

# Index

---

References are to sections.

## A

### **Ad Hoc Proceedings**

See Non-Administered (Ad Hoc) Programs

### **Administered (Institutional) Proceedings**

Arbitration, 5.19, 5.21, 5.23, 5.26, 5.31, 5.37, 5.52, 5.61, 5.87  
Mediation, 6.14, 6.18, 6.26, 6.30, 6.40, 6.46, 6.49

### **Advertising**

Fraudulent advertising claims,  
Deceptive Trade Practices Act, 1.23  
Misappropriation of advertising ideas, 1.35

### **Agents**

Corporate officers and directors as  
actual authority, 2.20  
—apparent authority, 2.21  
—board action, 2.16  
—duty of care, 2.42  
—generally, 2.13, 2.40  
—implied authority, 2.21  
—liability, 2.19  
—ratification, 2.23  
—respondeat superior, 2.21  
Crimes of agent, corporate liability for, 3.4  
Respondeat superior, 2.21, 3.4  
Rules of agency, applicability to corporations of, 2.3, 2.13, 2.40, 2.42

### **Alternative Dispute Resolution (ADR)**

See also Arbitration, Mediation  
Generally, 5.34  
Defined, Wisconsin, 5.16

### **American Arbitration**

**Association (AAA)**, 5.19, 5.37, 5.47, 5.120, 6.6, 6.30

### **American Bar Association Section of Dispute Resolution**

Generally, 6.6  
Committee on Mediator Ethical Guidance, 6.38

### **Arbitral Systems**

Ad hoc (non-administered), 5.21  
Administered (institutional)  
—generally, 5.19  
—American Arbitration Association, 5.19  
Administration, 5.18  
Choosing a system, 5.37  
Institutional (administered), 5.19  
Non-administered (ad hoc)  
—generally, 5.21  
—BBB Arbitration Rules, 5.23  
—CPR Institute (International Institute for Conflict Prevention & Resolution), 5.22  
—large cases, 5.22  
—smaller cases, 5.23

**Arbitration**

- Generally, ch. 5
- Advocacy in
  - briefs, 5.86
  - closing arguments, 5.86
  - consolidation, 5.63
  - discovery
    - generally, 5.42, 5.66, 5.88
    - depositions, 5.67
    - extraordinary circumstances test, 5.66
    - interrogatories, 5.68
  - errors, common, 5.88
  - evidentiary rules
    - generally, 5.72
    - cross-examination, 5.74
    - documents, 5.82
    - privileged matter, 5.81
    - subpoenas, 5.62, 5.84
    - witnesses, 5.75–80, 5.85, 5.88
  - motion practice, 5.70
  - opening statements, 5.86
  - pleadings, 5.61
    - statement of claim, 5.61, 5.88
    - notice of arbitration, 5.61
    - response, 5.61
  - prehearing conferences, 5.62
  - record of hearing, 5.87
  - severance, 5.63
- Appeals
  - from orders and judgments, 5.118
  - of judicial decisions, 5.119
- Arbitrators, 5.44–52. *See also* Arbitrators
- Authority to bind party to arbitrate, 5.27
- Awards
  - generally, 5.2, 5.97
  - distinguished from orders and directions, 5.98
  - final awards, 5.99
  - interim awards, 5.58, 5.95, 5.105
  - reasoned, 5.101
  - requisites, 5.100

