PREFACE	xxix
ACKNOWLEDGMENTS	xxxiii
ABOUT THE AUTHOR	XXXV

## 1

## INTRODUCTION TO THE COURT SYSTEM 1

Chapter Objectives Chapter Outline	1 1
I. INTRODUCTION	2
II. CIVIL LAW	2
A. What Is Civil Law?	3
B. How Does Civil Law Differ from Other Areas of Law?	3
1. The Parties	3
2. The Pleadings	4
3. The Rules	5
4. The Burden of Proof	5
5. The Outcome	7
III. SOURCES OF LEGAL AUTHORITY IN THE	UNITED
STATES	8
A. The Constitution	8
B. Statutes	8
1. Administrative Rules and Regulations	8
2. Ordinances	9
C. Case Law	10
D. Common Law	11
IV. JURISDICTION	11
A. Subject Matter Jurisdiction	11
B. Personal Jurisdiction	12

1. Physical Presence in the Forum	13	
2. Domicile or Residence in the Forum	13	
3. Property Ownership in the Forum	13	
4. Consent	13	
5. Minimum Contacts	14	
V. FEDERAL AND STATE COURT SYSTEMS	14	
A. Levels of the Federal Court System	14	
1. Trial Courts: U.S. Federal District Court	15	
2. Appellate Courts: U.S. Circuit Courts of Appeal	15	
3. U.S. Supreme Court	16	
<ul><li>B. Levels of the State Court System</li><li>1. Trial Courts</li></ul>	16 16	
2. Appellate Courts	16	
3. State Supreme Courts	17	
C. Federal versus State Law	17	
Case Excerpt: Lambert v. Glob. Intl Servs.	19	
Chapter Summary		
Skills You Need in the Real World		
Ethical Issues for the Paralegal Key Terms and Concepts End-of-Chapter Exercises		
		Applying What You Have Learned
Web Surfing	26	
Forms and Court Documents	27	
Practice Questions for Test Review	29	
THE PARTICIPANTS IN THE LEGAL SYSTEM 31		
Chapter Objectives	31	
Chapter Outline	31	
I. INTRODUCTION	32	
II. JUDGES	32	
	33	
A. Becoming a Judge     1. Judicial Appointment	33	
2. Election	34	
3. Judicial Selection Committee	34	
B. The Role of the Judge	34	
1. Judges as Referees	34	
2. Judicial Rulings	35 35	
a Motions	4-	

	<ul><li>b. Evidence</li><li>3. Judges as Fact Finders</li></ul>	35 35
	5. Judges as Fact Finders	35
III.	ATTORNEYS	36
	A. Becoming an Attorney	36
	1. Law School Education	37
	2. The Bar Examination	37
	3. Joining the State Bar	37
	4. Specialization	37
	<ul><li>a. Plaintiffs' Attorneys</li><li>b. Defendants' Attorneys</li></ul>	38 38
	c. The Day-to-Day Practice of Law	38
IV.	COMPENSATING LEGAL PROFESSIONALS	39
	A. Contingency Fees	39
	B. Hourly Rates	40
V.	ORGANIZATION OF THE LAW OFFICE	41
	A. Partners	41
	B. Associate Attorneys	42
	C. Attorney Ethics	42
	1. Ethical Codes	42
	a. Private Reprimand	43
	<ul><li>b. Public Reprimand</li><li>c. Temporary Suspension of License</li></ul>	43 43
	d. Disbarment	43
	e. Criminal Prosecution	44
	2. Common Ethical Violations	44
	a. Commingling Funds	44
	b. Lack of Diligence	44
VI.	PARALEGALS	44
	A. Development of the Paralegal Profession	45
	B. Daily Activities of Paralegals	46
	C. Licensing and Certifying Paralegals	47
	D. Paralegal Ethics	49
	E. Legal Document Assistants	49
∕II.	CLIENTS	50
III.	COURTHOUSE PERSONNEL	50
	A. Clerk of Court	50
	B. Registrar of Deeds	51
	C. Probate Court	51
	D. Tax Office	51

