**Workbook to Accompany**

**Maerowitz and Mauet’s**

**FUNDAMENTALS OF LITIGATION FOR PARALEGALS**

***Eleventh Edition***

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**TO THE STUDENT**

Your textbook, **Fundamentals of Litigation for Paralegals,** Eleventh Edition, is intended to prepare you to begin your work as a legal assistant competently and confidently. It presents the procedural rules governing the civil litigation process and a system to help you use these rules to draft litigation documents. However, learning the rules and applying the knowledge are usually two different things. This workbook has been created to bridge the gap between knowledge and application. The workbook helps you to test your understanding of the concepts presented in the textbook and allows you to apply those concepts to a variety of litigation matters. In addition, the exercises in this workbook will give you practice in drafting litigation documents, including pleadings, motions, and discovery requests. You should keep copies of all the documents you draft in a separate electronic folder, or you can place hardcopies in a notebook. As you work through the exercises, you will begin to build a form file for use once you are in practice, as well as writing samples when you are interviewing for a position. This form file will become your litigation guide which can either be printed in hard copy form, or stored as an electronic form file.

**HOW TO USE THIS WORKBOOK**

The workbook is divided into chapters that correspond to the textbook. As you work through the chapters of the text, you should work through the chapters of this workbook. Your instructor may assign some problems to be done before class and others to be done during class. Even if a particular problem is not assigned, you should read through the problem and consider possible answers; this will help you to better understand the rules and concepts presented in the text.

Some of the problems in this workbook are designed for in‑class discussion; however, most are intended for you to do at home. You will be able to do many of the problems using only the information in the main text. However, for others you will need to do additional research about your particular state's rules of civil procedure. The purpose of this research is to encourage you to become familiar with the rules of the jurisdiction in which you will practice. By examining the state rules concurrently with the federal rules presented in the textbook, you will be well‑equipped to assist with litigation in both state and federal courts. Whenever a question asks you to determine an answer based upon state law, use the law of the state in which your school is located, unless your instructor advises otherwise. In addition, we have provided questions using a computerized legal database that will test your understanding of using computerized legal research in litigation matters. At the end of each chapter in the main text is a list of additional resources. Many of these sources will be helpful to you in using internet searches for your litigation practice.

***TESTING YOUR COMPREHENSION***

Each chapter of this workbook is divided into five main parts. The first, "Testing Your Comprehension," consists of true‑false questions that test your knowledge of the rules and concepts covered in each chapter. Although these questions can be answered by referring to the main text, refrain from looking at the text until you have at least attempted to answer every question. This way you will know whether you have understood the main concepts in each chapter. An answer sheet is provided for your reference in the Appendix.

***APPLYING YOUR KNOWLEDGE***

The second part, "Applying Your Knowledge," consists of questions designed to stimulate your thinking about the concepts discussed in the text. Many of these questions cannot be answered by simply referring to the text. Rather, they may require you to apply the skills and rules you have learned in the chapter to different fact situations.

***PROJECTS FOR RESEARCH AND WRITING***

The third part, "Projects for Research and Writing," consists of a number of written assignments. As you do each assignment, store the assignment in your litigation guide. When you finish your litigation course, this collection of information, samples, models, and forms will be your reference guide in practice. Many sample forms are included on this disk. Other samples are reprinted in the Instructor’s Manual that accompanies this book and are available from your instructor.

***LEGAL DATABASE RESEARCH QUESTIONS***

The fourth part, “Legal Database Research Questions,” consists of questions designed to provide you practice engaging in basic legal research. In order to answer each question, you will need to use an online database to locate various federal rules and cases. Answers are given in Appendix I.

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

The final part, “How Well Do You Know the Concepts in This Chapter?” asks you to answer the questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against your textbook, reviewing those sections where you did not know the answers carefully.

**HYPOTHETICALS**

In a file labeled “***cases***” are six hypothetical cases. When indicated, the facts in the cases should be used to help you complete the assignments. In addition, your instructor may give you additional assignments based upon some of the hypothetical cases.

**APPENDICES**

This workbook ends with two appendices. The first contains answers to the True-False questions and the Legal Database Research questions. The second appendix contains samples of many of the assignments that you are given in this workbook. You should refer to the samples in completing your assignments. Although the rules of civil procedure are not included in the appendix, you should consider the use of a legal research database as part of the appendix and refer to the rules of civil procedure and evidence that are referred to in the textbook. When studying the rules in the text, refer to the exact language used for each rule. Once you are in practice, you will be reading many rules of law. Referring to the text of the rules will give you practice in not just reading the summary of the law in your text, but the seeing exactly how the rules of law are written. The rules may also be used to assist you with the projects for legal research and writing in this workbook.

**HYPOTHETICAL CASES**

In several of the assignments you will be asked to use the facts found in one of the following hypothetical cases. The cases provide you with the basic facts; however, throughout the course your instructor may supplement these cases with additional facts and issues.

**1. SAMSON V. EMERALD’S CATERING**

Benjamin and Sara Samson decided to hold a large party at the country club near their home in order to raise money for a new pediatric wing of the local hospital. The Samsons hoped that during the evening, the guests that attended would make large donations to the hospital to be used for the new wing. The country club donated the space for the fundraiser, but advised the Samson’s that they did not have catering facilities to handle the large number of people the Samson’s wanted to invited. The Samson’s hired Emerald’s Catering, a company that specializes in large parties, to cater food for the party, decorate the room, provide party favors, and provide a musical band to entertain. A contract was signed that specified the date of the party, the food, entertainment and items to be provided, and the price to be paid. It further stipulated that a band would play for approximately five hours during the course of the party. One‑half of the total payment of $50,000 was made at the time the contract was signed. The other half was to be paid on the day of the party. Over 300 guests were invited to the fundraiser.

On the morning of the party, Mrs. Samson called Emerald’s Catering to confirm the arrival of the caterers. Mrs. Samson was assured that the caterers would arrive at approximately 5:00 p.m., one hour before the party was to begin. Mrs. Samson expressed concern that there might not be enough time to decorate and set up the food for the party. However, she was assured that since everything would be cooked ahead of time, there was no need to arrive any earlier. When no one from Emerald’s catering had arrived by 5:30 p.m., Mrs. Samson called Emerald’s Catering, but there was no answer. She continued to make telephone calls, but continued to receive no answer. At 7:00 p.m., with over 300 guests present, Mr. and Mrs. Samson apologized for there not being any food, band or decorations; and the guests left without making any donations. At approximately 8:00 p.m., the band and caterers arrived; however, the only people present were Mr. and Mrs. Samson and a few of their close friends.

Mr. and Mrs. Samson not only paid $25,000 to Emerald’s Catering, but they had spent $500 on engraved invitations that were sent to all the guests, as well as a number of other miscellaneous costs. They are also very upset about the damage to their reputation in the community and the embarrassment caused to them by the failure of Emerald’s Catering to perform.

**2. SHAMROCK ENTERPRISES V. MCFARLAND**

Shamrock Enterprises runs a home delivery laundry service throughout Lincoln County. It is the only such service in the area. Rather than advertising, Shamrock obtains its customers through telephone solicitations. These solicitations ask the potential customer to sign up for either weekly or bi‑weekly laundry service. Once a customer signs up, the salesperson keeps a log of all the customers they are responsible for, and makes periodic telephone calls to assure that their customers are satisfied with the service. Shamrock has been in business for more than ten years and many of its customers have been with them this entire time.

Doris McFarland was an employee of Shamrock for five years. For the past two years, she was Shamrock's number one salesperson. Several months ago, Ms. McFarland left Shamrock's employment and started her own company called McFarland's Laundry Service. Shamrock has found out that prior to her departure Ms. McFarland took with her the names and addresses of all the customers she had previously solicited on behalf of Shamrock. Shamrock has also found out that approximately 70% of these customers have canceled their accounts with Shamrock. Shamrock believes that these customers have now signed on as customers of Ms. McFarland.

**3. KESTER V. MONROE'S GROCERY STORE**

Sidney Kester is a 65 year‑old computer operator. He routinely shops at Monroe's Grocery Store, which is very close to his home. Approximately two months ago, while shopping in the store, he slipped in the produce department and fractured his knee. Although he is recovering, he missed several weeks of work; and his doctors advise him that he will probably need to use a cane for the rest of his life.

Mr. Kester does not know what he slipped on, but he does recall noticing that the produce manager was in the process of restocking many of the bins, and that crates filled several of the aisles. In one aisle in particular, he recalls noticing that several tomatoes had fallen from a crate onto the floor. Mr. Kester was in front of the lettuce bin at the time of the fall.

**4. GATSBY REALTY V. MASON**

Gatsby Realty owns and manages an apartment complex of 32 units. Derrick Mason is one of its tenants. Approximately 6 months ago, Mr. Mason advised Gatsby Realty that he had lost his job and could not make that month's rental payment on time; but he stated he could pay by the middle of the month. Gatsby Realty gave Mr. Mason permission to pay that one time on the 15th of the month. Mason paid one‑half of the rent on the 15th and did not pay the balance until the 30th of the month. Gatsby Realty did not say anything, but accepted the late rent.

For the next three months, Mr. Mason paid his rent, but usually not until at least the 20th of the month. This past month Mr. Mason told Gatsby Realty that he could not pay at all, but that he would like to pay this month's rent and next month's rent together. Gatsby Realty would like to start proceedings to have Mr. Mason evicted based upon nonpayment of rent.

**5. KING V. WOODS**

On March 25, Stella King was driving her automobile on her way to work when her car was hit by Dennis Woods. Ms. King was traveling in a northerly direction on Fifth Street. She has indicated that when she arrived at the intersection of Fifth and Hoover, she stopped at the red light. When the light turned green, she proceeded through the intersection. Mr. Woods was traveling in an easterly direction and his car collided with Ms. King's car in the center of the intersection.

Neither Mr. Woods nor Ms. King were seriously injured. Ms. King suffered a broken wrist and back and shoulder pain. She was taken to Warren Community Hospital after the accident, where she was treated for her injuries and released. Mr. Woods suffered a few scrapes but did not need any medical treatment. Both cars were damaged extensively. Ms. King is a legal secretary and, due to her broken wrist, was out of work for over a month.

Mr. Woods is an inspector of construction sites. On the day of the accident, he was on his way to an inspection. He admitted to the police that he was in a hurry because he was late. However, he claims that he was not speeding and was already in the intersection when the light turned yellow.

Two eyewitnesses to the accident stopped their cars to give assistance. One eyewitness is Beverly Peters, the other Roberta Geller. Both women stayed until the police arrived and gave the police their accounts of the accident. Ms. Peters was directly behind Mr. Woods' car. She claims that Mr. Woods failed to slow down as the light turned yellow and instead sped up to beat the red light. Ms. Geller was in the car directly behind Ms. King and claims that, while she cannot be sure, she believes Ms. King may have started into the intersection before the light turned green.

**6. THOMAS V. CITY OF TANNERVILLE**

At approximately 9:20 p.m. in October of last year, two City of Tannerville police officers stopped a vehicle that was driven by Michael Thomas. The officers had pulled Thomas’s vehicle over because it had expired license plates. When the officers approached the vehicle, Thomas got out of his car, and started to flee on foot. The two officers ran after him and, when he slipped and fell over some debris on the side of the road, the officers were able to grab him and keep him on the ground while they attempted to handcuff him. Thomas attempted to fight off the officers; but the officers were able to finally handcuff him and get him into the back of the patrol car. After running a vehicle check, the officers discovered the car driven by Thomas had been stolen. Thomas was arrested for the stolen vehicle and assault on a police officer. Although Thomas had some scrapes on his face from where he had fallen, he was not taken to the hospital as the scrapes did not appear serious.

The criminal charges against Thomas have recently been dropped by the County Attorney’s office, due to some procedural problems. Last week the City of Tannerville received a complaint filed by Thomas for violation of his civil rights. The complaint alleges that Thomas is entitled to an award of damages under 42 U.S.C. §1983 because the police officers used an unreasonable use of force during the arrest of Thomas.

**CHAPTER ONE**

**INTRODUCTION TO LITIGATION**

***CHAPTER OBJECTIVES***

Civil litigation is governed by a detailed set of rules that are explained in each chapter of the text. However, before studying the rules that govern the specific aspects of litigation, you need to be familiar with the litigation process. This familiarity includes knowing where to find the law governing litigation matters, which courts handle particular types of litigation, and what remedies can be awarded to a plaintiff in a litigation action. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What the differences are between civil litigation and other types of litigation
2. Where to find the law applicable to litigation matters
3. How the court system is structured
4. How a case moves through the litigation process
5. What types of remedies an aggrieved party may seek from the court
6. What the paralegal's role is in the litigation process
7. What the ethical standards are that paralegals must follow

**KEY TERMS**

Affirm

Affirm with modification

Answer

Cases

Civil litigation

Common law

Compensatory damages

Complaint

Conflict of interest

Constitutions

Court cases

Court of Appeals

Damages

Declaratory relief

Default

Defendant

Discovery and motion stage

Equitable remedy

Injunction

Legal remedy

Litigation

Motion

Plaintiff

Pleading

Pretrial motions

Privileges

Punitive damages

Reverse

Reverse and remand

Statutes

Summons

Trial and post-trial proceedings

Trial court

United States District Court

United States Supreme Court

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter One by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F Civil litigation is the resolution of disputes between private parties through the court system.

2. T F A party filing an action in a state court must follow the procedural rules of that particular court.

3. T F Criminal litigation is commenced by private parties.

4. T F Statutes are laws enacted by state or federal legislatures.

5. T F All laws enacted by Congress are found in the Federal Rules of Civil Procedure.

6. T F Only federal and state governments may enact statutes or codes.

7. T F Common law is never used in the United States today.

8. T F Litigation is commenced by the aggrieved party filing a complaint.

9. T F The aggrieved party filing a complaint is called the plaintiff and the party against whom the complaint is filed is called the respondent.

10. T F A complaint is always filed in the trial court.

11. T F On appeal, the appellate court may hear from witnesses and take new evidence.

12. T F The party appealing the decision of the trial court must demonstrate an error in the court below which affected the outcome of the case.

13. T F If the appellate court disagrees with the trial court's judgment, the appellate court will reverse the decision.

14. T F Appeal to the Supreme Court in not automatic, but rather is discretionary with the Court.

15. T F Compensatory damages are given when the defendant's conduct is willful or malicious in order to punish the defendant.

16. T F If the legal remedy is inadequate to compensate the plaintiff fully, then the plaintiff may be able to obtain an equitable remedy.

17. T F An injunction is a legal remedy.

18. T F Under the federal court system, the trial court is called the United States District Court.

19. T F The communication between an attorney and client is confidential.

20. T F A paralegal may not represent a client in court or at a deposition.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. Mary Jane plays a popular character on a daytime soap opera. She recently has seen a commercial in which someone is imitating her voice and mannerisms as she uses them on the soap opera. She is offended by the commercial for two reasons: First, she believes that if someone is going to do a commercial which imitates her character, she should have a right to have been offered the opportunity to do the commercial and receive compensation for the commercial. Second, she believes the commercial is damaging to her reputation as the person doing the imitation does not do a particularly good job and she is afraid that others will associate the poor acting job with Mary Jane's performance on the soap opera. What remedies do you think Mary Jane can seek? If Mary Jane wanted to file suit in the trial court for the county/district where your school is located, which court would she file in?

2. What is the path of a typical litigation case? Why do we have a formal set of rules of civil procedure to govern disputes?

3. Why is appeal to the United States Supreme Court not automatic? Why do we limit the cases the Supreme Court will hear? Isn't justice better served by letting all cases be appealed to the Supreme Court?

4. Why must a paralegal work under the supervision of a lawyer? Are there any times when a paralegal does not need to work under the supervision of a lawyer?

5. Once a litigation matter is appealed, what are the four types of decisions that an appellate court may make? Explain each type.

6. Paralegals must always identify themselves as paralegals directly below their name on any correspondence. Why is this? Are there any ethical considerations?

7. Communication between an attorney and a client is confidential and privileged. Is communication between a paralegal and a client confidential and privileged? Why? What policies are we trying to foster by keeping certain communications confidential.

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, save the projects in your litigation guide for future reference.

1. Litigation is governed by a formal set of rules which specify the procedure the parties must follow during each stage of the litigation. In order to familiarize yourself with the rules of procedure, locate a copy of the Federal Rules of Civil Procedure. By referring to the Table of Rules, you will note that the rules are divided into eleven sections beginning with Section 1 (Scope of Rules ‑ One Form of Action). Identify the other ten sections. Was one section deleted? If so, which section? Does your state have a similar Table of Rules? How are the rules of civil procedure divided for your particular state?

2. In Chapter 1, section E of your textbook, some of the ethical considerations which must be followed by paralegals are discussed. Make a list of the ethical considerations and store the list in your guide. Can you think of additional ethical considerations which should be included in your list?

3. As shown in Exhibit 1.1, the fifty states are divided into eleven circuits, plus the District of Columbia. Which circuit is your state in? In addition, each state has at least one district court. How many district courts are in your state? If your school wanted to file a litigation action in federal court, which district court would it file in? Write these answers on a separate page, and store the answers in your litigation guide for future reference.

4. In Chapter 1, section B.3 of your textbook, you learned the four basic stages of litigation. Compare the chart in Exhibit 1.4 with the rules in your state to determine if a litigation case follows the same path. Are there any differences? Is arbitration mandated in your state for any cases? Note any differences in your litigation guide.

5. A chart in your textbook Exhibit 1.2 indicates the structure of the federal court system. By reviewing the chart you can visualize the relationship between the trial courts and appellate courts, and identify the courts by a specific name. Using the chart below, prepare a chart of the court system for the state in which your school is located. Revise the chart as appropriate so that all courts are included. What is the name of your state's trial court? Are there inferior courts as well? What are the names of the inferior courts? Store a copy of the chart in your litigation guide. If you are uncertain about where to locate the names and structure of your state's court system, refer to your state's rules of civil procedure.

Court Structure for the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Find Rule 1 of the Federal Rules of Civil Procedure. What is the purpose of the rules? What actions do the Federal Rules of Civil Procedure apply to?

2. What is Canon 2 in the National Association of Legal Assistants Code of Ethics and Professional Responsibility?

3. Find a case in your state about the ability of a paralegal to conduct informational seminars to the general public on legal topics without an attorney being present?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against the answers in the textbook:

1. The threes sources of law are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. Litigation is the resolution of disputes through the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3. Civil litigation is the resolution of disputes between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ parties.

4. The entire litigation process is governed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_rules.

5. Actions filed in federal court are governed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

6. The notice that accompanies the complaint that commands the defendant to appear and defend against the action within a certain period of time is called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

7. In the federal system the trial court is called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

8. Common law developed in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from usage and custom.

9. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ are decisions of the court interpreting the law.

10. The federal \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the highest law of the law.

11. An appellate court can render one of four decisions. The four possible decisions are \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

12. Failure of a party to respond to the pleading of the opposing party is called a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

13. The final state of a litigation is the \_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ proceedings.

14. The most common legal remedy is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

15. The communication between an attorney and client are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**CHAPTER TWO**

**INFORMAL FACT GATHERING**

**AND INVESTIGATION**

***CHAPTER OBJECTIVES***

Before a complaint or answer is filed, the facts giving rise to the particular grievance must be investigated. This initial investigation includes a number of informal steps that may be taken to obtain the facts necessary to file a complaint on behalf of your client or to defend against a complaint that has been filed against your client. Before beginning the exercises, review the specific objectives for this chapter of the test.

1. How to structure a factual investigation
2. Where to obtain the necessary facts to prove your client's positions
3. How to interview clients
4. When and how to gather documents that may be used as evidence
5. Where to locate witnesses

**KEY TERMS**

Affirmative defense

Breach of contract

Cause of action

Chain of custody

Internet

Jury instructions

Negligence

Physical evidence

Counterclaim

Exhibits

Factfinder

Impeachment

Prima facie case

Statute of limitations

Subpoena

Third

party

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 2 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F Fact gathering should only be done by formal means after litigation begins.

2. T F Rule 11 of the Federal Rules of Civil Procedure requires that before any suit is filed, there must be a reasonable inquiry into the facts to ensure a pleading is well grounded.

3. T F A cause of action is a theory of recovery that entitles the plaintiff to recover against the defendant.

4. T F An affirmative defense is relief requested by the defendant which, if proven, entitles the defendant to recover something from the plaintiff.

5. T F One of the basic sources for informal investigation is the client.

6. T F When you first speak with a client you should identify yourself as a paralegal

7. T F When interviewing a client you should never inquire about the client's financial background.

8. T F Statutes of limitations limit the time period in which an action may be brought against a defendant.

9. T F A subpoena is a written court order compelling a third party to produce evidence.

10. T F Witnesses may be interviewed only after a lawsuit is filed and may never be interviewed during informal fact investigation.

11. T F Potential sources for locating witnesses include the client, telephone directories, voter registration lists, and license bureaus.

12. T F One of the purposes of a witness interview is to learn everything the witness knows or does not know that is relevant to a case.

13. T F It is never a good idea to try to pin a witness down to a particular fact during a witness interview.

14. T F Since some witnesses may be uncooperative, do not try to record the interview, but wait until after the interview to write down your thoughts and comments about the interview.

15. T F In some cases, it is a good idea to have the client's file reviewed by an appropriate expert.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. Why is it necessary to start with factual investigation, rather than to immediately start researching the law? Are there times when it may be better to research the law before you conduct your factual investigation? When would you want to research the law first?

2. What is the difference between informal and formal fact gathering? What are some of the ways you conduct informal fact gathering? Why is informal fact gathering preferable to formal fact gathering mechanisms?

3. What is the purpose of Rule 11 of the Federal Rules of Civil Procedure? Does your state have a rule similar to Rule 11? What is the rule in your state?

4. What is the purpose of a litigation chart? How do you find the elements to place on the litigation chart? Is a litigation chart equally useful to a defendant? Why?

5. What are some of the methods you can use to record a client interview? What methods do you think work best? What methods do you think work least well? Explain your answers.

6. Other than obtaining information, what are some of the goals of a client interview? How can you ensure that some of these goals are met during the interview?

