

INSTRUCTOR S MANUAL

INTRODUCTION TO LAW
Second Edition

HAMES & EKERN

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MODEL SYLLABUS AND COURSE OUTLINE

Introduction to Law

Instructor:

Telephone/E-mail:

Web Page:

Office:

Office Hours:

Course Description (Use description found in school catalog)

This course covers the structure and function of the American legal system. Major areas of substantive law are introduced to students. An overview of both civil and criminal procedure is also provided. Legal vocabulary and the process of legal analysis are emphasized.

Course Objectives

When students complete this class they should:

- Understand the structure and function of the American legal system
- Understand and be able to use legal terminology
- Be able to analyze a basic factual problem in light of statutory or case law
- Be able to explain basic court procedures used in civil and criminal cases
- Develop a basic understanding of major areas of substantive law
- Know how to read and brief a case
- Know how to read and analyze a statute

Text

Introduction to Law 2ed., by Hames and Ekern, Prentice Hall

Instructional Methods

A variety of instructional methods are used including lecture, case study from text, small group discussion and writing exercises, individual writing exercises, Internet assignments, speakers, and videos.

Student Evaluation

Students are evaluated on the following: midterm and final examinations, written homework assignments, classroom written assignments, and classroom participation.

Grading Scale (Insert your grading scale.)

Instructor Policies
exams, etc.)

(List any specific policies that you have, i.e., late assignments, missed

Course Schedule (Quarter)

Week

Topic/Assignment

1. Chapter 1 Legal Community and Professional Responsibility
Appendix II Paralegal Ethics
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 2 The American Legal System
Chapter 3 Laws: Their Sources
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 4 Finding the Law: Legal Research
Appendix IV Basic Citation Reference Guide
Appendix V *Marvin v. Marvin* cases
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 5 Using the Law: Analysis and Legal Writing
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 6 Laws: Civil v. Criminal
Chapter 7 Personal Injury Practice: Tort Law and Workers Compensation
Chapter 8 Family Law

Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Midterm Examination
Chapter 9 Wills, Trusts, and Probate
Chapter 10: Business Practice: Contract Law & Property Law
Chapter 11 Business Practice: The Law of Business Organizations and Bankruptcy
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 12 Criminal Practice: Criminal Law and Juvenile Law
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 13 Civil Procedure Before Trial
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 14 Criminal Law: Procedure
Chapter 15 Alternative Dispute Resolution
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 16 Rules of Evidence
Chapter 17 The Trial
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 18 Law and Technology: A Paralegal Perspective
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Final Exam

Course Schedule (Semester)

Week	Topic/Assignment
1.	Chapter 1 Legal Community and Professional Responsibility Appendix II Paralegal Ethics <u>Assignment:</u> (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)
1.	Chapter 2 The American Legal System Chapter 3 Laws: Their Sources <u>Assignment:</u> (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)
1.	Chapter 4 Finding the Law: Legal Research Appendix IV Basic Citation Reference Guide Appendix V <i>Marvin v. Marvin</i> cases <u>Assignment:</u> (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)
1.	Chapter 5 Using the Law: Analysis and Legal Writing <u>Assignment:</u> (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)
1.	Chapter 6 Laws: Civil v. Criminal <u>Assignment:</u> (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)
1.	Chapter 7 Personal Injury Practice: Tort Law and Workers Compensation <u>Assignment:</u> (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 8 Family Law
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 9 Wills, Trusts, and Probate
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Midterm Examination
Chapter 10: Business Practice: Contract Law & Property Law
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 11 Business Practice: The Law of Business Organizations and Bankruptcy
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 12 Criminal Law and Juvenile Law
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 13 Civil Procedure Before Trial
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 14 Criminal Law: Procedure
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 15 Alternative Dispute Resolution
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 16 Rules of Evidence

Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 17 The Trial
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Chapter 18 Law and Technology: A Paralegal Perspective
Assignment: (Select various assignments from Featured Web Site, Questions for Review, Questions for Analysis and Assignments and Projects.)

1. Final Exam

INTRODUCTION

Paralegal education strives to achieve a balance between theory and practice. In this *Introduction to Law* textbook we have attempted to bring that balance to an introductory class. Naturally, it is important that beginning students develop a legal vocabulary and learn about the legal system. It is also important, however, that they begin developing the skills they will need in the job market. In writing this book we have endeavored to help students accomplish these tasks. Because of the emphasis on legal vocabulary and the basic approach to the law, this text is appropriate for any introduction to law class

ORGANIZATION OF INSTRUCTOR S MANUAL

At the beginning of the Instructor s Manual, there is a Model Syllabus and Course Outline with variances for quarter and semester courses. The balance of this Instructor s Manual is organized in such a way as to give you an overview of the text as a whole and an overview of each individual chapter. You will find a description of the general features of the text. Following that is a section in which each chapter is treated separately. You are given a detailed outline for each chapter, suggestions on ways to approach the Ethical Choices and some of the Questions for Analysis and Assignments and Projects, and a list of those skills emphasized in the chapter. In addition, all cases in the text are briefly summarized and suggested answers for the case questions are given. At the end of this Instructor s Manual you will find a Test Bank with an Answer Key. True/False and multiple choice questions have been developed for each of the chapters. If you wish to include essay type questions in your exams, the questions for review at the end of each chapter are appropriate.

OVERHEAD TRANSPARENCY MASTERS

Several overhead transparency masters have been prepared for each chapter. A list of these resource materials is included in this Instructor s Manual in each chapter section.

SUPPLEMENTAL ACTIVITIES and MATERIALS

Videos often help supplement and illustrate legal principles discussed in the text. Fortunately, many are available from sources such as:

Court TV	www.courttv.com
The American Bar Association	www.abanet.org
The Wisconsin Bar Association	www.wisbar.org/

(Note: In addition to having students view videos, you can also have them complete a worksheet related to the video. For some sample worksheets see the Appendix following the Test Bank in this Instructor s Manual.)

An introductory class is also an ideal forum for guest speakers. Paralegals, attorneys and judges add a realistic perspective for the beginning student.

CASE SUMMARIES, CASE QUESTIONS, and SUGGESTED ANSWERS

Throughout the text we have included various case reports and statutes in order to introduce students to the law itself (the Constitution is in Appendix I). Questions follow the cases and statutes primarily to give students the opportunity to develop critical analytic skills. In some instances, there are specific and correct answers to the questions that the student will be able to understand, if he or she understood the case or statute. In other instances, the questions ask for opinions from the student, and there is no right or wrong answer. Questions can be discussed orally in class or assigned as writing exercises, either in or out of class. Summaries of all cases are included in the Instructor s Manual. Where appropriate, suggested answers are provided in this Instructor s Manual.

LEGAL ETHICS / ETHICAL CHOICES

No introductory text is complete without some exposure to the topic of legal ethics. In our experience, we have seen the topic of legal ethics covered in different ways. Sometimes it is included in an introductory course. Other times it is the subject of an entire course. We have introduced the major areas of concern in the first chapter. In Appendix II, we have included complete copies of the NALA Code of Ethics and Professional Responsibility, the NALA Model Standards and Guidelines for Utilization of Legal Assistants (Annotated), and the NFPA Model Code of Ethics and Professional Responsibility. In addition, each chapter contains a few hypothetical situations, called Ethical Choices, which give the student the opportunity to discuss various practical ethical questions that arise. In discussing these situations, you can branch off into related areas and incorporate the appropriate NALA and NFPA rules. Of course, you can also bring in the state ethical rules of your jurisdiction.

In this Instructor s Manual we have repeated each of the Ethical Choices in the text, noting the page in the text on which it appeared. We have added a series of questions or issues that we think are appropriate to discuss. These questions are by no means exhaustive and your own experience will undoubtedly raise other issues. In addition, in this Instructor s Manual we have mentioned supplemental materials, especially various videos that can be used to augment this area.

QUESTIONS FOR ANALYSIS AND SUGGESTED ANSWERS

An important feature of the second addition of this text is the addition of Questions for Analysis at the end of each chapter. Where appropriate suggested answers or approaches to these questions are included in this Instructor's Manual.

ORGANIZATION OF THE TEXTBOOK

This textbook is organized into two major parts. Part One, The Legal System contains five chapters and is an overview of the legal system. This section introduces the students to the various participants in the legal system, including paralegals, attorneys, law office support staff, and court staff. It also introduces the students to the structure and functions of the various components of the legal system. The various sources of our laws are explained and students are given a brief introduction to legal research, analysis and writing.

Part Two, Legal Practices and Principles covers the basic legal principles that form the basis of legal practice in the United States. Students are introduced to some of the more common areas of substantive law that form the basis of most legal practice. Tort law, family law, wills, trusts and probate law, contract law, real property law, intellectual property law, business organizations, bankruptcy, and criminal law are introduced. In all of the chapters major legal concepts and legal vocabulary are stressed. In addition to substantive law, students are introduced to civil procedure and criminal procedure as well as some of the important rules of evidence. Alternative dispute resolution and legal technology are also covered. Many of these chapters contain sample documents so students gain a true appreciation for legal practice, not just legal theory.

FEATURES OF THE TEXTBOOK

The features incorporated into the text are what we look for in the texts used in our classrooms. In our over thirty years of teaching experience, we have found that a combination of critical thinking, writing, practical activities, and projects help students grasp the concepts presented. The multitude of features in *Introduction to Law* make it an excellent choice for both the student and the instructor. Students will find an easy-to-read text with a built-in dictionary, realistic factual situations and high-interest cases. Instructors will find an organized text containing questions to help students review text material, hypothetical situations for class analysis and discussion and assignments in each chapter. More specifically, *Introduction to Law* contains the following features:

- **Legal Vocabulary** is identified in boldface type. The key terms are defined in the margins of the text where the terms appear and the terms are also listed at the end of each chapter for review.
- A **Case File**, containing a hypothetical factual situation opens each chapter. This case file serves as an introduction to the subject matter, encouraging the student to

think about the subject matter in a law office or everyday setting, rather than just as more textual reading.

- Carefully selected and edited **Case Law** appears in each chapter. The case law introduces students to reading the law and assists with the development of critical thinking skills. The cases are interesting and even familiar. Most cases have been edited, in an effort to shorten them and to give beginning students the opportunity to ascertain the important concepts of the case without being confused. In order to assist the student we have also provided a brief introduction to each case as well as questions for **Case Analysis** following the case. (In editing the cases we have taken some liberties with normal rules of editing.)
- A **Technology Corner** in each chapter provides a list of Internet sites that are relevant to the material in the chapter. A **Featured Website** in each chapter provides an overview of one important website along with student assignments utilizing the site.
- **Ethical Concerns** in each chapter contain hypothetical situations presenting ethical questions suitable for class discussion. Students are given the opportunity to apply the various ethical rules to real-life situations.
- A **Chapter Summary** is included in every chapter. The summaries are short overviews of the major concepts covered in the chapter.
- Basic **Review Questions** follow the chapter summary. These questions are designed to assist the student in focusing on the most important concepts in the chapter.
- **Questions for Analysis** at the end of each chapter are designed to require the student to apply the concepts covered in the chapter.
- An **Assignments and Projects** section follows the questions for analysis. The assignments and projects are hands-on activities designed to help the student build necessary skills.
- Most chapters include a feature we call **A Point to Remember**. This information is practical, and fashioned to help the students focus on the skills and concepts that will help them in their legal studies.
- A complete **Glossary** at the end of the text contains definitions for all highlighted vocabulary used in the text.
- A **Mock Trial** is in Appendix III and a **Basic Citation Reference Guide** is included as Appendix IV. The mock trial could be used at the end of Chapter 17 (The Trial). We have found that a mock trial is fun and memorable for the students. We have provided the basic fact pattern and the legal issues. The trial is a good opportunity for students to apply the materials in the preceding chapters.

Appendix Materials:

The United States Constitution
Paralegal Ethics (The NALA and NFPA rules)
A Mock Trial
Basic Citation Reference Guide
Marvin v. Marvin cases
Selected Federal Rules of Evidence

Recent United States Supreme Court Decisions

CHAPTER BY CHAPTER OUTLINE AND ANALYSIS

CHAPTER 1: THE LEGAL COMMUNITY AND PROFESSIONAL RESPONSIBILITY

TRANSPARENCY MASTERS

- The Legal Community
- Paralegal Skills
- Paralegal / Legal Assistant
- Regulation of Paralegals
- Legal Support Staff
- Court Personnel
- Professional Organizations
- Ethical Responsibilities
- Ethical Rules and Guidelines

PURPOSE AND SUBSTANTIVE CONTENT

This chapter introduces students to the various legal professions. It explains the role of all legal professionals and para-professionals in the legal system. Various professional organizations are discussed. The importance and nature of ethical responsibilities is highlighted. Students should also be asked to read carefully Appendix II, which contains the canons of ethics from NALA and NFPA, as well as Guidelines for use of Paralegals.

CHAPTER OUTLINE

- Technology Corner
- Case File

- 1-1 Introduction
- 1-2 The Legal Profession
 - Lawyers
 - The Practice of Law
- 1-3 The Paralegal Profession
 - Paralegals in the Legal Environment
 - Independent Paralegals
 - Regulation of Paralegals
 - Paralegal Education
 - Paralegals as Professionals
- 1-4 Legal Support Staff
 - Legal Secretaries
 - Law Clerks
 - Other Support Staff
- 1-5 Court Personnel
 - Judges

- Court Clerks
- Court Reporters
- Bailiffs
- 1-6 Agency Personnel
- 1-7 Professional Organizations
 - American Bar Association (ABA)
 - State Bar Associations
 - Local Bar Associations
 - American Trial Lawyers Association (ATLA)
 - National Association of Legal Assistants (NALA)
 - National Federation of Paralegal Associations (NFPA)
 - American Association for Paralegal Education (AAfPE)
 - Local Paralegal Associations
- 1-8 Ethical Responsibilities
 - Confidentiality
 - Competency
 - Conflict of Interest
 - Attorney Fees and Trust Accounts
 - Diligence
 - Communication with Opposing Parties
 - Unauthorized Practice of Law

Featured Web Site

Chapter Summary

Terms to Remember

Questions for Review

Questions for Analysis

Assignments and Projects

SKILL BUILDING

The case questions, assignments, and projects give students the opportunity to build the following skills:

Critical Analysis

Interviewing

Investigation

Writing

Computer



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

Missouri v. Jenkins, 491 U.S. 274 (1989) (Pg. 9)

In a major school desegregation case preceding this action, respondents prevailed and were awarded attorney s fees under 42 U.S.C./ 1988. In this case, the Supreme Court was asked to decide whether and to what extent paralegal time could be included in the award of attorney s fees. Respondents claimed they should be allowed to recover the amount they normally billed for paralegal work. Petitioner (Missouri) claimed that respondents should recover only what they actually pay paralegals. In finding for respondents, the Court discussed the role paralegals now play in the legal community, comparing much of their work to the work of the attorney.

1. The parties to a case are the people or organizations who have brought their dispute to court. Who are the parties in this case? Which party petitioned the Supreme Court for review? Can you tell which party won the case at the trial level?

Suggested Answer:

The parties are the State of Missouri and Jenkins. Missouri petitioned the Court. Jenkins won at the trial level.

1. Describe the nature of the dispute between the parties in this case. How did the Court resolve the dispute?

Suggested Answer:

The parties argued over whether paralegal time could be included when assessing an award of reasonable attorney fees to the same extent that the time would be billed to a client. The Court found that paralegal time, billed at the going rate, was properly included in an award of attorney s fees.

1. What does the Court say about the nature of work done by paralegals? Do you think this has any impact on the way judges and lawyers view the paralegal profession?

Suggested Answer:

In one of the footnotes, the Court states:

It has frequently been recognized in the lower courts that paralegals are capable of carrying out many tasks, under the supervision of an attorney, that might otherwise be performed by a lawyer and billed at a higher rate. Such work might include, for example, factual investigation, including locating and interviewing witnesses; assistance with depositions, interrogatories, and document production; compilation of statistical and financial data; checking legal citations; and drafting correspondence. Much such work lies in a gray area of tasks that might appropriately be performed either by an attorney or a paralegal....

The Court also says that the use of paralegals allows for more affordable legal services to be rendered

(The second part of this question calls for student opinion.)

1. Is the Court treating paralegals more like secretaries or more like attorneys? Explain.

Suggested Answer:

By allowing the recovery of paralegal time the Court is obviously treating paralegals more like attorneys than secretaries.

29 CFR 541.1 (d) & 29 CFR 541.107 (Pg. 12)

This section provides that overtime pay need not be paid to workers who customarily and regularly exercise discretionary powers and that this requirement is met by the employee who normally and recurrently is called upon to exercise and does exercise discretionary powers in the day-to-day performance of his duties. 29 CFR 541.107

1. Do you think paralegals are entitled to overtime pay according to this law?

Suggested Answer:

Although this question calls for an opinion by the student, in answering, students should analyze the type of work done by paralegals and the skills required and discuss how much discretion is involved in the work.

1. What factors are important in making this determination?

Suggested Answer:

Students might discuss the fact that not all paralegals do the same type of work. Some have much more discretion than others. Students should also discuss the fact that paralegals should be working under the supervision of a lawyer.

1. What about other law office support staff?

Suggested Answer:

Most support staff would probably not fall into this category since their work is largely ministerial. However, legal secretaries might at times be close to paralegals.

1. What about attorneys?

Suggested Answer:

Even attorneys who work for other attorneys or organizations are required to use their discretion and judgment. Students should try to give some examples of the types of work done by attorneys that would demonstrate this.

***Phoenix Founders, Inc. v. McClellan*, 887 S.W.2d 831, 38 Tex. Sup. J. 12 (1994) (Pg. 20)**

This case concerns the ethical question of conflict of interest. The court was asked to consider whether a law firm must be disqualified from ongoing litigation because it rehired a legal assistant who had worked for opposing counsel for three weeks. Phoenix was represented by the law firm of Thompson and Knight. A paralegal working for this firm left and was hired by the firm of David and Goodman, who represented the Benekes. The Benekes were being sued by Phoenix. The paralegal who originally worked for Thompson and Knight, left and went to work for David and Goodman for three weeks and then returned to Thompson and Knight. While at David and Goodman, the paralegal had some minor involvement in the case against the Benekes. When she returned to Thompson and Knight, the Benekes made a motion to disqualify the firm on the basis that they were now privy to confidential information. In the meantime, the paralegal had resigned from the firm (the alternative being termination). The trial court disqualified the firm. They appealed. The court stated that the paralegal did obtain confidential information. However, the court could not say that any confidential information obtained by a paralegal was absolutely imputed to the law firm. The firm would not have to be disqualified if proper steps were taken to insulate the paralegal. The case was remanded to determine if Thompson and Knight had in fact taken such steps.

1. Who brought this action in court and why?

Suggested Answer:

This action was brought by the law firm of Thompson and Knight, attorneys for Phoenix Founders, Inc. Obviously the firm did not want to be disqualified from representing plaintiffs in this and other litigation.

1. Why did the firm of Thompson and Knight ask the paralegal, Denise Hargrove, to leave or be fired?

Suggested Answer:

The answer to this question is not apparent in the case. One of two reasons seems probable. Either the firm was trying to minimize the conflict (and the paralegal was more expendable than the client), or it felt that she might not have been honest with them. This question gives students the opportunity to discuss the importance and consequences of ethical choices.

1. The Court talks a great deal about formal screening (which is sometimes referred to as the Chinese Wall). What types of things could be done in a law firm to achieve this?

Suggested Answer:

Students should discuss ways of keeping files from a person who has a conflict. They should also discuss ways of making sure that the case is not inadvertently discussed in the presence of such an individual.

ETHICAL CHOICES

You have just completed your first year of your paralegal education. Your neighbor, and good friend, was recently in an automobile accident. She tells you how the accident happened and asks if she has a good case. What should you tell her? (Pg. 8)

Points to Discuss:

This situation raises the issue of giving legal advice and the unauthorized practice of law. Students should discuss what they can tell their neighbor as well as what they cannot.

QUESTIONS FOR ANALYSIS

1. Review the classified section of your local newspaper for job advertisements for attorneys, paralegals and legal secretaries. Compare and contrast the job requirements and skills.

No suggestion here.

2. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.

CHAPTER 2: THE AMERICAN LEGAL SYSTEM

TRANSPARENCY MASTERS

Powers of the Federal Government
Powers of the Federal Government
Powers of the State Government
The Supremacy Clause
Texas v. Johnson
The U.S. Supreme Court

PURPOSE AND SUBSTANTIVE CONTENT

The purpose of this chapter is to give the introductory student an overview of the American legal system. Included is a discussion of the concept of federalism. All branches of the federal and state governments are discussed, with an emphasis on the structure and role of the various federal and state courts.

CHAPTER OUTLINE

Technology Corner
Case File

- 2-1 Introduction
- 2-2 Federalism — The Relationship Between Federal and State Government
 - Powers of the Federal Government
 - Powers of the State Government
 - Exclusive and Concurrent Powers of Federal and State Governments
 - Conflicts Between Federal and State Laws — The Supremacy Clause
- 2-3 The Federal Government and the Legal System
 - Executive Branch
 - Legislative Branch
 - Judicial Branch
- 2-4 State Governments and the Legal System
- 2-5 The Courts and Their Roles
 - The Federal Court System
 - Federal District Courts
 - Federal Appellate Courts
 - The U.S. Supreme Court
 - The Courts and Technology
 - Federal Judges
 - State Court Systems
 - State Court Judges

Featured Web Site
Chapter Summary
Terms to Remember
Questions for Review
Questions for Analysis
Assignments and Projects



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

Katzbach , Acting Attorney General v. McClung, 379 U.S. 294 (1964) (Pg. 27)

This case involved the application of the Civil Rights Act of 1964 to a small family-run restaurant, Ollie s Barbecue. Ollie s refused to serve blacks on the premises. As a result this action was brought. Since the Civil Rights Act applied only if a business was involved in interstate commerce, the Court had to decide if a small family-owned business was so involved. The record showed that part of the supplies bought by the restaurant were transported in interstate commerce, even though the restaurant operated solely within a state. The court held that there was a sufficient connection with interstate commerce to apply the Civil Rights Act.

1. This case deals with the validity of the Title II of the Civil Rights Act of 1964. Why is the Court discussing the interstate commerce clause of the U.S. Constitution?

Suggested Answer:

Since the power of Congress to make laws is restricted to those matters authorized in the Constitution, the Civil Rights Act must have some connection with a power given to Congress under the U.S. Constitution. The Interstate Commerce Clause gives Congress the power to regulate interstate commerce. In answering this question, students should demonstrate that they know Congress cannot make any law it wants to.

1. Does a small, family-owned business really have a substantial impact on interstate commerce? Why or why not?

Suggested Answer:

This question really calls for the students opinion and analysis. Although the Court felt that Ollie s Barbecue did have a sufficient impact, students might not agree.

1. Do you think that, under the Interstate Commerce Clause, Congress would have the power to make a law that makes it a crime for a person to possess a gun in areas around schools? See *U.S. v. Lopez*, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995)

Suggested Answer:

This question calls for analysis by the students. They should compare this situation to the case. The issue is what effect the restriction of possession of guns has on interstate commerce. (The *Lopez* case held that Congress did not have the power to make such a law.)

1. Could the U.S. Congress make it a federal crime for any business to discriminate because of race, sex or national origin or age? Why or why not?

Suggested Answer:

Again, this question calls more for student analysis and opinion. No answer is found directly in the case. Students should discuss whether Congress has general rights to enact crimes (which of course it does not). They should also discuss whether other provisions under the Constitution might control. Students will probably be inclined to mention the equal protection clause of the 14th Amendment. At this point a discussion about the fact that this Amendment only applies to state action and not individual action is appropriate.

***Texas v. Johnson*, 491 U.S. 397 (1989) (Pg. 30)**

In this case the defendant, Johnson, was found guilty in a Texas trial court for violating a state law making it a crime to burn the American flag. He did this at the Republican national convention held in Texas. Johnson appealed and eventually the U.S. Supreme Court granted certiorari. The question was whether burning the flag was protected under the First Amendment Right to Free Speech. The Supreme Court held that it was.

1. What gave the United States Supreme Court, a federal court, the right to review a Texas State law?

Suggested Answer:

The fact that a U.S. Constitutional right was asserted gave the Supreme Court federal jurisdiction.

1. Suppose that Johnson had burned a Texas state flag instead of the U.S. flag.
 - a. Would the U.S. Supreme Court have jurisdiction to hear the case?
 - b. If the Supreme Court did hear the case, do you think the decision would have been any different?

Suggested Answer:

The Supreme Court could hear the case and the result would probably be the same because the real issue was the Right to Free Speech under the U.S. Constitution, not whether the criminal law was state or federal.

1. In which court was Johnson first tried? List all of the courts that heard this case in the order in which they heard it.

Suggested Answer:

The case was first tried in a Texas trial court; The Court of Appeals for the Fifth District of Texas at Dallas affirmed Johnson's conviction, 706 S.W. 2d 120 (1986), Texas Court of Criminal Appeals reversed, 755 S.W. 2d 92 (1988), and U.S. Supreme Court granted a hearing.

Blanton v. North Las Vegas, 489 U.S. 538 (1989) (Pg. 32)

Petitioners were charged with drunk driving, an offense that carried a two-day jail term. They were denied the right to a jury trial in the trial court and appealed to the U.S. Supreme Court. The Court held there was no right to a jury trial in petty offenses which it described as offenses carrying less than six months in jail.

Calif. Health & Safety Code /11357 (b) makes possession of less than one ounce of marijuana a misdemeanor punishable by a fine of \$100.

California Penal Code / 689 provides for the right to trial for any misdemeanor in California.

1. Is there a conflict between California Penal Code/689 and the rule stated by the Supreme Court that jury trials are not required where the penalty is less than six months incarceration?

Suggested Answer:

There is no conflict here. The Supreme Court has held that jury trials are not required but has not precluded any state from offering such trials.

1. Suppose that Jensen is charged with violating California Health and Safety Code /11357 for possessing less than one ounce of marijuana. Assuming this is a public offense and assuming the maximum sentence is a fine of \$100, is Jensen entitled to a jury trial to determine guilt? Why or why not?

Suggested Answer:

Jensen is entitled to a jury trial because California law provides for it.

Heath v. Alabama, 474 U.S. 82 (1985) (Pg. 34)

Petitioner in this action hired two individuals to kidnap and murder his wife. She was kidnapped in Alabama, taken across state lines and murdered in Georgia. Petitioner pled guilty to a non-capital murder charge in Georgia. He was later charged with a capital murder charge in Alabama. Petitioner claimed that the double jeopardy clause of the Fifth Amendment prohibited the action in Alabama. The U.S. Supreme Court held that since the two states were separate sovereigns and each has its own laws and their own interests, each could prosecute the criminal case without any violation of double jeopardy.