xiv	Contents
-----	----------

	cerpt: In re Mann Summary	<b>52</b> <i>54</i>
Chapter Summary Skills You Need in the Real World Ethical Issues for the Paralegal Key Terms and Concepts End-of-Chapter Exercises		55
		55
		56
		56
	What You Have Learned	57
Web Sur	fing	58
Forms and Court Documents		58
Practice	Questions for Test Review	59
	BRINGING A LEGAL ACTION	61
Chapter	Objectives	61
Chapter	Outline	61
I. IN	ITRODUCTION	62
II. E	VALUATING A CIVIL CASE	62
A.	What Is a Case Evaluation?	62
	1. The Nature of the Claim	62
	2. The Facts	63
	a. Factual Analysis	63
	b. The Legal Requirement to Investigate a Case	64
	3. The Defendant's Liability	66
	4. The Impact of the Law	66
	5. The Likelihood of Recovery	67
ъ	6. The Extent of the Plaintiff's Injuries	68
D.	Initial Client Meeting	68
	<ol> <li>Obtaining Authorizations from Clients</li> <li>HIPAA Concerns with Medical Records</li> </ol>	71 71
	3. Other Information from Client	71 72
	a. Details of the Incident	73
	b. Police Reports	73
	c. Investigative Reports	73
	d. Police Accident Reconstructionist Report	74
	e. Witnesses	74
	f. Other Critical Information	74
	4. Client Intangibles	75
	a. Client's Personality	75
	b. Will the Client Make a Good Witness?	75
	c. Cross-Referencing the Client's Version	75
	d. The Client's Web Presence	75
	e. Interview Techniques for Clients	76
	5. Information the Law Firm Provides to the Client	78

III. INVESTIGATING THE CLAIM	79
A. Attorneys and Paralegals as Investigators	79
B. Paralegal Investigators	80
1. Locating Witnesses	80
a. Witness Locator Services	80
b. Internet Search	81
2. Interviewing Witnesses	81
a. Interviewing Techniques	82
b. Purposes of the Interview	83
c. Deceitful Witnesses	83 84
<ul><li>C. Documenting the Scene of the Accident</li><li>1. Photographs</li></ul>	84
2. Video	84
3. Diagramming the Scene	85
D. Gathering Evidence	86
E. Researching Public Records	86
1. The Clerk of Courts Office	86
2. The Deed Room	87
3. UCC Filings	87
4. Birth, Marriage, and Death Records	87
5. Tax Office	88
Case Excerpt: Jacobs v. Wheaton Van Lines Inc.	90
Chapter Summary	92
Skills You Need in the Real World	92
Ethical Issues for the Paralegal	92
Key Terms and Concepts	93
End-of-Chapter Exercises	93
Applying What You Have Learned	94 96
Web Surfing	
Practice Questions for Test Review	
CIVIL COMPLAINTS 99	
Chapter Objectives	99
Chapter Outline	99
I. INTRODUCTION	100
II. PARTIES	100
III. JURISDICTIONAL ISSUES IN CIVIL SUITS	100
A. Personal Jurisdiction	101
1. Presence	101
2. Domicile	102

**xvi** Contents

	3. Consent	102
	4. Minimum Contacts	102
	5. Special Appearance	103
	B. Subject Matter Jurisdiction	103
	1. General Jurisdiction Courts	103
	2. Limited Jurisdiction Courts	103
	a. Federal Question	104
	b. Diversity of Citizenship	104
	c. Amount in Controversy	104
	d. Pendent and Ancillary Jurisdiction	105
	e. Exclusive Jurisdiction	106
	f. Removal	106
	C. <i>In Rem</i> Jurisdiction	107
	D. Concurrent Jurisdiction	107
IV.	. CAPACITY AND STANDING	107
	A. Capacity	107
	B. Standing	109
	1. Elements of Standing	109
	2. Case or Controversy Requirement	110
	a. Ripeness Doctrine	111
	b. Mootness Doctrine	111
	c. Advisory Opinions	112
V.	. THE ELEMENTS OF A COMPLAINT	112
	A. Identification of Court	112
	B. Style or Caption of a Complaint	112
	1. Businesses as Parties	114
	2. Plea of Misnomer	114
	3. Deceased Parties	114
	4. Fugitives	114
	C. Title of Action	114
	D. Allegation of Jurisdiction	115
	E. Factual Contentions	116
	1. Liability Allegations	117
	2. Sufficiency of the Allegations	117
	F. Demand for Judgment/Prayer for Relief	117
	1. Request for Damages	118
	2. Jury Trial Demand	118
VI.	. COMPLAINT ATTACHMENTS	
	AND EXHIBITS	118
	A. Verifications	118
	B. Exhibits	119
	C. Affidavits	119

