

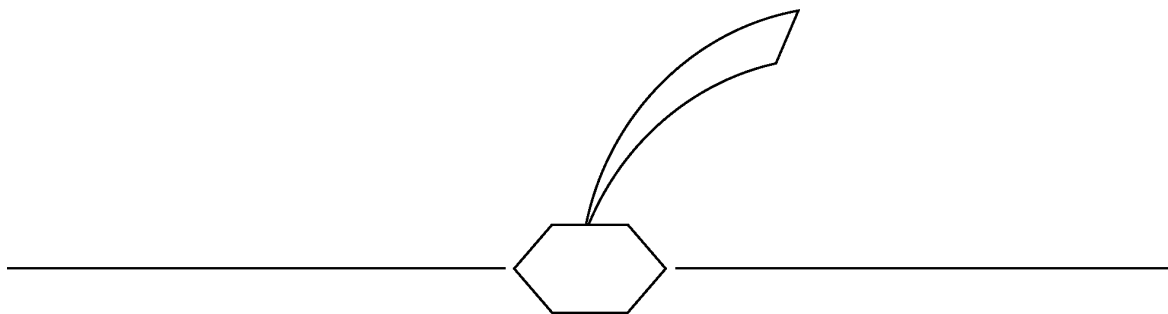
# **CIVIL LITIGATION: A CASE STUDY**

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**R. Pierce Kelley, Jr.**

**Instructor's Manual**

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## Introduction

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I have been practicing law for over 25 years and most of those years have been spent litigating civil cases, primarily personal injury. For over 20 years, I have been teaching various law-related courses at a number of junior colleges and universities. At St. Petersburg Jr. College, where I presently teach, the subject of civil litigation is taught over two semesters, three credit hours per semester. I found it difficult to meaningfully differentiate between the first semester's class on civil litigation and the second semester's class. An attempt was made to emphasize federal rules of procedure during the first semester, and then emphasize state rules of procedure during the second semester, but since state rules are patterned after the federal rules, I found myself repeating subjects and having difficulty making the topics interesting and enjoyable for the students.

As a result of my experiences, I decided to write a textbook that would provide students with a very practical approach to civil litigation and to let them know what they would be expected to do in a law office. I have used the case of *Scarlet Rose versus Nickel and Dime* to provide students with what I consider to be a very typical personal injury case. At some time in the future, I hope to use an automobile accident case as an example, because those cases are the most common personal injury lawsuits. I have found that the class is most effective, and enjoyable, when I use the second semester class to allow students to conduct various portions of a trial and to convert the class to a mock trial atmosphere.

It is my suggestion that students be asked to select a fact pattern of interest to them and allow them to develop the case, through pleadings, discovery, and trial, to conclusion. The text of *Scarlet Rose* provides the model for the students to follow in creating their own cases. Although most students will never have the opportunity to present a case to a jury, some students will become lawyers and will then be able to do so. The experience of standing in front of their classmates and making an opening statement, or a closing argument, and questioning a witness, is worthwhile and enjoyable. It requires students to do more than read the text, listen to the traditional lecture style of teaching law-related subjects, and participate in class discussions.

This manual assumes that instructors are following the above format. I have included sample tests, vocabulary words and phrases, as well as suggested topics for class discussion. As indicated in the text, I request that instructors share with me the results of their classroom experiences with the case of *Scarlet Rose versus Nickel and Dime*, including the verdicts returned by the students, and the most interesting fact patterns selected by the students, so that I may include those in future editions of the text. It is my hope that the suggested format will make the class more interesting and enjoyable for instructors as well. A sample syllabus is provided to assist you in preparing for your class. Good luck!

R. Pierce Kelley, Jr.

***Course objectives***

To continue the process of introducing the student to civil litigation, the emphasis of this course will be to provide the students with a more practical framework in which they can effectively function as legal assistants to a lawyer involved in the civil litigation process. The course includes discussion of the substantive civil law, the rules of civil procedure, and related matters, but will focus more upon the actual preparation of documents, including pleadings, motions, interrogatories and other matters in preparation for a mock trial. Students will be called upon to make actual presentations.

***Major learning outcomes***

The student will receive practical instruction regarding how a legal assistant will be able to assist a lawyer in handling a civil lawsuit, from the time the suit is filed to and including trial and post-trial motions.

***Course objectives*** (stated in performance terms)

The student will

- prepare a complaint
- prepare discovery requests
- prepare for and take a deposition
- prepare a motion
- prepare for a trial
- make oral presentations, such as an opening statement, direct and cross-examination of witnesses, and closing arguments.

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## Class Syllabus

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- Class 1 First class meeting—Read chapter 1 of *Scarlet Rose versus Nickel and Dime* in class and decide upon our class projects.
- 2 Discuss chapter 1. Plaintiff's paralegals draft a complaint for the chosen lawsuit project, plus read chapter 2 for next class.
- 3 Discuss chapter 2. Read chapter 3. Defense paralegals prepare answer to complaint, plus plaintiff's paralegals prepare all discovery to go to the defense.
- 4 Discuss chapter 3 and read chapter 4. Defense paralegals must prepare discovery requests. Plaintiff's paralegals can revise documents previously prepared during this week.
- 5 Discuss chapter 4. Read chapter 5. Both defense and plaintiff's paralegals must prepare responses to discovery requests made upon them.
- 6 Discuss chapter 5. Read chapter 6. If they wish, both plaintiff and defense paralegals can prepare any additional discovery requests to be made upon the other side.
- 7 Discuss chapter 6. Read chapter 7. Plaintiff and defense paralegals must answer any additional discovery made upon them.
- 8 Discuss chapter 7. Read chapter 8. All teams to conduct research on applicable law.
- 9 Discuss chapter 8. Read chapter 9. All teams to prepare a motion, such as a motion for summary judgment or motion in limine.
- 10 Discuss chapter 9. Read chapter 10. All teams must list all other pretrial matters that they would do prior to trial. All teams to argue pretrial motions.
- 11 Discuss chapter 10. Read chapter 11. All teams to conduct voir dire examination. All teams to prepare witness and exhibit lists plus a short statement as to how they expect each witness to testify at trial.
- 12 Discuss chapter 11. Read chapter 12. All teams to present opening statements. All teams to submit an order of proof.
- 13 Discuss chapter 12. Read chapter 13. All teams to present one witness for plaintiff's case. Cross-examination by defense. All teams to submit a joint jury instruction charge.
- 14 Discuss chapter 13. Read chapter 14. All teams to present one witness for defense case in chief. Cross-examination by plaintiffs.
- 15 Rebuttal witnesses from plaintiff. Discuss chapter 14. Turn in class projects (notebook), with proposed verdict forms.
- 16 Final exam; closing arguments by all teams; ten minutes per side. Class will vote as a jury on verdict in all cases and vote on the case of *Scarlet Rose v. Nickel & Dime*.

*Chapter One*

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## Chapter Overview

Chapter 1 begins with the trip-and-fall incident at Nickel and Dime. As indicated in the introduction to this book, I have developed the text for a class on civil litigation and it is intended to help students to learn, from a very practical perspective, how a civil case is litigated. The class can be taught from the conventional approach of lecture, discussion, and testing. The text can be used to provide a guide, or a model, for students to follow as they conduct a case of their own creation.

After Scarlet realizes the full extent of her injuries, and after she has undergone the surgery, she decides to consult with a lawyer. Class discussion could begin with the issue of when someone should consult with a lawyer. Why did Scarlet take so long to do so? Would most people wait that long? Is our society more litigious now than 30 years ago? A lengthy and healthy discussion could ensue, if the instructor wishes to do so.

The next area of the text focuses on the law firm selected by Scarlet, and how that law firm was selected. This, too, is a very fertile area for discussion. How does a person select a lawyer? It is a very controversial area. In most states, advertising by lawyers is not only permitted, it is rampant, from the back of telephone books, to taxi cabs, billboards, direct mail solicitations and, of course, radio and television. Again, the decision whether or not to dwell on this particular issue is entirely that of the instructor.

The next area of the text addresses the first of the two paralegals to be featured in the text, Marlene Mertz, and her experiences at her first job after completing her education and obtaining an Associates of Arts degree in Legal Assisting. While not intended to be comprehensive, the discussion in the text of attire, behavior, formal and informal office procedures, and how a law office actually works, will be of interest to all those students who have never worked in a law office. It has been my experience that at least a few students are working or have worked in law offices, and an instructor can use the experiences of those students to develop a very interesting class discussion.

Next, students will learn how a law firm is actually retained by a client and the formal agreement between attorney and client, as well as the rights that a client has after signing a retainer agreement. However, the heart of Chapter 1 is the investigation into the merits of the case. The initial interview, the form suggested for use, how information about the client is obtained, summarizing medical records, conducting research into the law to be applied, as well as determining the value of a case, are all very practical considerations that a lawyer will address, in real life, on an every-day basis.

I suggest that you use the text to give students a pattern for their own cases, and that this course be used as a moot-court opportunity, or a trial practice course, or learning about civil litigation by litigating a civil case. Provided you agree, I suggest that you use the first night of class to allow students to select a fact pattern for them to develop throughout the semester or term, as appropriate. By doing so, the students will be more likely to enjoy the various assignments throughout the class. Of course, it is necessary to find at least two students for each fact pattern, one to present the case on behalf of the plaintiff, and one to present the case on behalf of the defendant. The following cases are examples of what some of my students have created:

### ***Example 1: Boblett v. Jones***

On March 30, 1999, Ms. Samantha Jones was traveling south on I-75 in her 1993 Chevrolet Corsica. Her car broke down around 1:45 a.m. She then called her road service provider to request towing service to the closest available mechanic. The road service called REBEL YELL AUTO SHOP. Her vehicle was

towed to 1234 Robert E. Lee Boulevard in Hazzard County. The next morning Billy Joe Ray Boblett diagnosed her car. He determined the car had blown the head gasket. Billy Ray Jackson and Eddy Dominquez performed the repairs to her vehicle. Peggy Sue Holly prepared the bill and took payment from Samantha Jones in the form of a check numbered (I 198). The amount was \$1,496.35. They changed the oil and had the head cylinder resurfaced, in addition to other repairs.

Samantha Jones noticed the bumper sticker approximately three days after retrieving her car and was distraught. The bumper sticker was the emblem of the rebel flag. When she removed it from the vehicle, her paint was terribly damaged. She had to have the entire car painted over, costing \$2,500. Ms. Jones then distributed a flier with statements about Billy Joe Ray Boblett. She deemed him a racist, an incompetent mechanic among other things.

Billy Joe Ray Boblett filed a complaint against Ms. Samantha Jones demanding damages from her because he claims her flier impeded his business. He states he suffered severe financial loss in excess of \$15,000. Ms. Jones has asked our firm to counter sue on her behalf. We've accepted.

### ***Example 2: McCullough v. Madison***

In a recently published article by the Personal Watercraft Industry Association, which represents manufacturers of such devices, stated there might now be one million of such craft in North America, and injuries associated with their use have increased dramatically. There were at least 83 U.S. fatalities in 1997, it said, and injuries increased fourfold from 1990 to 1995. The statement said, "Operators who rent the watercraft seem to be at especially high risk." Operating characteristics contribute to these problems. They are maneuverable only when the throttle is open. Contrary to experience in every other motor vehicle, an obstruction is not avoided by slowing down and turning but by maintaining or increasing speed and turning to avoid the hazard," it added. "In addition, as with any other watercraft, there is no ability to brake," it said. "Stopping is achieved only by cutting the throttle and by coasting; while coasting no steering is possible." Those quirks, it said, make it harder for inexperienced, drivers to learn to use the watercraft safely.