1. What is meant by dual sovereignty?

Suggested Answer:

Dual sovereignty means that different governments (either separate states or state and federal) have the right to regulate within their governmental boundaries. When individuals have dealings with more than one government they are subject to laws of each of these governments.

1. Where do states get their power to prosecute individuals for crimes?

Suggested Answer:

States get their power to prosecute individuals for crimes from their own constitutions.

1. Is there dual sovereignty between a city and the state in which it is located? Explain.

Suggested Answer:

There is no dual sovereignty between a city and state because ultimately the city gets its authority from the state constitutions.

ETHICAL CHOICES

Assume that you work as a paralegal in a law office that has seven attorneys. While you are having dinner with your spouse in a restaurant, you see a female attorney from your law firm having an intimate dinner with a local male judge. The judge has been assigned to hear a case that your supervising attorney is handling. The female in question has nothing to do with this case. What do you do? (Pg. 39)

Points to Discuss:

Is there a potential conflict? Can attorneys and judges socialize? Does this create an appearance of impropriety? Is it the paralegal's obligation or responsibility to say anything? If the paralegal does tattle, how will he or she be regarded?

Assume that you work as a paralegal or legal secretary for an attorney who represents your small city. Work for the city constitutes about 50% of the practice of your attorney. One of the responsibilities of your office is to draft proposed local ordinances at the request of the city council. You receive a telephone call from the mayor of the city who tells you that the council is meeting that evening and he wants a draft of a proposed law that would ban all picketing within 200 feet of city hall. You explain to the mayor that the attorney is out of town for three days. The mayor tells you that he knows that you do all the real work in the law firm and orders you to draft the proposal, adding that if this firm cannot get the job done, the city will have to look for another firm to represent them. You know that the proposal would be unconstitutional. What do you do? (Pg. 41)

Points to Discuss:

Is drafting proposed legislation unauthorized practice of law? Does it require supervision? Is there a client? Can you draft a law knowing it is unconstitutional? Does that violate professional conduct and personal integrity? Does it matter that it is only a draft of a law? Can a paralegal work on any project if he or she believes they are supporting an untenable legal position?

QUESTIONS FOR ANALYSIS

1. Review the box titled Powers Granted to the U.S. Congress and consider the following :
 - a. Would you expect the lawsuit by Eberhardt's employer to be in state court or federal court?
 - b. Would you expect the Eberhardt divorce case to be in state court or federal court?
 - c. Would a federal or county prosecutor be handling the Eberhardt theft charges?
 - d. Would a federal or county prosecutor be handling a treason case against Eberhardt.

Suggested Answer:

- a. The trade secret lawsuit would probably be in state court since there is no federal question.
 - b. The divorce case would be in state court
 - c. A county prosecutor would handle the theft charge, a state crime.
 - d. A federal prosecutor would handle a treason charge
2. Read the hypothetical case in the Mock Trial in Appendix III. If this happened in your city, which court would have jurisdiction?

Suggested Answer:

The exact court will vary from state to state but it will be a trial court with jurisdiction over felonies.

3. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

Suggested Answer:

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.

CHAPTER 3: LAWS: THEIR SOURCES

TRANSPARENCY MASTERS

Constitutional Law
Federal Constitution
Case Law (vocabulary)
Tennessee v. Garner
Statutory Law
Statutory Law (vocabulary)

PURPOSE AND SUBSTANTIVE CONTENT

The purpose of this chapter is to introduce students to the different sources of laws: constitutions, cases, and codes. Each source is explained and examples are provided.

CHAPTER OUTLINE

Technology Corner
Case File

- 3-1 Introduction
- 3-2 Constitutional Law
 - The Federal Constitution
 - State Constitutions
- 3-3 Case Law
 - Common Law
 - Case Law—Interpretation of Constitutional and Statutory Law
 - Case Law—The Power to Invalidate Statutory Law
 - Case Law—The Factual Controversy
 - Stare Decisis
- 3-4 Statutory Law
 - The Legislative Process—The Federal Government
 - The Legislative Process—States
- 3-4 Administrative Regulations

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Questions for Review
Questions for Analysis
Assignments and Projects

SKILL BUILDING

The case questions, assignments, and projects give students the opportunity to build the following skills:

Critical Analysis
Investigation
Interviewing
Writing



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

Koon v. United States, 518 U.S. 81 (1996) (Pg. 49)

This case concerns the criminal action brought against the police officers in the Rodney King beating. The officers were convicted of criminal charges under the federal civil rights statute. The trial judge then imposed sentence. Under federal law, sentencing must follow certain guidelines, established by a special commission established by Congress. These guidelines provide sentencing standards. The trial judge is allowed to depart from these standards or times only under certain circumstances. In the *Koon* case, the trial judge considered various factors and reduced the sentence, departing from the standard sentence. In particular the trial court considered the effect of the conviction on their employment, the fact that this was a first offense, and the hardship to the officers because of the dual prosecution by both state and federal authorities. The government appealed. The Supreme Court held that the first two factors could not be considered by the trial court in sentencing, because they were already reflected in the sentencing guidelines. The hardship caused by double prosecution could be considered, however. The Supreme Court remanded the case for reevaluation.

1. What law is the court interpreting here? Be specific.

Suggested Answer:

The Court is interpreting The Sentencing Reform Act of 1984 as amended in 18 U.S.C. §3551 et seq. and 28 U.S.C. §§991-998.

1. What was the factual controversy in this case?

Suggested Answer:

The factual controversy was whether or not the trial judge abused his discretion in sentencing by reducing the sentence based on three factors: (1) the effect of the conviction on their employment, (2) the fact that it was a first offense, and (3) the extraordinary hardship caused by two separate prosecutions.

1. Would this case have any applicability in determining if Hardtack used excessive force? Explain.

Suggested Answer:

This case has nothing to do with what constitutes excessive force. It is limited to issues relating to sentencing.

Tennessee v. Garner, 471 U.S. 1 (1985) (Pg. 53)

In this case a young burglary suspect was shot and killed by a police officer while attempting to flee the scene of the crime. He was not armed. The father of the victim filed a civil lawsuit against the police officer and the state. The officer was acting in accordance with a state law that authorized the use of deadly force under this circumstance. At trial, the court found in favor of all defendants. The Court of Appeals reversed, stating that the use of force in this case violated the U.S. Constitution because it was unreasonable. The Supreme Court agreed with the Court of Appeals. The use of force in making an arrest must be reasonable. The use of deadly force is generally limited to situations where the perpetrator posed an immediate and serious threat to those around him. In reaching its decision the Court explores the history of this area of law, commenting on the common law rule that one could shoot a fleeing felon and explaining why the rule is no longer appropriate.

1. Which Constitutional provisions apply to this case and how do they apply?

Suggested Answer:

Fourth Amendment The shooting was part of the arrest, and the Fourth Amendment states that arrests must be reasonable. Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution also apply here.

1. What statutory law is the Court interpreting here?

Suggested Answer:

Tenn. Code Ann. /40-7-108 (1982).

1. Did the Court strike down the Tennessee statute? Quote the language that applies.

Suggested Answer:

The Court did not strike down the Tennessee statute in its entirety, only as applied in this type of situation. It is not, however, unconstitutional on its face. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force

may be used if necessary to prevent escape and if, where feasible, some warning has been given. As applied in such circumstances, the Tennessee statute would pass constitutional muster.

1. What common law rule was mentioned by the Court?

Suggested Answer:

The Court discusses the common-law rule that one could use deadly force against a fleeing felon.

1. Why did the Court not follow the common law rule?

Suggested Answer:

The common law was no longer needed. The common law rule occurred at a time when the killing of a resisting or fleeing felon resulted in no greater consequences than those authorized for punishment of the felony of which the individual was charged or suspected. Courts have also justified the common-law rule by emphasizing the relative dangerousness of felons.

Neither of these justifications makes sense today. Almost all crimes formerly punishable by death no longer are or can be. And while in earlier times the gulf between the felonies and the minor offences was broad and deep, today the distinction is minor and often arbitrary. Many crimes classified as misdemeanors, or nonexistent, at common law are now felonies. These changes have undermined the concept, which was questionable to begin with, that use of deadly force against a fleeing felon is merely a speedier execution of someone who has already forfeited his life. They have also made untenable the assumption that a felon is more dangerous than a misdemeanant.

There is an additional reason why the common law rule cannot be directly translated to the present day. The common-law rule developed at a time when weapons were rudimentary. Deadly force could be inflicted almost solely in a hand-to-hand struggle during which, necessarily, the safety of the arresting officer was at risk. Handguns were not carried by police officers until the latter half of the last century. Only then did it become possible to use deadly force from a distance as a means of apprehension. As a practical matter, the use of deadly force under the standard articulation of the common-law rule has an altogether different meaning -- —and harsher consequences — now than in past centuries.

1. In this case, the Court found that the use of deadly force in arresting an individual is a violation of the Fourth Amendment. Hardtack is accused of using excessive force (not deadly). Does this case apply to Hardtack? Why or why not? Quote language in the case that supports your position.

Suggested Answer:

Yes, this case would apply to Hardtack. A police officer may arrest a person if he has probable cause to believe that person committed a crime. *United States v. Watson*, 423 U.S. 411 (1976). Petitioners and appellant argue that if this requirement is satisfied the Fourth Amendment has nothing to say about how that seizure is made. This submission ignores the many cases in which this Court, by balancing the extent of the intrusion against the need for it, has examined the reasonableness of the manner in which a search or seizure is conducted. It is plain that reasonableness depends on not only when a seizure is made, but also how it is carried out. Hardtack is accused of using excessive force in making an arrest. How he made the arrest is an issue. This case would apply.

***Powell v. Alabama*, 287 U.S. 45 (1932) (Pg. 57)**

In this case several young Negro men were tried and convicted of a capital offense in the state court of Alabama. The young men were poor and illiterate. They were not given the opportunity to secure counsel for their defense. They were convicted and appealed to the U.S. Supreme Court.

1. What law is this Court interpreting? Be specific.

Suggested Answer:

The Court is interpreting the Fourteenth Amendment to the U.S. Constitution, in particular the due process clause.

1. Review the definition of the term remand from the previous chapter. Were the defendants in this case set free by the Court?

Suggested Answer:

No, the defendants were not set free. They were ordered to stand trial again, this time with adequate counsel.

1. Does the decision in this case apply to all felony cases? Quote the language in the case that supports your answer.

Suggested Answer:

The decision does not apply to all felony cases. The Court said we are of the opinion that, under the circumstances just stated, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of

counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment. Whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine. All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign.

1. This case started in the Alabama courts. Is it binding in your state? Explain.

Suggested Answer:

Yes. This was a decision on the meaning of the Fourteenth Amendment to the U.S. Constitution by the U.S. Supreme Court. As such, it is binding on all states.

1. What are the various sources of law relied upon by this Court in its decisions. Give examples from the case?

Suggested Answer:

The Court relies on Constitutional law (citing both the U.S. and Alabama state Constitutions), case law (citing the *Holden* decision), and statutory law (citing the Alabama statute dealing with rape).

1. What did the Supreme Court say about possible violations of the Alabama state constitution? Explain.

Suggested Answer:

The Court said it was not up to it to decide those issues. It was concerned with the U.S. Constitution. The Constitution of Alabama provides that in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel; and a state statute requires the court in a capital case, where the defendant is unable to employ counsel, to appoint counsel for him. The state supreme court held that these provisions had not been infringed, and the Supreme Court said it was powerless to interfere with that decision.

STATUTORY LAW, QUESTIONS, AND SUGGESTED ANSWERS

Federal Statutory Law (United States Code): 18 U.S.C. / 242 makes it a crime for anyone acting under color of authority to deprive another person of any Constitutional right because of color or race.

State Statutory Law

Battery Defined

A battery is any willful and unlawful use of force or violence upon the person of another.

Punishment for battery.

A battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.

California Penal Code //242, 243

1. Review the facts in the memo at the beginning of the chapter. Has Hardtack violated the federal statute? Explain

Suggested Answer:

Hardtack was a police officer on duty, so he was acting under color of authority. If he used excessive force and if he did so because of the race of the arrested individual, there is a violation. At this point, students should be encouraged not to assume that excessive force and a racial motive exist.

1. Has Hardtack violated the state statute?

Suggested Answer:

The state statutes are less restrictive than the federal statute. However, it must be shown that unlawful force was used.

1. If Hardtack is charged with violating the federal statute, which court would hear the trial?

Suggested Answer:

Federal District Court.

ETHICAL CHOICES

Assume that you work for the prosecutor's office. You are organizing a file in preparation for trial and come across the name and telephone number of a witness who identified the perpetrator of the crime as someone other than the defendant named in the case. It does not appear from the file that the defense attorney has been advised of this fact. You bring this to the attention of the attorney handling the case who tells you to forget about it. After all it isn't the prosecutor's job to defend anyone accused of a crime. What do you do? (Pg. 62)

Points to Discuss:

How does confidentiality affect this? Does the law require that this be disclosed? (It probably does under the *Brady* decision.) Whether or not the law requires it, do basic ethics require it? What do you do when you think an attorney you work for is doing something unethical?

Assume that you work for the public defender's office. You are organizing a file in preparation for trial and come across the name and telephone number of a witness who positively identified the perpetrator of the crime as the defendant named in the case. You are fairly certain that the prosecutor does not know of this witness. You bring this to the attention of the attorney handling the case who tells you to forget about it. After all it isn't the defense attorney's job to worry about this. The defendant, your client, has been accused of child molestation. What do you do? (Pg. 62)

Points to Discuss:

How does this differ from the situation above? Do you owe any obligation to society or potential victims of crime? Distinguish between identifiable victims and possible unknown victims.

QUESTIONS FOR ANALYSIS

1. Review the Bill of Rights, found in Appendix I, and refer to the Case File at the beginning of the chapter. If Hardtack is accused of any crimes, what rights does he have? Does it matter if he is charged with a federal crime or a state crime? Review the *Heath* case in Chapter 2 and the *Koon* case in this chapter. Based on these cases, could Hardtack be prosecuted for both state and federal crimes for his actions?

Suggested Answer:

Hardtack has the rights mentioned in the 4th, 5th, 6th, and 8th Amendments. If charged with a state crime, the rights will be basically the same because of the 14th Amendment. Based on the *Heath* and *Koon* cases, he could be tried for both state and federal crimes.

2. A group of concerned parents in the city of Elmwood wants to see a curfew imposed on anyone under the age of eighteen. How can they get such a law imposed (*i.e.*, legislative action, court case)?

Suggested Answer:

They would have to try to get local authorities to pass a law. Since there is no existing controversy, there can be no court case.

3. Peter, Paul, and Mary are sixteen-year-olds who live in Elmwood, a city with a 10 p.m. curfew for anyone under the age of eighteen. They think the law is unfair and violates their constitutional rights, and they want it changed. How can they go about doing this?

Suggested Answer:

They could try to get the city legislative body to repeal the law. Alternatively, they could file a lawsuit, but they would probably have to violate the curfew and be cited for it.

4. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

Suggested Answer:

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.

CHAPTER 4: FINDING THE LAW: LEGAL RESEARCH

TRANSPARENCY MASTERS

- Primary Sources
- Secondary Sources
- Facts and Issues
- Factual Categories
- How to Sort the Facts
- What Is Case Law?
- Federal Case Law
- How to Read a Case Citation
- State Case Law
- What Is Statutory Law?

PURPOSE AND SUBSTANTIVE CONTENT

This chapter introduces students to basic legal research. Students should carefully review Appendix IV, the Basic Citation Reference Guide. Basic legal research sources are summarized and categorized. Examples of several types of legal resources are included in the text of Chapter 4. Attention is given to sorting out relevant facts and identifying the legal issues raised by the relevant facts. An introduction on how to begin a legal research project is provided. This chapter introduces the student to case law and statutory law. Special attention is given to reading and analyzing cases and statutes. Critical thinking skills are an essential component of Chapter 4.

CHAPTER OUTLINE

Technology Corner
Case File

- 4-1 Introduction to Legal Research and Writing
- 4-2 Before You Begin
 - Know the Facts
 - Analyze the Facts
 - Identify the Issues
 - Use the Relevant Facts to Define the Issues
 - Sort the Facts
- 4-3 Where to Begin the Research
 - Dictionaries
 - Encyclopedias
 - Form Books
 - Legal Periodicals

- Treatises
- Digests
- 4-4 Case Law
 - What Is a Case?
 - Where to Find Case Law
 - Federal Case Law
 - State Case Law
 - How to Read and Use Case Law
- 4-5 Statutory Law
 - Using Statutory Law

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Questions for Analysis
Assignments and Projects

SKILL BUILDING

The examples, assignments, case questions, and projects provide the opportunity for students to build the following skills:

- Critical Thinking
- Critical Analysis
- Legal Reasoning
- Basic Legal Research
- Basic Legal Writing
- Computer



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

In re Marriage of Modnick, 33 Cal. 3d 897, 191 Cal. Rptr. 629, 663 P.2d 187 (1983) (Pg. 79)

Modnick is a family law/domestic relations decision. The legal issue addressed is does the failure of one spouse to disclose the existence of a community property asset constitute extrinsic fraud? When the Modnicks dissolved their marriage Mr. Modnick disclosed only one bank account in his name, that account had a \$7.00 balance. After an IRS investigation Mrs. Modnick discovered that her former husband had willfully not disclosed other substantial bank accounts. She moved to set aside the final judgment. The trial court denied her motion. The appellate court reversed and vacated the interlocutory and final

judgments of dissolution insofar as it related to the property settlement incorporated into the divorce decree and the spousal support award.

Students are asked to compare and contrast the facts of the *Modnick* case with the facts of the hypothetical case presented in the Interoffice Memorandum that opens Chapter 4.

1. Compare the facts of the *Modnick* case with the facts of the *Welch* case provided in the memo to Terry Jacobs. What do the two cases have in common? How do the cases differ?

Suggested Answer:

Factual Similarities: Both cases involve family law. In each instance, one spouse intentionally hid assets from the other in an effort to avoid a more equitable split of the marital property.

Factual Differences and Unknowns: In *Modnick* the spouse realized her former spouse hid bank accounts from her due to an IRS investigation into unreported income. In the *Welch* fact pattern the former business partner of the husband disclosed assets he was unaware the wife had no knowledge of. Child support is involved in the *Welch* situation and the former wife believes Mr. Welch's income has increased. The *Modnicks* were married for 22 years.

Note: Not all students will agree on what is a difference and what is an unknown. It is enough, at this stage, that they are able to support their reasoning. Some students will quickly realize that what is a similarity on one level may turn out to be a difference as the facts are further analyzed. Flexibility in evaluation of this assignment will help students build confidence in their analytical abilities. Learning to form analogies is an important element to be stressed in factual analysis. Listening to each other in a discussion format will prove beneficial for many students.

1. Are there additional facts you need to know in the *Welch* case in order to do a complete comparison with the *Modnick* case? If so, what do you need to know?

Suggested Answer:

Additional facts might include how much Mrs. Welch knew about her husband's law practice; could she have easily uncovered the hidden assets; and why Mrs. Welch did not insist upon bifurcation of the property issues.

Note: Answers here will vary.

ETHICAL CHOICES

You have completed the initial research in a contract case. You found several cases that clearly indicate that your client will not recover the damages he believes he incurred. What should you do? (Pg. 78)

Points to Discuss:

Is it ethical for an attorney to take a case when the law seems to be opposed to your client's position? What obligation do you have to the court to tell it about law that does not favor your client? Do you have an ethical obligation to divulge the cases to anyone?

QUESTIONS FOR ANALYSIS

1. Apply the North Carolina assault statute found in Section 4—5 to the following facts.
 - a. Bobby is angry with his supervisor. He takes a gun to work, intending to scare his supervisor. He waves the gun around while yelling at the supervisor. The police are called. Officer Goodman approaches Bobby and asks for the weapon. Bobby accidentally fires the gun, injuring Officer Goodman in the hand. Did Bobby violate the assault statute? Explain your response.
 - b. Bobby is angry with his supervisor. He takes a gun to work, intending to scare his supervisor. He stops at a local saloon to fortify himself for the confrontation with his supervisor. While Bobby is having a beer, the bartender notices the gun in Bobby's coat. John Goodman, an off-duty security guard, is having coffee at a table. The bartender tells him about Bobby's gun. Goodman approaches Bobby and asks for the weapon. Bobby accidentally fires the gun, injuring Goodman. Did Bobby violate the assault statute? Explain your response.

Suggested Answer: (a)

Bobby probably meeting all of the elements of the statute:

1. He committed an assault
2. He used a firearm
3. The assault was upon a law enforcement officer
4. The Officer was in the performance of his duties

Suggested Answer: (b)

Bobby did not violate the statute because it requires that the assault be on a law enforcement officer. Security guards are not normally law enforcement.

2. Summarize the factual dispute in *Lorillard Tobacco Co. v. Reilly*. The case syllabus (summary) is found in Appendix VII

Suggested Answer:

Massachusetts enacted legislation Governing the advertising and sale of tobacco products. The legislation included a ban on advertising within 1000 feet of a school or playground and required that point-of-sale advertising be placed no lower than 5 feet from the ground. A group of tobacco manufacturers and retailer filed suit claiming the laws violated the Supremacy Clause of the Constitution as well as the first and fourteenth amendments to the Constitution.

CHAPTER 5: USING THE LAW: ANALYSIS AND LEGAL WRITING

TRANSPARENCY MASTERS

Legal Analysis
The Case Brief (components)
Components of a Case Brief
The Writing Process
The Legal Memorandum

PURPOSE AND SUBSTANTIVE CONTENT

This chapter introduces the student to legal analysis and various types of legal writing with an emphasis on the case brief.

CHAPTER OUTLINE

Technology Corner
Case File
5-1 Introduction
5-2 Approaching a Legal Research and Writing Project
 Overview
 Preparing a First Draft
 Editing and Revision Process
 Keeping Legal Writing Simple
5-3 The Case Brief
 The Components of a Case Brief
 How to Write a Case Brief
5-4 The Legal Memorandum
 Writing the Memorandum of Law
 Citing Authorities
5-4 Persuasive Writing

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SKILL BUILDING

The examples, assignments, case questions, and projects provide the opportunity for students to build the following skills:

Critical Analysis
Statutory Analysis
Writing



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

Gideon v. Wainwright, 372 U.S. 335 (1963) (Pg. 95)

This 1963 case is a benchmark in criminal justice. Mr. Gideon successfully challenged the State of Florida in a battle over whether or not he was entitled to a court appointed attorney. The issue here is whether the trial and conviction of Mr. Gideon violated his rights under the Fourteenth Amendment. Mr. Gideon requested a court appointed attorney. The Court denied his request. He defended himself on charges of breaking and entering a poolroom. A jury found him guilty. Mr. Gideon appealed based on the Court's denial of his request for court appointed counsel. The Florida State Supreme Court upheld the lower court's decision. The United States Supreme Court reversed the Florida Supreme Court and in the process overruled *Betts v. Brady*. The Court followed *Powell v. Alabama* and held that the right to counsel is fundamental and essential to a fair trial.

1. Why didn't the original trial court appoint a lawyer for Mr. Gideon?

Suggested Answer:

When Mr. Gideon requested an attorney the Court apologized and said it could not appoint counsel for him. The Court explained that under the law of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. Mr. Gideon was not charged with a capital offense.

1. Why was the *Betts* case overruled?

Suggested Answer:

Relying on the Sixth Amendment, the Court overruled *Betts v. Brady*. The Court found that counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. The fundamental safeguards of liberty are protected by the due process clause of the Fourteenth Amendment. The *Betts* Court had not seen the wisdom of including the right to appointed counsel as one of the fundamental safeguards of liberty under the Fourteenth Amendment.

QUESTIONS FOR ANALYSIS

1. What was the Court's holding in *Powell v. Alabama*? (See the *Gideon v. Wainwright* case in this chapter.)

Suggested Answer:

The Court held that indigent defendants in a state capital case were entitled to court appointed counsel

2. Re-read the paragraphs taken from the Argument made by the United States in support of the Petitioner in *Minnesota v. Dickerson*. What tools did the author of these paragraphs use to make this Argument persuasive?

Suggested Answer:

Answers will vary, but should include a discussion of the choice of descriptive words used (i.e. lawful and far cry from) and the fact that the petitioner's point of view is presented as logical and justified.

CHAPTER 6: LAWS: CIVIL vs. CRIMINAL

TRANSPARENCY MASTERS

Criminal & Civil Laws Contain:
Substantive Laws: Criminal
Substantive Laws: Civil
Procedural Rules: Criminal
Substantive Rules: Civil
Elements of Criminal & Civil Cases

PURPOSE AND SUBSTANTIVE CONTENT

This chapter examines the differences and similarities between criminal and civil cases.

CHAPTER OUTLINE

Technology Corner
Case File

- 6-1 Introduction
- 6-2 Where Criminal and Civil Laws are Found
 - Substantive Laws--Criminal
 - Substantive Laws--Civil
 - Procedural Rules--Criminal
 - Procedural Rules--Civil
- 6-3 How Criminal and Civil Cases are Handled
 - The Parties
 - The Court
 - The Right to a Jury
 - The Right to an Attorney
 - Burden of Proof
 - The Verdict
 - The Punishment
 - The Right to Appeal
- 6-4 Quasi Criminal Cases

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SKILL BUILDING

The examples, assignments, case questions, and projects provide the opportunity for students to build the following skills:

Critical Analysis
Statutory Analysis
Factual Analysis
Case Analysis
Writing



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

Sommer v. Gabor, 40 Cal. App. 4th 1455, 48 Cal. Rptr. 2d 235 (1995) (Pg. 112)

Defendant Zsa Zsa Gabor and her husband, defendant Frederic Von Anhalt, appeal from a judgment on a special verdict in favor of plaintiff Elke Sommer in her action for defamation. On appeal, defendants contend the court erred in applying California, rather than German, defamation law. Defendants also contend that the statements attributed to them are opinions and are not actionable as a matter of law, and that the damages are excessive.

Derogatory statements concerning plaintiff and attributed to Gabor and her husband were published in two German magazines. In the first instance, the statements were made in Germany, although the magazine did have a few California subscribers. In the second instance, the statements were allegedly made in Southern California. The statements alleged to be defamatory included statements that she frequented sleazy bars, that she was broke, that nobody would have anything to do with her, and that she was at least 60 years old. The lawsuit was filed in California and the California court applied California rather than German law.

The appellate court held that California law was properly applied since all parties were residents of the U.S. and some statements were made in the U.S. Furthermore, defendant failed to raise this issue at trial and failed to show that the result would have been different if German law were applied. The Court also said that there were sufficient factual statements to support a judgment for defamation. Finally, the court held that there was no evidence that the damages were excessive.