VII. SUMMONS AND SERVICE OF PROCESS	121	
A. Service by Personal Delivery	124	
B. Service by Other Means	124	
C. Serving a Corporation or Government Entity	125	
Case Excerpt: RCO Legal, P.S., Inc. v. Johnson	125	
Chapter Summary Skills You Need in the Real World		
Key Terms and Concepts	132 132	
End-of-Chapter Exercises		
Applying What You Have Learned	133	
Web Surfing Practice Questions for Test Review	133 134	
	131	
THE DEFENDANT'S ANSWE	R 137	
Chapter Objectives	137	
Chapter Outline	137	
I. INTRODUCTION	138	
II. THE ANSWER	138	
A. The Function of the Answer	138	
B. The Minimum Requirements of the Answer	139	
C. Drafting the Answer	139	
1. Denying Claims	141	
2. Other Responses in Answers	142	
3. Bad Faith	143	
D. Serving the Answer on the Plaintiff	144	
E. Failure to Respond to the Complaint	145	
F. Failure to Respond to Allegations in the Complaint	145	
III. DEFENSES	146	
A. Affirmative Defenses	146	
B. Counterclaims	147	
1. Compulsory and Permissive Counterclaims	148	
2. Res Judicata	149	
3. Replies to Counterclaims	150	
IV. RULE 12(b)(6) MOTIONS	151	
A. Purpose of the Rule 12(b)(6) Motion	151	
B. When Can a Defendant File a Rule 12(b)(6) Motion?	152	
C. Motions to Strike	152	

xviii		Contents
-------	--	----------

V. CROSS-CLAIMS	153
A. Answers to Cross-Claims	154
B. Time Limits for Cross-Claims	154
VI. THIRD-PARTY CLAIMS	155
A. Impleader	155
B. Interpleader	157
C. Intervention	157
VII. CLASS ACTIONS	160
Case Excerpt: Barrett v. Invictus Real	
Estate Grp.	162
Chapter Summary	166
Skills You Need in the Real World	167
Ethical Issues for the Paralegal	167
Key Terms and Concepts	168
End-of-Chapter Exercises	168
Applying What You Have Learned	169
Web Surfing	169
Forms and Court Documents	169
Practice Questions for Test Review	173
EVIDENCE 175	
Chapter Objectives	175
Chapter Outline	175
Chapter Galline	173
I. INTRODUCTION	176
II. WHAT IS EVIDENCE?	176
A. Relevance	177
B. Competence	178
C. Admissibility	179
III. THE ROLE OF EVIDENCE	180
A. Laying the Foundation	180
B. Tendering Evidence	182
C. Objecting to Evidence	183
1. Improper Conclusion	183
2. Relevance	184
3. Prejudice	184
4. Other Issues	184

IV. TYPES OF EVIDENCE	185
A. Direct Evidence	185
1. What Qualifies as Direct Evidence	185
2. Eyewitness Testimony	185
B. Circumstantial Evidence	186
C. Documentary Evidence	187
D. Other Categories of Evidence	188
1. Testimonial Evidence	188
2. Demonstrative Evidence	188
3. Scientific Evidence	189
V. SPECIFIC EVIDENTIARY RULES	190
A. The Best Evidence Rule	190
B. Hearsay	191
1. Hearsay in Documents	192
2. Exceptions to the Hearsay Rule	192
a. Excited Utterance	193
b. Business Records	193
c. Statements for Purpose of Medical Diagnosis	194
C. Authentication	194
1. Judicial Notice	195
2. Self-Authenticating Document	196
D. Privileges	197
1. The Marital Privilege	198
2. The Attorney–Client Privilege	198
Case Excerpt: Cunningham v. MetLife Ins. Co.	199
Chapter Summary	200
Skills You Need in the Real World	201
Ethical Issues for the Paralegal	201
Key Terms and Concepts	202
End-of-Chapter Exercises	202
Applying What You Have Learned Web Surfing	203 203
Practice Questions for Test Review	203
Tructice Questions for Test Review	204
DISCOVERY 207	
Chaptan Ohiostina	207
Chapter Objectives Chapter Outline	207 207
	207
I. INTRODUCTION	208
II. PURPOSE OF DISCOVERY	208
A Clarification of the Facts	208