7. There are a variety of interviewing techniques that may be used depending upon the nature of the interview and the character of the witness. What are the types of interviewing techniques that can be used? If you have a hostile witness, what type of question‑asking techniques should you use to ascertain information from an unwilling witness?

8. Besides asking questions, the interviewer must also be an effective listener. Listening can be both passive and active. Passive listening includes simple gestures such as nodding of the head, or noncommittal responses such as "I see" and "Please continue." Active listening requires the interviewer to directly respond to the client's statements. For example, the interviewer may summarize what he has heard from the client, or tell the client how he sympathizes with the client's position. When would you want to use passive listening techniques? When would active listening techniques work better?

9. Identify at least five sources for locating the whereabouts of a witness.

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. In Section B.2.b of Chapter 2 of the main text you are given a sample litigation chart for a contract case. In this assignment, you are asked to prepare a litigation chart based upon a claim of negligence. The elements for a claim of negligence are found in the main text in Section B. For purposes of this assignment, assume the following facts:

You are assisting in the representation of the plaintiff in a personal injury action. The client has advised you that she was in an automobile accident while driving from home on her way to work one morning. After stopping at a stop sign, she proceeded through the intersection. A car coming from the opposite direction failed to stop and made a left-hand turn into the plaintiff's car. No injuries were sustained, but the plaintiff's car was badly damaged. A police report was made, and there were two bystanders who witnessed the accident. The lawyer has advised you that one possible claim the plaintiff has against the driver of the other car is negligence.

Based upon the information that you have been given, you should be able to complete all parts of your litigation chart with the exception of what formal discovery needs to be taken. Leave this part of the chart blank, but fill in all other parts of the chart.

**LITIGATION CHART**

Elements of Sources of Informal Fact Formal

Claims Proof Investigation Discovery

1. Negligence

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(a)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(b)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(c)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(d)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. After the client is interviewed, it is important to obtain the client's medical and employment records which will verify and provide evidence of the client's damages. Medical records will help verify the injuries sustained and the cost of treatment. Employment records will verify the time lost from work and the amount of compensation and benefits lost from being out of work.

Using hypothetical case number 3 in the front of your workbook, write a letter to Mr. Kester's employer requesting Mr. Kester's employment records to ascertain the number of days that Mr. Kester has been absent from work due to his accident. Draft the client authorization as well. You should follow the format set forth in Exhibits 2.2 and 2.3 of the main text. A sample letter and authorization are also included in the appendix.

3. Using hypothetical case number 2, make a list of all potential witnesses who should be interviewed. If you are not certain where these witnesses can be located, how might you go about finding the witnesses? What information do you hope to obtain from the various witnesses?

4. Assume that Mr. Samson in hypothetical case number 1 is coming to your office for an interview. Using just the facts you know from the hypothetical, prepare a sample checklist for a client interview. Include in your sample checklist specific areas about which you would like to question Mr. Samson.

5. Using one of the websites identified in the text for locating witnesses, insert your name and determine whether you can locate your address and telephone number. If you cannot locate your name, determine whether you can locate the address and telephone number of a friend or relatives.

6. One method of conducting informal fact investigation is by doing global internet searches. Using the facts set forth in hypothetical number 1, conduct a search on the to determine if there are any recent cases involving civil rights violations under 42 U.S.C. §1983, and list the cases you find. Identify the websites that you looked at to find your answer.

7. For this assignment you will need to work with another classmate. Each of you should take turns conducting an interview using hypothetical number 5. The first student should play the role of Stella King. The second student should play Dennis Woods. (If necessary, the names can be changed to Steve King and Denise Woods.) Use the initial client interview form below to conduct the interview. Include additional questions as you deem appropriate. The student playing the role of King or Woods should add to the role any information needed to make the interview as realistic as possible.

**INITIAL CLIENT INTERVIEW**

A. Background

1. Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Spouse's name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Telephone number:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Children Ages

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_

5. Education background commencing with high school: (State name of institution, dates of attendance, and degree obtained)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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6. Employment background starting with the most recent job and going backward: (State employer, job title and dates of employment)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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7. Military service:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8. Have you ever been arrested? \_\_\_\_\_\_\_ If yes, explain:\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

9. Income and assets:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. Nature of Claim/Liability

1. Reason for seeking legal advice:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Names of potential adverse parties:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Date of incident:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Have you discussed the incident with anyone else?\_\_\_\_\_\_If yes,

with whom have you discussed this incident?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. Have you submitted any claim to your insurance carrier concerning

the incident:\_\_\_\_\_\_\_When was the claim submitted?\_\_\_\_\_\_\_\_\_\_\_

Have you received any response?\_\_\_\_\_\_\_\_\_\_Has anyone attempted

to contact you to discuss the incident?\_\_\_\_\_\_\_

If so, who?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6. Have you applied for worker's compensation?\_\_\_\_\_ When?\_\_\_\_\_\_

Any response?\_\_\_\_\_\_\_\_\_\_\_\_\_\_If so, what?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

C. Damages

1. What injuries did you sustain?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Were you treated for the injuries?\_\_\_\_\_\_\_\_\_\_When?\_\_\_\_\_\_\_\_\_\_

3. Where did you receive treatment?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Names of all doctors administering treatment: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. What treatment did you receive?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6. Did you suffer any property damage?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

What damage?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

7. Pain and suffering?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8. How has the injury affected your life?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

D. Parties

1. Identify all parties to the incident:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Information about other potential parties:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E. Defenses and Counterclaims

1. Any potential claims by other parties against client?\_\_\_\_\_\_\_\_If yes,

what are the potential claims?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

F. Witnesses

1. Were there any witnesses to the incident?\_\_\_\_\_ If so, what are their

names?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Addresses if known:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Were any statements by the witnesses given to anyone?\_\_\_\_\_\_

If so, to whom?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Were any other parties injured to your knowledge?\_\_\_\_\_ If so, who was

injured, and what was the extent of the injuries?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

G. Records/Physical Objects

1. Are there any records concerning the incident?\_\_\_\_\_\_ If so, what records exist?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Are there records that are not in the client's possession?\_\_\_\_\_ If so,

where are the records located?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Are there physical objects involved in the incident?\_\_\_\_\_\_\_ If so,

what are the physical objects?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

H. Other Law Firms

1. Have other law firms been consulted?\_\_\_\_\_\_\_ If so, what other firms

have been consulted?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Have you retained any other law firms? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I. Client's Goals

1. What disposition of the matter would the client ideally like to

see?\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. What is the most important matter to you in the case?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Least important?\_\_\_\_\_\_\_\_\_\_

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Find Rule 11 of the Federal Rules of Civil Procedure and carefully read each subsection. What is the purpose of subsections (a), (b), and (c)?

2. Using an online research database, find a state statute dealing with the essential elements of a contract. Under the statute, what are the elements of a contract?

3. Find Rule 54 of the Federal Rules of Civil Procedure. Under the rule, when is a party entitled to court costs?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against the answers in the textbook:

1. The two ways of obtaining facts are \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. A theory of recovery that entitles the plaintiff to recover against the defendant is called a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3. Most jurisdictions have \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for commonly tried claims.

4. Facts come from 5 basic sources. They are the client, exhibits, witnesses, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

5. All states have \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that limit the time period in which an action may be brought against a defendant.

6. In addition to interviewing the witness, it is also good to not the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the client during the interview.

7. Tangible items of evidence presented at trial are called \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

8. The chain of custody is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

9. A court order court order compelling a nonparty to appear or produce documents or other tangible items is called a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

10. Evidence is frequently in the possession of a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, that is someone who is not a party to the lawsuit.

11. Information that might be used to discredit a witness is known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

12. It is common to start with the witness \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in structuring a witness interview.

13. In assessing witness credibility helps you determine if there is any \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

14. It is a good idea after the interview to have the witness \_\_\_\_\_\_\_\_\_ a statement.

15. Under Rule 26(b)(3)(B) of the Federal Rules of Civil Procedure, materials prepared by a lawyer, or other representative, concerning the mental impressions, conclusions, opinions, or legal theories are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ from disclosure.

**CHAPTER THREE**

**CASE EVALUATION AND STRATEGY**

***CHAPTER OBJECTIVES***

After the preliminary factual investigation is done, the lawyer must decide whether to take the case. If the lawyer decides to take the case, you will assist the lawyer with developing a litigation strategy and completing any pretrial requirements. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to establish the terms of the attorney‑client agreement
2. How a lawyer's fee is charged
3. What steps to take in planning the litigation
4. How to develop a litigation strategy
5. What prefiling requirements should be considered

**KEY TERMS**

Attorney's lien

Contingency fee agreement

Costs

Dispositive motions

Fixed flat fee

Hourly rate

Notice and claims provisions

Retainer fee

Settlement

Theory of the case

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 3 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F The terms of the attorney‑client relationship should be formally established with a written agreement.

2. T F A contingency fee arrangement is where the lawyer receives a percentage of the recovery received by the client.

3. T F A lawyer's fee includes out‑of‑pocket expenses incurred by a lawyer on behalf of the client.

4. T F A retainer is the hourly fee paid by the client to the lawyer.

5. T F A litigation plan is not necessary for most cases since you and the lawyer will already have defined the client's objectives after the initial client interview.

6. T F Statutory notice requirements must be complied with or else suit will be barred.

7. T F If a claim is based upon breach of contract, a notice to sue is never necessary.

8. T F If a contract contains an arbitration clause, the dispute must be submitted to arbitration.

9. T F Administrative procedures usually must be exhausted before claims may be brought in court against governmental bodies.

10. T F Minors and incompetents can sue either individually or through their legal guardians.

11. T F A person may never be deposed before a lawsuit is filed.

12. T F A demand letter should always be signed by the paralegals drafting the letter.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. What potential conflicts, if any, do you see between lawyers and their clients in contingency fee arrangements? If there is a potential for any conflict, why do jurisdictions still permit contingency fee arrangements?

2. Why are ambiguities and omissions in attorney‑client agreements strictly construed against the lawyer?

3. This chapter has covered in extensive detail the establishment of the terms of the attorney‑client relationship. Why is it important for you, as a paralegal, to be familiar with this information?

4. If a fee is shared with another lawyer outside the principal lawyer's firm, why must this fact be disclosed to the client and the client’s permission obtained?

5. What is the purpose of an attorney's lien? What type of notice is required, and who must receive such notice?

6. Once the lawyer decides to take the case, why is it good practice to have the client sign authorization forms to obtain records?

7. Why is it important for you and the lawyer to keep in close communication with the client?

8. What is meant by the phrase "theory of the case"? Why is it good practice to develop a theory of the case? How would you go about developing a theory of the case.

9. What are the steps which must be taken when planning discovery? What is the purpose of each step?

10. Why is it important to plan the settlement approach as part of the litigation planning.

11. Why do administrative remedies need to be exhausted before filing suit against a governmental agency?

12. A lis pendens gives notice to interested parties of a dispute involving an interest in real property or tangible personal property. Why may the notice be filed only after a lawsuit is filed? Why is the notice filed in the public records?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. The terms of any attorney‑client relationship should be established in writing. Assume that your firm has decided to take on the representation of the Samsons in hypothetical number 1 on an hourly basis. Make a list of the types of information that should be included in any formal written agreement. It is not necessary to actually write up the agreement.

2. Having written your list of terms to include in the fee agreement, you should now write the hourly fee agreement letter. Unless instructed otherwise, for purposes of this assignment assume the following additional facts in writing the agreement: the total amount of damages suffered by the Samsons was $38,000, the lawyer is charging a fee at the hourly rate of $300, and a retainer of $5,000 is required prior to representation of the client. Use the sample in the text at Exhibit 3.1 and the sample on the following page as guides for including all the necessary details. Although you are drafting the agreement, remember that the agreement should be prepared for the attorney's signature.

**FEE AGREEMENT LETTER**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

As we discussed in my office yesterday, I have agreed to represent you in connection with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(insert what services the attorney will render).

Fees for representing you will be based on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

My present hourly rate is \_\_\_\_\_\_ per hour. You have agreed to provide a retainer of \_\_\_\_\_\_\_\_\_\_ prior to commencement of my representation of you.

In addition to my fee, there will also be certain costs expended on your case, such as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

You will be responsible for paying all such costs, regardless of the outcome in the case.

[insert information about the rendering of monthly statements and the use of the retainer]

Please confirm that this letter correctly reflects the terms of our agreement by singing and dating the enclosed copy of this letter on the spaces provided.

[insert any concluding information]

Sincerely.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[name of attorney]

[insert signature and date lines]

3. Once your law firm decides to accept the representation of the client, several steps must be taken to get the relationship off to a good start. These steps are discussed in Chapter 3 of the main text in Section B.7. Draft a list of these steps and store the list in your litigation guide. The list may then be used as a checklist once you are in practice to insure that each step is carefully followed.

4. If the lawyer decides not to take a case, a letter declining representation should be sent to the client. Assume that your firm has decided to decline the representation of Mr. Kester in hypothetical number 3 and that the statute of limitations on personal injuries in your state is one year. The statute will run in exactly two months. Draft a letter to Mr. Kester declining representation. Remember, although you will be drafting the letter, the letter should be signed by the lawyer. You may use the letter in the appendix as a sample.

5. Assume that your firm is representing Derrick Mason in hypothetical number 4. What authorization forms should you have Mr. Mason sign? Draft a sample authorization form. You may use the authorizations contained in the main text and in the appendix as samples.

6. Prepare a list of the basic steps in a litigation plan. Put the list in your litigation guide and use the list as a checklist once you are in practice. Now, using Novelty Products, Inc. v. Gift Ideas, Inc. (Chapter 3, Section E) as a sample, prepare a litigation plan for Shamrock Enterprises in hypothetical number 2.

7. Demand letters are frequently used in contract cases. Assume that your firm represents Novelty Products, Inc. Using the facts in Chapter 3, Section 3 of the main text, write a demand letter to Gift Ideas, Inc. Refer to the samples in the main text at page 94 and in the appendix.

8. Before drafting any pleadings, a number of prefiling requirements must be considered. Make a checklist of all the necessary prefiling requirements, and store the checklist in our litigation guide for future reference.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Find the case *Venegas v. Mitchell*, 495 U.S. 82 (1990). What type of fee agreement did the attorney and the client have and what did the agreement specifically provide?
2. Find the Model Rules of Professional Conduct on the American Bar Association’s website at www.americanbar.org. What is the Ethic’s Rule dealing with conflicts of interest between an attorney and current clients?
3. Find Rule 17 of the Federal Rules of Civil Procedure. Under subsection (c), which representatives may sue or defend on behalf of a minor or an incompetent person?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against the answers in the textbook:

1. Once the lawyer decides to take the case, the terms of the attorney-client relationship should be formally established in a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. In a contingency fee agreement the lawyer receives a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the recovery in a lawsuit.

3. The agreement should specify what \_\_\_\_\_\_\_\_\_\_\_\_\_\_ will be performed and what will not be.

4. The total attorney fee must be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in light of the work to be done.

5. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ fee is when a lawyer receives a predetermined sum as the fee regardless of how much work is expended on the client’s behalf.

6. When an attorney receives advanced funds from a client, the funds must be put in a separate client \_\_\_\_\_\_\_\_ account.

7. The lawyer’s position on, and approach to, all the undisputed and disputed evidence that will be presented at trial is called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

8. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the resolution by the parties of their dispute without the necessity of trial.

9. An attorneys’ lien can be imposed to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

10. The out-of-pocket expenses incurred by the lawyer in the course of representation of the client are referred to as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

11. A division of a fee between lawyers who are not in the same firm may be made only if the total fee is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

12. If a potential conflict exists between two client of the same firm and the potential conflict cannot be waived it may be necessary for the attorney to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_>

13. If a lawyer declines the engagement, the lawyer should send a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_in writing.

14. A litigation plan consists of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and developing a strategy.

15. Some actions, primarily tort claims against government bodies such as municipalities, often have \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ requirements.

# **CHAPTER FOUR**

**PARTIES AND JURISDICTION**

## **CHAPTER OBJECTIVES**

Prior to commencing a lawsuit, research must be done to ascertain who should be made parties to the lawsuit and which court has jurisdiction over the lawsuit. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. Who may be a party to a lawsuit
2. How to identify the subject matter jurisdiction of federal courts
3. When a defendant may remove an action from state court to federal court
4. When a party may be compelled to defend an action in a particular court
5. What the differences are between federal and state court jurisdiction
6. How to determine in which court to file a lawsuit

**KEY TERMS**

Ancillary jurisdiction

Assignment

Choice-of-law decisions

Complete diversity

Corporation

Diversity jurisdiction

Domicile

Due process

Forum state

Guardian ad litem

Improper venue

Inconvenient venue

In personam jurisdiction

In rem jurisdiction

Intervention

Joinder of claims

Joinder of parties

Long-arm statutes

Minimum contacts

Parties to an action

Partnership

Pendent jurisdiction

Permissive joinder

Personal jurisdiction

Principal place of business

Quasi in rem jurisdiction

Real party in interest

Removal

Res

Service of process

Sole proprietorship

Sovereign immunity

Standing

Subject matter jurisdiction

Subrogation

Unincorporated association

Venue

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 4 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the test.

1. T F Parties to an action may be individuals as well as entities

such as partnerships and corporations.

2. T F When naming a partnership as a party to a lawsuit, do not

name the individual partners as parties.

3. T F When naming a corporation as a party to a lawsuit, you

should name the individual shareholders as parties to the

lawsuit.

4. T F The plaintiff to the action must be the real party in interest.

5. T F An assignee is never the real party in interest in a lawsuit.

6. T F Subrogation occurs when one party becomes obligated to pay for the loss sustained by another.

7. T F A lawsuit must be brought by and against parties that have a legal capacity to sue or defend the action.

8. T F A plaintiff should join any party in the litigation if that party's presence is required to grant complete relief.

9. T F Rule 20 of the Federal Rules of Civil Procedure permits the joinder of parties whenever there is a legal or factual relationship between the parties, making it sensible to have all the parties present in one lawsuit.

10. T F Because the permissive joinder rules may cause delay in the litigation and be unfairly expensive and burdensome on certain parties, a court has broad powers to order separate trials.

11. T F Joinder of claims is always mandatory and never permissive.

12. T F Subject matter jurisdiction refers to the power of a court to hear

particular matters.

13. T F Federal district courts are courts of unlimited jurisdiction.

14. T F The basis for federal court jurisdiction must appear on the ace of a well‑pleaded complaint.

15. T F Because federal courts may render advisory opinions, the court may even hear cases that are moot.

16. T F Federal district courts have original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.

17. T F The United States cannot be sued as a party unless it has waived its sovereign immunity.

18. T F If the federal district court does not have federal question jurisdiction, then the lawsuit must be filed in state court.

19. T F Domicile refers to the permanent residence of natural persons.

20. T F In order to invoke the federal court's diversity jurisdiction, one requirement is that the amount in controversy must exceed $50,000.

21. T F If a federal court has jurisdiction over the plaintiff's claim, the defendant may not file a counterclaim against the plaintiff unless the defendant's claim also has a basis for federal court jurisdiction.

22. T F Personal jurisdiction refers to the power of a court to bring a party.

23. T F If a court has subject matter jurisdiction, it does not need personal jurisdiction over the defendant.

24. T F Due process issues do not arise for plaintiffs since by initiating suit a plaintiff is considered to have voluntarily submitted to the court's jurisdiction.

25. T F Venue refers to the geographical district in which a lawsuit may be heard.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. Why may a legal entity be a party to a lawsuit without also naming an individual as a party? Are there times when you would want to name both the legal entity and an individual who is the owner of the legal entity as parties to a lawsuit? Identify a situation where you may want to name both the individual owner and the legal entity as parties.

2. Why do you need to determine the identity of the real party in interest before filing a lawsuit? How would you go about finding the identity of the real party in issue?

3. What are some of the issues which should be considered in determining whether a party should be joined in a lawsuit? What are the purposes of taking into account such issues? What should a court do if a party who should be joined in the lawsuit cannot be joined for some reason?

4. What is the meaning of limited jurisdiction in federal court? Are there any limits of jurisdiction for the trial courts in your state? What are those limits?

5. What actions does a federal court have original jurisdiction over? What does it mean to say that a federal court has original jurisdiction? Is original jurisdiction always required in federal court?

6. What is the difference between general and specific jurisdiction? Why is the distinction important?

7. Why must the United States waive its sovereign immunity before a lawsuit can be filed against it? What grounds can be used by the plaintiff to bring a lawsuit against the United States?

8. What are the different categories of actions for which diversity jurisdiction is proper? Give an example of each.

9. Why can domestic relations and probate matters only be raised in state courts and not in federal district courts? Are there some policy goals which are better fostered by having these matters heard in state court?

10. Actions filed in state court may be removed by a defendant to federal court within the 30 day period from the time the defendant had notice of the plaintiff's initial pleading. If an action could properly be brought in federal court, why is there any time limit within which a defendant must remove the action? If the plaintiff merely gave the defendant a copy of the state court pleading, but did not properly serve the defendant with the pleading, does the 30-day period still apply?

11. Why is it important for the court to have personal jurisdiction over the defendant? How does personal jurisdiction differ from subject matter jurisdiction?

1. In *International Shoe Co. v. State of Washington*, 326 U.S. 31‑ (1945), the Court held that where a corporation's "minimum contacts" in the forum state were such that being forced to defend a suit in that state would not offend "traditional notions of fair play and substantial justice," jurisdiction was proper. What do you think the Court meant by "minimum contacts"? Why is the Court concerned about there being sufficient minimum contacts?

13. The “citizenship” of a corporation for diversity purposes is the corporation’s “nerve center.” What does that mean?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. If the plaintiff wishes to file an action in federal district court, and there is not federal question jurisdiction, then the lawsuit may still be brought in federal court so long as there is diversity jurisdiction. On the top of a separate piece of paper, identify the three requirements for diversity jurisdiction. Under each requirement, list the specific elements of each requirement.

