Defamation—Preface.
- 806.50 Defamation—Libel Actionable *Per Se*—Private Figure—Not Matter of Public Concern.
- 806.51 Defamation—Libel Actionable *Per Se*—Private Figure—Matter of Public Concern.
- 806.53 Defamation—Libel Actionable *Per Se*—Public Figure or Official.
- 806.60 Defamation—Libel Actionable—*Per Quod*—Private Figure—Not Matter of Public Concern.
- 806.61 Defamation—Libel Actionable—*Per Quod*—Private Figure—Matter of Public Concern.
- 806.62 Defamation—Libel Actionable—*Per Quod*— Public Figure or Official.
- 806.65 Defamation—Slander Actionable *Per Se*—Private Figure—Not Matter of Public Concern.
- 806.66 Defamation—Slander Actionable *Per Se*—Private Figure—Matter of Public Concern.
- 806.67 Defamation—Slander Actionable *Per Se*—Public Figure or Official.
- 806.70 Defamation—Slander Actionable—*Per Quod*—Private Figure—Not Matter of Public Concern.
- 806.71 Defamation—Slander Actionable—*Per Quod*—Private Figure—Matter of Public Concern.
- 806.72 Defamation—Slander Actionable *Per Quod*—Public Figure or Official.
- 806.79 Defamation—Libel Actionable *Per Se* or Libel Actionable *Per Quod*—Private Figure—Not a matter of Public Concern—Defense of Truth.
- 806.81 Defamation Actionable *Per Se*—Private Figure—Not Matter of Public Concern—Presumed Damages.
- 806.82 Defamation Actionable *Per Se*—Private Figure—Matter of Public Concern—Presumed Damages.

- 806.83 Defamation Actionable *Per Se*—Private Figure or Official—Presumed Damages.
- 806.84 Defamation—Actual Damages.
- 806.85 Defamation—Private Figure—Matter of Public Concern—Issue of Actual Malice.

**North Carolina**  
**Conference of Superior Court Judges**  
Committee on Pattern Jury Instructions

**North Carolina**  
**PATTERN JURY**  
**INSTRUCTIONS**  
**for Civil Cases**

**Volume I**  
2021 Supplement

ISBN 978-1-64238-035-4



TABLE OF CONTENTS

PREFACE

INTRODUCTION

GUIDE TO THE USE OF THIS BOOK

SIGNIFICANT NEW DEVELOPMENTS

NORTH CAROLINA PATTERN JURY INSTRUCTIONS FOR CIVIL CASES: \*Dates the instructions were adopted are found in parentheses after the title of the instruction.

**PART I. GENERAL**

**Chapter 1. Preliminary Instructions.**

- 100.10 Opening Statement. (12/2004)
- 100.15 Cameras and Microphones in Courtroom. (5/2004)
- 100.20 Recesses. (6/2010)
- 100.21 Recesses. (6/2010)
- 100.40 Deposition Testimony. (5/2004)
- 100.44 Interrogatories. (12/2004)
- 100.70 Taking of Notes by Jurors. (5/2004)
- 101.00 Admonition to the Trial Judge on Stating the Evidence and Relating the Law to the Evidence. (10/1985)
- 101.05 Function of the Jury. (3/1994)
- 101.10 Burden of Proof and Greater Weight of the Evidence. (3/1994)
- 101.11 Clear, Strong, and Convincing Evidence. (11/2004)
- 101.14 Judicial Notice. (10/1983)
- 101.15 Credibility of Witness. (3/1994)
- 101.20 Weight of the Evidence. (3/1994)
- 101.25 Testimony of Expert Witness. (2/1994)
- 101.30 Testimony of Interested Witness. (3/1994)
- 101.32 Evidence—Limitation as to Parties. (10/1983)
- 101.33 Evidence—Limitation as to Purpose. (3/2017)
- 101.35 Impeachment of Witness by Prior Statement. (5/1992)
- 101.36 Impeachment of Witness or Party by Proof of Crime. (4/1986)
- 101.37 Evidence Relating to the Character Trait of a Witness (Including Party) for Truthfulness. (4/1986)
- 101.38 Evidence—Invocation by Witness of Fifth Amendment Privilege against Self-Incrimination. (5/2009)
- 101.39 Evidence—Spoliation by a Party. (6/2010)
- 101.40 Photograph, Videotape, Motion Pictures, X-Ray, Other Pictorial Representations; Map, Models, Charts—Illustrative and Substantive Evidence. (10/1985)
- 101.41 Stipulations. (1/1988)
- 101.42 Requests for Admissions. (1/1988)
- 101.43 Deposition Evidence. (4/1988)
- 101.45 Circumstantial Evidence. (10/1985)
- 101.46 Definition of [Intent] [Intentionally]. (12/2016)
- 101.50 Duty to Recall Evidence. (3/1994)
- 101.60 Issues. (3/1994)
- 101.62 Presumptions. (4/1984)

101.65 Peremptory Instruction. (8/1982)

**Chapter 2. General Negligence Instructions.**

- 102.10 Negligence Issue—Burden of Proof. (5/1994)  
102.10A Negligence Issue—Stipulation of Negligence. (5/2009)  
102.11 Negligence Issue—Definition of Common Law Negligence. (6/2018)  
102.12 Negligence Issue—Definition of Negligence in and of Itself (Negligence *Per Se*). (8/2015)  
102.13 Negligence of Minor Between Seven and Fourteen Years of Age. (6/2018)  
102.14 Negligence Issue—No Duty to Anticipate Negligence of Others. (5/1994)  
102.15 Negligence Issue—Doctrine of Sudden Emergency. (1/2019)  
102.16 Negligence Issue—Sudden Emergency Exception to Negligence *Per Se*. (5/1994)  
102.19 Proximate Cause—Definition; Multiple Causes. (5/2009))  
102.20 Proximate Cause—Peculiar Susceptibility. (3/2017)  
102.26 Proximate Cause—Act of God. (5/1994)  
102.27 Proximate Cause—Concurring Acts of Negligence. (3/2005)  
102.28 Proximate Cause—Insulating Acts of Negligence. (6/2010)  
102.30 Proximate Cause—Defense of Sudden Incapacitation. (2/2000)  
102.32 Negligence Issue—Breach of Parent’s Duty to Supervise Minor Children. (5/1992)  
102.35 Contentions of Negligence. (3/1994)  
102.50 Final Mandate—Negligence Issue. (3/1994)  
102.60 Concurring Negligence. (3/2005)  
102.65 Insulating/Intervening Negligence. (6/2020)  
102.84 Negligence—Infliction of Severe Emotional Distress. (2/2020)  
102.85 Willful or Wanton Conduct Issue (“Gross Negligence”). (5/1997)  
102.86 Willful or Wanton Conduct Issue (“Gross Negligence”)—Used to Defeat Contributory Negligence. (12/2003)  
102.87 Willful and Malicious Conduct Issue—Used to Defeat Parent-Child Immunity. (3/2016)  
102.90 Negligence Issue—Joint Conduct—Multiple Tortfeasors. (3/1994)  
102.95 Architect—Project Expediter—Negligence in Scheduling. (5/2005)

**Chapter 3. General Agency Instructions.**

- 103.10 Agency Issue—Burden of Proof—When Principal Is Liable. (1/2019)  
103.15 Independent Contractor. (5/1992)  
103.30 Agency Issue—Civil Conspiracy (One Defendant). (4/2019)  
103.31 Agency Issue—Civil Conspiracy (Multiple Defendants). (4/2019)  
103.40 Disregard of Corporate Entity of Affiliated Company—Instrumentality Rule (“Piercing the Corporate Veil”). (6/2020)  
103.50 Agency—Departure from Employment. (10/1985)  
103.55 Agency—Willful and Intentional Injury Inflicted by an Agent. (10/1985)  
103.70 Final Mandate—Agency Issue. (10/1985)

**Chapter 3a. Contributory Negligence Instructions.**

- 104.10 Contributory Negligence Issue—Burden of Proof—Definition. (6/2018)  
104.25 Contributory Negligence of Minor Between Seven and Fourteen Years of Age. (6/2018)  
104.35 Contentions of Contributory Negligence. (3/1994)  
104.50 Final Mandate—Contributory Negligence Issue. (3/1994)

**Chapter 4. Third Party Defendants.**

- 108.75 Negligence of Third Party Tort-Feasor—Contribution. (10/1985)

**Chapter 5. Summary Instructions.**

- 150.10 Jury Should Consider All Contentions. (3/1994)
- 150.12 Jury Should Render Verdict Based on Fact, Not Consequences. (3/1994)
- 150.20 The Court Has No Opinion. (3/1994)
- 150.30 Verdict Must Be Unanimous. (3/1994)
- 150.40 Selection of Foreperson. (3/1994)
- 150.45 Concluding Instructions—When To Begin Deliberations, Charge Conference. (3/1994)
- 150.50 Failure of Jury to Reach a Verdict. (10/1980)
- 150.60 Discharging the Jury. (5/1988)

**PART II. CONTRACTS**

**Chapter 1. General Contract Instructions.**

- 501.00 Introduction to Contract Series. (5/2003)

**Chapter 2. Issue of Formation of Contract.**

- 501.01 Contracts—Issue of Formation—Common Law. (6/2018)
- 501.01A Contracts—Issue of Formation—UCC. (6/2018)
- 501.02 Contracts—Issue of Formation—Peremptory Instruction. (5/2003)
- 501.03 Contracts—Issue of Formation—Parties Stipulate the Contract. (5/2003)
- 501.05 Contracts—Issue of Formation—Defense of Lack of Mental Capacity. (6/2018)
- 501.10 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Fair Dealing and Lack of Notice. (5/2003)
- 501.15 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Necessities. (5/2003)
- 501.20 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Ratification (Incompetent Regains Mental Capacity). (5/2003)
- 501.25 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Ratification (by Agent, Personal Representative or Successor). (5/2003)
- 501.30 Contracts—Issue of Formation—Defense of Mutual Mistake of Fact. (6/2013)
- 501.35 Contracts—Issue of Formation—Defense of Undue Influence. (5/2003)
- 501.40 Contracts—Issue of Formation—Defense of Duress. (5/2003)
- 501.45 Contracts—Issue of Formation—Defense of Fraud. (5/2004)
- 501.50 Contracts—Issue of Formation—Defense of Grossly Inadequate Consideration (“Intrinsic Fraud”). (5/2003)
- 501.52 Contracts—Issue of Formation—Defense of Fraud in the Factum. (5/2003)
- 501.55 Contracts—Issue of Formation—Defense of Constructive Fraud. (6/2018)
- 501.60 Contracts—Issue of Formation—Defense of Constructive Fraud—Rebuttal by Proof of Openness, Fairness, and Honesty. (5/2003)
- 501.65 Contracts—Issue of Formation—Defense of Infancy. (5/2003)
- 501.67 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Emancipation. (5/2003)
- 501.70 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Ratification After Minor Comes of Age. (5/2003)
- 501.75 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Ratification by Guardian, Personal Representative or Agent. (5/2003)
- 501.80 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Necessities. (5/2003)

**Chapter 3. Issue of Breach.**

- 502.00 Contracts—Issue of Breach By Non-Performance. (5/2003)
- 502.05 Contracts—Issue of Breach By Repudiation. (6/2018)
- 502.10 Contracts—Issue of Breach By Prevention. (5/2003)

- 502.15 Contracts—Issue of Breach—Defense of Waiver. (5/2004)
- 502.20 Contracts—Issue of Breach—Defense of Prevention by Plaintiff. (5/2003)
- 502.25 Contracts—Issue of Breach—Defense of Frustration of Purpose. (6/2014)
- 502.30 Contracts—Issue of Breach—Defense of Impossibility (Destruction of Subject Matter of Contract). (6/2014)
- 502.35 Contracts—Issue of Breach—Defense of Impossibility (Death, Disability, or Illness of Personal Services Provider). (6/2014)
- 502.40 Contracts—Issue of Breach—Defense of Illegality or Unenforceability. (2/2020)
- 502.45 Contracts—Issue of Breach—Defense of Unconscionability. (5/2003)
- 502.47 Contracts—Issue of Breach—Direct Damages—Defense of Oral Modification of Written Contract. (5/2003)
- 502.48 Contracts—Issue of Breach—Defense of Modification. (5/2003)
- 502.50 Contracts—Issue of Breach—Defense of Rescission. (5/2003)
- 502.55 Contracts—Issue of Breach—Defense of Novation. (5/2003)
- 502.60 Contracts—Issue of Breach—Defense of Accord and Satisfaction. (5/2003)

#### **Chapter 4. Issue of Common Law Remedy.**

- 503.00 Contracts—Issue of Common Law Remedy—Rescission. (5/2003)
- 503.01 Contracts—Issue of Common Law Remedy—Rescission—Measure of Restitution. (6/2014)
- 503.03 Contracts—Issue of Common Law Remedy—Specific Performance. (5/2003)
- 503.06 Contracts—Issue of Common Law Remedy—Statement of Damages Issue. (5/2003)
- 503.09 Contracts—Issue of Common Law Remedy—Damages in General. (5/2003)
- 503.12 Contracts—Issue of Common Law Remedy—Direct Damages—Buyer’s Measure of Recovery for a Seller’s Breach of Contract to Convey Real Property. (5/2003)
- 503.15 Contracts—Issue of Common Law Remedy—Direct Damages—Seller’s Measure of Recovery for a Buyer’s Breach of Executory Contract to Purchase Real Property. (5/2003)
- 503.18 Contracts—Issue of Common Law Remedy—Direct Damages—Broker’s Measure of Recovery for a Seller’s Breach of an Exclusive Listing Contract. (5/2003)
- 503.21 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Contractor’s Partial Breach of a Construction Contract. (5/2003)
- 503.24 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Contractor’s Partial Breach of a Construction Contract Where Correcting the Defect Would Cause Economic Waste. (5/2003)
- 503.27 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Partial Breach of a Repair or Services Contract. (5/2003)
- 503.30 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Contractor’s Failure to Perform any Work Under a Construction, Repair, or Services Contract. (5/2003)
- 503.33 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract Where the Contractor Has Fully Performed. (5/2003)
- 503.36 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract Where the Contractor Has Not Begun Performance. (5/2003)
- 503.39 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract After the Contractor Delivers Partial Performance. (5/2003)
- 503.42 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract Where the Contractor Elects to Recover Preparation and Performance Expenditures. (5/2003)



- 503.45 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for Loss of Rent due to a Lessee’s, Occupier’s, or Possessor’s Breach of Lease of Real Estate or Personal Property. (5/2003)
- 503.48 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for Loss of Use Due to a Lessee’s, Occupier’s, or Possessor’s Breach of Lease of Real Estate or Personal Property. (5/2003)
- 503.51 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for Real Estate or Personal Property Idled by Breach of a Contract Where Proof of Lost Profits or Rental Value Is Speculative. (5/2003)
- 503.54 Contracts—Issue of Common Law Remedy—Direct Damages—Employer’s Measure of Recovery for Employee’s Wrongful Termination of an Employment Contract. (5/2003)
- 503.70 Contracts—Issue of Common Law Remedy—Incidental Damages. (5/2003)
- 503.73 Contracts—Issue of Common Law Remedy—Consequential Damages. (5/2003)
- 503.75 Breach Of Contract—Special Damages—Loss Of Profits (Formerly 517.20) (6/2013)
- 503.76 Contracts—Issue of Common Law Remedy—Future Worth of Damages in Present Value. (5/2003)
- 503.79 Contracts—Issue of Common Law Remedy—Damages Mandate. (5/2003)
- 503.90 Contracts—Issue of Common Law Remedy—Defense (Offset) for Failure to Mitigate. (5/2003)
- 503.91 Contracts—Issue of Common Law Remedy—Defense (Offset) for Failure to Mitigate—Amount of Credit. (5/2003)
- 503.94 Contracts—Issue of Common Law Remedy—Validity of Liquidated Damages Provision. (5/2003)
- 503.97 Contracts—Issue of Common Law Remedy—Amount of Liquidated Damages. (5/2003)

**Chapter 5. Issue of UCC Remedy.**

- 504.00 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Seller’s Repudiation. (5/2003)
- 504.03 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Seller’s Failure to Make Delivery or Tender. (5/2003)
- 504.06 Contracts—Issue of UCC Remedy—Buyer’s Remedy of Rightful Rejection. (5/2003)
- 504.09 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Rightful Rejection. (5/2003)
- 504.12 Contracts—Issue of UCC Remedy—Buyer’s Remedy of Justifiable Revocation of Acceptance. (5/2003)
- 504.15 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Justifiable Revocation of Acceptance. (5/2003)
- 504.18 Contracts—Issue of UCC Remedy—Buyer’s Damages After Acceptance and Retention of Goods. (5/2003)
- 504.21 Contracts—Issue of UCC Remedy—Buyer’s Remedy of Specific Performance. (5/2003)
- 504.24 Contracts—Issue of UCC Remedy—Seller’s Remedy (or Defense) of Stopping Delivery of Goods. (5/2003)
- 504.27 Contracts—Issue of UCC Remedy—Seller’s Remedy (or Defense) of Reclaiming Goods Already Delivered. (5/2003)
- 504.30 Contracts—Issue of UCC Remedy—Seller’s Remedy of Resale. (5/2003)
- 504.33 Contracts—Issue of UCC Remedy—Seller’s Resale Damages. (5/2003)
- 504.36 Contracts—Issue of UCC Remedy—Seller’s Contract—Market Damages. (5/2003)
- 504.39 Contracts—Issue of UCC Remedy—Seller’s Lost Profit Damages. (5/2003)
- 504.42 Contracts—Issue of UCC Remedy—Seller’s Remedy of Action for Price (Specific Performance) for Delivered Goods. (5/2003)

- 504.45 Contracts—Issue of UCC Remedy—Seller’s Remedy of Action for Price (Specific Performance) for Undelivered Goods. (5/2003)
- 504.48 Contracts—Issue of UCC Remedy—Defense (Offset) of Failure to Mitigate. (5/2003)
- 504.51 Contracts—Issue of UCC Remedy—Validity of Liquidated Damages Provision. (5/2003)
- 504.54 Contracts—Issue of UCC Remedy—Amount of Liquidated Damages. (5/2003)

**Chapter 6. Minor’s Claims Where Contract Disavowed.**

- 505.20 Contracts—Issue of Remedy—Minor’s Claim for Restitution Where Contract Is Disavowed. (5/2003)
- 505.25 Contracts—Issue of Remedy—Minor’s Claim for Restitution Where Contract Is Disavowed—Measure of Recovery. (5/2003)

**Chapter 7. Agency.**

- 516.05 Agency in Contract—Actual and Apparent Authority of General Agent. (1/2019)
- 516.15 Agency—Ratification. (1/2019)
- 516.30 Agency—Issue of Undisclosed Principal—Liability of Agent. (4/2005)
- 517.20 Breach of Contract—Special Damages—Loss of Profits. (6/2013)

**Chapter 8. Deleted. (5/2003)**

**Chapter 9. Action on Account.**

- 635.20 Action on Unverified Account—Issue of Liability. (5/1991)
- 635.25 Action on Unverified Account—Issue of Amount Owed. (5/1991)
- 635.30 Action on Verified Itemized Account. (5/1991)
- 635.35 Action on Account Stated. (6/2014)
- 635.40 Action on Account—Defense of Payment. (5/1991)

**Chapter 10. Employment Relationship.**

- 640.00 Introduction to “Employment Relationship” Series. (6/2014)
- 640.00A Introduction to “Employment Relationship” Series (Delete Sheet). (6/2010)
- 640.01 Employment Relationship—Status of Person as Employee. (6/2018)
- 640.02 Employment Relationship—Constructive Termination. (6/2010)
- 640.03 Employment Relationship—Termination/Resignation. (6/2010)
- 640.10 Employment Relationship—Employment for a Definite Term. (2/1991)
- 640.12 Employment Relationship—Breach of Agreement for a Definite Term. (5/1991)
- 640.14 Employment Relationship—Employer’s Defense of Just Cause. (2/1991)
- 640.20 Employment Relationship—Wrongful (Tortious) Termination. (3/2017)
- 640.22 Employment Relationship—Employer’s Defense to Wrongful (Tortious) Termination. (4/1998)
- 640.25 Employment Relationship—Blacklisting. (11/1996)
- 640.27 Employment Discrimination—Pretext Case. (6/2018)
- 640.28 Employment Discrimination—Mixed Motive Case. (5/2004)
- 640.29A Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—Introduction. (6/2018)
- 640.29B Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Direct Admission Case*. (6/2010)
- 640.29C Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Pretext Case*. (6/2010)
- 640.29D Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Mixed Motive Case* (Plaintiff). (6/2010)
- 640.29E Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Mixed Motive Case* (Defendant). (5/2009)
- 640.30 Employment Relationship—Damages. (6/2010)

- 640.32 Employment Relationship—Mitigation of Damages. (6/2014)
- 640.40 Employment Relationship—Vicarious Liability of Employer for Co-Worker Torts. (6/2015)
- 640.42 Employment Relationship—Liability of Employer for Negligence in Hiring, Supervision, or Retention of an Employee. (5/2009)
- 640.43 Employment Relationship—Liability of Employer for Negligence in Hiring or Selecting an Independent Contractor. (5/2009)
- 640.44 Employment Relationship—Liability of Employer for Negligence in Retaining an Independent Contractor. (5/2009)
- 640.46 Employment Relationship—Liability of Employer for Injury to Employee—Exception to Workers’ Compensation Exclusion. (2/2017)
- 640.48 Employment Relationship—Liability of Principal for Negligence of Independent Contractor (Breach of Non-Delegable Duty of Safety)—Inherently Dangerous Activity. (5/2009)
- 640.60 Employment Relationships—Wage & Hour Act—Wage Payment Claim (2/2017)
- 640.65 Employment Relationships—Wage & Hour Act—Wage Payment Claim—Damages (6/2014)
- 640.70 Public Employee—Direct North Carolina Constitutional Claim—Enjoyment of Fruits of Labor. (2/2019)

**Chapter 11. Covenants Not to Compete.**

- 645.20 Covenants Not to Compete—Issue of the Existence of the Covenant. (6/2015)
- 645.30 Covenants Not to Compete—Issue of Whether Covenant was Breached. (5/1976)
- 645.50 Covenants not to Compete—Issue of Damages. (5/2006)

**Chapter 12. Actions for Services Rendered a Decedent.**

- 714.18 Products Liability—Military Contractor Defense. (6/2007)
- 735.00 Action for Services Rendered a Decedent—Issue of Existence of Contract. (11/2/2004)
- 735.05 Action for Services Rendered a Decedent—Evidence of Promise to Compensate by Will. (12/1977)
- 735.10 Action for Services Rendered a Decedent—Presumption that Compensation Is Intended. (5/1978)
- 735.15 Action for Services Rendered a Decedent—Presumption of Gratuity by Family Member. (12/1977)
- 735.20 Action for Services Rendered a Decedent—Issue of Breach of Contract. (12/1977)
- 735.25 Action for Services Rendered a Decedent—Issue of Recovery. (12/1977)
- 735.30 Action for Services Rendered a Decedent—Issue of Recovery—Benefits or Offsets. (10/1977)
- 735.35 Action for Services Rendered a Decedent—Issue of Recovery—Evidence of Value of Specific Property. (10/1977)
- 735.40 Action for Services Rendered a Decedent—Issue of Recovery—Statute of Limitations. (5/1978)

**Chapter 13. Quantum Meruit.**

- 736.00 Quantum Meruit—Quasi Contract—Contract Implied at Law. (5/2016)
- 736.01 Quantum Meruit—Quasi Contract—Contract Implied at Law: Measure of Recovery. (6/2015)

**Chapter 14. Leases.**

## **VOLUME II**

### **Part III. WARRANTIES AND PRODUCTS LIABILITY**

#### **Chapter 1. Warranties in Sales of Goods.**

- 741.00 Warranties in Sales of Goods. (5/1999)
- 741.05 Warranties in Sales of Goods—Issue of Existence of Express Warranty. (5/1999)
- 741.10 Warranties in Sales of Goods—Issue of Breach of Express Warranty. (5/1999)
- 741.15 Warranties in Sales of Goods—Issue of Existence of Implied Warranty of Merchantability. (6/2013)
- 741.16 Warranties in Sales of Goods—Issue of Seller’s Defense of Modification of Implied Warranty of Merchantability. (5/1999)
- 741.17 Warranties in Sales of Goods—Issue of Seller’s Defense of Exclusion of Implied Warranty of Merchantability. (5/1999)
- 741.18 Warranties in Sales of Goods—Issue of Seller’s Defense of Buyer’s Actual or Constructive Knowledge of Defects—Implied Warranty of Merchantability. (5/1999)
- 741.20 Warranties in Sales of Goods—Issue of Breach of Implied Warranty of Merchantability. (12/2003)
- 741.25 Warranties in Sales of Goods—Issue of Existence of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.26 Warranties in Sales of Goods—Issue of Seller’s Defense of Modification of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.27 Warranties in Sales of Goods—Issue of Seller’s Defense of Exclusion of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.28 Warranties in Sales of Goods—Issue of Seller’s Defense of Buyer’s Actual or Constructive Knowledge of Defects—Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.30 Warranties in Sales of Goods—Issue of Breach of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.31 Warranties in Sales of Goods—Issue of Existence of Implied Warranty Created by Course of Dealing or by Usage of Trade. (5/1999)
- 741.32 Warranties in Sales of Goods—Issue of Seller’s Defense of Exclusion of Implied Warranty Created by Course of Dealing or by Usage of Trade. (5/1999)
- 741.33 Warranties in Sales of Goods—Issue of Seller’s Defense of Buyer’s Actual or Constructive Knowledge of Defects—Implied Warranty Created by Course of Dealing or by Usage of Trade. (5/1999)
- 741.34 Warranties in Sales of Goods—Issue of Breach of Implied Warranty Created by Course of Dealing or Usage of Trade. (5/1999)
- 741.35 Warranties in Sales of Goods—Remedies—Rightful Rejection. (5/1999)
- 741.40 Warranties in Sales of Goods—Rightful Rejection—Damages. (5/1999)
- 741.45 Warranties in Sales of Goods—Remedies—Justifiable Revocation of Acceptance. (5/1999)
- 741.50 Warranties in Sales of Goods—Justifiable Revocation of Acceptance—Damages. (5/1999)
- 741.60 Warranties in Sales of Goods—Remedy for Breach of Warranty Where Accepted Goods are Retained—Damages. (5/1999)
- 741.65 Express and Implied Warranties—Third Party Rights of Action (Horizontal) Against Buyer’s Seller. (5/1999)
- 741.66 Implied Warranties—Third Party Rights of Action (Horizontal) Against Manufacturers. (5/2006)
- 741.67 Implied Warranties—Third Party Rights of Action (Vertical) Against Manufacturers. (5/1999)
- 741.70 Products Liability—Claim of Inadequate Warning or Instruction. (5/2005)

- 741.71 Products Liability—Claim Against Manufacturer for Inadequate Design or Formulation (Except Firearms or Ammunition). (5/2005)
- 741.72 Products Liability—Firearms or Ammunition—Claim Against Manufacturer or Seller for Defective Design. (5/2005)

**Chapter 2. Defenses By Sellers and Manufacturers.**

- 743.05 Products Liability (Other than Express Warranty)—Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/1999)
- 743.06 Products Liability—Exception To Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/2004)
- 743.07 Products Liability—Seller’s and Manufacturer’s Defense of Product Alteration or Modification. (5/1999)
- 743.08 Products Liability—Seller’s and Manufacturer’s Defense of Use Contrary to Instructions or Warnings. (5/1999)
- 743.09 Products Liability—Seller’s and Manufacturer’s Defense of Unreasonable Use In Light of Knowledge of Unreasonably Dangerous Condition of Product. (5/1999)
- 743.10 Products Liability—Seller’s and Manufacturer’s Defense of Claimant’s Failure to Exercise Reasonable Care as Proximate Cause of Damage. (5/1999)
- 744.05 Products Liability (Other than Express Warranty)—Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/1999)
- 744.06 Products Liability—Exception to Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/2004)
- 744.07 Products Liability—Seller’s and Manufacturer’s Defense of Product Alteration or Modification. (5/1999)
- 744.08 Products Liability—Seller’s and Manufacturer’s Defense of Use Contrary to Instructions or Warnings. (6/2010)
- 744.09 Products Liability—Seller’s and Manufacturer’s Defense of Unreasonable Use in Light of Knowledge of Unreasonably Dangerous Condition of Product. (5/1999)
- 744.10 Products Liability—Seller’s and Manufacturer’s Defense of Claimant’s Failure to Exercise Reasonable Care as Proximate Cause of Damage. (5/1999)
- 744.12 Products Liability—Seller’s and Manufacturer’s Defense of Open and Obvious Risk. (5/1999)
- 744.13 Products Liability—Prescription Drugs—Seller’s and Manufacturer’s Defense of Delivery of Adequate Warning or Instruction to Prescribers or Dispensers. (5/1999)
- 744.16 Products Liability—Manufacturer’s Defense of Inherent Characteristic. (5/1999)
- 744.17 Products Liability—Prescription Drugs—Manufacturer’s Defense of Unavoidably Unsafe Aspect. (5/1999)
- 744.18 Products Liability—Statute of Limitations. (6/2010)

**Chapter 3. New Motor Vehicle Warranties (“Lemon Law”).**

- 745.01 New Motor Vehicles Warranties Act (“Lemon Law”)—Manufacturer’s Failure to Make Repairs Necessary to Conform New Motor Vehicle to Applicable Express Warranties. (6/2013)
- 745.03 New Motor Vehicles Warranties Act (“Lemon Law”)—Manufacturer Unable to Conform New Motor Vehicle to Express Warranty. (6/2013)
- 745.05 New Motor Vehicles Warranties Act (“Lemon Law”)—Manufacturer’s Affirmative Defense of Abuse, Neglect, Odometer Tampering, or Unauthorized Modifications or Alterations. (6/2013)
- 745.07 New Motor Vehicles Warranties Act (“Lemon Law”)—Damages When Plaintiff is a Purchaser. (6/2015)
- 745.09 New Motor Vehicles Warranties Act (“Lemon Law”)—Damages When Plaintiff is a Lessee. (6/2015)
- 745.11 New Motor Vehicles Warranties Act (“Lemon Law”)—Damages When Plaintiff is a Lessor. (6/2015)

- 745.13 New Motor Vehicles Warranties Act (“Lemon Law”)—Unreasonable Refusal to Comply with Requirements of Act. (5/1999)
- Chapter 4. New Dwelling Warranty.**
- 747.00 Warranties in Sales of Dwellings—Issue of Existence of Implied Warranty of Habitability. (5/1999)
- 747.10 Warranties in Sales of Dwellings—Issue of Builder’s Defense that Buyer Had Notice of Defect. (5/1999)
- 747.20 Warranties in Sales of Dwellings—Issue of Breach of Implied Warranty of Habitability. (12/2003)
- 747.30 Warranties in Sales of Dwellings—Remedies—Rescission. (5/1999)
- 747.35 Warranties in Sales of Dwellings—Remedies—Special Damages Following Rescission. (5/1999)
- 747.36 Warranties in Sales of Dwellings—Remedies—Credit to Seller for Reasonable Rental Value. (5/1999)
- 747.40 Warranties in Sales of Dwellings—Remedies—Damages Upon Retention of Dwelling. (5/1999)

#### **Part IV. MISCELLANEOUS TORTS**

##### **Chapter 1. Fraud.**

- 800.00 Fraud. (6/2018)
- 800.00A Fraud—Statute of Limitations (5/2016)
- 800.05 Constructive Fraud. (6/2018)
- 800.06 Constructive Fraud—Rebuttal by Proof of Openness, Fairness and Honesty. (6/2018)
- 800.07 Fraud: Damages. (6/2007)
- 800.10 Negligent Misrepresentation. (3/2020)
- 800.11 Negligent Misrepresentation: Damages. (6/2007)

##### **Chapter 2. Criminal Conversation and Alienation of Affections.**

- 800.20 Alienation of Affection. (12/2016)
- 800.22 Alienation of Affections—Damages. (6/2007)
- 800.23 Alienation of Affection—Statute of Limitations. (6/2010)
- 800.23A Alienation of Affection—Statute of Limitations. (6/2010)
- 800.25 Criminal Conversation. (Adultery). (6/2010)
- 800.26 Alienation of Affection/Criminal Conversation—Damages. (6/2010)
- 800.27 Criminal Conversation—Statute of Limitations. (6/2015)
- 800.27A Criminal Conversation—Statute of Limitations. (6/2015)

##### **Chapter 3. Assault and Battery.**

- 800.50 Assault. (2/1994)
- 800.51 Battery. (2/2016)
- 800.52 Assault and Battery—Defense of Self. (5/1994)
- 800.53 Assault and Battery—Defense of Family Member. (5/1994)
- 800.54 Assault and Battery—Defense of Another from Felonious Assault. (5/2004)
- 800.56 Assault and Battery—Defense of Property. (5/1994)

##### **Chapter 3A. Infliction of Emotional Distress.**

- 800.60 Intentional or Reckless Infliction of Severe Emotional Distress. (4/2004)

##### **Chapter 3B. Loss of Consortium.**

800.65 Action for Loss of Consortium. (12/1999)

**Chapter 4. Invasion of Privacy.**

800.70 Invasion of Privacy—Offensive Intrusion. (6/2013)  
800.71 Invasion of Privacy—Offensive Intrusion—Damages. (6/2010)  
800.75 Invasion of Privacy—Appropriation of Name or Likeness for Commercial Use.  
(5/2001)  
800.76 Invasion of Privacy—Appropriation of Name or Likeness for Commercial Use—  
Damages. (5/2001)

**Chapter 5. Malicious Prosecution, False Imprisonment, and Abuse of Process.**

801.00 Malicious Prosecution—Criminal Proceeding. (6/2014)  
801.01 Malicious Prosecution—Civil Proceeding. (1/1995)  
801.05 Malicious Prosecution—Damages. (10/1994)  
801.10 Malicious Prosecution—Punitive Damages—Issue of Existence of Actual Malice.  
(5/2001)  
802.00 False Imprisonment. (6/2014)  
802.01 False Imprisonment—Merchant’s Defenses. (5/2004)  
803.00 Abuse of Process. (6/2012)  
804.00 Section 1983—Excessive Force in Making Lawful Arrest. (5/2004)  
804.01 Excessive Force in Making Arrest—Common Law Claim for Battery—Issue of  
Battery (3/2016)  
804.02 Excessive Force in Making Arrest—Common Law Claim for Battery—Issue of  
Lawfulness of Arrest (3/2016)  
804.03 Excessive Force in Making Arrest—Common Law Claim for Battery—Issue of  
Reasonableness of Force Used (3/2016)  
804.04 Excessive Force in Making Arrest—Common Law Claim for Battery—Damages  
(3/2016)  
804.05 Excessive Force in Making Arrest—Common Law Claim for Battery—Sample Verdict  
Sheet (3/2016)  
804.06 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Color of State Law  
(3/2016)  
804.07 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Use of Force  
(3/2016)  
804.08 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Color of  
Lawfulness of Arrest (3/2016)  
804.09 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Color of  
Reasonableness of Force Used (3/2016)  
804.10 Excessive Force in Making Arrest—Section 1983 Claim—Damages (3/2016)  
804.11 Excessive Force in Making Lawful Arrest—Section 1983 Claim—Punitive Damages  
(3/2016)  
804.12 Excessive Force in Making Arrest—Section 1983 Claim—Verdict Sheet (3/2016)  
804.50 Section 1983—Unreasonable Search of Home. (6/2016)

**Chapter 6. Nuisances and Trespass.**

805.00 Trespass to Real Property. (6/2015)  
805.05 Trespass to Real Property—Damages. (5/2001)  
805.10 Trespass to Personal Property. (5/2001)  
805.15 Trespass to Personal Property—Damages. (5/2001)  
805.20<sup>[DO1]</sup> Littering—Civil Action for Damages for Felonious Littering. (3/2020)  
805.21 Littering—Civil Action for Damages for Felonious Littering—Damages Issue.  
(4/2019)  
805.25<sup>[DO2]</sup> Private Nuisance. (5/2020)

**Chapter 7. Owners and Occupiers of Land.**

- 805.50 Status of Party—Lawful Visitor or Trespassor. (5/1999)
- 805.55 Duty of Owner to Lawful Visitor. (5/2020)
- 805.56 Duty of Owner to Lawful Visitor—Defense of Contributory Negligence. (6/2018)
- 805.60 Duty of Owner to Licensee. (Delete Sheet). (5/1999)
- 805.61 Duty of Owner to Licensee—Defense of Contributory Willful or Wanton Conduct (“Gross Negligence”). (Delete Sheet). (5/1999)
- 805.64 Duty of Owner to Trespasser—Intentional Harms (6/2013)
- 805.64A Duty of Owner to Trespasser—Use of Reasonable Force Defense (6/2013)
- 805.64B Duty of Owner to Child Trespasser—Artificial Condition (6/2013)
- 805.64C Duty of Owner to Trespasser: Position of Peril (6/2013)
- 805.65 Duty of Owner to Trespasser. (6/2013)
- 805.65A Duty of Owner to Child Trespasser—Attractive Nuisance. (6/2013)
- 805.66 Duty of Owner to Trespasser—Defense of Contributory Willful or Wanton Conduct (“Gross Negligence”). (11/2004)
- 805.67 Duty of City or County to Users of Public Ways. (5/1990)
- 805.68 City or County Negligence—Defense of Contributory Negligence—Sui Juris Plaintiff. (5/1990)
- 805.69 Municipal or County Negligence—Defense of Contributory Negligence—Handicapped Plaintiff. (5/1990)
- 805.70 Duty of Adjoining Landowners—Negligence. (5/1990)
- 805.71 Duty of Landlord to Residential Tenant—Residential Premises and Common Areas. (5/1990)
- 805.72 Duty of Landlord to Residential Tenant—Residential Premises and Common Areas—Defense of Contributory Negligence. (6/2018)
- 805.73 Duty of Landlord to Non-Residential Tenant—Controlled or Common Areas. (5/1990)
- 805.74 Duty of Landlord to Non-Residential Tenant—Controlled or Common Areas—Defense of Contributory Negligence. (6/2018)
- 805.80 Duty of Landlord to Tenant—Vacation Rental. (5/2001)

**Chapter 8. Conversion.**

- 806.00 Conversion. (5/1996)
- 806.01 Conversion—Defense of Abandonment. (5/1996)
- 806.02 Conversion—Defense of Sale (or Exchange). (5/1996)
- 806.03 Conversion—Defense of Gift. (4/2004)
- 806.05 Conversion—Damages. (5/1996)

**Chapter 9. Defamation.**

- 806.40 Defamation—Preface. (6/2021)
- 806.50 Defamation—Libel Actionable *Per Se*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.51 Defamation—Libel Actionable *Per Se*—Private Figure—Matter of Public Concern. (6/2021)
- 806.53 Defamation—Libel Actionable *Per Se*—Public Figure or Official. (6/2021)
- 806.60 Defamation—Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.61 Defamation—Libel Actionable *Per Quod*—Private Figure—Matter of Public Concern. (6/2021)
- 806.62 Defamation—Libel Actionable *Per Quod*—Public Figure or Official. (6/2021)
- 806.65 Defamation—Slander Actionable *Per Se*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.66 Defamation—Slander Actionable *Per Se*—Private Figure—Matter of Public Concern. (6/2021)



- 806.67 Defamation—Slander Actionable *Per Se*—Public Figure or Official. (6/2021)
- 806.70 Defamation—Slander Actionable *Per Quod*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.71 Defamation—Slander Actionable *Per Quod*—Private Figure—Matter of Public Concern. (6/2021)
- 806.72 Defamation—Slander Actionable *Per Quod*—Public Figure or Official. (6/2021)
- 806.79 Defamation—Libel Actionable *Per Se* or Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern—Defense of Truth as a Defense. (6/2021)
- 806.81 Defamation Actionable *Per Se*—Private Figure—Not Matter of Public Concern—Presumed Damages. (6/2021)
- 806.82 Defamation Actionable *Per Se*—Private Figure—Matter of Public Concern—Presumed Damages. (6/2021)
- 806.83 Defamation Actionable *Per Se*—Public Figure or Official—Presumed Damages. (6/2021)
- 806.84 Defamation—Private Figure—Matter of Public Concern—Actual Damages. (6/2021)
- 806.85 Defamation—Defamation Actionable *Per Se*—Private Figure—Matter of Public Concern—Punitive Damages. (6/2021)

**Chapter 10. Interference with Contracts.**

- 807.00 Wrongful Interference with Contract Right. (6/2020)
- 807.10 Wrongful Interference with Prospective Contract. (6/2020)
- 807.20 Slander of Title. (11/2004)
- 807.50 Breach of Duty—Corporate Director. (3/2016)
- 807.52 Breach of Duty—Corporate Officer. (5/2002)
- 807.54 Breach of Duty—Controlling Shareholder of Closely Held Corporation—Issue of Closely Held Corporation. (5/2002)
- 807.56 Breach of Duty—Controlling Shareholder of Closely Held Corporation—Issue of Taking Improper Advantage of Power. (5/2002)
- 807.58 Breach of Duty—Controlling Shareholder of Closely Held Corporation—Issue of Taking Improper Advantage of Power—Defense of Good Faith, Care and Diligence. (5/2002)

**Chapter 11. Medical Malpractice. Deleted.**

**Chapter 11A. Medical Negligence/Medical Malpractice.**

- 809.00 Medical Negligence—Direct Evidence of Negligence Only. (6/2014)
- 809.00A Medical Malpractice—Direct Evidence of Negligence Only. (1/2019)
- 809.03 Medical Negligence—Indirect Evidence of Negligence Only ("Res Ipsa Loquitur"). (6/2013)
- 809.03A Medical Malpractice—Indirect Evidence of Negligence Only ("Res Ipsa Loquitur"). (5/2019)
- 809.05 Medical Negligence—Both Direct and Indirect Evidence of Negligence. (6/2014)
- 809.05A Medical Malpractice—Both Direct and Indirect Evidence of Negligence. (5/2019)
- 809.06 Medical Malpractice—Corporate or Administrative Negligence by Hospital, Nursing Home, or Adult Care Home. (6/2012)
- 809.07 Medical Negligence—Defense of Limitation by Notice or Special Agreement. (5/1998)
- 809.20 Medical Malpractice—Existence of Emergency Medical Condition. (6/2013)
- 809.22 Medical Malpractice—Emergency Medical Condition—Direct Evidence of Negligence Only. (5/2019)
- 809.24 Medical Malpractice—Emergency Medical Condition—Indirect Evidence of Negligence Only. ("Res Ipsa Loquitur"). (5/2019)
- 809.26 Medical Malpractice—Emergency Medical Condition—Both Direct and Indirect Evidence of Negligence. (5/2019)

- 809.28 Medical Malpractice—Emergency Medical Condition—Corporate or Administrative Negligence by Hospital, Nursing Home, or Adult Care Home. (6/2012)
- 809.45 Medical Negligence—Informed Consent—Actual and Constructive. (5/2019)
- 809.65 Medical Negligence—Health Care Provider’s Liability for Acts of Non-Employee Agents—Respondeat Superior. (6/2012)
- 809.65A Medical Malpractice—Health Care Provider’s Liability for Acts of Non-Employee Agents—Respondeat Superior. (5/2019)
- 809.66 Medical Negligence—Health Care Provider’s Liability for Acts of Non-Employee Agents—Respondeat Superior—Apparent Agency. (5/2019)
- 809.75 Medical Negligence—Institutional Health Care Provider’s Liability for Selection of Attending Physician. (5/2019)
- 809.80 Medical Negligence—Institutional Health Care Provider’s Liability for Agents; Existence of Agency. (6/2012)
- 809.90 Legal Negligence—Duty to Client (Delete Sheet) (6/2013)
- 809.100 Medical Malpractice—Damages—Personal Injury Generally. (6/2015)
- 809.114 Medical Malpractice Personal Injury Damages—Permanent Injury—Economic Damages. (6/2015)
- 809.115 Medical Malpractice Personal Injury Damages—Permanent Injury—Non-Economic Damages. (6/2015)
- 809.120 Medical Malpractice Personal Injury Damages—Final Mandate. (Regular). (6/2012)
- 809.122 Medical Malpractice—Personal Injury Damages—Final Mandate. (Per Diem Argument by Counsel). (6/2012)
- 809.142 Medical Malpractice—Damages—Wrongful Death Generally. (6/2015)
- 809.150 Medical Malpractice Wrongful Death Damages—Present Monetary Value of Deceased to Next-of-Kin—Economic Damages. (6/2015)
- 809.151 Medical Malpractice Wrongful Death Damages—Present Monetary Value of Deceased to Next-of-Kin—Non-Economic Damages. (6/2015)
- 809.154 Medical Malpractice Wrongful Death Damages—Final Mandate. (Regular). (6/2012)
- 809.156 Medical Malpractice Wrongful Death Damages—Final Mandate. (Per Diem Argument by Counsel). (6/2012)
- 809.160 Medical Malpractice—Damages—No Limit on Non-Economic Damages. (6/2015)
- 809.199 Medical Malpractice—Sample Verdict Form—Damages Issues. (6/2015)

**Chapter 12. Damages.**

- 810 Series Reorganization Notice—Damages. (2/2000)
- 810.00 Personal Injury Damages—Issue and Burden of Proof. (6/2012)
- 810.02 Personal Injury Damages—In General. (6/2012)
- 810.04 Personal Injury Damages—Damages—Medical Expenses. (6/2013)
- 810.04A Personal Injury Damages—Medical Expenses—Stipulation. (6/2013)
- 810.04B Personal Injury Damages—Medical Expenses—Stipulation as to Amount Paid or Necessary to Be Paid, but Not Nexus to Conduct. (6/2013)
- 810.04C Personal Injury Damages—Medical Expenses—No Stipulation, No Rebuttal Evidence. (6/2013)
- 810.04D Personal Injury Damages—Medical Expenses—No Stipulation, Rebuttal Evidence Offered. (6/2013)
- 810.06 Personal Injury Damages—Loss of Earnings. (2/2000)
- 810.08 Personal Injury Damages—Pain and Suffering. (5/2006)
- 810.10 Scars or Disfigurement. (6/2010)
- 810.12 Personal Injury Damages—Loss (of Use) of Part of the Body. (6/2010)
- 810.14 Personal Injury Damages—Permanent Injury. (6/2015)
- 810.16 Personal Injury Damages—Future Worth in Present Value. (2/2000)
- 810.18 Personal Injury Damages—Set Off/Deduction of Workers’ Compensation Award. (11/1999)

810.20	Personal Injury Damages—Final Mandate. (Regular). (6/2012)
810.22	Personal Injury Damages—Final Mandate. (Per Diem Argument by Counsel). (6/2012)
810.24	Personal Injury Damages—Defense of Mitigation. (6/2018)
810.30	Personal Injury Damages—Loss of Consortium. (12/1999)
810.32	Personal Injury Damages—Parent’s Claim for Negligent or Wrongful Injury to Minor Child. (6/2010)
810.40	Wrongful Death Damages—Issue and Burden of Proof. (1/2000)
810.41	Wrongful Death Damages—Set Off/Deduction of Workers’ Compensation Award. (5/2017)
810.42	Wrongful Death Damages—In General. (6/2012)
810.44	Wrongful Death Damages—Medical Expenses. (6/2013)
810.44A	Wrongful Death Damages—Medical Expenses—Stipulation. (6/2013)
810.44B	Wrongful Death Damages—Medical Expenses—Stipulation as to Amount Paid or Necessary to Be Paid, but Not Nexus to Conduct. (6/2013)
810.44C	Wrongful Death Damages—Medical Expenses—No Stipulation, No Rebuttal Evidence. (6/2013)
810.44D	Wrongful Death Injury Damages—Medical Expenses—No Stipulation, Rebuttal Evidence Offered. (6/2013)
810.46	Wrongful Death Damages—Pain and Suffering. (1/2000)
810.48	Wrongful Death Damages—Funeral Expenses. (6/2013)
810.48A	Wrongful Death Damages—Funeral Expenses—Stipulation. (6/2013)
810.48B	Wrongful Death Damages—Funeral Expenses—Stipulation as to Amount Paid or Necessary to Be Paid, but Not Nexus to Conduct. (6/2013)
810.48C	Wrongful Death Damages—Funeral Expenses—No Stipulation, No Rebuttal Evidence. (6/2013)
810.48D	Wrongful Death Damages—Funeral Expenses—Stipulation, Rebuttal Evidence Offered. (6/2013)
810.49	Personal Injury Damages—Avoidable Consequences—Failure to Mitigate Damages. (Delete Sheet). (10/1999)
810.50	Wrongful Death Damages—Present Monetary Value of Deceased to Next-of-Kin. (6/2015)
810.54	Wrongful Death Damages—Final Mandate. (Regular). (6/2012)
810.56	Wrongful Death Damages—Final mandate. (Per Diem Argument by Counsel). (6/2012)
810.60	Property Damages—Issue and Burden of Proof. (4/2017)
810.62	Property Damages—Diminution in Market Value. (2/2000)
810.64	Property Damages—No Market Value—Cost of Replacement or Repair. (2/2000)
810.66	Property Damages—No Market Value, Repair, or Replacement—Recovery of Intrinsic Actual Value. (6/2013)
810.68	Property Damages—Final Mandate. (2/2000)
810.90	Punitive Damages—Issue of Existence of Outrageous or Aggravated Conduct. (5/1996)
810.91	Punitive Damages—Issue of Existence of Malicious, Willful or Wanton, or Grossly Negligent Conduct—Wrongful Death Cases. (5/1997)
810.92	Punitive Damages—Insurance Company’s Bad Faith Refusal to Settle a Claim. (5/1996)
810.93	Punitive Damages—Issue of Whether to Make Award and Amount. (5/1996)
810.94	Punitive Damages—Issue of Whether to Make Award and Amount. (Special Cases). (5/1996)
810.96	Punitive Damages—Liability of Defendant. (3/2016)
810.98	Punitive Damages—Issue of Whether to Make Award and Amount of Award. (5/2009)