- unreasoned, 5.101
- vacation of, 5.106–.116
- where made, 5.104
- zero awards, 5.70
- BBB Arbitration Rules, 5.23
- Binding, 5.2
- Briefs, 5.86
- Claim preclusion and, 5.28, 5.105
- Claimant, 5.61
- Class actions, 5.63, 5.120
- Clauses, sample, 5.93, app. A
- Closing arguments, 5.86
- Consolidation, 5.63
- Contract
  - generally, 5.25
  - arbitrability, 5.28
  - arbitrator, powers of, 5.30
  - attorney fees, 5.93
  - challenges to, 5.38
  - class action shield provision, 5.120
  - fraud, 5.55
  - governance of process, 5.31
  - law of, 5.32, 5.62
  - party autonomy, 5.26
  - record, in a, 5.4
  - sample language, 5.93, app. A
  - scope of, 5.29
  - types
    - generally, 5.34
    - post-dispute agreements, 5.36
    - pre-dispute agreements, 5.35
    - submission agreements, 5.36
- unconscionability, 5.38
- Defined, 5.2
  - appraisal, comparison to, 5.2
  - binding, 5.2
  - nonbinding, 5.2
- Discovery
  - generally, 5.42, 5.66, 5.88
  - depositions, 5.67
  - extraordinary circumstances test, 5.66
  - interrogatories, 5.68
- Errors, common, 5.88
- Estoppel, 5.28, 5.56, 5.114

- Evidentiary rules
  - generally, 5.72
  - cross-examination, 5.74
  - documents, 5.82
  - offers of proof, 5.83
  - privileged matter, 5.69, 5.81
  - subpoenas, 5.62, 5.84
  - witnesses
    - generally, 5.76, 5.88
    - by affidavit, 5.79
    - by deposition, 5.78
    - by telephone, 5.77
    - expert, 5.80
    - fees, 5.85
- Federal
  - Federal Arbitration Act (FAA), 5.4–10, 5.12, 5.14, 5.36, 5.38, 5.42, 5.66, 5.72, 5.81, 5.84, 5.90, 5.100, 5.119
  - Federal Rule of Evidence 408, 6.6
- Frivolous motions to vacate award, 5.117
- Issue preclusion and, 5.28, 5.105
- Legal environment, 5.3–16
- Location, 5.22, 5.30, 5.62
- Motion practice, 5.62, 5.70
- Nonbinding, 5.2
- Opening statements, 5.86
- Pleadings, 5.61
- Prehearing conferences, 5.62
- Proceedings
  - appeals of judicial decisions in aid of arbitration, 5.119
  - post-award proceedings
    - generally, 5.103
    - appeals from orders and judgments, 5.118
    - confirmation and enforcement of award, 5.105
    - correction or modification of award, 5.104
    - vacation (vacatur) of award, 5.88, 5.98, 5.106–116
  - pre-arbitration judicial proceedings
    - appointing arbitrator, 5.57
    - compelling arbitration, 5.56
    - enforcing arbitral subpoenas and orders, 5.58
    - staying civil action pending arbitration, 5.55
- Record of hearing, 5.87
- Remedies
  - generally, 5.90
  - attorney fees, 5.93
  - costs, 5.94
  - equitable relief, 5.91
  - provisional remedies, 5.95
  - punitive damages, 5.92
- Respondent, 5.61
- Response, 5.61
- Revised Uniform Arbitration Act (RUAA), 5.15, 5.58, 5.63, 5.66, 5.70, 5.72, 5.78, 5.81, 5.87, 5.90, 5.92, 5.93, 5.104
- Sanctions, frivolous motions to vacate award, 5.117
- Severance, 5.63
- Statement of claim, 5.61
- Suitability of case for
  - generally, 5.40
  - general considerations, 5.41
  - economic factors, 5.43
  - legal implications, 5.42
- Systems. *See* Arbitral Systems
- Uniform Arbitration Act (UAA), 5.4, 5.11–14, 5.36, 5.42, 5.62, 5.66, 5.119
- Vacation (vacatur) of award
  - generally, 5.70, 5.88, 5.98, 5.99, 5.107
  - estoppel, 5.114
  - evident partiality, 5.110, 5.116
  - expanded scope of judicial review by contract, 5.111
  - exceeding arbitrator’s powers, 5.112
  - fraud, 5.109
  - frivolous motions, 5.117

- manifest disregard of the law, 5.113
- post-vacatur proceedings, 5.115
- sanctions, 5.117
- success in obtaining, 5.116
- undue means, 5.108
- waiver, 5.114
- Waiver, 5.56, 5.114, 5.120
- Wisconsin
  - Wisconsin Arbitration Act (WAA), 5.12, 5.14, 5.15, 5.42, 5.66, 5.67, 5.72, 5.81, 5.84, 5.100
  - Wis. Stat. § 802.12, 5.16

