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\*J.D., 1967, Washington and Lee University. Mr. Smith is a member of The Florida Bar, the American and Palm Beach County bar associations, and the Association of Professional Responsibility Lawyers, and is a fellow of the American College of Trial Lawyers. He is the sole shareholder of D. Culver Smith III, P.A., in West Palm Beach.

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## I. [§1.1] INTRODUCTION; TRENDS

Lawyer liability claims did not become significant for the legal profession until the 1970s. Until then, few practitioners were concerned about such claims or about the cost of liability insurance. Then the 1970s produced four times as many published appellate decisions concerning lawyer liability as the 1960s — and almost as many as there had been in all the previous history of American jurisprudence. *Mallen & Smith*, 1 *LEGAL MALPRACTICE* §1.6 at 18, 21 (Thomson West 2005 ed.) (hereinafter referred to as *Mallen & Smith*). In the 1980s, the number of decisions tripled over the prior decade. *Id.* The 1990s brought an increase of approximately 155% over the 1980s. *Id.*; see also 5 *id.* at 521–771 (“Table of Legal Malpractice Decisions and Articles by Jurisdiction”).

Florida had 22 reported lawyer-liability decisions in all the years prior to 1970. 5 *id.* at 563–576. In the 1970s alone, it had 33. The count mushroomed to 115 in the 1980s, followed by 165 in the 1990s. The years 2000 through 2003 brought nearly 100 more. *Id.*; see also 5 *id.* at 107–109.

Liability claims against lawyers arising from the rendering of professional services are typically brought by clients and former clients. A lawyer may also be liable to a nonclient under various circumstances. Although the facts from which a lawyer’s civil liability arises are often unique, the elements of most causes of action and the legal principles that govern them are the same as with nonlawyer defendants. This chapter discusses those causes of action and some of their characteristics as applied uniquely to lawyers. It is limited to the civil liability of lawyers. Although some of the same conduct can result in disqualification, judicial sanctions, or professional discipline, those topics are beyond the scope of this chapter.

## II. LIABILITY FOR MALPRACTICE

### A. Preliminary Considerations

#### 1. [§1.2] Definition Of “Legal Malpractice”

The term “malpractice” has had widely varying definitions, from as broad and sinister-sounding as “any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct,” *BLACK’S LAW DICTIONARY* at 959 (6th ed. 1990); see also *Everett v. Gillespie*, 63 So.2d 903 (Fla. 1953) (defining