**Chapter 13. Legal Malpractice.**

811.00 Legal Negligence—Duty to Client (Formerly 809.90) [as represented from Civil Committee] (3/2020)

**Chapter 14. Animals.**

812.00(Preface) Animals—Liability of Owners and Keepers. (5/1996)  
812.00 Animals—Common Law (Strict) Liability of Owner for Wrongfully Keeping Vicious Domestic Animals. (5/2020)  
812.01 Animals—Liability of Owner Who Allows Dog to Run at Large at Night. (8/2004)  
812.02 Animals—Common Law Liability of Owner Whose Domestic Livestock Run at Large with Owner’s Knowledge and Consent. (5/1996)  
812.03 Animals—Common Law Liability of Owner of Domestic Animals. (6/2011)  
812.04 Animals—Owner’s Negligence In Violation of Animal Control Ordinance. (5/1996)  
812.05 Animals—Liability of Owner of Dog Which Injures, Kills, or Maims Livestock or Fowl. (5/1996)  
812.06 Animals—Liability of Owner Who Fails to Destroy Dog Bitten by Mad Dog. (5/1996)  
812.07 Animals—Statutory (Strict) Liability of Owner of a Dangerous Dog. (5/1996)

**Chapter 15. Trade Regulation.**

813.00 Trade Regulation—Preface. (6/2013)  
813.05 Model Unfair or Deceptive Trade Practice Charge. (6/2014)  
813.20 Trade Regulation—Violation—Issue of Contracts and Conspiracies in Restraint of Trade. (1/1995)  
813.21 Trade Regulation—Violation—Issue of Unfair Methods of Competition and Unfair or Deceptive Acts or Practices. (2/2020)  
813.22 Trade Regulation—Violation—Definition of Conspiracy. (2/2019)  
813.23 Trade Regulation—Violation—Issue of Price Suppression of Goods. (5/1997)  
813.24 Trade Regulation—Violation—Issue of Condition Not to Deal in Goods of Competitor. (5/1997)  
813.25 Trade Regulation—Violation—Issue of Predatory Acts with Design of Price Fixing. (5/1997)  
813.26 Trade Regulation—Violation—Issue of Predatory Pricing. (5/1997)  
813.27 Trade Regulation—Violation—Issue of Discriminatory Pricing. (5/1997)  
813.28 Trade Regulation—Violation—Issue of Territorial Market Allocation. (5/1997)  
813.29 Trade Regulation—Violation—Issue of Price Fixing. (5/1997)  
813.30 Trade Regulation—Violation—Issue of Tying Between Lender and Insurer. (4/1995)  
813.31 Trade Regulation—Violation—Unauthorized Disclosure of Tax Information. (3/1995)  
813.33 Trade Regulation—Violations—Unsolicited Calls by Automatic Dialing and Recorded Message Players. (3/1995)  
813.34 Trade Regulation—Violation—Work-at-Home Solicitations. (5/1995)  
813.35 Trade Regulation—Violation—Issue of Representation of Winning a Prize. (5/1995)  
813.36 Trade Regulation—Violation—Issue of Representation of Eligibility to Win a Prize. (5/1995)  
813.37 Trade Regulation—Violation—Issue of Representation of Being Specially Selected. (5/1995)  
813.38 Trade Regulation—Unfair and Deceptive Trade Practices—Simulation of Checks and Invoices. (5/1995)  
813.39 Trade Regulation—Violation—Issue of Use of Term “Wholesale” in Advertising. G.S. 75-29. (5/1995)  
813.40 Trade Regulation—Violation—Issue of Utilizing the Word “Wholesale” in Company or Firm Name. G.S. 75-29. (5/1995)  
813.41 Trade Regulation—Violation—False Lien Or Encumbrance Against A Public Officer or Public Employee (6/2013)

- 813.60 Trade Regulation—Commerce—Introduction. (6/2015)
- 813.62 Trade Regulation—Commerce—Unfair and Deceptive Methods of Competition and Unfair or Deceptive Acts or Practices. (5/2020)
- 813.63 Trade Regulation—Commerce—Representation of Winning a Prize, Representation of Eligibility to Win a Prize, Representation of Being Specially Selected, and Simulation of Checks and Invoices. (1/1995)
- 813.70 Trade Regulation—Proximate Cause—Issue of Proximate Cause. (6/2014)
- 813.80 Trade Regulation—Damages—Issue of Damages. (5/2006)
- 813.90 Misappropriation of Trade Secret—Issue of Existence of Trade Secret. (6/2013)
- 813.92 Misappropriation of Trade Secret—Issue of Misappropriation. (6/2013)
- 813.94 Misappropriation of Trade Secret—Defense to Misappropriation. (6/2013)
- 813.96 Misappropriation of Trade Secret—Issue of Causation. (6/2013)
- 813.98 Misappropriation of Trade Secret—Issue of Damages. (5/2020)

**Chapter 16. Bailment.**

- 814.00 Bailments—Issue of Bailment. (5/1996)
- 814.02 Bailments—Bailee’s Negligence—Prima Facie Case. (5/1996)
- 814.03 Bailments—Bailee’s Negligence. (5/1996)
- 814.04 Bailments—Bailor’s Negligence. (5/1996)

**Chapter 17. Fraudulent Transfer.**

- 814.40 Civil RICO—Introduction (5/2016)
- 814.41 Civil RICO—Engaging in a Pattern of Racketeering Activity (5/2016)
- 814.42 Civil RICO—Enterprise Activity (5/2016)
- 814.43 Civil RICO—Conspiracy (5/2016)
- 814.44 Civil RICO—Attempt (5/2016)
- 814.50 Fraudulent Transfer—Present and Future Creditors—Intent to Delay, Hinder, or Defraud. (6/2018)
- 814.55 Fraudulent Transfer—Present and Future Creditors—Intent to Delay, Hinder, or Defraud—Transferee’s Defense of Good Faith and Reasonably Equivalent Value. (6/2015)
- 814.65 Fraudulent Transfer—Present Creditors—Lack of Reasonably Equivalent Value. (2/2017)
- 814.70 Fraudulent Transfer—Present and Future Creditors—Insolvent Debtor and Lack of Reasonably Equivalent Value. (6/2018)
- 814.75 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent. (6/2018)
- 814.80 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of New Value Given. (2/2017)
- 814.81 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of New Value Given—Amount of New Value (5/2017)
- 814.85 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of Transfer in the Ordinary Course. (6/2015)
- 814.90 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of Good Faith Effort to Rehabilitate. (6/2015)

**Chapter 18. Budget Dispute Between Board of Education and Board of County Commissioners.**

- 814.95 Budget Dispute Between Board of Education and Board of County Commissioners (5/2015)
- 814.95A Budget Dispute Between Board of Education and Board of County Commissioners—Appendix— Sample Verdict Sheet (3/2016)

## **PART V. FAMILY MATTERS**

- 815 Series Various Family Matters Instructions—Delete Sheet. (1/2000)
- 815.00 Void Marriage—Issue of Lack of Consent. (8/2004)
- 815.02 Void Marriage—Issue of Lack of Proper Solemnization. (1/1999)
- 815.04 Void Marriage—Issue of Bigamy. (1/1999)
- 815.06 Void Marriage—Issue of Marriage to Close Blood Kin. (1/1999)
- 815.08 Invalid Marriage—Issue of Same Gender Marriage. (1/1999)
- 815.10 Divorce Absolute—Issue of Knowledge of Grounds. (1/1999)
- 815.20 Voidable Marriage (Annulment)—Issue of Marriage of Person 16 and 18. (1/1999)
- 815.22 Voidable Marriage (Annulment)—Issue of Marriage of Person Under 16—Defense of Pregnancy or Living Children. (1/1999)
- 815.23 Voidable Marriage (Annulment)—Issue of Marriage of Person Under 16. (1/1999)
- 815.24 Voidable Marriage (Annulment)—Issue of Impotence. (1/1999)
- 815.26 Voidable Marriage (Annulment)—Issue of Impotence—Defense of Knowledge. (1/1999)
- 815.27 Voidable Marriage (Annulment)—Issue of Duress. (5/2006)
- 815.28 Voidable Marriage (Annulment)—Issue of Lack of Sufficient Mental Capacity and Understanding. (1/1999)
- 815.29 Voidable Marriage (Annulment)—Issue of Undue Influence. (5/2006)
- 815.30 Voidable Marriage (Annulment)—Issues of Marriage to Close Blood Kin, Marriage of Person Under 16, Marriage of Person Between 16 and 18, Impotence and Lack of Sufficient Mental Capacity and Understanding—Defense of Cohabitation and Birth of Issue. (1/1999)
- 815.32 Voidable Marriage (Annulment)—Issues of Marriage of Person Under 16, Marriage of Person Between 16 and 18, Impotence, and Lack of Sufficient Mental Capacity and Understanding—Defense of Ratification. (1/1999)
- 815.40 Divorce—Absolute—Issue of One Year’s Separation. (8/2004)
- 815.42 Divorce—Absolute—Issue of One Year’s Separation—Defense of Mental Impairment. (1/1999)
- 815.44 Divorce—Absolute—Issue of Incurable Insanity. (1/1999)
- 815.46 Divorce—Absolute—Issue of Incurable Insanity—Defense of Contributory Conduct of Sane Spouse. (1/1999)
- 815.50 Divorce—From Bed and Board—Issue of Abandonment. (8/2004)
- 815.52 Divorce—From Bed and Board—Issue of Malicious Turning Out-of-Doors. (1/1999)
- 815.54 Divorce—From Bed and Board—Issue of Cruelty. (1/1999)
- 815.56 Divorce—From Bed and Board—Issue of Indignities. (8/2004)
- 815.58 Divorce—From Bed and Board—Issue of Excessive Use of Alcohol or Drugs. (1/1999)
- 815.60 Divorce—From Bed and Board—Issue of Adultery. (1/1999)
- 815.70 Alimony—Issue of Marital Misconduct. (6/2013)
- 815.71 Alimony—Issue of Condonation. (5/2009)
- 815.72 Alimony—Issue of Condonation—Violation of Condition. (5/2009)
- 815.75 Child Born Out of Wedlock—Issue of Paternity. (3/1999)
- 815.90 Parents’ Strict Liability for Personal Injury or Destruction of Property by Minor. G.S. 1-538.1. (3/1999)
- 815.91 Parents’ Strict Liability for Personal Injury or Destruction of Property by Minor—Issue of Damages. G.S. 1-538.1. (Delete Sheet). (3/1999)
- 815.92 Parents’ Strict Liability for Personal Injury or Destruction of Property by Minor—Defense of Removal of Legal Custody and Control. (3/1999)
- 817.00 Incompetency. (6/2007)

## **PART VI. LAND ACTIONS**

### **Chapter 1. Adverse Possession.**

- 820.00 Adverse Possession—Holding for Statutory Period. (4/2019)
- 820.10 Adverse Possession—Color of Title. (4/2019)
- 820.16 Adverse Possession by a Cotenant Claiming Constructive Ouster. (2/2017)

### **Chapter 2. Proof of Title.**

- 820.40 Proof of Title—Real Property Marketable Title Act. (6/2018)
- 820.50 Proof of Title—Connected Chain of Title from the State. (5/2001)
- 820.60 Proof of Title—Superior Title from a Common Source—Source Uncontested. (5/2001)
- 820.61 Proof of Title—Superior Title from a Common Source—Source Contested. (5/2001)

### **Chapter 3. Boundary Dispute.**

- 825.00<sup>[D03]</sup> Processioning Action. (N.C.G.S. Ch. 38). (5/2020)

### **Chapter 4. Eminent Domain—Initiated Before January 1, 1982. Deleted. (2/1999)**

- 830.00 Eminent Domain—Procedures. (Delete Sheet). (2/1999)
- 830.05 Eminent Domain—Total Taking. (Delete Sheet). (2/1999)
- 830.10 Eminent Domain—Partial Taking—Fee. (Delete Sheet). (2/1999)
- 830.15 Eminent Domain—Partial Taking—Easement. (Delete Sheet). (2/1999)
- 830.20 Eminent Domain—General and Special Benefits. (Delete Sheet). (2/1999)
- 830.30 Eminent Domain—Comparables. (Delete Sheet). (2/1999)

### **Chapter 5. Eminent Domain—Initiated on or After January 1, 1982.**

- 835.00 Eminent Domain—Series Preface. (4/1999)
- 835.05 Eminent Domain—Introductory Instruction. (4/1999)
- 835.05i Eminent Domain—Introductory Instruction. (Delete Sheet). (8/2015)
- 835.10 Eminent Domain—Issue of Just Compensation—Total Taking by Department of Transportation or by Municipality for Highway Purposes. (4/2020)
- 835.12 Eminent Domain—Issue of Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes. (4/2019)
- 835.12A Eminent Domain—Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes—Issue of General or Special Benefit. (5/2017)
- 835.13 Eminent Domain—Issue of Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes (“Map Act”). (4/2019)
- 835.13A Eminent Domain—Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes (“Map Act”) – Issue of General or Special Benefit. (5/2017)
- 835.14 Eminent Domain—Issue of Just Compensation—Taking of an Easement by Department of Transportation or by Municipality for Highway Purposes. (4/2019)
- 835.14A Eminent Domain—Just Compensation—Taking of an Easement by Department of Transportation or by Municipality for Highway Purposes—Issue of General or Special Benefit. (5/2017)
- 835.15 Eminent Domain—Issue of Just Compensation—Total Taking by Private or Local Public Condemnors. (5/2006)
- 835.15A Eminent Domain—Issue of Just Compensation—Taking of a Temporary Construction or Drainage Easement by Department of Transportation or by Municipality for Highway Purposes. (2/2020)

- 835.20 Eminent Domain—Issue of Just Compensation—Partial Taking by Private or Local Public Condemnors—Fair Market Value of Property Taken. (5/2006)
- 835.20A Eminent Domain—Issue of Just Compensation—Taking of an Easement by Private or Local Public Condemnors—Fair Market Value of Property Taken. (5/2006)
- 835.22 Eminent Domain—Issue of Just Compensation—Partial Taking by Private or Local Public Condemnors—Fair Market Value of Property Before and After the Taking. (5/2006)
- 835.22A Eminent Domain—Issue of Just Compensation—Taking of an Easement by Private or Local Public Condemnors—Fair Market Value of Property Before and After the Taking. (5/2006)
- 835.24 Eminent Domain—Issue of Just Compensation—Partial Taking by Private or Local Public Condemnors—Greater of the Fair Market Value of Property Taken or the Difference in Fair Market Value of the Property Before and After the Taking. (5/2006)
- 835.24A Eminent Domain—Issue of Just Compensation—Taking of an Easement by Private or Local Public Condemnors—Greater of the Fair Market Value of Property Taken or the Difference in Fair Market Value of the Property Before and After the Taking. (5/2006)
- 835.30 Eminent Domain—Comparables. (Delete Sheet). (5/1999)

#### **Chapter 6. Easements.**

- 840.00 Easement—General Definition. (Delete Sheet). (2/2000)
- 840.10 Easement by Prescription. (4/2019)
- 840.20 Implied Easement—Use of Predecessor Common Owner. (6/2015)
- 840.25 Implied Easement—Way of Necessity. (6/2015)
- 840.30 Cartway Proceeding. N.C. Gen Stat. § 136-69 (6/2015)
- 840.31 Cartway Proceeding—Compensation. (5/2000)

#### **Chapter 7. Summary Ejectment and Rent Abatement.**

- 845.00 Summary Ejectment—Violation of a Provision in the Lease. (4/2017)
- 845.04 Summary Ejectment—Defense of Tender. (2/1993)
- 845.05 Summary Ejectment—Failure to Pay Rent. (2/1993)
- 845.10 Summary Ejectment—Holding Over After the End of the Lease Period. (2/1993)
- 845.15 Summary Ejectment—Defense of Waiver of Breach by Acceptance of Rent. (12/1992)
- 845.20 Summary Ejectment—Damages. (2/1993)
- 845.30 Landlord’s Responsibility to Provide Fit Residential Premises. (2/1993)
- 845.35 Landlord’s Responsibility to Provide Fit Residential Premises—Issue of Damages. (1/2000)

#### **Chapter 8. Land-Disturbing Activity.**

- 847.00 Land-Disturbing Activity—Sedimentation Pollution Control Act of 1973—Violation of Act—Violation of Ordinance, Rule or Order of Secretary of Environment and Natural Resources or of Local Government. (5/2008)
- 847.01 Land-Disturbing Activity—Sedimentation Pollution Control Act of 1973—Violation of Act—Violation of Ordinance, Rule or Order of Secretary of Environment and Natural Resources or of Local Government—Damages. (5/2008)

### **PART VII. DEEDS, WILLS, AND TRUSTS**

#### **Chapter 1. Deeds.**

- 850.00 Deeds—Action to Establish Validity—Requirements. (8/2004)
- 850.05 Deeds—Action to Set Aside—Lack of Mental Capacity. (5/2002)
- 850.10 Deeds—Action to Set Aside—Mutual Mistake of Fact. (6/2013)



- 850.15 Deeds—Action to Set Aside—Undue Influence. (5/2002)
- 850.20 Deeds—Action to Set Aside—Duress. (5/2002)
- 850.25 Deeds—Action to Set Aside—Fraud. (8/2004)
- 850.30 Deeds—Action to Set Aside—Grossly Inadequate Consideration (“Intrinsic Fraud”). (5/2002)
- 850.35 Deeds—Action to Set Aside—Constructive Fraud. (5/2002)
- 850.40 "Deeds—Action to Set Aside—Constructive Fraud—Rebuttal by Proof of Openness, Fairness and Honesty." (5/2002)
- 850.45 Deeds—Action to Set Aside—Defense of Innocent Purchaser. (5/2020)
- 850.50 Deeds—Action to Set Aside—Lack of Valid Delivery. (8/2004)
- 850.55 Deeds—Action to Set Aside—Lack of Legally Adequate Acceptance. (5/2001)

**Chapter 1A. Foreclosure Actions.**

- 855.10 Foreclosure—Action for Deficiency Judgment—Amount of Debt Owed (4/2016)
- 855.12 Foreclosure—Action for Deficiency Judgment—Defense of Mortgagor to Defeat and Offset Deficiency Judgment—Property Fairly Worth Amount Owed (4/2016)
- 855.14 Foreclosure—Action for Deficiency Judgment—Defense of Mortgagor to Defeat and Offset Deficiency Judgment—Bid Substantially Less than True Value of Property on Date of Foreclosure (4/2016)
- 855.16 Foreclosure—Action for Deficiency Judgment—Defense of Mortgagor to Defeat and Offset Deficiency Judgment—True Value of Property on Date of Foreclosure Sale (3/2016)
- 855.18 Foreclosure—Action for Deficiency Judgment—Sample Verdict Form & Judge’s Worksheet (6/2014)

**Chapter 2. Wills.**

- 860.00 Wills—Introductory Statement by Court. (Optional). (5/2006)
- 860.05 Wills—Attested Written Will—Requirements. (4/2017)
- 860.10 Wills—Holographic Wills—Requirements. (5/2019)
- 860.15 Wills—Issue of Lack of Testamentary Capacity. (4/2017)
- 860.16 Wills—Issue of Lack of Testamentary Capacity—Evidence of Suicide. (Delete Sheet). (5/2001)
- 860.20 Wills—Issue of Undue Influence. (5/2017)
- 860.22 Wills—Issue of Duress. (5/2002)
- 860.25 Wills—Devisavit Vel Non. (5/2001)

**Chapter 3. Parol Trusts.**

- 865.50 Parol Trusts—Express Trust in Purchased Real or Personal Property. (5/2001)
- 865.55 Parol Trusts—Express Trust in Transferred Real or Personal Property. (8/2004)
- 865.60 Parol Trusts—Express Declaration of Trust in Personal Property. (5/2001)
- 865.65 Trusts by Operation of Law—Purchase Money Resulting Trust (Real or Personal Property). (6/2014)
- 865.70 Trusts by Operation of Law—Resulting Trust Where Purchase Made with Fiduciary Funds. (6/2014)
- 865.75 Trusts by Operation of Law—Constructive Trust. (6/2015)

**PART VIII. INSURANCE**

**Chapter 1. Liability for Agent for Failure to Procure Insurance.**

- 870.00 Failure to Procure Insurance—Negligence Issue. (6/2013)
- 870.10 Failure to Procure Insurance—Breach of Contract Issue. (2/2005)

**Chapter 2. Accident, Accidental Means, and Suicide.**

- 870.20 Accidental Means Definition. (5/2005)

- 870.21 "Accident" or "Accidental Means" Issue—Effect of Diseased Condition. (5/2005)
- 870.25 Accident Issue—Insurance. (2/2005)
- 870.30 General Risk Life Insurance Policy—Suicide as a Defense. (3/2005)
- 870.72 Identity Theft—Identifying Information. (6/2010)
- 870.73 Identity Theft—Identifying/Personal Information. (6/2010)

**Chapter 3. Disability.**

- 880.00 Disability—Continuous and Total Disability Issue. (3/2005)
- 880.01 Disability—Continuous Confinement Within Doors Issue. (3/2005)
- 880.02 Disability—Constant Care of a Licensed Physician Issue. (3/2005)

**Chapter 4. Material Misrepresentations.**

- 880.14 Misrepresentation in Application for Insurance—Factual Dispute. (5/2005)
- 880.15 Misrepresentation in Application for Insurance—Issue of Falsity of Representation. (5/2005)
- 880.20 Materiality of Misrepresentation in Application for Insurance. (5/2006)
- 880.25 Fire Insurance Policy—Willful Misrepresentation in Application. (5/2005)
- 880.26 Concealment in Application for Non-Marine Insurance. (5/2005)
- 880.30 Misrepresentation in Application—False Answer(s) Inserted by Agent. (Estoppel). (5/2006)

**Chapter 5. Definitions.**

- 900.10 Definition of Fiduciary; Explanation of Fiduciary Relationship. (6/2020)

**Chapter 6. Fire Insurance.**

- 910.20 Fire Insurance—Hazard Increased by Insured. (5/2006)
- 910.25 Fire Insurance—Intentional Burning by Insured. (5/2006)
- 910.26 Fire Insurance Policy—Willful Misrepresentation in Application. (5/2006)
- 910.27 Fire Insurance—Defense of Fraudulent Proof of Loss. (5/2006)

**Chapter 7. Damages.**

- 910.80 Insurance—Damages for Personal Property—Actual Cash Value. (6/1983)
- 910.90 Insurance—Damages for Real Property—Actual Cash Value. (6/1983)

**APPENDICES.**

- A. TABLE OF SECTIONS OF GENERAL STATUTES INVOLVED IN CIVIL INSTRUCTIONS. (6/1985)
- B. DESCRIPTIVE WORD INDEX. (6/2017)

**North Carolina**  
**Conference of Superior Court Judges**  
Committee on Pattern Jury Instructions

**North Carolina**  
**PATTERN JURY**  
**INSTRUCTIONS**  
**for Civil Cases**

**Volume II**  
2021 Supplement

ISBN 978-1-64238-035-4



TABLE OF CONTENTS

PREFACE

INTRODUCTION

GUIDE TO THE USE OF THIS BOOK

SIGNIFICANT NEW DEVELOPMENTS

NORTH CAROLINA PATTERN JURY INSTRUCTIONS FOR CIVIL CASES: \*Dates the instructions were adopted are found in parentheses after the title of the instruction.

**PART I. GENERAL**

**Chapter 1. Preliminary Instructions.**

- 100.10 Opening Statement. (12/2004)
- 100.15 Cameras and Microphones in Courtroom. (5/2004)
- 100.20 Recesses. (6/2010)
- 100.21 Recesses. (6/2010)
- 100.40 Deposition Testimony. (5/2004)
- 100.44 Interrogatories. (12/2004)
- 100.70 Taking of Notes by Jurors. (5/2004)
- 101.00 Admonition to the Trial Judge on Stating the Evidence and Relating the Law to the Evidence. (10/1985)
- 101.05 Function of the Jury. (3/1994)
- 101.10 Burden of Proof and Greater Weight of the Evidence. (3/1994)
- 101.11 Clear, Strong, and Convincing Evidence. (11/2004)
- 101.14 Judicial Notice. (10/1983)
- 101.15 Credibility of Witness. (3/1994)
- 101.20 Weight of the Evidence. (3/1994)
- 101.25 Testimony of Expert Witness. (2/1994)
- 101.30 Testimony of Interested Witness. (3/1994)
- 101.32 Evidence—Limitation as to Parties. (10/1983)
- 101.33 Evidence—Limitation as to Purpose. (3/2017)
- 101.35 Impeachment of Witness by Prior Statement. (5/1992)
- 101.36 Impeachment of Witness or Party by Proof of Crime. (4/1986)
- 101.37 Evidence Relating to the Character Trait of a Witness (Including Party) for Truthfulness. (4/1986)
- 101.38 Evidence—Invocation by Witness of Fifth Amendment Privilege against Self-Incrimination. (5/2009)
- 101.39 Evidence—Spoliation by a Party. (6/2010)
- 101.40 Photograph, Videotape, Motion Pictures, X-Ray, Other Pictorial Representations; Map, Models, Charts—Illustrative and Substantive Evidence. (10/1985)
- 101.41 Stipulations. (1/1988)
- 101.42 Requests for Admissions. (1/1988)
- 101.43 Deposition Evidence. (4/1988)
- 101.45 Circumstantial Evidence. (10/1985)
- 101.46 Definition of [Intent] [Intentionally]. (12/2016)
- 101.50 Duty to Recall Evidence. (3/1994)
- 101.60 Issues. (3/1994)
- 101.62 Presumptions. (4/1984)

101.65 Peremptory Instruction. (8/1982)

**Chapter 2. General Negligence Instructions.**

- 102.10 Negligence Issue—Burden of Proof. (5/1994)  
102.10A Negligence Issue—Stipulation of Negligence. (5/2009)  
102.11 Negligence Issue—Definition of Common Law Negligence. (6/2018)  
102.12 Negligence Issue—Definition of Negligence in and of Itself (Negligence *Per Se*). (8/2015)  
102.13 Negligence of Minor Between Seven and Fourteen Years of Age. (6/2018)  
102.14 Negligence Issue—No Duty to Anticipate Negligence of Others. (5/1994)  
102.15 Negligence Issue—Doctrine of Sudden Emergency. (1/2019)  
102.16 Negligence Issue—Sudden Emergency Exception to Negligence *Per Se*. (5/1994)  
102.19 Proximate Cause—Definition; Multiple Causes. (5/2009))  
102.20 Proximate Cause—Peculiar Susceptibility. (3/2017)  
102.26 Proximate Cause—Act of God. (5/1994)  
102.27 Proximate Cause—Concurring Acts of Negligence. (3/2005)  
102.28 Proximate Cause—Insulating Acts of Negligence. (6/2010)  
102.30 Proximate Cause—Defense of Sudden Incapacitation. (2/2000)  
102.32 Negligence Issue—Breach of Parent’s Duty to Supervise Minor Children. (5/1992)  
102.35 Contentions of Negligence. (3/1994)  
102.50 Final Mandate—Negligence Issue. (3/1994)  
102.60 Concurring Negligence. (3/2005)  
102.65 Insulating/Intervening Negligence. (6/2020)  
102.84 Negligence—Infliction of Severe Emotional Distress. (2/2020)  
102.85 Willful or Wanton Conduct Issue (“Gross Negligence”). (5/1997)  
102.86 Willful or Wanton Conduct Issue (“Gross Negligence”)—Used to Defeat Contributory Negligence. (12/2003)  
102.87 Willful and Malicious Conduct Issue—Used to Defeat Parent-Child Immunity. (3/2016)  
102.90 Negligence Issue—Joint Conduct—Multiple Tortfeasors. (3/1994)  
102.95 Architect—Project Expediter—Negligence in Scheduling. (5/2005)

**Chapter 3. General Agency Instructions.**

- 103.10 Agency Issue—Burden of Proof—When Principal Is Liable. (1/2019)  
103.15 Independent Contractor. (5/1992)  
103.30 Agency Issue—Civil Conspiracy (One Defendant). (4/2019)  
103.31 Agency Issue—Civil Conspiracy (Multiple Defendants). (4/2019)  
103.40 Disregard of Corporate Entity of Affiliated Company—Instrumentality Rule (“Piercing the Corporate Veil”). (6/2020)  
103.50 Agency—Departure from Employment. (10/1985)  
103.55 Agency—Willful and Intentional Injury Inflicted by an Agent. (10/1985)  
103.70 Final Mandate—Agency Issue. (10/1985)

**Chapter 3a. Contributory Negligence Instructions.**

- 104.10 Contributory Negligence Issue—Burden of Proof—Definition. (6/2018)  
104.25 Contributory Negligence of Minor Between Seven and Fourteen Years of Age. (6/2018)  
104.35 Contentions of Contributory Negligence. (3/1994)  
104.50 Final Mandate—Contributory Negligence Issue. (3/1994)

**Chapter 4. Third Party Defendants.**

- 108.75 Negligence of Third Party Tort-Feasor—Contribution. (10/1985)

**Chapter 5. Summary Instructions.**

- 150.10 Jury Should Consider All Contentions. (3/1994)
- 150.12 Jury Should Render Verdict Based on Fact, Not Consequences. (3/1994)
- 150.20 The Court Has No Opinion. (3/1994)
- 150.30 Verdict Must Be Unanimous. (3/1994)
- 150.40 Selection of Foreperson. (3/1994)
- 150.45 Concluding Instructions—When To Begin Deliberations, Charge Conference. (3/1994)
- 150.50 Failure of Jury to Reach a Verdict. (10/1980)
- 150.60 Discharging the Jury. (5/1988)

**PART II. CONTRACTS**

**Chapter 1. General Contract Instructions.**

- 501.00 Introduction to Contract Series. (5/2003)

**Chapter 2. Issue of Formation of Contract.**

- 501.01 Contracts—Issue of Formation—Common Law. (6/2018)
- 501.01A Contracts—Issue of Formation—UCC. (6/2018)
- 501.02 Contracts—Issue of Formation—Peremptory Instruction. (5/2003)
- 501.03 Contracts—Issue of Formation—Parties Stipulate the Contract. (5/2003)
- 501.05 Contracts—Issue of Formation—Defense of Lack of Mental Capacity. (6/2018)
- 501.10 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Fair Dealing and Lack of Notice. (5/2003)
- 501.15 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Necessities. (5/2003)
- 501.20 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Ratification (Incompetent Regains Mental Capacity). (5/2003)
- 501.25 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Ratification (by Agent, Personal Representative or Successor). (5/2003)
- 501.30 Contracts—Issue of Formation—Defense of Mutual Mistake of Fact. (6/2013)
- 501.35 Contracts—Issue of Formation—Defense of Undue Influence. (5/2003)
- 501.40 Contracts—Issue of Formation—Defense of Duress. (5/2003)
- 501.45 Contracts—Issue of Formation—Defense of Fraud. (5/2004)
- 501.50 Contracts—Issue of Formation—Defense of Grossly Inadequate Consideration (“Intrinsic Fraud”). (5/2003)
- 501.52 Contracts—Issue of Formation—Defense of Fraud in the Factum. (5/2003)
- 501.55 Contracts—Issue of Formation—Defense of Constructive Fraud. (6/2018)
- 501.60 Contracts—Issue of Formation—Defense of Constructive Fraud—Rebuttal by Proof of Openness, Fairness, and Honesty. (5/2003)
- 501.65 Contracts—Issue of Formation—Defense of Infancy. (5/2003)
- 501.67 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Emancipation. (5/2003)
- 501.70 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Ratification After Minor Comes of Age. (5/2003)
- 501.75 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Ratification by Guardian, Personal Representative or Agent. (5/2003)
- 501.80 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Necessities. (5/2003)

**Chapter 3. Issue of Breach.**

- 502.00 Contracts—Issue of Breach By Non-Performance. (5/2003)
- 502.05 Contracts—Issue of Breach By Repudiation. (6/2018)
- 502.10 Contracts—Issue of Breach By Prevention. (5/2003)

- 502.15 Contracts—Issue of Breach—Defense of Waiver. (5/2004)
- 502.20 Contracts—Issue of Breach—Defense of Prevention by Plaintiff. (5/2003)
- 502.25 Contracts—Issue of Breach—Defense of Frustration of Purpose. (6/2014)
- 502.30 Contracts—Issue of Breach—Defense of Impossibility (Destruction of Subject Matter of Contract). (6/2014)
- 502.35 Contracts—Issue of Breach—Defense of Impossibility (Death, Disability, or Illness of Personal Services Provider). (6/2014)
- 502.40 Contracts—Issue of Breach—Defense of Illegality or Unenforceability. (2/2020)
- 502.45 Contracts—Issue of Breach—Defense of Unconscionability. (5/2003)
- 502.47 Contracts—Issue of Breach—Direct Damages—Defense of Oral Modification of Written Contract. (5/2003)
- 502.48 Contracts—Issue of Breach—Defense of Modification. (5/2003)
- 502.50 Contracts—Issue of Breach—Defense of Rescission. (5/2003)
- 502.55 Contracts—Issue of Breach—Defense of Novation. (5/2003)
- 502.60 Contracts—Issue of Breach—Defense of Accord and Satisfaction. (5/2003)

**Chapter 4. Issue of Common Law Remedy.**

- 503.00 Contracts—Issue of Common Law Remedy—Rescission. (5/2003)
- 503.01 Contracts—Issue of Common Law Remedy—Rescission—Measure of Restitution. (6/2014)
- 503.03 Contracts—Issue of Common Law Remedy—Specific Performance. (5/2003)
- 503.06 Contracts—Issue of Common Law Remedy—Statement of Damages Issue. (5/2003)
- 503.09 Contracts—Issue of Common Law Remedy—Damages in General. (5/2003)
- 503.12 Contracts—Issue of Common Law Remedy—Direct Damages—Buyer’s Measure of Recovery for a Seller’s Breach of Contract to Convey Real Property. (5/2003)
- 503.15 Contracts—Issue of Common Law Remedy—Direct Damages—Seller’s Measure of Recovery for a Buyer’s Breach of Executory Contract to Purchase Real Property. (5/2003)
- 503.18 Contracts—Issue of Common Law Remedy—Direct Damages—Broker’s Measure of Recovery for a Seller’s Breach of an Exclusive Listing Contract. (5/2003)
- 503.21 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Contractor’s Partial Breach of a Construction Contract. (5/2003)
- 503.24 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Contractor’s Partial Breach of a Construction Contract Where Correcting the Defect Would Cause Economic Waste. (5/2003)
- 503.27 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Partial Breach of a Repair or Services Contract. (5/2003)
- 503.30 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Contractor’s Failure to Perform any Work Under a Construction, Repair, or Services Contract. (5/2003)
- 503.33 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract Where the Contractor Has Fully Performed. (5/2003)
- 503.36 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract Where the Contractor Has Not Begun Performance. (5/2003)
- 503.39 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract After the Contractor Delivers Partial Performance. (5/2003)
- 503.42 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract Where the Contractor Elects to Recover Preparation and Performance Expenditures. (5/2003)



- 503.45 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for Loss of Rent due to a Lessee’s, Occupier’s, or Possessor’s Breach of Lease of Real Estate or Personal Property. (5/2003)
- 503.48 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for Loss of Use Due to a Lessee’s, Occupier’s, or Possessor’s Breach of Lease of Real Estate or Personal Property. (5/2003)
- 503.51 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for Real Estate or Personal Property Idled by Breach of a Contract Where Proof of Lost Profits or Rental Value Is Speculative. (5/2003)
- 503.54 Contracts—Issue of Common Law Remedy—Direct Damages—Employer’s Measure of Recovery for Employee’s Wrongful Termination of an Employment Contract. (5/2003)
- 503.70 Contracts—Issue of Common Law Remedy—Incidental Damages. (5/2003)
- 503.73 Contracts—Issue of Common Law Remedy—Consequential Damages. (5/2003)
- 503.75 Breach Of Contract—Special Damages—Loss Of Profits (Formerly 517.20) (6/2013)
- 503.76 Contracts—Issue of Common Law Remedy—Future Worth of Damages in Present Value. (5/2003)
- 503.79 Contracts—Issue of Common Law Remedy—Damages Mandate. (5/2003)
- 503.90 Contracts—Issue of Common Law Remedy—Defense (Offset) for Failure to Mitigate. (5/2003)
- 503.91 Contracts—Issue of Common Law Remedy—Defense (Offset) for Failure to Mitigate—Amount of Credit. (5/2003)
- 503.94 Contracts—Issue of Common Law Remedy—Validity of Liquidated Damages Provision. (5/2003)
- 503.97 Contracts—Issue of Common Law Remedy—Amount of Liquidated Damages. (5/2003)
- Chapter 5. Issue of UCC Remedy.**
- 504.00 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Seller’s Repudiation. (5/2003)
- 504.03 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Seller’s Failure to Make Delivery or Tender. (5/2003)
- 504.06 Contracts—Issue of UCC Remedy—Buyer’s Remedy of Rightful Rejection. (5/2003)
- 504.09 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Rightful Rejection. (5/2003)
- 504.12 Contracts—Issue of UCC Remedy—Buyer’s Remedy of Justifiable Revocation of Acceptance. (5/2003)
- 504.15 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Justifiable Revocation of Acceptance. (5/2003)
- 504.18 Contracts—Issue of UCC Remedy—Buyer’s Damages After Acceptance and Retention of Goods. (5/2003)
- 504.21 Contracts—Issue of UCC Remedy—Buyer’s Remedy of Specific Performance. (5/2003)
- 504.24 Contracts—Issue of UCC Remedy—Seller’s Remedy (or Defense) of Stopping Delivery of Goods. (5/2003)
- 504.27 Contracts—Issue of UCC Remedy—Seller’s Remedy (or Defense) of Reclaiming Goods Already Delivered. (5/2003)
- 504.30 Contracts—Issue of UCC Remedy—Seller’s Remedy of Resale. (5/2003)
- 504.33 Contracts—Issue of UCC Remedy—Seller’s Resale Damages. (5/2003)
- 504.36 Contracts—Issue of UCC Remedy—Seller’s Contract—Market Damages. (5/2003)
- 504.39 Contracts—Issue of UCC Remedy—Seller’s Lost Profit Damages. (5/2003)
- 504.42 Contracts—Issue of UCC Remedy—Seller’s Remedy of Action for Price (Specific Performance) for Delivered Goods. (5/2003)

- 504.45 Contracts—Issue of UCC Remedy—Seller’s Remedy of Action for Price (Specific Performance) for Undelivered Goods. (5/2003)
- 504.48 Contracts—Issue of UCC Remedy—Defense (Offset) of Failure to Mitigate. (5/2003)
- 504.51 Contracts—Issue of UCC Remedy—Validity of Liquidated Damages Provision. (5/2003)
- 504.54 Contracts—Issue of UCC Remedy—Amount of Liquidated Damages. (5/2003)

**Chapter 6. Minor’s Claims Where Contract Disavowed.**

- 505.20 Contracts—Issue of Remedy—Minor’s Claim for Restitution Where Contract Is Disavowed. (5/2003)
- 505.25 Contracts—Issue of Remedy—Minor’s Claim for Restitution Where Contract Is Disavowed—Measure of Recovery. (5/2003)

**Chapter 7. Agency.**

- 516.05 Agency in Contract—Actual and Apparent Authority of General Agent. (1/2019)
- 516.15 Agency—Ratification. (1/2019)
- 516.30 Agency—Issue of Undisclosed Principal—Liability of Agent. (4/2005)
- 517.20 Breach of Contract—Special Damages—Loss of Profits. (6/2013)

**Chapter 8. Deleted. (5/2003)**

**Chapter 9. Action on Account.**

- 635.20 Action on Unverified Account—Issue of Liability. (5/1991)
- 635.25 Action on Unverified Account—Issue of Amount Owed. (5/1991)
- 635.30 Action on Verified Itemized Account. (5/1991)
- 635.35 Action on Account Stated. (6/2014)
- 635.40 Action on Account—Defense of Payment. (5/1991)

**Chapter 10. Employment Relationship.**

- 640.00 Introduction to “Employment Relationship” Series. (6/2014)
- 640.00A Introduction to “Employment Relationship” Series (Delete Sheet). (6/2010)
- 640.01 Employment Relationship—Status of Person as Employee. (6/2018)
- 640.02 Employment Relationship—Constructive Termination. (6/2010)
- 640.03 Employment Relationship—Termination/Resignation. (6/2010)
- 640.10 Employment Relationship—Employment for a Definite Term. (2/1991)
- 640.12 Employment Relationship—Breach of Agreement for a Definite Term. (5/1991)
- 640.14 Employment Relationship—Employer’s Defense of Just Cause. (2/1991)
- 640.20 Employment Relationship—Wrongful (Tortious) Termination. (3/2017)
- 640.22 Employment Relationship—Employer’s Defense to Wrongful (Tortious) Termination. (4/1998)
- 640.25 Employment Relationship—Blacklisting. (11/1996)
- 640.27 Employment Discrimination—Pretext Case. (6/2018)
- 640.28 Employment Discrimination—Mixed Motive Case. (5/2004)
- 640.29A Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—Introduction. (6/2018)
- 640.29B Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Direct Admission Case*. (6/2010)
- 640.29C Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Pretext Case*. (6/2010)
- 640.29D Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Mixed Motive Case* (Plaintiff). (6/2010)
- 640.29E Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Mixed Motive Case* (Defendant). (5/2009)
- 640.30 Employment Relationship—Damages. (6/2010)

- 640.32 Employment Relationship—Mitigation of Damages. (6/2014)
- 640.40 Employment Relationship—Vicarious Liability of Employer for Co-Worker Torts. (6/2015)
- 640.42 Employment Relationship—Liability of Employer for Negligence in Hiring, Supervision, or Retention of an Employee. (5/2009)
- 640.43 Employment Relationship—Liability of Employer for Negligence in Hiring or Selecting an Independent Contractor. (5/2009)
- 640.44 Employment Relationship—Liability of Employer for Negligence in Retaining an Independent Contractor. (5/2009)
- 640.46 Employment Relationship—Liability of Employer for Injury to Employee—Exception to Workers’ Compensation Exclusion. (2/2017)
- 640.48 Employment Relationship—Liability of Principal for Negligence of Independent Contractor (Breach of Non-Delegable Duty of Safety)—Inherently Dangerous Activity. (5/2009)
- 640.60 Employment Relationships—Wage & Hour Act—Wage Payment Claim (2/2017)
- 640.65 Employment Relationships—Wage & Hour Act—Wage Payment Claim—Damages (6/2014)
- 640.70 Public Employee—Direct North Carolina Constitutional Claim—Enjoyment of Fruits of Labor. (2/2019)

**Chapter 11. Covenants Not to Compete.**

- 645.20 Covenants Not to Compete—Issue of the Existence of the Covenant. (6/2015)
- 645.30 Covenants Not to Compete—Issue of Whether Covenant was Breached. (5/1976)
- 645.50 Covenants not to Compete—Issue of Damages. (5/2006)

**Chapter 12. Actions for Services Rendered a Decedent.**

- 714.18 Products Liability—Military Contractor Defense. (6/2007)
- 735.00 Action for Services Rendered a Decedent—Issue of Existence of Contract. (11/2/2004)
- 735.05 Action for Services Rendered a Decedent—Evidence of Promise to Compensate by Will. (12/1977)
- 735.10 Action for Services Rendered a Decedent—Presumption that Compensation Is Intended. (5/1978)
- 735.15 Action for Services Rendered a Decedent—Presumption of Gratuity by Family Member. (12/1977)
- 735.20 Action for Services Rendered a Decedent—Issue of Breach of Contract. (12/1977)
- 735.25 Action for Services Rendered a Decedent—Issue of Recovery. (12/1977)
- 735.30 Action for Services Rendered a Decedent—Issue of Recovery—Benefits or Offsets. (10/1977)
- 735.35 Action for Services Rendered a Decedent—Issue of Recovery—Evidence of Value of Specific Property. (10/1977)
- 735.40 Action for Services Rendered a Decedent—Issue of Recovery—Statute of Limitations. (5/1978)

**Chapter 13. Quantum Meruit.**

- 736.00 Quantum Meruit—Quasi Contract—Contract Implied at Law. (5/2016)
- 736.01 Quantum Meruit—Quasi Contract—Contract Implied at Law: Measure of Recovery. (6/2015)

**Chapter 14. Leases.**

## **VOLUME II**

### **Part III. WARRANTIES AND PRODUCTS LIABILITY**

#### **Chapter 1. Warranties in Sales of Goods.**

- 741.00 Warranties in Sales of Goods. (5/1999)
- 741.05 Warranties in Sales of Goods—Issue of Existence of Express Warranty. (5/1999)
- 741.10 Warranties in Sales of Goods—Issue of Breach of Express Warranty. (5/1999)
- 741.15 Warranties in Sales of Goods—Issue of Existence of Implied Warranty of Merchantability. (6/2013)
- 741.16 Warranties in Sales of Goods—Issue of Seller’s Defense of Modification of Implied Warranty of Merchantability. (5/1999)
- 741.17 Warranties in Sales of Goods—Issue of Seller’s Defense of Exclusion of Implied Warranty of Merchantability. (5/1999)
- 741.18 Warranties in Sales of Goods—Issue of Seller’s Defense of Buyer’s Actual or Constructive Knowledge of Defects—Implied Warranty of Merchantability. (5/1999)
- 741.20 Warranties in Sales of Goods—Issue of Breach of Implied Warranty of Merchantability. (12/2003)
- 741.25 Warranties in Sales of Goods—Issue of Existence of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.26 Warranties in Sales of Goods—Issue of Seller’s Defense of Modification of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.27 Warranties in Sales of Goods—Issue of Seller’s Defense of Exclusion of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.28 Warranties in Sales of Goods—Issue of Seller’s Defense of Buyer’s Actual or Constructive Knowledge of Defects—Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.30 Warranties in Sales of Goods—Issue of Breach of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.31 Warranties in Sales of Goods—Issue of Existence of Implied Warranty Created by Course of Dealing or by Usage of Trade. (5/1999)
- 741.32 Warranties in Sales of Goods—Issue of Seller’s Defense of Exclusion of Implied Warranty Created by Course of Dealing or by Usage of Trade. (5/1999)
- 741.33 Warranties in Sales of Goods—Issue of Seller’s Defense of Buyer’s Actual or Constructive Knowledge of Defects—Implied Warranty Created by Course of Dealing or by Usage of Trade. (5/1999)
- 741.34 Warranties in Sales of Goods—Issue of Breach of Implied Warranty Created by Course of Dealing or Usage of Trade. (5/1999)
- 741.35 Warranties in Sales of Goods—Remedies—Rightful Rejection. (5/1999)
- 741.40 Warranties in Sales of Goods—Rightful Rejection—Damages. (5/1999)
- 741.45 Warranties in Sales of Goods—Remedies—Justifiable Revocation of Acceptance. (5/1999)
- 741.50 Warranties in Sales of Goods—Justifiable Revocation of Acceptance—Damages. (5/1999)
- 741.60 Warranties in Sales of Goods—Remedy for Breach of Warranty Where Accepted Goods are Retained—Damages. (5/1999)
- 741.65 Express and Implied Warranties—Third Party Rights of Action (Horizontal) Against Buyer’s Seller. (5/1999)
- 741.66 Implied Warranties—Third Party Rights of Action (Horizontal) Against Manufacturers. (5/2006)
- 741.67 Implied Warranties—Third Party Rights of Action (Vertical) Against Manufacturers. (5/1999)
- 741.70 Products Liability—Claim of Inadequate Warning or Instruction. (5/2005)

- 741.71 Products Liability—Claim Against Manufacturer for Inadequate Design or Formulation (Except Firearms or Ammunition). (5/2005)
- 741.72 Products Liability—Firearms or Ammunition—Claim Against Manufacturer or Seller for Defective Design. (5/2005)

**Chapter 2. Defenses By Sellers and Manufacturers.**

- 743.05 Products Liability (Other than Express Warranty)—Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/1999)
- 743.06 Products Liability—Exception To Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/2004)
- 743.07 Products Liability—Seller’s and Manufacturer’s Defense of Product Alteration or Modification. (5/1999)
- 743.08 Products Liability—Seller’s and Manufacturer’s Defense of Use Contrary to Instructions or Warnings. (5/1999)
- 743.09 Products Liability—Seller’s and Manufacturer’s Defense of Unreasonable Use In Light of Knowledge of Unreasonably Dangerous Condition of Product. (5/1999)
- 743.10 Products Liability—Seller’s and Manufacturer’s Defense of Claimant’s Failure to Exercise Reasonable Care as Proximate Cause of Damage. (5/1999)
- 744.05 Products Liability (Other than Express Warranty)—Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/1999)
- 744.06 Products Liability—Exception to Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/2004)
- 744.07 Products Liability—Seller’s and Manufacturer’s Defense of Product Alteration or Modification. (5/1999)
- 744.08 Products Liability—Seller’s and Manufacturer’s Defense of Use Contrary to Instructions or Warnings. (6/2010)
- 744.09 Products Liability—Seller’s and Manufacturer’s Defense of Unreasonable Use in Light of Knowledge of Unreasonably Dangerous Condition of Product. (5/1999)
- 744.10 Products Liability—Seller’s and Manufacturer’s Defense of Claimant’s Failure to Exercise Reasonable Care as Proximate Cause of Damage. (5/1999)
- 744.12 Products Liability—Seller’s and Manufacturer’s Defense of Open and Obvious Risk. (5/1999)
- 744.13 Products Liability—Prescription Drugs—Seller’s and Manufacturer’s Defense of Delivery of Adequate Warning or Instruction to Prescribers or Dispensers. (5/1999)
- 744.16 Products Liability—Manufacturer’s Defense of Inherent Characteristic. (5/1999)
- 744.17 Products Liability—Prescription Drugs—Manufacturer’s Defense of Unavoidably Unsafe Aspect. (5/1999)
- 744.18 Products Liability—Statute of Limitations. (6/2010)