### **Arbitrators**

- Alternate, 5.51
- Appointing, 5.57
- Canon X, 5.48
- Evident partiality of, 5.48, 5.110, 5.116
- Ethics of, 5.46–.50
- Fees and costs, 5.52
- Functus officio*, 5.30, 5.42, 5.104
- Powers of, 5.30
- Relations with, generally, 5.45
- Selecting, 5.51

### **Artificial Intelligence**

- Corporate compliance and, 3.17

### **Attorney Fees**

- Generally, 5.93, 6.69
- American rule, 5.93
- Corporate crime investigation, payment of fees for employee in, 3.13
- Invasion-of-privacy claim, 1.26
- Shareholder litigation, 2.38
- Unfair competition claim, 1.33

### **Attorneys' Caucus, 5.41, 5.56**

## **B**

### **BBB Arbitration Rules, 5.23**

### **Benefit Corporations, 2.70**

### **Board of Directors, Actions**

#### **Against**

*See* Corporations, Actions Against

### **Bribery**

- Corporations, criminal conduct by, 3.3

### **Business Torts**

*See also* Products Liability

Competitors, injuries to

- civil conspiracy, 1.30

- contract, interference with, 1.29

- generally, 1.4, 1.28

- prospective business relationship, interference with, 1.29

- trade libel, product disparagement, and commercial defamation, 1.37

- unfair competition, misappropriation, and infringement, 1.31–.36

Contract versus tort

- economic loss doctrine, 1.1, 1.6–.9

- generally, 1.6

- punitive damages, 1.10

Corporations, liability of

- generally, 2.13

- preincorporation torts, 2.10

- respondeat superior, 2.24

Customers, injuries to

- fiduciary duty, breach of, 1.25

- fraudulent advertising, Deceptive Trade Practices Act, 1.23

- generally, 1.4, 1.12

- misrepresentation, 1.17–.22

- privacy, invasion of, 1.26

- products liability, 1.13–.16
- services, negligently provided, 1.9, 1.24

**Damages**

- generally, 4.1
- lost profits, recovery of, 4.4
- misrepresentation, intentional and strict liability, 1.22
- products liability negligence action, 1.16
- punitive, 1.10, 1.33
- unfair competition, 1.33

**Definitions**

- business tort, 1.4

- tort, 1.3

**Generally, 1.1**

**Intentional torts**

- civil conspiracy, 1.30
- contract, interference with, 1.29
- examples, 1.3
- invasion of privacy, 1.26
- prospective business relationship, interference with, 1.29
- punitive damages, 1.10
- statute of limitation, 1.26

**Negligence, 1.3**

- contributory negligence, rule on, 1.24
- customers, transactions with, 1.9, 1.20, 1.24
- misrepresentation, 1.20
- products liability, 1.16
- services, provision of, 1.9, 1.24