Furthermore, an article, "Deputies cruise to urge safe scooting—Sheriff's deputies are stepping up efforts to teach proper use of personal watercraft," was published in the *Times* on June 8, 2000, with factual information concerning the dangers and operator liability with jet skis. About 82,000 water scooters roam our waterways, more than any other state. They can cut through water at speeds of up to 60 mph, propelled by rear-mounted water pumps. If properly used, they are safe. But not enough people learn about the dangerous side of personal watercraft before heading to the water, Pineapple County Sheriffs Deputies say. To help increase public awareness, sheriffs marine deputies converged on the calm waters of Lake Magdalene, hoping to help reduce the number of accidents involving personal watercraft more commonly known by brand names such as Jet Ski or WaveRunner. Water scooters were involved in 397 reported accidents in our state last year. Eight people died and 309 were injured. The Fish and Wildlife Conservation Committee reported 18 accidents and 14 injuries. Most accidents occur within the first 60 minutes of operation, according to the National Transportation Safety Board. "(People) take off without any attempt to learn how to operate (the scooters)," said T.J. Pinta of the Sheriffs Office.

An eight-person marine unit will patrol more than 450 square miles of county waterways this summer, ensuring boaters and personal watercraft users are staying safe. Sgt. Ron Hartley said the marine unit stresses courtesy and common sense. The Sheriff's Office recently responded to a call of two people trying to throw water into each other's faces by making fast, sharp turns. Their stunt cost one of them a broken leg. These things are extra fast and extra maneuverable, and that can get you in trouble in a hurry," Hartley said. As a result of this accident, Elizabeth McCullough deems it appropriate to file a complaint with the Sixth Judicial Circuit Court for Pineapple County, Atlantis, suing the owner and operator of the Kawasaki Jet Ski, Wendy Madison for damages in excess of Fifteen Thousand Dollars (\$15,000) to compensate her for the loss and companionship of her Golden Retriever named Lauren. The pedigree Golden Retriever suffered serious bodily injury, suffered and continues to suffer pain and discomfort, was required to have surgery, which included a hysterectomy resulting in the inability to breed and enter championship shows. The pet is unable to produce pedigree puppies; therefore, the owner has incurred the loss and companionship of her beloved pet and the revenue from the sale of the pedigree puppies.

### ***Example 3: Jones v. Selwin Corp.***

Michael Smith created Selwin Corp. five years ago in order to purchase investment real estate, intending to make his first million dollars. By quick-claim deed, due to the previous owner's bankruptcy and need for quick cash, Selwin Corp. bought a small, four-unit apartment building. Due to the downtown location and its age (built in the 1940s), Selwin Corp. thought the apartment building ideal for renovation and rental as low-income housing. With downtown redevelopment in progress, the purchase of this building seemed like a sound, financial step toward that first million.

Lily Jones was a healthy 46-year-old woman when she moved into this building four years ago. She is divorced with two adult children. She has been employed at various banks as a secretary for 30 years. She currently works at the Bank of Clearwater. In January 2000, she was diagnosed with asbestosis, a serious, debilitating lung disease. Lily Jones alleges her lung disease was caused by exposure to asbestos during the renovation and remodeling in the apartment building and within her own apartment. It is not believed that smoking for 30 years caused this lung disease. Asbestos dust and debris were present in the common areas of the building. The ceiling and flooring in Lily Jones' apartment were torn up and replaced. No barrier, such as plastic, was put in place to protect her or the remaining rooms of her apartment from the asbestos dust and debris. The work was done by a man known to Lily Jones as one of the regular building maintenance personnel.

### ***Example 4: Johnson v. Adams***

On April 7, John and Margaret Adams noticed they were having difficulty with their satellite dish and put in a service call to Satellites R Us where they had purchased their equipment. Margaret Adams spoke with the owner's wife Sally and they established that Gary Johnson, the owner and operator of the business, would report to the Adams' residence on Monday, April 1, to check the connection on the outside of the home. When Mr. Johnson showed up on Monday morning to check on the satellite, he ventured through the gate on the right side of the home, not noticing the "Beware of Dog" sign on the gate. He made his way into the backyard and over to the satellite dish where he noticed a growling sound and when he turned, he was charged by the Adam's family dog, a 7-year-old, black lab and Shepard mix, named Buddy. The dog clenched on to Mr. Johnson's arm and in the struggle to get free of the dog Mr. Johnson obtained severe lacerations and puncture wounds to his right forearm and sprained his right wrist. Mr. Johnson got free of the dog and ran out of the backyard to his truck, where he called his wife and drove himself immediately to the County General Hospital Emergency Room. At the emergency room, he incurred 100 stitches and was notified that he had some soft-tissue damage as well as a sprain.

Mr. Johnson is suing Joseph and Margaret for strict liability concerning ownership of the property and the animal. Mr. Johnson claims that during the phone conversation with Margaret Adams, his wife, inquired whether or not there would be any pets in the backyard on the day the incident happened and Mrs. Adams said there would not be. Margaret Adams claimed that she was never questioned as to whether or not she had a pet and therefore could not have misinformed Mrs. Johnson. Another issue at hand is whether there was a "Beware of Dog" sign on that gate at the time Mr. Johnson entered the premise. Mr. Johnson did not see a sign, but the Adams contend that there was in fact an 8 1/2 X 11" sign directly posted on the gate. The Adams claim to have no prior knowledge of the dogs' propensity for violence and allege that the only reason they put the sign there to begin with is that on one prior occasion a man had come into the backyard while the Adams were outside with their child, Sarah a 5-year-old, and when the child was approached by the man, the dog growled fiercely and bared his teeth. The Adams assumed this was to protect the child, but to be on the safe side decided to post the sign just in case.

Witnesses for the plaintiff include

- Sally Johnson (wife of plaintiff) and the next door neighbor to the right of the Adams
- Melissa Robinson (who heard the commotion and witnessed briefly the flight of Mr. Johnson after the event had taken place)

Witnesses for the defendant include

- Margaret Adams (wife of the defendant)

- Robert Williams (Margaret's brother)
- Doug Green (long-time friend of the family) who will testify to the behavioral tendencies of the dog.

Mr. Johnson is suing for damages in the amount of \$75,000 for medical bills, lost wages, pain and suffering, and mental anguish.

***Example 5: Smith v. Jones***

Jane Smith, the defendant, first met John Jones, the plaintiff, when they were working at a business that contracts out customer service for other companies. She says that she caught his attention with her dazzling sense of style and seductive nature. They went out together to the bars in Ybor City, restaurants, the movies, etc., and had a relationship that skyrocketed. After two months, he moved in with her. She says that he started to become upset when she demanded that he stop hanging out with his friends, cut ties with his family, and that she know his every move. He moved out for several weeks, but moved back when she promised that she'd "lighten up." Over the next year, there were many arguments, and she destroyed his property to get what she wanted. He contacted the police, and filed for a restraining order against her. She claims that "I just couldn't live without him. Love hurts! How can he say that he doesn't want me?! Of course, he does!" She claims that she doesn't know what [she] was doing' when she banged the hood of the plaintiff's car, which led to this lawsuit. She states, "He says that he doesn't want to be with me, but that's only talk. He's told me at the end of every conversation that it's over, but I know that he's only teasing me. I feel lost without him! If I can't have him, nobody will!"

Jane Smith says that she has been seeing a psychiatrist, Ellen White, M.D., for the last four years for help in dealing with her turbulent relationships. Miss Smith says that for a few hours after some of the visits with the doctor she would feel better, but would start to ruminate about Mr. Jones again. She says that several times she would mention to Dr. White about harming Mr. Jones, but that she never meant it. It was during her last visit that she told Dr. White that she was considering ways of damaging his property to force him to come back to her. She added that Dr. White asked her how she might accomplish this and when. She replied that she could try to do great damage to his car, but never said when this might be. Dr. White was aware of her propensity to inflict harm, because Ms. Smith was arrested for violating the restraining order against her. She claims that she doesn't know 'what came over' her, and that she is sorry for what she did to his car. She decided to bang up his car that night, and would follow him from work.

***Example 6: Limpy v. The Mash Tent***

On November 22, 2000, Lynn Limpy enter *The Mash Tent*, a tavern in Largo. Ms. Limpy approached the bar and asked for a drink. The bartender refused to serve Lynn Limpy and stated, "You are intoxicated! I am not going to serve you, but would you like a cup of coffee or something to eat?" Ms. Limpy stated for all to hear, "I am not intoxicated, and I want a drink!" The bartender still refused to serve Ms. Limpy. The bartender then left the bar to find her manager to inform him of the incident. The manager agreed that if she didn't feel the person should be served, he would stand behind her. When both the bartender and manager returned to the bar, Ms. Limpy was observed stumbling over a barstool as she exited.

A patron sitting at the bar who had heard the whole situation got up and followed Ms. Limpy into the parking lot. Mrs. McGill stated to Ms. Limpy, "I don't care if you kill yourself, but I will not allow you to drive and kill someone else." Mrs. McGill insisted she hand over her keys and take a cab home. Ms. Limpy refused, arguing she was not intoxicated. As she opened the door to her car, Mrs. McGill attacked her and wrestled her to the ground. Mrs. McGill then took Ms. Limpy's keys. She returned to the bar and called a cab. The cab arrived within minutes and Ms. Limpy, hurt and very upset, got into the cab. Mrs. McGill gave Ms. Limpy's keys to the cab driver and paid the driver for Ms. Limpy's ride home.

***Example 7: Little v. Maxwell***

On April 11, 2000, Stewart Little entered his neighbor's open garage where the neighbor's dog, Jake, a chocolate Labrador, was restrained. Jake and Stewart had known each other from previous occasions.

They lived next door to each other and Stewart would come over to pet Jake. Jake is eight years old and Stewart is eleven. When Jake was a puppy, the Littles witnessed him snapping at a child's face. Jake has never been aggressive since and there are posted bad-dog signs in front of the house. Jake was restrained by a leash in the garage for a short period while the carpets were being cleaned inside his house. It was a little cloudy and his owners were afraid of rain so they put Jake in the garage, in case it rained. The door to the garage was fully open. Stewart was in his front yard playing Power Rangers when he noticed Jake in his neighbor's garage. When Stewart entered the garage, he started to pet Jake. Stewart was a little rambunctious from playing and started to tug on Jake's ears. Jake became irritated with Stewart's behavior, snapped at him, and bit him in the face. Stewart screamed and Jake's owners, Sally and Joseph Maxwell, came out to see what was going on. Stewart was taken to the hospital where he received 25 stitches in his right cheek by his nose. Stewart's parents, Cathryn and John Little, are suing the Maxwells for medical bills and pain and suffering. The Littles believe that the Maxwells owed a duty to keep the dog out of reach of the child.

***Example 8: Gomez v. Murphy***

On May 7, 2001, Richard Gomez, a bicycle rider, was traveling northbound on the Pinellas Trail. At 2:30 p.m., Richard Gomez was approaching the intersection of Alternate 19 and Klosterman Road and saw the walk signal, giving him the right to freely cross the intersection. At the same time, 2:30 p.m., Samantha Murphy, a driver of a motor vehicle, was heading north on Alternate 19 and was preparing to make a right turn on Klosterman and head east.