2. A defendant must have sufficient contacts with a state in order for the state to be able to exercise its jurisdiction over the defendant. Identify on a separate sheet of paper the contacts a defendant might have with a state which you believe may satisfy a minimum contacts analysis. You should attempt to brainstorm and come up with as many different contacts as you can. Be prepared to discuss these contacts in class.

3. As indicated in the main text, the federal district court is the trial court in the federal court system. Identify the trial court(s) in your state court system and the subject matter jurisdiction you must have for each. Be sure to identify all county, municipal, justice‑of‑the‑peace, and small claims courts. Store your work in your litigation guide.

4. Special pleading rules govern certain types of actions and regulate whether parties can be joined in a lawsuit. The Federal Rules of Civil Procedure identified Chapter 4 of the main text at Section C.5 indicate where you may find the various pleading rules for particular types of actions. Fill in the chart on the following page by referring to the rules of civil procedure for your state. If your state does not have a specific rule, write in "not applicable." At this point, you do not need to worry about the meaning of each of these terms. The pleadings and their requirements are discussed in Chapter 5 of the main text.

**PLEADING RULES**

ACTION FEDERAL RULES STATE RULES

Counterclaims Rule 13

Crossclaims Rule 13

Impleader Rule 14

Interpleader Rule 22

Intervention Rule 24

Class actions Rule 23

Shareholder

derivative suits Rule 23.1

5. For each of the following situations, state whether you believe the defendant has sufficient minimum contacts with the State to allow the State to exercise personal jurisdiction over the defendant. Be prepared to justify your answers.

a. Defendant lives in California. While on vacation in Wyoming, Defendant was involved in an automobile accident with Plaintiff. Plaintiff resides in Utah. Defendant has never been to Utah, nor does Plaintiff do any business in Utah. Defendant had been to Wyoming only one other time, approximately five years ago. Can a court in Wyoming exercise jurisdiction over the Defendant? Can a court in Utah? Can a court in California?

b. Plaintiff runs a mail‑order greeting card business in Iowa. Plaintiff sent a catalogue to Defendant in the mail. Defendant, a resident of New Jersey, after receiving the catalogue placed an order with Plaintiff over the telephone. This was the first time that Defendant ever placed an order with Plaintiff, although Plaintiff previously had sent Defendant catalogues. Plaintiff shipped Defendant the cards, but Defendant has refused to pay. Can a court in Iowa exercise jurisdiction over Defendant? Can a court in New Jersey?

c. Defendant was on a business trip from Seattle, Washington to Orlando, Florida. While en route, the airplane on which Defendant was traveling made a scheduled stop in Dallas, Texas. Defendant, wanting to buy a newspaper at the Dallas airport before the flight resumed, stepped off the plane. He was immediately served with a summons and complaint requesting that he appear and defend an action in Dallas, Texas. The complaint was for breach of contract, based upon a contract that was entered into in Washington. Plaintiff was residing in Washington at the time the contract was entered into but has since moved to Dallas, Texas. Does the court in Texas have jurisdiction over the Defendant?

d. Defendant is a corporation that sells hair dryers. Defendant's principal place of business is Massachusetts and it is incorporated in Delaware. Defendant ships its hair dryers to ten regional distributors who thereafter ship the hair dryers to retail outlets within each distributor’s region. Plaintiff purchased a hair dryer at a retail outlet in Omaha, Nebraska. The hair dryer had been shipped from the regional distributor in Memphis, Tennessee. Plaintiff was injured by the hair dryer when the hair dryer malfunctioned. Can a court in Nebraska exercise jurisdiction over the Defendant? Can a court in Tennessee? Can a court in Massachusetts? Can a court in Delaware?

6. For each of the following exercises, determine whether the jurisdictional amount requirement of $75,000 is met, thereby allowing the plaintiff to file the action in federal district court.

a. Plaintiff has one claim against one defendant for $70,000 in principal and $5,100 in interest.

b. Plaintiff has two claims against one defendant. One claim is for $60,000 and one claim is for $20,000.

c. Plaintiff has two claims against two defendants. The claims are two separate unrelated contracts. One claim is for $35,000, and one claim is for $45,000.

d. Plaintiff has two claims against three defendants. The claims all relate to the obligations of a partnership in which the defendants are all general partners. Each claim is for $30,000.

e. Two plaintiffs have a claim against one defendant based upon two separate contracts. Each plaintiff has a claim for $60,000 against the defendant.

7. Whenever you draft a complaint, you must be certain that you have named all proper and necessary parties. On a separate sheet of paper, make a checklist for yourself of the questions you must answer to determine whether you have the proper parties and whether additional parties are appropriate or necessary. Store the checklist in your guide for each reference when you begin drafting complaints.

8. In Section D.2.b of the main text, you learned that several sections of Title 28 of the United States Code provide for specific grants of federal court jurisdiction. State courts also often have specific grants of jurisdiction, requiring that certain actions be brought in particular courts. Review the rules of civil procedure for your state. Are there any specific grants of jurisdiction for the courts in your state? If so, identify the rule number and the type of jurisdiction, and store the information in your litigation guide for future reference.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Find Title 28 of the United States Code and search through its corresponding Chapters and Sections. Which section deals with a district court’s jurisdiction over actions against foreign states?

2. Find 28 U.S.C. § 1332, relating to diversity jurisdiction. Which subsection grants district courts jurisdiction over all civil actions, where the amount in controversy exceeds $75,000, between citizens of different States?

3. Using an online database, locate the case, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). Under the Court’s holding, did the Florida district court have personal jurisdiction over the Defendant, Rudzewicz?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against the answers in the textbook:

1. The parties to an action may be private individuals as well as (i)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (ii) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (iii)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (iv)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and (v)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is made up of two or more individuals who carry on a business and divide any profit or loss from the business.

3. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is made up of its shareholders who own the entity.

4. The real party in interest is the one who has the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that the lawsuit seeks to enforce.

5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ occurs when one party becomes obligated to pay for the loss sustained by another.

6. In the case of assignment the assignee is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and has the right to sue in the assignee’s own name.

7. A lawsuit must be brought by and against parties that have a legal \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or defend the action.

8. An infant or incompetent can sue or be sued in the name of a representative, but if there is no representative than a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ must be appointed.

9. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ matter jurisdiction refers to the power of a court to hear particular matters.

10. A court must have an actual “case or \_\_\_\_\_\_\_\_\_\_\_\_\_\_” that is ripe for adjudication.

11. If a person has a right to challenge in court the conduct of another the court will say the plaintiff has \_\_\_\_\_\_\_\_\_\_\_\_\_ to bring the claim.

12. A federal court has \_\_\_\_\_\_\_\_\_\_\_\_\_\_ jurisdiction when the court has jurisdiction over federal and non-federal claims that derive from the same set of common facts.

13. The government has \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ immunity from being sued when acting within its official capacity.

14. The issue of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ jurisdiction arises when a plaintiff has a proper claim and another party wishes to file a counterclaim, cross-claim, or third-party complaint, but the latter does not have an independent basis for jurisdiction.

15. A change of venue can be based on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

CHAPTER FIVE

**PLEADINGS**

***CHAPTER OBJECTIVES***

The documents filed by the plaintiff to commence a lawsuit and the documents filed by the defendant in response to the lawsuit are called pleadings. The Federal Rules of Civil Procedure state the types of pleadings that are permitted. The Federal Rules of Civil Procedure, along with the local rules of court, also govern the format and content of the pleadings. Chapter 5 of the text describes the types of pleadings that may be filed and the requirements that must be followed in drafting the pleadings. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What the general requirements are for all pleadings
2. How to draft a complaint
3. What pleadings the defendant may file in response to the complaint
4. How to draft an answer to the complaint
5. How a nonparty may intervene in the lawsuit
6. When you should amend or supplement a pleading

**KEY TERMS**

Affidavit of service

Affirmative defense

Answer

Certificate of service

Class action

Complaint

Compulsory counterclaim

Count

Counterclaim

Cross-claim

Default judgment

Impleader

Interpleader

Intervention of right

Memorandum of law

Motion for a more definite statement

Motion to dismiss

Motion to strike

Notice pleading

Permissive counterclaim

Permissive intervention

Pleadings

Prayer for relief

Reasonable inquiry

Recoupment

Relation back

Reply

Res judicata

Summons

Third-party complaint

Third-party practice

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 5 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F Under notice pleading the only requirement is that the pleading contain enough information to notify the opposing party of the basis of the claim.

2. T F A party may never plead alternative or inconsistent claims or defenses.

3. T F When drafting a complaint in federal court, a lawyer should rely solely on the client's representation of the facts.

4. T F When a party is represented by a lawyer, service of the complaint may be made on the party's lawyer.

5. T F Unless otherwise ordered, all pleadings should be filed with the court clerk.

6. T F Under Rule 9 of the Federal Rules of Civil Procedure, all allegations can be pleaded generally.

7. T F Under the federal rules, all complaints must contain a prayer for relief.

8. T F Failure to make a timely demand for a jury trial constitutes a waiver of the right to a jury.

9. T F Under Rule 4(a) of the Federal Rules of Civil Procedure, whenever a complaint is filed, the clerk is directed to issue a summons.

10. T F The complaint and summons may be served by any person who is not a party and is at least 18 years old.

11. T F A summons and complaint may be served on an individual by mail.

12. T F Service of a summons and a complaint on a corporation may be made by serving any shareholder of the corporation.

13. T F If a complaint contains redundant, immaterial, impertinent, or scandalous matter, the proper response by the defendant is a motion to dismiss.

14. T F A motion should include a memorandum of law.

15. T F If a complaint is so vague or ambiguous that the defendant cannot respond to it, the defendant may move for a more definite settlement.

16. T F Under Rule 12(b) of the Federal Rules of Civil Procedure, a defendant may raise certain defenses either in the answer or by a motion to dismiss.

17. T F If the defendant decides to respond by a motion to dismiss, the defendant may raise different defenses in several different motions to dismiss.

18. T F An affirmative defense raises matters that are put in issue by the defendant's denial of the allegations in the complaint.

19. T F A defendant may file a counterclaim against the plaintiff within the time the defendant has to answer the complaint.

20. T F A plaintiff does not need to reply to the defendant's counterclaim since it will be assumed that the plaintiff denies all allegations of the counterclaim.

21. T F Impleader is a method for bringing into the action new parties who may be liable to the defendant for some or all of the judgment the plaintiff may obtain against the defendant.

22. T F A third‑party complaint may be served on the third‑party defendant without leave of court if done within 10 days of serving the original answer to the complaint.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. What are the five format requirements for every pleading? What is the purpose of each requirement?

2. Why must a federal court pleading be signed by one of the party's lawyers? Why must the signing be by an individual and not a law firm? Does your state have a similar rule regarding the signing of pleadings?

3. What is a verified pleading? Why are pleadings in federal court not verified? Are pleadings verified in your state?

4. What is the purpose of Rule 11 of the Federal Rules of Evidence? Does your state have a similar rule?

1. What is a certificate or affidavit of service? Why is it important to attach such a document to the end of the pleading?

6. What are the three essential components of every complaint required by Rule 8(a) of the Federal Rules of Civil Procedure? Is there a similar rule for your state? Identify your state rule and requirements.

7. In federal court, why is it necessary to always include an allegation indicating the basis of federal court jurisdiction? Why would such a requirement not be necessary in state court?

8. In the main text, you have learned the difference between "notice pleading" and "fact pleading." What is the difference? What type of pleading is required in your state court? If your state is a "notice pleading" state, are there any exceptions for certain types of allegations?

9. Both federal and state courts require the use of "counts" in a complaint.

What is meant by the term "count"?

10. What is a "prayer for relief"? Why is it important to draft a prayer for relief carefully?

11. How can a party make a demand for a jury trial? When must the demand for a jury trial by made? Why must such a demand be made so early in the litigation?

12. What does it mean to "toll" the statute of limitations? Why does a complaint "toll" the running of the statute of limitations? Does the filing of a complaint toll the statute of limitations in your state? If not, what more is required in order to toll the statute of limitations.

13. In some states, a summons is a preprinted form that is filled out by the plaintiff and issued by the court. Does your state have such a preprinted form? If not, what are the standard elements that must be included in a summons filed in your state?

1. Why is it improper for a party to a lawsuit to serve the summons and complaint on the defendant? Would it be proper for a husband to serve, on behalf of his plaintiff‑wife, the summons and complaint on the defendant? Would it be proper for a parent to serve the summons and complaint on behalf of a child? Would it make a difference if the parent is representing the child in court as the child's guardian?

15. What is the 100 mile "bulge" rule? Why does the rule apply only to parties brought in as third‑party defendants?

16. There are several territorial limits of service of federal court complaints. State courts have similar territorial limits. What are the territorial limits for your state?

17. What is the "Hague Service Convention"? What is the effect of a failure to comply with the Hague Service Convention? Where can you find a copy of the Hague Service Convention?

18. In federal court, service of a summons and complaint must be made within 120 days of filing the complaint. What is the purpose of this requirement? Does your state have a similar rule?

19. What are the appropriate responses that a defendant may make to a complaint filed in federal court?

20. Under the federal rules, a defendant must serve a response within 20 days of service of the summons and complaint. What is the rule in your state?

21. What are the three types of responses that may be made to the allegations in a complaint? Give an example of each response.

22. When is a counterclaim compulsory? What is the effect of the failure of the defendant to bring a compulsory counterclaim?

23. What is meant by a "permissive counterclaim"?

24. What are the differences among a counterclaim, cross‑claim and third‑party complaint? Do these pleadings have the same names in your state? If not, what are each of these pleadings called in your state?

25. Why are come counterclaims compulsory, but all cross‑claims are discretionary?

26. Why might a nonparty want to intervene into a lawsuit?

27. Why might a defendant wish to file a third‑party complaint? Based upon hypothetical number 1, can you think of any nonparties whom Emerald’s Catering may wish to file a third‑party complaint against?

28. What are the general fact requirements for class actions?

29. When is the amendment of a pleading a matter of right? When is leave of court required?

1. What is the difference between an amended pleading and a supplemental pleading?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. Using hypothetical number 3, draft a complaint on behalf of Mr. Kester against Monroe's Grocery Store. Be sure to include all the proper format requirements. Assume, unless you are instructed otherwise, that Monroe's Grocery Store is incorporated in the State of Nevada, and that the basis for federal court jurisdiction is diversity jurisdiction.

2. Assume that your office is representing Gatsby Realty in hypothetical number 4. Obtain a copy of the proper format for a summons in your state and fill out the summons completely on behalf of Gatsby Realty. Keep the summons in your litigation guide for future reference. If you do not have access to a summons, or if your instructor directs, use the summons on the following page. Refer to the summons in the appendix as a sample.

**SUMMONS**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Court of \_\_\_\_\_\_\_\_\_County

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff Case No.\_\_\_\_\_\_\_\_\_\_\_

v.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TO THE ABOVE‑NAMED DEFENDANT(S): You are hereby summoned and required to file with this court and serve upon:

[Name and address of Plaintiff's attorney]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

an answer to the complaint which is herewith served upon you within \_\_\_\_\_ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk of the Court

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Clerk

3. How a summons may be served depends on the entity being served. For each of the entities below, identify how the summons may be served under both the federal rules and the rules of your state. Where the rules of your state are the same as the federal rules, make a notation on your chart. The federal rules for individuals are already filled out on the chart to be used as an example. The chart should be stored in your guide so you will have a diagram for easy reference once you are in practice.

**RULES FOR SERVING SUMMONS**

ENTITY FEDERAL RULES STATE RULES

Individuals 1. Personally

2. Leaving at residents

with person of suitable

age and discretion

3. On person's agent

4. On out‑of‑state

individuals as required

by federal or state

statutes

Infants and incompetents

Corporations,

partnerships,

and associations

Officers and agents of the

United States and local

governments

4. Under Rule 11 of the Federal Rules of Civil Procedure, a reasonable inquiry must be made into the laws and facts before a complaint may be brought. Assume that Shamrock Enterprises in hypothetical number 2 has contacted your law office to represent them in an action against Doris McFarland. What facts do you think should be investigated before a complaint is filed in order to satisfy Rule 11's reasonable inquiry requirement?

5. After drafting your complaint for Kester in hypothetical number 3 against Monroe's Grocery Store, draft an answer to the complaint. Are there any other Rule 12 responses which might be appropriate? Identify the other responses that may be appropriate and the basis for such responses.

6. Draft as many affirmative defenses as you can think of for Doris McFarland in hypothetical number 2. Make sure that the affirmative defenses are in the proper form.

7. On the following page is a chart of all the appropriate responses a defendant may make to a complaint under Rule 12 of the Federal Rules of Civil Procedure. Indicate on the chart which responses are also appropriate in the courts of your state. Finally, insert on the chart a brief summary of the purpose of each motion. Store the completed chart in your litigation guide to use as a checklist in deciding how to respond to a complaint.

**RESPONSES TO A COMPLAINT UNDER RULE 12**

Rule 12 Response State Court Purpose

Motion to Strike

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Motion for a More

Definite Statement

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Motion to Dismiss

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

8. Identify the requirements for bringing a class action. Can you think of any recent cases involving class actions?

9. Assume that in hypothetical number 2 the plaintiff has alleged that Doris McFarland has no experience as a businessperson and is incapable of running her own business. Using the form on the following page and the example given in Exhibit 5.15 of the main text, draft a motion to strike this allegation from the complaint. If instructed to do so, include with the motion a memorandum of law to support the motion.

**MOTION TO STRIKE**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Court of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County

State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff Case No. \_\_\_\_\_\_\_\_\_\_

v.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ moves under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. In support of the motion Defendant states:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Wherefore Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ requests that \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorneys for

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Using hypothetical number 5, draft a motion to dismiss, including all proper affirmative defenses. Unless otherwise instructed, assume the following additional fact with respect hypothetical number 5: plaintiff served the summons and complaint by leaving a copy of the summons and complaint with Mr. Woods’ 12-year-old son. The complaint has been filed in federal court.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Find Rule 7 of the Federal Rules of Civil Procedure. Which subsection provides the requirement that all motions, unless made during a hearing or trial, must be in writing?
2. Find Rule 8 of the Federal Rules of Civil Procedure. Which subsection establishes the requirements a party must follow in responding to a pleading?
3. Find Rule 11 of the Federal Rules of Civil Procedure. Under subsection (a), in addition to a signature, what else must be stated on every pleading, motion, or other court paper?
4. Search through the Federal Rules of Civil procedure and find the rule dealing with defenses and objections. Which rule allows a party to respond to the complaint with a motion to dismiss for failure to state a claim upon which relief can be granted?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against the answers in the textbook:

1. There are four forms of claims permitted under Rule 7(a) (i)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (ii) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (iii)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (iv)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and (v)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ must contain three elements: The file number, names of the parties, and court in which the case is filed.

3. A lawyer must make a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ into the law and facts and concludes that there is a sound basis in law and fact for the pleading.

4. Documents filed in court are considered \_\_\_\_\_\_\_\_\_\_\_\_\_\_ records and subject to public examination unless ordered sealed by the court.

5. The initial pleading is called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

6. Federal question jurisdiction can be based on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or treaty.

7. Federal jurisdiction can also be based on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ jurisdiction such as when the plaintiff and the defendant are citizens of different states.

8. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_ for relief is the section at the end of a complaint specifying the relief requested by the plaintiff

9. A federal action is filed when the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is filed with the clerk of the court.

10. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the notice to the defendant that commands that the defendant appear and defend against the action within a certain period of time or else judgment may be entered against the defendant.

11. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Convention is an international treaty that governs service of process in countries that are parties to the treaty.

12. If a complaint contains “redundant, immaterial, impertinent or scandalous matter”, a defendant cam make a motion to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

13. If the complaint is so “vague or ambiguous” that the defendant cannot respond to it, the defendant may make a motion for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

14. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ counterclaim are claims that a defendant is required to bring against the plaintiff.

15. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a complaint brought by one co-defendant against another codefendant.

CHAPTER SIX

**LAW AND MOTION**

***CHAPTER OBJECTIVES***

As part of the litigation process, you will be involved in drafting and responding to many pretrial motions. Although the types of motions and requirements for motions differ from court to court, there are some standard motions with uniform requirements that you must be familiar with. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What the general requirements are for all motions
2. How to obtain an extension of time and a continuance
3. When to serve motions
4. When there must be a substitution of parties
5. Why a case may be removed to federal court

**KEY TERMS**

Consent order

Magistrate

Memorandum of law

Minute order

Motion

Proof of service

Removal

Tentative ruling

Under submission

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 6 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F All motions must be served on the opposing party by hand.

2. T F Following service of the motion, the originals of the notice and motion should be filed with the clerk of the court along with a proof of service.

3. T F The party bringing the motion is generally referred to as the moving party.

4. T F The party responding to a motion is generally referred to as the respondent (or responding party).

5. T F If a motion to extend time is made after the applicable time period has expired, the moving party must show good cause for granting the motion.

6. T F You do not need to follow the local rules governing motions so long as you follow the Federal Rules of Civil Procedure.

7. T F Under the federal rules, a motion must be made in writing.

8. T F As a matter of good practice, all documentation that accompanies a motion should be attached to and served with the motion.

9. T F A proof of service is a certificate that states that service on the other parties has been made in a proper manner.

10. T F The proof of service should never be attached to the motion.

11. T F A memorandum of law is the same as a declaration or affidavit.

12. T F Once a lawsuit is filed, there may not be a substitution of parties.

13. T F A notice for removal of an action from state court to federal court must be made within 30 days after the defendant receives notice of the plaintiff's initial pleading.

14. T F A verified petition is no longer required under the Federal Rules of Civil Procedure when a defendant wishes to remove an action from state court to federal court.

15. T F Once a notice of removal is filed, the parties must wait for an order from the court to effect the removal.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. What are the three basic requirements that all motions must meet?

2. Unless otherwise specified under the federal rules of a court order, motions must be served at least five days before the hearing date. Local court rules and state rules usually require a longer period of time. Why is it a good idea, when possible, to give more than the minimum notice required?

3. What is a proof of service? Why must a proof of service be attached to the end of a motion?

4. How do you select a date for a hearing on the motion?

5. What is the purpose of attaching a memorandum of law to the motion? In some states, a motion will not be considered meritorious unless a memorandum of law is attached to the motion. Do your local state rules require that a memorandum of law be submitted with every motion?