**Chapter 3. New Motor Vehicle Warranties (“Lemon Law”).**

- 745.01 New Motor Vehicles Warranties Act (“Lemon Law”)—Manufacturer’s Failure to Make Repairs Necessary to Conform New Motor Vehicle to Applicable Express Warranties. (6/2013)
- 745.03 New Motor Vehicles Warranties Act (“Lemon Law”)—Manufacturer Unable to Conform New Motor Vehicle to Express Warranty. (6/2013)
- 745.05 New Motor Vehicles Warranties Act (“Lemon Law”)—Manufacturer’s Affirmative Defense of Abuse, Neglect, Odometer Tampering, or Unauthorized Modifications or Alterations. (6/2013)
- 745.07 New Motor Vehicles Warranties Act (“Lemon Law”)—Damages When Plaintiff is a Purchaser. (6/2015)
- 745.09 New Motor Vehicles Warranties Act (“Lemon Law”)—Damages When Plaintiff is a Lessee. (6/2015)
- 745.11 New Motor Vehicles Warranties Act (“Lemon Law”)—Damages When Plaintiff is a Lessor. (6/2015)

- 745.13 New Motor Vehicles Warranties Act (“Lemon Law”)—Unreasonable Refusal to Comply with Requirements of Act. (5/1999)
- Chapter 4. New Dwelling Warranty.**
- 747.00 Warranties in Sales of Dwellings—Issue of Existence of Implied Warranty of Habitability. (5/1999)
- 747.10 Warranties in Sales of Dwellings—Issue of Builder’s Defense that Buyer Had Notice of Defect. (5/1999)
- 747.20 Warranties in Sales of Dwellings—Issue of Breach of Implied Warranty of Habitability. (12/2003)
- 747.30 Warranties in Sales of Dwellings—Remedies—Rescission. (5/1999)
- 747.35 Warranties in Sales of Dwellings—Remedies—Special Damages Following Rescission. (5/1999)
- 747.36 Warranties in Sales of Dwellings—Remedies—Credit to Seller for Reasonable Rental Value. (5/1999)
- 747.40 Warranties in Sales of Dwellings—Remedies—Damages Upon Retention of Dwelling. (5/1999)

#### **Part IV. MISCELLANEOUS TORTS**

##### **Chapter 1. Fraud.**

- 800.00 Fraud. (6/2018)
- 800.00A Fraud—Statute of Limitations (5/2016)
- 800.05 Constructive Fraud. (6/2018)
- 800.06 Constructive Fraud—Rebuttal by Proof of Openness, Fairness and Honesty. (6/2018)
- 800.07 Fraud: Damages. (6/2007)
- 800.10 Negligent Misrepresentation. (3/2020)
- 800.11 Negligent Misrepresentation: Damages. (6/2007)

##### **Chapter 2. Criminal Conversation and Alienation of Affections.**

- 800.20 Alienation of Affection. (12/2016)
- 800.22 Alienation of Affections—Damages. (6/2007)
- 800.23 Alienation of Affection—Statute of Limitations. (6/2010)
- 800.23A Alienation of Affection—Statute of Limitations. (6/2010)
- 800.25 Criminal Conversation. (Adultery). (6/2010)
- 800.26 Alienation of Affection/Criminal Conversation—Damages. (6/2010)
- 800.27 Criminal Conversation—Statute of Limitations. (6/2015)
- 800.27A Criminal Conversation—Statute of Limitations. (6/2015)

##### **Chapter 3. Assault and Battery.**

- 800.50 Assault. (2/1994)
- 800.51 Battery. (2/2016)
- 800.52 Assault and Battery—Defense of Self. (5/1994)
- 800.53 Assault and Battery—Defense of Family Member. (5/1994)
- 800.54 Assault and Battery—Defense of Another from Felonious Assault. (5/2004)
- 800.56 Assault and Battery—Defense of Property. (5/1994)

##### **Chapter 3A. Infliction of Emotional Distress.**

- 800.60 Intentional or Reckless Infliction of Severe Emotional Distress. (4/2004)

##### **Chapter 3B. Loss of Consortium.**

800.65 Action for Loss of Consortium. (12/1999)

**Chapter 4. Invasion of Privacy.**

800.70 Invasion of Privacy—Offensive Intrusion. (6/2013)

800.71 Invasion of Privacy—Offensive Intrusion—Damages. (6/2010)

800.75 Invasion of Privacy—Appropriation of Name or Likeness for Commercial Use.  
(5/2001)

800.76 Invasion of Privacy—Appropriation of Name or Likeness for Commercial Use—  
Damages. (5/2001)

**Chapter 5. Malicious Prosecution, False Imprisonment, and  
Abuse of Process.**

801.00 Malicious Prosecution—Criminal Proceeding. (6/2014)

801.01 Malicious Prosecution—Civil Proceeding. (1/1995)

801.05 Malicious Prosecution—Damages. (10/1994)

801.10 Malicious Prosecution—Punitive Damages—Issue of Existence of Actual Malice.  
(5/2001)

802.00 False Imprisonment. (6/2014)

802.01 False Imprisonment—Merchant’s Defenses. (5/2004)

803.00 Abuse of Process. (6/2012)

804.00 Section 1983—Excessive Force in Making Lawful Arrest. (5/2004)

804.01 Excessive Force in Making Arrest—Common Law Claim for Battery—Issue of  
Battery (3/2016)

804.02 Excessive Force in Making Arrest—Common Law Claim for Battery—Issue of  
Lawfulness of Arrest (3/2016)

804.03 Excessive Force in Making Arrest—Common Law Claim for Battery—Issue of  
Reasonableness of Force Used (3/2016)

804.04 Excessive Force in Making Arrest—Common Law Claim for Battery—Damages  
(3/2016)

804.05 Excessive Force in Making Arrest—Common Law Claim for Battery—Sample Verdict  
Sheet (3/2016)

804.06 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Color of State Law  
(3/2016)

804.07 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Use of Force  
(3/2016)

804.08 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Color of  
Lawfulness of Arrest (3/2016)

804.09 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Color of  
Reasonableness of Force Used (3/2016)

804.10 Excessive Force in Making Arrest—Section 1983 Claim—Damages (3/2016)

804.11 Excessive Force in Making Lawful Arrest—Section 1983 Claim—Punitive Damages  
(3/2016)

804.12 Excessive Force in Making Arrest—Section 1983 Claim—Verdict Sheet (3/2016)

804.50 Section 1983—Unreasonable Search of Home. (6/2016)

**Chapter 6. Nuisances and Trespass.**

805.00 Trespass to Real Property. (6/2015)

805.05 Trespass to Real Property—Damages. (5/2001)

805.10 Trespass to Personal Property. (5/2001)

805.15 Trespass to Personal Property—Damages. (5/2001)

805.20<sup>[DO1]</sup> Littering—Civil Action for Damages for Felonious Littering. (3/2020)

805.21 Littering—Civil Action for Damages for Felonious Littering—Damages Issue.  
(4/2019)

805.25<sup>[DO2]</sup> Private Nuisance. (5/2020)

**Chapter 7. Owners and Occupiers of Land.**

- 805.50 Status of Party—Lawful Visitor or Trespassor. (5/1999)
- 805.55 Duty of Owner to Lawful Visitor. (5/2020)
- 805.56 Duty of Owner to Lawful Visitor—Defense of Contributory Negligence. (6/2018)
- 805.60 Duty of Owner to Licensee. (Delete Sheet). (5/1999)
- 805.61 Duty of Owner to Licensee—Defense of Contributory Willful or Wanton Conduct (“Gross Negligence”). (Delete Sheet). (5/1999)
- 805.64 Duty of Owner to Trespasser—Intentional Harms (6/2013)
- 805.64A Duty of Owner to Trespasser—Use of Reasonable Force Defense (6/2013)
- 805.64B Duty of Owner to Child Trespasser—Artificial Condition (6/2013)
- 805.64C Duty of Owner to Trespasser: Position of Peril (6/2013)
- 805.65 Duty of Owner to Trespasser. (6/2013)
- 805.65A Duty of Owner to Child Trespasser—Attractive Nuisance. (6/2013)
- 805.66 Duty of Owner to Trespasser—Defense of Contributory Willful or Wanton Conduct (“Gross Negligence”). (11/2004)
- 805.67 Duty of City or County to Users of Public Ways. (5/1990)
- 805.68 City or County Negligence—Defense of Contributory Negligence—Sui Juris Plaintiff. (5/1990)
- 805.69 Municipal or County Negligence—Defense of Contributory Negligence—Handicapped Plaintiff. (5/1990)
- 805.70 Duty of Adjoining Landowners—Negligence. (5/1990)
- 805.71 Duty of Landlord to Residential Tenant—Residential Premises and Common Areas. (5/1990)
- 805.72 Duty of Landlord to Residential Tenant—Residential Premises and Common Areas—Defense of Contributory Negligence. (6/2018)
- 805.73 Duty of Landlord to Non-Residential Tenant—Controlled or Common Areas. (5/1990)
- 805.74 Duty of Landlord to Non-Residential Tenant—Controlled or Common Areas—Defense of Contributory Negligence. (6/2018)
- 805.80 Duty of Landlord to Tenant—Vacation Rental. (5/2001)

**Chapter 8. Conversion.**

- 806.00 Conversion. (5/1996)
- 806.01 Conversion—Defense of Abandonment. (5/1996)
- 806.02 Conversion—Defense of Sale (or Exchange). (5/1996)
- 806.03 Conversion—Defense of Gift. (4/2004)
- 806.05 Conversion—Damages. (5/1996)

**Chapter 9. Defamation.**

- 806.40 Defamation—Preface. (6/2021)
- 806.50 Defamation—Libel Actionable *Per Se*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.51 Defamation—Libel Actionable *Per Se*—Private Figure—Matter of Public Concern. (6/2021)
- 806.53 Defamation—Libel Actionable *Per Se*—Public Figure or Official. (6/2021)
- 806.60 Defamation—Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.61 Defamation—Libel Actionable *Per Quod*—Private Figure—Matter of Public Concern. (6/2021)
- 806.62 Defamation—Libel Actionable *Per Quod*—Public Figure or Official. (6/2021)
- 806.65 Defamation—Slander Actionable *Per Se*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.66 Defamation—Slander Actionable *Per Se*—Private Figure—Matter of Public Concern. (6/2021)



- 806.67 Defamation—Slander Actionable *Per Se*—Public Figure or Official. (6/2021)
- 806.70 Defamation—Slander Actionable *Per Quod*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.71 Defamation—Slander Actionable *Per Quod*—Private Figure—Matter of Public Concern. (6/2021)
- 806.72 Defamation—Slander Actionable *Per Quod*—Public Figure or Official. (6/2021)
- 806.79 Defamation—Libel Actionable *Per Se* or Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern—Defense of Truth as a Defense. (6/2021)
- 806.81 Defamation Actionable *Per Se*—Private Figure—Not Matter of Public Concern—Presumed Damages. (6/2021)
- 806.82 Defamation Actionable *Per Se*—Private Figure—Matter of Public Concern—Presumed Damages. (6/2021)
- 806.83 Defamation Actionable *Per Se*—Public Figure or Official—Presumed Damages. (6/2021)
- 806.84 Defamation—Private Figure—Matter of Public Concern—Actual Damages. (6/2021)
- 806.85 Defamation—Defamation Actionable *Per Se*—Private Figure—Matter of Public Concern—Punitive Damages. (6/2021)

**Chapter 10. Interference with Contracts.**

- 807.00 Wrongful Interference with Contract Right. (6/2020)
- 807.10 Wrongful Interference with Prospective Contract. (6/2020)
- 807.20 Slander of Title. (11/2004)
- 807.50 Breach of Duty—Corporate Director. (3/2016)
- 807.52 Breach of Duty—Corporate Officer. (5/2002)
- 807.54 Breach of Duty—Controlling Shareholder of Closely Held Corporation—Issue of Closely Held Corporation. (5/2002)
- 807.56 Breach of Duty—Controlling Shareholder of Closely Held Corporation—Issue of Taking Improper Advantage of Power. (5/2002)
- 807.58 Breach of Duty—Controlling Shareholder of Closely Held Corporation—Issue of Taking Improper Advantage of Power—Defense of Good Faith, Care and Diligence. (5/2002)

**Chapter 11. Medical Malpractice. Deleted.**

**Chapter 11A. Medical Negligence/Medical Malpractice.**

- 809.00 Medical Negligence—Direct Evidence of Negligence Only. (6/2014)
- 809.00A Medical Malpractice—Direct Evidence of Negligence Only. (1/2019)
- 809.03 Medical Negligence—Indirect Evidence of Negligence Only ("Res Ipsa Loquitur"). (6/2013)
- 809.03A Medical Malpractice—Indirect Evidence of Negligence Only ("Res Ipsa Loquitur"). (5/2019)
- 809.05 Medical Negligence—Both Direct and Indirect Evidence of Negligence. (6/2014)
- 809.05A Medical Malpractice—Both Direct and Indirect Evidence of Negligence. (5/2019)
- 809.06 Medical Malpractice—Corporate or Administrative Negligence by Hospital, Nursing Home, or Adult Care Home. (6/2012)
- 809.07 Medical Negligence—Defense of Limitation by Notice or Special Agreement. (5/1998)
- 809.20 Medical Malpractice—Existence of Emergency Medical Condition. (6/2013)
- 809.22 Medical Malpractice—Emergency Medical Condition—Direct Evidence of Negligence Only. (5/2019)
- 809.24 Medical Malpractice—Emergency Medical Condition—Indirect Evidence of Negligence Only. ("Res Ipsa Loquitur"). (5/2019)
- 809.26 Medical Malpractice—Emergency Medical Condition—Both Direct and Indirect Evidence of Negligence. (5/2019)

- 809.28 Medical Malpractice—Emergency Medical Condition—Corporate or Administrative Negligence by Hospital, Nursing Home, or Adult Care Home. (6/2012)
- 809.45 Medical Negligence—Informed Consent—Actual and Constructive. (5/2019)
- 809.65 Medical Negligence—Health Care Provider’s Liability for Acts of Non-Employee Agents—Respondeat Superior. (6/2012)
- 809.65A Medical Malpractice—Health Care Provider’s Liability for Acts of Non-Employee Agents—Respondeat Superior. (5/2019)
- 809.66 Medical Negligence—Health Care Provider’s Liability for Acts of Non-Employee Agents—Respondeat Superior—Apparent Agency. (5/2019)
- 809.75 Medical Negligence—Institutional Health Care Provider’s Liability for Selection of Attending Physician. (5/2019)
- 809.80 Medical Negligence—Institutional Health Care Provider’s Liability for Agents; Existence of Agency. (6/2012)
- 809.90 Legal Negligence—Duty to Client (Delete Sheet) (6/2013)
- 809.100 Medical Malpractice—Damages—Personal Injury Generally. (6/2015)
- 809.114 Medical Malpractice Personal Injury Damages—Permanent Injury—Economic Damages. (6/2015)
- 809.115 Medical Malpractice Personal Injury Damages—Permanent Injury—Non-Economic Damages. (6/2015)
- 809.120 Medical Malpractice Personal Injury Damages—Final Mandate. (Regular). (6/2012)
- 809.122 Medical Malpractice—Personal Injury Damages—Final Mandate. (Per Diem Argument by Counsel). (6/2012)
- 809.142 Medical Malpractice—Damages—Wrongful Death Generally. (6/2015)
- 809.150 Medical Malpractice Wrongful Death Damages—Present Monetary Value of Deceased to Next-of-Kin—Economic Damages. (6/2015)
- 809.151 Medical Malpractice Wrongful Death Damages—Present Monetary Value of Deceased to Next-of-Kin—Non-Economic Damages. (6/2015)
- 809.154 Medical Malpractice Wrongful Death Damages—Final Mandate. (Regular). (6/2012)
- 809.156 Medical Malpractice Wrongful Death Damages—Final Mandate. (Per Diem Argument by Counsel). (6/2012)
- 809.160 Medical Malpractice—Damages—No Limit on Non-Economic Damages. (6/2015)
- 809.199 Medical Malpractice—Sample Verdict Form—Damages Issues. (6/2015)

**Chapter 12. Damages.**

- 810 Series Reorganization Notice—Damages. (2/2000)
- 810.00 Personal Injury Damages—Issue and Burden of Proof. (6/2012)
- 810.02 Personal Injury Damages—In General. (6/2012)
- 810.04 Personal Injury Damages—Damages—Medical Expenses. (6/2013)
- 810.04A Personal Injury Damages—Medical Expenses—Stipulation. (6/2013)
- 810.04B Personal Injury Damages—Medical Expenses—Stipulation as to Amount Paid or Necessary to Be Paid, but Not Nexus to Conduct. (6/2013)
- 810.04C Personal Injury Damages—Medical Expenses—No Stipulation, No Rebuttal Evidence. (6/2013)
- 810.04D Personal Injury Damages—Medical Expenses—No Stipulation, Rebuttal Evidence Offered. (6/2013)
- 810.06 Personal Injury Damages—Loss of Earnings. (2/2000)
- 810.08 Personal Injury Damages—Pain and Suffering. (5/2006)
- 810.10 Scars or Disfigurement. (6/2010)
- 810.12 Personal Injury Damages—Loss (of Use) of Part of the Body. (6/2010)
- 810.14 Personal Injury Damages—Permanent Injury. (6/2015)
- 810.16 Personal Injury Damages—Future Worth in Present Value. (2/2000)
- 810.18 Personal Injury Damages—Set Off/Deduction of Workers’ Compensation Award. (11/1999)

810.20	Personal Injury Damages—Final Mandate. (Regular). (6/2012)
810.22	Personal Injury Damages—Final Mandate. (Per Diem Argument by Counsel). (6/2012)
810.24	Personal Injury Damages—Defense of Mitigation. (6/2018)
810.30	Personal Injury Damages—Loss of Consortium. (12/1999)
810.32	Personal Injury Damages—Parent’s Claim for Negligent or Wrongful Injury to Minor Child. (6/2010)
810.40	Wrongful Death Damages—Issue and Burden of Proof. (1/2000)
810.41	Wrongful Death Damages—Set Off/Deduction of Workers’ Compensation Award. (5/2017)
810.42	Wrongful Death Damages—In General. (6/2012)
810.44	Wrongful Death Damages—Medical Expenses. (6/2013)
810.44A	Wrongful Death Damages—Medical Expenses—Stipulation. (6/2013)
810.44B	Wrongful Death Damages—Medical Expenses—Stipulation as to Amount Paid or Necessary to Be Paid, but Not Nexus to Conduct. (6/2013)
810.44C	Wrongful Death Damages—Medical Expenses—No Stipulation, No Rebuttal Evidence. (6/2013)
810.44D	Wrongful Death Injury Damages—Medical Expenses—No Stipulation, Rebuttal Evidence Offered. (6/2013)
810.46	Wrongful Death Damages—Pain and Suffering. (1/2000)
810.48	Wrongful Death Damages—Funeral Expenses. (6/2013)
810.48A	Wrongful Death Damages—Funeral Expenses—Stipulation. (6/2013)
810.48B	Wrongful Death Damages—Funeral Expenses—Stipulation as to Amount Paid or Necessary to Be Paid, but Not Nexus to Conduct. (6/2013)
810.48C	Wrongful Death Damages—Funeral Expenses—No Stipulation, No Rebuttal Evidence. (6/2013)
810.48D	Wrongful Death Damages—Funeral Expenses—Stipulation, Rebuttal Evidence Offered. (6/2013)
810.49	Personal Injury Damages—Avoidable Consequences—Failure to Mitigate Damages. (Delete Sheet). (10/1999)
810.50	Wrongful Death Damages—Present Monetary Value of Deceased to Next-of-Kin. (6/2015)
810.54	Wrongful Death Damages—Final Mandate. (Regular). (6/2012)
810.56	Wrongful Death Damages—Final mandate. (Per Diem Argument by Counsel). (6/2012)
810.60	Property Damages—Issue and Burden of Proof. (4/2017)
810.62	Property Damages—Diminution in Market Value. (2/2000)
810.64	Property Damages—No Market Value—Cost of Replacement or Repair. (2/2000)
810.66	Property Damages—No Market Value, Repair, or Replacement—Recovery of Intrinsic Actual Value. (6/2013)
810.68	Property Damages—Final Mandate. (2/2000)
810.90	Punitive Damages—Issue of Existence of Outrageous or Aggravated Conduct. (5/1996)
810.91	Punitive Damages—Issue of Existence of Malicious, Willful or Wanton, or Grossly Negligent Conduct—Wrongful Death Cases. (5/1997)
810.92	Punitive Damages—Insurance Company’s Bad Faith Refusal to Settle a Claim. (5/1996)
810.93	Punitive Damages—Issue of Whether to Make Award and Amount. (5/1996)
810.94	Punitive Damages—Issue of Whether to Make Award and Amount. (Special Cases). (5/1996)
810.96	Punitive Damages—Liability of Defendant. (3/2016)
810.98	Punitive Damages—Issue of Whether to Make Award and Amount of Award. (5/2009)

**Chapter 13. Legal Malpractice.**

811.00 Legal Negligence—Duty to Client (Formerly 809.90) [as represented from Civil Committee] (3/2020)

**Chapter 14. Animals.**

812.00(Preface) Animals—Liability of Owners and Keepers. (5/1996)  
812.00 Animals—Common Law (Strict) Liability of Owner for Wrongfully Keeping Vicious Domestic Animals. (5/2020)  
812.01 Animals—Liability of Owner Who Allows Dog to Run at Large at Night. (8/2004)  
812.02 Animals—Common Law Liability of Owner Whose Domestic Livestock Run at Large with Owner’s Knowledge and Consent. (5/1996)  
812.03 Animals—Common Law Liability of Owner of Domestic Animals. (6/2011)  
812.04 Animals—Owner’s Negligence In Violation of Animal Control Ordinance. (5/1996)  
812.05 Animals—Liability of Owner of Dog Which Injures, Kills, or Maims Livestock or Fowl. (5/1996)  
812.06 Animals—Liability of Owner Who Fails to Destroy Dog Bitten by Mad Dog. (5/1996)  
812.07 Animals—Statutory (Strict) Liability of Owner of a Dangerous Dog. (5/1996)

**Chapter 15. Trade Regulation.**

813.00 Trade Regulation—Preface. (6/2013)  
813.05 Model Unfair or Deceptive Trade Practice Charge. (6/2014)  
813.20 Trade Regulation—Violation—Issue of Contracts and Conspiracies in Restraint of Trade. (1/1995)  
813.21 Trade Regulation—Violation—Issue of Unfair Methods of Competition and Unfair or Deceptive Acts or Practices. (2/2020)  
813.22 Trade Regulation—Violation—Definition of Conspiracy. (2/2019)  
813.23 Trade Regulation—Violation—Issue of Price Suppression of Goods. (5/1997)  
813.24 Trade Regulation—Violation—Issue of Condition Not to Deal in Goods of Competitor. (5/1997)  
813.25 Trade Regulation—Violation—Issue of Predatory Acts with Design of Price Fixing. (5/1997)  
813.26 Trade Regulation—Violation—Issue of Predatory Pricing. (5/1997)  
813.27 Trade Regulation—Violation—Issue of Discriminatory Pricing. (5/1997)  
813.28 Trade Regulation—Violation—Issue of Territorial Market Allocation. (5/1997)  
813.29 Trade Regulation—Violation—Issue of Price Fixing. (5/1997)  
813.30 Trade Regulation—Violation—Issue of Tying Between Lender and Insurer. (4/1995)  
813.31 Trade Regulation—Violation—Unauthorized Disclosure of Tax Information. (3/1995)  
813.33 Trade Regulation—Violations—Unsolicited Calls by Automatic Dialing and Recorded Message Players. (3/1995)  
813.34 Trade Regulation—Violation—Work-at-Home Solicitations. (5/1995)  
813.35 Trade Regulation—Violation—Issue of Representation of Winning a Prize. (5/1995)  
813.36 Trade Regulation—Violation—Issue of Representation of Eligibility to Win a Prize. (5/1995)  
813.37 Trade Regulation—Violation—Issue of Representation of Being Specially Selected. (5/1995)  
813.38 Trade Regulation—Unfair and Deceptive Trade Practices—Simulation of Checks and Invoices. (5/1995)  
813.39 Trade Regulation—Violation—Issue of Use of Term “Wholesale” in Advertising. G.S. 75-29. (5/1995)  
813.40 Trade Regulation—Violation—Issue of Utilizing the Word “Wholesale” in Company or Firm Name. G.S. 75-29. (5/1995)  
813.41 Trade Regulation—Violation—False Lien Or Encumbrance Against A Public Officer or Public Employee (6/2013)

- 813.60 Trade Regulation—Commerce—Introduction. (6/2015)
- 813.62 Trade Regulation—Commerce—Unfair and Deceptive Methods of Competition and Unfair or Deceptive Acts or Practices. (5/2020)
- 813.63 Trade Regulation—Commerce—Representation of Winning a Prize, Representation of Eligibility to Win a Prize, Representation of Being Specially Selected, and Simulation of Checks and Invoices. (1/1995)
- 813.70 Trade Regulation—Proximate Cause—Issue of Proximate Cause. (6/2014)
- 813.80 Trade Regulation—Damages—Issue of Damages. (5/2006)
- 813.90 Misappropriation of Trade Secret—Issue of Existence of Trade Secret. (6/2013)
- 813.92 Misappropriation of Trade Secret—Issue of Misappropriation. (6/2013)
- 813.94 Misappropriation of Trade Secret—Defense to Misappropriation. (6/2013)
- 813.96 Misappropriation of Trade Secret—Issue of Causation. (6/2013)
- 813.98 Misappropriation of Trade Secret—Issue of Damages. (5/2020)

**Chapter 16. Bailment.**

- 814.00 Bailments—Issue of Bailment. (5/1996)
- 814.02 Bailments—Bailee’s Negligence—Prima Facie Case. (5/1996)
- 814.03 Bailments—Bailee’s Negligence. (5/1996)
- 814.04 Bailments—Bailor’s Negligence. (5/1996)

**Chapter 17. Fraudulent Transfer.**

- 814.40 Civil RICO—Introduction (5/2016)
- 814.41 Civil RICO—Engaging in a Pattern of Racketeering Activity (5/2016)
- 814.42 Civil RICO—Enterprise Activity (5/2016)
- 814.43 Civil RICO—Conspiracy (5/2016)
- 814.44 Civil RICO—Attempt (5/2016)
- 814.50 Fraudulent Transfer—Present and Future Creditors—Intent to Delay, Hinder, or Defraud. (6/2018)
- 814.55 Fraudulent Transfer—Present and Future Creditors—Intent to Delay, Hinder, or Defraud—Transferee’s Defense of Good Faith and Reasonably Equivalent Value. (6/2015)
- 814.65 Fraudulent Transfer—Present Creditors—Lack of Reasonably Equivalent Value. (2/2017)
- 814.70 Fraudulent Transfer—Present and Future Creditors—Insolvent Debtor and Lack of Reasonably Equivalent Value. (6/2018)
- 814.75 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent. (6/2018)
- 814.80 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of New Value Given. (2/2017)
- 814.81 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of New Value Given—Amount of New Value (5/2017)
- 814.85 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of Transfer in the Ordinary Course. (6/2015)
- 814.90 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of Good Faith Effort to Rehabilitate. (6/2015)

**Chapter 18. Budget Dispute Between Board of Education and Board of County Commissioners.**

- 814.95 Budget Dispute Between Board of Education and Board of County Commissioners (5/2015)
- 814.95A Budget Dispute Between Board of Education and Board of County Commissioners—Appendix— Sample Verdict Sheet (3/2016)

## **PART V. FAMILY MATTERS**

- 815 Series Various Family Matters Instructions—Delete Sheet. (1/2000)
- 815.00 Void Marriage—Issue of Lack of Consent. (8/2004)
- 815.02 Void Marriage—Issue of Lack of Proper Solemnization. (1/1999)
- 815.04 Void Marriage—Issue of Bigamy. (1/1999)
- 815.06 Void Marriage—Issue of Marriage to Close Blood Kin. (1/1999)
- 815.08 Invalid Marriage—Issue of Same Gender Marriage. (1/1999)
- 815.10 Divorce Absolute—Issue of Knowledge of Grounds. (1/1999)
- 815.20 Voidable Marriage (Annulment)—Issue of Marriage of Person 16 and 18. (1/1999)
- 815.22 Voidable Marriage (Annulment)—Issue of Marriage of Person Under 16—Defense of Pregnancy or Living Children. (1/1999)
- 815.23 Voidable Marriage (Annulment)—Issue of Marriage of Person Under 16. (1/1999)
- 815.24 Voidable Marriage (Annulment)—Issue of Impotence. (1/1999)
- 815.26 Voidable Marriage (Annulment)—Issue of Impotence—Defense of Knowledge. (1/1999)
- 815.27 Voidable Marriage (Annulment)—Issue of Duress. (5/2006)
- 815.28 Voidable Marriage (Annulment)—Issue of Lack of Sufficient Mental Capacity and Understanding. (1/1999)
- 815.29 Voidable Marriage (Annulment)—Issue of Undue Influence. (5/2006)
- 815.30 Voidable Marriage (Annulment)—Issues of Marriage to Close Blood Kin, Marriage of Person Under 16, Marriage of Person Between 16 and 18, Impotence and Lack of Sufficient Mental Capacity and Understanding—Defense of Cohabitation and Birth of Issue. (1/1999)
- 815.32 Voidable Marriage (Annulment)—Issues of Marriage of Person Under 16, Marriage of Person Between 16 and 18, Impotence, and Lack of Sufficient Mental Capacity and Understanding—Defense of Ratification. (1/1999)
- 815.40 Divorce—Absolute—Issue of One Year’s Separation. (8/2004)
- 815.42 Divorce—Absolute—Issue of One Year’s Separation—Defense of Mental Impairment. (1/1999)
- 815.44 Divorce—Absolute—Issue of Incurable Insanity. (1/1999)
- 815.46 Divorce—Absolute—Issue of Incurable Insanity—Defense of Contributory Conduct of Sane Spouse. (1/1999)
- 815.50 Divorce—From Bed and Board—Issue of Abandonment. (8/2004)
- 815.52 Divorce—From Bed and Board—Issue of Malicious Turning Out-of-Doors. (1/1999)
- 815.54 Divorce—From Bed and Board—Issue of Cruelty. (1/1999)
- 815.56 Divorce—From Bed and Board—Issue of Indignities. (8/2004)
- 815.58 Divorce—From Bed and Board—Issue of Excessive Use of Alcohol or Drugs. (1/1999)
- 815.60 Divorce—From Bed and Board—Issue of Adultery. (1/1999)
- 815.70 Alimony—Issue of Marital Misconduct. (6/2013)
- 815.71 Alimony—Issue of Condonation. (5/2009)
- 815.72 Alimony—Issue of Condonation—Violation of Condition. (5/2009)
- 815.75 Child Born Out of Wedlock—Issue of Paternity. (3/1999)
- 815.90 Parents’ Strict Liability for Personal Injury or Destruction of Property by Minor. G.S. 1-538.1. (3/1999)
- 815.91 Parents’ Strict Liability for Personal Injury or Destruction of Property by Minor—Issue of Damages. G.S. 1-538.1. (Delete Sheet). (3/1999)
- 815.92 Parents’ Strict Liability for Personal Injury or Destruction of Property by Minor—Defense of Removal of Legal Custody and Control. (3/1999)
- 817.00 Incompetency. (6/2007)

## **PART VI. LAND ACTIONS**

### **Chapter 1. Adverse Possession.**

- 820.00 Adverse Possession—Holding for Statutory Period. (4/2019)
- 820.10 Adverse Possession—Color of Title. (4/2019)
- 820.16 Adverse Possession by a Cotenant Claiming Constructive Ouster. (2/2017)

### **Chapter 2. Proof of Title.**

- 820.40 Proof of Title—Real Property Marketable Title Act. (6/2018)
- 820.50 Proof of Title—Connected Chain of Title from the State. (5/2001)
- 820.60 Proof of Title—Superior Title from a Common Source—Source Uncontested. (5/2001)
- 820.61 Proof of Title—Superior Title from a Common Source—Source Contested. (5/2001)

### **Chapter 3. Boundary Dispute.**

- 825.00<sup>[D03]</sup> Processioning Action. (N.C.G.S. Ch. 38). (5/2020)

### **Chapter 4. Eminent Domain—Initiated Before January 1, 1982. Deleted. (2/1999)**

- 830.00 Eminent Domain—Procedures. (Delete Sheet). (2/1999)
- 830.05 Eminent Domain—Total Taking. (Delete Sheet). (2/1999)
- 830.10 Eminent Domain—Partial Taking—Fee. (Delete Sheet). (2/1999)
- 830.15 Eminent Domain—Partial Taking—Easement. (Delete Sheet). (2/1999)
- 830.20 Eminent Domain—General and Special Benefits. (Delete Sheet). (2/1999)
- 830.30 Eminent Domain—Comparables. (Delete Sheet). (2/1999)

### **Chapter 5. Eminent Domain—Initiated on or After January 1, 1982.**

- 835.00 Eminent Domain—Series Preface. (4/1999)
- 835.05 Eminent Domain—Introductory Instruction. (4/1999)
- 835.05i Eminent Domain—Introductory Instruction. (Delete Sheet). (8/2015)
- 835.10 Eminent Domain—Issue of Just Compensation—Total Taking by Department of Transportation or by Municipality for Highway Purposes. (4/2020)
- 835.12 Eminent Domain—Issue of Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes. (4/2019)
- 835.12A Eminent Domain—Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes—Issue of General or Special Benefit. (5/2017)
- 835.13 Eminent Domain—Issue of Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes (“Map Act”). (4/2019)
- 835.13A Eminent Domain—Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes (“Map Act”) – Issue of General or Special Benefit. (5/2017)
- 835.14 Eminent Domain—Issue of Just Compensation—Taking of an Easement by Department of Transportation or by Municipality for Highway Purposes. (4/2019)
- 835.14A Eminent Domain—Just Compensation—Taking of an Easement by Department of Transportation or by Municipality for Highway Purposes—Issue of General or Special Benefit. (5/2017)
- 835.15 Eminent Domain—Issue of Just Compensation—Total Taking by Private or Local Public Condemnors. (5/2006)
- 835.15A Eminent Domain—Issue of Just Compensation—Taking of a Temporary Construction or Drainage Easement by Department of Transportation or by Municipality for Highway Purposes. (2/2020)

- 835.20 Eminent Domain—Issue of Just Compensation—Partial Taking by Private or Local Public Condemnors—Fair Market Value of Property Taken. (5/2006)
- 835.20A Eminent Domain—Issue of Just Compensation—Taking of an Easement by Private or Local Public Condemnors—Fair Market Value of Property Taken. (5/2006)
- 835.22 Eminent Domain—Issue of Just Compensation—Partial Taking by Private or Local Public Condemnors—Fair Market Value of Property Before and After the Taking. (5/2006)
- 835.22A Eminent Domain—Issue of Just Compensation—Taking of an Easement by Private or Local Public Condemnors—Fair Market Value of Property Before and After the Taking. (5/2006)
- 835.24 Eminent Domain—Issue of Just Compensation—Partial Taking by Private or Local Public Condemnors—Greater of the Fair Market Value of Property Taken or the Difference in Fair Market Value of the Property Before and After the Taking. (5/2006)
- 835.24A Eminent Domain—Issue of Just Compensation—Taking of an Easement by Private or Local Public Condemnors—Greater of the Fair Market Value of Property Taken or the Difference in Fair Market Value of the Property Before and After the Taking. (5/2006)
- 835.30 Eminent Domain—Comparables. (Delete Sheet). (5/1999)

#### **Chapter 6. Easements.**

- 840.00 Easement—General Definition. (Delete Sheet). (2/2000)
- 840.10 Easement by Prescription. (4/2019)
- 840.20 Implied Easement—Use of Predecessor Common Owner. (6/2015)
- 840.25 Implied Easement—Way of Necessity. (6/2015)
- 840.30 Cartway Proceeding. N.C. Gen Stat. § 136-69 (6/2015)
- 840.31 Cartway Proceeding—Compensation. (5/2000)

#### **Chapter 7. Summary Ejectment and Rent Abatement.**

- 845.00 Summary Ejectment—Violation of a Provision in the Lease. (4/2017)
- 845.04 Summary Ejectment—Defense of Tender. (2/1993)
- 845.05 Summary Ejectment—Failure to Pay Rent. (2/1993)
- 845.10 Summary Ejectment—Holding Over After the End of the Lease Period. (2/1993)
- 845.15 Summary Ejectment—Defense of Waiver of Breach by Acceptance of Rent. (12/1992)
- 845.20 Summary Ejectment—Damages. (2/1993)
- 845.30 Landlord’s Responsibility to Provide Fit Residential Premises. (2/1993)
- 845.35 Landlord’s Responsibility to Provide Fit Residential Premises—Issue of Damages. (1/2000)

#### **Chapter 8. Land-Disturbing Activity.**

- 847.00 Land-Disturbing Activity—Sedimentation Pollution Control Act of 1973—Violation of Act—Violation of Ordinance, Rule or Order of Secretary of Environment and Natural Resources or of Local Government. (5/2008)
- 847.01 Land-Disturbing Activity—Sedimentation Pollution Control Act of 1973—Violation of Act—Violation of Ordinance, Rule or Order of Secretary of Environment and Natural Resources or of Local Government—Damages. (5/2008)

### **PART VII. DEEDS, WILLS, AND TRUSTS**

#### **Chapter 1. Deeds.**

- 850.00 Deeds—Action to Establish Validity—Requirements. (8/2004)
- 850.05 Deeds—Action to Set Aside—Lack of Mental Capacity. (5/2002)
- 850.10 Deeds—Action to Set Aside—Mutual Mistake of Fact. (6/2013)



- 850.15 Deeds—Action to Set Aside—Undue Influence. (5/2002)
- 850.20 Deeds—Action to Set Aside—Duress. (5/2002)
- 850.25 Deeds—Action to Set Aside—Fraud. (8/2004)
- 850.30 Deeds—Action to Set Aside—Grossly Inadequate Consideration (“Intrinsic Fraud”). (5/2002)
- 850.35 Deeds—Action to Set Aside—Constructive Fraud. (5/2002)
- 850.40 "Deeds—Action to Set Aside—Constructive Fraud—Rebuttal by Proof of Openness, Fairness and Honesty." (5/2002)
- 850.45 Deeds—Action to Set Aside—Defense of Innocent Purchaser. (5/2020)
- 850.50 Deeds—Action to Set Aside—Lack of Valid Delivery. (8/2004)
- 850.55 Deeds—Action to Set Aside—Lack of Legally Adequate Acceptance. (5/2001)

**Chapter 1A. Foreclosure Actions.**

- 855.10 Foreclosure—Action for Deficiency Judgment—Amount of Debt Owed (4/2016)
- 855.12 Foreclosure—Action for Deficiency Judgment—Defense of Mortgagor to Defeat and Offset Deficiency Judgment—Property Fairly Worth Amount Owed (4/2016)
- 855.14 Foreclosure—Action for Deficiency Judgment—Defense of Mortgagor to Defeat and Offset Deficiency Judgment—Bid Substantially Less than True Value of Property on Date of Foreclosure (4/2016)
- 855.16 Foreclosure—Action for Deficiency Judgment—Defense of Mortgagor to Defeat and Offset Deficiency Judgment—True Value of Property on Date of Foreclosure Sale (3/2016)
- 855.18 Foreclosure—Action for Deficiency Judgment—Sample Verdict Form & Judge’s Worksheet (6/2014)

**Chapter 2. Wills.**

- 860.00 Wills—Introductory Statement by Court. (Optional). (5/2006)
- 860.05 Wills—Attested Written Will—Requirements. (4/2017)
- 860.10 Wills—Holographic Wills—Requirements. (5/2019)
- 860.15 Wills—Issue of Lack of Testamentary Capacity. (4/2017)
- 860.16 Wills—Issue of Lack of Testamentary Capacity—Evidence of Suicide. (Delete Sheet). (5/2001)
- 860.20 Wills—Issue of Undue Influence. (5/2017)
- 860.22 Wills—Issue of Duress. (5/2002)
- 860.25 Wills—Devisavit Vel Non. (5/2001)

**Chapter 3. Parol Trusts.**

- 865.50 Parol Trusts—Express Trust in Purchased Real or Personal Property. (5/2001)
- 865.55 Parol Trusts—Express Trust in Transferred Real or Personal Property. (8/2004)
- 865.60 Parol Trusts—Express Declaration of Trust in Personal Property. (5/2001)
- 865.65 Trusts by Operation of Law—Purchase Money Resulting Trust (Real or Personal Property). (6/2014)
- 865.70 Trusts by Operation of Law—Resulting Trust Where Purchase Made with Fiduciary Funds. (6/2014)
- 865.75 Trusts by Operation of Law—Constructive Trust. (6/2015)

**PART VIII. INSURANCE**

**Chapter 1. Liability for Agent for Failure to Procure Insurance.**

- 870.00 Failure to Procure Insurance—Negligence Issue. (6/2013)
- 870.10 Failure to Procure Insurance—Breach of Contract Issue. (2/2005)

**Chapter 2. Accident, Accidental Means, and Suicide.**

- 870.20 Accidental Means Definition. (5/2005)

- 870.21 "Accident" or "Accidental Means" Issue—Effect of Diseased Condition. (5/2005)
- 870.25 Accident Issue—Insurance. (2/2005)
- 870.30 General Risk Life Insurance Policy—Suicide as a Defense. (3/2005)
- 870.72 Identity Theft—Identifying Information. (6/2010)
- 870.73 Identity Theft—Identifying/Personal Information. (6/2010)

**Chapter 3. Disability.**

- 880.00 Disability—Continuous and Total Disability Issue. (3/2005)
- 880.01 Disability—Continuous Confinement Within Doors Issue. (3/2005)
- 880.02 Disability—Constant Care of a Licensed Physician Issue. (3/2005)

**Chapter 4. Material Misrepresentations.**

- 880.14 Misrepresentation in Application for Insurance—Factual Dispute. (5/2005)
- 880.15 Misrepresentation in Application for Insurance—Issue of Falsity of Representation. (5/2005)
- 880.20 Materiality of Misrepresentation in Application for Insurance. (5/2006)
- 880.25 Fire Insurance Policy—Willful Misrepresentation in Application. (5/2005)
- 880.26 Concealment in Application for Non-Marine Insurance. (5/2005)
- 880.30 Misrepresentation in Application—False Answer(s) Inserted by Agent. (Estoppel). (5/2006)

**Chapter 5. Definitions.**

- 900.10 Definition of Fiduciary; Explanation of Fiduciary Relationship. (6/2020)

**Chapter 6. Fire Insurance.**

- 910.20 Fire Insurance—Hazard Increased by Insured. (5/2006)
- 910.25 Fire Insurance—Intentional Burning by Insured. (5/2006)
- 910.26 Fire Insurance Policy—Willful Misrepresentation in Application. (5/2006)
- 910.27 Fire Insurance—Defense of Fraudulent Proof of Loss. (5/2006)

**Chapter 7. Damages.**

- 910.80 Insurance—Damages for Personal Property—Actual Cash Value. (6/1983)
- 910.90 Insurance—Damages for Real Property—Actual Cash Value. (6/1983)

**APPENDICES.**

- A. TABLE OF SECTIONS OF GENERAL STATUTES INVOLVED IN CIVIL INSTRUCTIONS. (6/1985)
- B. DESCRIPTIVE WORD INDEX. (6/2017)

## 806.40 DEFAMATION—PREFACE.<sup>1</sup>

*(This document has attachments. See Instruction References.)*

*NOTE WELL: Libel, which generally involves written statements, and slander, which generally involves spoken statements, are complex torts. The elements vary depending upon how the claim is classified for common law and for constitutional purposes. The following brief summary of this complicated topic is recommended reading prior to commencing the trial of any defamation claim.*

A defamatory statement<sup>2</sup> is one which is false<sup>3</sup> and which is communicated to a person or persons other than the person defamed, thereby causing injury to the person defamed. Libel actionable *per se*<sup>4</sup>, libel actionable *per quod*<sup>5</sup>, slander actionable *per se*<sup>6</sup> and slander actionable *per quod* are all distinct varieties of defamation under the common law.

In the landmark decision of *N.Y. Times Co. v. Sullivan*<sup>7</sup>, the United States Supreme Court began to alter the common law rule by providing First Amendment protection to certain speech. Subsequent cases established three general types of defamation claims- those involving private figures in matters not of public concern,<sup>8</sup> those involving private figures in matters of public concern,<sup>9</sup> and those involving public figures or public officials.<sup>10</sup>

The trial judge must, as a matter of law<sup>11</sup>, determine the classification of a particular defamation claim for both common law and constitutional purposes. Once such classification has been determined, differing fault levels for both liability and damages apply.

In the first category of cases, those involving private figures in matters not of public concern, the fault level to establish liability is negligence.<sup>12</sup> Similarly, in cases involving private figures in matters of public concern, the fault level for liability is also negligence.<sup>13</sup> However, for cases involving public figures or public officials, the liability fault level is actual malice.<sup>14</sup>

The question of damages adds further layers of complexity to defamation cases. Cases actionable *per se*, for example, may involve three different kinds of "compensatory"<sup>15</sup> damages:

1. *Pecuniary/Special Damages.* If a plaintiff seeks recovery for an actual monetary loss (such as lost income), such damages are described as pecuniary or special damages.<sup>16</sup> These damages are subject to specific pleading<sup>17</sup> and proof requirements and constitute one form of "actual damage."<sup>18</sup>

2. *Actual Harm Damages.* As defined by the U.S. Supreme Court, actual harm damages include "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering."<sup>19</sup> These damages must be proved by competent evidence and constitute a form of "actual damage."

3. *Nonproven/Presumed Damages.* Presumed damages may include "mental or physical pain and suffering, inconvenience, or loss of enjoyment which cannot be definitively measured in monetary terms."<sup>20</sup> At common law and in certain circumstances dependent upon the type of plaintiff and the subject of the case, these damages may be presumed without particularized proof and may be nominal or in a substantial amount if so determined by the trier of fact.<sup>21</sup>

For defamation cases that are not actionable *per se*, that is middle-tier libel and defamation actionable *per quod*, only the first two categories of damages (pecuniary/special damages and actual harm) are available. Plaintiffs in these cases cannot recover nonproven/ presumed damages, but rather must prove actual damages as an element of the claim.<sup>22</sup>

4. *Punitive Damages.* In addition to the foregoing categories of damages, a plaintiff may seek punitive damages if the proof requirements for the type of plaintiff and speech involved in the case can be satisfied and the Chapter 1D requirements for punitive damages met.<sup>23</sup>

As with the issue of liability, the standards for awarding particular types of damages may implicate constitutional principles and vary according to the type of plaintiff and whether or not the speech at issue involves a matter of public concern.

In cases of defamation actionable *per se*, the common law historically allowed a presumption of malice and reputational damages, at least nominally, without specific proof of actual injury.<sup>24</sup> Further, with reference to punitive damages, the North Carolina rule prior to the 1995 enactment of N.C. Gen. Stat., Chapter 1D Punitive Damages had been that such damages were allowed only upon a showing that the plaintiff sustained actual damages and that the defendant's conduct was malicious, wanton, or recklessly indifferent to the truth and the plaintiff's rights.<sup>25</sup>

Under current U.S. Supreme Court jurisprudence, however, proof of actual malice is required in some circumstances:

- Public figure or public official -- The element of publication with actual malice must be proven, not only to establish liability,<sup>26</sup> but also to recover presumed damages and permit recovery of punitive damages, if the Chapter 1D requirements for an award of punitive damages are satisfied as well.<sup>27</sup>
- Private figure plaintiff - case actionable *per se* - matter of private concern. Liability may be established based upon a negligence standard and presumed damages recovered.<sup>28</sup> An actual damage award is available upon the presentation of evidence supporting

such an award. The plaintiff may receive punitive damages absent a showing of actual malice, if the Chapter 1D requirements for an award of punitive damages are satisfied as well.<sup>29</sup>

- Private figure plaintiff – case actionable *per se* – matter of public concern. Liability may be established based upon a negligence standard. An actual damage award is available upon the presentation of evidence supporting such an award. In this circumstance, the plaintiff must establish actual malice in order to receive presumed damages and to permit recovery of punitive damages, if the Chapter 1D requirements for an award of punitive damages are satisfied as well.<sup>30</sup>

The statutory requirements that any plaintiff seeking punitive damages must satisfy are as follows:

N.C. Gen. Stat. § 1D-15. Standards for recovery of punitive damages.

(a) Punitive damages may be awarded only if the claimant proves that the defendant is liable for compensatory damages and that one of the following aggravating factors was present and was related to the injury for which compensatory damages were awarded:

- (1) Fraud.
- (2) Malice.
- (3) Willful or wanton conduct.

(b) The claimant must prove the existence of an aggravating factor by clear and convincing evidence.<sup>31</sup>

In matters actionable *per quod*, punitive damages are available in the following circumstances:<sup>32</sup>

For a public figure plaintiff, upon a showing of actual malice and satisfaction of the Chapter 1D requirements;

For a private figure plaintiff in a public matter, upon a showing of actual malice and satisfaction of the Chapter 1D requirements; and

For a private figure plaintiff in a private matter, satisfaction of the Chapter 1D requirements is sufficient, and no additional showing of malice is required.

Finally, media defendants receive certain statutory protection from punitive damages awards.<sup>33</sup>

---

*NOTE WELL: The charts that follow are incorporated into this preface, but are printed on single pages for convenience of use.*

The first two charts summarize the foregoing recitation of the differing fault levels for both liability and damages in defamation cases:

	<b>Matter Actionable <i>Per Se</i>:</b>		
	<b>Private Figure</b>		<b>Public Official or Figure</b>
	<b>Not Matter of Public Concern</b> <i>(Libel - 806.50 Slander - 806.65)</i>	<b>Matter of Public Concern</b> <i>(Libel - 806.51 Slander - 806.66)</i>	<i>(Libel - 806.53 Slander - 806.67)</i>
<b>Liability</b>	Negligence	Negligence	Actual Malice
<b>Presumed Damages</b>	No additional proof needed – presumed damage available upon liability showing of negligence	Actual Malice	No additional proof needed – showing of actual malice suffices
<b>Actual Harm/ Special Damages</b>	Available if proved by the greater weight of evidence	Available if proved by the greater weight of evidence	Available if proved by the greater weight of evidence
<b>Punitive Damages</b>	Available upon showing of statutory criteria set out in N.C. Gen. Stat. § 1D-15.	Available upon showing of statutory criteria set out in N.C. Gen. Stat. § 1D-15 and actual malice under the <i>N.Y. Times</i> standard.	Liability showing of actual malice satisfies the <i>N.Y. Times</i> standard. Punitive damages are available upon showing of statutory criteria set out in N.C. Gen. Stat. § 1D-15.