Samantha Murphy preparing to make the right turn, slowed at the intersection, and then proceeded to make the right turn. Murphy states the light was green, giving her the right to make the turn lawfully. It was at this time that Samantha Murphy hit bicycle rider, Richard Gomez, in the pedestrian walkway, causing injury to Richard Gomez, and destroying the bicycle beyond repair. These injuries included a fractured arm, cuts and bruises to the face, requiring 10 stitches, two knocked out teeth and a broken finger, and he suffered a mild concussion.

***Example 9: Parker v. Davis***

On April 5, 2001, at approximately 3:30 p.m., Minnie Parker was driving North on Seminole Avenue when she was struck by Mickey Davis. Minnie Parker approached the intersection of Seminole Avenue and 5<sup>th</sup> Street stopping for the red light in the left turning lane. The light turned and Mrs. Parker proceeded into the intersection. Mickey Davis was traveling south on Seminole Avenue and collided with Ms. Parker's car in the center of the intersection.

Ms. Parker suffered a broken leg and injured her back. She went to General Hospital and was treated for her injuries. Mr. Davis suffered a few scrapes but did not go to the hospital. Both cars were very badly damaged. Ms. Parker missed several weeks of work. Mr. Davis claims he was not speeding and was already in the intersection when the light turned yellow.

***Example 10: Stevenson v. Smith***

On May 10, 2000, four-year-old, Tommy Stevenson, nearly drowned in a neighbor's pool. Tommy entered the backyard of Mr. and Mrs. Smith and fell in the pool. Mrs. Stevenson, while searching for him, came across her son floating face down in the pool. She jumped in and pulled him out. In between cries for help, she performed CPR on her son.

The Smiths were inside their home when they heard an unusual splash type of noise come through their screened-in patio door. Mr. Smith began to go out through the door to investigate when he noticed his neighbor, Mrs. Stevenson, rounding the back corner of his home. They both came upon Tommy just about the same time face down in the pool. Mr. Smith ran to get his wife as Mrs. Stevenson screamed and jumped into the pool after Tommy. Both the Smiths came running out again, phone in hand, as Mrs. Stevenson was pulling her son out of the water. While Mrs. Stevenson performed CPR on her son, Mrs. Smith dialed 911 immediately. The Pineapple County EMT Unit responded and transported Tommy to All Children's Hospital.

The pool has a screened-in enclosure with a child safety gate that was not up at the time. The door to the screened-in enclosure was shut but not locked. Tommy often played with the Smiths' son, Jimmy, under supervision. He has been in the swimming pool several times with Jimmy under the supervision of the Smiths.

At the time of the accident, the Smiths were inside watching television after having a private swim of their own. Their son, Jimmy, was away visiting his grandmother. Mrs. Stevenson was in her front yard pulling weeds. After several weeks in Intensive Care and then the pediatric unit at All Children's Hospital, Tommy was released to his pediatrician and parents' direct care. Tommy suffered from decreased brain activity due to lack of oxygen to his brain. He has fully recovered but his parents are very guarded because he is not the same child as before the accident.

### ***Example 11: Tipsey v. School Board***

Jessica Tipsey intends to file claims for negligent supervision and instruction and a demand for money damages against the Pineapple County School Board under the Atlantis Tort Claims Act.

#### Claimant Data

Claimant: Jessica Tipsey  
Date of Birth: 9/8/82  
Date of Loss: 10/20/00  
SSN#: 123-45-6789  
Address: 1805 127<sup>th</sup> Avenue North  
Seminole, Atlantis 00000

Jessica Tipsey is a student at Osceola High School and a two-year member of the Osceola High School Cheerleading squad. On October 20, 2000, Jessica was participating in cheering at an Osceola High School football game. During a stunting event, Jessica was pushed with great force into the air. After the stunt was completed, Jessica let herself drop, anticipating her fellow teammates would catch her. Her teammates missed the drop/catch and Jessica fell to the ground. Jessica complained of lower-back pain and was immediately taken by ambulance to Suncoast Hospital in Largo.

Jessica has been diagnosed with a disc herniation at L5-S1 and has myofascial and segmental dysfunction. She continues to suffer from a bulging disc at C6-7. These injuries are permanent in nature. Due to her young age, surgery to the lumbar spine will be necessary in the future. Her medical bills total \$33,956.

State law imposes a duty of reasonable care upon school boards to control and supervise students when they are participating in school-sponsored activities. As a result of the lack of supervision and lack of appropriate training at the time of the described incident, Jessica incurred injuries and damages. Jessica Tipsey's injuries were proximately caused by wrongful acts or omissions of employees of the Pineapple County School Board while acting within the course and scope of their employment.

### **Vocabulary Words and Phrases**

Contingency Fee Agreement  
Letter of Protection  
Business invitee  
Compression fracture  
Law office automation  
Maximum Medical improvement (MMI)  
Liability  
Damages  
Client Retainer Agreement  
Contingent Fee Agreement  
Authorization for release of information

Demand letter  
Statute of Limitations  
Computer Software Programs

### **Topics For Class Discussion**

- When should a person contact an attorney after being in an accident?
- How should a person go about the process of selecting a lawyer?
- Discuss law offices and how they differ.
- Discuss how legal assistants should dress and behave in a law office environment.
- Define the legal assistant's role in a law office.
- What were the three aspects of Ms. Rose's claim that Marlene needed to assess to establish the value of the case?
- How to conduct legal research, what search engines to use, plus the cost of it.
- How to evaluate the value of a case—this case in particular.
- Why did Attorney Franklin want to wait until his client is at MMI before drafting a demand letter and filing suit?
- How is the law in the state of Atlantis different from the law in your jurisdiction?
- What does the class think of trip-and-fall incidents, in general, before actually beginning to conduct any research on the subject?
- Are some students more naturally plaintiff oriented whereas some are more naturally defense oriented?
- Should students consider what their personal beliefs are before deciding where to go to work?
- Could Scarlet have asked for reimbursement for the time lost from work for which she was required to use sick leave and had vacation benefits?
- Could Sarah, Scarlet's daughter, have made a consortium claim?
- How does a computer software system help in a law office?

### **Summary and Conclusion**

At the end of Chapter 1, students may feel energized and enthusiastic about the class and the project ahead. They will have read Chapter 1 and they should read Chapter 2 before the next class. Plaintiff's paralegals must draft a complaint by the next class, which will require them not only to read the chapter before doing so, but also to do so without the benefit of a lecture on the topic beforehand. This may be challenging, but they should remember what they learned in the Civil Litigation I class, and they can use the complaint filed by Scarlet Rose as an example to follow. Also, it is my suggestion that the draft complaints will be a learning tool in and of itself, and that the instructor will have ample opportunity to allow the student to learn how to draft a complaint by the trial-and-error method. My suggested grading schedule does not provide for the complaint to be graded. The product at the end of the class will be the grade, plus class participation, and quizzes. The students will need to become comfortable with the procedure whereby they will not be punished by a lower grade if they don't get it right the first time. This is intended to be a class that students will enjoy and learn from at the same time.

**The Pleadings Stage from  
the Plaintiff's Perspective**

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**Class Overview**

If you have decided to use the fact patterns selected by the students as the case to be litigated, the Scarlet Rose v. Nickel & Dime case and the text are instructional, the homework assignments are the exercises to be performed by the students on their own cases. I suggest that class discussions begin with the text and that after the chapter has been discussed, the assignments be discussed, generally, and then with each team of attorneys specifically. It will be virtually impossible to keep secrets about any of the cases, so discussions should not be limited to either the perspective of the plaintiff or the defense.

Chapter 2 involves the Complaint filed by Scarlet, and her attorney Bruce Franklin, with the help of Marlene Mertz. Chapter 2 addresses how a complaint is formally filed, and what discovery may be initiated at the time suit is filed. Clearly, the topics for class discussion are plentiful. Provided the students have taken a preliminary course, such as Civil Litigation I, the topics are not new to the students and will not require an inordinate amount of time for lecture. This course is intended to allow the students to learn about filing suit and conducting discovery by actually doing just that.

The single most important task to be accomplished by the instructor at this stage of the class is to make sure the students are paired off well, and that the topics selected to be litigated are good ones, not too complex and not too simple.

**Vocabulary Words and Phrases**

Litigation Plan  
Negligence  
Interrogatories  
Requests for Admissions  
Requests for Production  
Consortium  
File maintenance  
Summons

**Topics For Class Discussion**

- How is a defense law firm different from a plaintiff-oriented law firm?
- How many interrogatories could Marlene propound? How many can you ask in your jurisdiction?
- What is the law in your jurisdiction on the issue of comparative negligence/contributory negligence?
- Which discovery-related documents are not required to be filed with the Court and clerk's office in order to reduce paperwork in the state of Atlantis? How about in your jurisdiction?
- Why does a defense lawyer have to write report letters and prepare a litigation plan, but a plaintiff's lawyer does not?
- Are incident reports discoverable?
- Why does a defendant have to issue subpoenas for medical records or employment records, but a plaintiff can just write a letter?
- Can you think of any other questions that should have been asked in interrogatories or requests for admissions, or any other documents that should have been requested in request for production?

**Chapter Summary and Conclusion**

At the conclusion of the second week of class, the pleadings stage, and the preparation of a draft of the complaint will have been discussed and performed. Plaintiff's paralegals will be required to prepare the

first set of discovery documents. Students must read Chapter 3 prior to the next class, in addition to their written homework assignment. The textbook reads like a novel, so it should not be too time-consuming to ask students to do both. However, students cannot put off their homework assignments until the end of a semester because it will adversely affect the attorneys on the other side of the case, and it will affect their performance in class.

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**The Pleadings Stage from  
the Defendant's Perspective**

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**Chapter Overview**

Chapter 3 involves the inner workings of a defense law firm and how it differs from a plaintiff-oriented law firm. The attire, behavior, and office procedures may be, and usually are, quite different. This is a fertile area for discussion, assuming some of the students have worked in law offices. If not, the discussion should still be of interest, although probably more lecture style than conversational.

**Vocabulary Words and Phrases**

Affirmative Defenses  
Collateral sources  
Litigation Plan  
Comparative Negligence  
Contributory Negligence  
Negligence  
Interrogatories  
Requests for Admissions  
Requests for Production  
Subpoena for records  
Subpoena duces tecum  
Non-parties  
File maintenance  
Expert witness interrogatories  
Incident reports  
Aggravation of a pre-existing condition

**Topics For Class Discussion**

- How is a defense law firm different from a plaintiff-oriented law firm?
- How many interrogatories could Chris propound? How many can you ask in your jurisdiction?
- What is the law in your jurisdiction on the issue of comparative negligence/contributory negligence?
- Which discovery related documents are not required to be filed with the Court and clerk's office in order to reduce paperwork in the state of Atlantis?
- How about in your jurisdiction?
- Why does a defense lawyer have to write report letters and prepare a litigation plan, but a plaintiff's lawyer does not?
- Are incident reports discoverable?
- Why does a defendant have to issue subpoenas for medical records or employment records, but a plaintiff can just write a letter?
- Can you think of any other questions that should have been asked in interrogatories or requests for admissions, or any other documents that should have been requested in request for production?
- How often can expert witness interrogatories be served?
- Must expert witness interrogatories be served more than once, usually?
- How about other types of discovery? How often, and why?