1. Which substantive law(s) do you think apply to this case?

Suggested Answer:

This case primarily involves the law of defamation. Also at issue is the law relating to the nature and extent of damages.

1. What procedural law(s), if any, apply to this case?

Suggested Answer:

Choice of law, appellate procedure.

1. Could the defendant have been charged with any crimes as a result of this case?

Suggested Answer:

The answer to this question is not in the case. Students should discuss whether slander or libel can result in criminal actions. In this case, it would appear not.

1. If a party committed a crime in Germany, could the trial take place in California if both the defendant and the victim were California residents?

Suggested Answer:

The answer is not in this case. Students should consider the Sixth Amendment to the Constitution, which provides that trials should occur in the district in which the crime occurred.

***People v. Sirhan Sirhan*, 7 Cal.3d 710, 102 Cal. Rptr. 385, 497 P.2d 1121 (1972) (Pg. 116)**

This is the case of Sirhan Sirhan, the assassin of Robert Kennedy. A jury found defendant guilty of first-degree murder of Senator Kennedy and fixed the penalty at death. The court denied a motion for a new trial and the defendant's automatic appeal was heard by the California Supreme Court.

Defendant contends that (1) the death penalty is cruel or unusual punishment; (2) in view of proof of his diminished capacity the evidence is insufficient to support the first degree murder conviction; (3) he was denied a fair trial as a result of certain publicity; (4) his right to be secure against unreasonable searches and seizures and his privilege against self-incrimination were violated by the receipt of evidence found in his bedroom.

The Court referred to a prior California case that had recently found the death penalty in California in violation of the California Constitution. It therefore reduced the sentence to life in prison. It did, however, address the other issues. It found that there was sufficient psychiatric testimony and other evidence to support the first-degree murder conviction. It found that although there was extensive publicity, there was no evidence that it prejudiced the trial. It found that the warrantless search of his premises was reasonable due to exigent circumstances. The court also found no violation of the right against self-incrimination.

1. Who was the plaintiff in this case?

Suggested Answer:

At the trial level, the plaintiff was the People of the State of California.

1. What did the California Supreme Court do?

Suggested Answer:

The California Supreme Court reduced the sentence from death to life in prison because it had previously found the California death penalty to be unconstitutional. In all other respects it affirmed the murder conviction.

1. What crime was defendant charged with?

Suggested Answer:

First Degree Murder.

1. What procedural questions did the defendant raise on appeal?

Suggested Answer:

- a) Were the defendant's rights regarding cruel and unusual punishment violated by the trial court in imposing the death penalty?
- a) Was defendant denied a fair trial because of the amount of pretrial publicity?
- a) Was the jury's finding of malice and intent supported by the evidence?
- a) Did the trial court err in admitting evidence obtained in a warrantless search of defendant's premises?

***Coon v. Joseph*, 192 Cal. App.3d 1269, 237 Cal. Rptr. 873 (1987) (Pg. 123)**

This is a civil tort action based on a violation of a civil rights statute that provides that all persons have the right to be free from any violence, intimidation or threat thereof "committed against their persons" because of race, religion, sex, or sexual orientation. In this case, plaintiff witnessed a municipal bus driver harass and assault his male partner. The complaint established that no violence or intimidation was committed or threatened against appellant's person and thus no cause of action existed in his own right. The trial court dismissed the complaint. The appellate court affirmed.

1. Who filed this case in the trial court?

Suggested Answer:

The plaintiff was Gary Coon, the individual who witnessed the assault.

1. What type of relief was the plaintiff seeking in this case?

Suggested Answer:

This is a civil suit seeking money damages.

1. Who is appealing this case?

Suggested Answer:

The plaintiff is appealing.

1. Is this a civil case or a criminal case?

Suggested Answer:

This is a civil suit.

1. In the *Hardtack* case, if Martinez had a friend with him and that friend watched Hardtack assault Martinez, would the friend have a case for a civil rights violation? Why or why not? Suppose that instead of a friend, Martinez's wife watched her husband being assaulted. Would she have a case for a civil rights violation?

Suggested Answer:

The holding in this case would clearly prevent Martinez's friend from being able to recover damages. As to the wife, the issue probably is not as clear. In *Coon* the court says that allowing a witness to recover would mean any person would have the right to recover damages for himself or herself whenever the rights of any other human being of similar race, religion, sex, or sexual orientation were threatened. It could be argued that a spouse is not any person. On the other hand, the court also says in *Coon* that the civil rights statute provides a right to recover for injury committed against their persons. If no injury is committed or threatened against a person they may not be able to recover regardless of the relationship.

***Buranen v. Hanna*, 623 F. Supp. 445 (D.Minn. 1985) (Pg. 124)**

This matter was before the district court on the motions of defendant for dismissal. Plaintiffs in this action, Candace Lee Buranen and Robert Francis Buranen, are a wife and husband who assert that police officers unjustifiably arrested them and used excessive force in the process. They were both arrested at a high school hockey game when they came to the aid of an assistant coach who was being harassed by the officers. During the arrest they were

physically attacked. Both were charged criminally with assault and obstruction of justice and were acquitted. They then filed a civil action under 42 U.S.C. /1983. The defendant police officers moved to dismiss, arguing that assuming plaintiffs' version of the facts was true, defendants had not deprived plaintiffs of a federally protected right.

The court denied the motion stating that the plaintiffs in the present action were alleging violations of substantive constitutional rights as well as violations of procedural due process. Plaintiffs claimed that defendants violated their Fourth Amendment right to be arrested only upon probable cause. Plaintiffs could clearly maintain a/1983 action for being arrested without probable cause. Police officers' use of excessive force was also conduct actionable under/1983.

1. Is this a civil case or a criminal case?

Suggested Answer:

Civil case.

1. How can you tell?

Suggested Answer:

The plaintiffs were private parties, not the state, and they were suing for money damages.

1. Did the facts in this case give rise to a criminal case? If so, who were the parties in that case? Does the decision in the criminal case have any bearing on the outcome of this case?

Suggested Answer:

The case indicates there had been a prior criminal case for assault and obstruction of justice. In that case, the plaintiff was the State (or the People) and the defendants were the Buranens, the plaintiffs in this case. Technically, the decision does not have any bearing. This is a separate case. However, since this case involved a motion, it is entirely probable that the judge knew of the result. It is speculation to say that the judge considered the outcome.

***People v. Lashley*, 1 Cal. App. 4th 938, 2 Cal. Rptr. 2d 629 (1991) (Pg. 125)**

Defendant was convicted of attempted murder, assault with a firearm, civil rights violations and brandishing a weapon. The convictions arose out of an incident in which defendant and some friends harassed a group of black men who were going fishing. At issue

was the sufficiency of evidence to support a conviction under a state civil rights statute. The court held that the evidence was sufficient.

1. Is this a civil case or a criminal case? How can you tell?

Suggested Answer:

This is a criminal case. The title of the case indicates that it is brought by the state. The case talks about conviction, a term used in connection with criminal cases, and the defendant was sentenced to state prison.

1. Assuming that the *Hardtack* case took place in this state, would Hardtack be guilty of violating the state statutes mentioned in the case? Do you think Hardtack would be guilty of violating 18 U.S.C./242?

Suggested Answer:

Calls for students' opinions. However, there would be no difference between the federal and state laws in the *Hardtack* case. Both apply to law enforcement.

1. How do the state laws involved in this case differ from the laws involved in the *Coon* case?

Suggested Answer:

The laws in the *Coon* case provide a remedy for civil damages, not a criminal penalty.

ETHICAL CHOICES

Assume that you work in a law office. You are interviewing a client who has retained your firm to represent him as a result of legal problems stemming from an automobile accident. Your client, who was drunk at the time, caused the accident. Your firm is representing him in the criminal action. He has been sued civilly, but his insurance company has provided an attorney to handle this case. The client is confused about the nature of the legal proceedings and asks you to explain the differences between the civil and the criminal case. Can you tell him or would you be giving legal advice? (Pg. 123)

Points to Discuss:

What types of statements constitute legal advice? Is there a difference between giving legal advice and providing a client with information about the legal process? How would you phrase your response to the client?

You work for a sole practitioner, Bryan Anderson, who has a very busy practice. The *Hanley* case, a criminal action, is set for a pretrial conference at 10:00 a.m. on Tuesday. Unfortunately, the attorney also has a divorce case set for the same time in another courthouse. Your attorney tells you to appear on the *Hanley* case and ask for a continuance. He tells you to introduce yourself and tell the court you are from the Anderson Law Firm. He also tells you that if the judge asks if you are an attorney do not lie about it, but do not volunteer any information either. What should you do? (Pg. 126)

Points to Discuss:

Can you appear in court to ask for a continuance or is it unauthorized practice of law? If you do appear in court, are you deceiving the court by not saying that you are a paralegal. How do you deal with an employer who asks you to do something you think is wrong?

QUESTIONS FOR ANALYSIS

1. Compare the two code sections at the beginning of the chapter, 18 U.S.C. / 242 and 42 U.S.C./1983. Which is a criminal statute and which is a civil statute? Are they equally specific as to the conduct that is forbidden? Are they equally specific as to the punishment that can be imposed? Which is less specific in this area?

Suggested Answer:

18 U.S.C./242 is a criminal statute and 42 U.S.C./1983 is a civil statute. The statutes are similar in describing the forbidden conduct. However, the criminal statute is much more specific about the punishment.

2. The following are documents in connection with the Hardtack cases. For each of the documents listed, indicate whether it belongs in the civil file or the criminal file:
 - a. A letter from the prosecutor's office requesting copies of statements of any witnesses whom Hardtack plans to call at trial
 - b. A request for trial signed by the attorney for Jaime Martinez
 - c. Copies of medical bills from Martinez
 - d. A document entitled Complaint for Damages
 - e. A copy of a jury instruction entitled Reasonable Doubt Defined
 - f. A memorandum of law regarding comparing sentencing under state battery statutes with state civil-rights violations

Suggested Answer:

- a. criminal file
- b. civil file
- c. civil file
- d. civil file

- e. criminal file
 - f. criminal file
3. Consider the Hardtack criminal and civil cases. Identify the following for the Hardtack criminal case:
- a. Parties (plaintiff and defendant)
 - b. Possible punishment should Hardtack be found guilty
 - c. Who could appeal the case

Do the same for the civil case.

Suggested Answer:

Criminal Case:

Parties: U.S. v. Hardtack

Punishment: fine or imprisonment not more than 10 years

Appeal: Only the Defendant

Civil Case:

Parties: Martinez v. Hardtack

Punishment: Money (action at law) to be determined by jury

Appeal: Either party

4. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

Suggested Answer:

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.

5. Review the summary of *U.S. v. Morrison* in Appendix VII. Is this a civil case or a criminal case? Explain

Suggested Answer:

This is a civil case resulting from a civil lawsuit filed by a rape victim under 42 U.S.C. /13981

CHAPTER 7: PERSONAL INJURY PRACTICE: TORT LAW AND WORKERS COMPENSATION

TRANSPARENCY MASTERS

- Tort Law in General
- Tort Law (vocabulary)
- Personal Torts
- Other Torts and Defenses
- Negligence (the elements)
- Types of Negligence Actions
- Defenses to Negligence
- Intentional Tort
- Strict Liability
- Damages

PURPOSE AND SUBSTANTIVE CONTENT

This chapter gives students an overview of some of the more common concepts of tort law. Intentional torts, negligence, and strict liability are discussed. The elements of various causes of action and common defenses are explained. Workers Compensation law is introduced.

CHAPTER OUTLINE

Technology Corner
Case File

- 7-1 Introduction
- 7-2 Tort Law in General
- 7-3 Intentional Torts
 - Personal Torts
 - Business Torts
 - Property Torts
 - Fraud
 - Defenses to Intentional Torts
- 7-4 Negligence
 - Negligence in General
 - Types of Negligence Actions
 - Defenses to Negligence
- 7-5 Strict Liability
 - Dangerous Animals
 - Ultra-hazardous Activities

Defective Products
Defenses to Strict Liability

- 7-6 Damages
- 7-7 Liability for Torts of Another
- 7-8 Personal Injury Practice and Paralegals
- 7-9 Future of Tort Law and Personal Injury Practice
- 7-10 Workers Compensation

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SKILL BUILDING

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Legal Analysis
Factual Analysis
Writing
Case Analysis



CASE QUESTIONS, AND SUGGESTED ANSWERS

***Hustler v. Falwell*, 485 U.S. 46 (1987) (Pg. 134)**

Hustler Magazine (published by Larry Flynt) published an ad parody ridiculing Jerry Falwell and suggesting that his first sexual experience involved his mother and an outhouse. Falwell sued for damages for invasion of privacy, libel, and intentional infliction of emotional distress. The trial court directed a verdict on the privacy claim. The jury found for *Hustler* and Flynt on the defamation claim, but awarded damages based on intentional infliction of emotional distress. *Hustler* and Flynt appealed, claiming that the First Amendment gave them the right to publish a parody of a public figure and thus protected them against an action for intentional infliction of emotional distress. The Supreme Court agreed and found for *Hustler* and Flynt, saying that a public figure cannot recover for this type of action unless he can prove that a false statement of fact was published with actual malice. This is the case that is the basis of the movie, *People v. Larry Flynt*.

1. What was the factual basis for Falwell's claim against *Hustler* for intentional infliction of emotional distress.

Suggested Answer:

Falwell claimed that *Hustler* and Flynt published an ad parody suggesting that Falwell had sex with his mother in an outhouse. This was so outrageous that it caused Falwell emotional distress.

1. Why did Falwell lose this lawsuit?

Suggested Answer:

Even though the Court agreed that the ad parody was outrageous and in bad taste, it found that the First Amendment gives special protection when public figures or public affairs are involved. Limiting the right to free speech in such circumstances would seriously interfere with Constitutional freedoms. In order to recover damages under any theory, a public figure must prove that false statements of fact are made with actual malice. In this case, it was clear that Falwell was a public figure. The ad parody in this case could not be taken as a statement of fact since it was clearly labeled an ad parody, not to be taken seriously. The table of contents also listed the ad as fiction.

***Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339, 162 N.E. 99 (1928) (Pg. 142)**

Plaintiff was standing on a railroad platform. A man, carrying a small unidentifiable package, jumped aboard a railroad car. A guard on the car, trying to help him board the train, dislodged the package from his arm. The package contained fireworks, which exploded when they fell. The explosion caused scales at the other end of the platform to fall, injuring plaintiff. The issue in this case was whether Plaintiff had a cause of action for negligence. The majority opinion (Cardozo) approaches the question from the perspective of duty of care, stating that the plaintiff must show that as to him the negligent act was dangerous. Since this couldn't be done, the case was dismissed. The dissent (Andrews) takes a different view and approaches the issue from the perspective of proximate cause. Andrews states that the duty of care required for negligence should not be a duty owed to individual persons, but a duty owed to society to protect it from unnecessary danger. The question of liability thus becomes a question of proximate cause, rather than duty of care. Proximate cause, he says, depends in each case upon many considerations. In general however, proximate cause means that because of public policy, or a rough set of justice, the law will refuse to extend liability beyond a certain series of events.

1. Why did Justice Andrews dissent from the Majority opinion?

Suggested Answer:

He felt that the majority took much too narrow a view on the concept of duty of care. Duty of care should not be limited to specific individuals but rather to society at large. If there is a duty to protect anyone from danger, there is a duty to protect everyone.

1. According to Justice Andrews, what is proximate cause?

Suggested Answer:

In general, proximate cause means that because of public policy, or a rough set of justice, the law will refuse to extend liability beyond a certain series of events. Proximate cause can differ in different situations, but Andrews offers the following hints to determine if it exists. Proximate cause should be something without which the event would not happen. Is there a natural and continuous sequence between cause and effect? Was the one a substantial factor in producing the other? Was there a direct connection between the events, without too many intervening causes? Is the effect of the cause on the result not too attenuated? Is the cause likely to produce the result? Is the result foreseeable? Is the result too remote from the cause?

***Baum v. New York Central Railroad*, 12 Misc. 2d 622, 175 N.Y.S.2d 628 (1958) (Pg. 147)**

While appearing on stage with a horse, a television actor was injured when the horse stepped on his hand. The actor sued, claiming damages as a result of negligence and breach of warranty. The complaint was dismissed because there was no evidence of any vicious or unruly propensities known by the owner of the animal and thus no evidence of negligence. Neither was there any evidence of breach of warranty. The horse acted like a horse. This case illustrates that damages alone are not enough for a lawsuit. Negligence or some other legal basis must be shown.

1. Review the elements for a cause of action for negligence. Which element or elements were missing here?

Suggested Answer:

Negligence requires:
duty of care
breach of duty
proximate cause
actual cause
damages

In this case, the breach of duty is missing. There was no negligent act. Here, the plaintiff probably needs to show that the animal had some known dangerous propensities or had injured people on prior occasions.

***Burnett v. National Enquirer, Inc.*, 144 Cal. App. 3d 991, 193 Cal. Rptr. 206 (1983)**
(Pg. 150)

In this case, plaintiff, Carol Burnett, sued the defendant, the *National Enquirer*, for compensatory and punitive damages as a result of an article published in defendant magazine. The article claimed that she became drunk in a public restaurant, had an argument with Henry Kissinger, and disturbed other guests. A jury awarded the plaintiff \$300,000 in compensatory damages and \$1.3 million as punitive damages. The trial judge reduced the amounts to \$50,000 for compensatory and \$750,000 for punitive damages. On appeal, the appellate court found the punitive damages still to be excessive. Defendant's net worth was estimated to be \$2.6 million and its net income for the period under consideration was about \$1.56 million. The court found the amount excessive. The amount of compensatory damages was upheld.

1. The award of \$50,000 was for compensatory damages. Were these for general damages or special damages?

Suggested Answer:

Because the statements were libelous on their face, plaintiff only needed to show general damages. In this case, those general damages included loss of reputation, shame, mortification, and injured feelings.

1. Why did the court reduce the amount of punitive damages? Why was the *National Enquirer*, as opposed to its employees, held responsible for the punitive damages?

Suggested Answer:

In comparison to the net worth and net income of the defendant, the court felt the award was excessive. The court states that the punitive damage award constituted 35% of net worth and 50% of net income. (Note: It would be interesting to compare these figures with the award of punitive damages in the *Simpson* case, where the percentages are much higher.) The *National Enquirer* was held responsible because the court found that the *National Enquirer* knew and ratified the acts of its employees and agents.

1. Why did the plaintiff in this case recover both compensatory and punitive damages whereas the respondent in the *Hustler* magazine case recovered nothing?

Suggested Answer:

Both of these cases involved First Amendment issues, in particular the requirement that no actions for defamation would lie against public figures unless it can be shown that false statements of fact are made with actual malice. In the *Hustler* case, the plaintiff was unable to show that any false statements of fact were made. In this case,

plaintiff was able to prove that the statements were not factual and that they were published with malice. Malice was established by showing that the publishers knew the articles were false and published anyway.

ETHICAL CHOICES

You are working in a law office with an attorney who is preparing a client for a deposition. You are present taking notes. The client tells the attorney that he was not wearing a seat belt. The attorney tells the client, If you say that during the deposition, the value of your case seriously diminishes. Should you do anything? (Pg. 154)

Points to Discuss:

Did the attorney commit a breach of ethics? Has he told his client to lie, or just told him the consequences of his actions? If the attorney did commit a breach what can a paralegal do? Can you say anything to the attorney? To the client? To another attorney in the firm? If the attorney is ultimately responsible to the client, does the paralegal have to do anything? How does client confidentiality enter into this?

A young woman, a plaintiff in your office, sued a local fast food chain. She scalded her mouth on a cup of very hot chocolate. She asks you how much her injuries are worth. You know that your office just settled the same type of case with comparable injuries for \$5000. What do you tell her? (Pg. 154)

Points to Discuss:

What is the difference between legal advice and legal information? How do you handle this type of situation if the client becomes insistent?

QUESTIONS FOR ANALYSIS

1. Analyze the following factual situations and discuss possible torts.
 - a. Peters points a gun at Quentin s back, Quentin being unaware of what is happening. Peters then shoots and hits Quentin.
 - b. Jones consents to a blood transfusion, providing the doctor uses blood from a designated donor. The doctor does the transfusion using a general supply of blood. No injury results.
 - c. Smith is late for an appointment and runs a red light, thinking that there was no cross traffic. Unfortunately, Smith collides with a vehicle that he had not seen. The driver of the other vehicle is injured.
 - d. Roberts, a supervising attorney with a county prosecutor s office, consistently makes sexual remarks to James, a paralegal in the office. On several occasions she also invited him out for drinks after work. James always declined the invitations and asked Roberts to

stop the remarks. Recently Roberts gave James a poor job review, even though his work is very good.

Suggested Answer:

- a. Because the victim was not aware of any threat there is no assault. Because he was shot, there is a battery.
 - b. The doctor went beyond the consent given, thus there is a battery, even though no injury resulted. The lack of injury would eliminate a negligent tort.
 - c. This is a classic case of negligence. Even though the defendant intended to run the red light, he did not intend to hit the other vehicle.
 - d. Under modern statutes, sexual harassment is clearly present. The facts also support causes of action for intentional infliction of emotional distress and defamation.
2. Review the Case File at the beginning of the chapter. Write a memo discussing the possible tort liability of Carpets Etc.

Suggested Answer:

The memo should include a discussion of the negligence of both Brentwood and Carpets Inc. as well as the status of the plaintiff. Of key importance is the fact that the plaintiff is an employee of Brentwood and might be precluded from suing under Worker s Compensation laws.

3. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state s ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

Suggested Answer:

The NALA and NFPA rules are found in Appendix II of the text. State s rules will vary.

CHAPTER 8: FAMILY LAW

TRANSPARENCY MASTERS

Family Law Issues
Prenuptial Agreements
Terminating a Marriage
Nullity
Divorce/Dissolution
Legal Separation
Child Custody
Child Support
McCord v. McCord
Spousal Support
Separate Property
Community Property
Quasi-Community Property
Value and Division of Property
Family Law Court Pleadings
Motions
Orders
Discovery
Settlement and Trial
Family Law Matters and Unmarried Parties

PURPOSE AND SUBSTANTIVE CONTENT

This chapter provides a broad overview of family law. Students are introduced to many familiar topics. The material begins with pre-marital agreements and ends with family law issues involving unmarried persons. Emphasis is placed on the role of the legal assistant in a family law practice.

CHAPTER OUTLINE

Technology Corner
Case File

- 8-1 Introduction
- 8-2 Prenuptial Agreements
- 8-3 Terminating a Marriage
 - Nullity
 - Divorce/Dissolution
 - Legal Separation
- 8-4 Child Custody

- 8-5 Support
 - Child Support
 - Spousal Support
- 8-6 Property Concerns
 - Value and Division of Property
- 8-7 Family Law Court Proceedings
 - The Pleadings
 - Motions and Orders
 - Discovery
- 8-8 Settlement and Trial
- 8-9 Family Law Matters and Unmarried Parties

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SKILL BUILDING

The assignments, examples, case questions, and projects provide the students the opportunity to continue to develop the following skills:

Critical Thinking

Legal Analysis

Writing

Computer



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

***Wages v. Wages*, 660 So. 2d 797 (Fla. Dist. Ct. App. 1995) (Pg. 161)**

This family law decision addresses the question of whether the trial court erred when it changed the custody of a child from the mother to the father. When the parents dissolved their marriage, the mother was designated as the primary residential parent and the father was to pay child support. When the mother wanted to relocate out-of-state she requested a modification of the original visitation schedule. The father responded with a request for a change of custody, or in the alternative, that he no longer be required to pay child support. The trial court found that it would be in the best interest of the child to be placed into the custody of the father. On appeal, the Court reverses the lower court's decision. The Appellate Court agreed that the out-of-state move may have constituted a substantial change in circumstances. However, there was no evidence to support that it would have been in the child's best interest to be relocated with the father. The reviewing court found

that the father did not meet the evidentiary burden required to change custody in a modification context.

1. Why did the appellate court reverse the decision of the trial court?

Suggested Answer:

The Appellate Court found that the father did not meet the evidentiary burden required to change custody in a modification context.

1. Explain the facts that brought about the father's letter to the court?

Suggested Answer:

The mother was designated as the primary residential parent and the father was to pay child support when the parties ended their marriage. The mother decided to move from Florida to Kentucky. The original visitation agreement required alternate weekend visitation for the father with his daughter. Because this visitation schedule would be excessively burdensome in light of the mother's move to Kentucky, she requested a modification of the visitation schedule. The father's response to the request for modification was the letter to the trial court.

***McCord v. McCord*, 910 P.2d 85 (Colo. App. 1995) (Pg. 163)**

A mother requested an order modifying child support after the father won an annuity worth \$2 million in the State Lottery. At the same time she requested the father be ordered to pay his share of the child's unreimbursed medical expenses and that she be reimbursed for her attorney fees incurred in the motion for modification of child support. The father quit his job after winning the lottery and described himself as self-employed. The magistrate increased the father's child support obligation, ordered him to pay \$1,300 of the mother's attorney fees, and ordered him to pay a portion of the unreimbursed medical. A district court affirmed the magistrate's findings and order. On appeal the court (1) upheld the medical expenses portion of the order, (2) held that the father's increased income constituted a change of circumstances warranting modification of his child support obligation, and (3) held that the father was voluntarily unemployed.

1. Explain the changed circumstances cited by the appellate court in upholding the ruling of the magistrate.

Suggested Answer:

The father voluntarily quit work after winning the lottery. A parent's child support obligation may be modified upon a showing of changed circumstances that are substantial and continuing. When the party requesting the modification can show an

increase in the obligor's income that would result in a 10% change in the amount of child support, the court presumes the child's needs have increased.

1. Write a brief summary of the court's discussion of the voluntarily unemployed issue (Issue III).

Suggested Answer:

When a parent is voluntarily unemployed or underemployed, child support must be calculated based on the parent's potential income. A parent will not be considered voluntarily unemployed if he or she is mentally or physically incapacitated. Colorado Statutes set forth the standards to be applied if an employed parent is earning less than he or she is capable of earning.

ETHICAL CHOICES

In a complicated divorce case, both parties have come to a settlement agreement through their attorneys. Your supervising attorney gave you her notes regarding the settlement and told you that the other attorney was preparing the papers. When the settlement papers arrive you review them and note that the other attorney made a substantial error in the spousal support provision. The error is in your client's favor. You bring this to the attention of your attorney, who tells you not to do anything about it. What do you do? (Pg. 166)

Points to Discuss:

Is it unethical to allow a mistake like this to continue? Is it a violation of ethics to do something that affects your client in this way? What do you do when your ethics differ from that of your supervising attorney? Is there a duty to be honest and fair in dealing with opposing parties and, if so, would it be a breach not to reveal the problem? Could you notify the other side anonymously?