**XX** Contents

	<ul><li>B. Preservation of Testimony for Later Use</li><li>C. Avoiding Surprise at Trial</li><li>D. Narrowing the Issues</li></ul>	209 209 209
m.	SHORT HISTORY OF DISCOVERY	209
IV.	DISCOVERY IN MODERN CIVIL PRACTICE	210
	A. Rules of Civil Procedure	211
	B. Sequence of Discovery	211
	C. Supplementing Discovery Responses	212
	D. Expert Witnesses in Modern Discovery	213
	E. Electronic or "E-Discovery"	213
V.	DISCOVERY METHODS	215
	A. Interrogatories	215
	1. Limitations on Interrogatories	217
	a. Unreasonably Cumulative or Burdensome	217
	b. Objections to Specific Questions	217
	2. Drafting Interrogatories	217
	3. Answering Interrogatories	219
	4. Time Limits on Interrogatories	219
	B. Requests for Production of Documents	220
	C. Depositions	221
	1. Preparing for a Deposition	222
	2. Setting a Deposition	223
	3. Conducting the Deposition	225
	a. Opening Stipulations	225
	b. Reserving Objections	226
	c. Permissible Questions	226
	d. Cross-Examining a Witness During the Deposition	227
	e. Use of Exhibits	227
	4. Persons Present at the Deposition	227
	a. The Witness	227
	b. The Attorneys	228
	c. The Court Reporter	228
	d. The Parties	228
	5. Duration of the Deposition	228
	6. After the Deposition	229
	D. Requests for Physical and/or Mental Examination	232
	E. Requests to Admit	232
VI.	OBJECTIONS TO DISCOVERY REQUESTS	233
	A. Work Product	233
	B. Unduly Burdensome, Cumulative, and/or Expensive	233
	C. Constitutional Rights	233

<ul><li>D. Trade Secrets</li><li>E. Protective Orders</li></ul>	234 234
VII. FAILURE TO RESPOND TO DISCOVERY REQUESTS	236
VIII. COMPELLING DISCOVERY	236
IX. SOFTWARE THAT ASSISTS IN DISCOVERY	237
Case Excerpt: 3D Sys. v. Wynne Chapter Summary Skills You Need in the Real World Ethical Issues for the Paralegal Key Terms and Concepts End-of-Chapter Exercises Applying What You Have Learned Web Surfing Practice Questions for Test Review	238 242 242 243 243 243 244 245 246
MOTIONS PRACTICE	249
Chapter Objectives Chapter Outline	249 249
I. INTRODUCTION	250
II. BRINGING A MOTION	250
<ul> <li>A. Construing the Language in a Motion</li> <li>B. Drafting a Motion</li> <li>C. Serving a Motion <ol> <li>Certificate of Service</li> <li>Attaching Affidavits to the Motion</li> </ol> </li> <li>D. Filing a Motion</li> <li>Arguing a Motion</li> <li>Ruling on a Motion</li> <li>Written Motions</li> <li>H. Oral Motions</li> </ul>	250 250 251 252 252 254 255 256 256 256
III. ISSUES THAT CAN BE ADDRESSED IN A MOTION	256
<ul> <li>A. Motion for Summary Judgment</li> <li>B. Motion for Partial Summary Judgment</li> <li>C. Judgment on the Pleadings</li> <li>D. Affirmative Defenses <ol> <li>Lack of Jurisdiction over the Subject Matter</li> <li>Lack of Jurisdiction over the Person</li> </ol> </li> </ul>	257 259 259 259 260 260