6. What are the two choices which a respondent can make when served with a motion?

7. Why do judges sometimes issue tentative rulings?

8. What are the differences between a minute order and a written opinion and order of the court? What determines whether a judge will enter a “minute order” or whether a formal written opinion and order are necessary?

9. If a motion to extend time is made before the expiration of the applicable time period, the court may grant the motion for good cause. What grounds would constitute good cause for granting the motion?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. Using hypothetical number 6, prepare a Notice of Motion to reset a hearing date in the format set forth in exhibit 6.1 of the main text. Also, using the form on the following page, prepare the motion to reset the hearing date. The motion should be made on behalf of the City of Tannerville and should request that the court reset Thomas’s motion for discovery sanctions. Since the form does not list facts in support of the motion, you will need to think of specific facts which justify the court’s granting of the motion.

**MOTION TO RESET HEARING DATE**

[caption]

Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ moves this Court for an order continuing the hearing on plaintiff’s motion for discovery sanctions, presently set for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ten days.

In support of its motion, defendant states:

1.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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2.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Wherefore, defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ requests the Court to enter an order continuing the hearing, presently set for \_\_\_\_\_\_\_\_to \_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorneys for

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Assume your firm represents Sydney Kester in hypothetical number 3 and that Monroe's Grocery Store has made a motion for additional time to answer. Assume also that the motion is set for two weeks from today in your local court. Using the Exhibit 6.4 of the main text as an example, prepare a statement of nonopposition to defendant's motion for additional time to answer.

3. Assume your firm represents Monroe’s Grocery Store. Using hypothetical number 3, prepare a motion for additional time to answer on behalf of Monroe's Grocery Store. Follow the format set forth in Exhibit 6.6. For purposes of this assignment, assume the following additional facts: The attorney received the complaint yesterday, and an answer is due in just over two weeks; the complaint alleges wrongful conduct by the defendant resulting in the plaintiff's injuries; the attorney needs time to investigate the claim and speak with employees of the defendant who may have knowledge of the incident and at least two of the employees who may have knowledge of the incident are presently on vacation and will not be returning for another week; the attorney needs an additional 10 days in which to respond.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Search the Federal Rules of Civil Procedure. Which rule permits serving a motion by mailing it to the person’s last known address?
2. Under the Federal Rules of Civil Procedure, which rule governs the service of multiple defendants?
3. Search through Title II of the Federal Rules of Civil Procedure. Which rule permits the court to extend the time to file a motion, after the time has expired, if the party failed to act because of excusable neglect?
4. Under the Federal Rules of Civil Procedure, which rule governs the substitution of parties after a party’s death?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against the answers in the textbook:

1. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is simply an application to a court for an order.

2. Under Rule 7(b) a motion must meet three basic requirements: (i) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (ii)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and (iii)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3. The format requirements for motions are identical to that for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

4. Every motion must be signed by a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ representing the moving party.

5. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the notice that appears at the end of the pleading or motion stating particulars about the service of the pleading or motion.

6. If a party is represented by an attorney, service must be made under Rule 5(b) on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ unless the court orders service on the other party.

7. A \_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_ is a document setting forth the background facts and legal authorities to support the motion.

8. Once served with a motion, the responding party has two choices to \_\_\_\_\_\_\_\_\_\_\_\_ or \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

9. A \_\_\_\_\_\_\_\_\_\_\_\_ order is when both parties draft an agreed upon order that disposes of the motion.

10. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is empowered to hear routine civil pretrial matters.

11. In federal court routine matters are usually decided by a \_\_\_\_\_\_\_\_\_\_\_\_\_ order.

12. Sometimes judges will make \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ based on the brief submitted and in advance of hearing oral argument.

13. After oral argument, the judge may take the matter under \_\_\_\_\_\_\_\_\_\_\_\_ in order to consider the matter further .

14. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the procedure by which the defendant may transfer a case already filed in stated court to the federal court.

15. The document filed to transfer the case from state court to federal court is call a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**CHAPTER SEVEN**

**MOTION PRACTICE**

***CHAPTER OBJECTIVES***

In Chapter 6, you learned the general requirements for all motions. In Chapter 7, you learned the many different types of motions that a party may bring after the pleadings are complete, but before trial begins. The exercises in this portion of the workbook are designed to give you additional practice in both understanding and drafting the various litigation motions and the responses to the motions. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to draft a motion for judgment on the pleadings
2. When a motion for summary judgment is appropriate
3. What must be included in a motion for summary judgment
4. What response the opponent should make to a summary judgment motion
5. How to obtain a dismissal of a lawsuit
6. How to cure a default judgment
7. When consolidation and separation of trials may occur

**KEY TERMS**

Affidavit

Consolidation

Default

Involuntary dismissal

Judgment on the pleadings

Partial summary judgment

Prove up

Summary judgment

Voluntary dismissal

With prejudice

Without prejudice

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 7 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F A motion for judgment on the pleadings is made before the pleadings are closed.

2. T F A motion for summary judgment may be made when there are no genuine disputes over any material facts.

3. T F A plaintiff may move for summary judgment 20 days after the action has been commenced or after an adverse party has moved for summary judgment.

4. T F A defendant may move for summary judgment at any time.

5. T F A party opposing a summary judgment may rely on denials in the pleadings to resist the motion.

6. T F On a motion for summary judgment, evidentiary defects in the moving party's affidavits should be raised in the opposing memorandum.

7. T F Dismissal of an action may be voluntary or involuntary.

8. T F A voluntary dismissal is only proper if all claims are dismissed against all parties.

9. T F A voluntary dismissal is without prejudice unless otherwise stated.

10. T F An involuntary dismissal is with prejudice unless otherwise ordered.

11. T F Defaults are allowed only when the claimant seeks affirmative relief.

12. T F Consolidation may be ordered when different actions are pending in different courts.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. What is a motion for judgment on the pleadings? How does a motion for judgment on the pleadings differ from a motion to dismiss and a motion for summary judgment?

1. Under the Federal Rules of Civil Procedure, a motion for summary judgment must be served on all other parties at least 10 days before the hearing date. However, local rules and state rules usually require a longer period of time. What are the notice requirements under your local federal rules? Under your state rules?

3. A moving party is entitled to summary judgment only if there is no genuine issue as to any “material fact.” What does this mean? In hypothetical number 1, what would constitute a genuine issue as to a material fact?

4. If a motion for summary judgment fails to show on its face that the movant is entitled to relief, theoretically the opposing party does not need to do anything. However, why is it good practice for the opposing party still to file an opposing memorandum?

5. There are two ways a plaintiff may obtain a voluntary dismissal of the complaint. What are the two ways?

6. What is the “two dismissal rule" in federal court?

7. What are the grounds for an involuntary dismissal?

8. Under what circumstances may a default judgment be entered by the clerk of the court? Why is it necessary to sometimes obtain a default judgment by the court?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. Prepare a motion for summary judgment on behalf of the Samson’s against Emerald’s Catering in hypothetical number 1. Assume that the only defense Emerald’s Catering has raised in the lawsuit is that the staff had mixed up the time of the Samson’s' party with the time of the party for another customer.

2. Assume that the Samson’s in hypothetical number 1 have filed their complaint against Emerald’s Catering. However, before Emerald’s Catering files any papers, the Samson’s decide to dismiss their complaint. Draft a notice of dismissal on behalf of the Samson’s.

3. Assume that Emerald’s Catering has failed to respond to the complaint filed by the Samson’s in hypothetical number 1. Using the form on the following page, prepare a motion for default on behalf of the Samson’s.

**MOTION FOR DEFAULT**

[caption]

Plaintiffs \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ move for an order finding defendant Emerald’s Catering in default, finding that the defendant owes plaintiffs the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ plus costs, and for judgment against the defendant in that amount. In support of their motion, the plaintiffs state:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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3. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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WHEREFORE, the plaintiffs request that the court find defendant Emerald’s Catering in default, hold a hearing to determine the exact amount due the plaintiffs, and enter judgment for plaintiffs and against the defendant in that amount.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for Plaintiffs

4. In order to ensure that a default judgment will not be set aside, there are several steps that a plaintiff should take prior to seeking a default judgment. Make a list of the steps which the plaintiff should take; and include the list in your litigation guide.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Under Rule 12 of the Federal Rules of Civil Procedure, when may a party move for judgment on the pleadings? Under which subsection did you find your answer?
2. Under the Federal Rules of Civil Procedure, which rule provides the standard for determining whether a court must grant a motion for summary judgment?
3. Under the Federal Rules of Civil Procedure, which rule provides the standard for determining whether the clerk of the court must enter a party’s default? Under this rule, which subsection governs the entering of a default judgment by the court? Under what rule may the court set aside a final default judgment?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against the answers in the textbook:

1. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a judgment entered after the pleadings have been complete but before trial.

2. A summary judgment is rendered by the court \_\_\_\_\_\_\_\_\_\_\_\_\_\_ trial.

3. A summary judgment may be made when there are no \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ disputes over any material facts.

4. Partial summary judgment can be granted on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

5. In some states partial summary judgment is referred to as summary \_\_\_\_\_\_\_\_\_\_\_\_\_\_ of issues.

6. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ are sworn statements by witnesses.

7. A witness signs a declaration under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

8. There are two types of dismissals: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

9. A withdrawal of a claim by the party originally asserting the claim is called a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dismissal.

10. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of dismissal can be filed if all parties agree.

11. Once dismissed the claim may be filed again if it is dismissed without \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

12. Once dismissed the claim may not be filed again if it is dismissed with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

13. A plaintiff’s failure to prosecute a claim can result in a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

14. If a party fails to take steps to defend against the pending action, the claimant may receive a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ judgment.

15. The court may order \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ trials when more convenient, or will permit a case to be tried more efficiently.

**CHAPTER EIGHT**

**PROVISIONAL REMEDIES**

***CHAPTER OBJECTIVES***

Provisional remedies are those remedies a plaintiff may receive prior to trial. Even though a plaintiff may be granted a remedy from the court, this does not mean that the plaintiff does not have to proceed to trial. Rather, the litigation process still continues. If the plaintiff should lose at trial, the plaintiff may be responsible to the defendant for any damages the defendant suffered as a result of the provisional remedy that was imposed. In chapter 8 you learned the different types of remedies that a plaintiff may want to seek against the defendant and the requirements for each remedy. Before beginning the exercises, review the specific objectives of this chapter of the text.

1. Why a temporary restraining order or preliminary injunction may be necessary
2. How to obtain a temporary restraining order
3. When a plaintiff can make a motion for a preliminary injunction
4. When a writ of attachment may be obtained
5. What is a writ of possession
6. How to obtain a lis pendens

**KEY TERMS**

Attachment

Ex parte

Injunction

Lis pendens

Movant

Permanent injunction

Preliminary injunction

Provisional remedies

Status quo

Temporary restraining order

Unsecured

Writ of possession

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 8 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F A preliminary injunction may be issued only after an adversarial hearing.

2. T F An injunction is an equitable remedy.

3. T F A motion for a temporary restraining order may only be made if notice is given to the adverse party.

4. T F A motion for a temporary restraining order cannot be made unless the summons and complaint are also filed.

5. T F An application for a temporary restraining order should be combined with a request for a preliminary injunction.

6. T F A preliminary injunction may not be sought without requesting a temporary restraining order first.

7. T F An attachment is a way of seizing a defendant's property to satisfy a future judgment.

8. T F The procedure for issuance of a writ of attachment is governed by federal law.

9. T F An attachment is available only on tort claims.

10. T F One requirement for an attachment is that the amount owed the plaintiff must be unsecured.

11. T F A plaintiff may seek an attachment on a money claim personally owed by the defendant not arising from the defendant's business.

12. T F The motion papers for an attachment should show to the court that it is probably more likely than not that the plaintiff will prevail.

13. T F When the plaintiff has security in personal property of the defendant, the plaintiff may seek a writ of possession.

14. T F Writs of possession are governed by the statutory requirements of state law.

15. T F The plaintiff does not need to show an immediate right to possession in order to receive a writ of possession.

16. T F A lis pendens places a lien on property owned by the defendant.

17. T F A lis pendens gives notice that in the future the plaintiff may attempt to file a lawsuit involving real or personal property of the defendant.

18. T F A lis pendens notice is usually filed in the county office that keeps the public records.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. Identify the three types of injunctions, and explain how they differ.

1. Why are temporary restraining orders referred to as an "extraordinary procedure"?

3. What are the ways in which you can notify an opposing party that an application for a temporary restraining order is going to be made?

4. Under Rule 65(c) of the Federal Rules of Civil Procedure, a temporary restraining order cannot be issued unless the applicant provides adequate security. Why is adequate security required? How can adequate security be given?

5. Would it be easier and less expensive for the plaintiff to simply wait until after receiving a judgment before attempting to attach the defendant's property? Why would a plaintiff want to seek an attachment?

6. Under what circumstances should a plaintiff seek to obtain a writ of possession?

1. What is the purpose of a lis pendens? How does the simple filing of such a notice help the plaintiff?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. Using the form on the following page, prepare an application for a temporary restraining order and preliminary injunction on behalf of Derrick Mason in hypothetical number 4. Also prepare the draft order. You may use the sample in the appendix as a guide.

**APPLICATION FOR TEMPORARY RESTRAINING**

**ORDER AND PRELIMINARY INJUNCTION**

[Caption]

Defendant Derrick Mason applies for a temporary restraining order and requests that a hearing for a preliminary injunction be set. In support of his application Defendant states:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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WHEREFORE, Defendant requests that the court enter a temporary restraining order against Plaintiff and set a hearing for a temporary injunction at the earliest practical time.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for Defendant

2. Prepare two checklists. One checklist should list the requirements for a temporary restraining order. The second checklist should list the requirements for a preliminary injunction. Review your state rules to ascertain whether there are any special requirements for temporary restraining orders and preliminary injunctions, and store this information in your lists. The checklists should be stored in your litigation guide for future reference.

3. There are no federal rules specifically governing either the use of a writ of attachment or a writ of possession. Rather, if the action is filed in state court, the law of the state in which the district court sits is used for purposes of determining whether an attachment or writ of possession is possible. Review the rules of civil procedure for your state. Does your state have any rules for the attachment or writ of possession proceedings? What are those rules? Note the rules for seeking an attachment or writ of possession, and store in your litigation guide for future reference.

4. A lis pendens places a lien on property of the defendant. In some states, a lis pendens is referred to as a notice of pending action. Does your state have such a procedure? What is it called? After reviewing the rules of civil procedure in your state, note the rules for obtaining a lis pendens, and store in your litigation guide for future reference.

5. Although the forms may vary from state to state, most states require similar information before issuing a pretrial order for an attachment. Assume in hypothetical number 1 that the Samsons want to obtain an attachment against Emerald’s Catering in the amount of $25,000. Your instructor can provide you with a sample form (available in the Instructor’s Manual to accompany your text) to apply for a Right to Attach Order and Order for Issuance of Writ of Attachment. Where appropriate, fill in the pertinent facts directly on the application.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Search through the Federal Rules of Civil Procedure. Which rule provides the requirements for issuing a temporary restraining order without notice?
2. Under the Federal Rules of Civil Procedure, which rule governs motions to dissolve or modify a temporary restraining order?
3. Using an online research database, find the case, *Winter v. Natural Resources Defense Council*, Inc., 555 U.S. 7 (2008). Did the Court uphold the trial court’s grant of the plaintiffs’ motion for a preliminary injunction? Why or why not?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against the answers in the textbook:

1. A provisional remedy is obtained by a plaintiff prior to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

2. If a provisional remedy is obtained by the plaintiff and the plaintiff ultimately loses at trial, the plaintiff may be responsible for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ do the defendant.

3. A temporary restraining order is an order from the court prohibiting \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

4. A temporary restraining order can be granted with or without \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

5. The motion for a temporary restraining order must be supported by an affidavit or verified complaint showing that \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and irreparable injury, loss or damage will result.

6. The applicant for a temporary restraining order must post \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in an amount the court deemed sufficient to cover costs and damages if the defendant is wrongfully restrained.

7. In addition to irreparable injury, the applicant must show a likelihood of success on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

8. If the temporary restraining order is granted the court must set a date for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

9. The purpose of a preliminary injunction is to maintain the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

10. With a motion for a preliminary injunction, the plaintiff must give \_\_\_\_\_\_\_\_\_\_\_\_ to an adverse party.

11. The court can \_\_\_\_\_\_\_\_\_\_\_\_ a hearing on the motion for a preliminary injunction with a trial on the merits.

12. A motion for preliminary injunction must specify precisely what \_\_\_\_\_\_\_\_\_\_ are sought to be enjoined.

13. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is the legal process in which someone’s property is seized to satisfy a judgment not yet rendered.

14. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may be issued when the plaintiff has security in personal property of the defendant.

15. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ places a lien on property owned by the defendant.

**CHAPTER NINE**

**EVIDENCE**

***CHAPTER OBJECTIVES***

Before you can properly assist the lawyer with a litigation matter, you must be familiar with the rules of evidence. To be admissible in court, evidence must be relevant, reliable, and real. Accordingly, one of your tasks will be to ensure that the evidence you accumulate in your investigation of the case meets these requirements so that the evidence that supports your side’s position will be admissible in court. In addition, you must also be familiar with the rules of evidence, since failure to follow the rules could lead to the inadvertent disclosure of inadmissible evidence to opposing parties. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What constitutes evidence
2. Why paralegals must be familiar with the rules of evidence
3. How to determine what evidence is relevant
4. What evidence is excluded based upon the hearsay rules
5. Whether hearsay evidence may be admissible under a hearsay

exception

1. When a witness is competent to testify
2. What evidence is protected from disclosure based upon a claim of

privilege

**KEY TERMS**

Admission of a party opponent

Affidavit

Attorney-client privilege

Authenticated

Best evidence rule

Business records

Character traits

Contradiction

Declaration

Demonstrative evidence

Exhibits

Federal Rules of Evidence

Hearsay

Impeachment

Judicial notice

Privileges

Probative

Public records

Question of law

Real

Real evidence

Recorded recollections

Relevant

Reliable

Testimony

Trier of fact

Work product

***TESTING YOUR COMPREHENSION***

Text your comprehension of Chapter 9 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F Evidentiary issues are questions of law.

2. T F If evidence is irrelevant, the evidence may still be admissible under special rules of relevancy.

3. T F All relevant evidence is admissible at trial.

4. T F Hearsay evidence is subject to exclusion at trial unless an exception to the hearsay rule applies.

5. T F A statement made by the declarant while testifying at trial is considered hearsay.

6. T F The hearsay rule does not apply to the actual oral testimony of the witness in court.

7. T F An admission of a party opponent is any statement made by any party to a lawsuit.

8. T F Under the Federal Rules of Evidence, prior statements by witnesses that were made under oath at a previous hearing or deposition are not hearsay.

9. T F Even if a witness is available, former testimony of a witness may be admissible evidence.

10. T F A statement made during or immediately after an event that describes or explains the event is admissible.

11. T F Under the public records exception to the hearsay rule, a witness must be called to lay a foundation for the record before the record will be admitted into evidence.

12. T F Under the Federal Rules of Evidence, a child is presumed

incompetent to testify.

13. T F A person who can only communicate by gestures is presumed

incompetent to testify.

14. T F A witness must have personal knowledge in order to be

considered competent to testify.

15. T F The best evidence rule requires that the best evidence on every issue be presented.

16. T F Facts generally known within the particular geographic area may be judicially noticed.

17. T F Communications between a client and a paralegal are subject to the attorney‑client privilege.

18. T F The attorney‑client privilege does not apply if the services of a lawyer are sought to enable or aid one to commit or plan a crime or fraud.

19. T F In some instances, a lawyer’s opinions, mental impressions, and legal theories may be required to be disclosed to the opposing parties.

20. T F The work product privilege does not apply to materials prepared by a legal assistant.

21. T F The physician‑patient privilege only applies to parties to a lawsuit.

22. T F Confidential communications made by one spouse to the other during a marriage are protected from disclosure.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. What does it mean to say that evidentiary issues are questions of law? How do questions of law differ from questions of fact?

2. Why is it necessary for a paralegal to know the rules of evidence?

3. In determining whether to admit evidence under the general relevance test stated in the main text, the court will examine whether the evidence is “of consequence” to the issues in the action. What does it mean for the evidence to be “of consequence”? The court will also examine the “probative value” of the evidence. What does “probative value” mean?

1. Why are certain types of evidence excluded for extrinsic policy reasons? What are the types of evidence which are excluded for policy reasons?

5. Character evidence is only admissible in civil cases if character is an essential element of a claim or defense. Why is such evidence, if relevant under the general relevance tests, excluded when character is not an essential element of a claim or defense? Would the evidence of a defendant’s character be relevant to prove circumstantially how the defendant might have acted on a particular occasion? For example, suppose a witness is available to testify that the defendant has a reputation for daydreaming and the defendant therefore often does not watch where the defendant is going. Would this evidence be relevant to show that the defendant went through a red light and hit the plaintiff’s car? Would the evidence be admissible as character evidence?

6. Evidence of conduct routine enough to be considered a habit will be admissible. What is the difference between “character” and “habit” evidence?

7. Evidence of subsequent repairs is not admissible to prove negligence or fault, but may be admissible to prove feasibility of precautionary measures. If you were sitting as a juror and were instructed by the judge to not consider the evidence as proof of negligence but only as to feasibility of the precautionary measures, do you think you could make this distinction? Should there be any concern by the defendant that the jury may use the evidence to place fault with the defendant for not taking the precautionary measures sooner?

8. What is "hearsay"? Why is hearsay evidence excluded from trial?

9. With respect to the hearsay rule, identify the three types of statements under the Federal Rules of Evidence. Give an example of each.

10. Why are prior statements by witnesses admissible evidence? What can the prior statements be used to prove? Does your state consider prior statements hearsay? If so, does your state provide for an exception to the hearsay rule for prior statements?

11. Compare and contrast the admission of a party opponent exception to the hearsay rule with the statements against interest exception.