QUESTIONS FOR ANALYSIS

1. State the issues presented to the Court in *McCord v. McCord*.

Suggested Answer:

- a. Is it error for a court to modify a child support order requiring Father to pay extraordinary medical expenses after Father wins \$2 million in a lottery?
- b. Is it error for a court to modify child support based on Father's winning of a lottery when no change of circumstances exist for the child?
- c. Is it error for a court to impute earnings to a Father when the Father quits his job, claiming it was for physical reasons but presenting no evidence to substantiate the claim?

2. Locate and summarize two family law statutes that address the issue of child custody. Provide the title of the code and the section number in your summary. Use Appendix IV to guide you in proper citation format. The index to the code will enable you to go directly to the appropriate statutes. Choose your vocabulary carefully before going to the index, to provide focus on the topic.

Answers will vary from state to state.

CHAPTER 9: WILLS, TRUSTS, AND PROBATE

TRANSPARENCY MASTERS

- The Will
- Wills (some vocabulary)
- Preparation of a Will
- Changing the Will
- What Is a Trust?
- How to Create a Trust
- Express Trusts
- Implied Trusts
- What Is Probate?

PURPOSE AND SUBSTANTIVE CONTENT

This chapter is intended to give the student an introduction to and overview of the law of wills, trusts, and probate.

CHAPTER OUTLINE

- Technology Corner
- Case File

- 9-1 Introduction
- 9-2 Wills
- 9-3 Preparation of the Will
 - The Opening Clauses
 - The Body of the Will
 - The Fiduciary Clause
 - The Closing Clauses
 - Changing the Will
 - Where There Is no Will
- 9-4 Trusts
 - What Is a Trust?
 - How to Create a Trust
 - Express Trusts
 - Implied Trusts
- 9-5 Probate
- 9-6 Case Law Examples

- Featured Website
- Chapter Summary

Terms to Remember
Questions for Review
Questions for Analysis
Assignments and Projects

SKILL BUILDING

The examples, assignments, case questions and projects provide the opportunity for students to build the following skills:

Critical Thinking
Legal Analysis
Writing
Computer



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

***Hicks v. Casablanca Records*, 464 F. Supp. 426 (S.D.N.Y. 1978) (Pg. 188)**

This is an action brought by the heirs of Agatha Christie against a movie company and book publisher who want to distribute a movie and book, entitled *Agatha*, that gives a fictionalized account of a true incident in the life of Agatha Christie. At one point in her life, Ms. Christie disappeared for 11 days. No one knows why, although the movie and the book suggest that she did this because she was emotionally unstable and was plotting to kill her husband's mistress. The petitioners requested a preliminary injunction while the respondents moved to dismiss the case.

The issues in this case involve the right of heirs to assert the right of publicity value of the name or likeness of the decedent and whether that right exists at all in connection with movies or books rather than with the sale of merchandise. As to the first issue, the court stated that heirs have the basis to assert the right of publicity if the public figure exploited his or her name during their lifetime and these rights were duly transferred to the heirs. In this case, both facts were present. Ms. Christie's name was obviously exploited and she made a valid testamentary disposition of her rights. As to the second issue, the court could find no direct law and therefore analogized to the state law regarding invasion of privacy. Appropriating one's likeness for commercial purposes constitutes an invasion of privacy unless the publication is a biography or comes under the fair comment exception. Since *Agatha* was clearly intended to be a fictionalized account, it could not be considered a biography, nor was it fair comment. However, the court also found that where books and movies were concerned, First Amendment rights had to be considered. After reviewing other authorities, the court found that absent deliberate falsifications, or an attempt to present disputed events as true, the First Amendment protection usually accorded novels and movies outweighs the publicity rights plaintiffs may possess.

1. What is a right to publicity ?

Suggested Answer:

The right to publicity is the interest in the publicity value of one's name or likeness and is a valid property right, which is transferable and capable of surviving the death of the owner.

1. Why does the court cite (discuss) so many cases in the *Hicks v. Casablanca Records* decision?

Suggested Answer:

The court cites so many cases because it is discussing a novel area of law. That is there is no one case that is directly on point. The court, therefore, wanted to present all cases that dealt with similar issues. In this way, the court could analogize and distinguish the facts and appropriate law.

***Froch v. Grosset & Dunlap, Inc.*, 75 A.2d 768, 427 N.Y.S.2d 828 (1980) (Pg. 191)**

The executor of the estate of Marilyn Monroe brought this action against various defendants as a result of the Norman Mailer book, *Marilyn*. The book purported to be a biography, although plaintiff disputed this characterization. The trial court granted summary judgment. The court of appeals affirmed, saying that it did not matter whether the book was truly a biography or not. The right of publicity applies to commercial advertisements for the sale of goods or services. It does not apply to any literary works.

1. Explain plaintiff's argument.

Suggested Answer:

Plaintiff is arguing that the Mailer book is a fictionalized biography and as such constitutes an attempt to make a profit based on the publicity value of the Monroe name. As the executor of the estate, plaintiff has the right to assert this.

1. According to the court in this case, does a right of publicity survive the death of Marilyn Monroe? Explain.

Suggested Answer:

This court does not deny that a right of publicity can survive the death of Monroe. It does say, however, that the publication of the book, *Marilyn*, does not involve a violation of that right.

***Groucho Marx Production, Inc., v. Day and Night Company*, 523 F. Supp 485 (S.D.N.Y. 1981) (Pg. 192)**

Plaintiffs in this case are the heirs and assignees of three Marx brothers, Groucho, Chico, and Harpo. They brought this action alleging that defendants appropriated the right of publicity in their names, by producing a musical play. The court discusses two main issues in this case. First, does the right to publicity exist under New York law? Second, after establishing that the right to publicity did in fact exist, did it descend to the heirs and assignees of the Marx brothers in this case?

In discussing the first issue, the court mentions that this right does not exist under any New York statute and must therefore be based on common law. In examining case law, the court noted that while several federal courts (interpreting New York State law) found such a right exists, no state court had done so. This court decided that such a right does exist.

In discussing the second issue, the court mentions that in order for the right to publicity to descend to heirs, the public figure must have asserted the right during his or her lifetime. In this case, defendants argued that the Marx brothers never used their likeness to sell products and had therefore not exploited their rights. The court disagreed, pointing out that each of the brothers had created special, recognizable characters that had a public value. The fact that they never endorsed products was not important.

1. How did each plaintiff acquire rights of publicity?

Suggested Answer:

Plaintiff, Susan Marx, was trustee of the residuary trust under the last will and testament of Harpo Marx. Plaintiff Marx Productions acquired rights through contractual assignments. Groucho Marx assigned to plaintiff all right, title, and interest in the name, likeness, and style of the character Groucho. The estate of Chico Marx, through his widow, Mary Marx, entered a similar agreement with Marx Productions. Mary Marx claimed her rights as the residual beneficiary under the will of Chico Marx.

1. How did Julius Marx demonstrate an intent to capitalize on the value of the name and likeness of the character of Groucho?

Suggested Answer:

This was done in two ways. First, he obviously created a well-known character. Second, more importantly, he made an intervivos transfer of his rights and also included a testamentary disposition of his rights in his will.

***State ex rel, The Elvis Presley International Memorial Foundation v. Crowell*, 733 S.W.2d 89 (Tenn. App. 1987) (Pg. 195)**

This case involves a dispute between two non-profit corporations concerning their respective rights to use Elvis Presley's name as part of their corporate name. Plaintiff was known as the Elvis Presley International Memorial Foundation and defendant was known as the Elvis Presley Memorial Foundation. After the death of Elvis Presley, his estate incorporated Elvis Presley Enterprises, Inc. This corporation monitors and sells the right to the name and likeness of Elvis Presley. In 1981 a group of Presley fans incorporated the Elvis Presley International Memorial Foundation, a non-profit corporation supporting a trauma center that was part of the Memphis and Shelby County hospital system. Although they had approached the Presley estate for permission to use the Presley name, permission was denied. They incorporated anyway. A few years later, the Presley estate incorporated a different non-profit corporation called the Elvis Presley Memorial Foundation. Plaintiff sued to dissolve this corporation, claiming that it constituted unfair competition. Defendant corporation claimed that it had the right to use the Presley name under agreement with the Presley estate. Plaintiff claimed, that upon his death the name of Elvis Presley entered the public domain and that no descendible property right existed. They were therefore free to use the name. The trial court entered summary judgment in favor of defendant.

The court spent considerable time discussing whether or not a right of property descends to one's heirs. It points out several public policy reasons why such a right of property does descend in the state of Tennessee. The Tennessee courts have long recognized that a person's business, a corporate name, a trade name, and the good will of a business are types of intangible personal property. Furthermore a celebrity's right of publicity has value. Recognizing the right of publicity as descendible is consistent with the recognition that an individual's right of testamentary distribution is an essential right. If a right of publicity is treated as an intangible property right in life, it is no less a right at death. It also recognizes one of the basic principles of jurisprudence that one may not reap where another has sown. It is consistent with a celebrity's expectation that he is creating a valuable capital asset that would benefit his heirs and assigns after death. Failure to recognize the value of the contract rights of persons who have acquired the rights to use a celebrity's name and likeness would greatly diminish the value of those rights. Recognizing that the right of publicity can be descendible will further the public's interest in being free from deception regarding endorsement. Finally, recognizing the right of publicity is descendible is consistent with the policy against unfair competition. Thus, the court concluded that the right to use the Presley name was a property right that was descendible. (However, the court did reverse the summary judgment on the grounds that the Presley estate may have been guilty of laches in not asserting the right at an earlier time.)

1. Is there a descendible right of publicity in Tennessee?

Suggested Answer:

For all of the public policy reasons stated, the court concluded that there is a descendible right of publicity in Tennessee.

1. Summarize each of the three issues in *State ex rel. The Elvis Presley International Memorial Foundation v. Crowell*.

Suggested Answer:

The first issue deals with the exploitation of the Presley name during his lifetime. The court describes the unique and unparalleled nature of the Presley career and points out how his name was commercially exploited during his life and how commercial exploitations continue after his death. Presley entered into numerous contracts during his lifetime and this practice continued through his estate after his death.

The second issue deals with whether the right of publicity descended to the heirs of Elvis Presley. In discussing this, the court discusses whether the right of publicity is descendible or whether a public figure's name and likeness enter the public domain upon the figure's death. The Tennessee State court decided that in Tennessee the right to publicity is a recognizable property right and, for several public policy reasons, is descendible.

The third issue deals with the appropriateness of a summary judgment in the case. Although the reasons are not fully explained, the court decided that a summary judgment was not appropriate.

QUESTIONS FOR ANALYSIS

1. State the issues presented to the Court in *Groucho Marx Publications, Inc. v. Day and Night Company*.

Suggested Answer:

- a. Does New York recognize a non-statutory right of publicity?
 - b. Does a right of publicity descend to heirs and assignees?
2. How is the right of publicity different from the right of privacy? (See the Elvis Presley case in this chapter.)

Suggested Answer:

The right of privacy concerns the media's intrusion into the affairs of private citizens whereas the right of publicity involves the right of celebrities to use their names and likenesses for commercial purposes.

CHAPTER 10: BUSINESS PRACTICE: CONTRACT LAW AND REAL PROPERTY LAW

TRANSPARENCY MASTERS

- Contract Law
- Elements of a Contract
- Legal Principles Affecting the Validity and Enforceability of a Contract
- Breach of Contract
- Ownership Interests in Real Property
- Non-Ownership Interests in Real Property
- Intellectual Property

PURPOSE AND SUBSTANTIVE CONTENT

This chapter introduces students to some of the general legal concepts of contract law and real property law. Also included is a brief overview of the law of landlord/tenant.

CHAPTER OUTLINE

- Technology Corner
- Case File

- 10-1 Introduction
- 10-2 Contract Law
 - Formation of Contracts
 - Performance of Contracts
 - Assignment of Contract Rights
- 10-3 Real Property Law
 - Ownership Interests in Real Property
 - Non-ownership Interests in Real Property
 - Landlord/Tenant Law
- 10-4 Intellectual Property Law
 - Copyright law
 - Patent Law
 - Trademark Law
 - Trade Secret Law

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- Questions for Review
- Questions for Analysis
- Assignments and Projects

SKILL BUILDING

The examples, assignments, case questions, and projects provide the opportunity for students to build the following skills:

Legal Research
Investigative
Case Analysis
Document Summarization



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

***Keith v. Buchannan*, 173 Cal. App. 3d 13, 220 Cal. Rptr. 392 (1985) (Pg. 207)**

This is an action based on breach of express and implied warranties arising out of the purchase of a yacht by plaintiff. Plaintiff purchased a boat intended to be used for long distances on the ocean. In purchasing the vessel, plaintiff states that he relied on representations made by the sales representative and representations contained in printed literature that the boat would be seaworthy for such use. Plaintiff also had a friend who was involved in a boat building enterprise inspect the vessel before it was purchased. The trial court found that the written statements in the brochure were opinions and therefore no express warranty was created. It also found that no implied warranty of fitness was created because plaintiff relied on his own experts.

The court discusses the law of express and implied warranties as found in the Uniform Commercial Code (as adopted in California). Under the UCC, express warranties are created by any affirmation of fact relating to the goods that becomes part of the basis of the bargain and any description of the goods which is made part of the basis of the bargain. The court states that statements found in a brochure can create express warranties. In this case, the vessel purchased was described in the brochure as a picture of sure-footed seaworthiness and a carefully well-equipped and very seaworthy vessel. Furthermore, seller was aware that appellant was looking for a vessel sufficient for long distance ocean-going cruises. The statements were statements of fact. The court also discussed what part of the basis of the bargain test means. The court stated that a buyer need not show that he would not have entered into the agreement absent the warrant or even that it was a dominant factor. It only needs to be part of the basis or merely a factor or consideration inducing the buyer to enter into the bargain. The facts in this case indicate that it was a factor.

As to the issue of implied warranty of fitness, the court points out that the main issue is whether the buyer relies on the skill and judgment of seller. In this case, buyer relied on his own expert. The trial court's judgment regarding express warranty was reversed. The finding on implied warranty was affirmed.

1. Why is this case dependent on the Uniform Commercial Code and not general contract law?

Suggested Answer:

This is a contract for the sale of goods, i.e., a boat, and therefore under the U.C.C.

1. Does a careful shopper risk the loss of warranties?

Suggested Answer:

Obviously, this case indicates that when shoppers rely on their own research and own experts they risk losing rights under implied warranties although not their rights under express warranties. Before buyers lose their rights under express warranties the seller must show that the express warranties were not a factor in buyer's decision to purchase of the item. This would be very difficult. If a shopper's investigation showed that the seller's representations were not true, that shopper would probably not purchase the item.

1. What is the difference between an express warranty and an implied warranty?

Suggested Answer:

An express warranty is a statement of fact made by the seller, either orally or in writing concerning the goods sold that forms part of the basis of the bargain. An implied warranty is not a statement that is made or printed. Rather, when an item is purchased, the buyer is entitled to rely on the fact that the item will be fit for its intended use.

ProCD, Inc. v. Zeidenberg, 908 F. Supp 640 (W.D. Wis. 1996) (Pg. 218)

Plaintiff created a comprehensive national directory of residential and business listings and sells these on CD-ROM. Defendant downloaded data from the CD-ROM and made it available over the Internet. He did not, however, download the software that plaintiff had developed and used on the CD-ROM. Plaintiff filed an action seeking an injunction prohibiting defendant from distributing the material on the Internet. Each party made a motion for summary judgment. Defendant was granted summary judgment. The appellate court affirmed, stating that federal copyright law controlled this situation. Under federal copyright law, public data such as phone numbers is not subject to copyright protection. The court also considered a Wisconsin Computer Crimes Act that made it unlawful to modify, destroy, access, take, or copy computer data willfully, knowingly, and without authorization. In this case, however, federal law preempts.

1. Explain the plaintiff's argument.

Suggested Answer:

Plaintiff contends that the defendant infringed plaintiff's copyright when he copied and used the SelectPhone CD-ROM for purposes of commercially distributing the listings on the Internet because copyright protection extends to both the telephone lists and to the software.

1. Explain the defendant's argument.

Suggested Answer:

Defendant argues that the SelectPhone data is not copyrightable but, nonetheless, copyright law permits him to make a copy of the program as long as it is essential to his personal use of the program and is not used in a manner inconsistent with the plaintiff's copyright.

1. Discuss the *Feist* case relied upon by the court.

Suggested Answer:

In the *Feist* case the U.S. Supreme Court held that a telephone company's white pages were not entitled to copyright protection. The Court stated that facts are not copyrightable, although compilations of data are copyrightable if there is some creativity or originality to the compilation. Copyright protects originality and creativity. It does not simply protect hard work in compiling data.

***Universal City Studios, Inc. v. Nintendo Co., 746 F.2d 112 (2nd Cir. 1984)* (Pg. 248)**

This is a case concerning trademark infringement brought by Universal, who owned the rights to the name and character of King Kong, against Nintendo, who produced the famous game, Donkey Kong. Universal claimed that Donkey Kong infringed on the name and character of King Kong. After comparing and inspecting both the Donkey Kong game and the King Kong movies, the trial court found that the differences between the two were great and that Donkey Kong was clearly a parody of King Kong. The trial court found that there was no likelihood of consumer confusion between the two and therefore granted summary judgment. The appellate court agreed.

1. Who are the parties to this case? What type of business organization is each party? How do you know?

Suggested Answer:

Plaintiff is Universal City Studios, Inc. This is obviously a corporation since the term Inc. appears in the name. Nintendo Co., is defendant. Although the court does not

expressly describe its business status, it talks about Nintendo of America, its wholly owned subsidiary. These are terms used to describe corporations.

1. Why did Universal sue Nintendo?

Suggested Answer:

Universal claimed that in producing the game Donkey Kong, Nintendo was infringing on the use of the character King Kong in violation of 15 U.S.C. / 1125 (a) in that Nintendo's actions suggested to the public that the product originated with or was authorized by the owner of the King Kong name. Universal also asserted claims based upon common law unfair competition, trademark and trade name principles.

3. How did the court distinguish King Kong from Donkey Kong ?

Suggested Answer:

The court says that the name Kong and King Kong connote an ape-like creature. The addition of the word Donkey creates an entirely different impression and thus the likelihood of confusion does not exist.

ETHICAL CHOICES

A friend of yours, who is also a paralegal, has asked you to come work with her. She owns and operates Paralegal Eviction Services, a company that helps landlords evict tenants. The firm employs no attorneys. You do not enjoy your present job in a law office and would like to find another job. Your friend has even offered you a partnership interest in the business. What do you do? (Pg. 213)

Points to Discuss:

Can paralegals offer their services directly to the public? Is it the unauthorized practice of law? If they can work directly with the public what are the possible pitfalls?

Review both the NALA and NFPA definitions of legal assistant or paralegal. If one is offering services to the public is he or she really a paralegal? Do paralegals who work directly for the public provide a needed service?

Assume that you work in a law firm. A complex intellectual property litigation case is set for trial in one week. In organizing the file before trial, you locate a document that was not produced during discovery because no one knew of its existence. The document is obviously relevant, but is very harmful to your client's position. The client is your neighbor. What do you do? (Pg. 230)

Points to Discuss:

Does the client's status as a neighbor have any bearing? Do you owe any special duty to friends and family? What is your obligation regarding the document? Do you have to turn it over? Are you in a conflict situation? Are there special problems when you represent family and friends? Does that mean that you should not work on cases involving family or friends?

QUESTIONS FOR ANALYSIS

1. Review the case file at the beginning of the chapter. How would Kersch protect his computer chip?

Suggested Answer:

A patent would be appropriate.

2. Assume that Kersch enters into an oral agreement to lease a building for eleven months. Three months into the lease, Kersch decides to buy a building. Can he cancel the lease without penalty?

Suggested Answer:

An oral lease for less than one year is usually enforceable. Therefore he cannot cancel unilaterally without penalty.

3. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

Suggested Answer:

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.

CHAPTER 11: BUSINESS PRACTICE: THE LAW OF BUSINESS ORGANIZATIONS AND BANKRUPTCY

TRANSPARENCY MASTERS

Business Organizations
Major Forms of Business Organizations
Corporations
Bankruptcy
Bankruptcy Law

PURPOSE AND SUBSTANTIVE CONTENT

This chapter covers the basic forms of business organizations, sole proprietorships, partnerships, and corporations as well as limited liability partnerships and companies. The law of bankruptcy is also introduced.

CHAPTER OUTLINE

Technology Corner
Case file

- 11-1 Introduction
- 11-2 Business Organizations
- 11-3 Sole Proprietorships
- 11-4 General Partnerships
- 11-5 Limited Partnerships
- 11-5 Corporations
 - Business Corporations
 - Professional Corporations
 - Close Corporations vs. Public Corporations
 - Nonprofit Corporations
 - Piercing the Corporate Veil
 - Security Regulations
 - The Corporate Paralegal
- 11-7 Limited Liability Partnership
- 11-8 Limited Liability Companies
- 11-9 Bankruptcy
 - Paralegals and Bankruptcy Law

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Questions for Analysis
Assignments and Projects

SKILL BUILDING

The examples, assignments, case questions, and projects provide the opportunity for students to build the following skills:

Legal Research
Statutory Analysis
Investigative
Case Analysis



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

***In re Tia CARRERE, Debtor*, 64 Bankr. 156; Bankr. L. Rep. (CCH) P71,279, 15 Collier Bankr. Cas. 2d (MB) 407, 14 Bankr. Ct. Dec. (CRR) 977 (July 16, 1986) (Pg. 248)**

The issue in this bankruptcy proceeding is whether a debtor who was under a personal service contract is entitled to reject the contract after filing bankruptcy. In this case, the debtor, a movie and television actress was under a contract to appear in a soap opera. She also entered into a separate agreement to appear in a different television program The A Team for more money. The second agreement was in the nature of an option. The actress subsequently filed bankruptcy and requested release from the first, binding contract. Under bankruptcy law, the trustee may assume contracts, which are advantageous to the estate and reject contracts that are not. The bankruptcy court found that under bankruptcy law, personal service contracts are not part of the bankrupt estate. Furthermore, in this case, the court was concerned with the good faith issue.

1. Why did Carrere file bankruptcy?

Suggested Answer:

She claimed that her liabilities were \$76,575 and her assets were \$13,191.

1. What is a personal services contract?

Suggested Answer:

While the court does not specifically define the term, it certainly suggests enough to tell that a personal service contract is one in which the personal and unique services of one party are to be supplied to the other party.

1. Under bankruptcy law, what is meant by the term estate ?

Suggested Answer:

Again, the court does not expressly define the term, but from a reading of the case, it is clear that estate means all of the property and debts turned over to the bankruptcy trustee.

ETHICAL CHOICES

Assume that you work as a member of the support staff in a corporate law firm. Your supervising attorney asks you to prepare minutes of regular meetings of a board of directors for a corporation for the past five years. The attorney explains that over the past five years the corporation, which is owned entirely by a husband, wife, and their son, failed to actually hold their board of director meetings or keep minutes. The corporation has recently been sued and the attorney is afraid that the plaintiff will try to pierce the corporate veil. Should you prepare five years worth of minutes for board of director s meetings that never took place? (Pg. 243)

Points to Discuss:

Is this conduct that is unethical? Examine the nature of the work the paralegal is doing. Does it involve misrepresentation to anyone? Is it the role of the paralegal to determine whether acts are unethical if the attorney thinks it is all right? Is it enough that the attorney has ultimate responsibility for what is done? What would happen to the paralegal if he or she refused to prepare the minutes?

Under the supervision of an attorney, you are helping a client fill out a bankruptcy petition. During this process the client tells you that since he first contemplated filing bankruptcy, approximately six months ago, he has been putting aside cash from each paycheck and now has about \$3000 cash. The client tells you not to list this as an asset on the bankruptcy petition. What do you do? (Pg. 250)

Points to Discuss:

How do you balance your duty to your client with your duty to the court? Are you bound by the client confidence here? What do you do if you tell the attorney and the attorney tells you to do what the client wants?

QUESTIONS FOR ANALYSIS

1. Refer to the quoted sections of the Delaware corporation laws in Figure 11—2 and answer the following questions, referring to the section in which you found the answer.
 - a. Must a business be doing business in Delaware in order to incorporate in that state?
 - b. Who is responsible for adopting bylaws for a corporation?
 - c. List at least five powers of a corporation.

Suggested Answer:

- a. No
 - b. Incorporators or initial directors; after stock is issued the shareholders unless the articles give directors that right
 - c. 16 specific powers are listed in 122 of the Delaware Law (pg 24-241)
2. Review figures 11-4 (Limited Liability Partnership Registration) and 11-5 (Limited Liability Company, Articles of Organization). Make a list of the information that you would need to obtain from Hoppats if they were considering a limited liability partnership and a limited liability company as possibilities for their business

Suggested Answer:

Name, Address, Agent for Service of Process, Type of business, Manager

3. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

Suggested Answer:

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.

CHAPTER 12: CRIMINAL PRACTICE: CRIMINAL LAW AND JUVENILE LAW

TRANSPARENCY MASTERS

Purposes of Criminal Law
Elements of a Crime
Elements of a Crime (continued)
Crime: Homicide
Elements of Battery
Prosecution of Juvenile Offenders

PURPOSE AND SUBSTANTIVE CONTENT

This chapter gives students an overview of substantive criminal law. Elements of crimes are explained. Examples of some common crimes are given. Juvenile law is also introduced.