**C**

**Caucus Process**

Generally, 6.37, 6.45, 6.53, 6.56

Attorneys’ caucus, 5.41, 5.56

**Civil Conspiracy Statute**

Business tort action brought under, 1.30

**Claim Preclusion**

Arbitration and, 5.48, 5.105

**Class Actions**

Arbitration, 5.63, 5.120

—class action shield provision, 5.120

Mediation, 6.69

**Code of Ethics for Arbitrators in Commercial Disputes, 5.47**

**Commercial Defamation, 1.37**

**Commercial Docket Pilot Project, 2.69**

**Common Law**

Agency, rules of. *See* Agents

Corporate officers and directors, conflict of interest of, 2.52

Ultra vires, applicability to corporate board action of, 2.16

**Competitors, Business Tort Claims by**

*See* Business Torts

**Conciliation, 6.2**

*See* Mediation

**Conspiracy, Civil**

Business tort action brought under statute, 1.30

**Contracts**

Arbitration

—generally, 5.25

—arbitrability, 5.28

—arbitrator, powers of, 5.30

—challenges to, 5.38

—governance of process, 5.31

—law of, 5.32

—party autonomy, 5.26

—record, in a, 5.4

- sample language, 5.93, app. A
- scope of agreement, 5.29
- separability doctrine, 5.28, 5.55
- types
  - generally, 5.34
  - post-dispute (submission) agreements, 5.36
  - pre-dispute agreements, 5.35
- unconscionability, 5.38
- Corporations, liability of
  - See also* Corporations, Actions Against
  - generally, 2.13
  - preincorporation contracts, 2.9
- Damages, contract disputes
  - See also* Damages, Business Litigation
  - economic loss doctrine, damages limited by, 1.1, 1.7–9, 1.24, 4.18
  - generally, 4.1
  - lost profits, recovery of, 4.4
  - net benefit to defendant, 4.12
  - punitive damages, 1.6
  - service contracts, 1.9, 1.24, 4.18
- Interference with
  - competition as basis for, 1.29
  - right to interfere (privilege), 1.29
  - tortious interference, action for, 1.29, 4.12
- Mediation
  - generally, 6.25
  - electing style, 6.31
  - electing system, 6.30
  - mediator, 6.27–29
  - sample language, 5.93, app. A
  - self-determination, 6.25, 6.26, 6.31, 6.33
- Sample clauses, 5.93, app. A
- Service contracts, actions for breach of, 1.9, 1.24, 4.18
- Theft by contractor, director and officer liability for, 2.58
- Torts versus. *See* Business Torts

**Corporate Crimes, Addressing Allegations of**

- Agent’s crimes, corporate liability for, 3.4
- Bribery, 3.3
- Civil actions by government or victims, possibility of, 3.14
- Civil actions by victims, possibility of, 3.11
- Corporate compliance and artificial intelligence, 3.17
- Corporate compliance program, effectiveness of, 3.11, 3.16
- Corporate duty to prevent employee’s criminal acts, 3.4
- Documents
  - internal investigation, documentation of, 3.14
  - preservation, including electronic documents, 3.15
- Employment status of alleged wrong-doer, addressing, 3.11
- Evidence, preservation of, 3.15
- Factors to consider, company’s, 3.11
- Facts support allegation, determining whether, 3.3
- Failure to report crimes, effect of, 3.11
- Federal Sentencing Guidelines, consideration of, 3.9, 3.11, 3.15–16
- Fraud, including mail and wire fraud, 3.3
- Generally, 3.1
- Hypothetical situation, 3.2
- Investigation, internal corporate, 3.11
  - documentation, 3.14
  - evidence, preservation of, 3.15
  - team for, 3.14
- Investigative tools, government’s, 3.10
- Legal representation of corporation
  - corporate *Mirandas*, use of, 3.13
  - joint defense agreements, 3.13

- multiple representation issues, 3.13
- representation team, formation of, 3.14
- whistle-blowing employee, interview of, 3.13
- Obstruction-of-justice offenses, 3.15
- Prosecuting office, government’s choice of, 3.9
- Prosecutor’s decision to charge corporation
  - benefits of prosecution, 3.7
  - federal prosecutor, 3.6
  - Principles of Federal Prosecution of Business Organizations (Thompson Memorandum), 3.8, 3.9, 3.11, 3.13–.16
  - prosecutorial discretion, 3.6
- Regulated industries, affirmative action to report certain events in, 3.11
- Thompson Memorandum, 3.8
- Voluntary reporting of possible crimes, 3.11
- Waiver of corporate attorney-client and work product privileges, 3.11, 3.13–.14

### **Corporate Officers**

- Conflict of interest
  - authorized, approved, or ratified transactions, 2.54
  - common law, 2.52
  - fair to corporation transactions, 2.55
  - generally, 2.51
  - loans to officers, 2.56
  - statutory rules, 2.53
- Corporate opportunity doctrine, applicability of, 2.57
- Duties
  - care, generally, 2.42
  - generally, 2.40
  - loyalty, good faith, and fair dealing, 2.42, 2.44

- Indemnification
  - mandatory, 2.66, 2.68
  - modification of statutory indemnification, corporation’s, 2.68
  - permissive, 2.67
- Liability, 2.19
- Statutory liability, 2.58