	<b>Matter Actionable <i>Per Quod</i>:</b>		
	<b>Private Figure</b>		<b>Public Official or Figure</b>
	<b>Not Matter of Public Concern</b> <i>(Libel-806.60 Slander-806.70)</i>	<b>Matter of Public Concern</b> <i>(Libel-806.61 Slander-806.71)</i>	<i>(Libel-806.62 Slander-806.72)</i>
<b>Liability</b>	Negligence	Negligence	Actual Malice
<b>Presumed Damages</b>	Not available	Not available	Not available
<b>Actual/Special Damages</b>	Available- However, proof of special damages required in order to establish liability	Available- However, proof of special damages required in order to establish liability	Available-However, proof of special damages required in order to establish liability
<b>Punitive Damages</b>	Available upon showing of statutory criteria set out in N.C. Gen. Stat. § 1D-15.	Available upon showing of statutory criteria set out in N.C. Gen. Stat. § 1D-15 and actual malice under the <i>N.Y. Times</i> standard.	Liability showing of actual malice satisfies the <i>N.Y. Times</i> standard. Punitive damages are available upon showing of statutory criteria set out in N.C. Gen. Stat. § 1D-15.

The last chart shows instruction combinations in various types of defamation cases:

	<b>Nonproven /Presumed Damages</b>	<b>Pecuniary /Special Damages</b>	<b>Actual Harm</b>	<b>Punitive Damages</b>
<b>Private Figure/Not Matter of Public Concern</b>				
Defamation Actionable Per Se • 806.50 • 806.65	806.81	806.84	806.84	810.96 & 810.98— standard punitive damage PJIs*
Middle Tier Libel/ Defamation actionable Per Quod • 806.60 • 806.70	Not available	806.84	806.84	810.96 & 810.98— standard punitive damage PJIs*
<b>Private Figure/Matter of Public Concern</b>				
Defamation Actionable Per Se • 806.51 • 806.66	806.82	806.84	806.84	806.85, followed by 810.96 & 810.98— standard punitive damages PJI**
Middle Tier Libel/ Defamation actionable Per Quod • 806.61 • 806.71	Not available	806.84	806.84	806.85, followed by 810.98—standard punitive damages PJI**
<b>Public Figure or Public Official</b>				
Defamation Actionable Per Se • 806.53 • 806.67	806.83	806.84	806.84	810.96 & 810.98— standard punitive damages PJI**
Middle Tier Libel/ Defamation actionable Per Quod • 806.62 • 806.72	Not available	806.84	806.84	810.96 & 810.98— standard punitive damages PJI**

\*Including statutory fault standards

\*\*Excluding statutory fault standards

---

1. The defamation series begins with this preface and continues through N.C.P.I.—Civil 806.85 ("Defamation—Private Figure—Matter of Public Concern—Issue of Actual Malice"). Reference to this endnote series is made throughout.

2. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) ("[T]o make out a *prima facie* case for defamation, 'plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff's reputation.'" (citation omitted)); see also *Andrews v. Elliot*, 109 N.C. App. 271, 274, 426 S.E.2d 430, 432 (1993) ("To be actionable, a defamatory statement must be false and must be communicated to a person or persons other than the person defamed."); *Tyson v. L'Eggs Products, Inc.*, 84 N.C. App. 1, 10-11, 351 S.E.2d 834, 840 (1987); and *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) ("While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed." *overruled on other grounds by, Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956)).

Note that a defamatory statement "must be one of fact, not merely opinion", but that "the United States Supreme Court has cautioned against 'an artificial dichotomy between 'opinion' and fact' and has stated that 'expressions of 'opinion' may often imply an assertion of objective fact.'" *Desmond v. News & Observer Publ'g Co.*, 375 N.C. 21, 38, 846 S.E.2d 647, 659 (2020) (quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18-19 (1990)). When "determining whether a statement can be reasonably interpreted as stating actual facts about an individual, courts look to the circumstances in which the statement is made. Specifically. . . [courts] consider whether the language used is loose, figurative, or hyperbolic language, as well as the general tenor . . ." of the statement. *Desmond v. News & Observer Publ'g Co.*, 241 N.C. App. 10, 17, 772 S.E.2d. 128, 135 (2015) (quoting *Lewis v. Rapp*, 220 N.C. App. 299, 304-05, 725 S.E.2d. 597, 602 (2012)).

3. The element of "falsity" has previously been included in every pattern jury instruction on libel and slander except N.C.P.I.—Civil 806.50 ("Defamation—Libel Actionable *Per Se*—Private Figure—Not Matter of Public Concern") and N.C.P.I.—Civil 806.60 ("Defamation—Libel Actionable *Per Quod*-Private Figure—Not a Matter of Public Concern").

Although the issue is not a settled one and notwithstanding that neither the United States Supreme Court nor North Carolina's appellate courts have spoken definitively in this regard, for the reasons that follow and upon careful consideration, the Pattern Jury Civil Subcommittee has concluded that the element of falsity should likewise be included in these two instructions.

At common law, defamatory statements were presumed to be false and truth thus was an affirmative defense to a libel claim. However, the First Amendment subsequently has been interpreted to place the burden of proving falsity upon the plaintiff in many types of defamation cases. See *Phila. Newspaper, Inc. v. Hepps*, 475 U.S. 767, 775, 89 L.Ed.2d 783, 792 (1986) ("[A] public-figure plaintiff must show the falsity of the statements at issue in order to prevail in a suit for defamation.") and *Phila. Newspaper*, 475 U.S. at 775, 793 ("[A] private-figure plaintiff must bear the burden of showing that the speech at issue is false before recovering damages for defamation from a media defendant."); see also Rodney A. Smolla, *Law of Defamation*, § 5:13 (2d. ed. 2004) (Although *Hepps* did not definitively address all types of defamation cases, the "wisest choice . . . is to place the burden of proof [of falsity] on the plaintiff" in all defamation cases.), and *Herbert v. Lando*, 441 U.S. 153, 176, 60 L. Ed.2d 115, 133 (1979) ("In every or almost every [defamation] case, the plaintiff . . . must

prove a false publication . . . ."); *cf. Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20, 111 L.Ed.2d 1, 20 (1990), n.6 ("In *Hepps* the Court reserved judgment [as to whether falsity must be proved by a private defamation plaintiff] on cases involving nonmedia defendants . . . and accordingly we do the same."); Dan B. Dobbs, *The Law of Torts* (2001 ed.), § 420, p. 1184 ("[Certain] features of *Hepps* may suggest that, as a practical matter, the states will remain free to presume falsehood when a private person sues on a publication that is not about issues of public concern."); *Restatement (Second) of Torts* § 613 (1)(g) (The plaintiff has the burden of proving "the defendant's negligence, reckless disregard or knowledge regarding the truth or falsity and the defamatory character of the communication.") and 613 Caveat ("The Institute expresses no opinion on the extent to which the common law rule placing on the defendant the burden of proof to show the truth of the defamatory communication has been changed by the constitutional requirement that the plaintiff must prove defendant's negligence or greater fault regarding the falsity of the communication.").

Moreover, in numerous cases the North Carolina appellate courts have repeatedly included "falsity" as an element of defamation. See *Desmond*, 375 N.C. 21, 846 S.E.2d 647 (approving of the requirement that a defamation plaintiff "generally must show the defendant made false, defamatory statements" that caused the plaintiff's injury); *Renwick v. News & Observer*, 310 N.C. 312, 319, 312 S.E.2d 405, 410 (1984) ("Although every defamation must be false, not every falsehood is defamatory."); *Brown v. Boney*, 41 N.C. App. 636, 648, 255 S.E.2d 784, 791 (1979) ("If the plaintiff's [libel] case is to succeed, he must show the factual statements made concerning him were false."); *Morrow v. Kings Dept. Stores, Inc.*, 57 N.C. App. 13, 20, 290 S.E.2d 732, 736 (1982) ("A defamatory statement, to be actionable, must be false . . . ."); *Williams v. State Farm Mutual Automobile Ins. Co.*, 67 N.C. App. 271, 274, 312 S.E.2d 905, 907 (1984) ("To be actionable, the statement must be false."); *Boston v. Webb*, 73 N.C. App. 459-60, 326 S.E.2d 104, 106 (1985) ("These statements, if found false by a jury, constituted libel *per se*."); *Gibby v. Murphy*, 73 N.C. App. 128, 132, 325 S.E.2d 673, 676 (1985) ("The allegations . . . were libel *per se*, if a jury found them to be false."); *Pinehurst, Inc. v. O'Leary Bros. Realty, Inc.*, 79 N.C. App. 51, 58, 338 S.E.2d 918, 922 (1986) ("Falsity is an essential element of libel."); *Clark v. Brown*, 99 N.C. App. 255, 260-61, 393 S.E.2d 134, 137 (1990) (discussing what "false words" constitute libel *per se*); *Kwan-Sa You v. Roe*, 97 N.C. App. 1, 12, 387 S.E.2d 188, 193 (1990) (equating a "statement . . . libel *per se*" with "a false written statement which on its face is defamatory . . . ." (quoting *Robinson v. Nationwide Ins. Co.*, 273 N.C. 391, 393, 159 S.E.2d 896, 899 (1968))); *Martin Marietta Corp. v. Wake Stone Corp.*, 111 N.C. App. 269, 276, 432 S.E.2d 428, 433 (1993) ("[D]efamatory statements [in a libel action] must be false in order to be actionable." (citation omitted)); *Andrews v. Elliot*, 109 N.C. App. 271, 274, 426 S.E.2d 420, 432 (1993) ("To be actionable, a defamatory statement must be false . . . ."); *Hanton v. Gilbert*, 126 N.C. App. 561, 569, 486 S.E.2d 432, 437 (1997) ("In order to be actionable, a defamatory statement must be false."); *Boyce & Isley, PLLC v. Cooper*, 153 N.C. App. 25, 29, 568 S.E.2d 893, 897 (2002) ("In order to recover for defamation, a plaintiff must allege, [*inter alia*, that the defendant] ma[de] false, defamatory statements.").

Finally, inclusion of the falsity element in N.C.P.I.—Civil 806.50 ("Defamation—Libel Actionable Per Se—Private Figure—Not Matter of Public Concern") and 806.60 ("Defamation—Libel Actionable Per Quod—Private Figure—Not Matter of Public Concern") achieves uniformity between the standards for libel and slander. Falsity is the third element in a claim for slander *per se* brought by a private plaintiff in a matter not of public concern (N.C.P.I.—Civil 806.65 ("Defamation—Defamation Actionable Per Se—Private Figure—Matter of Public Concern—Punitive Damages")) and the sixth element in a private plaintiff's claim for slander *per quod* in a matter not of public concern (N.C.P.I.—Civil 806.70 ("Defamation—Slander Per Quod—Private Figure—Not Matter of Public Concern")). The N.C. Court of Appeals has stated, in certain contexts, that it see[s] "no reason to distinguish libel *per se* from slander *per se*."

*Ausley v. Bishop*, 133 N.C. App. 210, 216, 515 S.E.2d 72, 77 (1999). There appears to be no basis upon which to include the falsity requirement in the instructions for private figure/not matter of public concern slander *per se* and slander *per quod* cases (as well as every other category of both libel and slander), but to exclude falsity from the instructions for private figure/not matter of public concern libel *per se* and libel *per quod* cases.

Notwithstanding, the Committee has included a suggested instruction, N.C.P.I.—Civil 806.79 ("Defamation—Libel Actionable *Per Se* or Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern—Truth as a Defense"), for use by those judges who feel North Carolina will continue to adhere to the common law rule in the limited instances covered by N.C.P.I.—Civil 806.50 ("Defamation—Libel Actionable *Per Se*—Private Figure—Not Matter of Public Concern") and 806.60 ("Defamation—Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern"). See *Desmond*, 375 N.C. at 41, 846 S.E.2d. at 661 (quoting *Desmond*, 241 N.C. App. at 16, 772 S.E.2d. at 135) ("[I]n order to recover for defamation, a plaintiff generally must show that the defendant caused injury to the plaintiff by making false, defamatory statements of or concerning the plaintiff, which were published to a third person."); *Phila. Newspapers v. Hepps*, 475 U.S. 767, 776 (1986) ("We believe that the common law's rule on falsity – that the defendant must bear the burden of proving truth – must similarly fall here to a constitutional requirement that the plaintiff bear the burden of showing falsity, as well as fault, before recovering damages."). In such an instance, the judge should delete the element of falsity from N.C.P.I.—Civil 806.50 806.50 ("Defamation—Libel Actionable *Per Se*—Private Figure—Not Matter of Public Concern") and 806.60 ("Defamation—Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern") and thereafter submit N.C.P.I.—Civil 806.79 ("Defamation—Libel Actionable *Per Se* or Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern—Defense of Truth"). See N.C.P.I.—Civil 806.50 ("Defamation—Libel Actionable *Per Se*—Private Figure—Not Matter of Public Concern"), n.11 ("NOTE WELL") and N.C.P.I.—Civil 806.60 ("Defamation—Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern"), n.18 ("NOTE WELL").

4. "Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures which, when considered alone without innuendo, colloquium or explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace." *Renwick v. News & Observer Publishing Co.*, 310 N.C. at 317, 312 S.E.2d at 408-09 (citing *Flake v. Greensboro News Co.*, 212 N.C. 780, 787, 195 S.E. 55, 60 (1937)).

5. Libel actionable *per quod* is comprised of those publications "which are not obviously defamatory, but which become so when considered in connection with innuendo, colloquium and explanatory circumstances." *Ellis v. Northern Star Co.*, 326 N.C. 219, 223, 388 S.E.2d 127, 130 (1990) (quoting *Flake*, 212 N.C. at 785, 195 S.E. at 59).

North Carolina also recognizes a "middle-tier libel" when a statement is susceptible of two meanings—one of which is defamatory and one of which is not. See *Renwick*, 310 N.C. at 316, 312 S.E.2d at 408 (citation omitted). For jury instruction purposes, however, the instructions for libel actionable *per quod* will suffice in a middle-tier libel claim.

6. "Slander is a tort distinct from libel in that slander involves an oral communication. Like libel, slander may be *per se* or *per quod*, but it cannot fall into the intermediate category where it would be susceptible to two meanings. Slander *per se* involves an oral communication to a third person which amounts to: (1) accusations that the plaintiff committed a crime involving moral turpitude; (2) allegations that impeach the plaintiff in his or her trade, business, or profession; or (3) imputations that the plaintiff has a loathsome disease." *Raymond U v. Duke Univ.*, 91 N.C. App. 171, 182, 371 S.E.2d 701, 709 (1988)

---

(citations omitted); see also *Donovan v. Fiumara*, 114 N.C. App. 524, 527-36, 442 S.E.2d 572, 575-80 (1994) (rejecting the argument that *dicta* in *West v. King's Dept. Store, Inc.*, 321 N.C. 698, 703, 365 S.E.2d 621, 624-25 (1988) created a fourth classification of slander *per se*, i.e., "to hold [the plaintiff] up to disgrace, ridicule or contempt").

7. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 11 L.Ed.2d 686 (1964).

8. See *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 759, 86 L. Ed. 2d 593, 604 (1985) ("[S]peech on matters of purely private concern is of less First Amendment concern. As a number of state courts . . . have recognized, the role of the Constitution in regulating state libel law is far more limited when the concerns that activated *N.Y. Times* and *Gertz* are absent.").

9. *Dun & Bradstreet*, 472 U.S. at 758-59, 86 L. Ed. 2d at 602 ("[The Supreme Court has] long recognized that not all speech is of equal First Amendment importance. It is speech on 'matters of public concern' that is 'at the heart of the First Amendment's protection.'" (citations omitted)); see also *Rosenbloom v. Metromedia*, 403 U.S. 29, 44, 29 L.Ed.2d 296, 312 (1971) ("[T]he determinant whether the First Amendment applies to state libel actions is whether the utterance involved concerns an issue of public or general concern").

Whether "speech addresses a matter of public concern must be determined by [the expression's] content, form, and context . . . as revealed by the whole record." *Dun & Bradstreet*, 472 U.S. at 761, 86 L.Ed.2d at 604 (citation omitted).

10. "[T]he 'public official' designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." *Rosenblatt v. Baer*, 383 U.S. 75, 85, 15 L.Ed.2d 597, 605 (1966).

The *N.Y. Times* standard was extended from public officials to all public figures in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 155, 18 L.Ed.2d 1094, 1111 (1967).

"[T]he Supreme Court . . . divided [public official and public figure plaintiffs] into three categories[:] . . . involuntary public figures, all purpose public figures, and limited purpose public figures." *Gaunt v. Pittaway*, 139 N.C. App. 778, 785, 534 S.E.2d 660, 664-65 (2000) (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 41 L.Ed.2d 789, 810 (1974)).

"[Although] it may be possible for someone to become a public figure through no purposeful action of his own, . . . the instances of truly involuntary public figures must be exceedingly rare. For the most part those who attain this status have assumed roles of special prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment."

*Gertz*, 418 U.S. at 345, 41 L.Ed.2d at 810. Public figures "assume special prominence in the resolution of public questions . . ." *Gertz*, 418 U.S. at 351, 41 L. Ed.2d at 812.

"In . . . three . . . cases, the Supreme Court developed a two-part inquiry for determining whether a defamation plaintiff is a limited purpose public figure: (1) was there a particular 'public controversy' that gave rise to the alleged defamation and (2) was the nature and extent of the plaintiff's participation in that particular controversy sufficient to justify 'public figure' status?" *Gaunt v. Pittaway*, 139 N.C. App. at 186, 534 S.E.2d at 665.

The United States Court of Appeals for the Fourth Circuit has set forth five requirements for establishing that the plaintiff is a limited purpose public figure: "(1) the

plaintiff had access to channels of effective communication; (2) the plaintiff voluntarily assumed a role of special prominence in the public controversy; (3) the plaintiff sought to influence the resolution or outcome of the controversy; (4) the controversy existed prior to the publication of the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the alleged defamation." *Foretich v. Capital Cities/ABC*, 37 F.3rd 1541, 1553 (4th Cir. 1994).

"Under North Carolina law, an individual may become a limited purpose public figure 'by his purposeful activity amounting to a thrusting of his personality into the "vortex" of an important public controversy.'" *Gaunt*, 139 N.C. App. at 786, 534 S.E.2d at 665 (citations omitted).

The heightened burden for public officials and public figures is justified by two considerations. First, "[p]ublic officials and public figures usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy." *Gertz*, 418 U.S. at 344, 41 L.Ed.2d at 807-08. Second, "[t]here is a compelling normative consideration underlying the distinction between public and private defamation plaintiffs. An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case . . . . Those classed as public figures stand in a similar position . . . . [Because of their] roles of special prominence in the affairs of society . . . . [or] positions of . . . persuasive power and influence . . . [or because they] have thrust themselves to the forefront of particular public controversies . . . [public figures] invite attention and comment." *Gertz*, 418 U.S. at 344-45, 41 L.Ed.2d at 808.

11. See *Broughton v. McClatchy Newspapers, Inc.*, 161 N.C. App. 20, 26, 588 S.E.2d 20, 26 (2003) ("Whether a publication is deemed libelous *per se* is a question of law to be determined by the court."); *Renwick*, 310 N.C. at 317-18, 312 S.E.2d at 409 ("[D]efamatory words to be libelous *per se* must be susceptible of *but one meaning* and of such nature that *the court* can presume *as a matter* of law that they tend to disgrace and degrade the party or hold him up to public hatred, contempt or ridicule, or cause him to be shunned and avoided." (quoting *Flake*, 212 N.C. at 786, 195 S.E. at 60) (emphasis added)); and *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) ("It is noted: '(1) The court determines whether a communication is capable of a defamatory meaning. (2) The jury determines whether a communication, capable of a defamatory meaning, was so understood by its recipient.'" (quoting *Restatement of the Law of Torts*, Sec. 614)); see also 50 Am. Jur.2d, *Libel and Slander* § 488 at 871 ("Examples of questions . . . to be decided by the court as a matter of law include: whether a person is a public official, whether a person is a public figure, and if so, for what purposes, whether a statement is defamatory *per se* or *per quod*, . . . [and] whether the statements complained of are capable of the meaning ascribed to them by the plaintiff . . .").

12. See *Cochran v. Piedmont Publishing Co., Inc.*, 62 N.C. App. 548, 549, 302 S.E.2d 903, 904 (1983) ("In order to recover compensatory damages for libel, [a private figure] plaintiff must establish . . . that the false information was published through the fault or negligence of the defendant." (citations omitted)); *McKinney v. Avery Journal, Inc.*, 99 N.C. App. 529, 531, 393 S.E.2d. 295, 296 (1990) ("[I]n the case of 'private' individuals . . . a lesser showing of fault rather than actual malice is required to recover damages."); see also *Gertz*, 418 U.S. at 353, 41 L.Ed.2d at 813 (Blackmun, J., concurring) ("[The Court] now conditions a libel action by a private person upon a showing of negligence.").

13. See *Neill Grading & Constr. Co., Inc. v. Lingafelt*, 168 N.C. App 36, 46, 106 S.E.2d 734, 741 (2005) ("[W]e now hold that North Carolina's standard of fault for speech regarding a matter of public concern, where the plaintiff is a private individual, is negligence.").

14. See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 11 L. Ed. 2d 686, 706 (Where the plaintiff is a "public official" and the alleged defamatory statement concerns that official's conduct, the official must prove that the statement was "made with 'actual malice'- that is, with knowledge that it was false or with reckless disregard of whether it was false or not."); see also *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 155, 18 L. Ed.2d 1094, 1011 (1967), and *Varner v. Bryant*, 113 N.C. App. 697, 702-03, 440 S.E.2d 295, 299 (1994).

"The question of whether the evidence in the record in a defamation case is sufficient to support a finding of actual malice is a question of law." *Dobson v. Harris*, 134 N.C. App. 573, 581, 521 S.E.2d 710, 717 (1999) (citing *Harte-Hanks Comm'ns, Inc. v. Connaughton*, 491 U.S. 657, 657, 105 L. Ed.2d 587, 587 (1989)), overruled on other grounds by, *Dobson v. Harris*, 352 N.C. 77, 530 S.E.2d 829 (2000). "Actual malice" may be proved by circumstantial evidence. *Id.*

Note that "actual malice" as employed here in the constitutional sense should be differentiated from "malice" as used elsewhere in the North Carolina Pattern Instructions. Note, too, that the *N.Y. Times* "actual malice" standard may not be established by a showing of personal hostility and thus should be distinguished from state common law malice. See *Masson v. New Yorker Magazine*, 501 U.S. 496, 510, 115 L. Ed.2d 447, 468 (1991).

15. This term is used to distinguish the damages discussed from punitive or other types of exemplary damages. See *Iadanza v. Harper*, 169 N.C. App. 776, 779, 611 S.E.2d 217, 221 (2005) ("Compensatory damages include both general and special damages . . . . '[G]eneral damages are such as might accrue to any person similarly injured, while special damages are such as did in fact accrue to the particular individual by reason of the particular circumstances of the case.' (citations omitted). '[G]eneral damages . . . include such matters as mental or physical pain and suffering, inconvenience, or loss of enjoyment which cannot be definitively measured in monetary terms[.] . . . [S]pecial damages are usually synonymous with pecuniary loss [such as] [m]edical and hospital expenses, as well as loss of earnings . . . .'" (citation omitted).

16. See *Donovan*, 114 N.C. App. 524, 527, 442 S.E.2d 572, 575 ("In the context of an action for defamation, special damage means 'pecuniary loss'; 'emotional distress and mental suffering are not alone sufficient . . . .'" (citation omitted)).

17. See N.C. Gen. Stat. § 1A-1, Rule 9(g) (2001) ("When items of special damage are claimed each shall be averred.").

18. See *Hawkins v. Hawkins*, 101 N.C. App. 529, 532, 400 S.E.2d 472, 473-75 (1991) (actual damage defined as "some actual loss, hurt or harm resulting from the illegal invasion of a legal right.").

19. *Gertz*, 418 U.S. at 350, 41 L.Ed.2d at 811.

20. See *Iadanza*, 169 N.C. App. at 779-80, 611 S.E.2d at 221.

Note that the descriptions of actual harm and nonproven/presumed damages are similar and indeed are exactly the same type of damages. It is the level of proof that is assigned to these two categories that makes them distinct from one another. Whether a plaintiff must seek damages based upon actual harm (which requires specific proof) or can seek nonproven/presumed damages (which do not require specific proof) is determined by the classification of the plaintiff and whether the speech at issue involved a matter of public concern.

Nonproven/presumed damages were often called "general" damages at common law. Due to constitutional requirements, the U.S. Supreme Court determined that such "general" damages in some cases would have to be proven as actual harm. The label of "general" damages is now somewhat imprecise because it can be used to describe either actual harm



or nonproven/presumed damages.

21. See n.24 *infra*; see also *Sunward Corporation v. Dun & Bradstreet, Inc.*, 811 F.2d 511, 538 (10th Cir. 1987) ("Ascertainment of presumed general damages is difficult at best and unavoidably includes an element of speculation.") and *Prosser and Keeton on Torts*, § 116A at 843 (presumed damages are "an estimate, however rough, of the probable extent of actual loss a person had suffered and would suffer in the future, even though the loss could not be identified in terms of advantageous relationships lost, either from a monetary or enjoyment-of-life standpoint.").

22. See *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408 ("The complaints failed to bring the editorial within the [category of] . . . libel *per quod* . . . since it was not alleged that the plaintiff suffered special damages." (citing *Flake*, 212 N.C. at 785, 195 S.E. at 59)), and *Raymond U v. Duke University*, 91 N.C. App. 171, 181, 371 S.E.2d 701, 707 (1988) ("Under a libel *per quod* theory . . . special damages must be proven.").

23. In *Desmond v. The News and Observer Publ'g Co., et al.*, 375 N.C. 21, 846 S.E.2d 647 (2020), the Supreme Court of North Carolina determined that the *N.Y. Times* standard for "actual malice" was not synonymous with the definition of either "malice" or "willful or wanton conduct" found in North Carolina's punitive damages statute, N.C. Gen. Stat., Chapter 1D. Because actual malice under the *N.Y. Times* standard does not equate with malice as an aggravating factor under Chapter 1D-15(a), the jury must be instructed – through use of the appropriate Pattern Jury Instruction – to find one of the statutory factors before punitive damages can be awarded.

24. See *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. at 760, 86 L. Ed.2d at 603 ("The rationale of the common-law rules has been the experience and judgment of history that 'proof of actual damage will be impossible in a great many cases where, from the character of the defamatory words and the circumstances of publication, it is all but certain that serious harm has resulted in fact.'" (quoting Prosser, *Law of Torts* § 112, p. 765 (4th ed. 1971))); see also *Stewart v. Check Corp.*, 279 N.C. 278, 284, 182 S.E.2d 410, 414 (1971) ("Defamatory charges which are actionable *per se* raise a *prima facie* presumption of malice and a conclusive presumption of legal injury and general damage, entitling plaintiff to recover nominal damages at least without specific allegations or proof of damages.").

25. See *Harris v. Temple*, 99 N.C. App. 179, 183, 392 S.E.2d 752, 753, *rev. denied*, 327 N.C. 428, 385 S.E.2d 678 (1990) ("Punitive damages for slander are allowable when actual damages are sustained and defendant's conduct was malicious, wanton, or recklessly indifferent to the truth and plaintiff's rights.") and *Woody v. Catawba Valley Broadcasting Co.*, 272 N.C. 459, 463, 158 S.E.2d 578, 581-82 (1968) ("While punitive damages are not recoverable as a matter of right, sometimes they are justified as additional punishment for intentional acts which are wanton, willful, and in reckless disregard of a plaintiff's rights.").

26. See n.14 *supra*.

27. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349, 41 L. Ed. 2d 789, 810-11 ("we hold that the States may not permit recovery of presumed or punitive damages . . . when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth."); see also *Desmond*, 375 N.C. at 71, 846 S.E.2d at 678 (a "successful showing of actual malice in the liability stage *permits* an award of punitive damages under Supreme Court precedent, but it does not eliminate the necessity of" complying with Chapter 1D-15(a)).

28. See nn.12 and 13 *supra*.

29. *Dun & Bradstreet, Inc.*, 472 U.S. at 761, 86 L. Ed.2d at 603 ("[T]he state interest in awarding presumed and punitive damages . . . is 'substantial' relative to the incidental

effect these remedies may have on speech [not at the core of First Amendment concern . . . .] In light of the reduced constitutional value of speech involving no matters of public concern, we hold that the state interest adequately supports awards of presumed and punitive damages- even absent a showing of 'actual malice.'").

*NOTE WELL: The Pattern Jury Instruction Civil Subcommittee, after careful consideration, suggests that certain language used by the North Carolina Supreme Court in Renwick v. News & Observer Publishing Co., 310 N.C. 312, 312 S.E.2d 405 (1984), should be relied upon with caution. Although Renwick was issued in 1984 after the U.S. Supreme Court decisions in N.Y. Times and Gertz, the N.C. Supreme Court in Renwick deemed it unnecessary under the facts to categorize the claim before it under the private/public categories established by the U.S. Supreme Court. See Renwick, 310 N.C. at 318, 312 S.E.2d at 409, n.1. However, the Court quoted with approval the following language from Flake, a N.C. Supreme Court decision, issued well before establishment of the private/public categories by the U.S. Supreme Court:*

"When an unauthorized publication is libelous per se, malice and damage are presumed from the fact of publication and no proof is required as to any resulting injury. The law presumes that general damages actually, proximately and necessarily result from an unauthorized publication which is libelous per se and they are not required to be proved by evidence since they arise by inference of law, and are allowed whenever the immediate tendency of the publication is to impair plaintiff's reputation, although no actual pecuniary loss has in fact resulted."Renwick, 310 N.C. at 316, 312 S.E.2d at 408 (quoting Flake, 212 N.C. at 785, 195 S.E. at 59).

*NOTE WELL: As noted in the text of this Preface, the U.S. Supreme Court has altered the law of defamation based upon the nature of the plaintiff and the nature of subject matter of the alleged defamation. In the context of a public figure or official presenting a claim for defamation actionable per se, for example, presumed damages are allowed- but only upon a showing of actual malice. See N.Y. Times v. Sullivan, 376 U.S. at 279-80, 11 L. Ed.2d at 706; see also n.14 supra. In the context of a private plaintiff and a matter of public concern in a claim for defamation actionable per se, liability is predicated upon a showing of negligence, but presumed damages are not allowed unless the plaintiff can establish actual malice. See Gertz, 418 U.S. at 349-50, 41 L. Ed. 2d at 810; see also n.29 supra. Finally, in the context of a private plaintiff/not matter of public concern claim for defamation actionable per se, liability and presumed damages are allowed- but only upon a showing of negligence. See Dun & Bradstreet, 418 U.S. at 761, 86 L. Ed.2d at 604; Gertz, 418 U.S. at 347, 41 L. Ed.2d at 809 ("We hold that, so long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual."), and Walters, 31 N.C. App. 233, 235, 228 S.E.2d 766, 767 ("[U]nder the Gertz decision, a plaintiff in a civil action for libel, if he is a private citizen and not a public official or a public figure, can recover only if he alleges and proves fault, or at least negligence, on the part of the defendant . . . in publishing false and defamatory statements."). Thus, it appears the N.C. Supreme Court's use in Renwick of the broad language from Flake must be tempered in light of subsequent U.S. Supreme Court jurisprudence. See Walters, 31 N.C. App. at 235-36, 228 S.E.2d at 767 (Prior to Gertz, "this jurisdiction . . . clearly established that a publication charging that someone had committed a crime constituted libel per se and both malice and actual*

*damages were presumed (citation omitted). Under Gertz, there is no presumption of malice and damages, and fault must be alleged and established by a private citizen who seeks to recover for a defamatory falsehood.*")

30 *Gertz*, 418 U.S. at 349-50 ("[W]e hold that the States may not permit recovery of presumed or punitive damages, at least when liability is not based on a showing of knowledge of falsity or reckless disregard for the truth . . . . In short, the private defamation plaintiff who establishes liability under a less demanding standard than that stated by *N.Y. Times* may recover only such damages as are sufficient to compensate him for actual injury."); *see also Gibby v. Murphy*, 73 N.C. App. 128, 133, 325 S.E.2d 673, 676-77 (1985) (To recover punitive damages a private figure/matter of public concern plaintiff "must prove 'actual malice' on the part of the defendants. Actual malice may be proven by showing that the defendants published the defamatory material with knowledge that it was false, with reckless disregard to the truth, or with a high degree of awareness of its probable falsity.").

31. N.C. Gen. Stat. § 1D-15 (2001). As opposed to constitutional "actual malice" (publication with knowledge of falsity or reckless disregard of falsity, *see* n.14 *supra*), "malice" as used in the statute is common law malice defined as a "sense of personal ill will toward the claimant that activated or incited the defendant to perform the act or undertake the conduct that resulted in harm to the claimant." N.C. Gen. Stat. § 1D-5(5). "Willful or wanton conduct" is defined as "the conscious and intentional disregard of and indifference to the rights and safety of others, which the defendant knows or should know is reasonably likely to result in injury, damage, or other harm. 'Willful or wanton conduct' means more than gross negligence." N.C. Gen. Stat. § 1D-5(7).

32. Presumed damages are not available in middle-tier libel or libel *per quod* cases. *See* n.22 *supra*; *see also Morris v. Bruney*, 78 N.C. App. 668, 675, 338 S.E.2d 561, 566 (1978) ("[I]f extrinsic facts are needed to show the slander, special damages also must be alleged and proven . . . ."); *Arnold v. Sharp*, 37 N.C. App. 506, 509, 246 S.E.2d 556, 558 (1978) ("Unless a publication is actionable *per se*, the plaintiff must prove special damages."), *rev'd on other grounds*, 296 N.C. 533, 251 S.E.2d 452 (1979).

33. *See* N.C. Gen. Stat. § 99-2.



806.50 DEFAMATION—LIBEL ACTIONABLE *PER SE*—PRIVATE FIGURE—NOT MATTER OF PUBLIC CONCERN.<sup>1</sup>

*NOTE WELL: This instruction applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the statement is libelous<sup>3</sup> on its face<sup>4</sup>; (2) the plaintiff is a private figure and (3) the subject matter of the statement is not of public concern.*

*NOTE WELL: A "Yes" answer to this issue entitles the plaintiff to instructions on presumed damages (N.C.P.I.—Civil 806.81 ("Defamation Actionable Per Se—Private Figure—Not Matter of Public Concern—Presumed Damages")) and, if proof is offered, actual damages (N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages")) as well. If the plaintiff seeks an award of punitive damages and the evidence supports instruction on punitive damages, the jury should be instructed using N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount").*

The (*state number*) issue reads:

"Did the defendant libel the plaintiff?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, four things:

First, that the defendant [wrote]<sup>5</sup> [printed] [caused to be printed] [possessed in [written] [printed] form] the following statement about the plaintiff:

(*Quote the alleged statement*)

Second, that the defendant published<sup>6</sup> the statement. "Published" means that the defendant knowingly [communicated<sup>7</sup> the statement] [distributed<sup>8</sup> the statement] [caused the statement to be distributed] so that it reached one or more persons<sup>9</sup> other than the plaintiff. [Communicating the statement] [Distributing the statement] [Causing the statement to be distributed] to the plaintiff alone is not sufficient.<sup>10</sup>

Third, that the statement was false.<sup>11</sup>

Fourth, that at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false.<sup>12</sup> Ordinary care is that degree of care that a reasonable and prudent person in the same or similar circumstances would have used in order to determine whether the statement was false.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant [wrote] [printed] [caused to be printed] [possessed in [written] [printed] form] the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, and that, at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 ("Defamation—Preface") nn.4-6, 8-10 and accompanying text.

2. See *Broughton v. McClatchy Newspapers, Inc.*, 161 N.C. App. 20, 26, 588 S.E.2d 20, 26 (2003) ("Whether a publication is deemed libelous *per se* is a question of law to be determined by the court."); see also N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.11.

3. "Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures which, when considered alone without innuendo, colloquium or explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace." *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408-09 (1984) (citing *Flake v. Greensboro News Co.*, 212 N.C. 780, 787, 195 S.E. 55, 60 (1937)).

4. See *Griffin v. Holden*, 180 N.C. App. 129, 134, 636 S.E.2d 298, 303 (2006) (“In determining whether the [statement] is libelous *per se* the [statement] alone must be construed, stripped of all insinuations, innuendo, colloquium and explanatory circumstances. The [statement] must be defamatory on its face within the four corners thereof. . . . To be libelous *per se*, defamatory words must generally “be susceptible of but one meaning and of such nature that the court can presume as a matter of law that they tend to disgrace and degrade the party or hold him up to public hatred, contempt or ridicule, or cause him to be shunned and avoided. . . .” (citations and internal quotations marks omitted)).

5. See *Renwick*, 310 N.C. at 317, 312 S.E.2d 298, 303 (2006) (“Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures.”); see also *Dailey v. Popma*, 191 N.C. App. 64, 66, 662 S.E.2d. 12, 14 (2008) (describing allegedly libelous information on the internet as “internet postings”); Dan B. Dobbs, *The Law of Torts* (2d ed. 2011 ed.), § 408, p. 1141 (“Libel today includes not only writing but all forms of communications embodied in some physical form such as movie film or video tapes . . . . Most communications by computer are no doubt in the category of libel.” (citations omitted)); *Hedgepeth v. Coleman*, 183 N.C. 309, 312, 111 S.E. 517, 519 (1922) (finding from expert testimony that an unsigned typewritten defamatory paper and a letter, “the authenticity of which the defendant did not dispute, were written by the same person on an Oliver typewriter . . . . This . . . was evidence of a character sufficiently substantial to warrant the jury in finding . . . the defendant . . . responsible for [the] typewritten paper of unavowed authorship.”).

6. “A written dissemination, as suggested by the common meaning of the term ‘published,’ is not required; the mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication.” 50 Am. Jur. 2d., *Libel and Slander*, § 235, pp. 568-69 (citations omitted). Communication by means of e-mail or through use of a website are included among “other methods of communication” by which defamatory matter may be published. 50 Am. Jur. 2d., *Libel and Slander*, § 235, pp. 573-74.

7. See Restatement (2d) of Torts § 559 cmt. A (2012) (“The word ‘communication’ is used to denote the fact that one person has brought an idea to the perception of another.”).

8. See Dobbs, *supra* note 5, at § 522

Many persons who deliver, transmit, or facilitate defamation have only the most attenuated or mechanical connection with the defamatory content. Some primary publishers like newspapers are responsible as publishers even for materials prepared by others. . . . [M]any others such as telegraph and telephone companies, libraries and news vendors are called transmitters, distributors, or secondary publishers rather than primary publishers. . . . As to these, it seems clear that liability cannot be imposed unless the distributor knows or should know of the defamatory content in the materials he distributes.”

In addition, the federal Communications Decency Act (CDA) provides that internet service providers and users are not counted as “publishers” or “speakers” for defamation purposes. See 47 U.S.C. § 230(c)(1) (“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”).

9. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (“[T]o make out a *prima facie* case for defamation, ‘plaintiff must allege and prove that the defendant

made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff's reputation.") (citation omitted); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951), *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) ("While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed."); *see also White v. Trew*, 366 N.C. 360, 736 S.E.2d 166 (2013) (holding that, where general statutes and regulations mandate that public universities create evaluations of employees and make such evaluations accessible to supervisors and department heads, neither communications consistent with these rights and obligations nor review of the performance evaluation with legal counsel in preparation for performance reviews constitutes publication for purposes of a libel suit).

10. *Taylor*, 234 N.C. at 662, 68 S.E.2d at 314 (1951) ("While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed."); *Donovan v. Flumara*, 114 N.C. App. 524, 527, 442 S.E.2d 572, 573 (1994) ("To be actionable, defamatory statement must be false, and must be communicated (published) to some person or persons other than the individual defamed."); *see also Hedgepeth v. Coleman*, 183 N.C. 330, 335, 111 S.E. 517, 519–20 (1922) (finding the defendant liable for libel even though he sent the defamatory statement directly to the plaintiff, who then divulged its contents, because "the defendant must have foreseen the plaintiff's necessary exposure of the letter as the natural and probable result of the libel").

11. *NOTE WELL*: *See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.3. The element of "falsity" has previously been included in every pattern instruction on libel and slander except this instruction, N.C.P.I.—Civil 806.50 ("Defamation—Libel Actionable Per Se—Private Figure—Not Matter of Public Concern"), and N.C.P.I.—Civil 806.60 ("Defamation—Libel: Libel Actionable Per Quod—Private Figure—Not a Matter of Public Concern"). The Pattern Jury Civil Sub-Committee, upon careful consideration (set out at length in N.C.P.I.—Civil 806.40 ("Defamation—Preface", n.3) has concluded that the element of falsity should likewise be included in these two instructions.*

*If, however, after carefully reviewing n.3, it is felt that the burden of proving the truth of the statement as a defense should be placed upon the defendant in the private figure/not matter of public concern circumstance covered by this instruction, the third element should be deleted from this pattern charge and not submitted to the jury. However, N.C.P.I.—Civil 806.79 ("Defamation—Libel Actionable Per Se or Libel Per Quod—Private Figure—Not Matter of Public Concern—Truth as a Defense") should thereafter be submitted to the jury in the event this issue is answered in favor of the plaintiff.*

12. *See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.12.*



806.51 DEFAMATION—LIBEL ACTIONABLE *PER SE*—PRIVATE FIGURE—MATTER OF PUBLIC CONCERN.

*NOTE WELL: This instruction<sup>1</sup> applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the statement is libelous<sup>3</sup> on its face;<sup>4</sup> (2) the plaintiff is a private figure and (3) the subject matter of the statement is of public concern.<sup>5</sup>*

*NOTE WELL: See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), nn.12, 14, 29, 30 and accompanying text for a discussion of the proof requirements for this type of plaintiff. A “Yes” answer to this issue entitles the plaintiff to an instruction on actual damages if proof is offered. See N.C.P.I.—Civil 806.84 (“Defamation—Actual Damages”). Presumed damages are only allowed upon a showing of actual malice. See N.C.P.I.—Civil 806.82 (“Defamation—Actionable Per Se—Private Figure—Matter of Public Concern—Presumed Damages”). Punitive damages are permissible if actual malice is shown and the Chapter 1D requirements for punitive damages met. See N.C.P.I.—Civil 806.85 (“Defamation—Private Figure—Matter of Public Concern—Issue of Actual Malice”).*

The (*state number*) issue reads:

“Did the defendant libel the plaintiff?”

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, four things:

First, that the defendant [wrote] [printed] [caused to be printed]<sup>6</sup> [possessed in [written] [printed] form] the following statement about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>7</sup> the statement. “Published” means that the defendant knowingly [communicated<sup>8</sup> the statement] [distributed<sup>9</sup> the statement] [caused the statement to be distributed] so that it reached one or more persons<sup>10</sup> other than the plaintiff. [Communicating the

statement] [Distributing the statement] [Causing the statement to be distributed] to the plaintiff alone is not sufficient.<sup>11</sup>

Third, that the statement was false.<sup>12</sup>

Fourth, that, at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false.<sup>13</sup> Ordinary care is that degree of care that a reasonable and prudent person in the same or similar circumstances would have used in order to determine whether the statement was false.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant [wrote] [printed] [caused to be printed] [possessed in [written] [printed] form] the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, and that, at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false, then it would be your duty to answer this issue “Yes” in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I—Civil 806.40 (“Defamation—Preface”) nn.4, 9-10 and accompanying text.

2. See *Broughton v. McClatchy Newspapers, Inc.*, 161 N.C. App. 20, 26, 588 S.E.2d 20, 26 (2003) (“Whether a publication is deemed libelous *per se* is a question of law to be determined by the court.”); see also N.C.P.I—Civil 806.40 (“Defamation—Preface”), n.11.

3. “Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures which, when considered alone without innuendo, colloquium or explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one

to ridicule, contempt or disgrace.” *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408-09 (1984) (citing *Flake v. Greensboro News Co.*, 212 N.C. 780, 787, 195 S.E. 55, 60 (1937)).

4. See *Griffin v. Holden*, 180 N.C. App. 129, 134, 636 S.E.2d 298, 303 (2006) (“In determining whether [a statement] is libelous *per se* the [statement] alone must be construed, stripped of all insinuations, innuendo, colloquium and explanatory circumstances. The [statement] must be defamatory on its face ‘within the four corners thereof.’ To be libelous *per se*, defamatory words must generally ‘be susceptible of but one meaning and of such nature that the court can presume as a matter of law that they tend to disgrace and degrade the party or hold him up to public hatred, contempt or ridicule, or cause him to be shunned and avoided.’” (citations omitted)).

5. See *Mathis v. Daly*, 205 N.C. App. 200, 205, 695 S.E.2d 807, 811 (2010) (stating that whether speech addresses a matter of public concern will be determined by its context, form and content as evidenced by a reading of the whole record; and that factors tending to show a matter is of public concern include, but are not limited to, national news coverage of the matter and discussion of the matter at government and academic meetings).

6. See *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408-09 (“Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures.”); see also *Dailey v. Popma*, 191 N.C. App. 64, 66, 662 S.E.2d. 12, 14 (2008) (describing allegedly libelous information on the internet as “internet postings”); Dan B. Dobbs, *The Law of Torts* (2001 ed.), § 408, p. 1141 (“[L]ibel today includes not only writing but all forms of communications embodied in some physical form such as movie film or video tapes . . . Most communications by computer are no doubt in the category of libel.” (citations omitted)), and *Hedgepeth v. Coleman*, 183 N.C. 309, 312, 111 S.E. 517, 519 (1922) (Expert testimony that an unsigned typewritten defamatory paper and a letter, “the authenticity of which the defendant did not dispute, were written by the same person on an Oliver typewriter. This was evidence of a character sufficiently substantial to warrant the jury in finding . . . the defendant . . . responsible for [the] typewritten paper of unavowed authorship.”).

7. “A written dissemination, as suggested by the common meaning of the term ‘published,’ is not required; the mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication.” 50 Am. Jur.2d, *Libel and Slander* § 235, pp. 568-69 (citations omitted). Communication by means of e-mail or through use of a website are included among “other methods of communication” by which defamatory matter may be published. 50 Am. Jur. 2d., *Libel and Slander*, § 235, pp. 573-74.

8. “The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation.” 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word “communication” includes “publishing, speaking, uttering, or conveying by words, acts, or in any other manner’ and idea to another person.” N.C. Gen. Stat. § 99-1(b).

9. See Dobbs at § 402, p. 1123-24 (“Many persons who deliver, transmit, or facilitate defamation have only the most attenuated or mechanical connection with the defamatory content. Some primary publishers like newspapers are responsible as publishers even for materials prepared by others . . . [M]any others such as telegraph and telephone companies, libraries and news vendors are regarded as mere transmitters or disseminators rather than publishers. As to these, it seems clear that liability cannot be imposed unless the distributor

knows or should know of the defamatory content in the materials he distributes.” [In addition,] “[a] federal statute . . . immunizes the Internet users and providers so that they are not responsible for material posted by others”; see 47 U.S.C. § 230(c)(1) (“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”).

10. “[T]o make out a *prima facie* case for defamation, ‘plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff’s reputation.’” *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (citation omitted); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951), *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) (“While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed.”).

11. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d 676, 678 (1979)) (“A communication to the plaintiff, or to a person acting at the plaintiff’s request, cannot form the basis for a libel or slander claim.”).

12. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.3.

13. See *Neill Grading & Constr. Co., Inc. v. Lingafelt*, 168 N.C. App. 36, 47, 606 S.E.2d 734, 741 (2005) (holding that “North Carolina’s standard of fault for speech regarding a matter of public concern, where the plaintiff is a private individual, is negligence.”).

806.53 DEFAMATION—LIBEL ACTIONABLE *PER SE*—PUBLIC FIGURE OR OFFICIAL.<sup>1</sup>

*NOTE WELL: This instruction applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the statement is libelous<sup>3</sup> on its face<sup>4</sup> and (2) the plaintiff is a public figure or public official, as to whom actual malice must be shown.*

*NOTE WELL: A "Yes" answer to this issue entitles the plaintiff to instructions on presumed damages, N.C.P.I.—Civil 806.83 ("Defamation—Actionable Per Se-Public Figure or Official") and actual damages, N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages"), if proof of the latter is offered. A public figure or public official has to prove actual malice to permit an award of punitive damages under the N.Y. Times standard, and this is incorporated below as part of the liability consideration. Showing of the statutory criteria set out in Chapter 1D-15(a) is required as well, see N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn.14 and 27 and accompanying text, and the standard punitive damages instructions, N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount"), should be utilized if punitive damages are sought.*

The (*state number*) issue reads:

"Did the defendant libel the plaintiff?"

On this issue the burden of proof is on the plaintiff to prove four things. The plaintiff must prove the first three things by the greater weight of the evidence. The greater weight of the evidence does not refer to the quantity of the evidence, but rather to the quality and convincing force of the evidence. It means that you must be persuaded, considering all of the evidence, that the necessary facts are more likely than not to exist. The three things the plaintiff must prove by the greater weight of the evidence are:

First, that the defendant [wrote] [printed] [caused to be printed]<sup>5</sup> [possessed in [written] [printed] form] the following statement about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>6</sup> the statement. "Published" means that the defendant knowingly [communicated<sup>7</sup> the statement] [distributed<sup>8</sup> the statement] [caused the statement to be distributed] so that it reached one or more persons<sup>9</sup> other than the plaintiff. [Communicating the statement] [Distributing the statement] [Causing the statement to be distributed] to the plaintiff alone is not sufficient.<sup>10</sup>

Third, that the statement was false.<sup>11</sup>

Members of the jury, you will note that the plaintiff's burden of proof as to the first three things is by the greater weight of the evidence. However, as to the fourth thing, the plaintiff's burden of proof is by clear, strong and convincing evidence. Clear, strong and convincing evidence is evidence which, in its character and weight, establishes what the plaintiff seeks to prove in a clear, strong and convincing fashion. You shall interpret and apply the words "clear," "strong" and "convincing" in accordance with their commonly understood and accepted meanings in everyday speech.