12. Under the federal rules, certain hearsay exceptions require that the witness be unavailable before the hearsay statement made by the witness will be admissible. When is a witness considered “unavailable”? Are the requirements the same under your state court rules?

13. Compare and contrast the present sense impression exception to the hearsay rule with the excited utterances exception.

14. What is the rationale for admitting hearsay evidence of a statement by a patient about the patient’s present or past medical condition? Why is such evidence considered reliable?

15. Identify the three types of records exceptions to the hearsay rule. How do these exceptions differ?

16. What is the difference between a “lay” witness and an “expert” witness? Are there matters that an expert witness can testify to that a lay witness cannot? Why is it necessary to use expert witnesses in some cases?

17. What are the general requirements needed before a witness is considered competent to testify?

18. Identify at least three ways that a witness can be impeached. Give an example of each.

19. Under what circumstances can a witness’ prior bad acts be admissible to impeach that witness?

20. What does it mean to “authenticate” an exhibit? Why do exhibits need to be authenticated? If you wanted to authenticate a photograph of an accident scene, how could the photograph be authenticated?

21. What is the difference between real evidence and demonstrative evidence?

Give an example of each.

22. Some business records require that a witness testify and authenticate the record. However, public records are considered self‑authenticating. Why are public records treated differently?

23. What are the three types of facts which may be judicially noticed?

24. What is the “best evidence rule”?

25. If a client seeks the services of a lawyer, but does not ultimately retain the lawyer, can the client still assert the attorney‑client privilege and prevent the lawyer from disclosing the confidential communication? Or is the lawyer free to disclose the communication since the lawyer was never actually retained?

26. Under the attorney‑client privilege, the client is the holder of the privilege. That is, the client holds the right to prevent the attorney from disclosing the confidential communication and the client also has the right to waive the privilege and disclose the communication. Why is the privilege held only by the client, and not also by the lawyer?

27. What are the differences between the attorney‑client privilege and the work product privilege? What is the purpose of having a work product privilege? The work product privilege is qualified. What does this mean?

28. Why are communications between spouses protected from disclosure? Can you think of situations where there should be exceptions to this privilege?

29. One of the requirements under the hearsay rule is that there be a statement. Does the term “statement” apply only to statements made by people? What about readings from meters or scientific instruments? Are these considered statements?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. The main text identifies ten specific hearsay exceptions. Make a chart including each of the hearsay exceptions. On the chart indicate the requirements needed for each exception to apply. Be sure to include for each requirement whether the declarant must now be available. Store the chart in your litigation guide for future reference.

2. Locate a copy of your state’s rules of evidence. For each of the ten hearsay exceptions identified in the main text, locate the corresponding exception under your state rules. Once you have identified the appropriate state rules, prepare a chart comparing the requirements for each hearsay exception under the federal rules with your state rules. If your state has adopted the federal rules of evidence without change, note this information on your chart. The purpose of preparing this chart is to give you a reference guide for hearsay exceptions. The chart should be stored in your litigation guide and referred to whenever you are confronted with a hearsay problem.

3. Using a copy of your state’s rules of evidence, determine whether other hearsay exceptions exist other than those identified in the text. If other exceptions exist, identify those exceptions on a separate sheet of paper and store it in your litigation guide.

4. The main text identifies four of the more common privileges that may be asserted. However, in many states, numerous other exceptions also apply. Review your state’s rules of evidence and identify other privileges which may exist.

5. Some statements are not considered hearsay because these statements are not being offered to prove the truth of the matter asserted in the statements. Thus, you must always ask yourself what is being proven by offering the statement. If the statement is not being used to prove the truth of the statement, but rather something else, then the statement is not hearsay. With these rules in mind, examine the following statements and determine whether the statements are hearsay. Be prepared to explain your answers.

a. Tom and Sally are killed in an automobile accident. A witness at the scene testifies that she heard Tom say “The defendant’s car went through the red light.” The plaintiff wishes to use the statement to prove that the defendant was negligent. Is the statement hearsay?

b. Same situation as (a), except the statement is being used to prove that Tom was alive immediately following the accident. Is the statement hearsay?

c. A witness testifies that she heard John say “I love Janet.” The statement is being used to prove that John loves Janet. Is the statement hearsay?

d. A witness testifies that she heard John say “Janet has the most beautiful eyes in the world.” The statement is being used to prove that John loves Janet. Is the statement hearsay?

e. A witness testifies that she heard Alan say “I am Felix the Cat.” The statement is being used to prove that Alan is insane. Is the statement hearsay?

6. For each of the following statements, identify which exception to the hearsay rule best applies. Be prepared to explain your answers.

1. Plaintiff testifies that she heard the defendant say immediately after the accident “I’m sorry my car hit you. I guess I didn’t see the light turn red in time.”

b. In a breach of contract action, defendant testifies at trial that he mailed the payment due plaintiff under the contract on April 25, 2005. Plaintiff now wants to use the deposition testimony of defendant where defendant testified that he could not remember if he ever mailed the payment to plaintiff.

c. Witness testifies that the declarant told her “I am not feeling very well.”

d. Plaintiff has brought an action against the pilot of a helicopter, for damage to the plaintiff’s car. Witness testifies at the trial that she was looking out her kitchen window when she saw the helicopter spin several times before landing on the ground. She said to her husband “Gee, look at that helicopter spin. It looks like the pilot is losing control of it.”

e. The plaintiff has sued her health club and exercise instructor for injuries to her back caused while she was being shown by the instructor how to use certain exercise equipment. Defendant calls a witness to testify that she heard Betty Thomas say “I had told the plaintiff several days before the incident that I was able to collect a lot of money from the same health club by faking an injury to my back.” Betty Thomas is now unavailable.

f. Jennifer Dorsey was injured at school when another child pushed Jennifer into a wall. The May 23, 2011 records of the school nurse indicate that “On May 23, 2011, I examined Jennifer Dorsey for an injury caused during recess. She appeared to have a scraped elbow and bruises on her back and shoulder. She had limited mobility of her index finger on her right hand and I suggested that her mother be called so that Jennifer could be taken to a physician and treated for a possible broken finger.”

7. Assume that you are a paralegal in the law firm representing Stella King in hypothetical number 5. The following documents are in your firm’s files. For each document, identify whether there is any claim of privilege that may be made and, if so, which privilege.

a. Medical records from Stella King’s personal physician concerning a broken leg Stella King had suffered five years prior to the accident.

b. The hospital admittance report for Ms. King at Warren Community Hospital for the day of the accident.

c. Ms. King’s personnel records from her employer.

d. A memorandum from you to the attorney responsible for the matter in your firm.

e. A letter from the client to the attorney responsible for the matter in your firm.

f. A letter from the attorney for Mr. Woods to your firm.

g. A memorandum from Ms. King to the attorney in your firm giving a detailed narration of the facts.

h. A copy of a letter signed by you to Ms. King.

i. A note from the attorney to the attorney’s secretary regarding the scheduling of depositions.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Using an online database, search through the Federal Rules of Evidence. Which rule provides the general relevance test for evidence?
2. Under the Federal Rules of Evidence, which rule establishes that evidence of a person’s character is generally inadmissible to prove that on a particular occasion the person acted in accordance with that character?
3. Under the Federal Rules of Evidence, which rule defines “hearsay?”
4. Under the Federal Rules of Evidence, which rule provides exceptions to the rule against hearsay? Under this rule, for an exception to apply, what is required of the declarant in all cases?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without

looking in the book. After you have completed the exercise, check your answers against the

answers in the textbook:

1. Evidentiary questions are question of \_\_\_\_\_\_\_\_\_\_\_\_.

2. The law of evidence is the tool the judges uses to filter \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3. A convenient way to consider this filtration process is to remember the threes R’s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

4. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ are written statements made by a witness and signed under penalty of perjury.

5. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ are written statements by a witness made under oath and acknowledged by a notary public.

6. A person is likely to act consistently with the kind of person that he or she really and we refer to this as \_\_\_\_\_\_\_\_\_\_\_\_\_\_ traits.

7. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_ of a person may be relevant to prove that conduct of the person on a particular occasion.

8. Evidence of a subsequent repair is inadmissible for \_\_\_\_\_\_\_\_\_\_\_\_ reasons and excluded for that reason.

9. A statement other than the one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted is called \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

10. An \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ opponent is any statement made by an adverse party in the lawsuit.

11. If a witness is unavailable and there was \_\_\_\_\_\_\_\_\_\_\_\_\_ testimony given under oath, the testimony may be admissible as an exception to the hearsay rule.

12. An exception t the hearing say is an \_\_\_\_\_\_\_\_\_\_\_\_\_ utterance if relates to a startling event or condition made under the stress of excitement.

13. A statement made describing or explaining an event or condition made while or immediately after the declaration perceived it is admission under the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ exception.

14. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ privilege is a qualified privilege for the work papers, notes, memoranda and reports gathered or prepared by attorneys in anticipation of litigation.

15. The \_\_\_\_\_\_\_\_\_\_\_\_\_ evidence rule is more accurately called the original document rule.

**CHAPTER TEN**

**DISCOVERY**

***CHAPTER OBJECTIVES***

To ascertain facts concerning the incidents in a lawsuit, lawyers and paralegals use several discovery devices. Each of the discovery devices serves a different purpose and is used at a different stage in the lawsuit. Properly conducted discovery helps both sides determine the strengths and weaknesses of their positions, and prevents trials by surprise. Since discovery is a significant part of any litigation, you must be familiar with the different types of discovery to assist the lawyer with the factual investigation. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What discovery devices you may use to obtain facts
2. How you may use computers for litigation support
3. When you can conduct discovery
4. How to draft the different forms of discovery
5. How to prepare a witness for deposition
6. How to prepare a deposition summary in different ways
7. When a discovery motion may be necessary
8. Where to find electronically stored information
9. What electronically stored information must be disclosed

**KEY TERMS**

Chronological summary

Contention interrogatories

Deponent

Deposition

Deposition transcript

Good cause

Interrogatories

Narrative

Objection

Pattern interrogatories

Physical and mental examinations

Protective order

Redact

Request to admit

Request to produce

Subject matter summary

Subpoena ad testificandum

Subpoena duces tecum

Topic index

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 10 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F Interrogatories are oral questions presented by one party to another party.

2. T F Under the Federal Rules of Civil Procedure, a party has 30 days to respond to written interrogatories.

3. T F A party sending the interrogatories is sometimes referred to as the propounding party.

4. T F Interrogatories may only be served on parties to the lawsuit.

5. T F A request to produce may be used to compel responses to interrogatories.

6. T F Depositions may only take place in a conference room at a courthouse.

7. T F A physical or mental examination of a party can be obtained if the party's physical or mental condition is in issue.

8. T F If a party does not agree to voluntarily submit to a physical examination, a court order must be obtained.

9. T F Requests to admit are written statements that force a party to admit or deny facts or a document's genuineness.

10. T F Computers may be used to assist lawyers and paralegals in conducting research.

11. T F Computers may be used to locate information about parties or witnesses.

12. T F Only evidence that may be admissible at trial may be obtained in discovery.

13. T F A written statement made by a nonparty witness that is in the possession of an adversary is discoverable.

14. T F Statements made by a party to the party's own lawyer are not discoverable.

15. T F The identity of experts who are expected to be called as witnesses at trial is not discoverable.

16. T F A deposition of an adverse party may never be taken before responses to interrogatories are received.

17. T F The party responding to interrogatories must respond to each interrogatory separately with either an answer or an objection.

18. T F A party answering interrogatories never has an obligation to supplement interrogatory responses.

19. T F Interrogatory answers must be signed and sworn to by the person making them.

20. T F A party is not obligated to produce documents that are not in the party's actual control.

21. T F A party does not need to serve a written response to a document request if the party is going to produce the requested documents.

22. T F Responses to requests to produce are usually due within 30 days of service of the request.

23. T F If a document contains both privileged and unprivileged material, the entire document does not need to be produced.

24. T F Although a paralegal may attend a deposition, only the lawyer may take the deposition or defend a witness at the deposition.

25. T F A deposition of a nonparty may be conducted anywhere.

26. T F Requests to admit facts and the genuineness of documents apply only to parties.

27. T F After a request to admit has been served on a party, that party must serve a response within 30 days, or the matters requested will be deemed admitted.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. What is the purpose of sending interrogatories to an adverse party? What type of information is most effectively obtained by interrogatories?

2. Interrogatories that ask for "opinions," "contentions relating to facts," or the "application of law to fact" are usually proper interrogatory requests. However, interrogatories that ask for matters about the law are not proper interrogatory requests. Why is this? Shouldn't a party be permitted to find out what the other side thinks the law is?

3. In chapter 9 you learned that only relevant evidence may be admissible at trial. However, in this chapter, you have learned that for discovery purposes, relevance is defined as any information that "appears reasonably calculated to lead to the discovery of admissible evidence." Thus, even if the information requested is not relevant, the information may still be discoverable if the information is reasonably calculated to lead to the discovery of admissible evidence. Why is more latitude given for discovery purposes than for admission of evidence at trial?

4. Evidence of liability insurance is not admissible in evidence to prove fault or lack of fault. Yet, liability insurance under Rule 26(a)(1)(D) of the Federal Rules of Civil Procedure is discoverable. Why is this information discoverable if the information cannot be admitted into evidence?

5. There are three basic kinds of experts: testifying experts, consulting experts, and informally consulted experts. How are they different? Why is there a qualified privilege for the work done by consulting experts?

6. Rule 34 of the Federal Rules of Civil Procedure permits requests to produce three things. What are they?

7. When drafting a request to produce documents, the request must identify the documents with "reasonable particularity." What does this mean? How can you draft a request with reasonable particularity if you do not know what the documents are that you are seeking?

8. When responding to document requests, it is a good idea to keep a copy of all documents submitted to the opposing side. Why should you keep copies of what was submitted?

9. Documents which are produced to the opposing side, and which the opposing side produced to you, are usually numbered stamped (sometimes referred to as "Bate stamped"). What is the purpose of numbering the documents? In what ways is the numbering helpful during the litigation?

10. Requests to produce apply only to parties in the action. How can a party obtain documents which are in the possession of nonparty witnesses?

11. If you are asked to attend a production of documents produced by the other party, what steps should you take before reviewing the documents which will be produced?

12. Why must a deposition be taken in the presence of someone authorized to administer oaths and who can stenographically record the testimony?

13. Why is a court order needed before a physical or mental examination of a party is ordered? What must the party requesting the examination prove before an examination will be ordered?

14. There are four basic responses permitted when a party is served with a Request to Admit. What are the permitted responses?

15. If the discovery sought is annoying, embarrassing, oppressive, unduly burdensome, or unduly expensive, what can the responding party do?

16. If a party fails to answer or gives evasive or incomplete answers to proper discovery, what can the other party do?

17. What sanctions are available against a party who does not abide by discovery orders?

18. Some discovery devices are permitted to be used only against parties; others may be used against parties and nonparties alike. What discovery devices are permitted only against parties? How can you obtain discovery against nonparties?

19. Some discovery devices require the moving party to show "good cause." What does this mean?

20. Identify places that you must look to find electronically stored information?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. Prepare a list of words that should be defined in the definitions and instructions section of your interrogatories. Give definitions for each word. Naturally, depending upon the type of case, the definitions and instructions may vary. Accordingly, confine your list to words that are likely to be included in every set of interrogatories that you draft.

2. Part of the strategy for discovery is to have a good discovery plan which outlines the order in which your side's discovery will proceed and the information your side expects to receive from each discovery device. Assume that your law firm represents Shamrock Enterprises in hypothetical number 2. Prepare a discovery plan for Shamrock Enterprises. The discovery plan should outline the order in which discovery should proceed and indicate the types of information your side expects to obtain from each of the discovery devices.

3. Assume that your law firm has undertaken the representation of Sidney Kester in hypothetical number 3. Draft a set of interrogatories to be sent to Monroe's Grocery Store. Include in the interrogatories the topics outlined in Section E.2.a of the main text.

4. There are several grounds for objecting to interrogatories. Some of those grounds are identified in Section E.2.c.ii of the main text. Make a list of the proper grounds for objections to interrogatories. Include on the list the grounds set forth in the text. Store the list in your litigation guide. The list can then be referred to whenever you are asked to respond to interrogatories.

5. Assume that your law firm has been retained to represent Doris McFarland in hypothetical number 2. Draft a document request to be sent to Shamrock Enterprises. Remember to draft the request with "reasonable particularity" so as to satisfy the requirements of Rule 34 of the Federal Rules of Civil Procedure.

6. Whenever a deposition will be taken, the party taking the deposition must give notice of the deposition to every party to the action. Assume that your law firm represents Gatsby Realty in hypothetical number 4. Draft a notice of deposition to take the deposition of Derrick Mason using the form on the following page. Use the examples in the main text and in the appendix as a guide.

**NOTICE OF DEPOSITION**

Michael Sobel, Esq.

Roberts, Williams, and Stevenson

2345 Woodbine Street

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,\_\_\_\_\_\_\_\_

Attorneys for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please take notice that :

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Dates:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Michael Sobel

Attorney for Plaintiff

7. Witnesses need to be served with a subpoena in order to compel them to attend a deposition. Assume in hypothetical number 5 that the matter is pending in federal court, and that Dennis Woods wants to subpoena Karen Blake, the custodian of records for Warren Community Hospital, the hospital that treated Stella King for her injuries. Be sure to include a request for all the relevant documents. You may use Exhibit 10.24 as an example. Your instructor has additional examples available in the Instructor’s Manual that accompanies this book.

8. Local court rules often govern the number of interrogatories which can be propounded to the other side. Are there local rules in your jurisdiction which limit the number of interrogatories? If so, what are the limits?

9. As part of the preparation for a deposition, an outline is usually made of the topics that need to be covered in the deposition. Prepare an outline for an attorney taking the deposition of Sidney Kester in hypothetical number 3.

10. It is common practice to prepare witnesses for their depositions in advance of the date of the deposition. Lawyers and paralegals usually use a checklist, covering the items discussed in Section G.2.c of the main text, to prepare the witness. Using the information contained in the main text, draft a checklist of matters to be covered with a witness in advance of the deposition. The checklist should be included in your litigation guide for future reference.

11. The main text has discussed the five major types of discovery devices. Although the rules discussed are the rules under the Federal Rules of Civil Procedure, similar rules exist for state courts as well. Using the forms on the following pages, prepare two charts outlining the rules for both the federal and state courts. Each chart should identify the discovery device, the time in which responses are due to the discovery (or in the case of depositions, the amount of notice required in advance of the deposition), any limits on the number which can be propounded (ie. only 30 interrogatories), and whether the responses must be made under oath. You can also include on the state chart any other requirements that are unique to your state. Copies of the charts may then be stored in your litigation guide and referred to once you are in practice.

**FEDERAL DISCOVERY RULES**

**INTERROGATORIES (Rule 33)**

Response Due Limits on Number Type of Responses Comments

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**REQUEST TO PRODUCE (Rule 34)**

Response Due Limits on Number Type of Response Comments

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**REQUESTS FOR ADMISSIONS (Rule 36)**

Response Due Limits on Number Type of Response Comments

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**ORAL DEPOSITIONS (Rule 30)**

Timing Response Required Objections Comments

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**MEDICAL EXAMINATIONS (Rule 35)**

Response Due Limits on Number Type of Response Comments

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**STATE DISCOVERY RULES**

**INTERROGATORIES (Rule \_\_)**

Response Due Limits on Number Type of Response Comments

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**REQUEST TO PRODUCE (Rule \_\_)**

Response Due Limits on Number Type of Response Comments

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**REQUESTS FOR ADMISSIONS (Rule \_\_)**

Response Due Limits on Number Type of Response Comments

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**ORAL DEPOSITIONS (Rule \_\_)**

Timing Response Required Objections Comments

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**MEDICAL EXAMINATIONS (Rule \_\_)**

Response Due Limits on Number Type of Response Comments

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12. Requests to admit are usually served at the end of the discovery stage. However, where the issues are fairly simple and straightforward, it may be useful to serve a set of requests for admissions early in the case to ascertain whether there is any dispute with respect to the main facts. In hypothetical number 1, the Samsons have a claim against Emerald’s Catering for breach of contract. Draft a set of requests for admissions that Sara and Benjamin Samson may serve on Emerald’s Catering. Your instructor has a sample form available in the Instructor’s Manual that accompanies these materials, if needed.

13. Some states have form interrogatories that you may use instead of drafting your own set of interrogatories. Assume that your state has form interrogatories. (If needed, your instructor has sample form interrogatories available in the instructor’s manual that accompanies your text.) Using hypothetical number 3, draft a set of interrogatories on behalf of Monroe's Grocery Store, to be sent to Sydney Kester.

14. In addition to drafting discovery requests, as a paralegal you will also need to draft responses to discovery requests. Exchange with a classmate the interrogatories you have drafted in assignment number 3. Respond to the interrogatories that have been drafted by your classmate. Remember that each interrogatory must be responded to separately. Include all appropriate objections to the interrogatories.

15. Assume in hypothetical number 3 that Sidney Kester has failed to respond to the interrogatories that you have drafted. Draft a motion to compel Sydney Kester to respond to the interrogatories. If your state requires an affidavit or declaration indicating that the parties have met, in good faith, and attempted to resolve the discovery dispute, include the affidavit or declaration with your motion.

16. Knowing how to respond and object to document requests is very important. Failure to object to a document request may cause a waiver of your client's evidentiary privileges. Assume that Dennis Woods in hypothetical number 5 has served the following document request on Stella King. Respond to the document request, making all appropriate objections.

[caption]

**DEFENDANT DENNIS WOODS' REQUEST TO PRODUCE**

**DOCUMENTS TO PLAINTIFF STELLA KING**

Defendant Woods requests that plaintiff Stella King produce the documents and things listed below:

1. All documents reflecting, referring to, or otherwise relating to the injuries sustained as a result of the accident which is the subject of the instant lawsuit.

2. All documents reflecting, referring to, or otherwise relating to plaintiff's medical condition for the past five years.