### **Corporations, Actions Against**

- See also* Corporate Officers
- Agency, rules of, 2.3
- Board decisions, liability for.
  - See also* Directors’ liability *this heading*
  - authority of board, 2.15–.16
  - business judgment rule, 2.36, 2.48
  - delegating board authority, 2.17
  - generally, 2.13, 2.15, 2.40
  - ultra vires, doctrine of, 2.16
- Corporate authority
  - actual authority of officers, 2.20
  - agents, officers and directors as, 2.19
  - apparent authority of officers, 2.22
  - generally, 2.19
  - implied authority of officers, 2.21
  - ratification of agent’s actions, 2.23
  - respondeat superior, 2.24
  - successor liability, 2.25
- Corporate opportunity, doctrine of, 2.57
- Directors’ liability
  - See also* Board decisions, liability for *this heading*
  - business judgment rule, applicability of, 2.48
  - conflicts of interest, 2.50–.56
  - corporate opportunity, doctrine of, 2.57
  - duty of care, statutory, 2.45–.46

- fiduciary duty of loyalty, 2.44, 2.46
- function of directors, 2.45
- generally, 2.40, 2.43
- inaction or lack of attention, 2.49
- indemnification, 2.66–.68
- limitations, 2.47
- statutory liability, 2.58
- third parties, fiduciary duty to, 2.40
- Dissolved corporations, 2.63
- Foreign corporations, 2.6, 2.8
- Generally, 2.1, 2.3, 2.13
- Incorporation, defective, 2.11
- Indemnification
  - mandatory, 2.66, 2.68
  - modification of statutory indemnification, 2.68
  - permissive, 2.67
- Jurisdiction, 2.6
- Preincorporation liability
  - contracts, preincorporation, 2.9
  - defective incorporation, 2.11
  - torts, preincorporation, 2.10
- Residency of corporation, 2.6
- Separate legal entity, corporation as
  - independent existence, 2.5
  - jurisdiction over corporation, 2.6
  - residency of corporation, 2.6
  - service on corporation, 2.8
- Service on corporation, 2.8
- Shareholder litigation. *See* Shareholder Action Against Corporations; Shareholders, Actions Against
- Taxes, director and officer liability for corporate failure to pay, 2.58
- Theft by contractor, director and officer liability for, 2.58
- Unemployment insurance, director and officer liability for failure to pay, 2.58
- Wages, director and officer liability for unpaid, 2.58

Wisconsin Consumer Act  
 violations, director and officer liability for, 2.58

**CPR Institute (International Institute for Conflict Prevention & Resolution),**  
 5.22, 5.23, 5.31, 5.37, 6.17, 6.18, 6.30

**Crimes, Corporate**  
*See* Corporate Crimes, Addressing Allegations of

**Customers, Business Torts**  
**Claims by**  
*See* Business Torts

**D**

**Damages, Business Litigation**

Experts
 

- consultants versus expert witnesses, 4.24
- Daubert* challenges, 4.26
- generally, 4.23
- retaining consultant or expert, 4.25

 Generally, 4.1–.2  
 Lost profits
 

- amount of loss, determining, 4.7
- analysis, 4.4
- “but-for” analysis, 4.7, 4.16
- damaging event as cause of loss, determining, 4.5
- economic loss doctrine, effect of, 4.18
- generally, 4.2, 4.4
- mitigation of damage, duty of, 4.9
- net lost profits, 4.10
- new business, recovery for, 4.8
- present value of projected lost profits, 4.21



—taxability of, 4.11  
 —time period for, 4.7  
 Lost value, 4.13  
 Net benefit to defendant, 4.12  
 Proof of damages  
 —generally, 4.20  
 —present value of projected lost profits, 4.21  
 Restitution, payment of, 4.12  
 Royalties, 4.16  
 Specialized causes of action  
 —generally, 4.15  
 —intellectual property actions, 4.16  
 Torts. *See* Business Torts