cxii	Contents
(XII	Contents

3. Improper Venue	260
4. Insufficiency of Process and Service of Process	260
5. Failure to Join a Necessary Party Under Rule 19	260
<ul><li>E. 12(b)(6) Motion</li><li>F. Motion for More Definite Statement</li></ul>	261 261
G. Motion for Default Judgment	262
G. Motion for Delauit Judgment	202
IV. THE JUDGE'S ROLE IN CONSIDERING MOTIONS: MOTIONS FOR SUMMARY JUDGMENT	263
V. USING MOTIONS TO CLARIFY ISSUES IN	
LITIGATION	264
VI. PRETRIAL, TRIAL, AND POST-TRIAL MOTIONS	265
A. JNOV Motions	265
B. Motion for Directed Verdict	266
C. Motion for New Trial	266
Case Excerpt: Haeger v. Goodyear Tire & Rubber Co.	267
Chapter Summary	269
Skills You Need in the Real World	270
Ethical Issues for the Paralegal	270
Key Terms and Concepts	270 271
End-of-Chapter Exercises Applying What You Have Learned	271
Web Surfing	271
Forms and Court Documents	272
Practice Questions for Test Review	274
PREPARING FOR AND CONDUCTING THE TRIAL 277	
Chapter Objectives	277
Chapter Outline	277
I. INTRODUCTION	278
II. PREPARING FOR THE TRIAL	278
A. The Attorney's Role	279
B. The Paralegal's Role	280
1. Chronology of Events	280
2. Master Index	282
3. Issue Table	283
4. Witness Cross-Reference	284
<ul><li>5. Witness Summaries</li><li>6. Trial Timetable</li></ul>	285 286
7. Organized Client File	287
Organized Cheffer Inc	207

	8. Trial Notebook	287
	9. Paralegal Trial Notebook	288
	10. Preparing Exhibits	289
III.	PREPARING WITNESSES FOR THE TRIAL	289
	A. Review Deposition Testimony	290
	B. Double- and Triple-Check Documentation	290
	C. What to Tell Witnesses About Testifying	290
	1. Do: Review the File	291
	2. Do: Dress Professionally	291
	3. Do: Make Eye Contact with the Jurors	291
	4. Do: Be Polite	291
	5. Do: Tell the Truth	292
	6. Don't: Guess	292
	7. Don't: Get Angry or Use Sarcasm	292
	8. Don't: Take Notes to the Witness Stand	292
IV.	PREPARING FOR THE TRIAL: ROLE OF THE	
	PARALEGAL	293
	A. Reconnoiter the Courtroom	293
	B. Rehearse Your Equipment	293
	C. Learn the Layout of the Courthouse	294
	D. Master the Trial Notebook or the Case Files	294
	E. Get Ready for Stress	294
	F. Anticipate Problems	295
V.	MOCK TRIALS	295
VI.	PHASES OF THE TRIAL	295
	A. Pretrial Conference	295
	B. Calendar Call	298
	C. Jury Selection	298
	Trial Paralegals and Jury Selection	299
	2. Peremptory Jury Strikes	299
	3. Challenges for Cause	299
	D. Opening Statements	300
	E. Presentation of the Plaintiff's Case	300
	1. Witnesses	300
	a. Direct Examination	300
	b. Cross-Examination	302
	c. Paralegal Assistance During the Testimony Phase of the Trial	302
	2. Resting the Case	303
	3. Motion for Directed Verdict	303
	F. Presenting the Defense	303
	1. Defense Witnesses	304
	2. Resting the Defense Case	304
	G. Charge Conference	304

H. Closing Argument	306
I. Jury Instructions	306
J. Jury Deliberation	307
K. Verdict	307
L. Judgment	307
M. Enforcing the Judgment	307
Case Excerpt: In re Breakstone	308
Chapter Summary	311
Skills You Need in the Real World	312
Ethical Issues for the Paralegal	312
Key Terms and Concepts	313
End-of-Chapter Exercises	313
Applying What You Have Learned	313
Web Surfing	314
Practice Questions for Test Review	314
Chapter Objectives Chapter Outline	317 317
Lnapter Outtine	317
I. INTRODUCTION	318
II. TYPES OF DAMAGES	318
A. Compensatory Damages	319
1. General Damages	319
a. Calculating Damages	319
b. Pain and Suffering	320
2. Special Damages	320
a. Lost Wages	320
b. Medical Bills	321
c. Future Losses	321
d. Emotional Distress	322
e. Loss of Consortium	322
f. Bad Faith Damages	322
B. Punitive Damages	323
C. Nominal Damages	324
III. PROVING DAMAGES	324
A. Distinguishing Between General and Special Damages	324
B. Presenting Proof at Trial	325
C. Proving Property Losses	325
D. The Collateral Source Rule	326