CHAPTER OUTLINE

Technology Corner
Case File

Criminal Law

- 12-1 Introduction to Criminal Practice
- 12-2 Purposes of Criminal Law
 - Deterrence
 - Rehabilitation
 - Incapacitation
 - Retribution
- 12-3 The Elements of a Crime: Mens Rea and Actus Reus
 - Mens Rea
 - The Prosecutor Must Prove Mens Rea
 - Actus Reus
 - Concurrence of Mens Rea and Actus Reus
- 12-4 Crimes
 - Homicide
 - Battery
 - Assault
 - Kidnapping and False Imprisonment
 - Burglary
- 12-5 Defenses to Criminal Charges

Juvenile Law

- 12-6 Introduction to Juvenile Law
- 12-7 The Juvenile Court
- 12-8 Prosecution of Juvenile Offenders

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Assignments and Projects

SKILL BUILDING

The examples, assignments, case questions, and projects provide the opportunity for students to build the following skills:

Critical Thinking

Legal Analysis

Writing

Working in Groups

Computer



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

***United States v. Falkowski*, 900 F. Supp 1207 (D.Alaska 1995) (Pg. 260)**

In this criminal case, defendant Falkowski was indicted on charges related to the cultivation and distribution of marijuana. The day following the criminal indictment, the government filed civil forfeiture proceedings against real property obviously used in the commission of the crime. The sequence of the events following is important. On October 14, defendant was arrested. On November 5, the United States sought entry of default in the civil forfeiture case. On November 13, defendant pled guilty to some of the criminal charges pursuant to a plea agreement. On December 2, the government made a second request to enter default in the civil forfeiture action. On December 14, the clerk entered default in the civil forfeiture proceeding. On February 2, the United States moved for a decree of forfeiture. On July 28, defendant was sentenced in the criminal case. Defendant appealed the criminal conviction claiming that the civil forfeiture and criminal sentence constituted double jeopardy and because the sentence was the last to be imposed, the conviction must be set aside. The court stated that there were three reasons why the attack on the criminal case must fail. First, jeopardy attached in the criminal case before the default judgment was entered in the civil proceeding. Second, by entering a plea of guilty, defendant waived or forfeited the right to

collaterally attack his conviction and sentence on double jeopardy. Third, the civil forfeiture was not based upon the same offense for which defendant was criminally prosecuted.

1. Summarize the facts that lead up to the defendant's claim that he had been subjected to double jeopardy.

Suggested Answer:

On October 6, 1992, Falkowski and co-defendants were indicted on charges related to the cultivation and distribution of marijuana. The indictment contained criminal forfeiture counts addressing property in which Falkowski was alleged to claim an interest.

On October 7, 1992, the day following the return of the indictment, the government filed civil forfeiture proceedings against real property located at 1804 Caribou Way in Fairbanks, Alaska. This property was also listed in the indictment. On October 14, 1992, Falkowski was arrested and simultaneously served with notice of the arrest of the property at 1804 Caribou Way.

On November 5, 1992, the United States sought entry of default against Falkowski in the civil forfeiture case.

On November 13, 1992, Falkowski pled guilty to some of the charges in the indictment pursuant to a plea agreement anticipating that the other counts would be dismissed. The charges to which Falkowski pled included conducting a continuing criminal enterprise, money laundering, and investing drug proceeds in a business enterprise. As part of the plea agreement, Falkowski agreed to forfeit any property 1) that he acquired as a result of drug trafficking and 2) to assist the government in locating and seizing any such property. The plea agreement did not specify whether the property at 1804 Caribou Way would be forfeited civilly or criminally. In fact, the plea agreement made no specific reference to the Caribou Way property or the civil forfeiture proceeding.

On December 2, 1992, the government made a second request to enter default against Falkowski in the civil forfeiture action.

On December 14, 1992, the clerk entered a default against all defendants or claimants in the forfeiture action who had not filed claims, answer, or responses. The defaulted parties included Falkowski.

On February 2, 1993, the United States moved for a decree of forfeiture, relying in part on the declaration and order of default. The 1804 Caribou Way property was ordered forfeited to the United States by an order entered on February 10, 1993.

On July 28, 1993, the district court sentenced Falkowski to identical concurrent seventy-two month sentences on each of the counts of conviction.

1. What were the legal questions before the court?

Suggested Answer:

The main issue in this case was whether the civil forfeiture and criminal sentence constituted double jeopardy. In deciding this issue, the court also had to determine if the elements of the civil forfeiture were the same as the elements of the criminal offense.

1. Based on what you read in this case, what is civil forfeiture?

Suggested Answer:

Civil forfeiture is the government's claiming of property that is acquired as a result of a criminal action or is used in the commission of a criminal offense.

***Roy v. Gomez*, 55 F. 3d 1483 (9th Cir. 1995) (Pg. 266)**

This criminal case deals primarily with the felony-murder rule. Defendant Roy and a friend, McHargue, were charged with two counts of robbery and two counts of first degree murder. The facts leading to the charges are as follows. The two victims picked up both defendants, who were hitchhiking. The prosecutor argued that the defendants planned to drive to a remote location, rob and kill both victims, and steal their pickup truck. When defendants were arrested, a search of Roy produced a knife, cash, and a watch later identified as belonging to victim Mannix. Roy also made statements to fellow inmates in jail and these statements were admitted into evidence at trial. The facts indicated that Roy killed victim Clark while defendant McHargue was struggling with defendant Mannix, and that after Roy killed Clark, Roy helped McHargue rob and kill Mannix. The jury found Roy guilty of second-degree murder for killing Clark, but found him not guilty of robbing Clark. They found him guilty of first-degree murder in the killing of Mannix. Roy appealed stating that the finding of second degree murder in the Clark killing eliminated the theory of premeditation. The only way that the first-degree murder could stand would be under the theory of the felony murder rule. In connection with this, defendant claims that the court committed a *Beeman* error in the instructions, in that the court failed to tell the jury that an aider or abettor must not only know the unlawful purpose of the accomplice but must intend to encourage or facilitate the commission of the offense in this case a robbery. The California Court of Appeal affirmed the felony murder verdict stating that the *Beeman* error was harmless. The federal court agreed. The court felt that no jury could fail to find that Roy intended to aid McHargue in robbing Mannix.

1. Summarize the facts of the *Gomez* case.

Suggested Answer:

Defendant Roy and a friend, McHargue, were charged with two counts of robbery and two counts of first degree murder. The facts leading to the charges are as follows. The two victims picked up both defendants, who were hitchhiking. The prosecutor argued that the defendants planned to drive to a remote location, rob and kill both victims, and steal their pickup truck. When defendants were arrested, a search of Roy produced a knife, cash, and a watch later identified as belonging to victim Mannix. Roy also made statements to fellow inmates in jail and these statements were admitted into evidence at trial. The facts indicated that Roy killed victim Clark while defendant McHargue was struggling with defendant Mannix, and that after Roy killed Clark, Roy helped McHargue rob and kill Mannix. The jury found Roy guilty of second-degree murder for killing Clark, but found him not guilty of robbing Clark.

1. What is the legal issue in *Gomez*?

Suggested Answer:

The legal issue is whether the trial court's failure to properly instruct on the law regarding felony-murder (specifically that an aider or abettor must intend to facilitate the commission of the felony) entitles defendant to a reversal on appeal.

1. Why did the court affirm the lower court's ruling?

Suggested Answer:

The court felt that any error committed by the trial court was harmless. The court found that implied in the jury's finding on other issues was the fact that Roy intended to encourage or facilitate the commission of the robbery.

***Schweinle v. Texas*, 915 S.W.2d 17 (Tex. Crim. App. 1996) (Pg. 269)**

In this criminal case, defendant was found guilty of aggravated kidnapping. The crime arose out of a situation involving a domestic dispute. After a fight, defendant abducted his girl friend, beat her, and took her to his house where he kept her over night. Under Texas law, the offense of kidnapping occurs if a defendant intentionally or knowingly abducts another. Abducts means to secrete or hold a person in a place where he is not likely to be found or using or threatening to use deadly force. Also under Texas law, the offense of false imprisonment is committed if a defendant knowingly restrains another person. At trial, the jury was instructed as to the crime of kidnapping but not as to the crime of false imprisonment. Defendant appealed claiming that the jury should have been instructed as to false imprisonment because it is a lesser-included offense of kidnapping and the facts in this case supported such a finding. The Court of Appeal affirmed the trial court finding but the Texas high court granted discretionary review. It found that false imprisonment was a lesser-

included offense of kidnapping. The second issue required more discussion, but the Court stated that a jury could have found that no deadly force was used or threatened. The defendant testified that he did not touch the gun nor point it at the victim. Furthermore, he testified that he always carried the gun in his truck and the victim knew this. Also, the Court said that a jury could have found that in view of the fact of the relationship between the parties, his house might not have been a place where she was not likely to be found. The Court reversed and remanded.

1. Why did the court remand the case to the court of appeals?

Suggested Answer:

The court of appeals found that it was not necessary to instruct on the lesser-included offense of false imprisonment. The high court disagreed. The case was remanded to the court of appeal so that it could analyze whether the failure to instruct on the lesser-included offense was a harmless error or not.

1. According to what you read in *Schweinle*, what is a lesser included offense?

Suggested Answer:

An offense is a lesser-included offense if it is established by proof of the same, or less, facts that are required to prove the offense charged.

1. Under the Model Penal Code, did the appellant commit the crime of kidnapping? Explain using the appropriate elements of the Model Penal Code set forth in the text.

Suggested Answer:

The Model Penal Code provides that kidnapping is the unlawful taking, confinement, and carrying away of another person, by threat, force, fraud, or deception. In this case, it seems obvious that the defendant did commit the crime of kidnapping as defined in the Model Penal Code. The defendant unlawfully took, transported, and confined another. The Model Penal Code says nothing about keeping the victim in a place where she is not likely to be found. Furthermore, defendant in this case threatened and forced the victim to come with him. He dragged her and slapped her. Unlike the Texas law, the Model Penal Code does not require deadly force, only threats or nondeadly force.

***In Re Gault*, 387 U.S. 1 (1967) (Pg. 274)**

In the *Gault* case, police arrested a juvenile for making obscene phone calls. After denying him substantial due process rights, Gault, age 15, was committed to an institution until he should reach his majority. The U.S. Supreme Court held that juveniles are entitled to several due process rights under the U.S. Constitution. Specifically, the juvenile and his

parents are entitled to adequate written notice of the specific issues in the case. This notice must be given sufficiently in advance of the hearing to permit preparation. The child and his parents must be advised of their right to counsel and if unable to afford counsel, that one will be appointed. The constitutional privilege against self-incrimination is applicable. A juvenile must be afforded the right of confrontations and sworn testimony of witnesses available for cross-examination.

1. What constitutional right was Gault denied during the adjudicatory stage of the juvenile process?

Suggested Answer:

Gault was denied the constitutional right of due process.

1. What does due process require in the adjudicatory stage of the juvenile process?

Suggested Answer:

Specifically, the juvenile and his parents are entitled to adequate written notice of the specific issues in the case. This notice must be given sufficiently in advance of the hearing to permit preparation. The child and his parents must be advised of their right to counsel and if unable to afford counsel, that one will be appointed. The constitutional privilege against self-incrimination is applicable. A juvenile must be afforded the right of confrontations and sworn testimony of witnesses available for cross-examination.

1. Does a juvenile have a right against self-incrimination? Discuss.

Suggested Answer:

This Court makes it clear that a juvenile does have a right against self-incrimination. Furthermore, this Court points out that admissions and confessions by juveniles require special caution as to their reliability and voluntariness. Special problems may also arise when a juvenile attempts to waive these rights.

Breed v. Jones, 421 U.S. 519 (1975) (Pg. 275)

In this case, a petition was filed in the Juvenile Division of the Superior Court seeking to have the juvenile declared a ward of the court on the ground that he committed an act (armed robbery) which would be a crime had he been an adult. At an adjudicatory hearing, the facts of the petition were found to be true. At that point, the juvenile court also found that the juvenile was not fit for juvenile proceedings and transferred the case to the Superior Court for him to be tried as an adult. The juvenile claimed that this was double jeopardy. Eventually the case reached the U.S. Supreme Court, which held that even if there were no

double punishment, double jeopardy applied because he was required to go through two trials for basically the same offense.

1. What is the legal issue in the *Breed* case?

Suggested Answer:

The legal issue is whether double jeopardy applies once a juvenile has been through an adjudicatory hearing in which he is found to have committed acts that would be a crime were he an adult. In other words, can a juvenile be tried as an adult after an adjudicatory hearing by a juvenile court?

1. Explain why the Court found that the double jeopardy clause of the Fifth Amendment was violated by the California courts.

Suggested Answer:

The respondent in this case was subjected to the burden of two trials for the same offense; he was twice put to the task of marshaling his resources against those of the State, twice subjected to the heavy personal strain that such an experience represents. The Supreme Court stated that this type of prosecution posed potential consequences of additional stigma inherent in the criminal determination and the possibility of the deprivation of liberty for many years.

ETHICAL CHOICES

You are a case assistant. You sit in on an interview with a criminal defendant who admits to your supervising attorney that he did in fact commit the crime in question. At trial, the client takes the stand and testifies that he had nothing to do with the crime. Should you do anything about either the client or the attorney? (Pg. 272)

Points to Discuss:

How far does preserving a client's confidence extend? If you know your client has lied in court is there any obligation? Must you always maintain a client confidence in criminal cases? Are there any exceptions? What if someone could be injured? What if a client threatens to commit another crime?

QUESTIONS FOR ANALYSIS

1. Locate the juvenile court rules for your jurisdiction. Choose two statutes. Rewrite them, breaking them into their elements. Review the statutes for assault, battery, and kidnapping in this chapter to review how a statute is broken apart into elements.

Answers will vary from state to state

2. Reread the Case File at the beginning of the chapter. What crimes has the client committed? Explain your answer by discussing the facts and the elements of the crimes.

Suggested Answer:

Assault and Battery —Throwing the bottle of beer at the victim and actually hitting him with it constitutes an assault and battery causing apprehension and intentional and harmful touching.

None of the previous conduct is criminal. Shoving a hand away after being poked is probably reasonable force in response to the initial poking.

The statement to stay away from him or you'll be sorry is not a sufficient threat to constitute an assault.

Should the victim die, manslaughter or negligent homicide would probably result.

CHAPTER 13: CIVIL PROCEDURE BEFORE TRIAL

TRANSPARENCY MASTERS

- Civil Procedure: The Cause of Action
- Jurisdiction
- Jurisdiction (continued)
- Civil Pleadings
- The Complaint (the basic components)
- Summons
- Service of process
- The Answer
- Pretrial Motions
- Discovery

PURPOSE AND SUBSTANTIVE CONTENT

This chapter presents an overview of the pretrial civil litigation process. Pleadings, motions, and discovery are discussed.

CHAPTER OUTLINE

- Technology Corner
- Case File

- 13-1 Introduction to Civil Litigation
- 13-2 Cause of Action
- 13-3 Jurisdiction
 - Subject Matter Jurisdiction
 - Personal Jurisdiction
 - In Rem Jurisdiction and Quasi in rem jurisdiction
- 13-4 Venue
- 13-5 The Pleadings
 - The Complaint
 - The Summons
 - Service of Process
 - The Answer
 - Motions and Demurrers
 - Counterclaims, Cross-Claims, and Third-Party Actions
- 13-6 Pretrial Motions
- 13-7 Discovery
 - Interrogatories
 - Requests for Admissions

Requests to Produce or Inspect
Depositions
Requests for Medical Examinations
Disclosure

13-8 Pretrial Conferences and Settlement

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SKILL BUILDING

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Case Analysis
Legal Research
Statutory Analysis
Document Analysis
Interviewing



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

***Twentieth Century-Fox Film Corporation v. Taylor*, 233 F. Supp. 913 (S.D.N.Y. 1965)**
(Pg. 282)

This is a civil lawsuit brought by Twentieth Century-Fox against both Elizabeth Taylor and Richard Burton as a result of their actions during the filming of *Cleopatra*. The complaint contained several causes of action, some against Taylor only, some against Burton only, and some against both of them. Taylor was a citizen of the United States, but not any individual state. Burton was a British resident. The action was first filed in the New York state court. The entire case was removed to federal court on the basis of diversity of citizenship between Burton and plaintiff, even though no diversity existed as to Taylor. Twentieth Century moved to remand the entire action back to the state court. The court found that four of the five causes of action were properly in federal court even though two of them were against Taylor only because there were common questions between these causes of action and the ones against Burton. Since the fifth cause of action contained no common questions, it was remanded.

1. State each cause of action in a separate sentence.

Suggested Answer:

- The first cause of action is against Taylor individually for breach of contract.
- The second cause of action is against Burton for breach of his employment contract.
- The third cause of action is against Taylor and Burton for breach of their employment contracts and for inducing the other to breach the contract.
- The fourth cause of action is against Taylor and Burton alleging that they interfered with and injured plaintiff's business and property rights.
- The fifth cause of action is solely against Taylor and alleges that she is the alter ego of MCL Films, S.A., and seeks a declaratory judgment that any money due from plaintiff to MCL may be set off against any judgment against Taylor.

1. Why were Elizabeth Taylor and Richard Burton sued by Twentieth Century-Fox Film Corporation?

Suggested Answer:

They were sued because plaintiff claims their actions and conduct while on the set of the movie *Cleopatra* caused delays and extra expenses in the making of the movie. This constituted a breach of their respective employment agreements.

1. Why was Richard Burton able to move the case to federal court?

Suggested Answer:

Richard Burton was a British citizen. Plaintiff was a Delaware corporation with its principal place of business in New York. Diversity jurisdiction existed.

1. What was the nature of the motion that was made in this case? Who made the motion?

Suggested Answer:

Plaintiff moved to remand the action back to the state court after it had been removed to federal court.

1. Why did the federal court decide to retain jurisdiction over the first, third, and fourth causes of action even though they involved neither a federal question nor diversity of citizenship?

Suggested Answer:

These causes of action contained common questions of fact, and items of proof might overlap and the same witnesses might be called. To require separate trials in two courts would needlessly waste the time and effort of all concerned.

***M.T.V. Network v. Curry*, 867 F. Supp 202 (S.D.N.Y. 1994) (Pg. 301)**

Defendant, Curry, was a video disc jockey who worked for plaintiff MTV. He also engaged in activities not affiliated with MTV. While working for MTV he developed an Internet site, mtv.com. According to Curry he discussed this with several officials of MTV and was told to go ahead with his development. Sometime later, MTV decided to set up an Internet site and brought this action against Curry on several grounds including trademark claims based on the use of registered MTV marks and breach of Curry's employment contract. Curry counterclaimed for breach of oral contract, fraud/negligent misrepresentation, and unfair competition. MTV made a motion to dismiss the counterclaims, claiming that any agreement violated the statute of frauds (it could not be performed within one year), that the allegations of fraud are not sufficiently pleaded in the complaint, and that the allegation of unfair competition was not clearly stated. The court denied plaintiff's motions as to the first two counterclaims, but granted a motion for a more definite statement as to the third counterclaim.

1. Describe the motions that were made at trial.

Suggested Answer:

1. What is the legal issue in the MTV case?

Suggested Answer:

The legal issue is whether defendant's counterclaims state any basis for relief.

3. What are the various pleadings discussed in this case?

Suggested Answer:

The court primarily discusses counterclaims filed by the defendant. It also discusses briefly, the defendant's answer. Although motions are not technically pleadings, the court does discuss a motion to dismiss and a motion for a more definite statement.

ETHICAL CHOICES

You are the paralegal in a litigation practice. Your next door neighbor has sued a local police officer. The police officer is a client in your office. You have been assigned to the case. Should you do anything? (Pg. 306)

Points to Discuss:

Does the fact that you know someone create a conflict of interest? Does the relationship between the neighbor and the paralegal matter? Even if you think there is no conflict should you tell your supervising attorney? What if the firm is laying people off?

Your supervising attorney tells you that for each case you refer the firm will pay you a \$100 bonus. In the case of a contingent fee, the firm will pay you 10% of the fee. A case you referred to the office settles and the firm receives a contingent fee of \$100,000. You do not ask for any referral fee, but the firm offers you \$10,000. Do you accept the money? (Pg. 308)

Points to Discuss:

Is the attorney violating any ethics in promising a referral fee to a non lawyer? Do you turn down \$10,000 that you have not requested?

QUESTIONS FOR ANALYSIS

1. Review the short excerpt from a deposition transcript found on page 306. Write a short summary of the transcript.

Suggested Answer:

Harry Hardtack has been employed as a patrol officer by the Centerville Police Department for 5 years.

2. Review the Interrogatories that might be used in the Hardtack case. Write a set of question that might be sent to the plaintiff in this case.

No suggested answer

3. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state s ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

Suggested Answer:

The NALA and NFPA rules are found in Appendix II of the text. State s rules will vary.

CHAPTER 14: CRIMINAL LAW: PROCEDURE

TRANSPARENCY MASTERS

- Criminal Procedure
- The Constitution
- Probable Cause
- Warrant Requirement
- Exceptions to the Warrant Requirement
- The Exclusionary Rule
- Arrest
- Interrogations and Confessions
- Right to Counsel
- Pretrial Activities

PURPOSE AND SUBSTANTIVE CONTENT

This chapter covers the procedures employed in criminal cases. It discusses the Constitutional guarantees such as the Fourth, Fifth, and Sixth Amendments and how they affect the criminal process. Also discussed are the various types of court hearings in criminal cases.

CHAPTER OUTLINE

- Technology Corner
- Case File

- 14-1 Introduction to Criminal Procedure
- 14-2 The Constitution and the Criminal Suspect
 - Due Process
 - Search and Seizure
 - Probable Cause
 - The Warrant Requirement
 - Exceptions to the Warrant Requirement
 - The Exclusionary Rule
 - Arrest
- 14-3 Confessions and Interrogations
 - Right to Counsel
- 14-4 Pretrial Activities
 - Discovery and Investigation
 - The Arrest
 - The Complaint
 - The Initial Appearance

The Preliminary Hearing
Formal Charges
Formal Discovery
Pretrial Motions

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CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

***Katz v. United States*, 389 U.S. 347 (1967)** (Pg. 314)

Petitioner was convicted of transmitting wagering information by telephone across state lines. Evidence in this case was obtained by FBI agents placing an electronic listening device on a public telephone without a warrant. The Supreme Court held that Katz had an expectation of privacy in his phone call and that the activities of the FBI constituted an unreasonable search since they failed to obtain a warrant.

1. Summarize the facts in the *Katz* case.

Suggested Answer:

Petitioner was convicted of transmitting wagering information by telephone across state lines. Evidence in this case was obtained by FBI agents placing an electronic listening device on a public telephone without a warrant

1. Why did the Court rephrase the legal issues?

Suggested Answer:

The issues were originally phrased by petitioner. The court changed them because it did not agree with the interpretation of the Fourth Amendment to the Constitution that was implied in the issues as phrased by petitioner. Petitioner implied that the Fourth Amendment dealt with constitutionally protected areas and general right to privacy. The Court stated that the Fourth Amendment protects people not places.

1. Explain the Court's decision in *Katz*.

Suggested Answer:

The Court decided that *Katz* had a reasonable expectation of privacy in making a phone call from a public telephone. The actions of the FBI therefore constituted a search and seizure. Furthermore, officers should have obtained a warrant prior to the search. Their failure to do so resulted in an unreasonable and therefore illegal search.

***Mapp v. Ohio*, 367 U.S. 643 (1961) (Pg. 325)**

In this case, police searched the home of appellant without a warrant. They seized obscene materials and arrested appellant. She was convicted of possession of lewd and lascivious materials in violation of state law. She appealed, claiming that evidence was obtained as a result of an illegal search and therefore should have been excluded at trial. The state claimed that even if the search was unreasonable, it should not be prevented from using the evidence at trial. The Supreme Court disagreed and held that the exclusionary rule applied to states.

1. Summarize the facts in the *Mapp* case.

Suggested Answer:

In this case, police searched the home of appellant without a warrant. They seized obscene materials and arrested appellant. She was convicted of possession of lewd and lascivious materials in violation of state law. She appealed claiming that evidence was obtained as a result of an illegal search and therefore should have been excluded at trial.

1. What is the legal issue in *Mapp*?

Suggested Answer:

The legal issue is whether evidence obtained by searches and seizures in violation of the Constitution is admissible in a state court.

1. How did the Court use the exclusionary rule in this case?

Suggested Answer:

In this case, the Court held that the exclusionary rule applied in state cases. The result was that the conviction of *Mapp* was reversed.

***Terry v. Ohio*, 392 U.S. 1 (1968) (Pg. 328)**

A police officer saw two men walking back and forth in front of a store and pausing to stare in the store window. He later saw a third man join them. The officer then approached them, identified himself, and asked their names. They mumbled something, at which point the officer frisked one of the suspects and felt a weapon. He later removed the weapon. He also found a weapon on a second suspect. Both were charged with carrying a concealed weapon. They moved to suppress the evidence. The Court held that the Fourth Amendment does apply to stop and frisk procedures such as those followed in this case. However, where a reasonably prudent officer is warranted in believing that his safety or that of others is endangered, he may make a reasonable search for weapons. In this case, the officer's original stop was good. He had reason to think that they were contemplating a daylight robbery and were armed. He had the right to stop and investigate and to do a pat down for weapons.

1. Summarize the Court's decision in the *Terry* case.

Suggested Answer:

The Court stated that even though police must obtain a warrant to make a search and seizure whenever practicable, that procedure cannot be followed where swift action, based upon on-the-spot observations of the officer on the beat, is required. The reasonableness of any particular search and seizure must be assessed in light of the particular circumstances. If an officer justifiably believes that those whom he is investigating may be armed, the officer may make a search for weapons.

1. When may an officer make a reasonable search for weapons?

Suggested Answer:

Where a reasonably prudent officer is warranted in believing that his safety or that of others is endangered, he may make a reasonable search for weapons.

***Miranda v. Arizona*, 384 U.S. 436 (1966) (Pg. 330)**

In a series of cases before the Court, the defendants, while in police custody, were questioned by police or attorneys in a room in which they were cut off from the outside world. None of the defendants was given any warning of his rights at the outset of the interrogation process. Admissions and confessions were obtained. In this famous case, the Court held that under the above circumstances, defendants must be fully informed of their rights prior to questioning.

1. Discuss the pros and cons of the *Miranda* warning on the justice system.

Suggested Answer:

Calls for students' opinions.

1. Discuss the privilege against self-incrimination.

Suggested Answer:

Calls for students' opinions.

ETHICAL CHOICES

You are interviewing a young man charged with burglary. He asks if you have to tell the attorney everything he tells you. What is your response and why? (Pg. 343)

Points to Discuss:

How do you explain confidentiality to clients? What do you do if he tells you he is guilty? What do you do if he tells you he paid the attorney with money stolen during the burglary?

QUESTIONS FOR ANALYSIS

1. Discuss the differences between the complaints in the Simpson and Nichols cases.

Suggested Answer:

Although both Simpson and Nichols were involved in homicides the complaints are very different. Simpson is charged with murder under California State law. The complaint is very short and simple, setting out the minimum basics of the offense. Nichols is charged with violating federal laws concerning destruction of property by bombs and explosive devices. This complaint contains an affidavit of an investigating officer setting forth several details of the offense.

2. Read the Case File at the beginning of this chapter. Compare and contrast the case file facts with the facts of the *Mapp* case. Look for similar facts, differences and factual gaps.