**Chapter Summary and Conclusion**

At the conclusion of the first three weeks of class, the pleadings stage, and the preparation of the complaint and answer, plus the denial of affirmative defenses, will have been discussed and performed, still in draft. Defense paralegals will have prepared an answer to the Complaint, and addressed all of the various affirmative defenses to be raised, which will be challenging. Plaintiff's

paralegals will be required to prepare the first set of discovery documents. Students must read Chapter 4 prior to the next class, in addition to their written homework assignment. Students cannot put off their homework assignments until the end of a semester because it will adversely affect the attorneys on the other side of the case, and affect their performance in class.

### **Class Overview**

Chapter 4 is moving the students from the practical area of how to prepare a complaint and an answer and how to prepare discovery requests into the area of actually putting some flesh on the framework of the lawsuit. Some facts! In Scarlet's case, the facts are presented for the students to study and to discuss. In the cases that the students have created for themselves, the facts will need to be developed. It will very likely be necessary for the instructor to step in and help the students to agree upon the facts, because some students will undoubtedly try to make the facts so strong in their favor that the other side has no chance of winning. The instructor must make sure the case can at least get to a jury, and that there are good arguments available to both sides.

### **Vocabulary Words and Phrases**

Person Injury Protection (PIP)

Pain and suffering

Notice of intent to subpoena records from nonparties

Memorandum to the file

Self-insured.

Request for copies

Compliance with requests for copies

### **Topics For Class Discussion**

- During the discovery phase, explain when and why a Request for Admissions is sent to the opposing party.
- How can a party to a case be compelled to give up information which may be adverse to his interest? You can't do that in a criminal case, can you?
- How does a civil case differ from a criminal case?
- With Request for Admissions, what responses are considered valid?
- When and why should an attorney decide to hire one or more expert witnesses?
- What records should an attorney try to obtain other than employment records, medical records, and school records?
- Are payments made by Blue Cross/Blue Shield a collateral source or not?
- How does the law in your jurisdiction differ from the law in the state of Atlantis as far as written discovery is concerned?
- What are examples of collateral sources in your jurisdiction?
- Are PIP payments a collateral source?

### **Chapter Summary and Conclusion**

At this point, students will begin to exchange information about their chosen cases, just as Scarlet Rose and Nickel and Dime have done. The students must read Chapter 5 for next week's class. The defense paralegals will be required to start discovery initiated upon the plaintiffs.

## **Chapter Overview**

Chapter 5 takes the students into the deposition process. In most cases, the first deposition taken in a personal injury case is that of the Plaintiff, which is what occurred in Scarlet's case. A pre-deposition conference, court reporters, swearing in of the witness, and the procedure to be followed may be entirely new areas for most students who have not had a prior personal involvement with the legal system. Again, those students who have some prior experience can be used to fuel class discussion, at the risk of making those students the center of attention and too dominant. It has been my experience that class discussions are much better when students are providing information to other students than discussions involving my telling students what happens at a deposition.

## **Vocabulary Words and Phrases**

Notice of Deposition  
Subpoena for deposition  
Deposition  
Court reporter  
Transcript  
Aski disc  
Mini-Transcript  
Deposition summary  
Cross-noticing a deposition  
Expedited copy of deposition

## **Topics For Class Discussion**

- How does a party notice another party to appear for a deposition?
- When does a party have to issue a subpoena for deposition instead of a notice?
- What is the difference between a subpoena for deposition and a subpoena duces tecum for deposition?
- What is the difference between a subpoena to obtain records and a subpoena to appear for deposition as a records custodian, as Kate Frechette did in the Scarlet Rose case?
- Why would an attorney take a deposition and not order a transcript?
- What can a deposition produce that might lead to a settlement of the case?
- Why are subpoenas issued to former employees, but not current employees, of the defendant?
- What is the purpose of a deposition, to attack and discredit a witness or to just find out what the witness has to say?

## **Chapter Summary and Conclusion**

At this point in the class, the students are still exchanging information, and the text is ahead of their schedule. It has been my experience that taking depositions of witnesses in our mock trial atmosphere is difficult since the only witnesses are usually other students, who are busy working on their own cases. I usually wait until later in the class to have the class present a witness, and both sides are only permitted to present one witness per side. Students will need to read Chapter 6 for next week, and to complete the exchange of factual information through formal discovery.

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**Video Deposition of the Surgeon**

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**Chapter Overview**

Chapter 6 introduces students to actual medical testimony and terms. For most students, this will be the first time that they are exposed to such terms and testimony. They can not be expected to know such things, but they should find the information fascinating, and they will all have friends or relatives who have back problems, and have had x-rays and MRIs, and they can relate to the testimony to some extent. They should be told that they will not be expected to know all of the terms, but that they should inject some medical issues into their own cases, because that is part of the damages aspect of the case. Up to this point, the focus has mostly been on the liability side of the case. I tell students that the task of performing a medical records review will very likely be a task that they will be required to perform if they become paralegals in a personal injury law firm.

**Vocabulary Words and Phrases**

Degenerative disc disease  
Laminectomy  
Dual-rod stabilization process  
L-4, L-5  
L-5, S-1  
Vertebrae  
Chronic  
Neurology  
Board certification  
MRI  
Reasonable degree of medical probability  
Antalgic gait  
Trigger-point injection  
Micro-surgical interlaminar decompression

**Topics For Class Discussion**

- What is the validity of a videotaped deposition? Doesn't the party affected have a Sixth Amendment right to confront witnesses at trial?
- When is it a good idea to videotape depositions?
- What does it mean to qualify a witness as an expert?
- When can a witness offer expert testimony?

**Chapter Summary and Conclusion**

This chapter is to be read as one would read a novel, not necessarily to study and dissect. Although students will be interested in the material, they should not be expected to fully grasp and understand all the medical terms and topics. Students must read Chapter 7 prior to the next class. They can do additional discovery, but this is a week to simply get everything organized, so all pleadings and discovery documents should be completed during this week. Instructors are encouraged to inspect the notebooks that the students are compiling during this week or next.

**Continued Negotiations, Physical Examination of the Plaintiff, and Deposition of the Defendant's Expert**

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**Chapter Overview**

Chapter 7 addresses that period of time in a lawsuit after the pleadings are closed and after the written discovery is concluded, and after some of the depositions and discovery are concluded, to assess the case and decide where the case is going. The plaintiff initially demanded \$300,000 before suit was filed, but the defense had not offered any money to settle the case. The defense must decide whether to offer some money or take the case to trial. In Scarlet's case, Nickel and Dime decided to have a compulsory physical examination (IME) conducted of Scarlet, and Scarlet's attorney deposed the doctor who conducted the test.

**Vocabulary Words and Phrases**

Offer of judgment/ Proposal for settlement  
Compromising medical bills  
Compulsory physical examination  
IME

**Topics For Class Discussion**

- What is the difference between an IME and a compulsory physical examination?
- What is the procedure called in your jurisdiction?
- Can the test be videotaped by the plaintiff?
- Can a court reporter be present when an IME is being performed?
- If the case has gone as far as court, why make an offer of judgment?
- When should an offer of judgment be made, and why?
- Does your jurisdiction have a procedure similar to the procedure in Atlantis about proposals for settlement? If so, how do they differ?
- What is the difference between a proposal for settlement and an offer of judgment?
- Is the proposal for settlement/offer of judgment something created by the legislature or by the Court?

**Chapter Summary and Conclusion**

Chapter 7 addresses issues that are not usually discussed in any detail in a civil litigation textbook, but are very practical issues that are addressed in virtually every lawsuit. An offer of judgment and/or a proposal for settlement, at least in Atlantis, brings the spectre of an award of attorneys fees to a lawsuit, which raises the stakes, and can cause each side to reconsider the extent of their resolve to take the case to trial. Again, as with the medical testimony, students should not be expected to have prior knowledge of these areas, and these topics should be informational and interesting to them. As far as their cases are concerned, there is a lull in the action, and this would be a good time to have a mid-term exam, or give a quiz, to make sure the students are keeping up with the material. Sample quizzes and a suggested mid-term exam are found at the back of this teacher's manual.

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**Pretrial Motions, Orders of the Court,  
and Hearings Before the Court**

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### **Chapter Overview**

Chapter 8 addresses the Court, for the first time, and how the trial judge begins to enter the picture. Students will be asked, in Chapter 8, to prepare a motion, or two, such as a motion for summary judgment or a motion in limine. Students are asked during this week to conduct research, using their fact patterns, to prepare such motions. Students could also research the law as it exists in their jurisdiction and as it applies to Scarlet Rose's case. Students must read Chapter 9 before the next class.

### **Vocabulary Words and Phrases**

“At issue”  
Motion in limine  
Motion for summary judgment  
How to conduct research  
How to frame a legal research question  
Notice that case is at issue and ready for trial  
Pretrial order  
Order of referral to mediation  
Witness and exhibit list  
Memorandum of law  
Pretrial stipulation  
Mediation  
Mediation summary  
Mediator  
Westlaw  
Find law.com  
Lexis  
Computer assisted research  
www.morelaw.com

### **Topics For Class Discussion**

- When is a case “at issue?”
- Who normally notices a case for trial?
- When should a case be noticed for trial?
- What is the purpose of ordering mediation for a case that is likely to go to trial?
- What is the purpose of a pretrial order?
- Why do judges who have cases on their dockets for more than 18 months have to report the delay? Does your jurisdiction have a similar procedure?
- Is it required that a memorandum of law be filed in every case where a motion is filed in Atlantis? How about in your jurisdiction? How about in federal court?
- What is a pretrial stipulation and why is that necessary or desirable?
- How does mediation differ from arbitration?
- Can a court order arbitration instead of mediation? Or in addition to mediation? How about in your jurisdiction? How about in federal court?
- Which is better for you, computer research or research by hand at the law library? What are your favorite search engines?

### **Chapter Summary and Conclusion**

Chapter 8 provided students with a real sense of what a court or trial judge will do once the case advances to that point in the litigation process. Pretrial orders, pretrial motions, hearings on pretrial motions, witness and exhibit lists, selecting a mediator and engaging in a mediation are all very practical aspects of

a lawsuit, which are not usually addressed in any significant way in textbooks. Students are asked to conduct research during this week, and apply law to the facts of the cases that they have selected to litigate. Students must read Chapter 9 before next week's class.

## **Chapter Overview**

In Scarlet's case, negotiations have failed, mediation was unsuccessful, the case was not resolved by way of pretrial motions, and the case is proceeding toward trial. The text addresses all of the things that must be done before the case is actually presented to a jury, such as a pretrial conference, trial subpoenas, trial exhibits, file maintenance, and other such things. During this week in class, students will be asked to argue a pretrial motion. This will be the first time in the class that students will be asked to make oral presentations in front of their classmates. This is when the class begins to become more enjoyable for the students and the instructor. The students then have an opportunity to display their personalities.

## **Vocabulary Words and Phrases**

Order of Proof  
Evidentiary Issues  
Jury instructions  
Special jury instructions  
Pretrial conference  
Mock trial  
Trial notebook

## **Topics For Class Discussion**

- Are all witnesses subpoenaed for trial? Why or why not?
- What is an Order of Proof and how do you use it?
- What is meant by "a bad settlement is better than a good trial?"
- What is a pretrial conference and how does it differ from a status conference?
- Why should there be no reference to insurance in medical records?
- When and why should an attorney conduct a mock trial?