3. All documents reflecting, referring to, or otherwise relating to plaintiff's driving record for the past five years.

4. All documents reflecting, referring to, or otherwise relating to any statements obtained from witnesses of the accident which is the subject of the instant lawsuit.

5. All documents reflecting, referring to, or otherwise relating to any damages claims by plaintiff as a result of the accident which is the subject of the instant lawsuit.

6. All documents reflecting, referring to, or otherwise relating to the time plaintiff lost from work as a result of the accident which is the subject of the instant lawsuit.

7. All correspondence between plaintiff and any other person or entity regarding the instant lawsuit.

17. One of the tasks that a paralegal often performs is the summarizing of deposition testimony. On the following pages is an excerpt from the deposition of Sidney Kester. Summarize the deposition testimony using each of the methods discussed in the main text.

**EXAMINATION OF SIDNEY KESTER**

Q. Would you please state your name for the record?

A. Sidney Alan Kester.

Q. Mr. Kester, have you ever had your deposition taken before?

A. Yes.

Q. How many times?

A. Once.

Q. So you understand the procedure a little bit and you have had an opportunity to speak with your counsel about the procedure?

A. Yes.

Q. Let me briefly explain to you what is going to take place today, and I won't go into great detail. I am going to ask you a series of questions to which you will be required to give answers. Everything that we say is going to be taken down by the reporter, and it will be later typed up in a booklet form. You will have an opportunity to read it and make any changes or corrections that you deem necessary. However, I must caution you that in the event you do make any changes, we'll be permitted to comment upon those changes at the time of trial. Do you understand that?

A. Yes.

Q. Is there any reason why your deposition cannot go forward today?

A. No.

Q. You are not under any medication which impairs your ability to remember?

A. No.

Q. What is your present address?

A. 300 Wetherly Street.

Q. How long have you lived at that address?

A. Fifteen years.

Q. Are you employed?

A. Yes.

Q. Where are you employed?

A. Simon Electronics.

Q. What is your position at Simon Electronics?

A. Computer operator.

Q. How long have you been a computer operator?

A. Ten years.

Q. Prior to that time, were you employed?

A. Yes. Also by Simon Electronics.

Q. What was your position prior to computer operator?

A. Data processor.

Q. How long were you employed as a data processor?

A. Approximately nine years.

Q. What was the purpose of your visit to Monroe's Grocery Store on the day of your accident?

A. I went in to pick up a few things that I needed for dinner that night. I had been to the market the day before, but I had forgotten to pick up lettuce, tomatoes, and a few other things I wanted to make a salad. I was having my son and his wife, along with my little grandson, over for dinner that night. I always make a big salad when they come over.

Q. Approximately what time of day was this?

A. It was around 4:00 p.m. I had just gotten off work, and I had decided to stop at the store before going home.

Q. How many times had you previously shopped at Monroe's Grocery Store?

A. Oh, many times. The store is only about half mile from my house. I've been going there at least once a week for the past ten years.

Q. Have you ever had any accidents in any other stores that you have shopped in?

A. Well, not that I can recall at the moment.

Q. Where did the fall in Monroe's Grocery Store take place?

A. In the produce department.

Q. Did you notice anything unusual about the produce department prior to the fall?

A. I recall that the produce manager was in the process of restocking many of the bins. And, when I went to pick up the tomatoes, I noticed that several of the tomatoes had fallen on the ground. The tomatoes looked like they had just been restocked, so I assumed that the bin was so full that some of the tomatoes fell to the ground.

Q. Where in the produce department did your fall occur?

A. In front of the lettuce bin.

Q. How close is the lettuce bin to the tomatoes?

A. Not that close. They are about two aisles apart.

Q. Did you notice anything on the floor by the lettuce bin?

A. No. But as I said before, there were crates in all the aisles. And there was a crate near the lettuce bin. I don't think the lettuce bin had been restocked yet.

Q. What happened after your fall?

A. Well, as soon as it happened, the produce manager came rushing over to see how I was doing.

Q. Do you remember the name of the produce manager?

A. Yes. His name is Jim. I've seen him there before, but I do not know his last name.

Q. Did Jim say anything to you?

A. He asked if I was okay. I told him that I thought I was, but then I had a hard time getting up.

Q. What happened next?

A. Jim helped me get up and took me to an office in the back of the store. At the time, I told the store manager that I did not think I would need to see a doctor. The store manager insisted on calling an ambulance when it was clear that I would not be able to walk on my right leg.

Q. Did an ambulance come?

A. Yes. They took me to Clearview Community Hospital.

Q. What happened after you went to the Hospital?

A. I was taken to the Emergency Room. A nurse came by to have me fill out some papers.

Q. What papers were these?

A. They were the hospital admitting papers, things like name, address, social security number, and information about medical insurance.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Search through Title V of the Federal Rules of Civil Procedure, dealing with disclosures and discovery. Which rule states that each interrogatory, if not objected to, must be answered separately and fully in writing?
2. Under the Federal Rules of Civil Procedure, which rule governs when a deposition may be taken without obtaining leave of court? Which rule governs when a party must obtain leave of court before a deposition may be taken?
3. Locate Rule 26(b) of the Federal Rules of Civil Procedure. Under which rule may the court alter the limits on the number of depositions and interrogatories or the length of depositions?
4. Under Rule 26(b) of the Federal Rules of Civil Procedure, which subpart provides the two requirements for discovering documents and tangible things that are prepared in anticipation for litigation, or for trial, by another party?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without looking in the book. After you have completed the exercise, check your answers against the answers in the textbook:

1. Interrogatories are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ questions sent by one party to another party.

2. Interrogatories are the most effective for obtaining basic \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ data from the other party.

3. Depositions are \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ questions by one part to another.

4. A request to admit is a written statement that forces a party to \_\_\_\_\_\_ or \_\_\_\_\_\_ a factor document genuineness.

5. A party may discover any non-privileged information that is \_\_\_\_\_\_\_\_\_\_\_\_\_ to a party’s claims or defense.

6. Preprinted questions approved by some districts in common types of cases are called \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ interrogatories.

7. A party must usually answer interrogatories within \_\_\_ days of service of the interrogatories.

8. A request to produce must describe each item or category to be produced with reasonable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

9. Documents produced for inspection must be produced in the same order they are \_\_\_\_\_\_\_\_\_\_\_\_\_\_ kept or in the order, with labels, that corresponds to the categories of the requests.

10. Other than a subpoena for documents, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ are the only discovery method that can be used on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

11. Questions that ask the opposing side for the basis of any denial of a request are called \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ interrogatories.

12. If a party fails to respond to discovery, the party propounding the request may made a motion to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

13. If a party answering discovery believes that the discovery constitutes an attempt to annoy, oppress, and place undue burden on them, they may make a motion for a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ order.

14. If a motion to compel is granted the court may award reasonable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to the prevailing party.

15. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ stored information is specifically included as part of discovery.

**CHAPTER ELEVEN**

**SETTLEMENTS**

***CHAPTER OBJECTIVES***

Since the majority of cases are settled before trial, the purpose of this chapter is to acquaint you with the settlement process. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. When to use a settlement brochure
2. How to draft a settlement agreement
3. What the different types of settlement agreements are
4. How to enforce a settlement agreement

**KEY TERMS**

Contribution

Covenant not to sue

Indemnification

Joint tortfeasors

Loan receipt

Mary Carter agreement

Offer of judgment

Pretrial conference

Release

Settlement brochure

Structured settlement

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 11 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F A settlement brochure should never contain medical reports of the plaintiff’s injuries.

2. T F Settlement agreements should be in writing and signed by each party.

3. T F If a case is settled, the lawsuit is usually dismissed with prejudice.

4. T F A release operates as a discharge of all claims against the parties to the release as well as any persons against whom the same claims are or could have been asserted.

5. T F A release is used only if there is a partial settlement of the lawsuit.

6. T F A covenant not to sue does not discharge any parties.

7. T F Contribution is a theory for apportioning liability among joint tortfeasors.

8. T F A covenant not to sue prevents a nonsettling defendant from later bringing a contribution claim against the settling defendant after a final judgment.

9. T F Under a structured settlement, the plaintiff receives periodic payments rather than one lump sum settlement.

10. T F Once a case is settled, a court order is always necessary to dismiss the case.

11. T F A stipulation for dismissal with prejudice bars the plaintiff from refiling the claim later.

12. T F An offer of judgment under Rule 68 of the Federal Rules of Civil Procedure may be conditioned upon settlement with other defendants.

13. T F An offer of judgment may be made any time before trial.

14. T F Offers of settlement are admissible at trial to prove liability.

15. T F A settlement agreement may be enforced in a separate contract action.

16. T F An insurer should notify the insured of all settlement offers.

17. T F The wronged party may enforce a settlement agreement by making a motion to enforce the settlement agreement.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. What are the three basic steps for settling a case?

2. What is a settlement brochure? Why is a settlement brochure useful?

3. Why should a defendant insist upon obtaining a dismissal of the lawsuit

with prejudice in the event of a settlement?

4. Why is it necessary for a settlement agreement to clearly state whether the settlement is a release, covenant not to sue, or loan receipt?

5. If a lawsuit involves both contract and tort claims, why is it important to know how much of the settlement amount will be allocated to each type of claim?

6. What is a structured settlement? What are the advantages of such a settlement to a plaintiff? To the defendant?

7. Why is it necessary to obtain court approval for a settlement in class actions?

8. What is the purpose of a Rule 68 offer of judgment?

9. What are the good faith requirements by an insurer who is defending an

insured?

10. What are the different ways in which a settlement agreement may be enforced? Are there advantages and disadvantages to each way?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. Using the form on the following page and the sample in the main text, prepare a Release on behalf of the parties in hypothetical number 5. Unless instructed otherwise, assume that the parties have agreed to settle the lawsuit by Dennis Woods paying Stella King $15,000. A copy of the Release should be stored in your litigation guide.**RELEASE**

In consideration of the sum of $\_\_\_\_\_\_\_\_\_\_, which Plaintiff\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_acknowledges receiving, Plaintiff \_\_\_\_\_\_\_\_\_\_\_\_\_\_agrees

to release Defendant\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and his\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

from all claims, suits, or actions in any form or on any basis, because of anything that was done or not done at any time, on account of the following:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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As a result of this collision, Plaintiff has brought suit against Defendant for damages. Defendant has denied both liability and the claimed extent of damages. This release is a compromise settlement between Plaintiff\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Defendant\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

This agreement is a release and shall operate as a total discharge of any claims Plaintiff has or may have arising out of the above occurrence against this Defendant and any other persons.

Plaintiff\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and Defendant\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_also

expressly agree to terminate any actions that have been filed, particularly a claim by this Plaintiff against this Defendant currently filed as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Plaintiff and this Defendant agree to execute a Stipulation of Dismissal, with prejudice, and file it with the Clerk of the above Court, thereby terminating that action in its entirety, within seven days of the execution of this agreement.

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Defendant

2. Using hypothetical number 4, prepare a Covenant Not to Sue on behalf of the parties. Unless instructed otherwise, assume that the parties have agreed to settle their dispute by Mason’s payment of all past due rent to Gatsby Realty. A copy of the Covenant Not to Sue should be stored in your litigation guide.

3. One potential settlement agreement is the loan receipt, sometimes referred to as a “Mary Carter” agreement. However, states vary on the validity and enforceability of Mary Carter agreements. Research the law in you state to determine whether such an agreement is valid. Are there any special requirements for the enforceability of such an agreement?

4. Using the form on the following page, prepare a stipulation of dismissal for the parties in hypothetical number 2.

[caption]

**STIPULATION OF DISMISSAL**

Plaintiff \_\_\_\_\_\_\_\_\_\_\_\_\_\_and Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agree to

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for Plaintiff

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for Defendant

5. Rule 68 of the Federal Rules of Civil Procedure provides that a party defending a claim can serve an offer of judgment upon the opposing party. Similar rules exist in state courts; however, there are usually slight variations in the state court requirements. For example, in California a similar rule is found in Code of Civil Procedure Section 998. That rule provides that either party may make an offer of settlement, not just the party defending the claim. Determine whether your state has a rule similar to Rule 68. If so, identify on the chart on the following page the requirements for your state rule.

**STATE REQUIREMENTS**

Rule 68 Requirements State Requirements

a. Party defending claim may

send to opposing party

b. Offer must be made more than

10 days before trial

c. If plaintiff refuses offer and

receives a less favorable

judgment, plaintiff is

responsible for defendant’s

costs from date of offer

d. Offer must be reasonably

certain in amount

e. Offer must be unconditional

6. Using hypothetical number 2, draft an offer of judgment on behalf of Doris McFarland to send to Shamrock Enterprises.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Search through Title VIII of the Federal Rules of Civil Procedure. If an offeree rejects a settlement offer, but ultimately obtains a judgment less favorable than the unaccepted offer, which rule requires the offeree to pay the costs incurred after the offer was made?
2. Using an online legal database, locate the Seventh Circuit case, *Harbor Motor Co., Inc. v. Arneil Chevrolet-Geo, Inc.*, 265 F.3d 638 (7th Cir. 2001). One of the issues in this case was whether a non-prevailing party is entitled to post-offer attorney’s fees. Under the court’s holding, can a non-prevailing party be entitled to attorney’s fees pursuant to Rule 68?
3. Search through Article IV of the Federal Rules of Evidence. Which rule allows the court to admit compromises and offers of compromise for the purpose of proving a witness’s bias?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without

looking in the book. After you have completed the exercise, check your answers against the

answers in the textbook:

1. A meeting between the parties before the court after litigation commences, but before the trial begins is called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ conference.

2. Settling involves three basic steps including determining the case’s settlement \_\_\_\_\_\_\_\_\_\_\_\_\_.

3. Before a settlement can be reached you must obtain your client’s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

4. A settlement brochure sets out the background of the plaintiff along with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ showing liability and damages.

5. Settlements are generally made using either a release or a covenant not to \_\_\_\_\_\_\_\_\_\_\_\_.

6. When are two or more persons are liable to the plaintiff for the same injury they are called \_\_\_\_\_\_\_\_\_\_\_ tortfeasors.

7. A complete discharge or satisfaction of the action is called a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

8. The loan receipt is sometimes called a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ agreement.

9. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a claim allowing one party who has paid for a liability to recover completely from another party.

10. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ may exist when one party to a joint and several obligation pays more than his share of the obligation.

11. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ settlement is a settlement under which the plaintiff receives periodic payments rather than one lump sum.

12. A settlement agreement is a \_\_\_\_\_\_\_\_\_\_\_\_ and therefore can always be enforce as a separate action in court.

13. An offer of judgment can be served upon the opposing party more than \_\_\_\_\_\_ days before trial.

14. If an offer of judgment is refused, and the refusing party obtains the same or a less favorable decision after trial, the refusing party becomes responsible for the offering party’s \_\_\_\_\_\_\_\_ incurred from the time of the offer.

15. If the insurer is managing the defense and negotiation of a settlement, the insurer has a duty to deal fairly and in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**CHAPTER TWELVE**

**TRIAL PREPARATION, TRIAL,**

**AND APPEAL**

***CHAPTER OBJECTIVES***

As a paralegal, you will be involved in all aspects of trial preparation. In addition, you will assist the lawyer at trial and with any post‑trial work. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to draft a pretrial memorandum
2. How to organize litigation files for trial
3. What items must be included in a trial notebook
4. Why developing a theory of the case is important
5. How to prepare witnesses for trial
6. How to prepare exhibits for trial
7. What the paralegal’s role is during trial
8. What tasks must be performed if a party files an appeal

**KEY TERMS**

Appellant

Appellee

Case-in-chief

Closing argument

Demonstrative evidence

Divider method

Exhibit chart

For cause

Jury chart

Notice of appeal

On-call witnesses

Opening argument

Peremptory challenge

Petition for writ of certiorari

Prejudicial errors

Pretrial conference

Pretrial order

Rebuttal evidence

Record on appeal

Respondent

Standard of review

Strike system

Surrebuttal

Theory of the case

Trial box

Trial chart

Trial notebook method

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 12 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F Deviations from the pretrial order are always allowed at trial.

2. T F Any omissions or inaccuracies in the pretrial order may be corrected at trial.

3. T F A jury chart is used to record where each juror is sitting in the jury box during trial.

4. T F Voir dire examination is when specific questions are asked of the prospective jurors.

5. T F A witness who is not a party to the lawsuit must be served with a subpoena to appear at trial.

6. T F If a witness is bias, the lawyer must use a peremptory challenge to strike the prospective juror from the jury panel.

7. T F Nonparty witnesses must sit through the entire trial until they are called to testify.

8. T F In closing arguments the lawyers summarize the evidence that has been presented and explain why the judge or jury should rule in a particular way.

9. T F After the plaintiff’s case‑in‑chief, the defendant has the opportunity to present rebuttal evidence.

10. T F Once the jury renders a judgment in favor of one party, the case is automatically closed.

11. T F Jury instructions should be drafted before trial.

12. T F Witnesses should not be permitted to review their previous deposition transcripts prior to trial.

13. T F After the direct examination has been prepared, it is a good idea to review with the witness the areas that the lawyer anticipates the cross‑examination will cover.

14. T F Photographs should be enlarged in advance of trial so that the photographs are easier for the jury to see.

15. T F Prejudicial errors that may provide grounds for appeal include evidence that was improperly denied or admitted.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. Why do many cases settle during the trial preparation state of the litigation?

2. What is a pretrial conference? What is the purpose of the pretrial conference?

3. Why is the first step in trial preparation the organization of files? In what categories should the files be organized?

4. Why is voir dire examination of the prospective jurors important?

5. Identify the different methods by which trial material may be organized.

6. What does “theory of the case” mean? Why is a theory of the case important?

7. How does witness preparation for trial differ from witness preparation for discovery?

8. Why do all nonparty witnesses need to be served with a subpoena to testify at trial? Why is it good practice to serve even friendly nonparty witnesses with a subpoena? Should parties to a lawsuit be served with a subpoena to appear at trial?

9. Explain the various stages of trial and the purpose of each stage. Do the rules of your state have any different stages?

10. What is the purpose of a peremptory challenge? Why is the number of peremptory challenges each side is given limited?

11. Why is it a good idea to visit the courtroom a few days before trial?

12. Why is it necessary for you to avoid speaking with any of the jurors during a trial?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. You have been asked by the attorney to help prepare hypothetical case number 5, *King v. Woods*, for trial. Your office represents Stella King. The firm’s files contain the following documents. Determine how the documents should be organized, using the method found in Section D of Chapter 12 of the main text.

a. Police report

b. Witness statement of Beverly Peters

c. Witness statement of Roberta Geller

d. March 25 hospital admitting report

e. Complaint by King against Woods

f. Answer by Woods and counterclaim against King

g. Answer by King to counterclaim filed by Woods

h. Correspondence between counsel for King and counsel for Woods

i. Retainer agreement

j. Legal research

k. Diagram of intersection

l. Map of vicinity surrounding the intersection

m. Authorizations for releases of records signed by Ms. King

n. Medical bills, invoices, receipts

o. Interrogatory requests and responses

p. Document requests and responses

q. Requests for admissions and responses

r. Documents produced by Woods to King

s. Photographs of damage to both cars

t. Motion papers and responses

u. Deposition transcripts

v. Subpoenas

w. Attorney and paralegal notes

x. Correspondence between King and her counsel

y. Pretrial order

z. Personnel records of King

2. As indicated in Section L of the main text, the appellate process is governed by a detailed set of court rules. Careful attention must be given to all deadlines in order to avoid a forfeiture of your client's rights. In Exhibit 12.8 in the main text, a chart is provided that indicates some of the important dates to be aware of during the course of an appeal. Using your state court rules, determine if there are any other deadlines that should be included on the chart, and prepare an appellate chart to store in your litigation guide.

3. Assume in hypothetical number 2 that Doris McFarland obtained a jury verdict in her favor, and the court entered judgment on the verdict. Prepare a notice of appeal on behalf of Shamrock Enterprises. You should follow the format required by your state. A sample format is provided in the appendix. However, you will need to check this format against the requirements of your state rules. If you need to state the grounds for appeal under your state rules, you may be creative with the grounds that you choose so long as the grounds would be sufficient to allow Shamrock Enterprises to appeal.

4. As part of your trial preparation, you will need to serve all nonparties with a subpoena for trial. These witnesses often do not sit through the entire trial, but rather are "on-call." Assume in hypothetical number 3 that your firm intends to call Keith Arrington as a witness on behalf of Mr. Kester at trial. Mr. Arrington has agreed to attend the trial upon notification from you. Send a letter to Mr. Arrington asking him to acknowledge his agreement to be on-call. You may use the letter in the appendix as a sample.

5. A trial chart shows each element of the claim and the witnesses and exhibits that will prove each of the required elements. On the following page is a sample chart that the Samsons may be using in hypothetical number 1. Fill in the appropriate witnesses and exhibits.

**TRIAL CHART -- PLAINTIFF**

Elements of claim Witnesses and exhibits

(Count 1 -- Contract)

a. Contract made

b. Def. executed contract

c. Pl. performed

d. Def. breached contract

e. Pl. damages

6. After a jury renders its verdict, or the judge rules in favor of a party, a judgment must be entered. In some cases, the judge will prepare the judgment. However, in most cases the judge asks the prevailing party to prepare the judgment. The judgment should include the identity of the parties, the names of their respective counsel, and the exact relief obtained. If the judgment awards money to one of the parties, the exact amount awarded must be included in the judgment. Assume in hypothetical number 5 that Stella King obtained a judgment against Dennis Woods for $30,000. Prepare the judgment on behalf of Ms. King. You may follow the format of the judgment provided in the appendix.

7. As a paralegal, you may be called upon by the lawyer to prepare the direct examination questions for a witness. Assume that your firm represents Derrick Mason in hypothetical number 4. Prepare the direct examination questions that the lawyer should ask Mr. Mason at trial.