Suggested Answer:

Similar facts: In both cases officers came to defendant's home and demanded entrance without a warrant; defendants denied entry without a warrant; officers conducted surveillance of home for several hours; officers eventually entered residences forcibly;

officers refused to show defendants search warrant; officers searched residences and found evidence of crimes not associated with original intent

Different facts: Officers in Darwood matter actually had a search warrant, even though it was for wrong property; officers in Mapp probably did not; officers would not allow Darwood to call attorney while Mapp was allowed to do so

Gaps: We don't know if officers in Darwood were acting under exigent circumstances the true defendant was accused of having explosive materials and had been involved in prior bombings

CHAPTER 15: ALTERNATIVE DISPUTE RESOLUTION

TRANSPARENCY MASTERS

Alternative Dispute Resolution (ADR)
Binding and Nonbinding ADR
Negotiation
Arbitration
Mediation
Other Methods of ADR

PURPOSE AND SUBSTANTIVE CONTENT

This chapter explains the various methods of alternative dispute resolution, including negotiation, mediation, and arbitration.

CHAPTER OUTLINE

Technology Corner
Case File

15-1 Introduction
15-2 Binding ADR v. Nonbinding ADR
15-3 Negotiation
15-4 Arbitration
15-5 Mediation
15-6 Mini-trials
15-7 Court-Related ADR
15-8 Private Judges
15-8 Special Masters and Discovery Referees
15-10 ADR and Criminal Law
15-11 Arbitrators, Mediators, and Other Neutrals

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Investigative
Writing



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

***Madden v. Kaiser Foundation Hospitals*, 17 Cal. 3d 699, 131 Cal. Rptr. 882, 552 P.2d 1178 (1976) (Pg. 350)**

Defendants appeal from an order denying enforcement of an arbitration provision in a medical services contract entered into between the Board of Administration of the State Employees Retirement System (hereafter board) and defendant, Kaiser Foundation Health Plan. Plaintiff, a state employee who enrolled under the Kaiser plan, contends that she is not bound by the provision for arbitration. The instant appeal presents the issue whether an agent or representative, contracting for medical services on behalf of a group of employees, has implied authority to agree to arbitration of malpractice claims of enrolled employees arising under the contract. The Court found that she was bound by the agreement because the board was her agent. Furthermore, this is not to be treated as a contract of adhesion.

1. If arbitration is so beneficial, why did plaintiff oppose it in this case?

Suggested Answer:

Calls for students' opinions.

1. Because this case was decided by the California Supreme Court, is arbitration really an alternative to the court process? Explain.

Suggested Answer:

This case decided only whether arbitration could be forced. It did not resolve the merits of the underlying dispute. However, even with arbitration, the courts sometimes do get involved.

1. According to the California Supreme Court, what are the advantages of arbitration?

Suggested Answer:

The speed and economy of arbitration, in contrast to the expense and delay of the jury trial, could prove helpful to all parties; the simplified procedures and relaxed

rules of evidence in arbitration may aid an injured plaintiff in presenting his case. Plaintiffs with less serious injuries, who cannot afford the high litigation expenses of court or jury trial, disproportionate to the amount of their claim, will benefit especially from the simplicity and economy of arbitration. This procedure facilitates the adjudication of minor malpractice claims that cannot economically be resolved in a judicial forum.

1. The California Supreme Court ordered the parties to submit to arbitration in this case. Was it to be binding arbitration or non-binding? Did the plaintiff in this case agree to be bound by an arbitration award?

Suggested Answer:

This is binding arbitration. Although the plaintiff did not personally agree to be bound by an arbitration award, her agent had the right to bind her.

***Lawrence v. Walzer*, 207 Cal. App.3d 1501, 256 Cal. Rptr. 6 (1989) (Pg. 355)**

The law firm of Walzer and Gabrielson and four attorneys associated with that firm are defendants in an action for legal malpractice brought by Margaret Drain Lawrence, a former client, and appeal from the denial of their petition to compel arbitration. Defendants contend the retainer agreement signed by plaintiff compels arbitration of this action for legal malpractice. A retainer agreement, consisting of a three-page letter from defendants to plaintiff, states: This letter sets forth the agreement concerning our representation of you. Thirteen numbered paragraphs follow. The first nine paragraphs concern the computation and payment of attorney's fees and costs. In paragraph 10, defendants promise to keep plaintiff informed of the progress of her case. Paragraph 11 then states: In the event of a dispute between us regarding fees, costs or any other aspect of our attorney-client relationship, the dispute shall be resolved by binding arbitration. The prevailing party in any arbitration or litigation between us shall be entitled to reasonable attorney's fees and costs. The final two paragraphs contain a promise by defendants to conform to the highest legal and ethical standards, and instructions to plaintiff to sign and return a copy of the letter. The court held that the agreement to arbitrate applied only to the issue of attorney fees not whether malpractice occurred.

1. Compare the attitude of this court toward arbitration to the attitude of the *Madden* (Pg. 366) court.

Suggested Answer:

This court sees an agreement to arbitrate as an agreement in which one gives up substantial rights, especially the right to a jury trial. The court says that the law ought not to do this where a client has not been made aware of the existence of an arbitration provision or its implications.

1. How do the facts of this case differ from the facts of the *Madden* case?

Suggested Answer:

Students may see different factual similarities and differences. In both cases plaintiffs were parties to agreements containing arbitration clauses. Although not stated in the case, the fact that the defendants were lawyers probably had an impact on the decision.

In the matter of the Arbitration between Freddie Prinze, Also Known as Freddie Pruetzel, Appellant, and David Jonas, Respondent, 38 N.Y.2d 570, 345 N.E.2d 295, 381 N.Y.S.2d 824 (Pg. 356)

On January 16, 1974, petitioner and respondent signed a contract whereby the petitioner agreed to employ the respondent as his agent for a period of three years. The contract is a standard form used and approved by the conference of personal managers in the entertainment industry. It contains an arbitration clause that provides: In the event of any dispute under or relating to the terms of this agreement, or the breach, validity or legality thereof, it is agreed that the same shall be submitted to arbitration. In addition to the standard features the contract contains a rider giving the respondent the option to extend the agreement for four more years.

When the petitioner signed these agreements he was 19 years old and thus, according to the law in effect at that time, he was legally an infant. The court held that arbitration was the proper way to handle the dispute.

1. Did the court rule that the entire contract was valid? Could one provision in the contract be valid and enforceable while the rest of the contract is not valid?

Suggested Answer:

The court held only that the arbitration clause was reasonable and enforceable. It left it to the arbitrator to decide the remaining issues.

1. What is the New York court's general attitude toward arbitration?

Suggested Answer:

The court favors arbitration. In the absence of a compelling public policy, arbitration is a preferred means for the settlement of disputes.

Neaman v. Kaiser Foundation Hospital, 9 Cal. App.4th 1170, 11 Cal. Rptr 2d 879 (1992)
(Pg. 362)

After an arbitration hearing, the petitioners learned that one of three arbitrators had a prior business relationship with defendant. They moved to set aside the award. The court granted the motion.

1. Was the court concerned with the fairness of the arbitrator's award in this case?

Suggested Answer:

Although fairness might be an underlying concern, the court says nothing about it. The court is concerned with the fairness of the proceeding rather than the award.

1. Why did the court set aside the arbitration award?

Suggested Answer:

At the very least there was an appearance of impropriety, and the prior business relationship should have been disclosed to plaintiffs.

ETHICAL CHOICES

Assume that you are conducting the initial interview of a client. Your attorney has asked you to have the client sign a retainer agreement, telling you that he has already explained the fee arrangement to the client. You give a copy of the retainer agreement to the client who proceeds to read the agreement. Before signing it, the client notices that there is a provision in the agreement stating that any dispute arising out of the attorney/client relationship, including fees, must be arbitrated.. The client asks you if it is a good idea to agree to such a provision. What do you tell the client? (Pg. 363)

Points to Discuss:

Does this constitute giving legal advice? Is there a conflict between your duty to your client and your duty to the law firm? Assuming that this is not legal advice, how would you answer the client?

QUESTIONS FOR ANALYSIS

1. Review the section of your automobile policy that deals with uninsured-motorist coverage. Describe these provisions.

Suggested Answer:

The typical policy will include a description of what kinds of claims are covered, who is covered, the limits of liability, exclusions and a requirement for arbitration in the event of a dispute.

2. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state's ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

Suggested Answer:

The NALA and NFPA rules are found in Appendix II of the text. State's rules will vary.

CHAPTER 16: RULES OF EVIDENCE

TRANSPARENCY MASTERS

- Rules of Evidence
- The Four Types of Evidence
- Testimony of a Witness
- Types of Exhibits
- Types of Evidence
- What Is Relevancy?
- What Is Impeachment?
- What Is Hearsay?

PURPOSE AND SUBSTANTIVE CONTENT

This chapter gives students an overview of the purpose of the rules of evidence as well as introducing some major rules of evidence.

CHAPTER OUTLINE

- Technology Corner
- Case File

- 16-1 Introduction
- 16-2 What Is Evidence?
 - Testimony of a Witness
 - Exhibits
 - Stipulated Facts
 - Judicial Notice
- 16-3 Types of Evidence
 - Direct Evidence
 - Circumstantial Evidence
- 16-4 Relevancy
- 16-5 Impeachment
- 16-6 Hearsay

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- Terms to Remember
- Questions for Review
- Questions for Analysis
- Assignments and Projects

SKILL BUILDING

The examples, assignments, case questions, and projects provide the opportunity for students to build the following skills:

Critical Thinking
Legal Analysis
Writing
Computer

 **CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS**

United States v. Lawson, 653 F.2d 299 (7th Cir. 1991) (Pg. 368)

During a criminal trial for extortion, a psychiatrist testified regarding defendant. His testimony and opinion were based primarily on information and reports from other doctors. Defendant was convicted and appealed raising the contention that the admission of hearsay in the testimony of the psychiatrist violated his right to confront adverse witnesses. The court upheld the conviction stating that the admission of hearsay was in accordance with Federal Rule of Evidence 703, which expressly permits experts to base their testimony on evidence that would otherwise be inadmissible, so long as it is of a type reasonably relied on by experts in the particular field in forming opinions. The admission of hearsay did not violate the Constitutional right to confront witnesses, because the defendant had pretrial access to the hearsay information relied upon.

1. Rule 703 was discussed in the *Lawson* case. Rule 703 states that [t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. Explain why the *Lawson* court held that the opinion of Dr. Sheldon was admissible.

Suggested Answer:

Expert psychiatrists often base their opinion on reports and data from other experts. Dr. Sheldon in this case relied on staff reports, background information from the Marine Corps, and the U.S. Attorney's Office, which were clearly the type that psychiatrists would rely upon in making a similar professional judgment.

1. Prepare a brief for the *Lawson* case. Include the facts, issues, rules, analysis, and conclusion of the court.

Suggested Answer:

Answers will vary from student to student.

Bowling v. Commonwealth of Virginia, 12 Va. App. 166, 403 S.E.2d 375 (1991) (Pg. 374)

Defendant was convicted of murder, which occurred in the course of a robbery. At trial the following evidentiary issues arose: (1) Defendant attempted to introduce psychiatric testimony regarding his low I.Q. in an attempt to prove lack of premeditation. The court refused to allow the testimony. (2) The court admitted a recording of a 911 tape made by the victim minutes after the robbery and shooting. On the tape, the victim answered several questions. (3) The court admitted statements of the victim made to his wife in the emergency room as dying declarations. The victim also requested to see a minister and made several statements to his wife, indicating that he felt he was dying. The appellate court upheld all the trial court's rulings.

1. Using Appendix VII, find the Federal Rules of Evidence that might have been applicable to the *Bowling* case. Explain how each could be used.

Suggested Answer:

Rule 802 is the basic hearsay rule. Rules 803 and 804 create the numerous exceptions. In this case, the following would apply:

- 803 (1) Present Sense Impression
- 803 (2) Excited Utterance.
- 803 (24) Other Exceptions (a statement having guarantees of trustworthiness if the statement is offered as evidence of a material fact, if the statement is more probative than other evidence, and if justice will be served.)
 - (a) Hearsay Exceptions; Declarant Unavailable (defines unavailability and included death)
- 804(b)(2) Statement under Belief of Impending Death

1. Write a case brief for the *Bowling* case.

Suggested Answer:

This will vary from student to student.

ETHICAL CHOICES

A client charged with armed robbery comes into the office with a small bundle wrapped in a kitchen towel. She asks you to hide the bundle. What should you do? (Pg.372)

Points to Discuss:

How far do your obligations to your client go? If you did this would you be committing a crime? Do you have to tell the police that you were asked to do this?

A client tells you he is going to shred certain relevant documents that are damaging to his case. What should you do? (Pg. 373)

Points to Discuss:

How does your fiduciary duty to your client apply here? Does it matter if this happens at the beginning of the case, before any discovery takes place? Is it alright to shred the document as long as you do not lie about it later? What if this does happen and later you learn that your client has perjured himself, denying that any such documents ever existed (and the attorney refuses to do anything)?

QUESTIONS FOR ANALYSIS

1. Read the following hypothetical situation after reviewing the Case File at the beginning of this chapter. Focus on the statements that may be hearsay.

Tommy Rutherford and his family were staying at the lake for the summer. Tommy's family has a very small cabin built by his great-grandfather. The new home next door is quite large and the owner is almost never there. One weekend the next-door neighbor, Susan, came to the lake for a short stay. Tommy offered to cut her lawn and look after the outdoor plants on the back deck. Susan said that would be great. Susan also said, "Feel free to use the dock, the tennis courts, and the back deck any time."

Late in the summer, Susan returned to find that the dock was badly damaged due to Tommy's inexperienced docking of his family boat, and the net over the tennis court was ripped in half. When Susan asked about the damage, Tommy's sister Helen said, "Tommy said we could use the dock all we want, and besides, he is just learning to use a boat. The tennis court net was not my fault."

Review Federal Rules of Evidence 801 through 806 in Appendix VI

- a. Are any of these statements hearsay? Explain.
- b. Is there a nonhearsay use for any of the statements? Explain.
- c. What type of documentary evidence might be used in the Rutherford case?

Suggested Answer:

a. Since Susan is a party, and the statements would be offered against her, her statements to Tommy are not hearsay [Rule 801 (d) (2)]. Tommy could testify as to what she said. However, if Helen testifies, her testimony regarding Susan's statements would include hearsay within hearsay (Rule 805). She could testify only if both Susan's and Tommy's statements were exceptions. Susan's statement is an exception since she is a party and the statement would be offered against her. Tommy is a party, but the statement would not be offered against him. It might be admissible under the state of mind exception.

Helen's statements that Tommy is learning to use a boat and that the net was not her fault are hearsay if introduced by someone other than Helen. The statements might be admissible if she is unavailable for trial (Rule 804)

- b. Any of the statements can be used to impeach a witness.

c. Student answers will vary for this part.

CHAPTER 17: THE TRIAL

TRANSPARENCY MASTERS

- Trial Participants
- The Trial Brief
- Jury Selection (some vocabulary)
- Burden of Proof (civil)
- Burden of Proof (criminal)
- Plaintiff s Role at Trial
- Defendant s Role at Trial
- Jury Instructions
- Jury Deliberations

PURPOSE AND SUBSTANTIVE CONTENT

This chapter prevents an overview of the trial participants and the trial process.

CHAPTER OUTLINE

Technology Corner
Case File

- 17-1 Introduction
- 17-2 Role of Trial Participants
- 17-3 Pretrial Motions
- 17-4 Jury Selection
 - Jury Questionnaire
 - Voir Dire
- 17-5 Opening Statement
- 17-6 Plaintiff s Case in Chief
 - Burden of Proof
 - Examination of Witnesses
- 17-7 Defendant s Case
 - Examination of Witnesses
- 17-8 Plaintiff s Rebuttal Case
- 17-9 Closing Arguments
- 17-10 Judge s Instructions to the Jury
- 17-11 Jury Deliberations and the Verdict

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SKILL BUILDING

The examples, assignments, case questions, and projects provide the opportunity for students to build the following skills:

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Legal Analysis
Working in Groups
Writing
Computer



CASE SUMMARIES, CASE QUESTIONS, AND SUGGESTED ANSWERS

***Reuther v. Southern Cross Club, Inc.*, 785 F. Supp 1339 (S.D.Ind. 1992) (Pg. 381)**

Plaintiff hired defendant to take him scuba diving. On the way to the dive site, a large wave struck the boat and plaintiff was injured. Prior to the dive, plaintiff signed a waiver and release, releasing defendant for all liability. The release referred to the potential dangers incidental to scuba diving, instruction, or snorkeling. Defendant moved for summary judgment. Plaintiff claimed that his understanding of the agreement was that it applied only to the diving and not to the boat ride to the site. The court denied the motion for summary judgment.

1. In the *Reuther* case, the Court did not grant the motion for summary judgment. Why?

Suggested Answer:

The motion was based on the fact that a release had been signed. The court found that the release did not cover the situation causing the damages.

1. Do you agree with the Court's interpretation of the language of the release signed by Mr. Reuther?

Suggested Answer:

Call for students' opinions.

***People v. Martinez*, 207 A.2d 284, 615 N.Y.S.2d 383 (1994) (Pg. 390)**

This case concerns statements and evidentiary rulings made by a judge during the course of a criminal trial. The judge interrupted defense counsel during the opening statements telling him to get to what you will show. Defendant argues that this statement shifted the burden of proof from prosecutor to defense. The judge refused to allow expert testimony where an offer of proof failed to establish a proper foundation. The appellate court rejected defense arguments on these two points and refused to consider another issue that had been raised for the first time on appeal.

1. Explain the defendant's argument in this appeal.

Suggested Answer:

Defendant is claiming the trial court erroneously shifted the burden of proof when it made a comment during opening statement of defense counsel, telling counsel to get on with what you will show. Defendant is also claiming that the judge made an erroneous evidentiary ruling in refusing to allow expert witnesses to testify.

1. Explain the court's reasoning and ultimate conclusion.

Suggested Answer:

The court said that the trial judge was exercising its sound discretion in monitoring the conduct of the trial. Taken in context of the defense counsel's opening statement, the judge's comments were appropriate. As to the evidentiary ruling, it too was an appropriate exercise of discretion. The appellate court affirmed the trial court rulings.

***Windsor v. State of Alabama*, 683 So. 2d 1021 (Ala. 1994) (Pg. 393)**

This case concerns statements made by a prosecutor in his closing argument to the jury. In a capital murder case, the prosecutor made comments about the fact that the state of mind of the defendant was not subject to positive proof; that he could not get into the mind of the defendant. The defense objected, arguing that such a statement was a comment on the failure of the defendant to testify at trial and therefore improper. The trial court overruled the objection. The court of appeals agreed.

1. What is the legal issue before the court?

Suggested Answer:

Was the prosecutor's comment in closing argument improper where he indicated that defendant's state of mind was not subject to positive proof?

1. When is a statement by a prosecutor improper?

Suggested Answer:

In this type of case, the comment would be improper if it was manifestly intended to be or was of such a character that the jury would naturally and necessarily take it to be a comment on the failure of the accused to testify.

ETHICAL CHOICES

In preparing for a trial, you come across a document at the bottom of a box of your client's documents. This document clearly indicates that your client has been untruthful with your office and the court. What should you do? (Pg. 380)

Points to Discuss:

How do you balance your fiduciary duties and duty of confidentiality to your client with your obligations to the court? Do you confront your client? Do you tell your attorney and let him or her worry about it? Can you say something to the judge in private? Can you send an anonymous letter to the judge?

QUESTIONS FOR ANALYSIS

1. Write a case brief for the *Windsor* case. Include the facts, issues, rules, analysis, and conclusion.

Student work will vary. See the summary of the *Windsor* case given above.

2. How do the responses to a Jury Questionnaire help an attorney choose jurors?

Calls for student opinions.

CHAPTER 18: LAW AND TECHNOLOGY

TRANSPARENCY MASTERS

- General Office Procedures
- Calendaring
- Billing
- Common Types of Legal Correspondence
- E-Mail (electronic mail)
- Interviewing Clients and Witnesses

PURPOSE AND SUBSTANTIVE CONTENT

This chapter covers modern law office procedures and relationship of technology to practice. It also explores the many uses of the Internet in the law

CHAPTER OUTLINE

- Technology Corner
- Case File

- 18-1 Introduction
- 18-2 The Modern Law Office
 - Computer Hardware
 - Computer Software
- 18-3 The Internet
 - Communication E-mail
 - Advertising
 - Information Resources
 - Discussion Forums
 - Legal Research
 - The Internet and the Courts
 - Document Depository
 - Intranet and Extranets
- 18-4 General Office Procedures
 - Accepting a New Case
 - Maintaining Client Files
 - Calendaring
 - Billing
- 18-5 Communication Techniques
 - Writing Business Letters
 - Common Types of Legal Correspondence
 - Handling the Telephone

Writing Interoffice Memoranda
Interviewing Clients and Witnesses

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SKILL BUILDING

The examples, assignments, case questions and projects provide the opportunity for students to build the following skills:

Critical Thinking
Critical Analysis
Writing
Computer

ETHICAL CHOICES

A fax was forwarded to your law firm, which represents a large tobacco company. The fax is from the plaintiff's counsel in a complex class action involving the tobacco industry. The fax was supposed to be sent to the fifteen plaintiffs. A mistake was made and your office received a copy of an extremely confidential document. What should you do? (Pg. 407)

Points to Discuss:

How do you handle mistakes? What kind of professional courtesy do you owe other attorneys? How do your obligations to your client affect this? If the attorney returns the document can you say anything about it to your client?

The client you have just interviewed asks to take a break and to use the phone. You inadvertently overhear a conversation indicating that the client had been untruthful with you during the interview. What do you do? (Pg. 419)

Points to Discuss:

How far does confidentiality extend? Do you ignore something if you come across it by accident? Do you confront the client? What do you do when your attorney tells you not to worry about it, all clients lie anyway?

QUESTIONS FOR ANALYSIS

1. Assume that you are working as a paralegal in the law firm of Smith and Wesson. You have been assigned to work on a case involving a dispute between two neighbors, Sam Nabors and Victor Vice, over the repair of a good neighbor fence. In the last big storm, the fence dividing their two properties was destroyed by severe winds. Sam tried to get his neighbor to cooperate in repairing the fence, but the neighbor refused to even talk to Sam about it. Sam hired a contractor to fix the fence and now wants his neighbor to pay one-half of the cost.

The following statute exists in your jurisdiction:

Coterminous owners are mutually bound equally to maintain:

°1.°The boundaries and monuments between them;

°2.°The fences between them, unless one of them chooses to let his land lie without fencing; in which case, if he afterwards encloses it, he must refund to the other a just proportion of the value, at that time, of any division made by the latter.

The fence repair cost Sam \$1,250.00. Sam s address is 497 Oak Canyon Way, Centerville, CA 98765. Victor Vice s address is 496 Cedar Tree Lane, Centerville, CA 98765. Write a demand letter to Sam s neighbor requesting payment of one-half of the repair bill.

Student work will vary

2. Also draft a letter to Sam, to be signed by your supervising attorney, advising Sam of his rights under the code section and explaining what action has been taken by the law firm.

Student work will vary

3. Review the Ethical Choices in this chapter. Which NALA and/or NFPA ethical rules or guidelines apply to the situations? Review your state s ethical rules (hint: go to www.nala.org and find a link). Which of those rules apply?

The NALA and NFPA rules are found in Appendix II of the text. State s rules will vary.

TEST BANK

Chapter 1: Legal Community and Professional Responsibility

True/False

1. Individuals must take and pass an examination known as a bar exam before they are licensed to practice law.
1. All paralegals work in law offices.
1. A CLA is a licensed paralegal who can practice law.
1. Quasi judicial officers have the same power as judges.
1. A special relationship of trust and confidence between an attorney and client is known as a fiduciary relationship.
1. NALA and NFPA impose mandatory rules of conduct on paralegals.
1. Paralegals are bound by rules of confidentiality in dealing with clients of the law firm in which they work.
1. Independent paralegals and their clients are protected by the privilege of confidentiality.
1. A conflict of interest may arise when a paralegal has a personal relationship with someone who works for a law firm on an opposing side in a lawsuit.
1. It is usually unethical for a paralegal to give legal advice or appear in court on behalf of a client.

Multiple Choice

1. Which of the following can paralegals usually do?
 - a. charge clients for their legal advice
 - a. give legal advice to friends without charging
 - a. draft legal documents under the supervision of a lawyer
 - a. argue a motion in court, as long as they are accompanied by a lawyer
 - a. both c and d
2. Which skill is not required by paralegals?
 - a. oral communication skills
 - a. written communication skills
 - a. analytic skills

- a. general office skills
 - a. none of the above; they are all required
3. The CLA exam is sponsored by:
- a. NALA
 - a. NFPA
 - a. ABA
 - a. the individual State Bar Associations
 - a. AAFPE
4. If a paralegal breaches an ethical duty, he or she can be punished by:
- a. NALA
 - a. NFPA
 - a. ABA
 - a. individual State Bar Associations
 - a. none of the above
4. Prosecutor s Offices are also known as:
- a. Public Defenders Offices
 - a. District Attorneys Offices
 - a. Corporate Legal Departments
 - a. all of the above
 - a. none of the above
4. Which of the following is not an important member of the legal team?
- a. paralegal
 - a. legal secretary
 - a. case clerk
 - a. court clerk
 - a. none of the above; they are all important members of the legal team
4. Which of the following are not judicial or quasi-judicial offices?
- a. judge
 - a. magistrate
 - a. commissioner
 - a. referee
 - a. attorney
4. Which of the following is not a breach of ethics by a lawyer?

- a. commingling personal funds with trust account money
 - a. failing to maintain a trust account even when the attorney does not handle client funds
 - a. accepting a case and not having sufficient time to handle the matter
 - a. allowing a paralegal to give legal advice to clients
 - a. none of the above; they are all breaches of ethics
4. It is alright for a paralegal to communicate directly with an opposing party in a lawsuit?
- a. if that party does not have a lawyer
 - a. if that party calls the paralegal
 - a. as long as the paralegal's supervising attorney says it's all right
 - a. under any circumstances
 - a. under no circumstances
4. A conflict of interest could arise:
- a. because of prior employment
 - a. because of financial relationships with clients
 - a. because of personal relationship with clients
 - a. because of personal relationships with other legal professionals
 - a. all of the above.

Answer Key

- | | | | | | |
|---------|----------|----------|----------|---------|----------|
| 1. True | 2. False | 3. False | 4. False | 5. True | 6. False |
| 7. True | 8. False | 9. True | 10. True | | |
| 1.c | 2.e | 3.a | 4.e | 5.b | 6.d |
| 7.e | 8.b | 9.a | 10.e | | |

Chapter 2: The American Legal System

True/False

1. Federalism means that two separate governments, state and federal, regulate citizens in the United States.
1. The power of the federal government to make laws is unlimited.
1. In the area of criminal law, the powers of the federal government and state governments are concurrent.
1. When a conflict between state and federal laws exists, federal law controls.
1. The federal legislature consists of a bicameral structure.
1. Most states have a bicameral legislature.
1. Federal trial courts are known as district courts.
1. District courts are courts of original jurisdiction.
1. The U.S. Court of Appeals is primarily a court of original jurisdiction.
1. All federal judges are appointed by the President, subject to approval by the House of Representatives.