## **Chapter Summary and Conclusion**

For some students, it may be difficult to figure out what pretrial motion to file. An instructor may have to help students. Some examples of issues that can be raised in virtually any case are as follows:

- A felony conviction of possession of marijuana that is more than 10 years old
- A record from a psychiatrist in a case where no damages are claimed for mental problems
- A misdemeanor conviction for theft that involves honesty

During this week, since the text is short, class discussion will not be as lengthy as in prior weeks. Some might question the wisdom of asking students who are planning to become paralegals to engage in verbal presentations since, unless they become lawyers, they will not be likely to have the opportunity to do so in their careers. It has been my experience that students learn from making the oral presentations, and they gain confidence in their ability to advance an argument, be able to defend their position. Plus, it is fun and makes the students and the entire class more vibrant.

Also, some students will go on to become lawyers, perhaps as a result of their experiences as students in a paralegal education program. In class, you will discuss Chapter 9 and students are to read Chapter 10.

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## Voir Dire and Opening Statements

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### Chapter Overview

Chapter 10 informs students of how a trial actually commences, beginning with how jurors are selected and how they are summoned to court. The chapter also discusses the type of personal information that the court and the attorneys are looking for, with examples of the documents used by the clerk's office.

### Vocabulary Words and Phrases

Bailiff  
Juror summons  
Juror questionnaire  
Juror excusal form  
Venire  
Voir dire  
Peremptory challenges  
Challenges for cause  
Alternate juror  
Opening statements  
Counsel table  
Daily Copy

### Topics For Class Discussion

- What records are used to select the names of prospective jurors in Atlantis? How about in your jurisdiction?
- Distinguish between peremptory challenge and challenge for cause.
- How many of each does each party get?
- What is the purpose of the judge asking preliminary jury questions of a jury, aren't they already qualified by the clerk's office?
- What issues does a jury decide?
- What issues does a judge decide?
- What type of juror do you think would be the best juror for this case from plaintiff's perspective?
- How about from the defense perspective?
- What are the preliminary instructions to the jury and who gives them? (As opposed to final jury instructions.)
- What is the purpose of an opening statement?
- Can paralegals sit at counsel table in your jurisdiction?

### Chapter Summary and Conclusion

After discussing Chapter 10 during class, instructors are encouraged to allow students to conduct a voir dire examination and ask pertinent questions of their fellow classmates, even though they will have no opportunity to excuse a prospective juror (fellow student) for cause or for any reason whatsoever, unless you have enough students in your class to allow for that. By allowing students to ask questions, it will provide students with some insight into how difficult it can be to think of appropriate questions to ask, as well as provide the students with an opportunity to do some public speaking. The questions asked should be different from one group of students to the next, assuming that there are different fact patterns being litigated.

As homework assignment, students are required to read Chapter 11 and prepare for next week's class during which they will make an opening statement of no more than 10 minutes.

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**Plaintiff's Case In Chief**

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### **Chapter Overview**

During this week's class, all students will make their opening statements. Next week, students who are representing the plaintiffs will be called upon to present one witness, most likely the plaintiff, and to ask questions of that witness and allow cross-examination of that witness by the defense attorney. If space permits, it is a nice touch if the classroom can be re-arranged so that the jurors, excluding the witness and the two paralegals, can sit in a jury area, with the instructor as the judge and the two attorneys/paralegals at counsel table.

As far as the text is concerned, Scarlet Rose is presenting her case, and calling herself, her mother, her treating physician, the surgeon, and three former employees of Nickel and Dime as witnesses. Scarlet is attempting to establish that Nickel and Dime is responsible for the incident, since they violated their own internal policy and procedure by allowing the tote to be left in the aisle unattended. Scarlet also is attempting to prove that the surgery and all of her pain and suffering are related to the incident at Nickel and Dime.

On the other hand, the defense is attempting to establish that Scarlet should have seen the tote if she was paying attention to where she was walking. Nickel and Dime asserts that Carol Westwoman was within two feet of the tote, and there was no violation of their internal procedures, but Carol Westwoman could not be located and was not called as a witness. The defense also is trying to establish that the back condition was a preexisting condition and that surgery would have been necessary even if this incident never occurred. It is my expectation that students will have preconceived notions of liability and that part of the learning experience will be to educate students to keep open minds and to see the case from the viewpoint of others.

### **Vocabulary Words and Phrases**

Daily copy  
Direct examination  
Cross-examination  
Re-direct examination  
Hidden danger  
Radiculopathy  
Surgical candidate  
Motion for directed verdict  
Motions at the close of plaintiff's case  
Hostile witness/adverse witness  
Prima facie

### **Topics For Class Discussion**

- How are exhibits numbered, who does it and when is it done?
- Do you think the judge should have allowed evidence about the stocking policy and procedure to be heard by the jury? Doesn't it make Nickel and Dime more likely to be found negligent if they violated their own policy? Is that the standard, or is the standard what other department stores do or don't do?
- Did you think that Mr. Richard should have made more objections? If so, to what questions?
- What did you think of Mr. Franklin's questioning of witnesses? How about the cross-examination? Any comments or criticisms?
- What is the process for qualifying an expert witness?

- Why was there no re-cross examination?
- Does your jurisdiction allow for re-cross examination?
- Do the federal rules of procedure allow for re-cross?
- Was it absolutely necessary for Mr. Richard to make a motion at the close of Scarlet's case? Why? How about Mr. Franklin, should he have made a motion too?
- Distinguish among direct, cross, redirect, re-cross examination.
- Can there be a motion for directed verdict by both the plaintiff and the defense at the same time?

### **Chapter Summary and Conclusion**

As far as the Scarlet Rose versus Nickel and Dime case is concerned, Mr. Franklin presented the best case he could, given the facts of the case. He has some problems with the case, but he knew that before the trial started. He is hoping to get the case to a jury and that a jury will be sympathetic to Scarlet.

As far as the students are concerned, they are trying to present their cases to their classmates, and to have a jury vote in their favor. They are probably much more interested in their cases at this point than they are in the Scarlet Rose case. Students can learn how to present their own witness by following the line of questioning engaged in by Mr. Franklin.

At this point, Scarlet's case is reading as a novel would read, and students can simply absorb the testimony and get a better understanding of how a trial proceeds. Most textbooks devote just a few pages to what a trial is actually like, and it is my hope that this trial testimony helps to demystify a trial for the students.

Students are to read Chapter 12 for next week's class. Both sides are to present a witness next week. You will discuss Chapter 11 in class this week.

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**Defendant's Case in Chief**

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**Chapter Overview**

Chapter 12 is Nickel and Dime's response to the case presented by Scarlet, through her attorney. Nickel and Dime calls its two store employees, Marjorie Murphy and Caitlin Palmer, in addition to the IME doctor, Christopher Paul. Some discerning students, and instructors might question why the Plaintiff did not call Marjorie or Caitlin as witnesses in their case in chief, since they called three other employees, which is a good question, and the answer is that some lawyers might have done so. Those are examples of trial strategy and how an attorney must decide to present a case. Hopefully, that question, and others like it, will be food for thought for your students.

**Vocabulary Words and Phrases**

Subjective complaints of pain  
Chronic pain syndrome  
Publish a photo to a jury  
Conservative treatment  
Nerve-root compression  
Soft-tissue injury  
Rebuttal testimony  
Surrebuttal testimony  
Motions at the close of defendant's case in chief  
Motions at the close of all the evidence  
Jury instructions  
Special jury instructions  
Verdict  
Foreman/forewoman

**Topics For Class Discussion**

- Why didn't Mr. Franklin call Marjorie and Caitlin during his case in chief?
- How does an attorney have a photograph admitted into evidence in your jurisdiction? Is it necessary to call the photographer as a witness? What is the necessary showing that needs to be made before a photograph can be shown to a jury?
- Does the fact that an expert is paid a substantial amount of money make that witness' testimony suspect?
- Do you think the defense gained an advantage by calling Dr. Paul as a witness at trial live, instead of by video, as plaintiff did with Dr. Beebe?
- Distinguish between rebuttal testimony and testimony during a case in chief.
- Does your jurisdiction allow surrebuttal testimony?
- Can you think of any surrebuttal testimony that Nickel and Dime could have offered?
- Why file more motions at the close of the defense case? And again after rebuttal?
- Are there standard jury instructions in your jurisdiction?
- Did you think the judge should have permitted a special jury instruction?
- Is the verdict used in this case similar to verdict forms used in your jurisdiction? How and where would you look to find out?

**Class Summary and Conclusion**

During this chapter, students present their case, but can only call one witness for each side, usually the plaintiff and the defendant. Where necessary, students can read to the jury what other witnesses would

say. It is best if the two students can agree on what the witness(es) would testify to, and allow the students to indicate where there is a difference of opinion as to whether or not the proffered testimony is truthful. It is important for the students to keep in mind that this exercise is a learning tool, and not a perfect example of what trial practice consists of. Some students will become obsessed with the project and put in an inordinate amount of time on it, whereas others will do much less. As with everything else, a student will get out of a course what he or she puts into it, but all should learn from, and enjoy, the experience. Students should understand that virtually every case involves contradictory evidence and that a jury is normally required to decide what testimony is most credible.

As far as the text is concerned, there are no surprises at trial. Carol Westwoman was not called as a witness by either side, and her unavailability could hurt the defense. Or perhaps the plaintiff? You will discuss Chapter 12 in class. Students should read Chapter 13 for next week's class.

**Closing Arguments, Jury  
Deliberations and the Verdict**

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**Chapter Overview**

During Chapter 11 and 12, attorneys Bruce Franklin and Allan Richard presented their cases to the jury. Now they will attempt to persuade the jurors to return a verdict in favor of their respective clients. The class, much like the jurors in the textbook, is told by the judge to keep their minds open until they have heard all the evidence and have heard the closing arguments of the attorneys. It is questionable how many jurors actually do that, but there remain a substantial number of trial attorneys who continue to believe that the last attorney to have the opportunity to address the jury has an advantage and that the closing arguments are the most important stage of the trial.

Hopefully your students will still be uncertain how they will vote as they read what attorneys Franklin and Richard have to say. If you agree to follow my suggestion and request, your class will vote on the verdict to be returned in the case of Scarlet Rose versus Nickel and Dime, in addition to voting on the cases of their classmates.

As far as the students' cases are concerned, they are a week behind the text. The primary purpose of this week's class is to allow the class to prepare their own cases, conclude their class notebooks, and to prepare for their closing arguments. This would be a good week to have another test, if you would like. Discuss chapter 13 in class. Students will read Chapter 14 on jury instructions and a verdict. Next week they will elect a foreman or forewoman and actually decide the case, after hearing closing arguments.

**Vocabulary Words and Phrases**

Closing arguments  
Preponderance of the evidence  
Burden of proof  
Symbols of justice  
Rebuttal argument

**Topics For Class Discussion**

- What is the procedure for closing arguments? Who goes first; who goes last? How about in your jurisdiction?
- How much time is each attorney allotted? Is this enough? Too much? How about in your jurisdiction?
- How did you like the two presentations? Is your decision made? What if others don't agree with your opinions, how do you think you will resolve those differences once you get into the jury room next week?

**Chapter Summary and Conclusion**

Unless the students have already made up their minds, the arguments of Bruce Franklin and Allan Richard will give pause to all students as to what verdict should be returned. The class will have read the instructions given by the Court, and they will deliberate and decide this case and, unless there is complete unanimity, the debate could be lively. I suggest you will want to focus on the style, the delivery, the content of the argument, and leave the debate on the merits to next week.

As far as the students' cases are concerned, they should turn in their class notebooks next week and be preparing to give their own closing arguments. Discuss Chapter 13 in class and read Chapter 14 for next

week.