Fourth, the plaintiff must prove by clear, strong and convincing evidence that, at the time of the publication, the defendant either knew the statement was false or acted with reckless disregard of whether the statement was false.<sup>12</sup> Reckless disregard means that, at the time of the publication, the defendant had serious doubts about whether the statement was true.<sup>13</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant [wrote] [printed] [caused to be printed] [possessed in [written] [printed] form] the following statement about the plaintiff: *(Quote the alleged statement)*, that the defendant published the statement, and that the statement was false; and if you further find by clear, strong and convincing evidence that, at the time

of the publication, the defendant either knew the statement was false or acted with reckless disregard of whether the statement was false, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn. 4, 9-10 and accompanying text.

2. See *Broughton v. McClatchy Newspapers, Inc.*, 161 N.C. App. 20, 26, 588 S.E.2d 20, 26 (2003) ("Whether a publication is deemed libelous *per se* is a question of law to be determined by the court."); see also N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.11.

3. "Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures which, when considered alone without innuendo, colloquium or explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace." *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408-09 (1984) (citing *Flake v. Greensboro News Co.*, 212 N.C. 780, 787, 195 S.E. 55, 60 (1937)).

4. See *Griffin v. Holden*, 180 N.C. App. 129, 134, 636 S.E.2d 298, 303 (2006) ("In determining whether [a statement] is libelous *per se* the [statement] alone must be construed, stripped of all insinuations, innuendo, colloquium and explanatory circumstances. The [statement] must be defamatory on its face 'within the four corners thereof.' To be libelous *per se*, defamatory words must generally "be susceptible of but one meaning and of such nature that the court can presume as a matter of law that they tend to disgrace and degrade the party or hold him up to public hatred, contempt or ridicule, or cause him to be shunned and avoided.'" (citations omitted)).

5. See *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408-09 ("Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures."); see also *Dailey v. Popma*, 191 N.C. App. 64, 66, 662 S.E.2d. 12, 14 (2008) (describing allegedly libelous information on the internet as "internet postings"); Dan B. Dobbs, *The Law of Torts* (2001 ed.), § 408, p. 1141 ("[L]ibel today includes not only writing but all forms of communications embodied in some physical form such as movie film or video tapes . . . Most communications by computer are no doubt in the category of libel." (citations omitted)), and *Hedgepeth v. Coleman*, 183 N.C. 309, 312, 111 S.E. 517, 519 (1922) (Expert testimony that an unsigned typewritten defamatory paper and a letter, "the authenticity of which the defendant did not dispute, were written by the same person on an Oliver typewriter. This was evidence of a character sufficiently substantial to warrant the jury in finding . . . the defendant . . . responsible for [the] typewritten paper of unavowed authorship.").

6. "A written dissemination, as suggested by the common meaning of the term 'published,' is not required; the mode of publication of [defamatory matter] is immaterial,

and . . . any act by which the defamatory matter is communicated to a third party constitutes publication.” 50 Am. Jur.2d, *Libel and Slander*, § 235, pp. 568-69 (citations omitted). Communication by means of email or through use of a website are included among “other methods of communication” by which defamatory matter may be published. 50 Am. Jur. 2d., *Libel and Slander*, § 235, pp. 573-74.

7. “The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation.” 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word “communication” includes “publishing, speaking, uttering, or conveying by words, acts, or in any other manner’ and idea to another person.” N.C. Gen. Stat. § 99-1(b).

8. See Dobbs at 402, pp. 1123-24 (“Many persons who deliver, transmit, or facilitate defamation have only the most attenuated or mechanical connection with the defamatory content. Some primary publishers like newspapers are responsible as publishers even for materials prepared by others . . . [M]any others such as telegraph and telephone companies, libraries and news vendors are regarded as mere transmitters or disseminators rather than publishers. As to these, it seems clear that liability cannot be imposed unless the distributor knows or should know of the defamatory content in the materials he distributes.”)

[In addition,] “[a] federal statute . . . immunizes the Internet users and providers so that they are not responsible for material posted by others”; see 47 U.S.C. § 230(c)(1) (“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”).

9. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (“[T]o make out a *prima facie* case for defamation, ‘plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff’s reputation.’”) (citation omitted); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) (“While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed.” (citations omitted)).

10. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678 (1979)) (“A communication to the plaintiff, or to a person acting at the plaintiff’s request, cannot form the basis for a libel or slander claim.”).

11. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.3.

12. This element incorporates the “actual malice” requirement mandated by *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 11 L. Ed.2d 686, 706 (1964). See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.14.

13. See *Dellinger v. Belk*, 34 N.C. App. 488, 490, 238 S.E.2d 788, 789 (1977) (noting that the U.S. Supreme Court in *Amant v. Thompson*, 390 U.S. 727, 731, 20 L. Ed.2d 262, 267 (1968), “refined the definition of ‘reckless disregard’ to require ‘sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.’”); see also *Barker v. Kimberly-Clark Corp.*, 136 N.C. App. 455, 461, 524 S.E.2d 821, 825 (2000) (actual malice may be shown, *inter alia*, by publication of a defamatory statement “with a high degree of awareness of its probable falsity.”), and *Ward v. Turcotte*, 79 N.C. Ap. 458, 461, 339 S.E.2d 444, 446-7 (1986) (citation omitted) (“Actual malice may be found in a reckless disregard for the truth and may be proven by a showing



---

that the defamatory statement was made in bad faith, without probable cause or without checking for truth by the means at hand.”).



806.60 DEFAMATION—LIBEL ACTIONABLE *PER QUOD*—PRIVATE FIGURE—NOT MATTER OF PUBLIC CONCERN.<sup>1</sup>

*NOTE WELL: This instruction applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the statement is subject to two interpretations, one of which is defamatory and one of which is not; or the statement is not libelous<sup>3</sup> on its face, but is capable of a defamatory meaning when extrinsic evidence is considered;<sup>4</sup> (2) the plaintiff is a private figure and (3) the subject matter of the statement is not of public concern.*

*NOTE WELL: A "Yes" answer to this issue entitles a plaintiff to an instruction on actual damages. See N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages"). Presumed damages are not available. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n. 32. If the plaintiff seeks an award of punitive damages and the evidence supports instruction on punitive damages, the plaintiff may receive an instruction on punitive damages under the general statutory standards enunciated in N.C. Gen. Stat. § 1D-15. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n. 23. N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount") should be utilized.*

The (*state number*) issue reads:

"Did the defendant libel the plaintiff?"

A libelous statement is one which (*select the appropriate alternative*):

[charges that a person has committed an infamous crime.<sup>5</sup> I instruct you that (*state infamous crime*)<sup>6</sup> is an infamous crime.]

[charges a person with having an infectious disease. I instruct you that [*state infectious disease, i.e., HIV/AIDS, syphilis*] is an infectious disease.]

[tends to [impeach<sup>7</sup>] [prejudice<sup>8</sup>] [discredit<sup>9</sup>] [reflect unfavorably upon]<sup>10</sup> a person in that person's trade or profession.]

[tends to subject a person to ridicule, contempt or disgrace.]<sup>11</sup>

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, seven things:

First, that the defendant [wrote]<sup>12</sup> [printed] [caused to be printed] [possessed in [written] [printed] form] the following statement about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>13</sup> the statement. "Published" means that the defendant knowingly [communicated<sup>14</sup> the statement] [distributed<sup>15</sup> the statement] [caused the statement to be distributed] so that it reached one or more persons<sup>16</sup> other than the plaintiff. [Communicating the statement] [Distributing the statement] [Causing the statement to be distributed] to the plaintiff alone is not sufficient.<sup>17</sup>

Third, that the statement was false.<sup>18</sup>

Fourth, that the defendant intended<sup>19</sup> the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession] [subject the plaintiff to ridicule, contempt or disgrace].

Fifth, that the person other than the plaintiff to whom the statement was published reasonably understood<sup>20</sup> the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession]<sup>21</sup> [subject the plaintiff to ridicule, contempt or disgrace].

Sixth, that at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false.<sup>22</sup> Ordinary care is that degree of care that

a reasonable and prudent person in the same or similar circumstances would have used in order to determine whether the statement was false.

Seventh, that the plaintiff, as a result of the publication, suffered a monetary or economic loss.<sup>23</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant [wrote] [printed] [caused to be printed] [possessed in [written] [printed] form] the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, that the defendant intended the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff’s trade or profession] [subject the plaintiff to ridicule, contempt or disgrace], that the person to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff’s trade or profession] [subject the plaintiff to ridicule, contempt or disgrace], that, at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false, and that the plaintiff, as a result of the publication, suffered a monetary or economic loss, then it would be your duty to answer this issue “Yes” in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 (“Defamation—Preface”), nn.4-5 and accompanying text.

2. See *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) (“It is noted:

'(1) The court determines whether a communication is capable of a defamatory meaning. (2) The jury determines whether a communication, capable of a defamatory meaning, was so understood by its recipient'" (quoting *Restatement of the Law of Torts*, § 614.); see also N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.11.

3. "Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures which, when considered alone without innuendo, colloquium or explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace." *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408-09 (1984) (citing *Flake v. Greensboro News Co.*, 212 N.C. 780, 787, 195 S.E. 55, 60 (1937)).

4. Libel actionable *per quod* is comprised of those publications "which are not obviously defamatory, but which become so when considered in connection with innuendo, colloquium and explanatory circumstances." *Ellis v. Northern Star Co.*, 326 N.C. 219, 223, 388 S.E.2d 127, 130 (1990) (quoting *Flake v. Greensboro News Co.*, 212 N.C. at 785, 195 S.E. at 59).

North Carolina also recognizes a "middle-tier libel" when a statement is "susceptible of two reasonable interpretations, one of which is defamatory and the other is not." *Ellis*, 326 N.C. at 223, 388 S.E.2d at 130 (quoting *Flake*, 212 N.C. at 785, 195 S.E.2d. at 59). Although middle-tier libel may differ technically from libel actionable *per quod* the instructions for libel actionable *per quod* are appropriate for jury instruction purposes in a middle-tier libel claim.

5. N.C. Gen. Stat. § 14-3(b) permits punishment as felonies of misdemeanors constituting "infamous crimes." However, "[t]he applicable statute . . . and the reported cases leave some lack of certainty as to what crimes may be designated and punished as 'infamous.'" *State v. Keen*, 25 N.C. App. 567, 571, 214 S.E.2d 242, 244 (1975). In addition to those crimes specified, all felonies are also "infamous crimes" for defamation purposes. See, e.g., *State v. Mann*, 317 N.C. 164, 170, 345 S.E.2d 365, 369 (1986) ("A crime is 'infamous' within the meaning of the statute if it is an act of depravity, involves moral turpitude, and reveals a heart devoid of social duties and a mind fatally bent on mischief" (citation omitted).), and *Jones v. Brinkley*, 174 N.C. 23, 25, 93 S.E. 372, 374 (1917) (Under an earlier version of N.C. Gen. Stat. § 14-3, "the test is not the nature of the punishment, but the nature of the offense charged. A charge of larceny is actionable *per se*, and 'there is no distinction between grand and petty larceny in this respect.'" (citation omitted)); see also *State v. Surlles*, 230 N.C. 272, 283-84, 52 S.E.2d 880, 888 (1949) (Ervin, J., dissenting) ("At common law, . . . an infamous crime is one whose commission brings infamy upon a convicted person, rendering him unfit and incompetent to testify as a witness, such crimes being treason, felony, and *crimen falsi*. This latter term means any offense involving corrupt deceit, or falsehood by which the public administration of justice may be impeded, such as perjury, subornation of perjury, forgery, bribery of witnesses, conspiracy in procuring non-attendance of witnesses, barratry, counterfeiting, cheating by false weights or measures, and conspiring to accuse an innocent person of crime." (quoting Burdick, *Law of Crimes*, § 87)).

6. See n.5.

7. If further definition of the phrase "impeach the plaintiff in plaintiff's trade or profession" is required, consider: The statement "(1) must touch the plaintiff in his special trade or occupation, and (2) must contain an imputation necessarily hurtful in its effect on his business." *Badame v. Lampke*, 242 N.C. 755, 757, 89 S.E. 2d 466, 468 (1955).

8. See *Shreve v. Duke Power Co.*, 97 N.C. App. 646, 389 S.E.2d 444 (1990).

9. *Nguyen v. Taylor*, 219 N.C. App. 1, 8, 723 S.E.2d. 551, 557-58 (2012) (quoting *Cohen v. McLawhorn*, 208 N.C. App. 492, 503, 704 S.E.2d. 519, 527 (2010)) (“North Carolina has long recognized the harm that can result from false statements that impeach a person in that person's trade or profession – such statements are deemed defamation per se. The mere saying or writing of the words is presumed to cause injury to the subject; there is no need to prove any actual injury.”).

10. See n.9 *supra*.

11. *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408-09 (1984).

12. See *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408-09 (“Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures.”); see also Dan B. Dobbs, *The Law of Torts* (2001 ed.) § 408 at 1141 (“[L]ibel today includes not only writing but all forms of communications embodied in some physical form such as movie film or video tapes . . . . Most communications by computer are no doubt in the category of libel.” (citations omitted)); and *Hedgepeth v. Coleman*, 183 N.C. 309, 312, 111 S.E. 517, 519 (1922) (Expert testimony that an unsigned typewritten defamatory paper and a letter, “the authenticity of which the defendant did not dispute, were written by the same person on an Oliver typewriter . . . was evidence of a character sufficiently substantial to warrant the jury in finding . . . the defendant . . . responsible for [the] typewritten paper of unavowed authorship.”).

13. “A written dissemination, as suggested by the common meaning of the term ‘published,’ is not required; the mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication.” 50 Am. Jur. 2d, *Libel and Slander*, § 235, pp. 568-69 (citations omitted). Communication by means of email or through use of a web site are included among “other methods of communication” by which defamatory matter may be published. 50 Am. Jur. 2d, *Libel and Slander*, § 235, pp. 573-74.

14. “The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation.” 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word “communication” includes “publishing, speaking, uttering, or conveying by words, acts, or in any other manner” an idea to another person. N.C. Gen. Stat. § 99-1(b).

15. See Dobbs, § 402 at 1123-24 (“Many persons who deliver, transmit, or facilitate defamation have only the most attenuated or mechanical connection with the defamatory content. Some primary publishers like newspapers are responsible as publishers even for materials prepared by others . . . . [M]any others such as telegraph and telephone companies, libraries and news vendors are regarded as mere transmitters or disseminators rather than publishers. As to these, it seems clear that liability cannot be imposed unless the distributor knows or should know of the defamatory content in the materials he distributes.”

[In addition,] “[a] federal statute . . . immunizes the Internet users and providers so that they are not responsible for material posted by others”; see 47 U.S.C. § 230(c)(1) (“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”).

16. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (“[T]o

make out a *prima facie* case for defamation, 'plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff's reputation.'" (citation omitted)); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) ("While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed." (citations omitted)).

17. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678 (1979)) ("A communication to the plaintiff, or to a person acting at the plaintiff's request, cannot form the basis for a libel or slander claim.").

18. NOTE WELL: See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn.2-3. The element of "falsity" has previously been included in every pattern instruction on libel and slander except this instruction, N.C.P.I.—Civil 806.60 ("Defamation—Libel Actionable Per Quod—Private Figure—Not Matter of Public Concern"), and N.C.P.I.—Civil 806.50 ("Defamation—Libel: Libel Actionable Per Se—Private Figure—Not a Matter of Public Concern"). The Pattern Jury Civil Sub-Committee, upon careful consideration (set out at length in N.C.P.I.—Civil, 806.40 ("Defamation—Preface"), n.3), has concluded that the element of falsity should likewise be included in these two instructions.

If, however, after carefully reviewing 806.40 ("Defamation—Preface"), n.3, it is felt that the burden of proving the truth of the statement as a defense should be placed upon the defendant in the private figure/not matter of public concern circumstance covered by this instruction, then the third element should be deleted from this pattern charge and not submitted to the jury. N.C.P.I.—Civil 806.79 ("Defamation—Libel Actionable Per Se or Libel Actionable Per Quod—Not Matter of Public Concern—Truth as a Defense") should thereafter be submitted to the jury in the event this issue is answered in favor of the plaintiff.

19 See *Raymond U v. Duke University*, 91 N.C. App. 171, 181, 371 S.E.2d 701, 708 (1988) (Under libel actionable *per quod*, "the publication must have been intended by defendant to be defamatory and had to be understood as such by those to whom it was published."); *Renwick*, 310 N.C. at 316-17, 312 S.E.2d at 408 ("The plaintiff's complaints in these cases failed to bring the editorial complained of within the second class of libel, since it was not alleged that the editorial is susceptible of two meanings, one defamatory, and that the defamatory meaning was intended and was so understood by those to whom the publication was made."); and *Robinson v. Nationwide Ins. Co.*, 273 N.C. 391, 394, 159 S.E.2d 896, 899 (1968) ("Where the words alleged to have been written and published by the defendant concerning the plaintiff are not, upon their face, susceptible only to a defamatory interpretation, the complaint states no cause of action unless it also alleges that a defamatory meaning was intended by the defendant and understood by those to whom the statement is alleged to have been published."); see also *Cathy's Boutique v. Winston-Salem Joint Venture*, 72 N.C. App. 641, 643, 325 S.E.2d 283, 285 (1985) ("a complaint does not state a cause of action [for 'middle-tier' libel] unless it alleges that the defamatory meaning was intended and was so understood by those to whom the publication was made.").

20 See n.19.

21 See n.7.

22 See N.C.P.I.—Civil-806.40 ("Defamation—Preface"), n.12.

23 *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408 ("The complaints failed to bring the



-----

---

editorial within the third class - libel *per quod* - since it was not alleged that the plaintiff suffered special damages."); *Raymond U*, 91 N.C. App. at 181, 371 S.E.2d at 708 (holding that for publications which are libelous *per quod*, "special damages must be proven."); *Griffin v. Holden*, 180 N.C. App. 129, 135, 636 S.E.2d 298, 303 (2006) ("[W]hen a publication is libelous *per quod*, the injurious character of the words and some special damage must be pleaded and proved."); *see also Iadanza v. Harper*, 169 N.C. App. 776, 779, 611 S.E.2d 217, 221 (2005) ("[S]pecial damages are usually synonymous with pecuniary loss . . . as well as loss of earnings . . .").



806.61 DEFAMATION—LIBEL ACTIONABLE *PER QUOD*—PRIVATE FIGURE—MATTER OF PUBLIC CONCERN.

*NOTE WELL: This instruction<sup>1</sup> applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the statement is subject to two interpretations, one of which is defamatory and one of which is not; or the statement is not libelous<sup>3</sup> on its face, but is capable of a defamatory meaning when extrinsic evidence is considered;<sup>4</sup> (2) the plaintiff is a private figure and (3) the subject matter of the statement is of public concern.<sup>5</sup>*

*NOTE WELL: A "Yes" answer to this issue entitles a plaintiff to an instruction on actual damages. See N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages"). Punitive damages are permissible if actual malice is shown and the Chapter 1D requirements for punitive damages met. See N.C.P.I.—Civil 806.85 ("Defamation—Private Figure—Matter of Public Concern—Issue of Actual Malice; see generally, N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.27 and accompanying text. N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and N.C.P.I.—Civil 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount") should be utilized. Presumed damages are not available. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.32 and accompanying text.*

The (*state number*) issue reads:

"Did the defendant libel the plaintiff?"

A libelous statement is one which (*select the appropriate alternative*):

[charges that a person has committed an infamous crime.<sup>6</sup> I instruct you that (*state infamous crime*)<sup>7</sup> is an infamous crime.]

[charges a person with having an infectious disease. I instruct you that [*state infectious disease, i.e., HIV/AIDS, syphilis*] is an infectious disease.]

[tends to [impeach<sup>8</sup>] [prejudice<sup>9</sup>] [discredit<sup>10</sup>] [reflect unfavorably upon]<sup>11</sup> a person in that person's trade or profession.]

[tends to subject a person to ridicule, contempt or disgrace.]<sup>12</sup>

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, seven things:

First, that the defendant [wrote]<sup>13</sup> [printed] [caused to be printed] [possessed in [written] [printed] form] the following statement about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>14</sup> the statement. "Published" means that the defendant knowingly [communicated<sup>15</sup> the statement] [distributed<sup>16</sup> the statement] [caused the statement to be distributed] so that it reached one or more persons<sup>17</sup> other than the plaintiff. [Communicating the statement] [Distributing the statement] [Causing the statement to be distributed] to the plaintiff alone is not sufficient.<sup>18</sup>

Third, that the statement was false.<sup>19</sup>

Fourth, that the defendant intended the statement [to charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession]<sup>20</sup> [subject the plaintiff to ridicule, contempt or disgrace].<sup>21</sup>

Fifth, that the person other than the plaintiff to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession] [subject the plaintiff to ridicule, contempt or disgrace].<sup>22</sup>

Sixth, that, at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false.<sup>23</sup> Ordinary care is that degree of care that

a reasonable and prudent person in the same or similar circumstances would have used in order to determine whether the statement was false.

Seventh, that the plaintiff, as a result of the publication, suffered a monetary or economic loss.<sup>24</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant [wrote] [printed] [caused to be printed] [possessed in [written] [printed] form] the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, that the defendant intended the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession] [subject the plaintiff to ridicule, contempt or disgrace], that the person to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession] [subject the plaintiff to ridicule, contempt or disgrace], that, at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false, and that the plaintiff, as a result of the publication, suffered a monetary or economic loss, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 ("Defamation—Preface") nn.4-5 and accompanying text.

2. See *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) ("It is noted: '(1) The court determines whether a communication is capable of a defamatory meaning. (2)

The jury determines whether a communication, capable of a defamatory meaning, was so understood by its recipient." (quoting *Restatement of the Law of Torts*, § 614)); see also N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.11.

3. "Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures which, when considered alone without innuendo, colloquium or explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace." *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408-09 (1984) (citing *Flake v. Greensboro News Co.*, 212 N.C. 780, 787, 195 S.E. 55, 60 (1937)).

4. Libel actionable *per quod* is comprised of those publications "which are not obviously defamatory, but which become so when considered in connection with innuendo, colloquium and explanatory circumstances." *Ellis v. Northern Star Co.*, 326 N.C. 219, 223, 388 S.E.2d 127, 130 (1990) (quoting *Flake v. Greensboro News Co.*, 212 N.C. at 785, 195 S.E. at 59).

North Carolina also recognizes a "middle-tier libel" when a statement is "susceptible of two reasonable interpretations, one of which is defamatory and the other is not." *Ellis*, 326 N.C. at 223, 388 S.E.2d at 130 (quoting *Flake*, 212 N.C. at 785, 195 S.E.2d. at 59). Although middle-tier libel may differ technically from libel actionable *per quod* the instructions for libel actionable *per quod* are appropriate for jury instruction purposes in a middle-tier libel claim.

5. See *Mathis v. Daly*, 205 N.C. App. 200, 205, 695 S.E.2d 807, 811 (2010) (stating that whether speech addresses a matter of public concern will be determined by its context, form and content as evidenced by a reading of the whole record; and that factors tending to show a matter is of public concern include, but are not limited to, national news coverage of the matter, discussion of the matter at government and academic meetings).

6. *State v. Keen*, 25 N.C. App. 567, 571, 214 S.E.2d 242, 244 (1975). In addition to those crimes specified, all felonies are also "infamous crimes" for defamation purposes. See, e.g., *State v. Mann*, 317 N.C. 164, 170, 345 S.E.2d 365, 369 (1986) ("A crime is 'infamous' within the meaning of the statute if it is an act of depravity, involves moral turpitude, and reveals a heart devoid of social duties and a mind fatally bent on mischief." (citation omitted)), and *Jones v. Brinkley*, 174 N.C. 23, 25, 93 S.E. 372, 374 (1917) (Under an earlier version of N.C. Gen. Stat. § 14-3, "the test is not the nature of the punishment, but the nature of the offense charged. A charge of larceny is actionable *per se*, and 'there is no distinction between grand and petty larceny in this respect.'" (citation omitted)); see also *State v. Surles*, 230 N.C. 272, 283-84, 52 S.E.2d 880, 888 (1949) (Ervin, J., dissenting) ("At common law, . . . an infamous crime is one whose commission brings infamy upon a convicted person, rendering him unfit and incompetent to testify as a witness, such crimes being treason, felony, and *crimen falsi*. This latter term means any offense involving corrupt deceit, or falsehood by which the public administration of justice may be impeded, such as perjury, subornation of perjury, forgery, bribery of witnesses, conspiracy in procuring non-attendance of witnesses, barratry, counterfeiting, cheating by false weights or measures, and conspiring to accuse an innocent person of crime." (quoting Burdick, *Law of Crimes*, § 87)).

7. See n.6 *supra*.

8. If further definition of the phrase "impeach the plaintiff in plaintiff's trade or profession" is required, consider: The statement "(1) must touch the plaintiff in his special

trade or occupation, and (2) must contain an imputation necessarily hurtful in its effect on his business.” *Badame v. Lampke*, 242 N.C. 755, 757, 89 S.E. 2d 466, 468 (1955).

9. See *Shreve v. Duke Power Co.*, 97 N.C. App. 648, 650, 389 S.E.2d 444, 446 (1990).

10. *Nguyen v. Taylor*, 219 N.C. App. 1, 8, 723 S.E.2d. 551, 557-58 (2012) (quoting *Cohen v. McLawhorn*, 208 N.C. App. 492, 503, 704 S.E.2d. 519, 527 (2010)) (“North Carolina has long recognized the harm that can result from false statements that impeach a person in that person's trade or profession – such statements are deemed defamation per se. The mere saying or writing of the words is presumed to cause injury to the subject; there is no need to prove any actual injury.”).

11. See n.10 *supra*.

12. *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408-09 (1984).

13. *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408-09 (“Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures.”); see also Dan B. Dobbs, *The Law of Torts* (2001 ed.) § 408 at 1141 (“[L]ibel today includes not only writing but all forms of communications embodied in some physical form such as movie film or video tapes . . . . Most communications by computer are no doubt in the category of libel.” (citations omitted)), and *Hedgepeth v. Coleman*, 183 N.C. 309, 312, 111 S.E. 517, 519 (1922) (Expert testimony that an unsigned typewritten defamatory paper and a letter, “the authenticity of which the defendant did not dispute, were written by the same person on an Oliver typewriter . . . . was evidence of a character sufficiently substantial to warrant the jury in finding . . . the defendant . . . responsible for [the] typewritten paper of unavowed authorship.”).

14. “A written dissemination, as suggested by the common meaning of the term ‘published,’ is not required; the mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication.” 50 Am. Jur. 2d., *Libel and Slander*, § 235, pp. 568-69 (citations omitted). Communication by means of e-mail or through use of a web site are included among “other methods of communication” by which defamatory matter may be published. 50 Am. Jur. 2d., *Libel and Slander*, § 235, pp. 573-74.

15. “The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation.” 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word “communication” includes “publishing, speaking, uttering, or conveying by words, acts, or in any other manner” an idea to another person. N.C. Gen. Stat. § 99-1(b).

16. See Dobbs, § 402 at 1123-24 (“Many persons who deliver, transmit, or facilitate defamation have only the most attenuated or mechanical connection with the defamatory content. Some primary publishers like newspapers are responsible as publishers even for materials prepared by others . . . . [M]any others such as telegraph and telephone companies, libraries and news vendors are regarded as mere transmitters or disseminators rather than publishers. As to these, it seems clear that liability cannot be imposed unless the distributor knows or should know of the defamatory content in the materials he distributes.”

[In addition,] “[a] federal statute . . . immunizes the Internet users and providers so that they are not responsible for material posted by others”; see 47 U.S.C. § 230(c)(1) (“No

provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”).

17. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (“[T]o make out a *prima facie* case for defamation, 'plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff's reputation.'” (citation omitted)); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) (“While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed.” (citations omitted)).

18. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678 (1979)) (“A communication to the plaintiff, or to a person acting at the plaintiff's request, cannot form the basis for a libel or slander claim.”).

19. See N.C.P.I.—Civil 806.40, (“Defamation—Preface”), n.3.

20. See n.8.

21. See *Raymond U v. Duke University*, 91 N.C. App. 171, 181, 371 S.E.2d 701, 708 (1988) (Under libel actionable *per quod*, “the publication must have been intended by defendant to be defamatory and had to be understood as such by those to whom it was published.”); *Renwick*, 310 N.C. at 316-17, 312 S.E.2d at 408 (“The plaintiff's complaints in these cases failed to bring the editorial complained of within the second class of libel, since it was not alleged that the editorial is susceptible of two meanings, one defamatory, and that the defamatory meaning was intended and was so understood by those to whom the publication was made.”); and *Robinson v. Nationwide Ins. Co.*, 273 N.C. 391, 394, 159 S.E.2d 896, 899 (1968) (“Where the words alleged to have been written and published by the defendant concerning the plaintiff are not, upon their face, susceptible only to a defamatory interpretation, the complaint states no cause of action unless it also alleges that a defamatory meaning was intended by the defendant and understood by those to whom the statement is alleged to have been published.”); see also *Cathy's Boutique v. Winston-Salem Joint Venture*, 72 N.C. App. 641, 643, 325 S.E.2d 283, 285 (1985) (“a complaint does not state a cause of action [for 'middle-tier' libel] unless it alleges that the defamatory meaning was intended and was so understood by those to whom the publication was made.”).

22. See N.C.P.I.—Civil 806.40, (“Defamation—Preface”), n.2.

23. *Neill Grading & Constr. Co., Inc. v. Lingafelt*, 168 N.C. App 36, 47, 106 S.E.2d 734, 741 (2005) (holding that “North Carolina's standard of fault for speech regarding a matter of public concern, where the plaintiff is a private individual, is negligence.”).

24. *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408 (“The complaints failed to bring the editorial within the third class- libel *per quod*- since it was not alleged that the plaintiff suffered special damages.); *Raymond U*, 91 N.C. App. at 181, 371 S.E.2d at 708 (for publications which are libelous *per quod*, “special damages must be proven”); *Griffin*, 180 N.C. App. at 135, 636 S.E.2d at 303 (“[W]hen a publication is libelous *per quod*, the injurious character of the words and some special damage must be pleaded and proved.”); see also *Iadanza v. Harper*, 169 N.C. App. 766, 779, 611 S.E.2d 217, 221 (2005)(“[S]pecial damages are usually synonymous with pecuniary loss . . . as well as loss of earnings . . .”).



806.62 DEFAMATION—LIBEL ACTIONABLE *PER QUOD*—PUBLIC FIGURE OR OFFICIAL.<sup>1</sup>

*NOTE WELL: This instruction applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the statement is subject to two interpretations, one of which is defamatory and one of which is not; or the statement is not libelous<sup>3</sup> on its face, but is capable of a defamatory meaning when extrinsic evidence is considered<sup>4</sup> and (2) the plaintiff is a public figure or public official, as to whom actual malice must be shown.*

*NOTE WELL: A "Yes" answer to this issue entitles a plaintiff to an instruction on actual damages. See N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages"). A public figure or public official has to prove actual malice to permit an award of punitive damages under the N.Y. Times standard, and this is incorporated below as part of the liability consideration. Showing of the statutory criteria set out in Chapter 1D-15(a) is required as well, see N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn. 14, 27, 30 and 31 and accompanying text, and the standard punitive damages instructions, N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount"), should be utilized if punitive damages are sought.*

The (*state number*) issue reads:

"Did the defendant libel the plaintiff?"

A libelous statement is one which (*select the appropriate alternative*):

[charges that a person has committed an infamous crime.<sup>5</sup> I instruct you that (*state infamous crime*)<sup>6</sup> is an infamous crime.]

[charges a person with having an infectious disease. I instruct you that [*state infectious disease, i.e., HIV/AIDS, syphilis*] is an infectious disease.]

[tends to [impeach<sup>7</sup>] [prejudice<sup>8</sup>] [discredit<sup>9</sup>] [reflect unfavorably upon]<sup>10</sup> a person in that person's trade or profession.]

[tends to subject a person to ridicule, contempt or disgrace.]<sup>11</sup>

On this issue the burden of proof is on the plaintiff to prove seven things. The plaintiff must prove the first six things by the greater weight of the evidence. The greater weight of the evidence does not refer to the quantity of the evidence, but rather to the quality and convincing force of the evidence. It means that you must be persuaded, considering all of the evidence, that the necessary facts are more likely than not to exist. These six things the plaintiff must prove by the greater weight of the evidence are:

First, that the defendant [wrote] [printed] [caused to be printed]<sup>12</sup> [possessed in [written] [printed] form] the following statement about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>13</sup> the statement. "Published" means that the defendant knowingly [communicated<sup>14</sup> the statement] [distributed<sup>15</sup> the statement] [caused the statement to be distributed] so that it reached one or more persons<sup>16</sup> other than the plaintiff. [Communicating the statement] [Distributing the statement] [Causing the statement to be distributed] to the plaintiff alone is not sufficient.<sup>17</sup>

Third, that the statement was false.<sup>18</sup>

Fourth, that the defendant intended the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession]<sup>19</sup> [subject the plaintiff to ridicule, contempt or disgrace].<sup>20</sup>

Fifth, that the person other than the plaintiff to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having

an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession] [subject the plaintiff to ridicule, contempt or disgrace].<sup>21</sup>

Sixth, that the plaintiff, as a result of the publication, suffered a monetary or economic loss.<sup>22</sup>

Members of the jury, you will note that the plaintiff's burden of proof as to the first six things is by the greater weight of the evidence. However, as to the seventh thing, the plaintiff's burden of proof is by clear, strong and convincing evidence. Clear, strong and convincing evidence is evidence which, in its character and weight, establishes what the plaintiff seeks to prove in a clear, strong and convincing fashion. You shall interpret and apply the words "clear," "strong" and "convincing" in accordance with their commonly understood and accepted meanings in everyday speech.

Seventh, the plaintiff must prove by clear, strong and convincing evidence that, at the time of the publication, the defendant either knew the statement was false or acted with reckless disregard of whether the statement was false.<sup>23</sup> Reckless disregard means that, at the time of the publication, the defendant had serious doubts about whether the statement was true.<sup>24</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant [wrote] [printed] [caused to be printed] [possessed in [written] [printed] form] the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, that the defendant intended the statement to [charge the plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession] [subject the plaintiff to ridicule, contempt or disgrace], that the person to whom the statement was published reasonably understood the statement to [charge the

plaintiff with having committed an infamous crime] [charge the plaintiff with having an infectious disease] [impeach the plaintiff in the plaintiff's trade or profession] [subject the plaintiff to ridicule, contempt or disgrace], and that the plaintiff, as a result of the publication, suffered a monetary or economic loss; and if you further find by clear, strong and convincing evidence that, at the time of the publication, the defendant either knew the statement was false or acted with reckless disregard of whether the statement was false, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I. 806.40 ("Defamation—Preface"), nn.5 and 9-10 and accompanying text.

2. See *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) ("It is noted: '(1) The court determines whether a communication is capable of a defamatory meaning. (2) The jury determines whether a communication, capable of a defamatory meaning, was so understood by its recipient.'" (quoting *Restatement of the Law of Torts*, § 614)); see also N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.11.

3. "Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures which, when considered alone without innuendo, colloquium or explanatory circumstances: (1) charges that a person has committed an infamous crime; (2) charges a person with having an infectious disease; (3) tends to impeach a person in that person's trade or profession; or (4) otherwise tends to subject one to ridicule, contempt or disgrace." *Renwick v. News & Observer Publishing Co.*, 310 N.C. 312, 317, 312 S.E.2d 405, 408-09 (1984) (citing *Flake v. Greensboro News Co.*, 212 N.C. 780, 787, 195 S.E. 55, 60 (1938)).

4. Libel actionable *per quod* is comprised of those publications "which are not obviously defamatory, but which become so when considered in connection with innuendo, colloquium and explanatory circumstances." *Ellis v. Northern Star Co.*, 326 N.C. 219, 223, 388 S.E.2d 127, 130 (1990) (quoting *Flake*, 212 N.C. at 785, 195 S.E. at 59).

North Carolina also recognizes a "middle-tier libel" when a statement is "susceptible of two reasonable interpretations, one of which is defamatory and the other is not." *Ellis*, 326 N.C. at 223, 388 S.E.2d at 130 (quoting *Flake*, 212 N.C. at 785, 195 S.E.2d. at 59). Although middle-tier libel may differ technically from libel actionable *per quod* the instructions for libel actionable *per quod* are appropriate for jury instruction purposes in a middle-tier libel claim.

5. *State v. Keen*, 25 N.C. App. 567, 571, 214 S.E.2d 242, 244 (1975). In addition to those crimes specified, all felonies are also "infamous crimes" for defamation purposes. See, e.g., *State v. Mann*, 317 N.C. 164, 170, 345 S.E.2d 365, 369 (1986) ("A crime is 'infamous' within the meaning of the statute if it is an act of depravity, involves moral turpitude, and

reveals a heart devoid of social duties and a mind fatally bent on mischief." (citation omitted)), and *Jones v. Brinkley*, 174 N.C. 23, 25, 93 S.E. 372, 374 (1917) (Under an earlier version of N.C. Gen. Stat. § 14-3, "the test is not the nature of the punishment, but the nature of the offense charged. A charge of larceny is actionable *per se*, and 'there is no distinction between grand and petty larceny in this respect.'" (citation omitted)); see also *State v. Surlles*, 230 N.C. 272, 283-84, 52 S.E.2d 880, 888 (1949) (Ervin, J., dissenting) ("At common law, . . . an infamous crime is one whose commission brings infamy upon a convicted person, rendering him unfit and incompetent to testify as a witness, such crimes being treason, felony, and *crimen falsi*. This latter term means any offense involving corrupt deceit, or falsehood by which the public administration of justice may be impeded, such as perjury, subornation of perjury, forgery, bribery of witnesses, conspiracy in procuring non-attendance of witnesses, barratry, counterfeiting, cheating by false weights or measures, and conspiring to accuse an innocent person of crime." (quoting Burdick, *Law of Crimes*, § 87)).

6. See n.5 *supra*.

7. If further definition of the phrase "impeach the plaintiff in the plaintiff's trade or profession" is required, consider: The statement "(1) must touch the plaintiff in his special trade or occupation, and (2) must contain an imputation necessarily hurtful in its effect on his business." *Badame v. Lampke*, 242 N.C. 755, 757, 89 S.E. 2d 466, 468 (1955).

8. See *Shreve v. Duke Power Co.*, 97 N.C. App. 648, 650, 389 S.E.2d 444, 446 (1990).

9. *Nguyen v. Taylor*, 219 N.C. App 1, 8, 723 S.E.2d. 551, 557-58 (2012) (quoting *Cohen v. McLawhorn*, 208 N.C. App. 492, 503-04, 704 S.E.2d. 519, 527 (2010)) ("North Carolina has long recognized the harm that can result from false statements that impeach a person in that person's trade or profession – such statements are deemed defamation *per se*. The mere saying or writing of the words is presumed to cause injury to the subject; there is no need to prove any actual injury.").

10. See n.9 *supra*.

11. *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408-09.

12. *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408-09 ("Under the well established common law of North Carolina, a libel *per se* is a publication by writing, printing, signs or pictures."); see also Dan B. Dobbs, *The Law of Torts* (2001 ed.) § 408 at 1141 ("[L]ibel today includes not only writing but all forms of communications embodied in some physical form such as movie film or video tapes . . . . Most communications by computer are no doubt in the category of libel." (citations omitted)), and *Hedgepeth v. Coleman*, 183 N.C. 309, 312, 111 S.E. 517, 519 (1922) (Expert testimony that an unsigned typewritten defamatory paper and a letter, "the authenticity of which the defendant did not dispute, were written by the same person on an Oliver typewriter . . . was evidence of a character sufficiently substantial to warrant the jury in finding . . . the defendant . . . responsible for [the] typewritten paper of unavowed authorship.").

13. "A written dissemination, as suggested by the common meaning of the term 'published,' is not required; the mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication." 50 Am. Jur. 2d, *Libel and Slander*, § 235, pp. 568-69 (citations omitted). ). Communication by means of e-mail or through use of a web site are included among "other methods of communication" by which defamatory matter may be published. 50 Am. Jur. 2d, *Libel and Slander*, § 235, pp. 573-74.

14. "The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation." 50

Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word “communication” includes “publishing, speaking, uttering, or conveying by words, acts, or in any other manner” and idea to another person.” N.C. Gen. Stat. § 99-1(b).

15. See Dobbs § 402 at 1123-24 (“Many persons who deliver, transmit, or facilitate defamation have only the most attenuated or mechanical connection with the defamatory content. Some primary publishers like newspapers are responsible as publishers even for materials prepared by others . . . . [M]any others such as telegraph and telephone companies, libraries and news vendors are regarded as mere transmitters or disseminators rather than publishers. As to these, it seems clear that liability cannot be imposed unless the distributor knows or should know of the defamatory content in the materials he distributes.”

[In addition,] “[a] federal statute . . . immunizes the Internet users and providers so that they are not responsible for material posted by others”; see 47 U.S.C. § 230(c)(1) (“No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”).

16. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (“[T]o make out a *prima facie* case for defamation, ‘plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff’s reputation.’”) (citation omitted; *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) (“While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed.” (citations omitted))).

17. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678 (1979)) (“A communication to the plaintiff, or to a person acting at the plaintiff’s request, cannot form the basis for a libel or slander claim.”).

18. See N.C.P.I.—Civil 806.40, (“Defamation—Preface”), n.3.

19. See n.7.

20. See *Raymond U v. Duke University*, 91 N.C. App. 171, 181, 371 S.E.2d 701, 708 (1988) (Under libel actionable *per quod*, “the publication must have been intended by defendant to be defamatory and had to be understood as such by those to whom it was published.”); *Renwick*, 310 N.C. at 316-17, 312 S.E.2d at 408 (“The plaintiff’s complaints in these cases failed to bring the editorial complained of within the second class of libel, since it was not alleged that the editorial is susceptible of two meanings, one defamatory, and that the defamatory meaning was intended and was so understood by those to whom the publication was made.”); and *Robinson v. Nationwide Ins. Co.*, 273 N.C. 391, 394, 159 S.E.2d 896, 899 (1968) (“Where the words alleged to have been written and published by the defendant concerning the plaintiff are not, upon their face, susceptible only to a defamatory interpretation, the complaint states no cause of action unless it also alleges that a defamatory meaning was intended by the defendant and understood by those to whom the statement is alleged to have been published.”); see also *Cathy’s Boutique v. Winston-Salem Joint Venture*, 72 N.C. App. 641, 643, 325 S.E.2d 283, 285 (1985) (“a complaint does not state a cause of action [for ‘middle-tier’ libel] unless it alleges that the defamatory meaning was intended and was so understood by those to whom the publication was made.”).

21. See n.20 *supra*.

22. *Renwick*, 310 N.C. at 317, 312 S.E.2d at 408 (“The complaints failed to bring the editorial within the third class - libel *per quod* - since it was not alleged that the plaintiff suffered special damages; *Raymond U*, 91 N.C. App. at 181, 371 S.E.2d at 708 (for publications which are libelous *per quod*, “special damages must be proven”); *Griffin*, 180 N.C. App. at 135, 636 S.E.2d at 303 (“[W]hen a publication is libelous *per quod*, the injurious character of the words and some special damage must be pleaded and proved.”); see also *Iadanza v. Harper*, 169 N.C. App. 766, 779, 611 S.E.2d 217, 221 (2005) (“[S]pecial damages are usually synonymous with pecuniary loss . . . as well as loss of earnings . . .”).

23. This element incorporates the “actual malice” requirement mandated by *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964). See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.14.

24. See *Dellinger v. Belk*, 34 N.C. App. 488, 490, 238 S.E.2d 788, 789 (1977) (noting that the U.S. Supreme Court in *St. Amant v. Thompson*, 390 U.S. 727, 731, 20 L. Ed. 2d 262, 1325 (1968), “refined the definition of ‘reckless disregard’ to require ‘sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.’”); see also *Barker v. Kimberly-Clark Corp.*, 136 N.C. App. 455, 461, 524 S.E.2d 821, 825 (2000) (actual malice may be shown, *inter alia*, by publication of a defamatory statement “with a high degree of awareness of its probable falsity.”), and *Ward v. Turcotte*, 79 N.C. App. 458, 461, 339 S.E.2d 444, 446-7 (1986) (citation omitted) (“Actual malice may be found in a reckless disregard for the truth and may be proven by a showing that the defamatory statement was made in bad faith, without probable cause or without checking for truth by the means at hand.”).





806.65 DEFAMATION—SLANDER ACTIONABLE *PER SE*—PRIVATE FIGURE—NOT MATTER OF PUBLIC CONCERN.<sup>1</sup>

*NOTE WELL: This instruction applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the slanderous<sup>3</sup> character of the statement appears on the face of the words alone;<sup>4</sup> (2) the plaintiff is a private figure and (3) the subject matter of the statement is not of public concern.*

*NOTE WELL: A "Yes" answer to this issue entitles the plaintiff to instructions on presumed damages and, if proof is offered, actual damages as well. See N.C.P.I.—Civil 806.81 ("Defamation—Actionable Per Se—Private Figure—Not Matter of Public Concern"), and N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages"). If the plaintiff seeks an award of punitive damages and the evidence supports instruction on punitive damages, the jury should be instructed using N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount"). N.C. Gen. Stat. § 1D-15.*

The (*state number*) issue reads:

"Did the defendant slander the plaintiff?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, four things:

First, that the defendant made the following statement<sup>5</sup> about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>6</sup> the statement. "Published" means that the defendant knowingly [communicated<sup>7</sup> the statement] [repeated<sup>8</sup> the statement] [caused the statement to be repeated] so that it reached one or more persons<sup>9</sup> other than the plaintiff. [Communicating the statement] [Repeating the statement] [Causing the statement to be repeated] to the plaintiff alone is not sufficient.<sup>10</sup>

Third, that the statement was false.<sup>11</sup>

Fourth, that at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false.<sup>12</sup> Ordinary care is that degree of care that a reasonable and prudent person in the same or similar circumstances would have used in order to determine whether the statement was false.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant made the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, and that, at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false, then it would be your duty to answer this issue “Yes” in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 (“Defamation—Preface”) n.6 and accompanying text.

2. See *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) (“The court determines whether a communication is capable of a defamatory meaning.” (citation omitted)); see also N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.11.

3. See *Raymond U v. Duke Univ.*, 91 N.C. App. 171, 182, 371 S.E.2d 701, 709 (1988) (“Slander *per se* involves an oral communication to a third person which amounts to: (1) accusations that the plaintiff committed a crime involving moral turpitude; (2) allegations that impeach the plaintiff in his or her trade, business, or profession; or (3) imputations that the plaintiff has a loathsome disease.” (citations omitted)).

4. See *Williams v. Freight Lines and Willard v. Freight Lines*, 10 N.C. App. 384, 388, 179 S.E.2d 319, 322 (1971) (“Where the injurious character of the words appear on their face as a matter of general acceptance they are actionable *per se*.”); see also *Beane v. Weiman Co., Inc.*, 5 N.C. App. 276, 278, 168 S.E.2d 236, 237-38 (1969) (“Where the injurious character of the words does not appear on their face as a matter of general acceptance, but only in consequence of extrinsic, explanatory facts showing their injurious effect, such utterance is actionable only *per quod*.” (citation omitted)).

5. *Raymond U*, 91 N.C. App. at 182, 371 S.E.2d at 709 (“Slander is a tort distinct from

libel in that slander involves an oral communication.” (citations omitted)); see also N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.6.

6. “[T]he mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication.” 50 Am. Jur. 2d, *Libel and Slander* § 235, pp. 568-69 (citations omitted).

7. “The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation.” 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word “communication” includes “publishing, speaking, uttering, or conveying by words, acts, or in any other manner’ an idea to another person.” N.C. Gen. Stat. § 99-1(b).

8. “The repeater of defamatory material is also a publisher and subject to liability for the publication.” Dan B. Dobbs, *The Law of Torts* (2001 ed.) § 402, p. 1123.

9. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (“[T]o make out a *prima facie* case for defamation, ‘plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff’s reputation.’” (citation omitted)); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951), *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) (“While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed.” (citations omitted)).

10. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678 (1979)) (“A communication to the plaintiff, or to a person acting at the plaintiff’s request, cannot form the basis for a libel or slander claim.”).

11. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.3.

12. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.12.



806.66 DEFAMATION—SLANDER ACTIONABLE *PER SE*—PRIVATE FIGURE—MATTER OF PUBLIC CONCERN.

*NOTE WELL: This instruction<sup>1</sup> applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the slanderous<sup>3</sup> character of the statement appears on the face of the words alone;<sup>4</sup> (2) the plaintiff is a private figure and (3) the subject matter of the statement is of public concern. <sup>5</sup>*

*NOTE WELL: A "Yes" answer to this issue entitles the plaintiff to an instruction on actual damages if proof is offered. See N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages"). Presumed damages are only allowed upon a showing of actual malice. See N.C.P.I.—Civil 806.82 ("Defamation—Actionable Per Se—Private Figure-Matter of Public Concern—Presumed Damages"). Punitive damages are permissible if actual malice is shown and the Chapter 1D requirements for punitive damages met. See N.C.P.I.—Civil 806.85 ("Defamation—Private Figure—Matter of Public Concern—Issue of Actual Malice"); N.C.P.I.—Civil 806.40 ("Defamation—Preface") nn.14, 27, 30 and 31 and accompanying text.*

The (*state number*) issue reads:

"Did the defendant slander the plaintiff?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, four things:

First, that the defendant made the following statement<sup>6</sup> about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>7</sup> the statement. "Published" means that the defendant knowingly [communicated<sup>8</sup> the statement] [repeated<sup>9</sup> the statement] [caused the statement to be repeated] so that it reached one or more persons<sup>10</sup> other than the plaintiff. [Communicating the

statement] [Repeating the statement] [Causing the statement to be repeated]  
to the plaintiff alone is not sufficient.<sup>11</sup>

Third, that the statement was false.<sup>12</sup>

Fourth, that, at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false.<sup>13</sup> Ordinary care is that degree of care that a reasonable and prudent person in the same or similar circumstances would have used in order to determine whether the statement was false.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant made the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, and that, at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false, then it would be your duty to answer this issue “Yes” in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.6 and accompanying text.

