

Contents

Preface *xix*

Acknowledgments *xxi*



Part I. Building a Firm Foundation

Chapter 1. What Is a Paralegal? 3

Chapter Outline 3

- I. Introduction 3
- II. Paralegal Underpinnings 4
 - a. Ancient Origins 5
 - b. Middle Ages 8
- III. The Rise of the Paralegal in the United States 9
- IV. The Road to Becoming an Attorney 16
- V. What Exactly Is a Paralegal? 21

Understand 22

Discuss 22

Master 23

Chapter 2. Ethical Concerns and Limitations 25

Chapter Outline 25

- I. Introduction 25
- II. The Ethical Paralegal 27
- III. Unauthorized Practice of Law 28
- IV. Competence 36
- V. Diligence 40
- VI. Confidentiality 42
- VII. Attorney-Client Privilege 46

VIII.	Fiduciary	50
IX.	Conflicts of Interest	55
X.	Candor Within an Adversarial System	57
XI.	Consequences	61
Understand 67		
Discuss 68		
Master 68		

Chapter 3. Becoming a Great Paralegal 71

Chapter Outline 71

I.	Introduction	71
II.	Life, Not File	72
III.	Empathy	77
IV.	Active Listening	80
V.	Open-Ended Questions	84
VI.	Close-Ended Questions	85
VII.	Leading Questions	89
VIII.	Attention to Detail	94
IX.	Punctuality	95
X.	Professionalism	98
XI.	Adaptability	100
XII.	Bias and Knowing Yourself	101
XIII.	Openness to Feedback	110

Understand 111

Discuss 112

Master 112



Part II. Understanding the Legal System

Chapter 4. The Law and Morality 115

Chapter Outline 115

I.	Introduction	115
II.	What Is Law—Generally?	116

III. Why Have Laws?	122
IV. The Law and Morality	125
a. Utilitarianism	128
b. Kantianism	132
c. John Rawls—A Theory of Justice	133
V. Must We Always Follow the Law?	135

Understand 141

Discuss 141

Master 142

Chapter 5. Sources of Law 143

Chapter Outline 143

I. Introduction	143
II. U.S. Constitution	144
III. State Constitutions and Laws	151
IV. Statutes	155
V. Administrative Agencies—Rules and Regulations	159
VI. Common Law	163
VII. Local Rules	170

Understand 171

Discuss 172

Master 172

Chapter 6. A Court Primer 175

Chapter Outline 175

I. Introduction	175
II. Trial Courts	176
III. Specialty and Special Courts	180
IV. Appellate Courts	182
V. Supreme Courts	184
VI. Jurisdiction	186
VII. Subject-Matter Jurisdiction	187
VIII. Personal Jurisdiction	196
IX. In Rem Jurisdiction	199
X. Venue	200

Understand 202

Discuss 203

Master 203

Chapter 7. Legal Research, Writing, and Reading 205

Chapter Outline 205

I. Introduction 205

II. Authority 207

III. Is It “Good”? 215

IV. Is It “On Point”? 219

V. Legal Writing Format 222

VI. Briefing Cases 225

VII. Additional Organization and Writing Techniques 226

VIII. Legal Reading 230

Understand 238

Discuss 238

Master 239



Part III. Important Concepts in Civil and Criminal Law

Chapter 8. Civil Litigation and Procedure 243

Chapter Outline 243

I. Introduction 243

II. Civil Law—Generally 244

III. Intake 248

IV. Billing 250

a. Fee-Shifting 251

b. Hourly Billing 252

c. Contingency Agreements 254

d. Flat Fee Arrangements 255

e. Pro Bono 256

V.	Demands	257
VI.	Lawsuits	261
VII.	Affirmative Defenses	270
a.	Consent	271
b.	Accord and Satisfaction	271
c.	Laches	273
d.	Assumption of the Risk	276
e.	Waiver	277
VIII.	At Issue	278
Understand 278		
Discuss 278		
Master 279		

Chapter 9. Discovery: Civil 281

Chapter Outline 281

I.	Introduction	281
II.	Discovery: Foundations	282
III.	Relevance	285
IV.	Discovery Methods	289
a.	Interrogatories	289
b.	Requests to Produce	294
c.	Objections to Interrogatories and Requests to Produce	296
d.	Requests to Admit	302
e.	Depositions	304
V.	Sanctions	306
VI.	Electronically Stored Information (ESI)	308

Understand 311

Discuss 311

Master 312

Chapter 10. Common Civil Arenas for the Practicing Paralegal 313

Chapter Outline 313

I.	Introduction	313
II.	Contracts	314
III.	Torts	322

IV. Family Law 329
V. Estate Planning 336

Understand 342

Discuss 343

Master 343

Chapter 11. Criminal Law 345

Chapter Outline 345

- I. Introduction 345
- II. Reasons for Criminal Law 346
 - a. Retribution 346
 - b. Deterrence 359
 - c. Rehabilitation 362
 - d. Restorative Justice 363
- III. Prosecutors and Defense Counsel 365
 - a. Prosecutors 365
 - b. Defense Counsel and Public Defenders 371
- IV. The Criminal Law Recipe 374
- V. Categories of Offenses 377
 - a. Voting 378
 - b. Employment 379
 - c. Immigration 381
- VI. Defenses 382
 - a. Necessity 382
 - b. Duress 383
 - c. Self-Defense 383
 - d. Entrapment 385

Understand 385

Discuss 386

Master 387

Chapter 12. Criminal Process and Procedure 389

Chapter Outline 389

- I. Introduction 389
- II. The Criminal Process 390
 - a. Investigation 390
 - b. Charging a Defendant 393

- c. Initial Court Steps 396
 - d. Discovery 396
 - e. Resolution 401
- III. Constitutional Considerations in Criminal Procedure 402
- a. The Fourth Amendment 403
 - b. The Fifth Amendment 413

Understand 415

Discuss 415

Master 416



Part IV. Roads to Resolution

Chapter 13. Resolution Through Negotiation 421

Chapter Outline 421

- I. Introduction 421
- II. Anchoring 422
- III. Negotiation Response Basics 424
- IV. Distributive Bargaining 430
- V. Interest-Based Bargaining 437
- VI. Negotiating for Others 439
- VII. Apology 444

Understand 457

Discuss 458

Master 459

Chapter 14. Alternative Dispute Resolution (ADR) 461

Chapter Outline 461

- I. Introduction 461
- II. Alternative Dispute Resolution: Brief Historical Context 462
- III. Mediation 471
- IV. Pre-Trial Settlement Conference 475
- V. Arbitration 477

Understand 484

Discuss 484

Master 485

Chapter 15. Evidence, Trial, and Appeals 487

Chapter Outline 487

- I. Introduction 487
- II. Evidence 488
 - a. Relevance 488
 - b. Types of Evidence 490
 - c. Hearsay 499
- III. Jury and Bench Trials 502
 - a. Jury Trials 503
 - b. Bench Trials and Judges 508
- IV. Trial Procedure 516
 - a. Opening Statements 516
 - b. Case-in-Chief 517
 - c. Presentment of the Defendant's Case 518
 - d. Closing Arguments and Deliberations 518
- V. Appeals 520
 - a. Questions of Law 520
 - b. Questions of Fact 522
 - c. Abuse of Discretion 522
 - d. Affirm, Reverse, Remand 524

Understand 525

Discuss 526

Master 527

Glossary 529

Index 549