**Deceptive Trade Practices Act**  
 Fraudulent advertising (Wis. Stat. § 100.18), 1.23

**Defamation, Commercial**, 1.37

**Department of Agriculture, Trade and Consumer Protection (DATCP)**, 1.33

**Directors, Corporate**  
*See* Corporations, Actions Against

**Discovery**  
 Arbitration, 5.42, 5.64–.68, 5.88  
 Mediation, 6.54

**E**

**Economic Loss Doctrine**  
 Defined, 1.7  
 Development of doctrine in Wisconsin, 1.8, 4.18  
 Exceptions to rule, 1.8, 4.18  
 Generally, 1.1, 1.6, 4.18  
 Service contracts, applicability to, 1.9, 1.24, 4.18

**Employees and Employers**  
 Criminal acts by employee, effect on corporation of. *See* Corporate Crimes, Addressing Allegations of  
 Employee contract, action for third party’s tortious interference with, 1.29  
 Invasion of privacy, claim by employee for, 1.26  
 Shareholders, employee’s fiduciary duty to, 2.44  
 Unemployment insurance, corporate director and officer liability for corporate failure to pay, 2.58  
 Wages, corporate director and officer liability for unpaid, 2.58

**Estoppel**  
 Corporate officer, corporate denial of authority of, 2.20

**Ethics**  
 Arbitrator  
 —generally, 5.47  
 —Code of Ethics for Arbitrators in Commercial Disputes, 5.47  
 —confidentiality, 5.49  
 —disclosures, required, 5.48  
 —evident partiality, 5.48, 5.107, 5.110, 5.116  
 —ex parte communications, 5.50, 5.52, 5.88, 5.108  
 —neutrality and conflicts of interest, 5.48, 5.52, 5.88  
 Mediator  
 —advocacy and dealing with deception, 6.57  
 —Committee on Mediator Ethical Guidance, 6.38  
 —confidentiality, 6.30, 6.36, 6.53  
 —ex parte communications, 6.37  
 —guidance for mediators, 6.38  
 —Model Standards of Conduct for Mediators, 6.6, 6.34–37

—neutrality, 6.30, 6.35  
 —permissible communications,  
 6.37, 6.53

**F**

**Federal Arbitration Act (FAA)**

Overview, 5.4–10, 5.12, 5.14,  
 5.36, 5.38, 5.42, 5.66, 5.72,  
 5.81, 5.84, 5.90, 5.100, 5.119

**Federal Sentencing Guidelines,**

3.9, 3.11, 3.15–.16

**Fiduciary Duty**

Corporate officers and directors  
 —business judgment rule, effect of,  
 2.48  
 —corporate opportunity, doctrine  
 of, 2.57  
 —corporation, duty to, 2.42, 2.44  
 —inaction or lack of attention as  
 breach, 2.49  
 —shareholders, duty to, 2.44, 2.46  
 —third parties, duty to, 2.40  
 Customer, breach of duty to, 1.25  
 Employees, 2.44

**Fraud**

*See also* Misrepresentation  
 Advertising, fraudulent, Deceptive  
 Trade Practices Act claims, 1.23  
 Corporations, criminal conduct by  
 —business judgment rule,  
 applicability of, 2.48  
 —generally, 3.3  
 —mail and wire fraud, 3.3  
 Economic loss doctrine, exception  
 to, 1.8

**I**

**Institutional Proceedings**

*See* Administered Proceedings

**Intellectual Property Actions**

Damages, 4.1, 4.16

**Issue Preclusion**

Arbitration and, 5.28, 5.105

**J**

**Juries**

“Ostrich instruction” to, 3.11  
 Products liability cases, question of  
 fact in, 1.15

**Jurisdiction**

Corporations, jurisdiction of  
 Wisconsin courts over domestic  
 and foreign, 2.6  
 Federal criminal jurisdiction, 3.6

**L**

**Libel, Trade,** 1.37

**M**

**Mail Fraud,** 3.3

**Mediation**

Generally, ch. 6  
 Advocacy in  
 —generally, 6.43  
 —agreement to mediate, 6.46  
 —caucus process, 6.37, 6.45, 6.53,  
 6.56  
 —confidential communications,  
 6.53