8. Keeping track of exhibits is an important part of the trial process. Assume that the lawyer for Sidney Kester in hypothetical number 3 uses the following exhibits at trial, and the rulings made are indicated in parentheses. Prepare an exhibit chart using Exhibit 12.4 in the main text as a model. If needed, your instructor has a sample chart available in the Instructor’s Manual that accompanies your text. The column marked EV (for evidence) will only be checked if the item of evidence is admitted.

a. Hospital admitting report for Sidney Kester (admitted)

b. Treating physician reports (a‑e) (admitted)

c. Pay check stub (refused)

d. Internal memo from Monroe employee to supervisor (admitted)

e. Defendant’s response to requests for admissions (admitted)

f. Witness statement of bystander Charles Winter (withdrawn)

g. Photograph of injury (refused)

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Search through the Federal Rules of Civil Procedure. Which rule deals with the matters for consideration at a pretrial conference?
2. Search through Title VI of the Federal Rules of Civil Procedure. Which rule permits a court to excuse a juror for good cause, during either trial or deliberation?
3. Using the Federal Rules of Civil Procedure, find the Title and Section of the U.S. Code governing the number of peremptory strikes to which each party is entitled. How many peremptory strikes is each party entitled to in civil cases? Which rule did you use to find your answer?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without

looking in the book. After you have completed the exercise, check your answers against the

answers in the textbook:

1. A pretrial conference is a meeting held before trial between the attorneys and the \_\_\_\_\_\_\_\_\_.

2. Even if not required it is good practice to file a pretrial \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3. An order that acts as a guide for the trial is called a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

4. One of the first steps to take in preparing for trial is to ensure that the \_\_\_\_\_\_\_\_\_\_\_\_ are in order.

5. In organizing files for trial, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ method each part of the trial receives a separate labeled file.

6. Under the trial notebook method the \_\_\_\_\_\_ section could contain all the reports, witness statements, diagrams and charts.

7. A diagram to be using during voir dire examination of the jury is called the \_\_\_\_\_\_\_\_\_\_\_\_\_.

8. Under the \_\_\_\_\_\_\_\_\_\_\_\_\_ system for jurors, each prospective juror will be questioned before any challenges are made.

9. Under the traditional system for questioning jurors, the potential jurors will be called into the jury \_\_\_\_\_ and only those in the \_\_\_\_\_\_\_\_ will be questioned.

10. A \_\_\_\_\_\_\_\_\_\_\_\_ list shows each witness’ name, address and telephone number, and short synopsis of the witness’ testimony.

11. An \_\_\_\_\_\_\_\_\_\_ chart is used for each party as well as all other parties showing the exhibit number, exhibit description, and boxes to check if the exhibit was offered.

12. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_ chart shows each element of each claim or defense and the witnesses and exhibits that will prove each required element.

13. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_ of a \_\_\_\_\_\_\_\_\_\_\_\_\_ is the lawyer’s positon on, and approach to, all the undisputed and disputed evidence that will be presented at trial.

14. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ evidence is evidence refuting the evidence presented by the defendant as part of the defendant’s case-in-chief.

15. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ evidence is sometimes referred to as graphic evidence.

**CHAPTER THIRTEEN**

**ENFORCEMENT OF JUDGMENTS**

***CHAPTER OBJECTIVES***

Once a judgment has been obtained, it may be necessary to take steps to enforce the judgment against the debtor. These steps will help to ensure that the client's rights are protected and maximize the possibility of obtaining quick and full recovery on the judgment. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. How to draft a demand letter
2. Why you should record an abstract of judgment
3. When a writ of execution is required
4. What the differences are between a till tap, a keeper, and a bank levy
5. How to locate assets of the debtor

**KEY TERMS**

Abstract of judgment

Bank levy

Demand letter

Judgment debtor

Keeper

Levy

Lien

Till tap

Wage garnishment

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 13 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F An abstract of judgment places a lien on all real property owned by the debtor.

2. T F The procedures for enforcing a judgment are governed by state law.

3. T F An abstract of judgment is not effective if the property has been sold after the abstract has been recorded.

4. T F A writ of execution is a motion made by the judgment creditor to levy upon assets of the debtor.

5. T F Upon issuance of a writ of execution, the judgment creditor can transfer the writ to the sheriff, marshal, or other agency, with instructions to levy upon certain assets of the judgment debtor.

6. T F If you would like the law enforcement agent to go into a business and collect any cash or checks that are in the register or that come into the business while the law enforcement agent is present, you should instruct the agent to install a keeper.

7. T F Wage garnishment is a direction to the employer of the judgment debtor to withhold a certain amount of money from each paycheck of the debtor for a limited period of time.

8. T F Discovery cannot be taken from a debtor after a judgment is entered.

9. T F Upon notice of a bank levy, the bank will turn over all funds in the debtor's account up to ten days after the notice is received by the bank.

10. T F A writ of execution is required in order to obtain information about the assets of a debtor.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. Why is it a good idea to send the debtor a demand letter for payment? What do you hope to accomplish by sending such a letter?

2. What are the drawbacks to using an abstract of judgment to enforce a judgment? Even with these drawbacks, why is it still a good idea to record an abstract of judgment?

3. Pursuant to Rule 69 of the Federal Rules of Civil Procedure, the procedures for enforcement of a judgment are to be in accordance with the law of the state in which the district court sits. Why are the procedures for enforcing a judgment governed by state law?

4. What are the three types of levies discussed in the main text? Explain how they differ.

5. What are the advantages and disadvantages of a till tap? When would a till tap not be an effective procedure to use to enforce a judgment?

6. If property of a debtor is seized to satisfy a judgment and the property is sold at an execution sale, why are any excess funds obtained as a result of the sale returned to the judgment debtor? If the property that is seized is worth more than the amount of the debt, wouldn't it encourage debtors to pay their debts before seizure if they knew that the excess funds would go to the judgment creditor instead?

7. If the judgment debtor is an individual who does not own his or her own business, what methods can be used to enforce the judgment?

8. What are the disadvantages of taking the oral examination of the judgment debtor? What can you do to help eliminate some of the disadvantages?

9. Why is it a good idea to first check with the client in attempting to locate assets of the debtor? What information might the client have that would assist in locating assets?

10. Why do you need to know the location of assets of the debtor in order to enforce the judgment?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned in the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. One of the first steps that should be taken with respect to the enforcement of a judgment is to send a demand letter to the debtor. Assume that in hypothetical number 1 the Samsons obtained a judgment against Emerald’s Catering for $18,000. Send a demand letter for payment on behalf of the Samsons to Emerald’s Catering.

2. Assume that Stella King in hypothetical number 5 has obtained a judgment against Dennis Woods for $35,000. Prepare an abstract of judgment to record against Mr. Woods. If possible, you should use the form of an abstract of judgment required in your state. If you do not have access to the form, or if directed by your instructor, use the form of Abstract of Judgment contained in the appendix. A copy of the completed abstract of judgment should be stored in your litigation guide.

3. As indicated in Section D of the main text, a writ of execution is the process used to enforce a judgment for the payment of money. Using hypothetical number 2, prepare a writ of execution on behalf of Shamrock Enterprises against Doris McFarland for the amount of $150,000. Unless directed otherwise, use the form that follows for filling out the writ of execution. You will need to research the rules of your state to determine the amount of interest that is permitted on judgments and the fee for issuance of a writ of execution.

**WRIT OF EXECUTION (Money Judgment)**

Superior Court of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SHAMROCK ENTERPRISES

Plaintiff Case No.C051-3263

v.

DORIS MCFARLAND

Defendant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TO THE SHERIFF OR ANY MARSHAL OR CONSTABLE OF THE COUNTY OF

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

You are directed to enforce the judgment entered in favor of \_\_\_\_\_\_\_\_\_\_\_\_\_ against \_\_\_\_\_\_\_\_\_ and to levy on the property of \_\_\_\_\_\_\_\_\_\_\_ in the principal amount of $\_\_\_\_\_\_\_ with interest at \_\_\_\_% a year from \_\_\_\_\_\_\_\_\_\_\_, 20\_\_, the date judgment was entered, until such judgment is paid in full, plus $\_\_\_\_\_\_ as the fee for issuance of the writ.

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_

Jeremy Lawrence

Clerk of the Court

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Clerk

4. Assume that you are asked to enforce the judgment by Shamrock Enterprises against Doric McFarland. Identify, in order of preference, all steps that you would take. Be prepared to discuss in class the basis for your preference of the steps listed.

5. The law enforcement agency must be given directions in order for them to enforce a judgment. Most law enforcement agencies have preprinted forms on which the instructions may be written. Alternatively, a letter specifically detailing the instructions may be sent to the law enforcement agency. Your instructor has a preprinted form available in the Instructor’s Manual to accompany your text, if needed. Insert the instructions you believe are appropriate for enforcing a judgment by the Samsons in hypothetical number 1 against Emerald’s Catering.

6. Since the laws for enforcement of judgments vary from state to state, it is important for you to know the methods that are available for enforcement in your particular state. The available procedures are usually found in your state's code of civil procedure. Research which methods for enforcing a judgment are available in your state, and record the code or rule that permits this method on the chart on the following page. If there are methods available in addition to the ones listed, include those methods at the end of the chart.

**RULES FOR ENFORCMENT**

Method Rule

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Abstract of Judgment

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Till Tap

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Keeper

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bank Levy

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Wage Garnishment

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

7. Prepare a list of the steps that you can take to locate assets of the debtor. Store this list in your litigation guide for future reference.

8. One of the tasks you may be asked to perform in enforcing a judgment is to prepare written interrogatories to the judgment debtor in an attempt to locate assets of the debtor. Assume that Stella King in hypothetical number 5 has obtained a judgment against Dennis Woods for $35,000. Prepare a set of written questions that can be sent to Mr. Woods. Be sure to include questions that deal with each of the following topics: Identity of the Debtor, Employment, Cash, Bank Accounts, Other Assets, Insurance, Personal and Real Properties, Loans and Other Obligations, Accounts Receivable.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Search through Title VIII of the Federal Rules of Civil Procedure. Which rule permits a court to hold a party in contempt for failure to perform a specific act required by a judgment?
2. Under the Federal Rules of Civil Procedure, which rule governs the procedure for enforcing an order that grants relief for or against a person that was not a party to the lawsuit?
3. Using an online database, find Title 15 of the United States Code Annotated. Which section governs the maximum allowable wage garnishment of a judgment debtor’s weekly earnings?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without

looking in the book. After you have completed the exercise, check your answers against the

answers in the textbook:

1. The easiest and quickest way to obtain payment on a judgment is to send a \_\_\_\_\_\_\_\_\_\_\_\_\_ letter.

2. That party that owes money is called the \_\_\_\_\_\_\_\_\_\_\_ debtor.

3. An abstract of judgment places a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on all real property owned by the debtor.

4. The procedures for \_\_\_\_\_\_\_\_\_\_\_\_\_ of a judgment are to be in accordance with the law of the state in which the district court sits.

5. The process to enforce a judgment for the payment of money shall be a \_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_.

6. The procedure by which assets of the debtor are seized for satisfaction of a judgment is called a \_\_\_\_\_\_\_\_\_\_\_\_.

7. Collection of cash and checks on hand at a business in order to satisfy a judgment is called a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

8. A law enforcement agent who stays on the premises of a business and collects cash or checks sufficient to satisfy a judgment is called \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

10. A seizure of funds held in a debtor’s bank account is called a \_\_\_\_\_\_\_\_\_\_\_\_\_.

11. A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a direction to the employer of the judgment debtor to withhold a certain amount of money from each paycheck.

12. The person collecting on the judgment is called the judgment \_\_\_\_\_\_\_\_\_\_\_\_.

13. The first step to locating asserts is to see what information the \_\_\_\_\_\_\_\_\_\_\_\_\_ has that can help you in locating the assets.

14. It is permissible to take a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_’s examination in order to obtain information about the location of assets.

15. It may be necessary to hire a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in order to locate assets of the debtor.

**CHAPTER FOURTEEN**

**ALTERNATIVE DISPUTE RESOLUTION**

***CHAPTER OBJECTIVES***

Although your litigation training focuses primarily on resolution of civil disputes through the court system, there are several alternatives to litigation. In Chapter 14 you learned about these alternatives. Before beginning the exercises, review the specific objectives for this chapter of the text.

1. What are the differences between arbitration and mediation
2. How to submit a claim to private arbitration
3. Why parties may wish to arbitrate a claim
4. When parties must arbitrate their disputes

**KEY TERMS**

American Arbitration Association

Arbitration

Arbitration award

Case administrator

Claimant

Demand for arbitration

Judicial arbitration

Mediation

Mediator

Respondent

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 14 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F Nonjudicial arbitration is usually paid for by the parties.

2. T F Arbitration through the court system is referred to as non-judicial arbitration.

3. T F The American Arbitration Association ("AAA") is a private agency that administers arbitrations between parties.

4. T F Mediation is the informal resolution of a dispute between the parties.

5. T F In mediation, the parties choose a person who will give legal advice and render a decision in favor or one party.

6. T F The parties may never mediate their dispute prior to an arbitration hearing.

7. T F In order to have an arbitration administered through the AAA, the parties must have an arbitration provision in the contract that is in dispute.

8. T F Arbitration with the AAA is commenced by the filing of a demand for arbitration.

9. T F Arbitration decisions rendered through the AAA are binding.

10. T F After the arbitration hearings are closed, the arbitrator has 30 days in which to render an award.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. What are some of the advantages of arbitration?

2. What are some of the disadvantages of arbitration?

3. Are there some cases which may not be as good to arbitrate and should proceed through the court system instead? What type of cases are better suited for court litigation than arbitration?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned from the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. Assume in hypothetical number 1 that the contract provided that all disputes were to be submitted to binding arbitration administered by the American Arbitration Association. Prepare the Demand for Arbitration. You may use the sample in the appendix and in the textbook as a guide.

2. In some states, judicial arbitration is mandatory for certain types of cases when the dollar amount in controversy is below a specified amount. Does your state have any rules for judicial arbitration? What are the rules in your state? Identify both the types of cases that are subject to arbitration as well as the jurisdictional limit of the amount in controversy.

***LEGAL DATABASE RESEARCH QUESTIONS***

1. Using an online research database, find the United States Code Annotated. Which Title deals with arbitration? Within that Title, which section governs the enforcement of agreements to arbitrate?
2. Using an online research database, find the case, *American Bankers Ins. Group, Inc. v. Long*, 453 F.3d 623 (4th Cir. 2006). In this case, the court examined the issue of whether a nonsignatory to a contract containing an arbitration clause could enforce the arbitration clause against signatories to the contract. What did the court hold?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without

looking in the book. After you have completed the exercise, check your answers against the

answers in the textbook:

1. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a formal conference between the parties and a neutral person with the intent to arrive at a settlement.

2. The neutral party who attempts to arrive at a settlement between the parties is called the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3. Arbitration through the court system is called \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ arbitration.

4. \_\_\_\_\_\_\_\_\_\_\_\_ arbitration is sometimes referred to as private arbitration.

5. The most frequently used private agency is the \_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

6. Mediation does not involve witnesses since there is no \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

7. An \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ will hear both sides of the dispute and render a ruling.

8. The ruling is similar to a judgment and called an \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

9. When drafting a contract it is possible to including an \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ provision that will require the dispute to be submitted to arbitration.

10. Arbitration under the rules of the AAA are commenced by filing a \_\_\_\_\_\_\_\_\_\_\_\_ for arbitration.

11. The staff member at the AAA that sends out a list of potential arbitrators is called the

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

12. The parties have a right to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ any names of the arbitrators.

13. Arbitration proceeds similar to a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

14. Private arbitration rulings are \_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the parties.

15. Arbitrations are much less formal than a \_\_\_\_\_\_\_\_\_\_\_\_\_.

**CHAPTER FIFTEEN**

**SOCIAL MEDIA IN LITIGATION**

***CHAPTER OBJECTIVES***

With the change in technology, so has come the change in the way we litigate cases. In Chapter 15 you learned different ways social media sites can be used in the courtroom, as well as the litigation pitfalls to be aware of when accessing these sites. Before beginning the exercises, review the specific objectives for this chapter of the text.

* How to use social media for discovery
* How to use social media sites for evidence in court
* How trials may be affected by social media sites
* What problems to be aware of when accessing social media sites
* What are the ethical obligations in using social media sites in litigation

**KEY TERMS**

Facebook

LinkedIn

Social Media

Stored Communications Act

Twitter

***TESTING YOUR COMPREHENSION***

Test your comprehension of Chapter 15 by answering each of the following questions. Circle true or false for each answer. Although the answers may be found in the main text, try to answer each question before referring to the text.

1. T F Social media is the use of technology such as the Internet or your telephone to communicate in a socially interactive manner.

2. T F Social media sites are most useful and only important in family law and personal injury cases.

3. T F It is very difficult to find information on the Internet that goes back several years because of the lack of permanency of Internet records.

4. T F Checking one social media site is usually sufficient to find what you need to know about a business or individual.

5. T F Information on social media sites may be an appropriate discovery request.

6. T F Information obtained from social media sites cannot be used as evidence in court.

7. T F Information contained in social media sites is governed by the Stored Communications Act.

8. T F Social media sites cannot be subject to subpoena powers.

9. T F When researching information on an adverse party one good tactic is to use a false name to “friend” the adverse party.

10. T F Client confidences should still be guarded when using social media sites.

***APPLYING YOUR KNOWLEDGE***

Answer the following questions by applying the information you have learned from the main text.

1. What are some of the ways social media sites can be used to gather evidence?

2. What ethical considerations might apply when using social media sites?

3. How might you use social media sites to do research on potential jurors?

***PROJECTS FOR RESEARCH AND WRITING***

Each of the following projects requires you to prepare documents from the information you have learned from the main text. In some instances, you will also need to conduct some basic legal research. Once you have finished each of the projects, store the projects in your litigation guide for future reference.

1. Choose a local organization or business in your jurisdiction. See what information you can find on different social media sites about the business. Does the information lead you to possible information about members of the organization or officers in the business? Are you surprised by the results?

2. Does your state court have any specific rules or policies governing the use of social media sites? Does your state court have a statute similar to the Stored Communications Act? If so, what is required?

3. Make a list of the various social media sites that you will want to check in conducting discovery. Store the list in your litigation guide.

***LEGAL DATABASE RESEARCH QUESTIONS***

1.Using an online research database, locate the case, *United States v. Browne*, 834 F.3d 403 (3d Cir. 2016). At issue in this case was whether records of “chats” exchanged over Facebook was admissible evidence. What did the court hold?

2. Using an online research database, locate the case, *United States v. Hassan*, 742 F.3d 104 (4th Cir. 2014). One of the issues in this case was whether certain screenshots of, and postings on, defendants’ social media profiles were admissible evidence? What did the court hold?

***HOW WELL DO YOU KNOW THE CONCEPTS IN THIS CHAPTER?***

Answer the following questions by filling in the blanks. Try to answer the questions without

looking in the book. After you have completed the exercise, check your answers against the

answers in the textbook:

1. Social media sites are important in all types of \_\_\_\_\_\_\_\_\_\_litigation matters.

2. As part of discovery it is a good idea to check information that is avaialbe on the internet for your client and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ parties.

3. Check \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for information that could show pictures of individuals that would discredit their position.

4. Do not become “friends’ with an adverse party or a witness in pending litigation in order to avoid \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ concerns.

5. Looking for information regarding someone’s employment qualifications, businesses, and recommendations may be found on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

6. Information found on social media sites should be printed and stamped with the \_\_\_\_\_\_\_\_\_\_\_ the materials were accessed.

7. Checking your client’s information on social media sites is important to insure that there is no \_\_\_\_\_\_\_\_\_\_\_\_ information available on the site that would also be available to the opposing party.

8. Social media information may be the subject of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ requests to an adverse party.

9. Information contained in social media postings is government by the Stored \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Act.

10. One potential way to obtain information from the social media site is to send a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ for any public information.

11. Information not available to the public may not be produced by the social media site, in which case it may be necessary to obtain an order from the \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

12. Once the information from the social media site is obtained it can be used as \_\_\_\_\_\_\_\_\_\_\_\_\_ in court.

13. To overcome objections to the use of social media evidence in court, the first stay is to lay a proper \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

14. If the statements made on the social media sites is made by an adverse party, it is not hearsay as it is considered an admission of a \_\_\_\_\_\_\_\_\_\_\_\_\_ opponent.