## **Chapter Overview**

During this week, the class will have read the instructions given to the jury, and they should now deliberate over the verdict that they wish to return. Instructors should try not to be too involved, and be as unobtrusive as possible, while the students debate. My practice is to leave the classroom after a team presents its argument, and after a verdict form has been given to the class. I use this time for discussion and feedback with the students who have completed their arguments. Sometimes a jury is out an hour or less, and sometimes it may take days. The longest I ever experienced was eight days, but that was a two-month trial. This jury can only use as much of the class period as time will permit.

As indicated in the summary of Chapter 13, this chapter is presented in a generalized fashion. No forms for presenting any post-trial motions have been included and no notice of appeal. As indicated throughout the text, the class is a study of the case of *Scarlet Rose v. Nickel and Dime*. The first issue to be decided is the issue of liability, and if the class finds that Nickel and Dime is responsible, at least in part, then the issue of damages must be resolved.

As far as the students' cases are concerned, this is the grand finale. Students will make their closing arguments. I suggest you allow only 5-10 minutes per side. You must also limit debate on the verdict. I suggest you allow for a less than unanimous verdict, and apportion your class time, depending on the number of students and the number of cases to be decided.

## **Vocabulary Words And Phrases**

Verdict  
Jury instructions  
Credibility of witness  
Negligence  
Dangerous condition  
Hidden danger  
Duty to warn  
Open and obvious condition  
Unanimous jury verdict  
Reasonable care  
Legal cause  
Proximate cause  
Damage  
Preponderance of the evidence  
Greater weight of the evidence  
Aggravation of a preexisting condition  
Apportioning damages  
Mitigating damages  
Judgment notwithstanding the verdict  
Orders for fees and costs  
Appellate review  
Motion for Taxation of Costs  
Motion for new trial  
Motion to allow questioning of jurors  
Additur  
Remittitur  
Recording a judgment

Notice of appeal  
Bond pending appeal

### Topics For Class Discussion

- Does your jurisdiction require a unanimous verdict? If not, what is it?
- Can jurors ask questions during a trial in Atlantis? How about in your jurisdiction? Should they be?
- Does proximate cause mean the same thing as legal cause?
- What does the term damage include?
- What does polling the jury mean?
- What does the term “greater weight of the evidence” mean? Is that the same thing as “preponderance of the evidence?”
- Did your jury apportion damages? Did they find a preexisting condition existed? How did they handle that issue?
- How and why did your jury decide the liability issues? What was most important? Was the argument of counsel persuasive? Personal experiences? Personal prejudices? Was there a single strong juror who influenced everyone else?
- Does the verdict represent a compromise or did the class simply listen to each other and resolve their differences in a meaningful and logical way?
- Should a losing party be required to post bond pending appeal?
- Judgment notwithstanding the verdict? What do you think of a judge overturning the verdict of a jury? Doesn't that undermine the entire jury system?
- How about adding to or subtracting from a verdict? When and why should a judge do that?
- What costs should be taxable? How is that determined?
- How can there be continued negotiations after the verdict has been returned?
- Recording the verdict, or the judgment, doesn't the clerk do those?
- When and why should an appeal be instituted, do you think?

### Chapter Summary And Conclusion

As far as the textbook is concerned, this class is the most important, because it is the resolution of the case, or the denouement. You will discuss Chapter 14 in class this week, but since students will be making closing arguments and voting on the outcome, this allows all classes to resolve the case. The chapter on post-trial motions is an aftermath. It is important for students to know what they can and, in some cases, must do if a jury decides against them.

The class concludes with much clamor and, in all probability, each and every student wanting to have more time to say all of the things they forgot to say during their closing arguments, or to find out why the jury didn't return the verdict that the student was hoping for and, of course, their final grade. Some students will do far more than could ever reasonably be asked of them, and they will necessarily get the best grades. However, all students who display energy, enthusiasm, and commitment to the process will want to be rewarded accordingly as well. I try to reward each student for the effort, since we may have lit a candle for him or her. There is much more to learn about being a paralegal in a busy personal injury practice, which only experience will teach those students but, hopefully, the case of Scarlet Rose versus Nickel and Dime has helped prepare students for that day when they begin a career as a paralegal. The most important thing is that they enjoyed the class, and that they learned from the experience. I hope you as instructors enjoyed the class as well.

## Quiz #1

All questions count for 10 points each.

1. Define the term “civil litigation” in 25 words or less.
2. Define the term “negligence” in 25 words or less.
3. List the four elements or components necessary to establish a cause of action for negligence.
4. Explain the difference between the doctrine of comparative negligence and the doctrine of contributory negligence in 50 words or less.
5. List the four levels of trial/appellate courts, as discussed in class, for the state of Atlantis judicial system (state court).
6. List the four levels of trial/appellate courts, as discussed in class, for the federal court system (federal courts).
7. Briefly describe the duties of a paralegal/legal assistant in a typical law office.
8. True or false. (3 points each).
  - a) If a lawyer and a client agree on a fee, even if it is extremely large, a court or the Atlantis Bar Association will not interfere between the two if a dispute arises, and will enforce the contract.
  - b) The rules of professional conduct that govern all members of the Atlantis bar are not merely advisory in nature, and are enforceable.
  - c) A lawyer may not represent both parties in a divorce, even if both parties agree, where child custody, visitation, alimony, and child support are agreed upon by the parties.
  - d) After two years, a lawyer may sue a former client, on behalf of another client, under any circumstances.
  - e) If a dispute arises between an attorney and a client, after the attorney has filed suit, the attorney may withdraw from further representation of the client by filing a notice with the court and sending a certified letter to the client.
  - f) A lawyer must do the very best he or she can for the client, but if the opposing lawyer does not know the law, the first lawyer must inform the court of the correct legal authority and cannot rely on case law which he or she knows is inaccurate or wrong.
  - g) A lawyer may talk to the press, if contacted by the press first, and say anything to help his or her client win the case.
  - h) If a lawyer knows a party is unrepresented, the first thing he or she should do is get an investigator to take a statement from that person, without revealing that the lawyer involved is representing an opposing party.

- i) A lawyer is responsible for the actions of a non-lawyer assistant even though that assistant has just started to work in the law office and really doesn't know all the rules of the office or of court.
- j) If a non-lawyer refers a case to a lawyer, the lawyer may give the non-lawyer a fee.

## Quiz #2

All questions count for 10 points each.

1. Define the term "common law."
2. Define the term "strict liability" and give two examples.
  - Definition:
  - Example no. 1
  - Example no. 2
3. Define the term "evidence."
4. Define the term "vicarious liability" and give one example.
  - Definition:
  - Example:
5. Define the term "hearsay."
6. Give three exceptions to the hearsay rule.
7. Define the term "preponderance of the evidence."
8. Explain what the term "burden of proof" means, and who has the burden of proof in a civil litigation matter.
9. True or false. (2 points each).
  - a) Truth is a complete defense to a lawsuit charging defamation of character.
  - b) The state of Atlantis is sovereignty and cannot be sued in tort for actions by any of its agencies or employees.
  - c) Nothing that is said outside of a courtroom is admissible into evidence.
  - d) Circumstantial evidence is evidence that merely suggests the existence of some other occurrence or thing.
  - e) No one is permitted to offer an opinion during the course of a trial. Only facts may be testified to in court.
  - f) A stipulation is an agreement between the plaintiff and the judge, which allows evidence to be admitted without authentication.
  - g) The term "clear and convincing" refers to the issue of judicial notice.
  - h) A presumption is a legal term meaning that certain facts are established as being true, by the judge, without any proof whatsoever being established first.

- i) A paralegal/legal assistant must be careful what goes into the client file, because some of it may have to be given to the opposing party under the attorney/client rule of evidence.
- j) A paralegal/legal assistant should be able to get any medical or other records from a doctor or other source if he or she properly identifies him or herself and uses letterhead stationary reflecting the name of the attorney for whom she or he works.

**Quiz #3**

Part I. Short answers—25 words or less. (10 points each).

1. List the four separate items that are needed to formally file a complaint with the clerk in state court action.
2. What is an “affirmative defense?” List five examples.
  - Definition: \_\_\_\_\_
  - Example no. 1: \_\_\_\_\_
  - Example no. 2: \_\_\_\_\_
  - Example no. 3: \_\_\_\_\_
  - Example no. 4: \_\_\_\_\_
  - Example no. 5: \_\_\_\_\_
3. Explain what a contingent fee agreement is, and how it differs from a flat-fee arrangement, or an hourly rate fee arrangement.
4. Under the law in the state of Atlantis in state court proceedings, list four of the seven reasons cited in the applicable rule as a basis for dismissing a complaint. Extra credit if you can name the exact rule and if you can list the other three reasons.

The rule of civil procedure is \_\_\_\_\_

5. List the four parts of a complaint as found in the text, and briefly describe each part.
6. Explain the difference between “subscription” and “verification.”
7. Explain the difference between a “fact pleading” jurisdiction and a “notice pleading” jurisdiction.

Part II. Multiple choice. (2 points each). Circle the correct answer.

1. If a defendant wishes to assert a claim against a co-defendant, it would file a:
  - (1) an injunction
  - (2) counter-claim
  - (3) cross-claim
  - (4) third-party complaint
2. A motion in limine is a:
  - (1) a motion to dismiss
  - (2) a motion for protection against prejudicial questions and statements at trial
  - (3) a motion to force a witness to testify
  - (4) a motion directed to pleadings to strike scandalous matters and allegations.

Part III. True or false. 10 questions. (1 points each).

1. A paralegal/legal assistant may not attend any discovery related proceedings if the opposing party objects.

2. Only a judge can enter a default judgment against a defendant who does not timely answer a complaint filed against him or her.
3. In a federal court proceeding, every motion must include a memorandum of law in support of the motion.
4. A complaint that is properly filed must be answered or otherwise responded to within 30 days after it is served.
5. Only a defendant may “remove” a case to federal court.
6. A demand for jury trial is assumed unless otherwise stated in the complaint.
7. If a plaintiff includes scandalous and impertinent allegations in a complaint, which is otherwise valid, the defendant may successfully move to have the complaint dismissed.
8. The Atlantis rules of civil procedure require a plaintiff to state a claim in one paragraph. If there are separate claims, they must be stated in a separate paragraph.
9. A lawyer is responsible for the actions of a non-lawyer assistant even though that assistant has just started to work in the law office and really doesn't know all the rules of the office of court.
10. The rules of professional conduct that govern all members of the Atlantis bar are aspirational goals and are not enforceable.

#### **Quiz #4**

All questions count for 20 points each.

1. List the most common way that service of process is achieved in the:
  - Federal court
  - State court \_\_\_\_\_
2. What does the term “long-arm statute” mean?
3. List the four different things that a defendant who has been served with initial process may do upon receiving the complaint.
4. True or false. (4 point each).
  - a) A “quasi in rem” action is one in which the court uses the property of a defendant over whom it does not have personal jurisdiction to pay a judgment against the defendant entered in an action unrelated to the property.
  - b) Only a judge can enter a default against a defendant who does not timely answer a complaint filed against him or her.
  - b) In a state court proceeding within the state of Atlantis, every motion must include a memorandum of law in support of the motion.
  - c) An answer to a complaint must be filed within 30 days, unless an extension of time is granted.