2. See *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) (“The court determines whether a communication is capable of a defamatory meaning.” (citation omitted)); see also N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.11.

3. See *Raymond U v. Duke Univ.*, 91 N.C. App. 171, 182, 371 S.E.2d 701, 709 (1988) (“Slander *per se* involves an oral communication to a third person which amounts to: (1) accusations that the plaintiff committed a crime involving moral turpitude; (2) allegations that impeach the plaintiff in his or her trade, business, or profession; or (3) imputations that the plaintiff has a loathsome disease.” (citations omitted)).

4. “Where the injurious character of the words appear on their face as a matter of

general acceptance they are actionable *per se*." *Williams v. Freight Lines and Willard v. Freight Lines*, 10 N.C. App. 384, 388, 179 S.E.2d 319, 322 (1971). See also *Beane v. Weiman Co., Inc.*, 5 N.C. App. 276, 278, 168 S.E.2d 236, 237-38 (1969) ("Where the injurious character of the words does not appear on their face as a matter of general acceptance, but only in consequence of extrinsic, explanatory facts showing their injurious effect, such utterance is actionable only *per quod*." (citation omitted)).

5. See *Mathis v. Daly*, 205 N.C. App. 200, 205, 695 S.E.2d 807, 811 (2010) (stating that whether speech addresses a matter of public concern will be determined by its context, form and content as evidenced by a reading of the whole record; and that factors tending to show a matter is of public concern include, but are not limited to, national news coverage of the matter, discussion of the matter at government and academic meetings).

6. *Raymond U v. Duke Univ.*, 91 N.C. App. at 182, 371 S.E.2d at 709 ("Slander is a tort distinct from libel in that slander involves an oral communication." (citations omitted)); see also N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.6.

7. "[T]he mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication." 50 Am. Jur.2d, *Libel and Slander* § 235, pp. 568-69 (citations omitted).

8. "The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation." 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word "communication" includes "'publishing, speaking, uttering, or conveying by words, acts, or in any other manner' and idea to another person." N.C. Gen. Stat. § 99-1(b).

9. "The repeater of defamatory material is also a publisher and subject to liability for the publication." Dan B. Dobbs, *Law of Torts* § 402, p. 1123 (2001 ed.).

10. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) ("[T]o make out a *prima facie* case for defamation, 'plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff's reputation." (citation omitted)); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) ("While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed." (citations omitted)).

11. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678 (1979)) ("A communication to the plaintiff, or to a person acting at the plaintiff's request, cannot form the basis for a libel or slander claim.").

12. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.3.

13. *Neill Grading & Constr. Co., Inc. v. Lingafelt*, 168 N.C. App. 36, 47, 606 S.E.2d 734, 741 (2005) (holding that "North Carolina's standard of fault for speech regarding a matter of public concern, where the plaintiff is a private individual, is negligence.").





806.67 DEFAMATION—SLANDER ACTIONABLE *PER SE*—PUBLIC FIGURE OR OFFICIAL.<sup>1</sup>

*NOTE WELL: This instruction applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the slanderous<sup>3</sup> character of the statement appears on the face of the words alone;<sup>4</sup> and (2) the plaintiff is a public figure or public official, as to whom actual malice must be shown.*

*NOTE WELL: A "Yes" answer to this issue entitles the plaintiff to instructions on presumed damages (N.C.P.I.—Civil 806.81 ("Defamation—Actionable Per Se—Private Figure—Not Matter of Public Concern—Presumed Damages")) and, if proof is offered, actual damages (N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages")) as well. If the plaintiff seeks an award of punitive damages and the evidence supports instruction on punitive damages, the jury should be instructed using N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount"). Showing of the statutory criteria set out in Chapter 1D-15(a) is required as well. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn.14 and 25 and accompanying text.*

The (*state number*) issue reads:

"Did the defendant slander the plaintiff?"

On this issue the burden of proof is on the plaintiff to prove four things. The plaintiff must prove the first three things by the greater weight of the evidence. The greater weight of the evidence does not refer to the quantity of the evidence, but rather to the quality and convincing force of the evidence. It means that you must be persuaded, considering all of the evidence, that the necessary facts are more likely than not to exist. These three things the plaintiff must prove by the greater weight of the evidence are:

First, that the defendant made the following statement<sup>5</sup> about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>6</sup> the statement. "Published" means that the defendant knowingly [communicated<sup>7</sup> the statement] [repeated<sup>8</sup> the statement] [caused the statement to be repeated] so that it reached one or more persons<sup>9</sup> other than the plaintiff. [Communicating the statement] [Repeating the statement] [Causing the statement to be repeated] to the plaintiff alone is not sufficient.<sup>10</sup>

Third, that the statement was false.<sup>11</sup>

Members of the jury, the plaintiff's burden of proof as to the first three things is by the greater weight of the evidence. However, as to the fourth thing, the plaintiff's burden of proof is by clear, strong and convincing evidence. Clear, strong and convincing evidence is evidence which, in its character and weight, establishes what the plaintiff seeks to prove in a clear, strong and convincing fashion. You shall interpret and apply the words "clear," "strong" and "convincing" in accordance with their commonly understood and accepted meanings in everyday speech.

Fourth, the plaintiff must prove by clear, strong and convincing evidence, that, at the time of the publication, the defendant either knew the statement was false or acted with reckless disregard of whether the statement was false.<sup>12</sup> Reckless disregard means that, at the time of the publication, the defendant had serious doubts about whether the statement was true.<sup>13</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant made the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, and that the statement was false; and if you further find by clear, strong and convincing evidence that, at the time of the publication, the defendant either knew the statement was false or acted with reckless disregard of whether the statement was false, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn. 6, 9-10 and accompanying text.

2. See *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) ("The court determines whether a communication is capable of a defamatory meaning." (citation omitted)); see also N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.11.

3. See *Raymond U v. Duke Univ.*, 91 N.C. App. 171, 182, 371 S.E.2d 701, 709 (1988) ("Slander *per se* involves an oral communication to a third person which amounts to: (1) accusations that the plaintiff committed a crime involving moral turpitude; (2) allegations that impeach the plaintiff in his or her trade, business, or profession; or (3) imputations that the plaintiff has a loathsome disease." (citations omitted)).

4. See *Williams v. Freight Lines and Willard v. Freight Lines*, 10 N.C. App. 384, 388, 179 S.E.2d 319, 322 (1971) ("Where the injurious character of the words appear on their face as a matter of general acceptance they are actionable *per se*."); see also *Beane v. Weiman Co., Inc.*, 5 N.C. App. 276, 278, 168 S.E.2d 236, 237-38 (1969) ("Where the injurious character of the words does not appear on their face as a matter of general acceptance, but only in consequence of extrinsic, explanatory facts showing their injurious effect, such utterance is actionable only *per quod*." (citation omitted)).

5. *Raymond U*, 91 N.C. App. at 182, 371 S.E.2d at 709 ("Slander is a tort distinct from libel in that slander involves an oral communication." (citations omitted)); see also N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.6.

6. "[T]he mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication." 50 Am. Jur.2d., *Libel and Slander*, § 235, pp. 568-69 (citations omitted).

7. "The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation." 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word "communication" includes "'publishing, speaking, uttering, or conveying by words, acts, or in any other manner' and idea to another person." N.C. Gen. Stat. § 99-1(b).

8. "The repeater of defamatory material is also a publisher and subject to liability for the publication." Dan B. Dobbs, *Law of Torts* § 402, p. 1123 (2001 ed.).

9. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) ("[T]o make out a *prima facie* case for defamation, 'plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff's reputation.'" (citation omitted)); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) ("While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed." (citations omitted)).

10. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678

---

(1979)) (“A communication to the plaintiff, or to a person acting at the plaintiff’s request, cannot form the basis for a libel or slander claim.”).

11. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.3.

12. This element incorporates the “actual malice” requirement mandated by *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964). See also N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.14.

13. See *Dellinger v. Belk*, 34 N.C. App. 488, 490, 238 S.E.2d 788, 789 (1977) (noting the U.S. Supreme Court in *St. Amant v. Thompson*, 390 U.S. 727, 731, 20 L. Ed. 2d 262, 267 (1968), “refined the definition of ‘reckless disregard’ to require ‘sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication’”); see also *Barker v. Kimberly-Clark Corp.*, 136 N.C. App. 455, 461, 524 S.E.2d 821, 825 (2000) (actual malice may be shown, *inter alia*, by publication of a defamatory statement “with a high degree of awareness of its probable falsity”), and *Ward v. Turcotte*, 79 N.C. App. 458, 461, 339 S.E.2d 444, 446-7 (1986) (citation omitted) (“Actual malice may be found in a reckless disregard for the truth and may be proven by a showing that the defamatory statement was made in bad faith, without probable cause or without checking for truth by the means at hand.”).

806.70 DEFAMATION—SLANDER ACTIONABLE *PER QUOD*—PRIVATE FIGURE—NOT MATTER OF PUBLIC CONCERN.<sup>1</sup>

*NOTE WELL: This instruction applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the statement is not slanderous on its face, but is capable of a defamatory meaning when extrinsic evidence is considered;<sup>3</sup> (2) the plaintiff is a private figure and (3) the subject matter of the statement is not of public concern.*

*NOTE WELL: A "Yes" answer to this issue entitles a plaintiff to an instruction on actual damages. See N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages"). Presumed damages are not available. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n. 32. If the plaintiff seeks an award of punitive damages and the evidence supports instruction on punitive damages, the plaintiff may receive an instruction on punitive damages under the general statutory standards enunciated in N.C. Gen. Stat. § 1D-15. See N.C.P.I.—Civil 806.40, n. 23. N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount") should be utilized.*

The (*state number*) issue reads:

"Did the defendant slander the plaintiff?"

A slanderous<sup>4</sup> statement is one which (*select the appropriate alternative*):

[charges that a person has committed a crime or offense involving moral turpitude.<sup>5</sup> I instruct you that (*state crime or offense*) is a crime or offense involving moral turpitude.]<sup>6</sup>

[impeaches<sup>7</sup> [or prejudices<sup>8</sup>] [or discredits<sup>9</sup>] [or reflects unfavorably upon<sup>10</sup>] a person in that person's trade or profession.]

[imputes<sup>11</sup> to a person a loathsome disease.<sup>12</sup>]

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, seven things:

First, that the defendant made the following statement<sup>13</sup> about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>14</sup> the statement. "Published" means that the defendant knowingly [communicated<sup>15</sup> the statement] [repeated<sup>16</sup> the statement] [caused the statement to be repeated] so that it reached one or more persons<sup>17</sup> other than the plaintiff. [Communicating the statement] [Repeating the statement] [Causing the statement to be repeated] to the plaintiff alone is not sufficient.<sup>18</sup>

Third, that the statement was false.<sup>19</sup>

Fourth, that the defendant intended the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in that person's trade or profession] [impute to the plaintiff a loathsome disease].<sup>20</sup>

Fifth, that the person other than the plaintiff to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in that person's trade or profession] [impute to the plaintiff a loathsome disease].<sup>21</sup>

Sixth, that at the time of the publication, the defendant either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false.<sup>22</sup> Ordinary care is that degree of care that a reasonable and prudent person in the same or similar circumstances would have used in order to determine whether the statement was false.

Seventh, that the plaintiff, as a result of the publication, suffered a monetary or economic loss.<sup>23</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant made the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, that the defendant intended the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in that person’s trade or profession] [impute to the plaintiff a loathsome disease], that the person to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in that person’s trade or profession] [impute to the plaintiff a loathsome disease], that the defendant, at the time of the publication, either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false, and that the plaintiff, as a result of the publication, suffered a monetary or economic loss, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 (“Defamation—Preface”) nn. 5-6 and accompanying text.

2. See *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) (“It is noted: '(1) The court determines whether a communication is capable of a defamatory meaning. (2) The jury determines whether a communication, capable of a defamatory meaning, was so understood by its recipient.’” (citation omitted)); see also N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n. 11.

3. See *Beane v. Weiman Co., Inc.*, 5 N.C. App. 276, 278, 168 S.E.2d 236, 237-38 (1969) (“Where the injurious character of the words does not appear on their face as a matter of general acceptance, but only in consequence of extrinsic, explanatory facts showing their injurious effect, such utterance is actionable only *per quod*.” (citation omitted)).

4. See *Raymond U v. Duke Univ.*, 91 N.C. App. 171, 182, 371 S.E.2d 701, 709 (1988) (“Slander *per se* involves an oral communication to a third person which amounts to: (1) accusations that the plaintiff committed a crime involving moral turpitude; (2) allegations that

impeach the plaintiff in his or her trade, business, or profession; or (3) imputations that the plaintiff has a loathsome disease.” (citations omitted)).

5. See *Restatement (Second) of Torts* § 571, cmt. g (defining moral turpitude “as inherent baseness or vileness of principle in the human heart; it means, in general, shameful wickedness, so extreme a departure from ordinary standards of honesty, good morals, justice, or ethics as to be shocking to the moral sense of the community.”), and *Jones v. Brinkley*, 174 N.C. 23, 25, 93 S.E. 372, 373 (1917) (defining moral turpitude as “[a]n act of baseness, vileness or depravity in the private and social duties that a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man” (citation omitted)).

6. “The question of whether an offense involves moral turpitude is one particularly suitable for the trial court’s judgment.” 28 Am. Jur.2d, *Libel and Slander* § 161, p. 510 (citing *Freedlander v. Edens Broadcasting, Inc.*, 734 F. Supp. 221 (E.D. Va. 1990), *order aff’d.*, 923 F.2d 848 (4th Cir. 1990). See also *Jones v. Brinkley*, 174 N.C. 23, 25, 93 S.E. 372, 373 (1917) (deciding as a matter of law that accusation of larceny, even if not at a felony level, was sufficient grounds for a defamation action).

7. If it is felt necessary to include an explanatory term for “impeach,” one or more of the suggested alternatives may be given. See, generally, *Badame v. Lampke*, 242 N.C. 755, 757, 89 S.E. 2d 466, 468 (1955) (noting that the statement “(1) must touch the plaintiff in his special trade or occupation, and (2) must contain an imputation necessarily hurtful in its effect on his business.”).

8. See *Shreve v. Duke Power Co.*, 97 N.C. App. 648, 650, 389 S.E.2d 444, 446 (1990).

9. *Nguyen v. Taylor*, 219 N.C. App 1, 8, 723 S.E.2d. 551, 557-58 (2012) (quoting *Cohen v. McLawhorn*, 208 N.C. App. 492, 503, 704 S.E.2d. 519, 527 (2010)) (“North Carolina has long recognized the harm that can result from false statements that impeach a person in that person’s trade or profession – such statements are deemed defamation *per se*. The mere saying or writing of the words is presumed to cause injury to the subject; there is no need to prove any actual injury.”).

10. See n.9 *supra*.

11. If an alternative to “imputes” is desired, the phraseology “conveys that [a person] has a loathsome disease,” may be used. See *Dobson v. Harris*, 134 N.C. App. 573, 579, 521 S.E.2d 710, 715-16 (1999), *rev’d on other grounds*, 352 N.C. 77, 530 S.E.2d 829 (2000); see also *Restatement (Second) of Torts* § 572, cmt. d (“To be actionable . . . , it is necessary that the words impute to the other person a present infection,” *i.e.*, a current as opposed to a past infection); *cf. Prosser and Keeton on Torts* § 112, p. 790 (“it is well established that the imputation that the plaintiff has had even a venereal disease in the past is not sufficient without proof of damage.”).

12. See *Restatement (Second) of Torts* § 572, cmt. b (“An imputation that another is currently afflicted with syphilis, gonorrhea or any other infection ordinarily contracted through sexual intercourse, is included within . . . this Section . . . . So, too, an imputation of leprosy presently existing, is actionable *per se*.); see also *id.* at § 572, cmt. c (“The rule stated must . . . be limited to diseases that are held in some special repugnance, and that are lingering or chronic, so that they may be expected to last for a considerable period.”); *Prosser and Keeton on Torts* § 12, p. 790 (the basis of the category “seems originally to have been the exclusion from society which would result. From the beginning it was limited to cases of venereal disease, with a few instances of leprosy, and it was not applied to more contagious and equally



repugnant disorders such as smallpox. The basis of the distinction was in all probability the fact that syphilis and leprosy were regarded originally as permanent, lingering and incurable, while from smallpox one either recovered or died in short order. [Similarly,] with the advance of medical science . . . , today accusations of insanity or of tuberculosis . . . are not included [within the category].”).

13. *Raymond U*, at 182, 371 S.E.2d at 709 (“Slander is a tort distinct from libel in that slander involves an oral communication.” (citations omitted)). See also N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n. 6.

14. “[T]he mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication.” 50 Am. Jur.2d, *Libel and Slander* § 235, pp. 568-69 (citations omitted).

15. “The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation.” 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word “communication” includes “publishing, speaking, uttering, or conveying by words, acts, or in any other manner’ and idea to another person.” N.C. Gen. Stat. § 99-1(b).

16. “The repeater of defamatory material is also a publisher and subject to liability for the publication.” Dan B. Dobbs, *Law of Torts* § 402, p. 1123 (2001 ed.).

17. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (“[T]o make out a *prima facie* case for defamation, ‘plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff’s reputation.’” (citation omitted)); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) (“While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed.” (citations omitted)).

18. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678 (1979)) (“A communication to the plaintiff, or to a person acting at the plaintiff’s request, cannot form the basis for a libel or slander claim.”).

19. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n. 3.

20. See *Wright v. Commercial Credit Company, Inc.*, 212 N.C. 87, 88, 192 S.E. 844, 845 (1937) (“The jury must not only be satisfied that the defendant’s [defamatory] meaning was as charged, but that he was so understood by the persons who heard him.”); *Pugh v. Neal*, 49 N.C. 367, 369 (1857) (“If the words . . . used are such as to convey to the minds of the hearers the intent of the defendant to slander the plaintiff in particular, it is sufficient.”); and *Studdard v. Linville*, 10 N.C. 474, 477 (1825) (approving jury instruction that if the jury “should believe that it was the intention of the defendant to charge the plaintiff with perjury, and the words he made use of were such as to convey such intention to the minds of the bystanders, . . . they would be slanderous.”); see also *Raymond U*, 91 N.C. App. at 181, 371 S.E.2d at 708 (1988) (Under libel actionable *per quod*, “the publication must have been intended by defendant to be defamatory and had to be understood as such by those to whom it was published.”).

21. See n. 20 *supra*.

22. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.12.

23. See *Badame*, 242 N.C. at 756, 89 S.E.2d at 467 (“Defamatory words may be actionable *per se*, that is, in themselves, or they may be actionable *per quod*, that is, only upon allegation and proof of special damage.”); and *Gibson v. Mutual Life Ins. Co.*, 121 N.C. App. 284, 289, 465 S.E.2d 56, 59 (1996) (“Slander *per quod* arises where the defamation is 'such as to sustain an action only when causing some special damage . . . in which case . . . the special damage must be alleged and proved.'” (citation omitted)); see also *Iadanza v. Harper*, 169 N.C. App. 766, 779, 611 S.E.2d 217, 221 (2005) (“[S]pecial damages are usually synonymous with pecuniary loss . . . as well as loss of earnings”).

806.71 DEFAMATION—SLANDER ACTIONABLE *PER QUOD*—PRIVATE FIGURE—MATTER OF PUBLIC CONCERN.<sup>1</sup>

*NOTE WELL: This instruction applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the statement is not slanderous on its face, but is capable of a defamatory meaning when extrinsic evidence is considered;<sup>3</sup> (2) the plaintiff is a private figure and (3) the subject matter of the statement is of public concern.*

*NOTE WELL: A "Yes" answer to this issue entitles a plaintiff to an instruction on actual damages. See N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages"). Punitive damages are permissible if actual malice is shown and the Chapter 1D requirements for punitive damages met. See N.C.P.I.—Civil 806.85 ("Defamation—Private Figure—Matter of Public Concern—Issue of Actual Malice"); see generally, N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.27 and accompanying text. Presumed damages are not available. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.32 and accompanying text.*

The (*state number*) issue reads:

"Did the defendant slander the plaintiff?"

A slanderous<sup>4</sup> statement is one which (*select the appropriate alternative*):

[charges that a person has committed a crime or offense involving moral turpitude.<sup>5</sup> I instruct you (*state crime or offense*) is a crime or offense involving moral turpitude.]<sup>6</sup>

[tends to impeach<sup>7</sup> [prejudice<sup>8</sup>] [discredit<sup>9</sup>] [reflect unfavorably upon<sup>10</sup>] a person in that person's trade or profession.]

[imputes<sup>11</sup> to a person a loathsome disease.<sup>12</sup>]

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, seven things:

First, that the defendant made the following statement<sup>13</sup> about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>14</sup> the statement. “Published” means that the defendant knowingly [communicated<sup>15</sup> the statement] [repeated<sup>16</sup> the statement] [caused the statement to be repeated] so that it reached one or more persons<sup>17</sup> other than the plaintiff. [Communicating the statement] [Repeating the statement] [Causing the statement to be repeated] to the plaintiff alone is not sufficient.<sup>18</sup>

Third, that the statement was false.<sup>19</sup>

Fourth, that the defendant intended the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in the plaintiff’s trade or profession] [impute to the plaintiff a loathsome disease].<sup>20</sup>

Fifth, that the person other than the plaintiff to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in the plaintiff’s trade or profession] [impute to the plaintiff a loathsome disease].<sup>21</sup>

Sixth, that, at the time of the publication, the defendant either knew that the statement was false or failed to exercise ordinary care in order to determine whether the statement was false.<sup>22</sup> Ordinary care is that degree of care that a reasonable and prudent person in the same or similar circumstances would have used in order to determine whether the statement was false.

Seventh, that the plaintiff, as a result of the publication, suffered a monetary or economic loss.<sup>23</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant made the

-----

following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, that the defendant intended the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in the plaintiff's trade or profession] [impute to the plaintiff a loathsome disease], that the person to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in the plaintiff's trade or profession] [impute to the plaintiff a loathsome disease], that the defendant, at the time of the publication, either knew the statement was false or failed to exercise ordinary care in order to determine whether the statement was false, and that the plaintiff, as a result of the publication, suffered a monetary or economic loss, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

---

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.6 and accompanying text.

2. See *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) ("It is noted: '(1) The court determines whether a communication is capable of a defamatory meaning. (2) The jury determines whether a communication, capable of a defamatory meaning, was so understood by its recipient.'" (citation omitted); see also N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.11.

3. See *Beane v. Weiman Co., Inc.*, 5 N.C. App. 276, 278, 168 S.E.2d 236, 237-38 (1969) ("Where the injurious character of the words does not appear on their face as a matter of general acceptance, but only in consequence of extrinsic, explanatory facts showing their injurious effect, such utterance is actionable only per quod." (citation omitted)).

4. See *Raymond U v. Duke Univ.*, 91 N.C. App. 171, 182, 371 S.E.2d 701, 709 (1988) ("Slander *per se* involves an oral communication to a third person which amounts to: (1) accusations that the plaintiff committed a crime involving moral turpitude; (2) allegations that impeach the plaintiff in his or her trade, business, or profession; or (3) imputations that the plaintiff has a loathsome disease." (citations omitted)).

5. See *Restatement (Second) of Torts* § 571, cmt. g (defining moral turpitude "as inherent baseness or vileness of principle in the human heart; it means, in general, shameful wickedness, so extreme a departure from ordinary standards of honesty, good morals, justice,

or ethics as to be shocking to the moral sense of the community.”), and *Jones v. Brinkley*, 174 N.C. 23, 25, 93 S.E. 372, 373 (1917) (defining moral turpitude as “[a]n act of baseness, vileness or depravity in the private and social duties that a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man” (citation omitted)).

6. “The question of whether an offense involves moral turpitude is one particularly suitable for the trial court’s judgment.” 28 Am. Jur.2d, *Libel and Slander* § 161, p. 510 (citing *Freedlander v. Edens Broadcasting, Inc.*, 734 F. Supp. 221 (E.D. Va. 1990), *order aff’d.*, 923 F.2d 848 (4th Cir. 1990). See also *Jones v. Brinkley*, 174 N.C. 23, 25, 93 S.E. 372, 373 (1917) (deciding as a matter of law that accusation of larceny, even if not at a felony level, was sufficient grounds for a defamation action).

7. If further definition of the phrase “impeach the plaintiff in the plaintiff’s trade or profession” is required, consider: The statement “(1) must touch the plaintiff in his special trade or occupation, and (2) must contain an imputation necessarily hurtful in its effect on his business.” *Badame v. Lampke*, 242 N.C. 755, 757, 89 S.E. 2d 466, 468 (1955).

8. See *Shreve v. Duke Power Co.*, 97 N.C. App. 648, 650, 389 S.E.2d 444, 446 (1990).

9. *Nguyen v. Taylor*, 219 N.C. App 1, 8, 723 S.E.2d. 551, 557-58 (2012) (quoting *Cohen v. McLawhorn*, 208 N.C. App. 492, 503, 704 S.E.2d. 519, 527 (2010)) (“North Carolina has long recognized the harm that can result from false statements that impeach a person in that person’s trade or profession – such statements are deemed defamation per se. The mere saying or writing of the words is presumed to cause injury to the subject; there is no need to prove any actual injury.”).

10. See n.9 *supra*.

11. If an alternative to “imputes” is desired, the phraseology “conveys that [a person] has a loathsome disease,” may be used. See *Dobson v. Harris*, 134 N.C. App. 573, 579, 521 S.E.2d 710, 715-16 (1999), *rev’d on other grounds*, 352 N.C. 77, 530 S.E.2d 829 (2000); see also *Restatement (Second) of Torts* § 572, cmt. d (“To be actionable . . . , it is necessary that the words impute to the other person a present infection,” *i.e.*, a current as opposed to a past infection); *cf. Prosser and Keeton on Torts* § 112, p. 790 (“it is well established that the imputation that the plaintiff has had even a venereal disease in the past is not sufficient without proof of damage.”).

12. See *Restatement (Second) of Torts* § 572, cmt. b (“An imputation that another is currently afflicted with syphilis, gonorrhea or any other infection ordinarily contracted through sexual intercourse, is included within . . . this Section . . . . So, too, an imputation of leprosy presently existing, is actionable per se.”); see also *id.* at § 572, cmt. c (“The rule stated must . . . be limited to diseases that are held in some special repugnance, and that are lingering or chronic, so that they may be expected to last for a considerable period.”); *Prosser and Keeton on Torts* § 112, p. 790 (the basis of the category “seems originally to have been the exclusion from society which would result. From the beginning it was limited to cases of venereal disease, with a few instances of leprosy, and it was not applied to more contagious and equally repugnant disorders such as smallpox. The basis of the distinction was in all probability the fact that syphilis and leprosy were regarded originally as permanent, lingering and incurable, while from smallpox one either recovered or died in short order. [Similarly,] with the advance of medical science . . . , today accusations of insanity or of tuberculosis . . . are not included [within the category].”).

13. *Raymond U*, at 182, 371 S.E.2d at 709 (“Slander is a tort distinct from libel in that slander involves an oral communication.” (citations omitted)). See also N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.6.

14. “[T]he mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication.” 50 Am. Jur.2d., *Libel and Slander* § 235, pp. 568-69 (citations omitted).

15. “The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation.” 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word “communication” includes “publishing, speaking, uttering, or conveying by words, acts, or in any other manner’ and idea to another person.” N.C. Gen. Stat. § 99-1(b).

16. “The repeater of defamatory material is also a publisher and subject to liability for the publication.” Dan B. Dobbs, *Law of Torts* § 402, p. 1123 (2001 ed.).

17. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (“[T]o make out a *prima facie* case for defamation, ‘plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff’s reputation.’” (citation omitted)); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) (“While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed.” (citations omitted)).

18. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678 (1979)) (“A communication to the plaintiff, or to a person acting at the plaintiff’s request, cannot form the basis for a libel or slander claim.”).

19. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.3.

20. See *Wright v. Commercial Credit Company, Inc.*, 212 N.C. 87, 88, 192 S.E. 844, 845 (1937) (“The jury must not only be satisfied that the defendant’s [defamatory] meaning was as charged, but that he was so understood by the persons who heard him.”), *Dameron v. Neal*, 49 N.C. 367, 367 (1857) (“If the words . . . used are such as to convey to the minds of the hearers the intent of the defendant to slander the plaintiff in particular, it is sufficient.”), and *Studdard v. Linville*, 10 N.C. (3 Hawks) 474, 477 (1825) (approving jury instruction that if the jury “should believe that it was the intention of the defendant to charge the plaintiff with perjury, and the words he made use of were such as to convey such intention to the minds of the bystanders, . . . they would be slanderous”); see also *Raymond U. v. Duke University*, 91 N.C. App. at 181, 371 S.E.2d at 708 (1988) (Under libel actionable *per quod*, “the publication must have been intended by defendant to be defamatory and had to be understood as such by those to whom it was published.”).

21. See n.20 *supra*.

22. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.12.

23. See *Badame*, 242 N.C. at 756, 89 S.E.2d at 467 (“Defamatory words may be actionable *per se*, that is, in themselves, or they may be actionable *per quod*, that is, only upon allegation and proof of special damage.”), and *Gibson v. Mutual Life Ins. Co.*, 121 N.C. App. 284, 289, 465 S.E.2d 56, 59 (1996) (“Slander *per quod* arises where the defamation is ‘such as to sustain an action only when causing some special damage . . . in which case both the malice and the special damage must be alleged and proved.’” (citation omitted)); see also *Iadanza v. Harper*, 169 N.C. App. 766, 779, 611 S.E.2d 217, 221 (2005) (“[S]pecial damages are usually synonymous with pecuniary loss . . . as well as loss of earnings . . .”).





806.72 DEFAMATION—SLANDER ACTIONABLE *PER QUOD*—PUBLIC FIGURE OR OFFICIAL.<sup>1</sup>

*NOTE WELL: This instruction applies when the trial judge has determined as a matter of law<sup>2</sup> that: (1) the statement is not slanderous on its face, but is capable of a defamatory meaning when extrinsic evidence is considered<sup>3</sup> and (2) the plaintiff is a public figure or official.*

*NOTE WELL: A "Yes" answer to this issue entitles a plaintiff to an instruction on actual damages. See N.C.P.I.—Civil 806.84 ("Defamation—Actual Damages"). A public figure or public official has to prove actual malice to permit an award of punitive damages under the N.Y. Times standard, and this is incorporated below in the liability consideration. Showing of the statutory criteria set out in Chapter 1D-15(a) is required as well, see N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn. 14, 27, 30 and 31 and accompanying text, and the standard punitive damages instructions, N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount"), should be utilized if punitive damages are sought.*

The (*state number*) issue reads:

"Did the defendant slander the plaintiff?"

A slanderous<sup>4</sup> statement is one which (*select the appropriate alternative*):

[charges that a person has committed a crime or offense involving moral turpitude.<sup>5</sup> I instruct you (*state crime or offense*) is a crime or offense involving moral turpitude.]<sup>6</sup>

[tends to impeach<sup>7</sup> [prejudice<sup>8</sup>] [discredit<sup>9</sup>] [reflect unfavorably upon<sup>10</sup>] a person in that person's trade or profession.]

[imputes<sup>11</sup> to a person a loathsome disease.<sup>12</sup>]

On this issue the burden of proof is on the plaintiff to prove seven things. The plaintiff must prove the first six things by the greater weight of the evidence. The greater weight of the evidence does not refer to the quantity

of the evidence, but rather to the quality and convincing force of the evidence. It means that you must be persuaded, considering all of the evidence, that the necessary facts are more likely than not to exist. The six things the plaintiff must prove by the greater weight of the evidence are:

First, that the defendant made the following statement<sup>13</sup> about the plaintiff:

*(Quote the alleged statement)*

Second, that the defendant published<sup>14</sup> the statement. “Published” means that the defendant knowingly [communicated<sup>15</sup> the statement] [repeated<sup>16</sup> the statement] [caused the statement to be repeated] so that it reached one or more persons other than the plaintiff.<sup>17</sup> [Communicating the statement] [Repeating the statement] [Causing the statement to be repeated] to the plaintiff alone is not sufficient.<sup>18</sup>

Third, that the statement was false.<sup>19</sup>

Fourth, that the defendant intended the statement [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in that person’s trade or profession] [impute to the plaintiff a loathsome disease].<sup>20</sup>

Fifth, that the person other than the plaintiff to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in that person’s trade or profession] [impute to the plaintiff a loathsome disease].

Sixth, that the plaintiff, as a result of the publication, suffered a monetary or economic loss.<sup>21</sup>

Members of the jury, the plaintiff’s burden of proof as to the first six things is by the greater weight of the evidence. However, as to the seventh

thing, the plaintiff's burden of proof is by clear, strong and convincing evidence. Clear, strong and convincing evidence is evidence which, in its character and weight, establishes what the plaintiff seeks to prove in a clear, strong and convincing fashion. You shall interpret and apply the words "clear," "strong" and "convincing" in accordance with their commonly understood and accepted meanings in everyday speech.

Seventh, the plaintiff must prove by clear, strong and convincing evidence, that at the time of the publication, the defendant either knew the statement was false or acted with reckless disregard to whether it was false.<sup>22</sup> Reckless disregard means that, at the time of the publication, the defendant had serious doubts about whether the statement was true.<sup>23</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant made the following statement about the plaintiff: (*Quote the alleged statement*), that the defendant published the statement, that the statement was false, that the defendant intended the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in that person's trade or profession] [impute to the plaintiff a loathsome disease], that the person to whom the statement was published reasonably understood the statement to [charge the plaintiff with having committed a crime or offense involving moral turpitude] [impeach the plaintiff in that person's trade or profession] [impute to the plaintiff a loathsome disease], and that the plaintiff, as a result of the publication, suffered a monetary or economic loss; and if you further find by clear, strong and convincing evidence that the defendant, at the time of the publication, either knew the statement was false or acted with reckless disregard of whether the statement was false, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. For an introduction to this category of defamation, see N.C.P.I.—Civil 806.40 (“Defamation—Preface”) nn.6, 9-10 and accompanying text.

2. See *Bell v. Simmons*, 247 N.C. 488, 495, 101 S.E.2d 383, 388 (1958) (“It is noted: '(1) The court determines whether a communication is capable of a defamatory meaning. (2) The jury determines whether a communication, capable of a defamatory meaning, was so understood by its recipient.’” (citation omitted)); see also N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.11.

3. See *Beane v. Weiman Co., Inc.*, 5 N.C. App. 276, 278, 168 S.E.2d 236, 237-38 (1969) (“Where the injurious character of the words does not appear on their face as a matter of general acceptance, but only in consequence of extrinsic, explanatory facts showing their injurious effect, such utterance is actionable only *per quod*.” (citation omitted)).

4. See *Raymond U v. Duke Univ.*, 91 N.C. App. 171, 182, 371 S.E.2d 701, 709 (1988) (“Slander *per se* involves an oral communication to a third person which amounts to: (1) accusations that the plaintiff committed a crime involving moral turpitude; (2) allegations that impeach the plaintiff in his or her trade, business, or profession; or (3) imputations that the plaintiff has a loathsome disease.” (citations omitted)).

5. See *Restatement (Second) of Torts* § 571, cmt. g (defining moral turpitude “as inherent baseness or vileness of principle in the human heart; it means, in general, shameful wickedness, so extreme a departure from ordinary standards of honesty, good morals, justice, or ethics as to be shocking to the moral sense of the community.”), and *Jones v. Brinkley*, 174 N.C. 23, 25, 93 S.E. 372, 373 (1917) (defining moral turpitude as “[a]n act of baseness, vileness or depravity in the private and social duties that a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man” (citation omitted)).

6. “The question of whether an offense involves moral turpitude is one particularly suitable for the trial court's judgment.” 28 Am. Jur.2d, *Libel and Slander* § 161, p. 510 (citing *Freedlander v. Edens Broadcasting, Inc.*, 734 F. Supp. 221 (E.D. Va. 1990), *order aff'd.*, 923 F.2d 848 (4th Cir. 1990). See also *Jones v. Brinkley*, 174 N.C. 23, 25, 93 S.E. 372, 373 (1917) (deciding as a matter of law that accusation of larceny, even if not at a felony level, was sufficient grounds for a defamation action).

7. If further definition of the phrase “impeach the plaintiff in the plaintiff’s trade or profession” is required, consider: The statement “(1) must touch the plaintiff in his special trade or occupation, and (2) must contain an imputation necessarily hurtful in its effect on his business.” See *Badame v. Lampke*, 242 N.C. 755, 757, 89 S.E. 2d 466 (1955).

8. See *Shreve v. Duke Power Co.*, 97 N.C. App. 648, 650, 389 S.E.2d 444, 446 (1990).

9. *Nguyen v. Taylor*, 219 N.C. App 1, 8, 723 S.E.2d. 551, 557-58 (2012) (quoting *Cohen v. McLawhorn*, 208 N.C. App. 492, 503, 704 S.E.2d. 519, 527 (2010)) (“North Carolina has long recognized the harm that can result from false statements that impeach a person in that person's trade or profession – such statements are deemed defamation *per se*. The mere saying or writing of the words is presumed to cause injury to the subject; there is no need to prove any actual injury.”).

10. See n.9 *supra*.

11. If an alternative to “imputes” is desired, the phraseology “conveys that [a person] has a loathsome disease,” may be used. See *Dobson v. Harris*, 134 N.C. App. 573, 579, 521 S.E.2d 710, 715-16 (1999), *rev'd on other grounds*, 352 N.C. 77, 530 S.E.2d 829 (2000); see also *Restatement (Second) of Torts* § 572, cmt. d (“To be actionable . . . , it is necessary that the words impute to the other person a present infection,” *i.e.*, a current as opposed to

a past infection); *cf. Prosser and Keeton on Torts* § 112, p. 790 (“it is well established that the imputation that the plaintiff has had even a venereal disease in the past is not sufficient without proof of damage.”).

12. *See Restatement (Second) of Torts* § 572, cmt. b (“An imputation that another is currently afflicted with syphilis, gonorrhea or any other infection ordinarily contracted through sexual intercourse, is included within . . . this Section . . . . So, too, an imputation of leprosy presently existing, is actionable *per se.*); *see also id.* at § 572, cmt. c (“The rule stated must . . . be limited to diseases that are held in some special repugnance, and that are lingering or chronic, so that they may be expected to last for a considerable period.”); *Prosser and Keeton on Torts* § 12, p. 790 (the basis of the category “seems originally to have been the exclusion from society which would result. From the beginning it was limited to cases of venereal disease, with a few instances of leprosy, and it was not applied to more contagious and equally repugnant disorders such as smallpox. The basis of the distinction was in all probability the fact that syphilis and leprosy were regarded originally as permanent, lingering and incurable, while from smallpox one either recovered or died in short order. [Similarly,] with the advance of medical science . . . , today accusations of insanity or of tuberculosis . . . are not included [within the category].”).

13. *Raymond U*, 91 N.C. App. at 182, 371 S.E.2d at 709 (“Slander is a tort distinct from libel in that slander involves an oral communication.”(citations omitted)). *See also* N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.6.

14. “[T]he mode of publication of [defamatory matter] is immaterial, and . . . any act by which the defamatory matter is communicated to a third party constitutes publication.” 50 Am. Jur.2d., *Libel and Slander* § 235, pp. 568-69 (citations omitted).

15. “The form of a communication matters not in determining whether it is defamatory. Words or conduct or the combination of words and conduct can communicate defamation.” 50 Am. Jur. 2d, *Libel and Slander* § 151 (citations omitted). In the context of claims based upon communications via radio or television, the word “communication” includes “publishing, speaking, uttering, or conveying by words, acts, or in any other manner’ and idea to another person.” N.C. Gen. Stat. § 99-1(b).

16. “The repeater of defamatory material is also a publisher and subject to liability for the publication.” Dan. B. Dobbs, *Law of Torts* § 402, p. 1123 (2001 ed.).

17. *Griffin v. Holden*, 180 N.C. App. 129, 133, 636 S.E.2d 298, 302 (2006) (“[T]o make out a *prima facie* case for defamation, plaintiff must allege and prove that the defendant made false, defamatory statements of or concerning the plaintiff, which were published to a third person, causing injury to the plaintiff’s reputation.” (citation omitted)); *Taylor v. Jones Bros. Bakery, Inc.*, 234 N.C. 660, 662, 68 S.E.2d 313, 314 (1951) *overruled on other grounds*, *Hinson v. Dawson*, 244 N.C. 23, 92 S.E.2d 393 (1956) (“While it is not necessary that the defamatory words be communicated to the public generally, it is necessary that they be communicated to some person or persons other than the person defamed.” (citations omitted)).

18. *Friel v. Angell Care Inc.*, 113 N.C. App. 505, 508, 440 S.E.2d. 111, 113 (1994) (citing *Pressley v. Continental Can Co., Inc.*, 39 N.C. App. 467, 469, 250 S.E.2d. 676, 678 (1979)) (“A communication to the plaintiff, or to a person acting at the plaintiff’s request, cannot form the basis for a libel or slander claim.”)

19. *See* N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.3.

20. *See Wright v. Commercial Credit Company, Inc.*, 212 N.C. 87, 88, 192 S.E. 844, 845 (1937) (“The jury must not only be satisfied that the defendant’s [defamatory] meaning was as charged, but that he was so understood by the persons who heard him.”), *Dameron*

*v. Neal*, 49 N.C. 367, 367 (1857) (“If the words . . . used are such as to convey to the minds of the hearers the intent of the defendant to slander the plaintiff in particular, it is sufficient.”), and *Studdard v. Linville*, 10 N.C. (3 Hawks) 474, 477 (1825) (approving jury instruction that if the jury “should believe that it was the intention of the defendant to charge the plaintiff with perjury, and the words he made use of were such as to convey such intention to the minds of the bystanders, . . . they would be slanderous”); see also *Raymond U v. Duke University*, 91 N.C. App. at 181, 371 S.E.2d at 708 (1988) (Under libel actionable *per quod*, “the publication must have been intended by defendant to be defamatory and had to be understood as such by those to whom it was published.”).

21. See *Badame v. Lampke*, 242 N.C. at 756, 89 S.E.2d at 467 (“Defamatory words may be actionable *per se*, that is, in themselves, or they may be actionable *per quod*, that is, only upon allegation and proof of special damage.”); *Gibson v. Mutual Life Ins. Co.*, 121 N.C. App. 284, 289, 465 S.E.2d 56, 59 (1996) (“Slander *per quod* arises where the defamation is ‘such as to sustain an action only when causing some special damage . . . in which case both the malice and the special damage must be alleged and proved.’” (citation omitted)); see also *Iadanza v. Harper*, 169 N.C. App. 766, 779, 611 S.E.2d 217, 221 (2005) (“[S]pecial damages are usually synonymous with pecuniary loss . . . as well as loss of earnings . . .”).

22. This element incorporates the “actual malice” requirement mandated by *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 20 L. Ed.2d 262, 267 (1964); see N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.14.

23. See *Dellinger v. Belk*, 34 N.C. App. 488, 490, 238 S.E.2d 788, 789 (1977) (noting the U.S. Supreme Court in *Amant v. Thompson*, 390 U.S. 727, 731, 20 L. Ed.2d 262, 267 (1968), “refined the definition of ‘reckless disregard’ to require ‘sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.’”); see also *Barker v. Kimberly-Clark Corp.*, 136 N.C. App. 455, 461, 524 S.E.2d 821, 825 (2000) (actual malice may be shown, *inter alia*, by publication of a defamatory statement “with a high degree of awareness of its probable falsity.”), and *Ward v. Turcotte*, 79 N.C. App. 458, 461, 339 S.E.2d 444, 446-7 (1986) (citation omitted) (“Actual malice may be found in a reckless disregard for the truth and may be proven by a showing that the defamatory statement was made in bad faith, without probable cause or without checking for truth by the means at hand.”).

806.79 DEFAMATION—LIBEL ACTIONABLE *PER SE* OR LIBEL ACTIONABLE *PER QUOD*—PRIVATE FIGURE—NOT MATTER OF PUBLIC CONCERN—DEFENSE OF TRUTH.<sup>1</sup>

*NOTE WELL: This instruction should be given ONLY if either N.C.P.I.—Civil 806.50 (“Defamation—Libel Actionable Per Se—Private Figure—Not Matter of Public Concern”) or N.C.P.I.—Civil 806.60 (“Defamation—Libel Actionable Per Quod—Private Figure—Not Matter of Public Concern”) has been submitted to the jury and ONLY if the third element, “falsity,” has been deleted from such instruction.<sup>2</sup> If the jury has been instructed to find on the element of falsity in N.C.P.I.—Civil 806.50 (“Defamation—Libel Actionable Per Se—Private Figure—Not Matter of Public Concern”) or in N.C.P.I.—Civil 806.60 (“Defamation—Libel Actionable Per Quod—Private Figure—Not Matter of Public Concern”), then submission of this instruction would not be appropriate.*

The (*state number*) issue reads:

“Was the statement made by the defendant true?”

You will answer this issue only if you have answered Issue Number (*state issue number*) “Yes” in favor of the plaintiff.

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, that the statement made by the defendant, (*quote the alleged statement*), was true. The truth of the matter stated is a complete defense to a claim for libel and the plaintiff cannot recover if the defendant proves the statement was true.

It is not required that the defendant prove that the statement was literally true in every respect.<sup>3</sup> Slight inaccuracies of expression are immaterial provided that the defendant proves that the statement was substantially true.<sup>4</sup> This means that the gist or sting of the statement must be true even if minor details are not.<sup>5</sup> The gist of a statement is the main point or heart of the matter in question.<sup>6</sup> The sting of such a statement is the hurtful effect or the element of the statement that wounds, pains or

irritates.<sup>7</sup> The gist or sting of a statement is true if it produces the same effect on the mind of the recipient which the precise truth would have produced.<sup>8</sup>

Finally as to this issue, on which the defendant has the burden of proof, if you find by the greater weight of the evidence, that the statement made by the defendant was true, then it would be your duty to answer this issue “Yes” in favor of the defendant. If, on the other hand, you fail to so find, then it would be your duty to answer this issue “No” in favor of the plaintiff.

---

1. For a discussion on falsity, see N.C.P.I.—Civil 806.40 (“Defamation—Preface”), n.3.

2. See N.C.P.I.—Civil 806.50 (“Defamation—Libel Actionable *Per Se*—Private Figure—Not Matter of Public Concern”), n.11, and N.C.P.I.—Civil 806.60 (“Defamation—Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern”), n.18.

3. See *Restatement (Second) of Torts* § 581A, p. 237; see also *Desmond v. News & Observer Publ’g Co.*, 375 N.C. 21, 67, 846 S.E.2d 647, 675 (2020) (quoting *Masson v. New Yorker Magazine*, 501 U.S. 496, 516-17, 115 L. Ed.2d 447, 472 (1991)) (stating that the issue of falsity “overlooks minor inaccuracies and focuses on substantial truth” such that falsity cannot be found as long as “the substance, the gist, the sting, of the libelous charge be justified.”).

4. See *Restatement (Second) of Torts* § 581A, p. 237; see also *Restatement (Second) of Torts* § 581A, p. 236-37 (“[i]t is not enough that the accused person is found to have engaged in some other substantially different kind of misconduct even though it is equally or more reprehensible. Thus a charge of burglary . . . is not justified by the finding that he has committed a murder. [But] many charges are made in terms that are accepted by their recipients in a popular rather than a technical sense. Thus a charge of theft may be reasonably interpreted as charging any form of criminally punishable misappropriation, and its truth may be established by proving the commission of any act of larceny or embezzlement.”); and *Aids Counseling and Testing Center v. Grp. W Television, Inc.*, 903 F.2d 1000, 1004 (4th Cir. 1990) (if the gist or “sting” of a statement is substantially true, “minor inaccuracies will not give rise to a defamation claim.” (citation omitted)).

5. Although “[o]lder cases required exact truth . . . , this . . . attitude no longer represents the substantive law.” Dan B. Dobbs, *Law of Torts* § 410, p. 1149 (2001). “The[] cases suggest that if (a) the publication states facts similar to the truth and (b) the sting of the publication is substantially equivalent to the sting of the truth, the truth defense should ordinarily apply. To say that the plaintiff robbed the A Bank when in fact he robbed the B Bank is substantially true because the sting is similar in both cases.” *Id.* at 1148; see also *Masson*, 501 U.S. at 517, 115 L. Ed.2d at 472-73 (“Minor inaccuracies do not amount to falsity so long as ‘the substance, the gist, the sting, of the libelous charge be justified.’” (citation omitted)), and *Prosser and Keeton on Torts* § 116, pp. 840-42 (“The defense that the defamatory statement is true has been given the technical name of justification . . . . [I]t is now generally agreed that it is not necessary to prove the literal truth of the accusation in every detail, and that it is sufficient to show that the imputation is substantially true, or, as it



is often put, to justify the 'gist,' the 'sting,' or the 'substantial truth' of the defamation." (citations omitted)).

6. See *Vachet v. Central Newspapers, Inc.*, 816 F.2d 313, 316 (7th Cir. 1987) ("The 'gist' or 'sting' of the alleged defamation means the heart of the matter in question—the hurtfulness of the utterance." (citation omitted)). See also *Rubin v. U.S. News & World Report, Inc.*, 271 F.3d 1305, 1306 (11th Cir. 2001) ("The gist of any statement within a publication or broadcast is found only by reference to the entire context.").

7. See *id.*; see also *Lawrence v. Bauer Pub. & Printing*, 446 A.2d 469, 473 (1982) (defining "sting" as "the defamatory imputation").