15. Social media evidence may be used to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a witness.

**APPENDIX I**

Appendix I contains the answers to the True-False questions in your Workbook as well as the answers to the Legal Database Research Questions at the end of each chapter in the Workbook. You should refrain from looking at the answers prior to answering the questions. If you do not go over the answers in class, explanations for all the True-False answers can be found in your textbook.

|  |  |  |  |
| --- | --- | --- | --- |
| **Chapter 1** | **Chapter 2** | **Chapter 3** | **Chapter 4** |
| 1. True | 1. False | 1. True | 1. True |
| 2. True | 2. True | 2. True | 2. False |
| 3. False | 3. True | 3. False | 3. False |
| 4. True | 4. False | 4. False | 4. True |
| 5. False | 5. True | 5. False | 5. False |
| 6. True | 6. True | 6. True | 6. True |
| 7. False | 7. False | 7. False | 7. True |
| 8. True | 8. True | 8. True | 8. True |
| 9. True | 9. True | 9. True | 9. True |
| 10.True | 10. False | 10. False | 10. True |
| 11. False | 11. True | 11. False | 11. False |
| 12. True | 12. True | 12. False | 12. True |
| 13. False | 13. False |  | 13. False |
| 14. True | 14. False |  | 14. True |
| 15. False | 15. True |  | 15. False |
| 16. True |  |  | 16. True |
| 17. False |  |  | 17. True |
| 18. True |  |  | 18. False |
| 19. True |  |  | 19. True |
| 20. True |  |  | 20. False |
|  |  |  | 21. False |
|  |  |  | 22. True |
|  |  |  | 23. False |
|  |  |  | 24. True |
|  |  |  | 25. True |

|  |  |  |  |
| --- | --- | --- | --- |
| **Chapter 5** | **Chapter 6** | **Chapter 7** | **Chapter 8** |
| 1. True | 1. False | 1. False | 1. True |
| 2. False | 2. True | 2. True | 2. True |
| 3. False | 3. True | 3. True | 3. False |
| 4. False | 4. True | 4. True | 4. True |
| 5. True | 5. True | 5. False | 5. True |
| 6. False | 6. False | 6. True | 6. True |
| 7. True | 7. True | 7. True | 7. True |
| 8. True | 8. True | 8. True | 8. False |
| 9. True | 9. True | 9. True | 9. False |
| 10. True | 10. False | 10. True | 10. True |
| 11. False | 11. False | 11. False | 11. False |
| 12. False | 12. False | 12. True | 12. True |
| 13. False | 13. True |  | 13. True |
| 14. True | 14. True |  | 14. True |
| 15. True | 15. False |  | 15. False |
| 16. True |  |  | 16. True |
| 17. False |  |  | 17. False |
| 18. False |  |  | 18. True |
| 19. True |  |  |  |
| 20. False |  |  |  |
| 21. True |  |  |  |
| 22. True |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Chapter 9** | **Chapter 10** | **Chapter 11** | **Chapter 12** |
| 1. True | 1. False | 1. False | 1. False |
| 2. False | 2. True | 2. True | 2. False |
| 3. False | 3. True | 3. True | 3. True |
| 4. True | 4. True | 4. True | 4. True |
| 5. False | 5. False | 5. False | 5. True |
| 6. True | 6. False | 6. True | 6. False |
| 7. False | 7. True | 7. True | 7. False |
| 8. True | 8. True | 8. False | 8. True |
| 9. False | 9. True | 9. True | 9. False |
| 10. True | 10. True | 10. False | 10. False |
| 11. False | 11. True | 11. True | 11. True |
| 12. False | 12. False | 12. False | 12. False |
| 13. False | 13. True | 13. False | 13. True |
| 14. True | 14. True | 14. False | 14. True |
| 15. False | 15. False | 15. True | 15. True |
| 16. True | 16. False | 16. True |  |
| 17. True | 17. True | 17. True |  |
| 18. True | 18. False |  |  |
| 19. False | 19. True |  |  |
| 20. False | 20. False |  |  |
| 21. False | 21. False |  |  |
| 22. True | 22. True |  |  |
|  | 23. False |  |  |
|  | 24. True |  |  |
|  | 25. False |  |  |
|  | 26. True |  |  |
|  | 27. True |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Chapter 13** | **Chapter 14** | **Chapter 15** |  |
| 1. True | 1. True | 1. True |  |
| 2. True | 2. False | 2. False |  |
| 3. False | 3. True | 3. False |  |
| 4. False | 4. True | 4. False |  |
| 5. True | 5. False | 5. True |  |
| 6. False | 6. False | 6. False |  |
| 7. True | 7. False | 7. True |  |
| 8. False | 8. True | 8. False |  |
| 9. False | 9. True | 9. False |  |
| 10. False | 10. True | 10. True |  |

**ANSWERS TO LEGAL DATABASE RESEARCH QUESTIONS**

**Chapter 1**

1. The purpose of the rules is “to secure the just, speedy, and inexpensive determination of every action and proceeding.” The rules apply in all civil actions and proceedings in the United States district courts, except as stated in Rule 81.

2. Canon 2: A paralegal may perform any task which is properly delegated and supervised by an attorney, as long as the attorney is ultimately responsible to the client, maintains a direct relationship with the client, and assumes professional responsibility for the work product.

3. The Court held that “a non-lawyer employee conducting unsupervised legal presentations for the public and answering legal questions for the public or for clients of the attorney/employer engages in the unauthorized practice of law.” See State v. Despain, 319 S.C. 317, 460 S.E.2d 576 (1995).

**Chapter 2**

1. Subsection (a) identifies a responsible party for each pleading, written motion, and other paper submitted to the court. The purpose is to ensure that every paper filed before the court is going to be pinned on a particular person who has authority to make a statement. Subsection (b) deals with representations to the court. The purpose of this subsection is to prevent the filing of frivolous motions and other pleadings, the content of which the party knows to be false. Subsection (c), dealing with sanctions, is designed to lessen the burden on the courts by only permitting meritorious cases.
2. Under California civil code, the four essential elements of a contract are: (1) a capability of contracting, (2) consent, (3) a lawful object, and (4) consideration. West’s Ann. Cal. Civ. Code § 1550.
3. Under Federal Rule of Civil Procedure 54(d), a party is generally entitled to costs—other than attorney fees—if the party prevails in the lawsuit.

**Chapter 3**

1. The attorney and the client in *Venegas v. Mitchell*, 495 U.S. 82 (1990) entered into a contingent-fee agreement. The agreement provided that the attorney “would receive a percentage of any gross recovery, which would be offset by any court-awarded attorney’s fees . . . .” *Id.*
2. Model Rules of Prof’l Conduct R. 1.7.
3. Under Rule 17(c) of the Federal Rules of Civil Procedure, the following representatives may sue or defend on behalf of a minor or an incompetent person: (A) a general guardian; (B) a committee; (C) a conservator; or (D) a like fiduciary.

**Chapter 4**

1. 28 U.S.C. § 1330.

1. 28 U.S.C. § 1332(a)(1).
2. Yes. The Supreme Court held that the Florida district court could assert personal jurisdiction over Defendant Rudzewicz. *Burger King. Corp. v. Rudewicz*, 471 U.S. 462, 478 (1985)

**Chapter 5**

1. Fed. R. Civ. P. 7(b)(1)(A).
2. Fed. R. Civ. P. 8(b)(1).
3. The signer’s address, e-mail address, and telephone number. Fed. R. Civ. P. 11(a).
4. Fed. R. Civ. P. 12(b)(6).

**Chapter 6**

1. Fed. R. Civ. P. 5(b)(2)(C).
2. Fed. R. Civ. P. 5(c).
3. Fed. R. Civ. P. 6(b)(1)(B).
4. Fed. R. Civ. P. 25(a).

**Chapter 7**

1. A party my move for judgment on the pleadings after the pleadings are closed, but early enough not to delay trial. Fed. R. Civ. P. 12(c).
2. Fed. R. Civ. P. 56(a).
3. Fed. R. Civ. P. 55(a) (entering a default by the clerk); Fed. R. Civ. P. 55(b)(2) (entering a default judgment by the court); Fed. R. Civ. P. 60(b) (setting aside a final default judgment).

**Chapter 8**

1. Fed. R. Civ. P. 65(b)(1).
2. Fed. R. Civ. P. 65(b)(4).
3. No, the Court reversed the trial court’s grant of the plaintiffs’ motion for a preliminary injunction. The Court reasoned that a “plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council*, Inc., 555 U.S. 7, 20 (2008). The plaintiffs’ motion did not meet these requirements. *Id.*

**Chapter 9**

1. Fed. R. Evid. 401.
2. Fed. R. Evid. 404(a)(1).
3. Fed. R. Evid. 801(c).
4. Fed. R. Evid. 804(b). For one of these hearsay exceptions to apply, the declarant must be unavailable. *Id.*

**Chapter 10**

1. Fed. R. Civ. P. 33(b)(3).
2. Fed R. Civ. P. 30(a)(1) (without leave); Fed. R. Civ. P. 30(a)(2) (with leave).
3. Fed. R. Civ. P. 30.
4. Fed. R. Civ. P. 26(b)(3)(A).

**Chapter 11**

1. Fed. R. Civ. P. 68(d).
2. No. The court held that a non-prevailing party is not entitled to post-offer attorney’s fees under Rule 68. *Harbor Motor Co., Inc. v. Arneil Chevrolet-Geo, Inc.*, 265 F.3d 638, 647 (7th Cir. 2001).
3. Fed. R. Evid. 408(b).

**Chapter 12**

1. Fed. R. Civ. P. 16(c)(2).
2. Fed. R. Civ. P. 47(c).
3. In civil cases, each party is entitled to three peremptory challenges. 28 U.S.C. § 1870. The federal rule that references 28 U.S.C. § 1870 is Fed. R Civ. P. 47(b).

**Chapter 13**

1. Fed. R. Civ. P. 70(e).
2. Fed. R. Civ. P. 71.
3. 15 U.S.C.A. § 1673.

**Chapter 14**

1. Title 9 of the United States Code Annotated deals with arbitration. 9 U.S.C.A. § 2 governs the enforcement of agreements to arbitrate.
2. The court held that the signatories (Richard and Lillie Long) were equitably estopped from denying that they were bound by the arbitration clause; the nonsignatory (American Bankers Insurance Group) could therefore enforce the clause against the signatories. *American Bankers Ins. Group, Inc. v. Long*, 453 F.3d 623, 630 (4th Cir. 2006).

**Chapter 15**

1. The court held that the records of “chats” over Facebook was inadmissible hearsay under Fed. R. Evid. 802. *United States v. Browne*, 834 F.3d 403, 416 (3d Cir. 2016).
2. The court held that both the screenshots of the defendants’ social media profiles and the postings were admissible. *United States v. Hassan*, 742 F.3d 104, 134 (4th Cir. 2014).

**APPENDIX II**

Appendix II contains sample forms and letters to assist you with the Projects for Legal Research and Writing in the workbook. The documents are in the order you will use them in the workbook. The following documents are included:

Demand Letter

Letter for School Records

Authorization for Release of School Records

Summons

Letter Re: Deposition Dates

Notice of Deposition

Letter Re: Rescheduled Deposition Date

Application for Temporary Restraining Order and Preliminary Injunction

Order for Temporary Restraining Order

On Call Letter to Trial Witness

Judgment

Notice of Appeal

Writ of Execution

**Preprinted forms available from your instructor, in the Instructor’s Manual to accompany your text:**

Civil Cover Sheet

Summons in a Civil Action

Summons on Third-Party Complaint

Subpoena to Testify at a Deposition in a Civil Action

Subpoena to Produce Documents, Information, or Objects or Permit Inspection of the Premises in a Civil Action

Judgment in a Civil Action

**DEMAND LETTER**

Ms. Betsy Severing

President

Emerald’s Catering, Inc.

17051 Vinson Blvd.

Los Angeles, California

Re: Sara and Benjamin Samson

Dear Ms. Severing:

This office represents Sara and Benjamin Samson. We are advised that on or about May 15, 2023, you entered into a written contract with the Samsons, whereby you agreed to cater the food for a fundraising event to be held on June 15, 2023 and to provide party favors, and a musical band to entertain the guests. One half of the total payment of $50,000 was made at the time the contract was signed. As you are aware, Emerald’s Catering was supposed to arrive at the Fairview County Club at 5:30 p.m. No one from your company arrived until 7:30 p.m., after the time the guests had already gone home.

As a result of such conduct, the Samsons have sustained damages in the amount of at least $25,000 paid to Emerald’s Catering, $500 paid for the engraved invitations, as well as the extreme embarrassment that this entire matter has caused them. The Samsons are willing to accept, at this time, $25,000 as a complete and final settlement of all claims that the Samsons have against Emerald’s Catering.

This letter and the offer contained herein are not to be used as evidence of any kind. The offer settle at this time is made in the spirit of compromise only. It is not an indication of the damages suffered by my client, and all such damages are hereby reserved. In the event litigation becomes necessary, the full extent of all damages suffered by my client will be sought.

Sincerely,

Chris Harris

**LETTER FOR SCHOOL RECORDS**

Records Administrator

University of Southern California

University Park

Los Angeles, California 90007

Re: Stella King

Dear Sir/Madam:

Our office represents Stella King for personal injuries sustained in an automobile accident on March 25, 2023. We understand that Ms. King attended the University from September 2008 through June 2012. She obtained a bachelor's degree in art sciences and graduated with honors. Verification of this information may be useful to us in our preparation for trial. Accordingly, please provide us with a copy of Ms. King's transcripts indicating the course work taken, grades received, and degree awarded. Enclosed is Ms. King's signed authorization to release the records to us.

Sincerely,

Victoria Kelley

**AUTHORIZATION FOR RELEASE OF SCHOOL RECORDS**

TO: The Records Administrator

You are hereby authorized to release a copy of my transcripts for all course work completed between the years 2008 through 2012 to Victoria Kelley or her representative. The authorization is effective immediately and remains in effect until such time as you receive written notice of my revocation of the authorization.

Stella King

[Notary Acknowledgment]

**LETTER RE: DEPOSITION DATES**

Robert Lubow, Esq.

Schwimmer, Freeman & Chan

1800 N. Central Place

Los Angeles, California 90024

Re: Shamrock Enterprises v. McFarland

Dear Mr. Lubow:

Mr. Bender would like to schedule the deposition of your client, Doris McFarland. Mr. Bender is available on October 14, 17 and 28. Please let me know prior to September 7 which dates are convenient for you and your client. If we fail to hear from you, Mr. Bender will simply notice the deposition for one of the above dates.

Very truly yours,

Janice Baldwin

Legal Assistant to James Bender

James Bender, Esq.

Sullivan & Bergman

101 N. Langley Blvd. Penthouse

Encino, California 91821

Attorneys for Plaintiff

United States District Court

Central District of California

SHAMROCK ENTERPRISES

Plaintiff Case No. C05‑3263

v. **NOTICE OF DEPOSITION**

DORIS MCFARLAND

Defendant

PLEASE TAKE NOTICE that, pursuant to Rule 26 of the Federal Rules of Civil Procedure, plaintiff will take the deposition of Doris McFarland on October 14, 2023 in the law offices of Sullivan & Bergman, located at 101 N. Langley Blvd. Penthouse, Encino, California. The deposition will take place before a notary public authorized by law to administer oaths and take depositions.

Dated: August 29, 2023 Sullivan & Bergman

by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

James Bender

**LETTER RE: RESCHEDULED DEPOSITION DATE**

Robert Lubow, Esq.

Schwimmer, Freeman & Chan

1800 N. Central Place

Los Angeles, California

Re: Shamrock Enterprises v. McFarland

Dear Mr. Lubow:

This confirms our telephone conversation on October 4, 2023 wherein you advised me that Ms. McFarland is unavailable for her deposition presently scheduled for October 14, 2023. We have agreed that the deposition will take place on October 28, 2023 at our offices. You have agreed that Ms. McFarland will appear at that time for her deposition, and that it is not necessary for us to serve her with a new notice of deposition.

Very truly,

Janice Baldwin

Legal Assistant to James Bender

James Bender, Esq.

Sullivan & Bergman

101 N. Langley Blvd. Penthouse

Encino, California 91821

Attorneys for Plaintiff

United States District Court

Central District of California

SHAMROCK ENTERPRISES

Plaintiff Case No. C05‑3263

v. **APPLICATION FOR TEMPORARY**

**RESTRAINING ORDER AND**

DORIS MCFARLAND **PRELIMINARY INJUNCTION**

Defendant

Plaintiff Shamrock Enterprises applies for a temporary restraining order and requests that a hearing for a preliminary injunction be set. In support of its application, plaintiff states:

1. Plaintiff will suffer an immediate and irreparable injury unless this application for a temporary restraining order is granted.

2. In support of its application for a preliminary injunction and a hearing date, plaintiff states:

(a) Defendant is engaged in the business of home laundry delivery service. Plaintiff is engaged in a competing business.

(b) Plaintiff believes that defendant has used the customer list of plaintiff to gain an unfair advantage for defendant.

(c) Unless further restrained from contacting any of the plaintiff's customers, plaintiff will incur irreparable injury.

(d) A preliminary injunction will not injure or inconvenience the defendant.

4. In support of this application, plaintiff incorporates by reference the allegations of the verified complaint and the facts as set forth in the witness affidavits attached as Exhibits A through C.

5. Plaintiff's attorney certificate, showing that the defendant was given notice of the date and time of this application, is attached hereto as Exhibit D.

6. Plaintiff is ready to provide security in such amount as the court determines is necessary to cover the costs and expenses incurred by the defendant in the event the defendant is found to have been erroneously restrained and enjoined.

WHEREFORE, plaintiff requests that the court enter a temporary restraining order against defendant and set a hearing for a temporary restraining order at the earliest practical time.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for Plaintiff

James Bender, Esq.

Sullivan & Bergman

101 N. Langley Blvd. Penthouse

Encino, California 91821

Attorneys for Plaintiff

United States District Court

Central District of California

SHAMROCK ENTERPRISES

Plaintiff Case No. C05‑3263

v. **ORDER FOR TEMPORARY**

**RESTRAINING ORDER AND**

DORIS MCFARLAND **PRELIMINARY INJUNCTION**

Defendant

This cause being heard on the application of plaintiff for a temporary restraining order and preliminary injunction, the plaintiff appeared after notice was given to the defendant. Defendant did not appear. Having considered the briefed complaint, witness affidavits, and the attorney's certificate attached as exhibits to plaintiff's motion,

THE COURT FINDS:

1 Plaintiff's threatened injury as described in the verified complaint is irreparable because in the event contact is made by defendant of plaintiff's customers, plaintiff could be damaged by a loss of business from such customers.

2. Notice of this application was given to the defendant since there was minimal risk of immediate irreparable injury as a result of notice being given to the defendant.

THE COURT ORDERS

1. The defendant is hereby restrained from contacting any of the customers of plaintiff known by the defendant to be customers of plaintiff.

2. This order shall remain in effect until September 8, 2023, at 5:00 p.m.

3. A hearing on plaintiff's motion for a preliminary injunction is set for September 8, 2019, at 2:00 p.m. and the defendant is hereby ordered to appear in this courtroom at that time.

4. A copy of this order, along with copies of the complaint, summons, motion, and supporting documentation, shall be served forthwith on the defendant.

SO ORDERED this 2nd day of September, 2023.

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

District Court Judge

**ON‑CALL LETTER TO TRIAL WITNESS**

Ms. Sally Becker

818 N. Sycamore Lane

Davis, California 95136

Re: Shamrock Enterprises v. McFarland

Dear Ms. Becker:

On July 1, 2023 you were served with a subpoena to appear in the Superior Court on August 30, 2023 at 9:00 a.m. to testify as a witness at the trial in the above matter. Rather than attend the entire trial, if you prefer we will telephone you when your testimony is needed. We will give you at least 24 hours' advance notice. Please confirm your availability and agreement to attend the trial when called by signing the enclosed copy of this letter and returning it to me in the enclosed self‑addressed stamped envelope. If we do not receive your signed agreement, it will be necessary for you to appear on August 30, 2023 as indicated in the subpoena.

If you should have any questions, please do not hesitate to call.

Sincerely,

Janice Baldwin

Legal Assistant

Michael Sobel, Esq.

Roberts, Williams, and Stevenson

2345 Woodbine Street

Los Angeles, California 90312

Attorneys for Plaintiff

Superior Court of the State of California

For the County of Los Angeles

GATSBY REALTY

Plaintiff Case No. 15347

v. **JUDGMENT**

DERRICK MASON

Defendant

This matter came on regularly for trial on November 17, 2016, the Honorable Henry Lester, judge, presiding. Michael Sobel, of Roberts, Williams, and Stevenson, appeared on behalf of Plaintiff Gatsby Realty ("Gatsby"), and Patrick Keely of Sorenson and Keely, appeared on Defendant Derrick Mason ("Mason"). Oral and documentary evidence was presented by both parties and the matter was submitted to this Court for decision.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is hereby awarded to Gatsby and against Mason, and that Mason be required to quit the premises forthwith. In addition, judgment is entered in favor of Gatsby in the sum of $3,000, plus costs of suit.

Dated: November 18, 2023

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge of the Superior Court

Alisa Howard, Esq.

Baker, Hodges & Howard

1800 N. Ventura Blvd.

Los Angeles, California 90063

Attorneys for Plaintiff

Superior Court of the State of California

For the County of Los Angeles

SIDNEY KESTER

Plaintiff Case No. 13857

**NOTICE OF APPEAL**

v.

MONROE'S GROCERY STORE

Defendant

PLEASE TAKE NOTICE that plaintiff Sidney Kester hereby appeals from the judgment entered against him on June 1, 2023. This appeal is based upon the grounds that plaintiff was not allowed to admit certain evidence at trial all to the prejudice of plaintiff.

Dated: June 30, 2023 Baker, Hodges & Howard

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Alisa Howard

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Plaintiff(s) CASE NUMBER

Benjamin Samson and Sara Samson CV: 014-07832

vs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**WRIT OF EXECUTION**

Emerald’s Catering, Inc.

Defendant(s)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TO THE UNITED STATES MARSHAL FOR THE CENTRAL DISTRICT OF CALIFORNIA

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a judgment was entered in the above entitled action in favor of:

Benjamin and Sara Samson

As Judgment Creditor and against

Betsy’s Parties, Inc.

As Judgment Debtor, for:

$ 7,000.00 Principal,

$ 375.00 Attorney Fees,

$ 100.00 Interest, and

$ 25.00 Costs, making a total amount of

$ 7,500.00 JUDGMENT AS ENTERED

*(see next page)* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WHEREAS, according to an affidavit and/or memorandum of costs after judgment filed herein, it appears that further sums have accrued since the entry of judgment, to wit:

$ 70.00 accrued interest, and

$ 15.00 accrued costs, making a total of

$ 85.00 ACCRUED COSTS AND ACCRUED INTEREST

Credit must be given for payments and partial satisfaction in the amount of $ Not applicable which is to be credited against the total accrued costs and accrued interest, with any excess credited against the judgment as entered, leaving a net balance of:

$ 7,585.00 ACTUALLY DUE on the date of the issuance of this writ of which

$ 7,500.00 is due on the judgment as entered, and bears interest at seven percent per annum, in the amount of $1.44 per day, from the date of issuance of this write, to which must be added the commissions and costs of the officer executing this writ.

You are directed to satisfy the following judgment, with interest and costs and your costs and disbursements, out of (1) the personal property of the judgment debtor(s), not exempt from execution, and if sufficient personal property cannot be found, then out of his (their) real property, or (2) if the judgment is a lien on real property, then out of the real property belonging to the debtor(s) on the date the abstract of judgment was filed under CCP 674, or on any date thereafter. Unless this writ is served on the debtor(s) at the same time of levy, you are also directed to give him (them) notice by mail (at address(es) given below) of any levy of execution under this writ, and to make return of the writ with what you have done endorsed on it not less than 10 days nor more than 60 days after you receive it.

*(If your levy is against earnings, the return must be made*

*within 90 days as provided in CCP 682.3)*

(Page 2)