- escalation of commitment,
    - avoiding, 6.55
  - ethics and deception, 6.57
  - failure of, reasons for, 6.67
  - gauging mediation setting, 6.48
  - opening statements, 6.52, 6.59
  - preparation
    - by attorney, 6.47
    - by client, 6.49
  - pre-session submissions, 6.51, 6.59
  - reaching agreement, 6.58–64
  - settlement agreements, 6.65
  - timing, 6.44
  - Caucus process, 6.37, 6.45, 6.53, 6.56
  - Class actions, 6.69
  - Clauses, sample, app. A
  - Clients’ expectations of counsel, 6.50
  - Co-mediation, 6.66
  - Communications made in, 6.5, 6.53
  - Contract
    - generally, 6.25
    - electing style, 6.31
    - electing system, 6.30
    - mediator, 6.27–29
    - pre-dispute agreement, 6.46
    - self-determination, 6.25, 6.26
    - submission agreement, 6.46
  - Court-annexed or -connected, 6.2
  - Court-ordered or -directed, 6.2
  - Court supervision of, 6.68
  - Deception in, 6.57
  - Defined, 6.2, 6.5
  - Discovery in, 6.54
  - Distributive mediations, 6.60
  - Escalation of commitment in, 6.55
  - Fairness hearing, 6.69
  - Legal environment
    - generally, 6.4
    - Uniform Mediation Act (UMA), 6.6, 6.45
    - Wis. Stat. § 802.12, 6.5
    - Wis. Stat. § 904.085, 6.5, 6.6, 6.45, 6.53
  - Mediators, 6.32–41. *See* Mediators
    - Pure-dollar mediations, 6.60
    - Rules, 6.30
    - Self-determination, 6.2, 6.25, 6.26, 6.31
    - Settings, 6.48
      - relational, 6.48
      - transactional, 6.48, 6.55
    - Suitability
      - generally, 6.8
      - general considerations, 6.9
      - economic factors, 6.11
      - legal implications, 6.10
    - Styles
      - generally, 6.20
      - combined facilitative-evaluative style, 6.23, 6.35, 6.39, 6.49
      - directive, 6.20
      - electing, 6.31
      - evaluative methodology, 6.20, 6.22, 6.28, 6.31, 6.35, 6.39, 6.49, 6.56, 6.63
      - facilitative methodology, 6.20, 6.21, 6.28, 6.31, 6.39, 6.49
      - transformative, 6.20
    - Systems
      - generally, 6.13
      - administered (institutional), 6.14, 6.18, 6.26, 6.30, 6.40, 6.46, 6.49
      - electing, 6.32
      - non-administered (ad hoc)
        - generally, 6.14, 6.16, 6.26, 6.27, 6.30, 6.40, 6.46, 6.49
        - large cases, 6.17
        - smaller cases, 6.18
  - Uniform Mediation Act (UMA), 6.6, 6.45
- Mediators**
- Co-mediators, 6.66
  - Escalation of commitment, avoiding, 6.55
  - Ethics of, 6.27, 6.34–38, 6.52, 6.57. *See* Ethics
  - Fees and costs, 6.40

Golden rules for, 6.41  
 Immunity of, 6.29  
 Powers of, 6.28  
 Proposal, 6.63  
 Relations with, generally, 6.25  
 Responsibilities of, 6.27  
 Selecting, 6.23, 6.30, 6.39

**Misrepresentation**

Customer transactions  
 —generally, 1.12, 1.18  
 —intentional misrepresentation,  
 1.19, 1.22  
 —negligent misrepresentation, 1.20  
 —procedural matters, 1.22  
 —strict liability misrepresentation,  
 1.21–.22

**Model Standards of Conduct for Mediators**, 6.6, 6.34–.37

**N**

**National Conference of Commissioners on Uniform State Laws (NCCUSL)**, 5.12, 5.15, 6.6

**Non-Administered (Ad Hoc) Programs**  
 Arbitration, 5.19–.23, 5.31, 5.36, 5.37  
 Mediation, 6.14–.18, 6.26, 6.27, 6.30, 6.40, 6.46, 6.49