Multiple Choice

1. Which power does federal congress not expressly have?
 - a. regulate commerce between the states
 - a. punish counterfeiting
 - a. establish inferior courts
 - a. punish drug offenders
 - a. none of the above; Congress has the express power to do all of the above
1. Which of the following powers is preempted by the federal government?
 - a. power to regulate criminal conduct
 - a. power to regulate civil tort liability
 - a. power to regulate the coining of money
 - a. power to regulate business organizations
 - a. both a and c

1. The power of government to regulate is sometimes referred to as:
 - a. preemption
 - a. ex post fact
 - a. jurisdiction
 - a. supremacy
 - a. federalism

1. When both state and federal governments have the right to regulate an area, those governments have:
 - a. exclusive jurisdiction
 - a. concurrent jurisdiction
 - a. original jurisdiction
 - a. bicameral legislatures
 - a. none of the above

1. Which of the following is not a branch of the federal government?
 - a. executive
 - a. legislative
 - a. judicial
 - a. the president
 - a. none of the above

1. Which of the following is a trial court?
 - a. district courts
 - a. U.S. tax courts
 - a. U.S. claims court
 - a. U.S. court of international trade
 - a. all of the above

1. The trier of fact is usually found in which court?
 - a. district court
 - a. court of appeals
 - a. Supreme Court
 - a. all of the above
 - a. none of the above

1. Which of the following is not part of an appeal?
 - a. jury instructions
 - a. clerk s transcript

- a. reporter s transcript
- a. appellate brief
- a. none of the above

1. State trial courts are sometimes called:

- a. superior courts
- a. municipal courts
- a. circuit courts
- a. supreme courts
- a. all of the above

1. To request a hearing in the U.S. Supreme Court, a party often files:

- a. a complaint
- a. an appeal
- a. a petition for a writ of certiorari
- a. a petition for a hearing
- a. none of the above

Answer Key

- | | | | | | |
|---------|----------|----------|-----------|---------|---------|
| 1. True | 2. False | 3. True | 4. True | 5. True | 6. True |
| 7. True | 8. True | 9. False | 10. False | | |
| 1.d | 2.c | 3.c | 4.b | 5.d | 6.e |
| 7.a | 8.a | 9.e | 10.c | | |

Chapter 3: Laws: Their Sources

True/False

1. The U.S. Constitution establishes and defines the various departments of the federal and state governments.
1. The U.S. Constitution is the supreme law of the land.
1. The U.S. Supreme Court has the power to declare state laws unconstitutional.
1. All case law originates with a factual controversy between two or more parties.
1. The concept of *stare decisis* prevents one Supreme Court from overruling decisions of prior Supreme Courts.
1. Courts of appeals in the various states decide many cases that never become *stare decisis*.
1. All federal bills are first introduced in the House of Representatives.
1. When the President refuses to either sign or veto proposed legislation, the bill is automatically vetoed.
1. The initiative process allows citizens in the United States to enact either federal or state law.
1. Administrative regulations are laws passed by various governmental boards, departments, commissions, and agencies.

Multiple Choice

1. The U.S. Constitution
 - a. established the federal government
 - a. established state governments
 - a. established both state and federal governments
 - a. has nothing to do with the establishment of government; it merely sets out the rights of Americans
 - a. none of the above
1. The Bill of Rights
 - a. consists of the first 10 Amendments to the U.S. Constitution
 - a. consists of the first 14 Amendments to the U.S. Constitution
 - a. is another name for the U.S. Constitution
 - a. deals exclusively with the rights of criminal defendants

- a. both a and d

1. State Constitutions

- a. establish state governments
- a. are often patterned after the U.S. Constitution
- a. are the supreme law of the state in questions of state law
- a. all of the above
- a. none of the above

1. A system in which laws were developed through the courts and case decisions is:

- a. federalism
- a. common law
- a. civil law
- a. all of the above
- a. none of the above

1. Another term for *stare decisis* is:

- a. precedent
- a. common law
- a. statutory law
- a. initiative
- a. referendum

1. The court resolves disputes by:

- a. making new laws to meet the situation
- a. asking the legislature to make a new law to meet the situation
- a. applying existing constitutional, statutory, and case law to the situation
- a. applying only existing case law or precedent to the situation
- a. none of the above

1. *Stare decisis* requires that:

- a. all courts follow decisions of all other courts
- a. all courts follow only those decisions from the U.S. Supreme Court
- a. trial courts follow all decisions from appellate courts
- a. all appellate courts follow all decisions of other appellate courts
- a. none of the above

1. The Statutes at Large

- a. are a topical organization of statutory law
- a. are a chronological organization of statutory law

- a. is another name for code
 - a. are easily used by legal researchers
 - a. both b and c
1. When the President is sent a bill that has been passed by both houses and refuses to sign or veto the proposed legislation, it
 - a. always becomes law after ten days
 - a. never becomes law (the pocket veto)
 - a. becomes law after ten days if Congress adjourns
 - a. is vetoed after ten days if Congress adjourns
 - a. none of the above

 1. Administrative regulations come from
 - a. federal boards, departments, commissions, and agencies
 - a. state boards, departments, commission, and agencies
 - a. federal courts
 - a. state courts
 - a. both a and b

Answer Key

- | | | | | | |
|----------|----------|----------|----------|----------|---------|
| 1. False | 2. True | 3. True | 4. True | 5. False | 6. True |
| 7. False | 8. False | 9. False | 10. True | | |
| 1.a | 2.a | 3.d. | 4.b | 5.a | 6.c |
| 7.e | 8.b | 9.d | 10.e | | |

Chapter 4: Finding the Law

True/False

1. Primary sources include case law, statutes, constitutions, and dictionaries.
1. Encyclopedias are a secondary source.
1. An issue is a question that must be decided by a court.
1. Facts should be sorted into the following three categories: relevant, explanatory, and unnecessary.
1. Form books are filled with sample forms and explanations on how and when to use the forms.
1. A digest is an index to statutes.
1. Case law is a collection of reported cases.
1. Precedent is an example set by the decision of an earlier court for similar cases or similar legal questions which arise in later cases.
1. Statutes are laws enacted by the legislature.
1. The case brief is a short summary of a case.

Multiple Choice

1. Which of the following are not secondary sources?
 - a. treatises
 - a. ordinances
 - a. digests
 - a. periodicals
 - a. form books
1. Relevant facts are sometimes called:
 - a. key facts
 - a. focus facts
 - a. explanatory facts
 - a. important
 - a. precedent

1. If you are unfamiliar with the area of law you are researching, you should begin the research with:
 - a. case law
 - a. statutes
 - a. secondary sources
 - a. primary sources
 - a. newspapers

1. Some secondary sources are referred to as:
 - a. annotations
 - a. dictionaries
 - a. finding tools
 - a. research manuals
 - a. indexes

1. *Stare decisis* means:
 - a. case law
 - a. reporter
 - a. similarities
 - a. precedent
 - a. review

1. We look to statutes to provide:
 - a. concise statements of the law
 - a. a detailed summary of the law
 - a. summaries of important cases
 - a. guidance for the public
 - a. references to secondary sources

1. Before comparing your facts and issues with case law, it is important you properly identify:
 - a. important precedent
 - a. facts and issues in your client's situation
 - a. judicial history
 - a. the question presented
 - a. explanatory facts

8. Information in a legal encyclopedia is arranged:
 - a. alphabetically
 - b. chronologically

- c. numerically
- d. randomly
- e. none of the above

9. Which of the following is an encyclopedia?

- a. Corpus Juris Secundum
- b. American Jurisprudence 2d
- c. California Jurisprudence 3d
- d. all of the above
- e. none of the above

10. The official reporter for U.S. Supreme Court cases is

- a. Supreme Court Reporter
- b. United States Reports
- c. Lawyer s Edition
- d. The Supreme Court Web Site
- e. Westlaw

Answer Key

- | | | | | | |
|----------|---------|---------|----------|---------|----------|
| 1. False | 2. True | 3. True | 4. True | 5. True | 6. False |
| 7. True | 8. True | 9. True | 10. True | | |
| 1.b | 2.a | 3.c | 4.c | 5.d | 6.a |
| 7.d | 8.a | 9.d | 10.b | | |

Chapter 5: Using the Law

True/False

1. The process of comparing or aligning the facts of a client's case with the elements of a statute is one element of legal analysis
1. Legal analysis is limited to analyzing case law.
1. Legal writing does not require a thesis paragraph.
1. Before editing a document, you should let it sit for a day or two.
1. Legal documents should be written with complex sentence structure to reflect the complexity of the law.
1. The issue in a case is also known as the question presented.
1. If a case brief does not follow proper format a court will not allow it to be filed in court.
1. A case brief compares a client's facts with facts of a reported case.
1. A legal memorandum compares a client's facts with facts of a reported case.
10. A case brief is an example of persuasive writing.

Multiple Choice

1. Which of the following is not an element of a case brief?
 - a. facts
 - b. analysis
 - c. issues
 - d. judicial history
 - e. precedent
2. Which element of a case brief is the most important?
 - a. rules
 - b. analysis
 - c. facts
 - d. issues
 - e. conclusions

3. The case brief is often the first step in preparing a formal written analysis, often called:
 - a. a legal memorandum
 - b. precedent
 - c. stare decisis
 - d. case report
 - e. none of the above.

4. In preparing a first draft of a legal document, you should:
 - a. reread the directions
 - b. begin in a logical fashion
 - c. complete one section before moving on to another section
 - d. periodically go back and reread directions
 - e. all of the above

5. The Thesis Paragraph should **not**:
 - a. set forth the client s problem
 - b. state the legal issue
 - c. explain in detail the legal rules governing the issues
 - d. state the legal conclusions
 - e. none of the above

6. A topic sentence
 - a. is another term for thesis paragraph
 - b. can be used in lieu of a thesis paragraph
 - c. introduces issues or subissues and connects them back to the thesis paragraph
 - d. all of the above
 - e. none of the above

7. The actions were quickly regretted by her is an example of:
 - a. active voice
 - b. passive voice
 - c. use of unnecessary words
 - d. ambiguous terms
 - e. none of the above

8. Which of the following is **not** included in a legal memorandum?
 - a. statement of facts
 - b. issue statement
 - c. discussion/analysis

- d. judicial history
- e. conclusion

9. When citing authorities you should use:

- a. a legal treatise
- b. a legal encyclopedia
- c. *A Uniform System of Citation*
- d. a state style manual
- e. either c or d

10. *Id.* and *supra* are examples of:

- a. shorthand ways of citing authorities
- b. abbreviations for certain courts
- c. Latin terms that describe legal principles
- d. terms that should never be used in a formal legal memorandum
- e. Latin terms that have nothing to do with the law

Answer Key

- | | | | | | |
|----------|----------|----------|-----------|----------|---------|
| 1. True | 2. False | 3. False | 4. True | 5. False | 6. True |
| 7. False | 8. False | 9. True | 10. False | | |
| 1.e | 2.b | 3.a | 4.e | 5.c | 6.c |
| 7.b | 8.d | 9.e | 10.a | | |

Chapter 6: Laws: Civil vs. Criminal

True/False

1. Substantive laws are those laws that define the rights and duties of parties.
1. Procedural laws are those laws that relate to the enforcement of substantive rights and duties.
1. Battery is an example of a criminal procedural law.
1. Libel is an example of a civil substantive law.
1. Rules of court are generally substantive laws.
1. In a criminal case, the plaintiff is usually the victim of a crime.
1. A right to a jury only exists in a criminal case.
1. A right to a court appointed attorney for indigent defendants applies only in criminal cases.
1. A hung jury occurs only in criminal cases.
1. In a civil case, if the defendant does not pay a civil judgment, he or she cannot usually be put in jail.

Multiple Choice

1. Substantive criminal laws for states are usually found in
 - a. state rules of court
 - a. case law
 - a. statutory law
 - a. constitutional law
 - a. local rules of court
1. Procedural criminal laws are found in
 - a. state constitutions
 - a. U.S. Constitution
 - a. state statutes
 - a. state and federal case law
 - a. all of the above

1. A law that gives a person who is accused of burglary the right to a trial by jury is an example of:

- a. civil substantive law
- a. civil procedural law
- a. criminal substantive law
- a. criminal procedural law
- a. none of the above

1. The statute of limitations for damages resulting from an automobile accident is an example of :

- a. civil substantive law
- a. civil procedural law
- a. criminal substantive law
- a. criminal procedural law
- a. none of the above.

1. Negligence is an example of:

- a. civil substantive law
- a. civil procedural law
- a. criminal substantive law
- a. criminal procedural law
- a. none of the above.

1. Rules of court usually contain:

- a. civil substantive law
- a. civil procedural law
- a. criminal substantive law
- a. criminal procedural law
- a. both b and d

1. In civil cases, the right to a jury usually exists:

- a. for actions at law
- a. for actions in equity
- a. for all cases
- a. for no cases
- a. only if the civil case also results in criminal charges

1. Juries in civil cases are different from juries in criminal cases in that

- a. in a civil case the parties pay for the jury, whereas in a criminal case the state pays
 - a. the number of jurors who must agree before a verdict is reached is often different
 - a. jurors in a criminal case must be convinced of the defendant s guilt beyond a reasonable doubt, whereas jurors in a civil case must usually be convinced by a preponderance of the evidence
 - a. all of the above
 - a. none of the above, criminal and civil juries are not different
1. In a criminal case, the punishment can be:
- a. a fine
 - a. incarceration
 - a. probation
 - a. any of the above
 - a. none of the above, criminal and civil juries are not different
1. Punitive damages
- a. are a form of compensatory damages
 - a. can be awarded in civil cases
 - a. can be awarded in criminal cases
 - a. are a form of general damages
 - a. none of the above

Answer Key

- | | | | | | |
|----------|---------|----------|----------|----------|----------|
| 1. True | 2. True | 3. False | 4. True | 5. False | 6. False |
| 7. False | 8. True | 9. False | 10. True | | |
| 1.c | 2.e | 3.d | 4.b | 5.a | 6.e |
| 7.a | 8.d | 9.d | 10.b | | |

Chapter 7: Personal Injury Practice: Tort Law and Workers Compensation

True/False

1. Personal injury practice deals with lawsuits for money damages for injuries that people have suffered.
1. An intentional tort is one in which the party committing the tort intends to do the act knowing it will cause serious injury.
1. A cause of action is a legally recognized right to relief or damages.
1. A tortfeasor is the injured person.
1. Defamation involves the unprivileged publication of a factual statement that is untrue and injurious or defamatory to a person's reputation.
1. The two major defenses to intentional torts are consent and privilege.
1. Negligence is the failure to act as a reasonably prudent person would act under similar circumstances.
1. Contributory risk is a defense to negligence.
1. Strict liability is liability without fault.
1. Vicarious liability is also known as respondeat superior.

Multiple Choice

1. Punitive damages are also known as:
 - a. special damages
 - a. medical damages
 - a. personal damages
 - a. exemplary damages
 - a. extraordinary damages
1. Intentional infliction of emotion distress causes:
 - a. mental suffering
 - a. general damages
 - a. special damages
 - a. negligence
 - a. mental disorder

1. Filing an unjustified criminal complaint against an individual leads to the tort of:

- a. negligence
- a. civil-rights violation
- a. malicious prosecution
- a. slander per se
- a. fraud

1. Which of the following is not an element of negligence?

- a. duty to use due care
- a. intent
- a. damages
- a. causation
- a. breach

1. Res ipsa loquitur means

- a. breach of duty
- a. causation
- a. the things speaks for itself
- a. it is proven
- a. reasonably prudent person

1. Which of the following is not a type of negligence action?

- a. liability of landowners
- a. automobile accidents
- a. professional negligence
- a. intentional infliction of emotional distress
- a. defective products

1. Which of the following is not a defense to negligence?

- a. assumption of the risk
- a. contributory negligence
- a. comparative negligence
- a. immunity
- a. self defense

1. Activities that give rise to strict liability are:

- a. driving a dangerous car

- a. engaging in an ultrahazardous activity
 - a. fighting
 - a. battery
 - a. selling pharmaceuticals
1. The law will not allow a person to escape liability for dangerous activities by simply:
- a. leaving the state
 - a. hiring an independent contractor to perform for them
 - a. declaring bankruptcy
 - a. changing his or her procedures after an injury has occurred
 - a. declaring that the injured person assumed the risk
1. In general, injured workers cannot sue employers under:
- a. workers compensation law
 - a. tort law
 - a. negligence
 - a. peculiar risk doctrine
 - a. assumption of the risk

Answer Key

- | | | | | | |
|---------|----------|---------|-----------|---------|---------|
| 1. True | 2. False | 3. True | 4. False | 5. True | 6. True |
| 7. True | 8. False | 9. True | 10. False | | |
| 1.d | 2.a | 3.c | 4.b | 5.c | 6.d |
| 7.e | 8.b | 9.b | 10.b | | |

Chapter 8: Family Law

True/False

1. Family law deals with legal issues that affect personal relationships.
1. A premarital agreement may help to protect the assets of persons who plan to marry.
1. A divorce is a total dissolving of a marriage.
1. A legal separation asks the court to resolve just the child support and child custody issues.
1. In all family law matters, the court will be most interested in the welfare of the children.
1. Parents do not always have a legal duty to support their children.
1. Spousal support is awarded when people end their marriage.
1. A marital partner has no legal interest in quasi-community property.
1. The petition is the pleading used to initiate a family law action.
1. Not all family law matters concern married persons.

Multiple Choice

1. Laws regarding family and personal relationships are generally found in:
 - a. state statutes
 - a. the United States Code
 - a. law reviews
 - a. encyclopedias
 - a. dictionaries
1. An annulment proceeding is used to obtain a court declaration that:
 - a. the marriage is over
 - a. a legal separation has begun
 - a. no legal marriage ever existed
 - a. the marriage is voidable
 - a. the marriage was illegal
1. A legal separation asks the court to grant the parties
 - a. something short of a final termination of the marital contract

- a. a nullity
 - a. an annulment
 - a. a dissolution
 - a. spousal support
1. In child custody matters the court will look for solutions that are:
- a. easy to enforce
 - a. in the best interest of the child
 - a. economically sound
 - a. designed to keep the parents close to their children
 - a. designed to move the children around as little as possible
1. Which of the following is not a form of child custody?
- a. joint legal custody
 - a. sole physical custody
 - a. joint physical custody
 - a. sole legal custody
 - a. dual custody
1. The court will retain jurisdiction over
- a. spousal support
 - a. nullity issues
 - a. child support
 - a. premarital agreements
 - a. family issues
1. Which of the following is a category of marital property?
- a. automobile
 - a. house
 - a. community property
 - a. inheritance
 - a. business interest
1. The discovery process in family law will not involve:
- a. depositions
 - a. interrogatories
 - a. request for production and inspection of documents
 - a. a complaint
 - a. experts

1. Which tasks would a paralegal working in the area of family law not do?

- a. draft moving papers
- a. calculate child and spousal support amounts
- a. set dates and times of depositions
- a. perform legal research
- a. set fees

1. Once a court determines that a parent-child relationship exists, it must consider:

- a. child support
- a. spousal support
- a. property issues
- a. whether restraining orders are needed
- a. income and expense situation for each party

Answer Key

1. True 2. True 3. True 4. False 5. True 6. False

7. False 8. False 9. True 10. True

1.a 2.c 3.a 4.b 5.e 6.c

7.c 8.d 9.e 10.a

Chapter 9: Wills, Trusts, and Probate

True/False

1. A will is a document in which an individual provides for the distribution of his or her property upon his or her death.
1. Wills fall into two broad categories: holographic and formal.
1. A common element of a will is the fiduciary clause.
1. The attestation clause is used to open the will.
1. A will may not be changed.
1. A trust is a document in which a person makes provisions for the disposition of all real property.
1. Technically a trust is a situation where the title to property is divided into two parts: legal title and equitable title.
1. Probate is the court-supervised process that takes place after a person dies.
1. Paralegals may draft initial wills.
1. Paralegals may draft guardianship documents.

Multiple Choice

1. Which of the following may a person not distribute in a will?
 - a. real property
 - a. personal property
 - a. money
 - a. property owned by another
 - a. car
1. Which of the following is not common to most wills?
 - a. the opening clauses
 - a. promises not to leave anything to a disfavored child
 - a. the fiduciary clause
 - a. the closing clause
 - a. the body of the will

1. Changes to a will may be published in:

- a. an addendum
- a. a codicil
- a. an attestation clause
- a. a testimonium clause
- a. the closing clause

1. Which of the following is not an element of a trust?

- a. a trustee
- a. a beneficiary
- a. a settlor
- a. a gift
- a. trust property

1. A living trust becomes effective

- a. during the life of the settlor
- a. upon death of the settlor
- a. upon death of the beneficiary
- a. when an express trust is created
- a. during the probate process

1. Which of the following tasks may not be performed by a paralegal?

- a. assist with inventories
- a. assist with tax returns
- a. advise the client on the benefits of a trust over a will
- a. draft conservatorship documents
- a. arrange for appraisals

1. Which of the following tasks may be performed by a paralegal?

- a. collection of documents
- a. draft initial wills and trusts
- a. review creditors' claims against an estate
- a. assist the attorney at initial client interview
- a. all of the above

1. A specific bequest is:

- a. money
- a. real property

- a. a specific devise
- a. a gift of specific property
- a. demonstrative legacy

1. A fiduciary owes a duty of trust to:

- a. the estate
- a. the guardian
- a. the trustee
- a. the executor
- a. the heirs

1. Which of the following is a reason to change a will?

- a. the testator changes his or her mind
- a. circumstances change
- a. assets are acquired
- a. heirs are born and die
- a. all of the above

Answer Key

- | | | | | | |
|---------|----------|---------|----------|----------|----------|
| 1. True | 2. False | 3. True | 4. False | 5. False | 6. False |
| 7. True | 8. True | 9. True | 10. True | | |
| 1.d | 2.b | 3.b | 4.d | 5.a | 6.c |
| 7.e | 8.d | 9.a | 10.e | | |

Chapter 10: Business Practice: Contract Law and Property Law

True/False

1. In contract law, the person who makes an offer is the offeree.
1. A bilateral contract is one in which both parties have made promises to perform.
1. In most contracts the consideration consists of promises to do something.
1. Contracts by emancipated minors are usually valid.
1. The parole evidence rule limits the types of evidence that be used to prove terms of an agreement
1. The key feature of joint tenancy is a right of survivorship.
1. Deeds are used to transfer ownership to property.
1. A lawsuit to evict a tenant is known as an unlawful detainer action.
1. Once a patent is obtained it is good forever.
1. Patent and copyright laws are federal rather than state.

Multiple Choice

1. The Uniform Commercial Code controls:
 - a. contracts for the sale of goods
 - a. contracts involving interstate commerce
 - a. contracts involving banks
 - a. contracts for the sale of real property
 - a. none of the above
1. Contracts usually contain the following:
 - a. mutual consent
 - a. consideration
 - a. capable parties
 - a. legal subject matter
 - a. all of the above
1. A contract entered into by a minor
 - a. is usually void

- a. is usually voidable
 - a. is usually enforceable against the minor
 - a. becomes enforceable if not rescinded within 60 days
 - a. none of the above
1. Which of the following is a void contract?
- a. contract entered into by a minor
 - a. contract entered into by someone who is drunk
 - a. contract entered into by someone who suffers a mental incapacity but who had not been adjudicated by a court to be incapable
 - a. contract entered into by someone who has been adjudicated by a court to be incapacitated or insane
 - a. all of the above are void
1. The legal doctrine that allows the court to treat a certain situation as if a contract exists, even where one of the elements is missing, is known as:
- a. quasi contract
 - a. promissory estoppel
 - a. parole evidence rule
 - a. statute of frauds
 - a. assignment
1. The Statute of Frauds
- a. requires that all contracts be in writing
 - a. limits the types of evidence that can be used to prove the terms of the contract
 - a. provides a remedy for fraudulent acts
 - a. requires that certain types of contracts be evidenced by a writing
 - a. requires that written contracts be notarized
1. Which of the following does not indicate an ownership interest in real property?
- a. fee simple
 - a. life estate
 - a. joint tenancy
 - a. month-to-month tenancy
 - a. community property
1. A type of deed in which the grantor makes no representations is a:
- a. quitclaim deed
 - a. warranty deed
 - a. grant deed

- a. none of the above
- a. all of the above

1. Which of the following indicates a non-ownership interest in real property?

- a. mortgage
- a. deed of trust
- a. lien
- a. lease
- a. all of the above

10. The Golden Arches is an example of something that is entitled to protection under

- a. patent law
- b. copyright law
- c. trade secret law
- d. trademark law
- e. all of the above

Answer Key

- | | | | | | |
|----------|---------|----------|----------|---------|---------|
| 1. False | 2. True | 3. True | 4. True | 5. True | 6. True |
| 7. True | 8. True | 9. False | 10. True | | |
| 1.a | 2.e | 3.b | 4.d | 5.a | 6.d |
| 7.d | 8.a | 9.e | 10.d | | |

Chapter 11: Business Practice: The Law of Business Organizations and Bankruptcy

True/False

1. A general partnership always has a managing partner.
1. Each partner in a partnership is the agent of the other partners and is responsible for the torts of the other partners if committed in the course and scope of the partnership.
1. In a partnership, each of the partners is liable to third parties for debts of the partnership in proportion to his or her ownership interest in the partnership.
1. A limited partnership must have at least one general partner.
1. A corporation is sometimes called an artificial person.
1. In a limited liability partnership, partners have limited liability as long as they do not participate in the management of the business.
1. A limited liability company the individuals who own the company are generally not personally liable for the company debts.
1. Bankruptcy is governed primarily by federal law.
1. All debts are dischargeable in bankruptcy.
1. Exempt assets must be turned over to the Bankruptcy trustee and are used to satisfy the debts of the person filing bankruptcy.