- d) A complaint that is properly filed in state court must be served within 60 days.
- e) Only a plaintiff may “remove” a case to federal court.
- f) The Atlantis rules of civil procedure do not allow for a defendant to be served with initial process when that defendant is brought into the jurisdiction by use of some trick or fraudulent manner.
- g) Whenever an attorney signs a pleading, or motion, he or she certifies that he has read it, that it is filed in good faith and not for any improper reason, and that it is meritorious in his or her opinion.
- h) A motion is a pleading asking the court to move the case along because the opponent is unreasonably delaying justice.
- i) An “in rem” action involves the attachment of property to resolve claims to the property.

### Quiz #5

All questions count for 10 points each.

1. List the discovery devices available under the state rules of civil procedure.
2. Define the term “discovery.”
3. When a party has failed to cooperate in responding to discovery requests, the adverse party may file a motion requesting an order from the court compelling discovery. List three things that a court may impose as sanctions.
4. What is a subpoena, and how does it differ from a subpoena duces tecum?
5. Multiple choice. (5 points each). Circle the correct answer.
  - a. When a party objects to discovery requests, it can seek
    - (1) an injunction
    - (2) protective orders
    - (3) motion to dismiss
    - (4) motion to discover
  - b. When preparing a witness for testimony, you should
    - (1) have them review all recorded statements
    - (2) tell them the answers they should give
    - (3) tell them to be impartial
    - (4) tell them to answer questions quickly
6. True or false. (5 point each).
  - a) Under the rules of civil procedure for use in state court proceedings, a party must update any information given in prior responses to discovery requests from the opposing party.
  - b) An attorney who retains an expert will usually ask for a written report from that expert, because such reports are not admissible at trial unless that expert actually testifies.
  - c) The documents needed in most case files can be neatly organized into one manila folder.
  - d) The term “automated litigation support” refers to the use and application of the computer to litigation tasks.

- e) A lawyer who does not have, within his possession or control, even if in the possession of his client, documents which he knows to be damaging to his case, is not ethically obligated to provide those documents to the opposing party, under state of Atlantis rules of procedure, without a formal request for same.
- f) A paralegal/legal assistant may not attend any discovery related proceedings if the opposing party objects.
- g) Under the federal rules of civil procedure, a party who has reasonably and properly answered discovery requests made by the opposing party does not have to update any responses, provided they were correct when initially given.
- h) Expert witness interrogatories may only be propounded once.

### Quiz #6

All questions count for 20 points each.

1. List four methods of resolving disputes.
2. List as many stages of a trial as you can.
3. Multiple choice. (10 points each). Circle the correct answer.
  - a. What percentage of civil cases are settled?
    - (1) 70%
    - (2) 75%
    - (3) 80%
    - (4) 96%
  - b. A pretrial conference
    - (1) occurs by consent of the parties only
    - (2) is designed to narrow the issues for trial
    - (3) may not be used to encourage settlement
    - (4) may not result in sanctions for the unprepared attorney
  - c. The paralegal can assist in the selection of jurors at trial by
    - (1) recording valuable information about each juror on the jury panel chart
    - (2) asking questions of the jury
    - (3) making numerous judgments based on body language
    - (4) 1 and 3 only
4. True or false. (1 point each).
  - a) Surveillance conducted by a defendant is usually performed with the consent and knowledge of the plaintiff.
  - b) A settlement is the process of both sides reviewing strengths and weaknesses of a case and reaching a mutual agreement on how to dispose of the case.
  - c) A defendant in a lawsuit usually presents a formal settlement package to a plaintiff to give him/herself the best chance to settle the lawsuit.
  - d) Because they communicate most closely with clients, paralegals are best equipped to advise the client on whether or not to accept a settlement.
  - e) In a small case, a settlement demand may be effectively communicated by way of a short and

simple letter.

- f) The term “voir dire” is French and means “to speak the truth.”
- g) “Polling the jury” means the process of carefully evaluating the background of the perspective jurors and getting as much information on them as possible.
- h) Jury instructions are “standard” and may be found in books and manuals and don't require any research or preparation by the legal assistant or paralegal.
- i) Mock juries are used as a good way for a young and inexperienced attorney to get some experience.
- j) Whenever investigating the background of a juror, it is unethical for an attorney to have contact with the prospective juror but all right for a paralegal/legal assistant.

### **Final exam**

Part I. Short answers—25 words or less. 20 questions (2 points each).

1. Define the term “civil litigation.”
2. Define the term “hearsay.”
3. Give six exceptions to the hearsay rule.
4. List the four levels of trial/appellate courts, as discussed in class, for the state judicial system (state court).
5. List the four levels of trial/appellate courts, as discussed in class, for the federal court system (federal courts).
6. List the four separate items that are needed to formally file a complaint with the clerk in state court action.
7. What is an “affirmative defense?” List five examples.

Definition:

- Example no. 1:
- Example no. 2:
- Example no. 3: \_\_\_\_\_
- Example no. 4:
- Example no. 5: \_\_\_\_\_

8. Define the term “preponderance of the evidence.”
9. List the six separate discovery devices available under the rules of civil procedure.
10. List three methods of resolving disputes.
11. Define the term “vicarious liability” and give one example.

- Definition:
- Example:

12. Define the term “pro se.”
13. Define the term “contempt of court.”
14. What does the term “challenge for cause” mean?
15. What is the definition of the term “release?”
16. What is an “I.M.E.,” which is also known as a “C.P.E?” (Extra credit if you can define both).
17. Explain what an “offer of judgment” is and how it works.
18. What is “rebuttal testimony?”
19. What does the term “prejudicial error” mean?
20. Explain how a dismissal with prejudice differs from a dismissal without prejudice.

Part II. Multiple choice. (2 points each). Circle the correct answer.

1. If a defendant wishes to assert a claim against the plaintiff, he or she would file
  - (1) an injunction
  - (2) a counter-claim
  - (3) a cross-claim
  - (4) a third-party complaint
  
2. A motion in limine is a
  - (1) a motion to dismiss
  - (2) a motion for protection against prejudicial questions and statements at trial
  - (3) a motion to force a witness to testify
  - (4) a motion directed to pleadings to strike scandalous matters and allegations
  
3. If a defendant wishes to assert a claim against a third party for a totally unrelated matter, the defendant would file a
  - (1) third party complaint
  - (2) interpleader
  - (3) separate lawsuit
  - (4) petition for writ of certiorari
  
4. A pretrial conference
  - (1) occurs by consent of the parties only
  - (2) is designed to narrow the issues for trial
  - (3) may not be used to encourage settlement
  - (4) may not result in sanctions for the unprepared attorney
  
5. The paralegal can assist in the selection of jurors at trial by
  - (1) recording valuable information about each juror on the jury panel chart after the jurors are sworn
  - (2) asking questions of the jury during breaks
  - (3) making observation based on body language and eye contact, and telling the attorney what she or he observed
  - (4) finding out who is going to be on the 12-member panel from the clerk before the other attorney can do so, by being friendly with the deputy clerks

Part III. True or false. (1 point each).

1. A paralegal/legal assistant may not attend any discovery-related proceedings if the opposing party objects.
2. Only a judge can enter a default judgment against a defendant who does not timely answer a complaint filed against him or her.
3. In a federal court proceeding, every motion must include a memorandum of law in support of the motion.
4. Under the Atlantis rules of civil procedure for use in state court proceedings, a party must update any information that it had previously given to the opposing party in prior responses to discovery requests.
5. Only a defendant may “remove” a case to federal court.
6. A demand for jury trial is assumed unless otherwise stated in the complaint.
7. When exercising a peremptory challenge, an attorney does not need a reason to excuse a potential juror, even if it is racially motivated.
8. Agreements between a co-defendant and a plaintiff are illegal in Atlantis, if they are not revealed to the other defendant.
9. A lawyer is responsible for the actions of a non-lawyer assistant even though that assistant has just started to work in the law office and really doesn't know all the rules of the office or the law.
10. The rules of professional conduct that govern all members of the Atlantis bar, are aspirational goals, and are not enforceable.
11. A lawyer who has within his possession or control, even if they are in the possession of his client, documents that he knows to be damaging to his case is ethically obligated to provide those documents to the opposing party under Atlantis state law.
12. Under the federal rules of civil procedure, a party who has reasonably and properly answered discovery requests made by the opposing party, does not have to update any responses, provided they were correct when initially given.
13. Nothing that is said outside of a courtroom is admissible into evidence.
14. The term “voir dire” is French and means “to speak the truth.”
15. “Polling the jury” means the process of carefully evaluating the background of the prospective jurors and getting as much information on them as possible.
16. All jury instructions are “standard” and may be found in books and manuals, and don't require any research or preparation by the legal assistant or paralegal.
17. In a case where a party wishes to have the claim mediated, the party must file a demand for mediation, and that will commence the process with the AAA.
18. Whenever investigating the background of a juror, it is unethical for an attorney to have contact with the prospective juror but all right for a paralegal/legal assistant.
19. The state of Atlantis is sovereignty and, as such, it cannot be sued in tort for actions by any citizens of the state or any other state, without a statute that authorizes such suits. There is a statutory limit of \$100,000, which is the extent of potential exposure, absent specific approval by the legislature.

20. "Judicial notice" means that a judge can instruct a jury of some facts that do not need to be proven.

Part IV. Long essay. (30 points).

Jane Doe is stopped at a red light at Park and 66<sup>th</sup> Street in Pineapple County, Atlantis, on May 2, 2000. Her vehicle is struck in the rear by a vehicle driven by Joe Cool, who is driving a vehicle that is owned by Papa Cool. Jane suffers injuries that are determined to be permanent in nature and involve a herniated disk in her neck. There are no lost wages. Her medical expenses are \$20,000. She is unmarried. You are asked to prepare a complaint for damages. Please do so.

### Quiz #1 Answers

1. The term “civil litigation” refers to a method of resolving civil disputes between private parties (which can include a governmental agency) as distinguished from criminal prosecutions in which a defendant faces possible incarceration.
2. Negligence is the failure to act as a reasonably prudent person would under like or similar circumstances.
3. Duty; breach of duty; damages; legal causation.
4. Comparative negligence means that a judge, jury, or other trier of fact will determine what persons or entities caused or contributed to cause the loss or damages, up to a total of 100%. In a pure comparative negligence jurisdiction, a plaintiff who is 99% responsible for the loss can still recover against a defendant who is 1% responsible for the loss. In a contributory negligence jurisdiction, if a plaintiff is 1% responsible for the loss, that plaintiff may not recover any moneys whatsoever against a 99% responsible defendant.
5. In Atlantis, those levels are county, circuit, and district courts of appeal, and the supreme court.
6. Magistrate; district; circuit courts of appeal; Supreme Court.
7. To do all things necessary to assist an attorney in the representation of a client, whether it be preparation of documents, interviewing witnesses, conducting research, performing investigations, organizing files, or any number of other such things.
8. (a) False  
(b) True  
(c) True  
(d) False  
(e) False  
(f) True  
(g) False  
(h) False  
(i) True  
(j) False

### Quiz #2 Answers

1. The term “common law” refers to decisions of judges at the trial or appellate level that reflect what the court decided in a particular case and that decision(s) became binding legal precedent for other lower courts to follow in future cases involving the same or similar facts. This is sometimes referred to as “judicially created law,” as opposed to “statutory law,” or law created by a legislative body.
2. The term “strict liability” means that a person or entity is liable for any injury or damage caused to another party by the activity engaged in by the person or entity, regardless of negligence, since the law has determined that anyone who engages in a type of conduct that is inherently dangerous must be prepared to pay for what damage or loss results from such inherently dangerous conduct. The use of dynamite, owning a wild animal, such as a lion, tiger, or bear, or other such conduct is an example of a situation when a person will be held to be strictly liable for an injury or damage which results from the dangerous activity

3. Evidence is the body of law that establishes what can be used at trial to either prove or disprove facts that either side wishes for the jury or trier of fact to hear and consider in reaching a decision.
4. The term vicarious liability means that a person or other legal entity is liable for, or legally responsible for, the actions of another, regardless of whether or not the person or legal entity was in any way at fault for the loss or damage complained of.