**Notice**  
 Corporation, dissolution of, 2.63  
 Shareholder, demand for corporate action by, 2.34–.35

**O**

**Officers, Corporate**  
*See* Corporate Officers

**P**

**Patent Infringement Actions**  
 Damages, 4.16

**Product Disparagement**, 1.37

**Products Liability**  
 Generally, 1.12, 1.14  
 Negligence, 1.16  
 Strict liability for product defects, 1.15  
 Unreasonably dangerous product, sale of  
 —economic loss doctrine exception for, 1.8  
 —strict liability, 1.15  
 Warning labels, effect of, 1.15

**R**

**Remedies**  
 Arbitration, 5.2, 5.15, 5.26, 5.36, 5.61, 5.89–.95

**Respondeat Superior**  
 Corporate liability for agents' actions, 2.25, 3.4

**Revised Uniform Arbitration Act (RUAA)**, 5.15, 5.58, 5.63, 5.66, 5.70, 5.72, 5.78, 5.81, 5.87, 5.90, 5.92, 5.93, 5.104

## S

**Sanctions**

Frivolous motions to vacate  
arbitration award, 5.117

**Shareholder Action Against Corporations**

Business judgment rule, 2.36

Damages, fair value of ownership  
interest, 4.1, 4.17

Derivative claims

—defenses to, 2.29, 2.33–.37

—generally, 2.29

—overlap with direct claim, 2.31

—prerequisites to, 2.32

—relationship with direct claim,  
2.30

Direct claims

—generally, 2.29

—overlap with derivative claim,  
2.31

—relationship with derivative  
claim, 2.30

Expenses, 2.38

Generally, 2.3, 2.27

Officers' and directors' fiduciary  
duty to shareholders, 2.44, 2.46

**Shareholders, Actions Against**

Debts of corporation, liability for,  
2.60

Dissolution, shareholder liability  
after, 2.63

Limitations on shareholder  
distributions, 2.62

Piercing corporate veil, 2.64

Shareholder duties, 2.61

**Statute of Limitation**

Dissolved corporation, creditors'  
claims against, 2.63

Intentional torts, 1.26

## T

**Taxes**

Corporate failure to pay, director  
and officer liability for, 2.58

Corporate tax violations, other  
corporate crime as indicator of,  
3.3

Damages for lost profits, taxability  
of, 4.11

**Trade Libel**, 1.37

**Trade Secrets**

Customer lists, protection of, 1.36

Uniform Trade Secret Act, Wis.  
Stat. § 134.90, trade secrets  
misappropriated under, 1.36

**Trademarks**

Infringement, action for, 1.34

## U

**Unfair Competition**

Generally, 1.32

Misappropriation

—common law, 1.35

—Uniform Trade Secret Act, Wis.  
Stat. § 134.90, trade secrets  
misappropriated under, 1.36

Trademark infringement, 1.34

Wis. Stat. § 100.20, 1.33

**Uniform Arbitration Act (UAA),**

5.4, 5.11–.15, 5.36, 5.42, 5.62,  
5.66, 5.119

**Uniform Commercial Code (UCC),** 1.1, 4.1–.2**Uniform Mediation Act (UMA),**

6.6, 6.45

**Uniform Trade Secret Act (UTSA), 1.36**

**U. S. Attorney**  
Corporate criminal cases  
prosecuted by, 3.9–.10

**W**

**Whistleblower Protections, 3.11**

**Wire Fraud, 3.3**

**Wisconsin Arbitration Act (WAA), 5.12, 5.14, 5.15, 5.42, 5.66, 5.67, 5.72, 5.81, 5.84, 5.100**

**Wisconsin Attorney General's Office**

Corporate criminal cases  
prosecuted by, 3.9

**Wisconsin Consumer Act**  
Corporate violations, director and officer liability for damages  
awarded for, 2.58

**Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP), 1.33**

**Wisconsin Uniform Voidable Transactions Law, 2.25**