E. Mitigation of Damages	327
F. Prior Injuries	328
IV. EQUITABLE REMEDIES	328
V. EVALUATING POTENTIAL DAMAGES	329
A. Reviewing the Facts of a Case	329
B. Asset Searches	330
C. The Jury's Role	330
1. Jury Instructions	330
2. JNOV	331
Case Excerpt: Virlar v. Puente	332
Chapter Summary	338
Skills You Need in the Real World	339
Ethical Issues for the Paralegal Key Terms and Concepts	339 340
End-of-Chapter Exercises	340
Applying What You Have Learned	341
Web Surfing	341
Practice Questions for Test Review	342
Chapter Objectives	345
Chapter Outline	345
I. INTRODUCTION	346
II. ARBITRATION	346
A. The History of Arbitration	346
B. The Federal Arbitration Act	347
C. Comparing Arbitration to Appraisal	348
D. Types of Arbitration	348
E. Issues That Can Be Submitted to Arbitration	349
F. Limitations on Arbitration Cases	349
G. Arbitrators H. The Arbitration Agreement	349 350
11. The Arottration Agreement	330
III. MEDIATION	350
A. State Mediation Programs	351
B. Certified Mediators	351
C. The Mediation Conference	352

D. Persons Required to Be Present at Mediation	352
E. The Mediator's Authority	353
F. Impasse	353
IV. SETTLEMENT	354
A. Reasons to Settle	354
B. Settlements Are Contracts	355
1. Mutual Assent	355
2. Capacity	356
3. Consideration	356
4. Legality	356
C. Procedures in Bringing About a Settlement	356
1. Settlement Brochure	356
a. Factual Basis of Plaintiff's Claim	357
b. Summary of Plaintiff's Damages	357
c. Overview of the Law	357
d. Summary of Recent Jury Awards	357
e. Offer to Settle	358
<ul><li>2. Demand Letter</li><li>3. Offers of Judgment</li></ul>	358 360
D. Releases	362
	363
Case Excerpt: FPG Cobble Hill Acquisitions, LLC v. Palm Cove Mgmt.	
Chapter Summary	367 368
Skills You Need in the Real World	
Ethical Issues for the Paralegal	368 368
Key Terms and Concepts End-of-Chapter Exercises	368 369
Applying What You Have Learned	369
Web Surfing	370
Practice Questions for Test Review	
Tructice Questions for Test Review	370
1 APPEALS 373	
AFFLALS 3/3	
Chapter Objectives	373
Chapter Outline	373
I. INTRODUCTION	374
II. STARTING AN APPEAL	374
III. CHANGING COURTS	375
A. Notice of Appeal	375
B. Terminology on Appeal	376
C. The Record	376
D. Appellate Docket Number	377

IV. BRIEFS	377
A. Appellant's Brief	377
1. Contents of an Appellate Brief	378
a. Title Page	378
b. Statement of Facts	379
c. Enumerations of Error	379
d. Argument	380
e. Conclusion	380
2. Filing Deadlines	380
<ul><li>3. Serving Copy on Appellee</li><li>B. Appellee's Brief</li></ul>	381 381
C. Oral Argument	382
V. THE POWERS OF THE APPELLATE COURTS	382
A. Affirming	382
B. Reversing	382
C. Modifying	383
D. Remanding	383
VI. THE STATE SUPREME COURT	383
A. Petition for Cert	384
B. Granting Cert	384
C. Denying Cert	384
VII. THE U.S. SUPREME COURT	385
Case Excerpt: Thompson v. Special Sch. Dist. of St. Louis Cnty.	386
Chapter Summary	390
Skills You Need in the Real World	391
Ethical Issues for the Paralegal	391
Key Terms and Concepts	392
End-of-Chapter Exercises	392
Applying What You Have Learned	393
Web Surfing Practice Questions for Test Review	394 394
Practice Questions for Test Review	394
Appendix A. Apple Case	397
Appendix B. Baker Case	423
Appendix C. Answers to Review Questions and Practice	
Questions for Test Review	435
GLOSSARY	479
INDEX	485