An example of vicarious liability is when a parent, who owns a car, allows his or her son or daughter to operate the car, and an accident occurs. By operation of law, the owner of the car is vicariously responsible for the actions of the driver of a car.

5. Hearsay is a statement made outside of the court or courtroom, which is offered by a party at trial to prove the truth of the matter that is being disputed in court. Generally, hearsay is not admissible at the time of trial, but there are many exceptions to the hearsay rule.
6. Dying declarations, spontaneous uttering, admissions of a party, business records, and prior out-of-court statements made by a witness that are/were against the interest of that person are examples of exceptions to the hearsay rule.
7. The term preponderance of the evidence means the greater weight of the evidence. If the scales of justice are tipped ever so slightly in favor of one party, that party has proven his or her case by a preponderance of the evidence.
8. The term “burden of proof” means that one party or the other has the burden of proving, or in some cases disproving, a fact. For example, a person who files a lawsuit against another person has the burden, or obligation, to prove his or her case, by a preponderance of the evidence.
9. (a) True  
(b) False  
(c) False  
(d) True  
(e) False  
(f) False  
(g) False  
(h) False  
(i) False  
(j) False

### Quiz #3 Answers

1. Complaint, summons, civil cover sheet, and a check.
2. An affirmative defense is a defense that says that even if the plaintiff proves absolutely everything that has been alleged in the complaint, the plaintiff is not entitled to the relief sought. Examples of an affirmative defense include
  - illegality, the court will not enforce an illegal activity, i.e. gambling debt
  - accord and satisfaction, the defendant previously offered to settle the matter, the offer was accepted, payment was made, and now the plaintiff cannot seek anything further
  - arbitration and award, the parties submitted the matter to binding arbitration, the defendant either won or paid the award entered by the arbitrator(s), and now the plaintiff cannot come to court to seek anything further
  - res judicata, which means that this exact case involving this exact issue has already been heard and resolved by a prior court and cannot be brought before the court again
  - statute of limitations, which means that the plaintiff has waited too long to bring the case

and is now barred from doing so. There are many other affirmative defenses that can be asserted as well.

3. A contingent fee arrangement means that the attorney is accepting the case with the understanding that his fee is “contingent” upon a successful outcome. Typically a contingent fee is involved with a personal injury claim and the plaintiff’s lawyer will not receive any money unless he or she is able to get some money from a defendant(s). A flat-fee arrangement means that an attorney will receive a fixed amount of money regardless of how much time it takes to resolve a case. An hourly arrangement means that the lawyer is paid by the hour at an agreed upon hourly rate.
4. Lack of jurisdiction over the person, lack of jurisdiction over the subject matter, improper venue, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, failure to name an indispensable party. In Atlantis, the rule is 1.140 (b).
5. Caption (heading); body; prayer for relief, subscription of attorney or pro se party.
6. Subscription means that the attorney, or pro se party, has read the complaint, that it is meritorious, and that it is not being filed for any improper reasons or motives.
7. A fact pleading state requires a pleader, the plaintiff, to state the facts upon which the complaint is being filed, with specificity. A notice pleading jurisdiction simply requires a pleader to state sufficient facts, the ultimate facts if you will, which will place a defendant on notice of what the case is about. Through discovery, all of the facts and circumstances surrounding the complaint will be discovered.
8. Cross-claim (3)
9. Motion for protection against prejudicial questions and statements at trial (2).
10. (a) False  
(b) True  
(c) True  
(d) True  
(e) True  
(f) False  
(g) False  
(h) False  
(i) True  
(j) False

#### Quiz #4 Answers

1. Federal court: mail  
State court: process server
2. A long-arm statute means a jurisdiction of a state or jurisdiction has the power to reach out and require a citizen of another state to answer or otherwise respond to a complaint made against that person in a court of the initiating state.
3. Move to dismiss; answer, file a counterclaim, file a motion to strike, file a motion for bill of particulars, file a third-party claim, or do nothing at all and allow a default to be entered against him or her.
4. (a) False  
(b) False  
(c) False  
(d) False

- (e) False
- (f) False
- (g) True
- (h) True
- (i) False
- (j) True

### Quiz #5 Answers

1. Interrogatories, requests for production from the opposing party, requests for admission, depositions, physical or mental examinations, production of documents and things from non-parties.
2. The term “discovery” means the rules of law and procedure that have been created to provide for the orderly exchange of information by and between parties to a lawsuit so that there will be no surprises at the time of trial.
3. Usually, a party would give notice to the court that an opposing party has failed to obey the rules and would ask the court to compel the other side to either give answers or responses that are overdue, and a court would so order, and could impose costs and attorneys fees against the offending party. In an unusual case, where the discovery is long overdue, and a court order has been disobeyed, a court could find a person to be in contempt of court for failure to abide by the rules, and could issue a formal order to show cause against the offending party; a court could strike pleadings and enter a default in an egregious situation.
4. A subpoena requires a person to be someplace at a designated time. A subpoena duces tecum requires the person subpoenaed to bring documents with him or her when they come.
5. (A) File a motion for a protective order (2)  
(B) Have them review all of their records and statements, and their deposition testimony, if applicable.
6. (a) False (in Atlantis)  
(b) False  
(c) True  
(d) True (in Atlantis)  
(e) True  
(f) True  
(g) False  
(h) False

### Quiz #6 Answers

1. Arbitration, mediation, trial, informal settlement by and between the parties.
2. Voir dire examination; opening statement; plaintiff’s case in chief; motions at the close of plaintiff’s case; defendant’s case in chief; motions at the close of defendant’s case; rebuttal testimony by the plaintiff; (surrebuttal in some jurisdictions); motions at the close of all the evidence; jury charge conference; closing arguments, jury instructions; jury deliberations, jury verdict.
3. (A) 96% (4)  
(B) is designed to narrow the issues to be tried (2)  
(C) The correct answer is (4) record information and make observations of the jurors.
4. (a) False  
(b) True  
(c) False, usually a plaintiff does that.

- (d) False
- (e) True
- (f) True
- (g) False
- (h) False
- (i) False
- (j) False

## Final exam

### Part I. Short Answers

1. The term civil litigation refers to a method of resolving civil disputes between private parties (which can include a governmental agency) as distinguished from criminal prosecutions in which a defendant faces possible incarceration.
2. Hearsay is a statement made outside of the court or courtroom. It is offered by a party at trial to prove the truth of the matter. Generally, hearsay is not admissible at the time of the trial, but there are many exceptions to the hearsay rule.
3. Dying declarations, spontaneous utterings, admissions of a party, business records, prior out-of-court statements made by a witness that are/or were against the interest of that person, former testimony, present sense impressions, statement of present or past conditions for medical diagnosis, and statement of present state of mind are examples of exceptions to the hearsay rule.
4. In Atlantis, those levels are county, circuit, district courts of appeal, and the Supreme Court.
5. Magistrate, district, circuit courts of appeals, Supreme Court.
6. Complaint, summons, civil cover sheet, and a check.
7. An affirmative defense is a defense that says that even if the plaintiff proves absolutely everything that has been alleged in the complaint, the plaintiff is not entitled to the relief sought. Examples of an affirmative defense include
  - illegality, the court will not enforce an illegal activity, *i.e.* gambling debt
  - accord and satisfaction, the defendant previously offered to settle the matter, the offer was accepted, payment was made, and now the plaintiff cannot seek anything further
  - arbitration and award, the parties submitted the matter to binding arbitration, the defendant either won or paid the award entered by the arbitrator(s), and now the plaintiff cannot come to court to seek anything further
  - res judicata, which means that this exact case involving this exact issue has already been heard and resolved by a prior court and cannot be brought before the court again
  - statute of limitations, which means that the plaintiff has waited too long to bring the case and is now barred from doing so. There are many other affirmative defenses that can be asserted as well.
8. The term preponderance of the evidence means the greater weight of the evidence. If the scales of justice are tipped ever so slightly in favor of one party, that party has proven his or her case by a preponderance of the evidence.
9. Interrogatories, requests for production from the opposing party, request for admission, depositions, physical or mental examinations, production of documents and things from non-parties.
10. Arbitration, mediation, trial, informal settlement by and between the parties.
11. The term vicarious liability means that a person or other legal entity is liable for, or legally responsible for, the actions of another, regardless of whether or not the person or legal entity was in

any way at fault for the loss or damage complained of.

An example of vicarious liability is when a parent, who owns a car, allows his or her son or daughter to operate the car, and an accident occurs. By operation of the law, the owner of the car is vicariously responsible for the actions of the driver of a car.

12. Pro se means the party is not represented by an attorney and is representing him or herself.
13. Contempt of Court means that a person or entity has disobeyed an order of the court or has shown disrespect for the power and authority of the court. There are several categories of contempt of court: direct criminal, indirect criminal, direct civil, or indirect civil. Contempt is punishable by incarceration and fines, in certain circumstances.
14. Challenge for cause means that a prospective juror is not capable of sitting as a juror in a given case, as a matter of law, as determined by the trial judge, due to some particular circumstance, such as familiarity with a witness, or one of the parties, due to the juror's background, prejudices, opinions or the like.
15. The term "release" normally refers to a written document whereby one party releases another party or parties from many further legal responsibility for a debt or other obligation, usually for the payment of money.
16. An I.M.E. means an independent medical examination. A C.P.E. means a compulsory physical examination. Either situation involves a requirement made by the defendant to have a plaintiff/claimant examined by a medical doctor, or other medical care provider.
17. An offer of judgment is an offer made by a defendant to allow a plaintiff to take a judgment against the defendant for a sum certain. It is made before trial and, under the rule in some jurisdictions, if the plaintiff does not accept the offer and a jury or judge returns a verdict that is within 25% of the offer, the plaintiff may have to pay costs and attorney fees for wrongfully refusing a reasonable offer of settlement, as set forth by statute and by rule.
18. Rebuttal testimony is testimony offered by the plaintiff to rebut the testimony presented by the defense at trial.
19. Prejudicial error means that an error occurred during the trial of the case, which was not harmless error, and requires a new trial to take place.
20. A dismissal with prejudice means that the matter may never be brought back before the court again, whereas a dismissal without prejudice means that it can be brought back up again.

Part II. Multiple choice. (2 points each). Circle the correct answer.

1. Counter-claim (2)
2. A motion for protection against prejudicial questions and statements at trial (2)
3. Interpleader (2)
4. Is designed to narrow the issues for trial (2)
5. Making observations based on body language and eye contact, and telling the attorney what she or he observed (3)

Part III. True or false. (1 point each).

1. False
2. True
3. True

4. False (in Atlantis)
5. True
6. False
7. False
8. True (in Atlantis)
9. True
10. False
11. True
12. False
13. False
14. True
15. False
16. False
17. False
18. False
19. True (in Atlantis)
20. True

#### Part IV. Long Essay

Instructors: Please see the forms in the text and use your discretion and judgment on this question.