8. See *Yohe v. Nugent*, 321 F.3d 35, 43 (1st Cir. 2003) (the "gist" or "sting" of a statement is "true . . . if it produces the same effect on the mind of the recipient which the precise truth would have produced" (citation omitted)); *Masson*, 501 U.S. at 517, 11 L. Ed.2d. at 472 ("the statement is not considered false unless it 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced'" (citation omitted)); and *Wehling v. Columbia Broadcasting System*, 721 F.2d 506, 509 (5th Cir. 1983) ("The critical test should be whether the defamation, as published, would affect the mind of the reader or listener in a different manner than (*sic*) would the misconduct proved. If the effect on the mind of the recipient would be the same, any variance between the misconduct charged and the misconduct proved should be disregarded" (citation omitted).).



806.81 DEFAMATION ACTIONABLE *PER SE*—PRIVATE FIGURE—NOT  
MATTER OF PUBLIC CONCERN—PRESUMED DAMAGES.<sup>1</sup>

The (*state number*) issue reads:

"What amount of presumed damages is the plaintiff entitled to recover?"

You will consider this issue only if you have answered Issue Number (*state issue number*) "Yes" in favor of the plaintiff.

If you have answered Issue Number (*state issue number*) "Yes," the plaintiff is entitled to be awarded compensation for presumed damages even without proof of actual damages. Presumed damages are damages that are assumed, without proof, to have occurred to the plaintiff as a result of the publication by the defendant of the [libelous] [slanderous] statement.<sup>2</sup> Presumed damages include matters such as loss of reputation or standing in the community, mental or physical pain and suffering, inconvenience, or loss of enjoyment which cannot be definitively measured in monetary terms.<sup>3</sup>

Presumed damages arise by inference of law and are not required to be specifically proved by evidence.<sup>4</sup> This means you need not have proof that the plaintiff suffered loss of reputation or standing in the community, mental or physical pain and suffering, inconvenience or loss of enjoyment in order to award the plaintiff damages for such harm because such harm is presumed by the law when a defendant publishes a [libelous] [slanderous] statement with the knowledge that it is false or with reckless disregard of whether it is false.<sup>5</sup>

The determination of the amount of presumed damages is not a task which can be completed with mathematical precision<sup>6</sup> and is one which unavoidably includes an element of speculation. The amount of presumed damages is an estimate, however rough, of the probable extent of actual harm, in the form of loss of reputation or standing in the community, mental

or physical pain and suffering, and inconvenience or loss of enjoyment which the plaintiff has suffered or will suffer in the future as a result of the defendant's publication of the [libelous] [slanderous] statement.<sup>7</sup> However, any amount you allow as future damages must be reduced to its present value, because a sum received now is equal to a larger sum received in the future.

You may award the plaintiff presumed damages, for example, in a nominal amount, which is a trivial amount such as one dollar, that shows that the plaintiff is entitled to recover from the defendant, without further proof from the plaintiff. You may also, in the exercise of your good judgment and common sense,<sup>8</sup> award the plaintiff presumed damages in an amount that will compensate the plaintiff, as far as money can do, for injury that you find is a direct and natural consequence<sup>9</sup> of the [libel] [slander] of the plaintiff by the defendant.

As to this issue, I instruct you that you are to base your decision on the rules of law with respect to presumed damages that I have given you and that you are not required to accept the amount of damages suggested by the parties or their attorneys. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally as to this issue, if you have answered Issue Number (*state issue number*) "Yes" in favor of the plaintiff, then you will answer this issue by writing in the blank space provided that amount of presumed damages which you have determined to award the plaintiff under the instructions I have given you.

1. For an introduction to the category of presumed damages in defamation cases, see N.C.P.I.—Civil 806.40 (“Defamation—Preface”), nn.20-21, 25, 29-30, 32 and accompanying text. Note that presumed damages are available only in defamation cases actionable *per se*. Plaintiffs in middle-tier libel cases or defamation cases actionable *per quod* must prove actual damages in order to recover. See N.C.P.I.—Civil 806.40 (“Defamation—Preface”), nn.22 and 32 and accompanying text.

2. See *Dun & Bradstreet*, 472 U.S. 749, 760-61, 86 L. Ed.2d 593, 604 (1985).

3. *Iadanza v. Harper*, 169 N.C. App. 776, 779-80, 611 S.E.2d 217, 221 (2005) (citing 22 Am. Jur.2d *Damages* § 42).

4. *Brown & Williamson Tobacco Corp. v. Jacobson*, 827 F.2d 1119, 1139 (7th Cir. 1987).

5. *Donovan v. Fiumara*, 114 N.C. App. 524, 527, 442 S.E.2d 572, 575 (1994).

6. See *Sunward Corporation v. Dun & Bradstreet, Inc.*, 811 F.2d 511, 538 (10th Cir. 1987) (“Ascertainment of presumed general damages is difficult at best and unavoidably includes an element of speculation.”); cf. *Republic Tobacco v. North Atlantic Trading*, 381 F.3d 717, 734 (7th Cir. 2004) (“While we are mindful that under the doctrine of presumed damages a party is not required to show specific loss, there must be some meaningful limit on the magnitude of a jury award when it is arrived at by pure speculation. Presumed damages serve a compensatory function—when such an award is given in a substantial amount to a party who has not demonstrated evidence of concrete loss, it becomes questionable whether the award is serving a different purpose.” The court thereupon reduced the trial court’s award of \$3.36 million in presumed damages to \$1 million.).

7. *Brown & Williamson*, 827 F.2d at 1138 (quoting *Prosser & Keeton on Torts*, § 116A, p. 843).

8. See n.6 *supra*.

9. See *Fields v. Bynum*, 156 N.C. 413, 418, 72 S.E. 449, 451 (1911) (“General damages . . . embrace compensation for those injuries which the law will presume must naturally, proximately, and necessarily result from the utterance of words which are actionable *per se* . . . Such damages include injury to the feelings and mental suffering endured in consequence. General damages need not be pleaded or proved.”); see also 50 Am. Jur.2d, *Libel and Slander* § 478 (“Under the common law, . . . general damages are presumed to result from a defamation that is actionable *per se*, so that recovery may be had of damages naturally and proximately resulting from the defamation even though they are not proved.”).



806.82 DEFAMATION ACTIONABLE *PER SE*—PRIVATE FIGURE—MATTER OF PUBLIC CONCERN—PRESUMED DAMAGES.<sup>1</sup>

The (*state number*) issue reads:

Part One: "Did the defendant publish the [libelous] [slanderous] statement with actual malice?"

Part Two: "If so, what amount of presumed damages is the plaintiff entitled to recover?"

You will consider this issue only if you have answered Issue Number (*state issue number*) "Yes" in favor of the plaintiff.

On Part One of this issue, the burden of proof is on the plaintiff to prove by clear, strong and convincing evidence that the defendant published the [libelous][slanderous] statement with actual malice.<sup>2</sup>

Clear, strong and convincing evidence is evidence that, in its character and weight, establishes what the plaintiff seeks to prove in a clear, strong and convincing fashion. You shall interpret and apply the words "clear," "strong" and "convincing" in accordance with their commonly understood and accepted meanings in everyday speech.

Actual malice means that, at the time of the publication of the [libelous] [slanderous] statement, the defendant either knew that the statement was false or acted with reckless disregard of whether the statement was false. Reckless disregard means that, at the time of the publication, the defendant had serious doubts about whether the statement was true.<sup>3</sup>

As to Part One of this issue on which the plaintiff has the burden of proof, if you find by clear, strong and convincing evidence that the defendant published the [libelous] [slanderous] statement with actual malice, then it would be your duty to write "Yes" in the first blank space provided and then proceed to consider Part Two of this issue. On the other hand, if you fail to

find by clear, strong and convincing evidence that the defendant published the [libelous] [slanderous] statement with actual malice, then it would be your duty to write "No" in the first blank space provided and you would not consider this issue further.

If you find by clear, strong and convincing evidence that the defendant published the [libelous] [slanderous] statement with actual malice, then the plaintiff under Part Two of this issue is entitled to be awarded compensation for presumed damages<sup>4</sup> even without proof of actual damages. Presumed damages are damages that are assumed, without proof, to have occurred to the plaintiff as a result of the publication by the defendant of the [libelous] [slanderous] statement.<sup>5</sup> Presumed damages include matters such as loss of reputation or standing in the community, mental or physical pain and suffering, inconvenience, or loss of enjoyment which cannot be definitively measured in monetary terms.<sup>6</sup>

Presumed damages arise by inference of law and are not required to be specifically proved by evidence.<sup>7</sup> This means you need not have proof that the plaintiff suffered loss of reputation or standing in the community, mental or physical pain and suffering, inconvenience or loss of enjoyment in order to award the plaintiff damages for such harm. The law presumes such harm when a defendant publishes a [libelous] [slanderous] statement with the knowledge that it is false or with reckless disregard of whether it is false.<sup>8</sup>

The determination of the amount of presumed damages is not a task which can be completed with mathematical precision.<sup>9</sup> The amount of presumed damages is an estimate, however rough, of the probable extent of actual harm, in the form of loss of reputation or standing in the community, mental or physical pain and suffering, and inconvenience or loss of enjoyment which the plaintiff has suffered or will suffer in the future as a result of the defendant's publication of the [libelous] [slanderous] statement.<sup>10</sup> However,



any amount you allow as future damages must be reduced to its present value, because a sum received now is equal to a larger sum received in the future.

You may award the plaintiff presumed damages, for example, in a nominal amount, which is a trivial amount such as one dollar, that shows that the plaintiff is entitled to recover from the defendant, without further proof from the plaintiff. You may also, in the exercise of your good judgment and common sense,<sup>11</sup> award the plaintiff presumed damages in an amount that will compensate the plaintiff, as far as money can do, for injury that you find is a direct and natural consequence<sup>12</sup> of the [libel] [slander] of the plaintiff by the defendant.

I instruct you that you are to base your decision on the rules of law with respect to presumed damages that I have given you and that you are not required to accept the amount of damages suggested by the parties or their attorneys. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

As to Part Two of this issue, if in Part One you have found by clear, strong and convincing evidence that the defendant published the statement with actual malice, then you shall answer Part Two by writing in the second blank space provided that amount of presumed damages which you have determined to award the plaintiff under the instructions I have given you. If, however, you answer “no” to the issue in Part One, as I have instructed you before, you will skip the issue in Part Two and move on to Issue Number (*state issue number*).

---

1. For an introduction to the category of presumed damages in defamation cases, see N.C.P.I.—Civil 806.40 (“Defamation—Preface”), nn.20-21, 25, 29-30, 32 and accompanying text.

Note that presumed damages are available only in defamation cases actionable *per se*. Plaintiffs in middle-tier libel cases or defamation cases actionable *per quod* must prove actual

damages in order to recover. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn.22 and 32 and accompanying text.

2. This paragraph incorporates the "actual malice" standard mandated by *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 11 L. Ed.2d 686, 706 (1964). See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.14.

A private figure plaintiff in a matter of public concern must first establish "actual malice" in order to recover presumed damages under *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349-50, 41 L. Ed.2d 789, 810 (1974) ("[W]e hold that the States may not permit recovery of presumed or punitive damages, at least when liability is not based on a showing of falsity or reckless disregard for the truth . . ."), and *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 760-61, 86 L. Ed.2d 593, 604 (1985) ("[T]he state interest in awarding presumed and punitive damages . . . is 'substantial' relative to the incidental effect these remedies may have on speech [not at the core of First Amendment concern . . .] In light of the reduced constitutional value of speech involving no matters of public concern, we hold that the state interest adequately supports awards of presumed and punitive damages—even absent a showing of 'actual malice.'").

3. See *Dellinger v. Belk*, 34 N.C. App. 488, 490, 238 S.E.2d 788, 789 (1977) (noting that the U.S. Supreme Court in *Amant v. Thompson*, 390 U.S. 727, 731, 20 L. Ed.2d 262, 267 (1968), "refined the definition of 'reckless disregard' to require 'sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication'"); see also *Barker v. Kimberly-Clark Corp.*, 136 N.C. App. 455, 461, 524 S.E.2d 821, 825 (2000) (citation omitted) (actual malice may be shown, *inter alia*, by publication of a defamatory statement "with a high degree of awareness of its probable falsity"), and *Ward v. Turcotte*, 79 N.C. App. 458, 461, 339 S.E.2d 444, 446-47 (1986) (citation omitted) ("Actual malice may be found in a reckless disregard for the truth and may be proven by a showing that the defamatory statement was made in bad faith, without probable cause or without checking for truth by the means at hand.").

4. See n.2 *supra*.

5. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n.24.

6. *Iadanza v. Harper*, 169 N.C. App. 776, 779-80, 611 S.E.2d 217, 221 (2005) (citing 22 Am. Jur.2d, *Damages* § 42).

7. *Brown & Williamson Tobacco Corp. v. Jacobson*, 827 F.2d 1119, 1139 (7th Cir. 1987).

8. *Donovan v. Fiumara*, 114 N.C. App. 524, 527, 442 S.E.2d 572, 575 (1994).

9. See *Sunward Corporation v. Dun & Bradstreet, Inc.*, 811 F.2d 511, 538 (10th Cir. 1987) ("Ascertainment of presumed general damages is difficult at best and unavoidably includes an element of speculation."); cf. *Republic Tobacco v. North Atlantic Trading*, 381 F.3d 717, 734 (7th Cir. 2004) ("While we are mindful that under the doctrine of presumed damages a party is not required to show specific loss, there must be some meaningful limit on the magnitude of a jury award when it is arrived at by pure speculation. Presumed damages serve a compensatory function-when such an award is given in a substantial amount to a party who has not demonstrated evidence of concrete loss, it becomes questionable whether the award is serving a different purpose." The court thereupon reduced the trial court's award of \$3.36 million in presumed damages to \$1 million.).

10. *Brown & Williamson*, 827 F.2d at 1138 (quoting *Prosser & Keeton on Torts*, § 116A, p. 843).

11. See n.9 *supra*.

---

12. See *Fields v. Bynum*, 156 N.C. 413, 418, 72 S.E. 449, 451 (1911) ("General damages . . . embrace compensation for those injuries which the law will presume must naturally, proximately, and necessarily result from the utterance of words which are actionable *per se* . . . . Such damages include injury to the feelings and mental suffering endured in consequence. General damages need not be pleaded or proved."); see also 50 Am. Jur.2d, *Libel and Slander* § 478 ("Under the common law, . . . general damages are presumed to result from a defamation that is actionable *per se*, so that recovery may be had of damages naturally and proximately resulting from the defamation even though they are not proved." (citations omitted)).



806.83 DEFAMATION ACTIONABLE *PER SE*—PUBLIC FIGURE OR OFFICIAL—PRESUMED DAMAGES.<sup>1</sup>

The (*state number*) issue reads:

"What amount of presumed damages<sup>2</sup> is the plaintiff entitled to recover?"

You will consider this issue only if you have answered Issue Number (*state issue number*) "Yes" in favor of the plaintiff.

If you have answered Issue Number (*state issue number*) "Yes," the plaintiff is entitled to be awarded compensation for presumed damages even without proof of actual damages. Presumed damages are damages that are assumed, without proof, to have occurred to the plaintiff as a result of the publication by the defendant of the [libelous] [slanderous] statement.<sup>3</sup> Presumed damages include matters such as loss of reputation or standing in the community, mental or physical pain and suffering, inconvenience, or loss of enjoyment which cannot be definitively measured in monetary terms.<sup>4</sup>

Presumed damages arise by inference of law and are not required to be specifically proved by evidence.<sup>5</sup> This means you need not have proof that the plaintiff suffered loss of reputation or standing in the community, mental or physical pain and suffering, inconvenience or loss of enjoyment in order to award the plaintiff damages for such harm because such harm is presumed by the law when a defendant publishes a [libelous] [slanderous] statement with the knowledge that it is false or with reckless disregard of whether it is false.<sup>6</sup>

The determination of the amount of presumed damages is not a task which can be completed with mathematical precision<sup>7</sup> and is one which unavoidably includes an element of speculation. The amount of presumed damages is an estimate, however rough, of the probable extent of actual harm, in the form of loss of reputation or standing in the community, mental

or physical pain and suffering, and inconvenience or loss of enjoyment which the plaintiff has suffered or will suffer in the future as a result of the defendant's publication of the [libelous] [slanderous] statement.<sup>8</sup> However, any amount you allow as future damages must be reduced to its present value, because a sum received now is equal to a larger sum received in the future.

You may award the plaintiff presumed damages, for example, in a nominal amount, which is a trivial amount such as one dollar, that shows that the plaintiff is entitled to recover from the defendant, without further proof from the plaintiff. You may also, in the exercise of your good judgment and common sense,<sup>9</sup> award the plaintiff presumed damages in an amount that will compensate the plaintiff, as far as money can do, for injury that you find is a direct and natural consequence<sup>10</sup> of the [libel] [slander] of the plaintiff by the defendant.

As to this issue, I instruct you that you are to base your decision on the rules of law with respect to presumed damages that I have given you and that you are not required to accept the amount of damages suggested by the parties or their attorneys. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally as to this issue, if you have answered Issue Number (*state issue number*) in favor of the plaintiff, then you will answer this issue by writing in the blank space provided that amount of presumed damages which you have determined to award the plaintiff under the instructions I have given you.

---

1. For an introduction to the category of presumed damages in defamation cases, see N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn. 20-21, 25, 29-30, 32 and accompanying text.

Presumed damages are available only in defamation cases actionable *per se*. Plaintiffs in middle-tier libel cases or defamation cases actionable *per quod* must prove actual damages in order to recover. See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn. 22 and 32 and accompanying text.

2. Under *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 11 L.Ed.2d 686, 706

(1964), a public official or public figure plaintiff must prove that the defendant published the statement with actual malice, that is, with knowledge that it was false or in reckless disregard of whether it was true or false. Because a public official/public figure plaintiff must prove actual malice for liability purposes (see N.C.P.I.—Civil 806.53, Defamation—Libel Actionable *Per Se*—Public Figure or Official and N.C.P.I.—Civil 806.67, Defamation—Slander Actionable *Per Se*—Public Figure or Official), the jury is not required to find actual malice a second time when considering damages (*cf.* N.C.P.I.—Civil 806.82, Defamation Actionable *Per Se*—Private Figure—Matter of Public Concern—Presumed Damages). See N.C.P.I.—Civil 806.40 ("Defamation—Preface"), n. 27 and accompanying text.

3. *Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 760-61, 86 L.Ed.2d 593, 604 (1985).

4. *Iadanza v. Harper*, 169 N.C. App. 776, 779-80, 611 S.E.2d 217, 221 (2005) (citing 22 Am. Jur.2d § 42).

5. *Brown & Williamson Tobacco Corp. v. Jacobson*, 827 F.2d 1119, 1139 (7th Cir. 1987).

6. *Donovan v. Fiumara*, 114 N.C. App. 524, 527, 442 S.E.2d 572, 575 (1994).

7. See *Sunward Corporation v. Dun & Bradstreet, Inc.*, 811 F.2d 511, 548 (10th Cir. 1987) ("Ascertainment of presumed general damages is difficult at best and unavoidably includes an element of speculation."); *cf. Republic Tobacco v. North Atlantic Trading*, 381 F.3d 717, 734 (7th Cir. 2004) ("While we are mindful that under the doctrine of presumed damages a party is not required to show specific loss, there must be some meaningful limit on the magnitude of a jury award when it is arrived at by pure speculation. Presumed damages serve a compensatory function—when such an award is given in a substantial amount to a party who has not demonstrated evidence of concrete loss, it becomes questionable whether the award is serving a different purpose." The court thereupon reduced the trial court's award of \$3.36 million in presumed damages to \$1 million.).

8. *Brown & Williamson*, 827 F.2d at 1138 (quoting *Prosser & Keeton on Torts*, § 116A, p. 843).

9. See n.7 *supra*.

10. See *Filed v. Bynum*, 156 N.C. 413, 418, 72 S.E. 449, 451 (1911) ("General damages . . . embrace compensation for those injuries which the law will presume must naturally, proximately, and necessarily result from the utterance of words which are actionable *per se* . . . . Such damages include injury to the feelings and mental suffering endured in consequence. General damages need not be pleaded or proved."); see also 50 Am. Jur.2d, *Libel and Slander* § 478 ("Under the common law, . . . general damages are presumed to result from a defamation that is actionable *per se*, so that recovery may be had of damages naturally and proximately resulting from the defamation even though they are not proved." (citations omitted)).





806.84 DEFAMATION—ACTUAL DAMAGES<sup>1</sup>.

The (*state number*) issue reads:

"What amount of actual damages is the plaintiff entitled to recover?"

You will answer this issue only if you have answered Issue Number (*state issue number*) "Yes" in favor of the plaintiff.

The burden of proof on this issue is on the plaintiff to prove by the greater weight of the evidence that, as a result of the defendant's publication of the [libelous] [slandering] statement, the plaintiff suffered actual damages. Actual damages means fair compensation for any actual loss, hurt, or harm resulting from the defamation, including pecuniary damages and actual harm damages.<sup>2</sup>

Pecuniary damages are tangible monetary losses, such as [lost income] [medical expenses] [or] [other direct financial harm].<sup>3</sup> You may award pecuniary damages to the extent you find the plaintiff has suffered such tangible monetary losses. Emotional distress and mental suffering alone do not prove monetary loss.<sup>4</sup>

Actual harm damages include such things as impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering.<sup>5</sup> You may award actual harm damages to the extent you find the plaintiff has suffered such actual injury.

[You may compensate the plaintiff only once for any injury.<sup>6</sup> Thus, if you award presumed damages to the plaintiff, you may not award additional amounts to the plaintiff as actual harm damages to the extent you have already awarded the plaintiff presumed damages for the same injury. You may award as actual damages only such amount as compensates the plaintiff for injuries the plaintiff proved were suffered and for which the plaintiff has not otherwise been compensated by your verdict on other damages.<sup>7</sup>]

As to this issue, I instruct you that you are to base your decision on the rules of law with respect to actual damages that I have given you and that you are not required to accept the amount of damages suggested by the parties or their attorneys. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff suffered actual damages as a result of the defendant's publication of the [libelous] [slandorous] statement, then it would be your duty to answer this issue in favor of the plaintiff and to write in the blank space provided the monetary amount of such actual damages you find the plaintiff has suffered.

If, on the other hand, you do not find that the plaintiff has suffered actual damages, then it would be your duty to answer this issue in favor of the defendant and write a "Zero" in the blank space provided.<sup>8</sup>

---

1. This instruction may be used for all types of defamation involving all types of plaintiffs when the issue of actual damage is to be presented. Because the fault standards for an award of actual damages are, for each type of plaintiff, no more stringent than the fault liability standards for each type of plaintiff, a plaintiff obtaining a "Yes" answer on liability should have established the fault standard necessary for actual damage recovery to the extent that such plaintiff has proved actual damages. See, generally, N.C.P.I.—Civil 806.40 ("Defamation—Preface"), nn. 10-14 and accompanying text.

2. See *Hawkins v. Hawkins*, 101 N.C. App. 529, 532, 400 S.E.2d 472, 473-75 (1991) (Actual damage defined as "some actual loss, hurt or harm resulting from the illegal invasion of a legal right.").

3. See *Iadanza v. Harper*, 169 N.C. App. 776, 779-80, 611 S.E.2d 217, 221 (2005) ("pecuniary loss" damages include "medical expenses, lost wages, or other direct financial injury.").

4. *Donovan v. Fiumara*, 114 N.C. App. 524, 527, 442 S.E.2d 572, 575 (1994).

5. *Gertz v. Robert Welch Inc.*, 418 U.S. 323, 350, 41 L.Ed.2d 789, 810 (1974).

6. This portion of the instruction should only be given if the jury is also being instructed on presumed damages. See N.C.P.I.—Civil 806.81, 806.82 and 806.83.

7. Although some actual harm damages may duplicate categories available as presumed damages, a plaintiff entitled to recover presumed damages might also be able to prove certain harm at a level that the jury might not otherwise presume. Compare *Iadanza*

---

*v. Harper*, 169 N.C. App. 766, 779-80, 611 S.E.2d 217, 221 (2005) (citing 22 Am. Jur.2d, *Damages* § 42), with *Gertz*, 418 U.S. at 350, 41 L. Ed.2d at 810. In addition, such a plaintiff might be able to prove losses, such as lost wages not available as presumed damages. To the extent a jury is instructed on both presumed and actual damages, there is a danger of improper duplication of damages by the jury that the trial court must take care to avoid.

Note that the plaintiff must prove actual harm in order to prove liability for middle-tier libel and defamation actionable *per quod*.



806.85 DEFAMATION—PRIVATE FIGURE—MATTER OF PUBLIC CONCERN—  
ISSUE OF ACTUAL MALICE.<sup>1</sup>

*NOTE WELL: If a private figure plaintiff in a matter of public concern seeks to recover punitive damages, the following issue must first be answered in the affirmative.<sup>2</sup> If, and only if, this issue is answered "Yes," then the standard punitive damages instructions, N.C.P.I.—Civil 810.96 ("Punitive Damages—Liability of Defendant") and 810.98 ("Punitive Damages—Issue of Whether to Make Award and Amount"), should be given.*

The (*state number*) issue reads:

"Did the defendant publish the [libelous] [slanderous] statement with actual malice?"

You will answer this issue only if you have answered the (*state issue number*) "Yes") in favor of the plaintiff.

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by clear, strong and convincing evidence, that the defendant published the [libelous] [slanderous] statement with actual malice.<sup>3</sup>

Clear, strong and convincing evidence is evidence which, in its character and weight, establishes what the plaintiff seeks to prove in a clear, strong and convincing fashion. You shall interpret and apply the words "clear," "strong" and "convincing" in accordance with their commonly understood and accepted meanings in everyday speech.

Actual malice means that, at the time of the publication of the [libelous] [slanderous] statement, the defendant either knew that the statement was false or acted with reckless disregard of whether the statement was false.<sup>4</sup> Reckless disregard means that, at the time of the publication, the defendant had serious doubts about whether the statement was true.<sup>5</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by clear, strong and convincing evidence that the defendant published

the [libelous] [slanderous] statement with actual malice, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

---

1 . See N.C.P.I—Civil 806.40 ("Defamation—Preface"), nn. 27, 30-32 and accompanying text. Note that for private figure plaintiffs in cases *not* involving matters of public concern, the standard punitive damages instruction may be used and the *N.Y. Times* standard for actual malice is not needed.

2. See *Gibby v. Murphy*, 73 N.C. App. 128, 133, 325 S.E.2d 673, 676-77 (1985) (To recover punitive damages a private figure/matter of public concern plaintiff "must prove 'actual malice' on the part of the defendants. Actual malice may be proven by showing that the defendants published the defamatory material with knowledge that it was false, with reckless disregard to the truth, or with a high degree of awareness of its probable falsity."). Note that for private figure plaintiffs in cases *not* involving matters of public concern, the standard punitive damages instruction may be used and the *N.Y. Times* standard for actual malice is not needed.

3. As it relates to constitutional limits on defamation claims, "actual malice" has been defined as publication of a defamatory statement "with 'knowledge that it was false or with reckless disregard of whether it was false or not.'" *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510, 115 L. Ed. 2d 447, 468 (1991) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279-280, 11 L. Ed.2d 686, 706 (1964) (emphasis added)). The actual malice standard developed by the U.S. Supreme Court cannot be established by a showing of personal hostility and thus should be distinguished from state common law malice. *Masson*, 501 U.S. at 509-12, 115 L. Ed.2d at 468-69; *Varner v. Bryan*, 113 N.C. App. 697, 704, 440 S.E.2d 295, 299-300 (1994).

4. See n.3 *supra*.

5. See *Dellinger v. Belk*, 34 N.C. App. 488, 490, 238 S.E.2d 788, 89 (1977) (noting that the U.S. Supreme Court in *St. Amant v. Thompson*, 390 U.S. 727, 731, 20 L. Ed.2d 262, 267 (1968), "refined the definition of 'reckless disregard' to require 'sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.'"); see also *Barker v. Kimberly-Clark Corp.*, 136 N.C. App. 455, 461, 524 S.E.2d 821, 825 (2000) (actual malice may be shown, *inter alia*, by publication of a defamatory statement "with a high degree of awareness of its probable falsity."), and *Ward v. Turcotte*, 79 N.C. Ap. 458, 461, 339 S.E.2d 444, 446-7 (1986) (citation omitted) ("Actual malice may be found in a reckless disregard for the truth and may be proven by a showing that the defamatory statement was made in bad faith, without probable cause or without checking for truth by the means at hand.").

**North Carolina**  
**Conference of Superior Court Judges**  
Committee on Pattern Jury Instructions

**North Carolina**  
**PATTERN JURY**  
**INSTRUCTIONS**  
**for Civil Cases**

**Volume III**  
2021 Supplement

ISBN 978-1-64238-035-4





TABLE OF CONTENTS

PREFACE

INTRODUCTION

GUIDE TO THE USE OF THIS BOOK

SIGNIFICANT NEW DEVELOPMENTS

NORTH CAROLINA PATTERN JURY INSTRUCTIONS FOR CIVIL CASES: \*Dates the instructions were adopted are found in parentheses after the title of the instruction.

**PART I. GENERAL**

**Chapter 1. Preliminary Instructions.**

- 100.10 Opening Statement. (12/2004)
- 100.15 Cameras and Microphones in Courtroom. (5/2004)
- 100.20 Recesses. (6/2010)
- 100.21 Recesses. (6/2010)
- 100.40 Deposition Testimony. (5/2004)
- 100.44 Interrogatories. (12/2004)
- 100.70 Taking of Notes by Jurors. (5/2004)
- 101.00 Admonition to the Trial Judge on Stating the Evidence and Relating the Law to the Evidence. (10/1985)
- 101.05 Function of the Jury. (3/1994)
- 101.10 Burden of Proof and Greater Weight of the Evidence. (3/1994)
- 101.11 Clear, Strong, and Convincing Evidence. (11/2004)
- 101.14 Judicial Notice. (10/1983)
- 101.15 Credibility of Witness. (3/1994)
- 101.20 Weight of the Evidence. (3/1994)
- 101.25 Testimony of Expert Witness. (2/1994)
- 101.30 Testimony of Interested Witness. (3/1994)
- 101.32 Evidence—Limitation as to Parties. (10/1983)
- 101.33 Evidence—Limitation as to Purpose. (3/2017)
- 101.35 Impeachment of Witness by Prior Statement. (5/1992)
- 101.36 Impeachment of Witness or Party by Proof of Crime. (4/1986)
- 101.37 Evidence Relating to the Character Trait of a Witness (Including Party) for Truthfulness. (4/1986)
- 101.38 Evidence—Invocation by Witness of Fifth Amendment Privilege against Self-Incrimination. (5/2009)
- 101.39 Evidence—Spoliation by a Party. (6/2010)
- 101.40 Photograph, Videotape, Motion Pictures, X-Ray, Other Pictorial Representations; Map, Models, Charts—Illustrative and Substantive Evidence. (10/1985)
- 101.41 Stipulations. (1/1988)
- 101.42 Requests for Admissions. (1/1988)
- 101.43 Deposition Evidence. (4/1988)
- 101.45 Circumstantial Evidence. (10/1985)
- 101.46 Definition of [Intent] [Intentionally]. (12/2016)
- 101.50 Duty to Recall Evidence. (3/1994)
- 101.60 Issues. (3/1994)
- 101.62 Presumptions. (4/1984)

101.65 Peremptory Instruction. (8/1982)

**Chapter 2. General Negligence Instructions.**

- 102.10 Negligence Issue—Burden of Proof. (5/1994)  
102.10A Negligence Issue—Stipulation of Negligence. (5/2009)  
102.11 Negligence Issue—Definition of Common Law Negligence. (6/2018)  
102.12 Negligence Issue—Definition of Negligence in and of Itself (Negligence *Per Se*). (8/2015)  
102.13 Negligence of Minor Between Seven and Fourteen Years of Age. (6/2018)  
102.14 Negligence Issue—No Duty to Anticipate Negligence of Others. (5/1994)  
102.15 Negligence Issue—Doctrine of Sudden Emergency. (1/2019)  
102.16 Negligence Issue—Sudden Emergency Exception to Negligence *Per Se*. (5/1994)  
102.19 Proximate Cause—Definition; Multiple Causes. (5/2009))  
102.20 Proximate Cause—Peculiar Susceptibility. (3/2017)  
102.26 Proximate Cause—Act of God. (5/1994)  
102.27 Proximate Cause—Concurring Acts of Negligence. (3/2005)  
102.28 Proximate Cause—Insulating Acts of Negligence. (6/2010)  
102.30 Proximate Cause—Defense of Sudden Incapacitation. (2/2000)  
102.32 Negligence Issue—Breach of Parent’s Duty to Supervise Minor Children. (5/1992)  
102.35 Contentions of Negligence. (3/1994)  
102.50 Final Mandate—Negligence Issue. (3/1994)  
102.60 Concurring Negligence. (3/2005)  
102.65 Insulating/Intervening Negligence. (6/2020)  
102.84 Negligence—Infliction of Severe Emotional Distress. (2/2020)  
102.85 Willful or Wanton Conduct Issue (“Gross Negligence”). (5/1997)  
102.86 Willful or Wanton Conduct Issue (“Gross Negligence”)—Used to Defeat Contributory Negligence. (12/2003)  
102.87 Willful and Malicious Conduct Issue—Used to Defeat Parent-Child Immunity. (3/2016)  
102.90 Negligence Issue—Joint Conduct—Multiple Tortfeasors. (3/1994)  
102.95 Architect—Project Expediter—Negligence in Scheduling. (5/2005)

**Chapter 3. General Agency Instructions.**

- 103.10 Agency Issue—Burden of Proof—When Principal Is Liable. (1/2019)  
103.15 Independent Contractor. (5/1992)  
103.30 Agency Issue—Civil Conspiracy (One Defendant). (4/2019)  
103.31 Agency Issue—Civil Conspiracy (Multiple Defendants). (4/2019)  
103.40 Disregard of Corporate Entity of Affiliated Company—Instrumentality Rule (“Piercing the Corporate Veil”). (6/2020)  
103.50 Agency—Departure from Employment. (10/1985)  
103.55 Agency—Willful and Intentional Injury Inflicted by an Agent. (10/1985)  
103.70 Final Mandate—Agency Issue. (10/1985)

**Chapter 3a. Contributory Negligence Instructions.**

- 104.10 Contributory Negligence Issue—Burden of Proof—Definition. (6/2018)  
104.25 Contributory Negligence of Minor Between Seven and Fourteen Years of Age. (6/2018)  
104.35 Contentions of Contributory Negligence. (3/1994)  
104.50 Final Mandate—Contributory Negligence Issue. (3/1994)

**Chapter 4. Third Party Defendants.**

- 108.75 Negligence of Third Party Tort-Feasor—Contribution. (10/1985)

**Chapter 5. Summary Instructions.**

- 150.10 Jury Should Consider All Contentions. (3/1994)
- 150.12 Jury Should Render Verdict Based on Fact, Not Consequences. (3/1994)
- 150.20 The Court Has No Opinion. (3/1994)
- 150.30 Verdict Must Be Unanimous. (3/1994)
- 150.40 Selection of Foreperson. (3/1994)
- 150.45 Concluding Instructions—When To Begin Deliberations, Charge Conference. (3/1994)
- 150.50 Failure of Jury to Reach a Verdict. (10/1980)
- 150.60 Discharging the Jury. (5/1988)

**PART II. CONTRACTS**

**Chapter 1. General Contract Instructions.**

- 501.00 Introduction to Contract Series. (5/2003)

**Chapter 2. Issue of Formation of Contract.**

- 501.01 Contracts—Issue of Formation—Common Law. (6/2018)
- 501.01A Contracts—Issue of Formation—UCC. (6/2018)
- 501.02 Contracts—Issue of Formation—Peremptory Instruction. (5/2003)
- 501.03 Contracts—Issue of Formation—Parties Stipulate the Contract. (5/2003)
- 501.05 Contracts—Issue of Formation—Defense of Lack of Mental Capacity. (6/2018)
- 501.10 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Fair Dealing and Lack of Notice. (5/2003)
- 501.15 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Necessities. (5/2003)
- 501.20 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Ratification (Incompetent Regains Mental Capacity). (5/2003)
- 501.25 Contracts—Issue of Formation—Defense of Lack of Mental Capacity—Rebuttal by Proof of Ratification (by Agent, Personal Representative or Successor). (5/2003)
- 501.30 Contracts—Issue of Formation—Defense of Mutual Mistake of Fact. (6/2013)
- 501.35 Contracts—Issue of Formation—Defense of Undue Influence. (5/2003)
- 501.40 Contracts—Issue of Formation—Defense of Duress. (5/2003)
- 501.45 Contracts—Issue of Formation—Defense of Fraud. (5/2004)
- 501.50 Contracts—Issue of Formation—Defense of Grossly Inadequate Consideration (“Intrinsic Fraud”). (5/2003)
- 501.52 Contracts—Issue of Formation—Defense of Fraud in the Factum. (5/2003)
- 501.55 Contracts—Issue of Formation—Defense of Constructive Fraud. (6/2018)
- 501.60 Contracts—Issue of Formation—Defense of Constructive Fraud—Rebuttal by Proof of Openness, Fairness, and Honesty. (5/2003)
- 501.65 Contracts—Issue of Formation—Defense of Infancy. (5/2003)
- 501.67 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Emancipation. (5/2003)
- 501.70 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Ratification After Minor Comes of Age. (5/2003)
- 501.75 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Ratification by Guardian, Personal Representative or Agent. (5/2003)
- 501.80 Contracts—Issue of Formation—Defense of Infancy—Rebuttal by Proof of Necessities. (5/2003)

**Chapter 3. Issue of Breach.**

- 502.00 Contracts—Issue of Breach By Non-Performance. (5/2003)
- 502.05 Contracts—Issue of Breach By Repudiation. (6/2018)
- 502.10 Contracts—Issue of Breach By Prevention. (5/2003)

- 502.15 Contracts—Issue of Breach—Defense of Waiver. (5/2004)
- 502.20 Contracts—Issue of Breach—Defense of Prevention by Plaintiff. (5/2003)
- 502.25 Contracts—Issue of Breach—Defense of Frustration of Purpose. (6/2014)
- 502.30 Contracts—Issue of Breach—Defense of Impossibility (Destruction of Subject Matter of Contract). (6/2014)
- 502.35 Contracts—Issue of Breach—Defense of Impossibility (Death, Disability, or Illness of Personal Services Provider). (6/2014)
- 502.40 Contracts—Issue of Breach—Defense of Illegality or Unenforceability. (2/2020)
- 502.45 Contracts—Issue of Breach—Defense of Unconscionability. (5/2003)
- 502.47 Contracts—Issue of Breach—Direct Damages—Defense of Oral Modification of Written Contract. (5/2003)
- 502.48 Contracts—Issue of Breach—Defense of Modification. (5/2003)
- 502.50 Contracts—Issue of Breach—Defense of Rescission. (5/2003)
- 502.55 Contracts—Issue of Breach—Defense of Novation. (5/2003)
- 502.60 Contracts—Issue of Breach—Defense of Accord and Satisfaction. (5/2003)

**Chapter 4. Issue of Common Law Remedy.**

- 503.00 Contracts—Issue of Common Law Remedy—Rescission. (5/2003)
- 503.01 Contracts—Issue of Common Law Remedy—Rescission—Measure of Restitution. (6/2014)
- 503.03 Contracts—Issue of Common Law Remedy—Specific Performance. (5/2003)
- 503.06 Contracts—Issue of Common Law Remedy—Statement of Damages Issue. (5/2003)
- 503.09 Contracts—Issue of Common Law Remedy—Damages in General. (5/2003)
- 503.12 Contracts—Issue of Common Law Remedy—Direct Damages—Buyer’s Measure of Recovery for a Seller’s Breach of Contract to Convey Real Property. (5/2003)
- 503.15 Contracts—Issue of Common Law Remedy—Direct Damages—Seller’s Measure of Recovery for a Buyer’s Breach of Executory Contract to Purchase Real Property. (5/2003)
- 503.18 Contracts—Issue of Common Law Remedy—Direct Damages—Broker’s Measure of Recovery for a Seller’s Breach of an Exclusive Listing Contract. (5/2003)
- 503.21 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Contractor’s Partial Breach of a Construction Contract. (5/2003)
- 503.24 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Contractor’s Partial Breach of a Construction Contract Where Correcting the Defect Would Cause Economic Waste. (5/2003)
- 503.27 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Partial Breach of a Repair or Services Contract. (5/2003)
- 503.30 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for a Contractor’s Failure to Perform any Work Under a Construction, Repair, or Services Contract. (5/2003)
- 503.33 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract Where the Contractor Has Fully Performed. (5/2003)
- 503.36 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract Where the Contractor Has Not Begun Performance. (5/2003)
- 503.39 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract After the Contractor Delivers Partial Performance. (5/2003)
- 503.42 Contracts—Issue of Common Law Remedy—Direct Damages—Contractor’s Measure of Recovery for an Owner’s Breach of a Construction, Repair, or Services Contract Where the Contractor Elects to Recover Preparation and Performance Expenditures. (5/2003)

- 503.45 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for Loss of Rent due to a Lessee’s, Occupier’s, or Possessor’s Breach of Lease of Real Estate or Personal Property. (5/2003)
- 503.48 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for Loss of Use Due to a Lessee’s, Occupier’s, or Possessor’s Breach of Lease of Real Estate or Personal Property. (5/2003)
- 503.51 Contracts—Issue of Common Law Remedy—Direct Damages—Owner’s Measure of Recovery for Real Estate or Personal Property Idled by Breach of a Contract Where Proof of Lost Profits or Rental Value Is Speculative. (5/2003)
- 503.54 Contracts—Issue of Common Law Remedy—Direct Damages—Employer’s Measure of Recovery for Employee’s Wrongful Termination of an Employment Contract. (5/2003)
- 503.70 Contracts—Issue of Common Law Remedy—Incidental Damages. (5/2003)
- 503.73 Contracts—Issue of Common Law Remedy—Consequential Damages. (5/2003)
- 503.75 Breach Of Contract—Special Damages—Loss Of Profits (Formerly 517.20) (6/2013)
- 503.76 Contracts—Issue of Common Law Remedy—Future Worth of Damages in Present Value. (5/2003)
- 503.79 Contracts—Issue of Common Law Remedy—Damages Mandate. (5/2003)
- 503.90 Contracts—Issue of Common Law Remedy—Defense (Offset) for Failure to Mitigate. (5/2003)
- 503.91 Contracts—Issue of Common Law Remedy—Defense (Offset) for Failure to Mitigate—Amount of Credit. (5/2003)
- 503.94 Contracts—Issue of Common Law Remedy—Validity of Liquidated Damages Provision. (5/2003)
- 503.97 Contracts—Issue of Common Law Remedy—Amount of Liquidated Damages. (5/2003)

**Chapter 5. Issue of UCC Remedy.**

- 504.00 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Seller’s Repudiation. (5/2003)
- 504.03 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Seller’s Failure to Make Delivery or Tender. (5/2003)
- 504.06 Contracts—Issue of UCC Remedy—Buyer’s Remedy of Rightful Rejection. (5/2003)
- 504.09 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Rightful Rejection. (5/2003)
- 504.12 Contracts—Issue of UCC Remedy—Buyer’s Remedy of Justifiable Revocation of Acceptance. (5/2003)
- 504.15 Contracts—Issue of UCC Remedy—Buyer’s Damages Upon Justifiable Revocation of Acceptance. (5/2003)
- 504.18 Contracts—Issue of UCC Remedy—Buyer’s Damages After Acceptance and Retention of Goods. (5/2003)
- 504.21 Contracts—Issue of UCC Remedy—Buyer’s Remedy of Specific Performance. (5/2003)
- 504.24 Contracts—Issue of UCC Remedy—Seller’s Remedy (or Defense) of Stopping Delivery of Goods. (5/2003)
- 504.27 Contracts—Issue of UCC Remedy—Seller’s Remedy (or Defense) of Reclaiming Goods Already Delivered. (5/2003)
- 504.30 Contracts—Issue of UCC Remedy—Seller’s Remedy of Resale. (5/2003)
- 504.33 Contracts—Issue of UCC Remedy—Seller’s Resale Damages. (5/2003)
- 504.36 Contracts—Issue of UCC Remedy—Seller’s Contract—Market Damages. (5/2003)
- 504.39 Contracts—Issue of UCC Remedy—Seller’s Lost Profit Damages. (5/2003)
- 504.42 Contracts—Issue of UCC Remedy—Seller’s Remedy of Action for Price (Specific Performance) for Delivered Goods. (5/2003)

- 504.45 Contracts—Issue of UCC Remedy—Seller’s Remedy of Action for Price (Specific Performance) for Undelivered Goods. (5/2003)
- 504.48 Contracts—Issue of UCC Remedy—Defense (Offset) of Failure to Mitigate. (5/2003)
- 504.51 Contracts—Issue of UCC Remedy—Validity of Liquidated Damages Provision. (5/2003)
- 504.54 Contracts—Issue of UCC Remedy—Amount of Liquidated Damages. (5/2003)

**Chapter 6. Minor’s Claims Where Contract Disavowed.**

- 505.20 Contracts—Issue of Remedy—Minor’s Claim for Restitution Where Contract Is Disavowed. (5/2003)
- 505.25 Contracts—Issue of Remedy—Minor’s Claim for Restitution Where Contract Is Disavowed—Measure of Recovery. (5/2003)

**Chapter 7. Agency.**

- 516.05 Agency in Contract—Actual and Apparent Authority of General Agent. (1/2019)
- 516.15 Agency—Ratification. (1/2019)
- 516.30 Agency—Issue of Undisclosed Principal—Liability of Agent. (4/2005)
- 517.20 Breach of Contract—Special Damages—Loss of Profits. (6/2013)

**Chapter 8. Deleted. (5/2003)**

**Chapter 9. Action on Account.**

- 635.20 Action on Unverified Account—Issue of Liability. (5/1991)
- 635.25 Action on Unverified Account—Issue of Amount Owed. (5/1991)
- 635.30 Action on Verified Itemized Account. (5/1991)
- 635.35 Action on Account Stated. (6/2014)
- 635.40 Action on Account—Defense of Payment. (5/1991)

**Chapter 10. Employment Relationship.**

- 640.00 Introduction to “Employment Relationship” Series. (6/2014)
- 640.00A Introduction to “Employment Relationship” Series (Delete Sheet). (6/2010)
- 640.01 Employment Relationship—Status of Person as Employee. (6/2018)
- 640.02 Employment Relationship—Constructive Termination. (6/2010)
- 640.03 Employment Relationship—Termination/Resignation. (6/2010)
- 640.10 Employment Relationship—Employment for a Definite Term. (2/1991)
- 640.12 Employment Relationship—Breach of Agreement for a Definite Term. (5/1991)
- 640.14 Employment Relationship—Employer’s Defense of Just Cause. (2/1991)
- 640.20 Employment Relationship—Wrongful (Tortious) Termination. (3/2017)
- 640.22 Employment Relationship—Employer’s Defense to Wrongful (Tortious) Termination. (4/1998)
- 640.25 Employment Relationship—Blacklisting. (11/1996)
- 640.27 Employment Discrimination—Pretext Case. (6/2018)
- 640.28 Employment Discrimination—Mixed Motive Case. (5/2004)
- 640.29A Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—Introduction. (6/2018)
- 640.29B Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Direct Admission Case*. (6/2010)
- 640.29C Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Pretext Case*. (6/2010)
- 640.29D Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Mixed Motive Case* (Plaintiff). (6/2010)
- 640.29E Employment Relationship—Adverse Employment Action in Violation of the North Carolina Whistleblower Act—*Mixed Motive Case* (Defendant). (5/2009)
- 640.30 Employment Relationship—Damages. (6/2010)

- 640.32 Employment Relationship—Mitigation of Damages. (6/2014)
- 640.40 Employment Relationship—Vicarious Liability of Employer for Co-Worker Torts. (6/2015)
- 640.42 Employment Relationship—Liability of Employer for Negligence in Hiring, Supervision, or Retention of an Employee. (5/2009)
- 640.43 Employment Relationship—Liability of Employer for Negligence in Hiring or Selecting an Independent Contractor. (5/2009)
- 640.44 Employment Relationship—Liability of Employer for Negligence in Retaining an Independent Contractor. (5/2009)
- 640.46 Employment Relationship—Liability of Employer for Injury to Employee—Exception to Workers’ Compensation Exclusion. (2/2017)
- 640.48 Employment Relationship—Liability of Principal for Negligence of Independent Contractor (Breach of Non-Delegable Duty of Safety)—Inherently Dangerous Activity. (5/2009)
- 640.60 Employment Relationships—Wage & Hour Act—Wage Payment Claim (2/2017)
- 640.65 Employment Relationships—Wage & Hour Act—Wage Payment Claim—Damages (6/2014)
- 640.70 Public Employee—Direct North Carolina Constitutional Claim—Enjoyment of Fruits of Labor. (2/2019)

**Chapter 11. Covenants Not to Compete.**

- 645.20 Covenants Not to Compete—Issue of the Existence of the Covenant. (6/2015)
- 645.30 Covenants Not to Compete—Issue of Whether Covenant was Breached. (5/1976)
- 645.50 Covenants not to Compete—Issue of Damages. (5/2006)

**Chapter 12. Actions for Services Rendered a Decedent.**

- 714.18 Products Liability—Military Contractor Defense. (6/2007)
- 735.00 Action for Services Rendered a Decedent—Issue of Existence of Contract. (11/2/2004)
- 735.05 Action for Services Rendered a Decedent—Evidence of Promise to Compensate by Will. (12/1977)
- 735.10 Action for Services Rendered a Decedent—Presumption that Compensation Is Intended. (5/1978)
- 735.15 Action for Services Rendered a Decedent—Presumption of Gratuity by Family Member. (12/1977)
- 735.20 Action for Services Rendered a Decedent—Issue of Breach of Contract. (12/1977)
- 735.25 Action for Services Rendered a Decedent—Issue of Recovery. (12/1977)
- 735.30 Action for Services Rendered a Decedent—Issue of Recovery—Benefits or Offsets. (10/1977)
- 735.35 Action for Services Rendered a Decedent—Issue of Recovery—Evidence of Value of Specific Property. (10/1977)
- 735.40 Action for Services Rendered a Decedent—Issue of Recovery—Statute of Limitations. (5/1978)