Multiple Choice

1. The term securities is used to describe:
 - a. a financial interest in a business
 - a. only shares of stock in a corporation
 - a. only a partnership interest in a general partnership
 - a. only a partnership interest in a limited partnership
 - a. none of the above
1. A sole proprietorship
 - a. consists of a business owned and operated by one individual
 - a. is a business form that protects the personal assets of the owner
 - a. is a business form that requires several formalities
 - a. is a business form that pays taxes as a business

- a. all of the above
1. Actual authority of partners to enter contracts on behalf of the partnership
 - a. means that authority is implied because the conduct of the parties have reasonably led third persons to believe that such authority exists
 - a. means that other partners have approved the contract
 - a. always exists for all partners
 - a. all of the above
 - a. none of the above

 1. In a limited partnership
 - a. all partners have limited liability
 - a. only general partners have limited liability
 - a. only limited partners have limited liability
 - a. limited partners have no liability
 - a. no partner has any liability

 1. A non-profit corporation
 - a. cannot generate any income
 - a. always has tax exempt status
 - a. cannot distribute any profit to its members
 - a. both b and c
 - a. all of the above

 1. The owners of a corporation are known as:
 - a. officers
 - a. shareholders
 - a. directors
 - a. members
 - a. none of the above

 1. Corporations are formed by filing which document with the secretary of state?
 - a. bylaws
 - a. articles of incorporation
 - a. stock permit
 - a. partnership agreement
 - a. shareholder agreement

 1. Equity securities are:
 - a. loans taken out by the corporation

- a. only owned by shareholders in public corporations
 - a. only owned by shareholders in close corporations
 - a. usually in the form of shares of stock for a corporation
 - a. always regulated by the federal government
1. Which of the following factors are considered when one tries to pierce the corporate veil?
- a. did the corporation observe corporate formalities such as holding meetings?
 - a. did the corporation keep separate bank accounts?
 - a. were corporate funds used for corporate and not personal purposes?
 - a. was the corporation undercapitalized?
 - a. all of the above.
1. Blue Sky laws refer to:
- a. federal securities laws
 - a. state securities laws
 - a. federal bankruptcy laws
 - a. state bankruptcy laws
 - a. none of the above

Answer Key

- | | | | | | |
|----------|---------|----------|-----------|---------|----------|
| 1. False | 2. True | 3. False | 4. True | 5. True | 6. False |
| 7. True | 8. True | 9. False | 10. False | | |
| 1.a | 2.a | 3.b | 4.c | 5.c | 6.b |
| 7.b | 8.d | 9.e | 10.b | | |

Chapter 12: Criminal Practice: Criminal Law and Juvenile Law

True/False

1. The Model Penal Code has been adopted in all states.
1. A rebuttable presumption means that the presumption may be disproved by the facts.
1. Most crimes have two basic elements.
1. Crimes can be committed against the public.
1. Crimes are generally categorized into felonies, misdemeanors, and petty offenses.
1. Homicide is the taking of the life of one person by another.
1. A battery is the reckless or intentional injuring of a person.
1. There is general uniformity among the states in how the juvenile court system works.
1. In simplistic terms, juveniles are delinquent when they commit a violation of the law.
1. Paralegals may review physical evidence.

Multiple Choice

1. Which of the following is not a purpose of criminal law?
 - a. deterrence
 - a. retribution
 - a. incapacitation
 - a. rehabilitation
 - a. mens rea

1. Which of the following is an element of mens rea?
 - a. a knowing act
 - a. a purposeful act
 - a. a reckless act
 - a. a and c
 - a. all of the above

1. Crimes can be committed against:
 - a. property
 - a. persons

- a. the public
- a. b and c
- a. all of the above

1. Which of the following is not a defense to a criminal charge?

- a. duress
- a. self-defense
- a. diminished capacity
- a. mistake
- a. all of the above

1. Paralegals may not:

- a. hire investigators
- a. set fees
- a. give legal advice
- a. appear in court on behalf of a client
- a. all of the above

1. Paralegals may:

- a. prepare trial notebooks
- a. assist at trial
- a. interview witnesses
- a. negotiate with a prosecutor
- a. a, b, and c

1. The Model Penal Code is:

- a. a set of uniform laws for all federal criminal cases
- a. a collection of criminal statutes
- a. a uniform collection of criminal laws followed by all states
- a. a uniform collection of criminal laws followed by the federal courts
- a. a and b

1. Actus reus is:

- a. an element of mens rea
- a. another term for a purposeful act
- a. the second element of a crime
- a. the intent element of mens rea
- a. b and c

1. A felony is often punishable by:

- a. a minimum one year s imprisonment
- a. a minimum of six months imprisonment
- a. time off for good behavior
- a. a and b
- a. none of the above

1. First degree murder is a homicide that is:

- a. premeditated
- a. willful
- a. deliberate
- a. a and c
- a. a, b, and c

Answer Key

- | | | | | | |
|----------|----------|---------|----------|---------|---------|
| 1. False | 2. True | 3. True | 4. True | 5. True | 6. True |
| 7. False | 8. False | 9. True | 10. True | | |

- | | | | | | |
|-----|-----|-----|------|-----|-----|
| 1.e | 2.e | 3.e | 4.d | 5.e | 6.e |
| 7.b | 8.c | 9.a | 10.e | | |

Chapter 13: Civil Procedure Before Trial

True/False

1. A cause of action is a factual situation that creates a legally recognized right to damages or other relief.
1. The authority of the federal courts to hear trials is known as original jurisdiction.
1. Diversity of citizenship means that one party is not a resident of the United States.
1. Personal jurisdiction is in part controlled by the due process clause of the Constitution.
1. Lack of proper venue renders any judgment void.
1. In a complaint, the factual statements forming the basis of the claim are found in the caption.
1. Plaintiffs are required to use licensed process servers to serve complaints.
1. A general denial denies each and every allegation contained in the complaint.
1. Motions generally require court hearings.
1. Depositions are written questions answered under oath.

Multiple Choice

1. The sole power or authority to act in a certain situation is known as:
 - a. exclusive jurisdiction
 - a. concurrent jurisdiction
 - a. pendant jurisdiction
 - a. original jurisdiction
 - a. diversity jurisdiction
1. If a court lacks personal jurisdiction, it can still hear a case if it has:
 - a. exclusive jurisdiction
 - a. in rem jurisdiction
 - a. pendant jurisdiction
 - a. venue
 - a. original jurisdiction
1. Which of the following is not found in a complaint?

- a. caption
- a. allegations
- a. denials
- a. prayer
- a. signature of attorney

1. Service of process

- a. must be made personally
- a. can be done by the plaintiff
- a. involves the service of a complaint and summons on the defendant
- a. can be waived under federal rules
- a. both c and d

1. If a defendant makes a claim against a co-defendant in federal court, it is known as a:

- a. counterclaim
- a. cross-claim
- a. third party action
- a. cross complaint
- a. demurrer

1. Written questions sent by one party to another party that must be answered under oath are known as:

- a. interrogatories
- a. depositions
- a. requests to produce
- a. disclosure
- a. none of the above

1. Disclosure requires that each party disclose the following information to the other after filing a lawsuit

- a. identity of persons who have relevant information
- a. description of relevant documents
- a. computation of damages
- a. identity and qualifications of potential expert witnesses
- a. all of the above

1. Discovery involves the use of:

- a. interrogatories
- a. depositions
- a. requests for medical examinations

- a. requests to produce or inspect
 - a. all of the above
1. A document describing the nature of a motion and the time and place set for hearing is known as:
- a. notice of motion
 - a. declaration in support of motion
 - a. memorandum of points and authorities
 - a. declaration in opposition to motion
 - a. none of the above
1. Settlement agreements are found in
- a. complaints
 - a. answers
 - a. discovery documents
 - a. compromise and release
 - a. dismissal without prejudice

Answer Key

- | | | | | | |
|----------|---------|----------|----------|----------|----------|
| 1. True | 2. True | 3. False | 4. True | 5. False | 6. False |
| 7. False | 8. True | 9. True | 10.False | | |
| 1.a | 2.b | 3.c | 4.e | 5.b | 6.a |
| 7.e | 8.e | 9.a | 10.d | | |

Chapter 14: Criminal Law: Procedure

True/False

1. Criminal procedure is a branch of federal law.
1. Due process refers to the system of rules and regulations designed to assure justice in the American legal system.
1. The Fifth Amendment contains the due process clause.
1. The Fourth Amendment prohibits unreasonable searches and seizures.
1. Hearsay is something a third person heard.
1. Before a warrant may be issued under the Fourth Amendment, probable cause must be established.
1. The warrant requirement is designed to protect law enforcement officers.
1. Hot pursuit is an exception to the warrant requirement.
1. The exclusionary rule is a rule of criminal procedure stating that evidence obtained illegally cannot be used at trial.
1. An arrest is the physical seizure of a person by the government.

Multiple Choice

1. The Fourth Amendment prohibits:
 - a. unreasonable searches
 - a. unreasonable seizures
 - a. unlawful arrest
 - a. an initial appearance without an attorney
 - a. a and b
1. What must be established before a warrant may be issued?
 - a. guilt
 - a. witnesses exist
 - a. evidence exists
 - a. an informant exists
 - a. probable cause

1. The warrant is intended to protect persons from:
 - a. overeager law enforcement behavior
 - a. bad informants
 - a. exigent circumstances
 - a. all of the above
 - a. none of the above

1. Which of the following is not an exception to the warrant requirement?
 - a. plain-view doctrine
 - a. hot pursuit
 - a. exigent circumstances
 - a. exclusionary rule
 - a. none of the above

1. The exclusionary rule is a rule of criminal procedure stating that evidence obtained illegally
 - a. cannot be used at the arraignment
 - a. cannot be used at trial
 - a. never really existed
 - a. cannot be seized
 - a. must be returned to the person from whom it was seized

1. An interrogation is:
 - a. a questioning process done while the defendant's attorney is present
 - a. a questioning process conducted by the court at the arraignment
 - a. when an officer questions a person he or she believes to have committed a crime
 - a. when a judge questions a person believed to have committed a crime
 - a. none of the above

1. The Sixth Amendment provides:
 - a. the accused shall have the right to assistance of counsel for his defense
 - a. the defendant has a right to a jury trial
 - a. the right to a speedy trial
 - a. the right to subpoena witnesses for trial
 - a. all of the above

1. An affidavit is:
 - a. a sworn statement by a police officer
 - a. a sworn statement by the defendant

- a. a statement made in open court and then printed for the record
- a. a non-oral statement of facts that is confirmed by oath or affirmation
- a. none of the above

1. Formal charges may take the form of:

- a. an information
- a. a warrant
- a. an indictment
- a. a grand jury
- a. a and c

1. Which of the following is not a pretrial motion in a criminal trial?

- a. motion to dismiss
- a. motion to suppress evidence
- a. motion for a change of venue
- a. motion for a grand jury
- a. none of the above

Answer Key

- | | | | | | |
|----------|---------|---------|----------|----------|---------|
| 1. False | 2. True | 3. True | 4. True | 5. False | 6. True |
| 7. False | 8. True | 9. True | 10. True | | |
| 1.e | 2.e | 3.a | 4.d | 5.b | 6.c |
| 7.e | 8.d | 9.e | 10.d | | |

Chapter 15: Alternative Dispute Resolution

True/False

1. Methods of alternative dispute resolution may be binding or nonbinding.
1. Arbitration is always binding.
1. To stay a proceeding means to delay or stop the proceeding.
1. Courts have the right to stay arbitration proceedings.
1. A mediator should always be a neutral person.
1. A mini-trial is a form of ADR.
1. If parties use any form of ADR they give up their right to trial.
1. A special master is a person usually appointed by a court to resolve disputed pretrial matters in civil actions.
1. ADR is never used in criminal cases.
1. Arbitrators and mediators must be attorneys.

Multiple Choice

1. The ADR proceeding involving an out-of-court hearing before a neutral party who listens to two or more disputing parties and renders a decision resolving the dispute is known as
 - a. arbitration
 - a. mediation
 - a. negotiation
 - a. mini-trial
 - a. early neutral evaluation
1. Which of the following frequently offer arbitration services?
 - a. private judges
 - a. the court
 - a. the American Arbitration Association
 - a. none of the above
 - a. all of the above
1. The type of ADR most popular with family law and labor matters is:

- a. arbitration
 - a. mediation
 - a. mini-trial
 - a. summary trial
 - a. trial
1. A procedure often used by businesses in which disputing parties present their dispute before a special jury in non-binding trial is known as:
- a. mini-trial
 - a. summary trial
 - a. binding arbitration
 - a. nonbinding arbitration
 - a. early neutral evaluation
1. Which of the following is generally not a type of court-related ADR?
- a. early neutral evaluation
 - a. binding arbitration
 - a. nonbinding arbitration
 - a. summary trial
 - a. none of the above; they are all common types of court-related ADR

Answer Key

- | | | | | | |
|----------|----------|----------|-----------|---------|---------|
| 1. True | 2. False | 3. True | 4. True | 5. True | 6. True |
| 7. False | 8. True | 9. False | 10. False | | |
| 1.a | 2.c | 3.b | 4.a | 5.b | |

Chapter 16: Rules of Evidence

True/False

1. There are four types of witnesses.
1. There are two basic types of evidence.
1. All states have adopted the Federal Rules of Evidence.
1. Actual evidence might include the weapon used in a crime.
1. Judicial notice is sometimes taken when the court believes that the information is common knowledge.
1. Evidence is either direct or circumstantial.
1. An inference is a logical conclusion of a fact that is not supported by direct evidence.
1. Impeachment is the tool used to attack a witness's credibility.
1. Hearsay is never admissible evidence.
1. Paralegals are not allowed to review physical and tangible evidence.

Multiple Choice

1. Which of the following are not types of evidence?
 - a. judicial notice
 - a. testimony of a witness
 - a. exhibits
 - a. stipulated facts
 - a. none of the above
1. A lay witness may testify about
 - a. something he or she heard
 - a. something he or she saw
 - a. conclusions of law
 - a. a and b
 - a. all of the above
1. Which of the following are types of exhibits?
 - a. documentary evidence

- a. actual evidence
- a. demonstrative evidence
- a. all of the above
- a. none of the above

1. Direct evidence is:

- a. always required at trial
- a. sometimes required at trial
- a. evidence that actually proves a point
- a. circumstantial in nature
- a. all of the above

1. Evidence is relevant when

- a. it clearly proves guilt or innocence
- a. it has a tendency to make the existence of any fact of consequence more probable
- a. it creates inferences
- a. it does not come from hearsay
- a. none of the above

1. The most common attributes used to discredit a witness are:

- a. personal bias
- a. prior inconsistent statements
- a. prior convictions
- a. character for untruthfulness
- a. all of the above

1. Hearsay is only admissible when

- a. two or more persons heard the statement
- a. the witness is credible
- a. the prosecutor asks the court to allow the statements
- a. there were no exigent circumstances
- a. none of the above

1. Paralegals may:

- a. research legal issues
- a. research evidentiary issues
- a. review evidence
- a. analyze discovery
- a. all of the above

1. A person is competent to testify when

- a. the court says the person is competent
- a. the parties agree
- a. the attorneys agree
- a. a and c
- a. none of the above

1. Circumstantial evidence is a form of evidence that is:

- a. non-hearsay
- a. indirect
- a. a logical conclusion
- a. a and b
- a. all of the above

Answer Key

1. False 2. False 3. False 4. True 5. True 6. True

7. True 8. True 9. False 10. False

1.e 2.d 3.d 4.c 5.b 6.e

7.e 8.e 9.e 10.b

Chapter 17: The Trial

True/False

1. A trial will always involve a jury.
1. A motion for summary judgment requests that the judge decide the case on the legal issues without consideration of the factual issues.
1. The Constitution prescribes the method of jury selection.
1. Voir dire is the process of questioning the jury to determine their suitability to serve on a jury panel.
1. The judge will make the first opening statement.
1. In a civil case the burden of proof falls upon the defendant.
1. In a criminal case the burden of proof falls upon the prosecutor.
1. The plaintiff will present his or her case in chief through the testimony of various witnesses.
1. As part of the jury instructions, the judge explains the jury process and the role of the jurors.
1. The deliberation of the jury takes place in private.

Multiple Choice

1. Which of the following persons will not participate in a trial?
 - a. judge
 - a. plaintiff s attorney
 - a. defendant s attorney
 - a. jury
 - a. news media
1. Jury questionnaires may contain questions on
 - a. age
 - a. race
 - a. employment
 - a. education
 - a. all of the above

1. If it appears that there is a bias or other legitimate reason that a person cannot sit as a juror
 - a. that person will be excused for cause
 - a. that person will be excused with a peremptory challenge
 - a. the judge will ask the potential juror to leave the courtroom
 - a. the attorneys will discuss the person and make a recommendation to the court
 - a. a and b

1. An opening statement provides:
 - a. the judge with an overview of the legal issues
 - a. the judge with an overview of the factual issues
 - a. an initial picture of the case and the evidence that will be presented at trial
 - a. an initial argument for the jury
 - a. the judge with an opportunity to make the jury familiar with the case

1. After the evidence has been presented by the plaintiff's attorney
 - a. the attorney for the defendant may cross-examine any of the witnesses called by the plaintiff
 - a. defense counsel may make an opening statement
 - a. defense counsel may make any motions regarding suppression of evidence
 - a. a and b
 - a. none of the above

1. In closing arguments each attorney will highlight:
 - a. the problems with the evidence
 - a. the importance of the jury
 - a. the evidence most favorable to his or her client
 - a. a and b
 - a. all of the above

1. The judge will decide which jury instructions to give based on:
 - a. the legal and factual arguments
 - a. the overall appropriateness of the instruction
 - a. whether sufficient evidence was presented during the trial
 - a. recommended or pattern jury instructions for the jurisdiction
 - a. all of the above

1. When a jury is sequestered
 - a. it cannot deliberate more than two weeks

- a. it will be confined to a hotel when it is not deliberating
 - a. it cannot ask the court questions
 - a. it must not read newspapers
 - a. all of the above
1. A paralegal may not:
- a. draft jury instructions
 - a. assist with exhibits during trial
 - a. interview witnesses
 - a. advise clients regarding the possible ramifications of certain testimony
 - a. none of the above
1. Preparation for trial is similar to preparation for:
- a. settlement
 - a. discovery
 - a. investigation
 - a. opening statements
 - a. closing arguments

Answer Key

- | | | | | | |
|----------|---------|----------|----------|----------|----------|
| 1. False | 2. True | 3. False | 4. True | 5. False | 6. False |
| 7. True | 8. True | 9. True | 10. True | | |
| 1.e | 2.e | 3.a | 4.c | 5.a | 6.c |
| 7.e | 8.b | 9.d | 10.a | | |

Chapter 18: Law and Technology

True/False

1. A client file should contain copies of all documents related to the case.
1. A ledger sheet is usually filed in court.
1. A tickler system is used to avoid problems with a statute of limitations.
1. Keeping accurate records of time spent on a case is important when the attorney is handling the case on a contingent fee basis.
1. All calendaring in a law firm is automated.
1. A cover letter can be signed by a paralegal.
1. An opinion letter can be signed by a paralegal.
1. Corresponding by fax is growing in popularity because it offers more confidentiality to the parties.
1. When interviewing a client, a paralegal should always identify him or herself as a paralegal.
1. Paralegals sometimes do factual investigation.

Multiple Choice

1. Office files are usually kept by:
 - a. client s name
 - a. a file number
 - a. attorney s name
 - a. both a and b
 - a. all of the above

1. An office file might contain:
 - a. copies of legal documents
 - a. copies of correspondence sent to other attorneys or clients
 - a. copies of correspondence from other attorneys or clients
 - a. any documents relevant to the case.
 - a. all of the above

1. A master calendar keeps track of which of the following?
 - a. dates and times of court appearances for attorneys
 - a. dates and times of appointments
 - a. dates that indicate when a statute of limitations on a case is running
 - a. both a and b
 - a. all of the above

1. A tickler system keeps track of:
 - a. office conflicts
 - a. statutes of limitation
 - a. client expenses
 - a. court dates
 - a. office appointments

1. When lawyers charge an hourly fee
 - a. they usually get a percentage of what they recover
 - a. they may also bill for the time spent by a paralegal
 - a. they usually do not bother with keeping a record of time spent
 - a. they never add costs to the bill
 - a. both b and d

1. A letter that puts in writing an oral understanding or agreement of the parties is known as a/an:
 - a. opinion letter
 - a. cover letter
 - a. confirming letter
 - a. information letter
 - a. demand letter

1. A letter that analyzes a particular factual situation is known as a/an
 - a. cover letter
 - a. confirming letter
 - a. information letter
 - a. opinion letter
 - a. demand letter

1. Which of the following should you never do when talking on the telephone?
 - a. put the caller on hold for a long time
 - a. eat, drink, or chew gum

- a. answer calls while in conference
 - a. refuse to identify yourself as a paralegal
 - a. all of the above.
1. Which of the following is a good technique during an interview by a paralegal?
- a. if asked, give legal advice
 - a. ask leading questions
 - a. never take notes
 - a. ask general questions, followed by specific ones
 - a. never introduce yourself as a paralegal
1. Which of the following is not an example of factual investigation?
- a. reviewing police reports,
 - a. reading case law
 - a. obtaining statements from witnesses
 - a. taking photographs of the scene
 - a. none of the above; they are all examples of factual investigation

Answer Key

- | | | | | | |
|----------|----------|---------|----------|----------|---------|
| 1. True | 2. False | 3. True | 4. False | 5. False | 6. True |
| 7. False | 8. False | 9. True | 10. True | | |
| 1.d | 2.e | 3.d | 4.b | 5.b | 6.c |
| 7.d | 8.e | 9.d | 10.b | | |

APPENDIX SAMPLE VIDEO WORKSHEETS

The following are examples of worksheet that can be used with videos.

Preparing for Your Deposition (the video)
(Video available from the Wisconsin Bar Association)

1. What is the written result of a deposition?
1. Why is a deposition taken?
1. What are the common mistakes made by deponents?
1. Why is a deposition so important?
1. Name two subtle reasons for taking a deposition?
1. A deposition may be the _____time one testifies.
1. What you _____and how you _____it are _____.
1. What is the primary responsibility of a deponent?
1. Where does a deposition take place and who will be there?
1. Never _____ information.
1. Tips:
1. When are witnesses tempted to guess?
1. Do not get _____, _____,or _____.
1. How can a deposition be used at trial?
1. What happens when a deponent tells more than is asked for?
1. What should a deponent do when an objection is made?
1. What subjects could be discussed with the lawyer prior to the deposition?
1. Review Topics:

Your Divorce Deposition (the video)
(Video is available from the Wisconsin Bar Association)

1. What is an informal way of getting information?
1. What is a deposition?
1. What does an attorney hope to learn at a deposition?
1. What issues may be covered at deposition?
1. What is impeachment?
1. State four reasons for taking a deposition?
1. Who will be at the deposition?
1. What might someone be asked to bring to a deposition?
1. What should one not bring to a deposition?
1. How does a deposition begin?
1. What is the most typical topic of a divorce deposition?
1. State the 10 tips.
 1. Listen carefully to each question and _____ before you answer.
 1. Listen, think, and answer only _____.
 1. Never argue with _____.
 1. The best way to get through a deposition is _____.
 1. How does a cooperative person answer questions?
 1. What is the role of the attorney during a deposition?
 1. Do not answer questions you do not _____.
 1. When you are unsure what a question means, _____.
 1. Do not / never _____.

1. When making an estimate, _____.

1. Phrases / words to avoid:

1. How does one dress for a deposition?

GIDEON'S TRUMPET
(Video is available commercially)

1. What was the offense Gideon was originally charged with?
1. Who represented Gideon at the first trial?
1. How did Abe Fortas come to represent Gideon?
1. Did Abe Fortas think traffic offenders should be entitled to court appointed counsel?
1. Why did Gideon think that a retrial after the Supreme Court decision was illegal?
1. What did the judge rule regarding Gideon's motion for change of venue?
1. What was the name of the chief witness against Gideon at the trial?
1. What was the jury verdict in the retrial of Gideon?
1. Which Constitutional Amendment or Amendments were involved in this case?
1. Did Gideon have an attorney in his second trial? If so, what was his name and who paid for him?

SEPARATE BUT EQUAL
(Video is available commercially)

To the extent possible from watching the film, answer the following questions.

1. Give a brief factual description of what led to this lawsuit.
1. Describe the judicial history of the case (i.e., in what court did it begin and in what appellate courts was it heard?).
1. What was the legal issue in the case?
1. What rule of law (or holding) do we get from the Supreme Courts ruling in this case?.
1. Why did the court rule the way that it did?
1. What is the name of the attorney who represented Briggs?
1. Was Briggs the plaintiff or the defendant?
1. What was the name of the Chief Justice of the Supreme Court when this case was first brought to the court?
1. What was the name of the Chief Justice of the Supreme Court when this case was decided?
1. Which Constitutional Amendment formed the basis for this court s decision?
1. Who wrote the Court s opinion in this matter?

***CALIFORNIA V. BRANDO*—BRANDO SENTENCING**
(Video is available from Court TV)

1. What is the purpose of a sentencing hearing?
1. What was the original crime with which Brando had been charged?
1. In this case, the parties had reached a plea bargain. What was the nature of that plea bargain?
1. The rules of evidence at a sentencing hearing are different from the rules of evidence at trial. Why?
1. How long did the *Brando* sentencing hearing take?
1. What were the potential sentences that Brando could have received?
1. What sentence did the probation department recommend?
1. What sentence did Brando actually receive from the judge? What did the judge say about mitigating and aggravating circumstances?
1. Who was Brando's attorney?
1. Brando's father originally refused to take the oath to tell the truth. Why?
1. What did the clerk do about this?
1. How long did Brando actually serve in prison?
1. After he was arrested, Brando gave a confession that was held inadmissible at trial. Why? Be specific.
1. Was this confession admissible at the sentencing hearing? Why or why not?

VAN HOUTEN PAROLE HEARING
(Video is available from Court TV)

1. How many times had Ms. Van Houten been before the parole board?
1. What crime(s) had she committed?
1. What was her original sentence and why was it not imposed?
1. When was she first eligible for parole?
1. How many people were on the parole board?
1. What percentage of people who came before the parole board in 1991 were actually paroled?
1. What were some of the factors considered by the parole board in determining whether she was suitable for parole?
1. Who was Stephen Kay and what roll did he play in this hearing?
1. What did the parole board do in this case?

ZION V. NEW YORK HOSPITAL
(Video is available from Court TV)

1. What type(s) of damages were requested by plaintiff? Are the same types of damages allowed in your state)
2. How many jurors heard this case? Would it be the same in your state? If not what is the difference?
3. Did the jurors decide the case unanimously?
4. How many questions did the jury have to answer?
5. Describe at least one pretrial motion that must have been made in the case?
6. What was the jury's decision in the case?
7. What happened to the jury's decision?
8. What post trial motions do you think were probably made (assuming that the same types of motions exist in New York as do in your state)? Be specific as to who would make the motions.
9. Describe any demonstrative evidence that you saw in the video.
10. What was your opinion of plaintiff's attorney? How about the defense attorneys?