**Chapter 13. Quantum Meruit.**

- 736.00 Quantum Meruit—Quasi Contract—Contract Implied at Law. (5/2016)
- 736.01 Quantum Meruit—Quasi Contract—Contract Implied at Law: Measure of Recovery. (6/2015)

**Chapter 14. Leases.**

## **VOLUME II**

### **Part III. WARRANTIES AND PRODUCTS LIABILITY**

#### **Chapter 1. Warranties in Sales of Goods.**

- 741.00 Warranties in Sales of Goods. (5/1999)
- 741.05 Warranties in Sales of Goods—Issue of Existence of Express Warranty. (5/1999)
- 741.10 Warranties in Sales of Goods—Issue of Breach of Express Warranty. (5/1999)
- 741.15 Warranties in Sales of Goods—Issue of Existence of Implied Warranty of Merchantability. (6/2013)
- 741.16 Warranties in Sales of Goods—Issue of Seller’s Defense of Modification of Implied Warranty of Merchantability. (5/1999)
- 741.17 Warranties in Sales of Goods—Issue of Seller’s Defense of Exclusion of Implied Warranty of Merchantability. (5/1999)
- 741.18 Warranties in Sales of Goods—Issue of Seller’s Defense of Buyer’s Actual or Constructive Knowledge of Defects—Implied Warranty of Merchantability. (5/1999)
- 741.20 Warranties in Sales of Goods—Issue of Breach of Implied Warranty of Merchantability. (12/2003)
- 741.25 Warranties in Sales of Goods—Issue of Existence of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.26 Warranties in Sales of Goods—Issue of Seller’s Defense of Modification of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.27 Warranties in Sales of Goods—Issue of Seller’s Defense of Exclusion of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.28 Warranties in Sales of Goods—Issue of Seller’s Defense of Buyer’s Actual or Constructive Knowledge of Defects—Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.30 Warranties in Sales of Goods—Issue of Breach of Implied Warranty of Fitness for a Particular Purpose. (5/1999)
- 741.31 Warranties in Sales of Goods—Issue of Existence of Implied Warranty Created by Course of Dealing or by Usage of Trade. (5/1999)
- 741.32 Warranties in Sales of Goods—Issue of Seller’s Defense of Exclusion of Implied Warranty Created by Course of Dealing or by Usage of Trade. (5/1999)
- 741.33 Warranties in Sales of Goods—Issue of Seller’s Defense of Buyer’s Actual or Constructive Knowledge of Defects—Implied Warranty Created by Course of Dealing or by Usage of Trade. (5/1999)
- 741.34 Warranties in Sales of Goods—Issue of Breach of Implied Warranty Created by Course of Dealing or Usage of Trade. (5/1999)
- 741.35 Warranties in Sales of Goods—Remedies—Rightful Rejection. (5/1999)
- 741.40 Warranties in Sales of Goods—Rightful Rejection—Damages. (5/1999)
- 741.45 Warranties in Sales of Goods—Remedies—Justifiable Revocation of Acceptance. (5/1999)
- 741.50 Warranties in Sales of Goods—Justifiable Revocation of Acceptance—Damages. (5/1999)
- 741.60 Warranties in Sales of Goods—Remedy for Breach of Warranty Where Accepted Goods are Retained—Damages. (5/1999)
- 741.65 Express and Implied Warranties—Third Party Rights of Action (Horizontal) Against Buyer’s Seller. (5/1999)
- 741.66 Implied Warranties—Third Party Rights of Action (Horizontal) Against Manufacturers. (5/2006)
- 741.67 Implied Warranties—Third Party Rights of Action (Vertical) Against Manufacturers. (5/1999)
- 741.70 Products Liability—Claim of Inadequate Warning or Instruction. (5/2005)



- 741.71 Products Liability—Claim Against Manufacturer for Inadequate Design or Formulation (Except Firearms or Ammunition). (5/2005)
- 741.72 Products Liability—Firearms or Ammunition—Claim Against Manufacturer or Seller for Defective Design. (5/2005)

**Chapter 2. Defenses By Sellers and Manufacturers.**

- 743.05 Products Liability (Other than Express Warranty)—Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/1999)
- 743.06 Products Liability—Exception To Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/2004)
- 743.07 Products Liability—Seller’s and Manufacturer’s Defense of Product Alteration or Modification. (5/1999)
- 743.08 Products Liability—Seller’s and Manufacturer’s Defense of Use Contrary to Instructions or Warnings. (5/1999)
- 743.09 Products Liability—Seller’s and Manufacturer’s Defense of Unreasonable Use In Light of Knowledge of Unreasonably Dangerous Condition of Product. (5/1999)
- 743.10 Products Liability—Seller’s and Manufacturer’s Defense of Claimant’s Failure to Exercise Reasonable Care as Proximate Cause of Damage. (5/1999)
- 744.05 Products Liability (Other than Express Warranty)—Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/1999)
- 744.06 Products Liability—Exception to Seller’s Defense of Sealed Container or Lack of Opportunity to Inspect Product. (5/2004)
- 744.07 Products Liability—Seller’s and Manufacturer’s Defense of Product Alteration or Modification. (5/1999)
- 744.08 Products Liability—Seller’s and Manufacturer’s Defense of Use Contrary to Instructions or Warnings. (6/2010)
- 744.09 Products Liability—Seller’s and Manufacturer’s Defense of Unreasonable Use in Light of Knowledge of Unreasonably Dangerous Condition of Product. (5/1999)
- 744.10 Products Liability—Seller’s and Manufacturer’s Defense of Claimant’s Failure to Exercise Reasonable Care as Proximate Cause of Damage. (5/1999)
- 744.12 Products Liability—Seller’s and Manufacturer’s Defense of Open and Obvious Risk. (5/1999)
- 744.13 Products Liability—Prescription Drugs—Seller’s and Manufacturer’s Defense of Delivery of Adequate Warning or Instruction to Prescribers or Dispensers. (5/1999)
- 744.16 Products Liability—Manufacturer’s Defense of Inherent Characteristic. (5/1999)
- 744.17 Products Liability—Prescription Drugs—Manufacturer’s Defense of Unavoidably Unsafe Aspect. (5/1999)
- 744.18 Products Liability—Statute of Limitations. (6/2010)

**Chapter 3. New Motor Vehicle Warranties (“Lemon Law”).**

- 745.01 New Motor Vehicles Warranties Act (“Lemon Law”)—Manufacturer’s Failure to Make Repairs Necessary to Conform New Motor Vehicle to Applicable Express Warranties. (6/2013)
- 745.03 New Motor Vehicles Warranties Act (“Lemon Law”)—Manufacturer Unable to Conform New Motor Vehicle to Express Warranty. (6/2013)
- 745.05 New Motor Vehicles Warranties Act (“Lemon Law”)—Manufacturer’s Affirmative Defense of Abuse, Neglect, Odometer Tampering, or Unauthorized Modifications or Alterations. (6/2013)
- 745.07 New Motor Vehicles Warranties Act (“Lemon Law”)—Damages When Plaintiff is a Purchaser. (6/2015)
- 745.09 New Motor Vehicles Warranties Act (“Lemon Law”)—Damages When Plaintiff is a Lessee. (6/2015)
- 745.11 New Motor Vehicles Warranties Act (“Lemon Law”)—Damages When Plaintiff is a Lessor. (6/2015)

- 745.13 New Motor Vehicles Warranties Act (“Lemon Law”)—Unreasonable Refusal to Comply with Requirements of Act. (5/1999)
- Chapter 4. New Dwelling Warranty.**
- 747.00 Warranties in Sales of Dwellings—Issue of Existence of Implied Warranty of Habitability. (5/1999)
- 747.10 Warranties in Sales of Dwellings—Issue of Builder’s Defense that Buyer Had Notice of Defect. (5/1999)
- 747.20 Warranties in Sales of Dwellings—Issue of Breach of Implied Warranty of Habitability. (12/2003)
- 747.30 Warranties in Sales of Dwellings—Remedies—Rescission. (5/1999)
- 747.35 Warranties in Sales of Dwellings—Remedies—Special Damages Following Rescission. (5/1999)
- 747.36 Warranties in Sales of Dwellings—Remedies—Credit to Seller for Reasonable Rental Value. (5/1999)
- 747.40 Warranties in Sales of Dwellings—Remedies—Damages Upon Retention of Dwelling. (5/1999)

#### **Part IV. MISCELLANEOUS TORTS**

##### **Chapter 1. Fraud.**

- 800.00 Fraud. (6/2018)
- 800.00A Fraud—Statute of Limitations (5/2016)
- 800.05 Constructive Fraud. (6/2018)
- 800.06 Constructive Fraud—Rebuttal by Proof of Openness, Fairness and Honesty. (6/2018)
- 800.07 Fraud: Damages. (6/2007)
- 800.10 Negligent Misrepresentation. (3/2020)
- 800.11 Negligent Misrepresentation: Damages. (6/2007)

##### **Chapter 2. Criminal Conversation and Alienation of Affections.**

- 800.20 Alienation of Affection. (12/2016)
- 800.22 Alienation of Affections—Damages. (6/2007)
- 800.23 Alienation of Affection—Statute of Limitations. (6/2010)
- 800.23A Alienation of Affection—Statute of Limitations. (6/2010)
- 800.25 Criminal Conversation. (Adultery). (6/2010)
- 800.26 Alienation of Affection/Criminal Conversation—Damages. (6/2010)
- 800.27 Criminal Conversation—Statute of Limitations. (6/2015)
- 800.27A Criminal Conversation—Statute of Limitations. (6/2015)

##### **Chapter 3. Assault and Battery.**

- 800.50 Assault. (2/1994)
- 800.51 Battery. (2/2016)
- 800.52 Assault and Battery—Defense of Self. (5/1994)
- 800.53 Assault and Battery—Defense of Family Member. (5/1994)
- 800.54 Assault and Battery—Defense of Another from Felonious Assault. (5/2004)
- 800.56 Assault and Battery—Defense of Property. (5/1994)

##### **Chapter 3A. Infliction of Emotional Distress.**

- 800.60 Intentional or Reckless Infliction of Severe Emotional Distress. (4/2004)

##### **Chapter 3B. Loss of Consortium.**

800.65 Action for Loss of Consortium. (12/1999)

**Chapter 4. Invasion of Privacy.**

800.70 Invasion of Privacy—Offensive Intrusion. (6/2013)  
800.71 Invasion of Privacy—Offensive Intrusion—Damages. (6/2010)  
800.75 Invasion of Privacy—Appropriation of Name or Likeness for Commercial Use.  
(5/2001)  
800.76 Invasion of Privacy—Appropriation of Name or Likeness for Commercial Use—  
Damages. (5/2001)

**Chapter 5. Malicious Prosecution, False Imprisonment, and Abuse of Process.**

801.00 Malicious Prosecution—Criminal Proceeding. (6/2014)  
801.01 Malicious Prosecution—Civil Proceeding. (1/1995)  
801.05 Malicious Prosecution—Damages. (10/1994)  
801.10 Malicious Prosecution—Punitive Damages—Issue of Existence of Actual Malice.  
(5/2001)  
802.00 False Imprisonment. (6/2014)  
802.01 False Imprisonment—Merchant’s Defenses. (5/2004)  
803.00 Abuse of Process. (6/2012)  
804.00 Section 1983—Excessive Force in Making Lawful Arrest. (5/2004)  
804.01 Excessive Force in Making Arrest—Common Law Claim for Battery—Issue of  
Battery (3/2016)  
804.02 Excessive Force in Making Arrest—Common Law Claim for Battery—Issue of  
Lawfulness of Arrest (3/2016)  
804.03 Excessive Force in Making Arrest—Common Law Claim for Battery—Issue of  
Reasonableness of Force Used (3/2016)  
804.04 Excessive Force in Making Arrest—Common Law Claim for Battery—Damages  
(3/2016)  
804.05 Excessive Force in Making Arrest—Common Law Claim for Battery—Sample Verdict  
Sheet (3/2016)  
804.06 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Color of State Law  
(3/2016)  
804.07 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Use of Force  
(3/2016)  
804.08 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Color of  
Lawfulness of Arrest (3/2016)  
804.09 Excessive Force in Making Arrest—Section 1983 Claim—Issue of Color of  
Reasonableness of Force Used (3/2016)  
804.10 Excessive Force in Making Arrest—Section 1983 Claim—Damages (3/2016)  
804.11 Excessive Force in Making Lawful Arrest—Section 1983 Claim—Punitive Damages  
(3/2016)  
804.12 Excessive Force in Making Arrest—Section 1983 Claim—Verdict Sheet (3/2016)  
804.50 Section 1983—Unreasonable Search of Home. (6/2016)

**Chapter 6. Nuisances and Trespass.**

805.00 Trespass to Real Property. (6/2015)  
805.05 Trespass to Real Property—Damages. (5/2001)  
805.10 Trespass to Personal Property. (5/2001)  
805.15 Trespass to Personal Property—Damages. (5/2001)  
805.20<sup>[DO1]</sup> Littering—Civil Action for Damages for Felonious Littering. (3/2020)  
805.21 Littering—Civil Action for Damages for Felonious Littering—Damages Issue.  
(4/2019)  
805.25<sup>[DO2]</sup> Private Nuisance. (5/2020)

**Chapter 7. Owners and Occupiers of Land.**

- 805.50 Status of Party—Lawful Visitor or Trespassor. (5/1999)
- 805.55 Duty of Owner to Lawful Visitor. (5/2020)
- 805.56 Duty of Owner to Lawful Visitor—Defense of Contributory Negligence. (6/2018)
- 805.60 Duty of Owner to Licensee. (Delete Sheet). (5/1999)
- 805.61 Duty of Owner to Licensee—Defense of Contributory Willful or Wanton Conduct (“Gross Negligence”). (Delete Sheet). (5/1999)
- 805.64 Duty of Owner to Trespasser—Intentional Harms (6/2013)
- 805.64A Duty of Owner to Trespasser—Use of Reasonable Force Defense (6/2013)
- 805.64B Duty of Owner to Child Trespasser—Artificial Condition (6/2013)
- 805.64C Duty of Owner to Trespasser: Position of Peril (6/2013)
- 805.65 Duty of Owner to Trespasser. (6/2013)
- 805.65A Duty of Owner to Child Trespasser—Attractive Nuisance. (6/2013)
- 805.66 Duty of Owner to Trespasser—Defense of Contributory Willful or Wanton Conduct (“Gross Negligence”). (11/2004)
- 805.67 Duty of City or County to Users of Public Ways. (5/1990)
- 805.68 City or County Negligence—Defense of Contributory Negligence—Sui Juris Plaintiff. (5/1990)
- 805.69 Municipal or County Negligence—Defense of Contributory Negligence—Handicapped Plaintiff. (5/1990)
- 805.70 Duty of Adjoining Landowners—Negligence. (5/1990)
- 805.71 Duty of Landlord to Residential Tenant—Residential Premises and Common Areas. (5/1990)
- 805.72 Duty of Landlord to Residential Tenant—Residential Premises and Common Areas—Defense of Contributory Negligence. (6/2018)
- 805.73 Duty of Landlord to Non-Residential Tenant—Controlled or Common Areas. (5/1990)
- 805.74 Duty of Landlord to Non-Residential Tenant—Controlled or Common Areas—Defense of Contributory Negligence. (6/2018)
- 805.80 Duty of Landlord to Tenant—Vacation Rental. (5/2001)

**Chapter 8. Conversion.**

- 806.00 Conversion. (5/1996)
- 806.01 Conversion—Defense of Abandonment. (5/1996)
- 806.02 Conversion—Defense of Sale (or Exchange). (5/1996)
- 806.03 Conversion—Defense of Gift. (4/2004)
- 806.05 Conversion—Damages. (5/1996)

**Chapter 9. Defamation.**

- 806.40 Defamation—Preface. (6/2021)
- 806.50 Defamation—Libel Actionable *Per Se*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.51 Defamation—Libel Actionable *Per Se*—Private Figure—Matter of Public Concern. (6/2021)
- 806.53 Defamation—Libel Actionable *Per Se*—Public Figure or Official. (6/2021)
- 806.60 Defamation—Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.61 Defamation—Libel Actionable *Per Quod*—Private Figure—Matter of Public Concern. (6/2021)
- 806.62 Defamation—Libel Actionable *Per Quod*—Public Figure or Official. (6/2021)
- 806.65 Defamation—Slander Actionable *Per Se*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.66 Defamation—Slander Actionable *Per Se*—Private Figure—Matter of Public Concern. (6/2021)

- 806.67 Defamation—Slander Actionable *Per Se*—Public Figure or Official. (6/2021)
- 806.70 Defamation—Slander Actionable *Per Quod*—Private Figure—Not Matter of Public Concern. (6/2021)
- 806.71 Defamation—Slander Actionable *Per Quod*—Private Figure—Matter of Public Concern. (6/2021)
- 806.72 Defamation—Slander Actionable *Per Quod*—Public Figure or Official. (6/2021)
- 806.79 Defamation—Libel Actionable *Per Se* or Libel Actionable *Per Quod*—Private Figure—Not Matter of Public Concern—Defense of Truth as a Defense. (6/2021)
- 806.81 Defamation Actionable *Per Se*—Private Figure—Not Matter of Public Concern—Presumed Damages. (6/2021)
- 806.82 Defamation Actionable *Per Se*—Private Figure—Matter of Public Concern—Presumed Damages. (6/2021)
- 806.83 Defamation Actionable *Per Se*—Public Figure or Official—Presumed Damages. (6/2021)
- 806.84 Defamation—Private Figure—Matter of Public Concern—Actual Damages. (6/2021)
- 806.85 Defamation—Defamation Actionable *Per Se*—Private Figure—Matter of Public Concern—Punitive Damages. (6/2021)

**Chapter 10. Interference with Contracts.**

- 807.00 Wrongful Interference with Contract Right. (6/2020)
- 807.10 Wrongful Interference with Prospective Contract. (6/2020)
- 807.20 Slander of Title. (11/2004)
- 807.50 Breach of Duty—Corporate Director. (3/2016)
- 807.52 Breach of Duty—Corporate Officer. (5/2002)
- 807.54 Breach of Duty—Controlling Shareholder of Closely Held Corporation—Issue of Closely Held Corporation. (5/2002)
- 807.56 Breach of Duty—Controlling Shareholder of Closely Held Corporation—Issue of Taking Improper Advantage of Power. (5/2002)
- 807.58 Breach of Duty—Controlling Shareholder of Closely Held Corporation—Issue of Taking Improper Advantage of Power—Defense of Good Faith, Care and Diligence. (5/2002)

**Chapter 11. Medical Malpractice. Deleted.**

**Chapter 11A. Medical Negligence/Medical Malpractice.**

- 809.00 Medical Negligence—Direct Evidence of Negligence Only. (6/2014)
- 809.00A Medical Malpractice—Direct Evidence of Negligence Only. (1/2019)
- 809.03 Medical Negligence—Indirect Evidence of Negligence Only ("Res Ipsa Loquitur"). (6/2013)
- 809.03A Medical Malpractice—Indirect Evidence of Negligence Only ("Res Ipsa Loquitur"). (5/2019)
- 809.05 Medical Negligence—Both Direct and Indirect Evidence of Negligence. (6/2014)
- 809.05A Medical Malpractice—Both Direct and Indirect Evidence of Negligence. (5/2019)
- 809.06 Medical Malpractice—Corporate or Administrative Negligence by Hospital, Nursing Home, or Adult Care Home. (6/2012)
- 809.07 Medical Negligence—Defense of Limitation by Notice or Special Agreement. (5/1998)
- 809.20 Medical Malpractice—Existence of Emergency Medical Condition. (6/2013)
- 809.22 Medical Malpractice—Emergency Medical Condition—Direct Evidence of Negligence Only. (5/2019)
- 809.24 Medical Malpractice—Emergency Medical Condition—Indirect Evidence of Negligence Only. ("Res Ipsa Loquitur"). (5/2019)
- 809.26 Medical Malpractice—Emergency Medical Condition—Both Direct and Indirect Evidence of Negligence. (5/2019)

- 809.28 Medical Malpractice—Emergency Medical Condition—Corporate or Administrative Negligence by Hospital, Nursing Home, or Adult Care Home. (6/2012)
- 809.45 Medical Negligence—Informed Consent—Actual and Constructive. (5/2019)
- 809.65 Medical Negligence—Health Care Provider’s Liability for Acts of Non-Employee Agents—Respondeat Superior. (6/2012)
- 809.65A Medical Malpractice—Health Care Provider’s Liability for Acts of Non-Employee Agents—Respondeat Superior. (5/2019)
- 809.66 Medical Negligence—Health Care Provider’s Liability for Acts of Non-Employee Agents—Respondeat Superior—Apparent Agency. (5/2019)
- 809.75 Medical Negligence—Institutional Health Care Provider’s Liability for Selection of Attending Physician. (5/2019)
- 809.80 Medical Negligence—Institutional Health Care Provider’s Liability for Agents; Existence of Agency. (6/2012)
- 809.90 Legal Negligence—Duty to Client (Delete Sheet) (6/2013)
- 809.100 Medical Malpractice—Damages—Personal Injury Generally. (6/2015)
- 809.114 Medical Malpractice Personal Injury Damages—Permanent Injury—Economic Damages. (6/2015)
- 809.115 Medical Malpractice Personal Injury Damages—Permanent Injury—Non-Economic Damages. (6/2015)
- 809.120 Medical Malpractice Personal Injury Damages—Final Mandate. (Regular). (6/2012)
- 809.122 Medical Malpractice—Personal Injury Damages—Final Mandate. (Per Diem Argument by Counsel). (6/2012)
- 809.142 Medical Malpractice—Damages—Wrongful Death Generally. (6/2015)
- 809.150 Medical Malpractice Wrongful Death Damages—Present Monetary Value of Deceased to Next-of-Kin—Economic Damages. (6/2015)
- 809.151 Medical Malpractice Wrongful Death Damages—Present Monetary Value of Deceased to Next-of-Kin—Non-Economic Damages. (6/2015)
- 809.154 Medical Malpractice Wrongful Death Damages—Final Mandate. (Regular). (6/2012)
- 809.156 Medical Malpractice Wrongful Death Damages—Final Mandate. (Per Diem Argument by Counsel). (6/2012)
- 809.160 Medical Malpractice—Damages—No Limit on Non-Economic Damages. (6/2015)
- 809.199 Medical Malpractice—Sample Verdict Form—Damages Issues. (6/2015)

**Chapter 12. Damages.**

- 810 Series Reorganization Notice—Damages. (2/2000)
- 810.00 Personal Injury Damages—Issue and Burden of Proof. (6/2012)
- 810.02 Personal Injury Damages—In General. (6/2012)
- 810.04 Personal Injury Damages—Damages—Medical Expenses. (6/2013)
- 810.04A Personal Injury Damages—Medical Expenses—Stipulation. (6/2013)
- 810.04B Personal Injury Damages—Medical Expenses—Stipulation as to Amount Paid or Necessary to Be Paid, but Not Nexus to Conduct. (6/2013)
- 810.04C Personal Injury Damages—Medical Expenses—No Stipulation, No Rebuttal Evidence. (6/2013)
- 810.04D Personal Injury Damages—Medical Expenses—No Stipulation, Rebuttal Evidence Offered. (6/2013)
- 810.06 Personal Injury Damages—Loss of Earnings. (2/2000)
- 810.08 Personal Injury Damages—Pain and Suffering. (5/2006)
- 810.10 Scars or Disfigurement. (6/2010)
- 810.12 Personal Injury Damages—Loss (of Use) of Part of the Body. (6/2010)
- 810.14 Personal Injury Damages—Permanent Injury. (6/2015)
- 810.16 Personal Injury Damages—Future Worth in Present Value. (2/2000)
- 810.18 Personal Injury Damages—Set Off/Deduction of Workers’ Compensation Award. (11/1999)

- 810.20 Personal Injury Damages—Final Mandate. (Regular). (6/2012)
- 810.22 Personal Injury Damages—Final Mandate. (Per Diem Argument by Counsel). (6/2012)
- 810.24 Personal Injury Damages—Defense of Mitigation. (6/2018)
- 810.30 Personal Injury Damages—Loss of Consortium. (12/1999)
- 810.32 Personal Injury Damages—Parent’s Claim for Negligent or Wrongful Injury to Minor Child. (6/2010)
- 810.40 Wrongful Death Damages—Issue and Burden of Proof. (1/2000)
- 810.41 Wrongful Death Damages—Set Off/Deduction of Workers’ Compensation Award. (5/2017)
- 810.42 Wrongful Death Damages—In General. (6/2012)
- 810.44 Wrongful Death Damages—Medical Expenses. (6/2013)
- 810.44A Wrongful Death Damages—Medical Expenses—Stipulation. (6/2013)
- 810.44B Wrongful Death Damages—Medical Expenses—Stipulation as to Amount Paid or Necessary to Be Paid, but Not Nexus to Conduct. (6/2013)
- 810.44C Wrongful Death Damages—Medical Expenses—No Stipulation, No Rebuttal Evidence. (6/2013)
- 810.44D Wrongful Death Injury Damages—Medical Expenses—No Stipulation, Rebuttal Evidence Offered. (6/2013)
- 810.46 Wrongful Death Damages—Pain and Suffering. (1/2000)
- 810.48 Wrongful Death Damages—Funeral Expenses. (6/2013)
- 810.48A Wrongful Death Damages—Funeral Expenses—Stipulation. (6/2013)
- 810.48B Wrongful Death Damages—Funeral Expenses—Stipulation as to Amount Paid or Necessary to Be Paid, but Not Nexus to Conduct. (6/2013)
- 810.48C Wrongful Death Damages—Funeral Expenses—No Stipulation, No Rebuttal Evidence. (6/2013)
- 810.48D Wrongful Death Damages—Funeral Expenses—Stipulation, Rebuttal Evidence Offered. (6/2013)
- 810.49 Personal Injury Damages—Avoidable Consequences—Failure to Mitigate Damages. (Delete Sheet). (10/1999)
- 810.50 Wrongful Death Damages—Present Monetary Value of Deceased to Next-of-Kin. (6/2015)
- 810.54 Wrongful Death Damages—Final Mandate. (Regular). (6/2012)
- 810.56 Wrongful Death Damages—Final mandate. (Per Diem Argument by Counsel). (6/2012)
- 810.60 Property Damages—Issue and Burden of Proof. (4/2017)
- 810.62 Property Damages—Diminution in Market Value. (2/2000)
- 810.64 Property Damages—No Market Value—Cost of Replacement or Repair. (2/2000)
- 810.66 Property Damages—No Market Value, Repair, or Replacement—Recovery of Intrinsic Actual Value. (6/2013)
- 810.68 Property Damages—Final Mandate. (2/2000)
- 810.90 Punitive Damages—Issue of Existence of Outrageous or Aggravated Conduct. (5/1996)
- 810.91 Punitive Damages—Issue of Existence of Malicious, Willful or Wanton, or Grossly Negligent Conduct—Wrongful Death Cases. (5/1997)
- 810.92 Punitive Damages—Insurance Company’s Bad Faith Refusal to Settle a Claim. (5/1996)
- 810.93 Punitive Damages—Issue of Whether to Make Award and Amount. (5/1996)
- 810.94 Punitive Damages—Issue of Whether to Make Award and Amount. (Special Cases). (5/1996)
- 810.96 Punitive Damages—Liability of Defendant. (3/2016)
- 810.98 Punitive Damages—Issue of Whether to Make Award and Amount of Award. (5/2009)

**Chapter 13. Legal Malpractice.**

811.00 Legal Negligence—Duty to Client (Formerly 809.90) [as represented from Civil Committee] (3/2020)

**Chapter 14. Animals.**

812.00(Preface) Animals—Liability of Owners and Keepers. (5/1996)  
812.00 Animals—Common Law (Strict) Liability of Owner for Wrongfully Keeping Vicious Domestic Animals. (5/2020)  
812.01 Animals—Liability of Owner Who Allows Dog to Run at Large at Night. (8/2004)  
812.02 Animals—Common Law Liability of Owner Whose Domestic Livestock Run at Large with Owner’s Knowledge and Consent. (5/1996)  
812.03 Animals—Common Law Liability of Owner of Domestic Animals. (6/2011)  
812.04 Animals—Owner’s Negligence In Violation of Animal Control Ordinance. (5/1996)  
812.05 Animals—Liability of Owner of Dog Which Injures, Kills, or Maims Livestock or Fowl. (5/1996)  
812.06 Animals—Liability of Owner Who Fails to Destroy Dog Bitten by Mad Dog. (5/1996)  
812.07 Animals—Statutory (Strict) Liability of Owner of a Dangerous Dog. (5/1996)

**Chapter 15. Trade Regulation.**

813.00 Trade Regulation—Preface. (6/2013)  
813.05 Model Unfair or Deceptive Trade Practice Charge. (6/2014)  
813.20 Trade Regulation—Violation—Issue of Contracts and Conspiracies in Restraint of Trade. (1/1995)  
813.21 Trade Regulation—Violation—Issue of Unfair Methods of Competition and Unfair or Deceptive Acts or Practices. (2/2020)  
813.22 Trade Regulation—Violation—Definition of Conspiracy. (2/2019)  
813.23 Trade Regulation—Violation—Issue of Price Suppression of Goods. (5/1997)  
813.24 Trade Regulation—Violation—Issue of Condition Not to Deal in Goods of Competitor. (5/1997)  
813.25 Trade Regulation—Violation—Issue of Predatory Acts with Design of Price Fixing. (5/1997)  
813.26 Trade Regulation—Violation—Issue of Predatory Pricing. (5/1997)  
813.27 Trade Regulation—Violation—Issue of Discriminatory Pricing. (5/1997)  
813.28 Trade Regulation—Violation—Issue of Territorial Market Allocation. (5/1997)  
813.29 Trade Regulation—Violation—Issue of Price Fixing. (5/1997)  
813.30 Trade Regulation—Violation—Issue of Tying Between Lender and Insurer. (4/1995)  
813.31 Trade Regulation—Violation—Unauthorized Disclosure of Tax Information. (3/1995)  
813.33 Trade Regulation—Violations—Unsolicited Calls by Automatic Dialing and Recorded Message Players. (3/1995)  
813.34 Trade Regulation—Violation—Work-at-Home Solicitations. (5/1995)  
813.35 Trade Regulation—Violation—Issue of Representation of Winning a Prize. (5/1995)  
813.36 Trade Regulation—Violation—Issue of Representation of Eligibility to Win a Prize. (5/1995)  
813.37 Trade Regulation—Violation—Issue of Representation of Being Specially Selected. (5/1995)  
813.38 Trade Regulation—Unfair and Deceptive Trade Practices—Simulation of Checks and Invoices. (5/1995)  
813.39 Trade Regulation—Violation—Issue of Use of Term “Wholesale” in Advertising. G.S. 75-29. (5/1995)  
813.40 Trade Regulation—Violation—Issue of Utilizing the Word “Wholesale” in Company or Firm Name. G.S. 75-29. (5/1995)  
813.41 Trade Regulation—Violation—False Lien Or Encumbrance Against A Public Officer or Public Employee (6/2013)



- 813.60 Trade Regulation—Commerce—Introduction. (6/2015)
- 813.62 Trade Regulation—Commerce—Unfair and Deceptive Methods of Competition and Unfair or Deceptive Acts or Practices. (5/2020)
- 813.63 Trade Regulation—Commerce—Representation of Winning a Prize, Representation of Eligibility to Win a Prize, Representation of Being Specially Selected, and Simulation of Checks and Invoices. (1/1995)
- 813.70 Trade Regulation—Proximate Cause—Issue of Proximate Cause. (6/2014)
- 813.80 Trade Regulation—Damages—Issue of Damages. (5/2006)
- 813.90 Misappropriation of Trade Secret—Issue of Existence of Trade Secret. (6/2013)
- 813.92 Misappropriation of Trade Secret—Issue of Misappropriation. (6/2013)
- 813.94 Misappropriation of Trade Secret—Defense to Misappropriation. (6/2013)
- 813.96 Misappropriation of Trade Secret—Issue of Causation. (6/2013)
- 813.98 Misappropriation of Trade Secret—Issue of Damages. (5/2020)

**Chapter 16. Bailment.**

- 814.00 Bailments—Issue of Bailment. (5/1996)
- 814.02 Bailments—Bailee’s Negligence—Prima Facie Case. (5/1996)
- 814.03 Bailments—Bailee’s Negligence. (5/1996)
- 814.04 Bailments—Bailor’s Negligence. (5/1996)

**Chapter 17. Fraudulent Transfer.**

- 814.40 Civil RICO—Introduction (5/2016)
- 814.41 Civil RICO—Engaging in a Pattern of Racketeering Activity (5/2016)
- 814.42 Civil RICO—Enterprise Activity (5/2016)
- 814.43 Civil RICO—Conspiracy (5/2016)
- 814.44 Civil RICO—Attempt (5/2016)
- 814.50 Fraudulent Transfer—Present and Future Creditors—Intent to Delay, Hinder, or Defraud. (6/2018)
- 814.55 Fraudulent Transfer—Present and Future Creditors—Intent to Delay, Hinder, or Defraud—Transferee’s Defense of Good Faith and Reasonably Equivalent Value. (6/2015)
- 814.65 Fraudulent Transfer—Present Creditors—Lack of Reasonably Equivalent Value. (2/2017)
- 814.70 Fraudulent Transfer—Present and Future Creditors—Insolvent Debtor and Lack of Reasonably Equivalent Value. (6/2018)
- 814.75 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent. (6/2018)
- 814.80 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of New Value Given. (2/2017)
- 814.81 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of New Value Given—Amount of New Value (5/2017)
- 814.85 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of Transfer in the Ordinary Course. (6/2015)
- 814.90 Fraudulent Transfer—Present Creditors—Transfer to Insider While Insolvent—Defense of Good Faith Effort to Rehabilitate. (6/2015)

**Chapter 18. Budget Dispute Between Board of Education and Board of County Commissioners.**

- 814.95 Budget Dispute Between Board of Education and Board of County Commissioners (5/2015)
- 814.95A Budget Dispute Between Board of Education and Board of County Commissioners—Appendix— Sample Verdict Sheet (3/2016)

## **PART V. FAMILY MATTERS**

- 815 Series Various Family Matters Instructions—Delete Sheet. (1/2000)
- 815.00 Void Marriage—Issue of Lack of Consent. (8/2004)
- 815.02 Void Marriage—Issue of Lack of Proper Solemnization. (1/1999)
- 815.04 Void Marriage—Issue of Bigamy. (1/1999)
- 815.06 Void Marriage—Issue of Marriage to Close Blood Kin. (1/1999)
- 815.08 Invalid Marriage—Issue of Same Gender Marriage. (1/1999)
- 815.10 Divorce Absolute—Issue of Knowledge of Grounds. (1/1999)
- 815.20 Voidable Marriage (Annulment)—Issue of Marriage of Person 16 and 18. (1/1999)
- 815.22 Voidable Marriage (Annulment)—Issue of Marriage of Person Under 16—Defense of Pregnancy or Living Children. (1/1999)
- 815.23 Voidable Marriage (Annulment)—Issue of Marriage of Person Under 16. (1/1999)
- 815.24 Voidable Marriage (Annulment)—Issue of Impotence. (1/1999)
- 815.26 Voidable Marriage (Annulment)—Issue of Impotence—Defense of Knowledge. (1/1999)
- 815.27 Voidable Marriage (Annulment)—Issue of Duress. (5/2006)
- 815.28 Voidable Marriage (Annulment)—Issue of Lack of Sufficient Mental Capacity and Understanding. (1/1999)
- 815.29 Voidable Marriage (Annulment)—Issue of Undue Influence. (5/2006)
- 815.30 Voidable Marriage (Annulment)—Issues of Marriage to Close Blood Kin, Marriage of Person Under 16, Marriage of Person Between 16 and 18, Impotence and Lack of Sufficient Mental Capacity and Understanding—Defense of Cohabitation and Birth of Issue. (1/1999)
- 815.32 Voidable Marriage (Annulment)—Issues of Marriage of Person Under 16, Marriage of Person Between 16 and 18, Impotence, and Lack of Sufficient Mental Capacity and Understanding—Defense of Ratification. (1/1999)
- 815.40 Divorce—Absolute—Issue of One Year’s Separation. (8/2004)
- 815.42 Divorce—Absolute—Issue of One Year’s Separation—Defense of Mental Impairment. (1/1999)
- 815.44 Divorce—Absolute—Issue of Incurable Insanity. (1/1999)
- 815.46 Divorce—Absolute—Issue of Incurable Insanity—Defense of Contributory Conduct of Sane Spouse. (1/1999)
- 815.50 Divorce—From Bed and Board—Issue of Abandonment. (8/2004)
- 815.52 Divorce—From Bed and Board—Issue of Malicious Turning Out-of-Doors. (1/1999)
- 815.54 Divorce—From Bed and Board—Issue of Cruelty. (1/1999)
- 815.56 Divorce—From Bed and Board—Issue of Indignities. (8/2004)
- 815.58 Divorce—From Bed and Board—Issue of Excessive Use of Alcohol or Drugs. (1/1999)
- 815.60 Divorce—From Bed and Board—Issue of Adultery. (1/1999)
- 815.70 Alimony—Issue of Marital Misconduct. (6/2013)
- 815.71 Alimony—Issue of Condonation. (5/2009)
- 815.72 Alimony—Issue of Condonation—Violation of Condition. (5/2009)
- 815.75 Child Born Out of Wedlock—Issue of Paternity. (3/1999)
- 815.90 Parents’ Strict Liability for Personal Injury or Destruction of Property by Minor. G.S. 1-538.1. (3/1999)
- 815.91 Parents’ Strict Liability for Personal Injury or Destruction of Property by Minor—Issue of Damages. G.S. 1-538.1. (Delete Sheet). (3/1999)
- 815.92 Parents’ Strict Liability for Personal Injury or Destruction of Property by Minor—Defense of Removal of Legal Custody and Control. (3/1999)
- 817.00 Incompetency. (6/2007)

## **PART VI. LAND ACTIONS**

### **Chapter 1. Adverse Possession.**

- 820.00 Adverse Possession—Holding for Statutory Period. (4/2019)
- 820.10 Adverse Possession—Color of Title. (4/2019)
- 820.16 Adverse Possession by a Cotenant Claiming Constructive Ouster. (2/2017)

### **Chapter 2. Proof of Title.**

- 820.40 Proof of Title—Real Property Marketable Title Act. (6/2018)
- 820.50 Proof of Title—Connected Chain of Title from the State. (5/2001)
- 820.60 Proof of Title—Superior Title from a Common Source—Source Uncontested. (5/2001)
- 820.61 Proof of Title—Superior Title from a Common Source—Source Contested. (5/2001)

### **Chapter 3. Boundary Dispute.**

- 825.00<sup>[D03]</sup> Processioning Action. (N.C.G.S. Ch. 38). (5/2020)

### **Chapter 4. Eminent Domain—Initiated Before January 1, 1982. Deleted. (2/1999)**

- 830.00 Eminent Domain—Procedures. (Delete Sheet). (2/1999)
- 830.05 Eminent Domain—Total Taking. (Delete Sheet). (2/1999)
- 830.10 Eminent Domain—Partial Taking—Fee. (Delete Sheet). (2/1999)
- 830.15 Eminent Domain—Partial Taking—Easement. (Delete Sheet). (2/1999)
- 830.20 Eminent Domain—General and Special Benefits. (Delete Sheet). (2/1999)
- 830.30 Eminent Domain—Comparables. (Delete Sheet). (2/1999)

### **Chapter 5. Eminent Domain—Initiated on or After January 1, 1982.**

- 835.00 Eminent Domain—Series Preface. (4/1999)
- 835.05 Eminent Domain—Introductory Instruction. (4/1999)
- 835.05i Eminent Domain—Introductory Instruction. (Delete Sheet). (8/2015)
- 835.10 Eminent Domain—Issue of Just Compensation—Total Taking by Department of Transportation or by Municipality for Highway Purposes. (4/2020)
- 835.12 Eminent Domain—Issue of Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes. (4/2019)
- 835.12A Eminent Domain—Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes—Issue of General or Special Benefit. (5/2017)
- 835.13 Eminent Domain—Issue of Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes (“Map Act”). (4/2019)
- 835.13A Eminent Domain—Just Compensation—Partial Taking by Department of Transportation or by Municipality for Highway Purposes (“Map Act”) – Issue of General or Special Benefit. (5/2017)
- 835.14 Eminent Domain—Issue of Just Compensation—Taking of an Easement by Department of Transportation or by Municipality for Highway Purposes. (4/2019)
- 835.14A Eminent Domain—Just Compensation—Taking of an Easement by Department of Transportation or by Municipality for Highway Purposes—Issue of General or Special Benefit. (5/2017)
- 835.15 Eminent Domain—Issue of Just Compensation—Total Taking by Private or Local Public Condemnors. (5/2006)
- 835.15A Eminent Domain—Issue of Just Compensation—Taking of a Temporary Construction or Drainage Easement by Department of Transportation or by Municipality for Highway Purposes. (2/2020)

- 835.20 Eminent Domain—Issue of Just Compensation—Partial Taking by Private or Local Public Condemnors—Fair Market Value of Property Taken. (5/2006)
- 835.20A Eminent Domain—Issue of Just Compensation—Taking of an Easement by Private or Local Public Condemnors—Fair Market Value of Property Taken. (5/2006)
- 835.22 Eminent Domain—Issue of Just Compensation—Partial Taking by Private or Local Public Condemnors—Fair Market Value of Property Before and After the Taking. (5/2006)
- 835.22A Eminent Domain—Issue of Just Compensation—Taking of an Easement by Private or Local Public Condemnors—Fair Market Value of Property Before and After the Taking. (5/2006)
- 835.24 Eminent Domain—Issue of Just Compensation—Partial Taking by Private or Local Public Condemnors—Greater of the Fair Market Value of Property Taken or the Difference in Fair Market Value of the Property Before and After the Taking. (5/2006)
- 835.24A Eminent Domain—Issue of Just Compensation—Taking of an Easement by Private or Local Public Condemnors—Greater of the Fair Market Value of Property Taken or the Difference in Fair Market Value of the Property Before and After the Taking. (5/2006)
- 835.30 Eminent Domain—Comparables. (Delete Sheet). (5/1999)

#### **Chapter 6. Easements.**

- 840.00 Easement—General Definition. (Delete Sheet). (2/2000)
- 840.10 Easement by Prescription. (4/2019)
- 840.20 Implied Easement—Use of Predecessor Common Owner. (6/2015)
- 840.25 Implied Easement—Way of Necessity. (6/2015)
- 840.30 Cartway Proceeding. N.C. Gen Stat. § 136-69 (6/2015)
- 840.31 Cartway Proceeding—Compensation. (5/2000)

#### **Chapter 7. Summary Ejectment and Rent Abatement.**

- 845.00 Summary Ejectment—Violation of a Provision in the Lease. (4/2017)
- 845.04 Summary Ejectment—Defense of Tender. (2/1993)
- 845.05 Summary Ejectment—Failure to Pay Rent. (2/1993)
- 845.10 Summary Ejectment—Holding Over After the End of the Lease Period. (2/1993)
- 845.15 Summary Ejectment—Defense of Waiver of Breach by Acceptance of Rent. (12/1992)
- 845.20 Summary Ejectment—Damages. (2/1993)
- 845.30 Landlord’s Responsibility to Provide Fit Residential Premises. (2/1993)
- 845.35 Landlord’s Responsibility to Provide Fit Residential Premises—Issue of Damages. (1/2000)

#### **Chapter 8. Land-Disturbing Activity.**

- 847.00 Land-Disturbing Activity—Sedimentation Pollution Control Act of 1973—Violation of Act—Violation of Ordinance, Rule or Order of Secretary of Environment and Natural Resources or of Local Government. (5/2008)
- 847.01 Land-Disturbing Activity—Sedimentation Pollution Control Act of 1973—Violation of Act—Violation of Ordinance, Rule or Order of Secretary of Environment and Natural Resources or of Local Government—Damages. (5/2008)

### **PART VII. DEEDS, WILLS, AND TRUSTS**

#### **Chapter 1. Deeds.**

- 850.00 Deeds—Action to Establish Validity—Requirements. (8/2004)
- 850.05 Deeds—Action to Set Aside—Lack of Mental Capacity. (5/2002)
- 850.10 Deeds—Action to Set Aside—Mutual Mistake of Fact. (6/2013)

- 850.15 Deeds—Action to Set Aside—Undue Influence. (5/2002)
- 850.20 Deeds—Action to Set Aside—Duress. (5/2002)
- 850.25 Deeds—Action to Set Aside—Fraud. (8/2004)
- 850.30 Deeds—Action to Set Aside—Grossly Inadequate Consideration (“Intrinsic Fraud”). (5/2002)
- 850.35 Deeds—Action to Set Aside—Constructive Fraud. (5/2002)
- 850.40 "Deeds—Action to Set Aside—Constructive Fraud—Rebuttal by Proof of Openness, Fairness and Honesty." (5/2002)
- 850.45 Deeds—Action to Set Aside—Defense of Innocent Purchaser. (5/2020)
- 850.50 Deeds—Action to Set Aside—Lack of Valid Delivery. (8/2004)
- 850.55 Deeds—Action to Set Aside—Lack of Legally Adequate Acceptance. (5/2001)

#### **Chapter 1A. Foreclosure Actions.**

- 855.10 Foreclosure—Action for Deficiency Judgment—Amount of Debt Owed (4/2016)
- 855.12 Foreclosure—Action for Deficiency Judgment—Defense of Mortgagor to Defeat and Offset Deficiency Judgment—Property Fairly Worth Amount Owed (4/2016)
- 855.14 Foreclosure—Action for Deficiency Judgment—Defense of Mortgagor to Defeat and Offset Deficiency Judgment—Bid Substantially Less than True Value of Property on Date of Foreclosure (4/2016)
- 855.16 Foreclosure—Action for Deficiency Judgment—Defense of Mortgagor to Defeat and Offset Deficiency Judgment—True Value of Property on Date of Foreclosure Sale (3/2016)
- 855.18 Foreclosure—Action for Deficiency Judgment—Sample Verdict Form & Judge’s Worksheet (6/2014)

#### **Chapter 2. Wills.**

- 860.00 Wills—Introductory Statement by Court. (Optional). (5/2006)
- 860.05 Wills—Attested Written Will—Requirements. (4/2017)
- 860.10 Wills—Holographic Wills—Requirements. (5/2019)
- 860.15 Wills—Issue of Lack of Testamentary Capacity. (4/2017)
- 860.16 Wills—Issue of Lack of Testamentary Capacity—Evidence of Suicide. (Delete Sheet). (5/2001)
- 860.20 Wills—Issue of Undue Influence. (5/2017)
- 860.22 Wills—Issue of Duress. (5/2002)
- 860.25 Wills—Devisavit Vel Non. (5/2001)

#### **Chapter 3. Parol Trusts.**

- 865.50 Parol Trusts—Express Trust in Purchased Real or Personal Property. (5/2001)
- 865.55 Parol Trusts—Express Trust in Transferred Real or Personal Property. (8/2004)
- 865.60 Parol Trusts—Express Declaration of Trust in Personal Property. (5/2001)
- 865.65 Trusts by Operation of Law—Purchase Money Resulting Trust (Real or Personal Property). (6/2014)
- 865.70 Trusts by Operation of Law—Resulting Trust Where Purchase Made with Fiduciary Funds. (6/2014)
- 865.75 Trusts by Operation of Law—Constructive Trust. (6/2015)

### **PART VIII. INSURANCE**

#### **Chapter 1. Liability for Agent for Failure to Procure Insurance.**

- 870.00 Failure to Procure Insurance—Negligence Issue. (6/2013)
- 870.10 Failure to Procure Insurance—Breach of Contract Issue. (2/2005)

#### **Chapter 2. Accident, Accidental Means, and Suicide.**

- 870.20 Accidental Means Definition. (5/2005)

- 870.21 "Accident" or "Accidental Means" Issue—Effect of Diseased Condition. (5/2005)
- 870.25 Accident Issue—Insurance. (2/2005)
- 870.30 General Risk Life Insurance Policy—Suicide as a Defense. (3/2005)
- 870.72 Identity Theft—Identifying Information. (6/2010)
- 870.73 Identity Theft—Identifying/Personal Information. (6/2010)

**Chapter 3. Disability.**

- 880.00 Disability—Continuous and Total Disability Issue. (3/2005)
- 880.01 Disability—Continuous Confinement Within Doors Issue. (3/2005)
- 880.02 Disability—Constant Care of a Licensed Physician Issue. (3/2005)

**Chapter 4. Material Misrepresentations.**

- 880.14 Misrepresentation in Application for Insurance—Factual Dispute. (5/2005)
- 880.15 Misrepresentation in Application for Insurance—Issue of Falsity of Representation. (5/2005)
- 880.20 Materiality of Misrepresentation in Application for Insurance. (5/2006)
- 880.25 Fire Insurance Policy—Willful Misrepresentation in Application. (5/2005)
- 880.26 Concealment in Application for Non-Marine Insurance. (5/2005)
- 880.30 Misrepresentation in Application—False Answer(s) Inserted by Agent. (Estoppel). (5/2006)

**Chapter 5. Definitions.**

- 900.10 Definition of Fiduciary; Explanation of Fiduciary Relationship. (6/2020)

**Chapter 6. Fire Insurance.**

- 910.20 Fire Insurance—Hazard Increased by Insured. (5/2006)
- 910.25 Fire Insurance—Intentional Burning by Insured. (5/2006)
- 910.26 Fire Insurance Policy—Willful Misrepresentation in Application. (5/2006)
- 910.27 Fire Insurance—Defense of Fraudulent Proof of Loss. (5/2006)

**Chapter 7. Damages.**

- 910.80 Insurance—Damages for Personal Property—Actual Cash Value. (6/1983)
- 910.90 Insurance—Damages for Real Property—Actual Cash Value. (6/1983)

**APPENDICES.**

- A. TABLE OF SECTIONS OF GENERAL STATUTES INVOLVED IN CIVIL INSTRUCTIONS. (6/1985)
- B. DESCRIPTIVE WORD INDEX. (6/2017)