

# Preface

Civil litigation is the lifeblood of private legal practice, as well as an important part of government practice. Paralegal students are far more likely to be involved in civil lawsuits than criminal cases, business disputes, and intellectual property suits combined. Civil litigation courses are part of the core curriculum in every paralegal program in the country. This text was designed to help prepare students for the practical world of divorces, car wreck cases, and medical malpractice claims that they will see every day in civil practice. In addition to discussing theoretical constructs, the text offers extensive ancillary materials and supplemental material.

In *Civil Law & Litigation for Paralegals*, the author provides students with an in-depth analysis of the wide variety of civil cases, laying out the basic foundation of the American legal system, proceeding through the investigation and implementation of a civil case, and following the case through to appeal. The premise of this book is not only to teach the basics of civil litigation but also to give students the chance to build a skill set and create material for a portfolio that they can show to prospective employers.

The text also addresses the specific duties of paralegals in civil practice. Each chapter presents students with examples of the important role that paralegals play in every stage of civil litigation, from client intake to bringing an appeal. The text balances the theoretical underpinnings of the law with the practical examples and hands-on experience that all students need to completely understand the topic.

## KEY CHARACTERISTICS OF CIVIL LAW & LITIGATION FOR PARALEGALS

### Writing Style

The author's clear and coherent writing is one of the best features of the text. The author clearly communicates his enthusiasm for the topic throughout the text.

### Chapter Features

Each chapter has a standard format, including:

- Clearly stated chapter objectives.

Each chapter sets out 10 objectives for the student–reader.

- Introductory paragraph.

The major topics in the chapter will be set out in this lead-in paragraph.

- Material presented in a logical way.

The topics discussed in the chapter flow in a logical, common-sense manner.

- Material supplemented by numerous sidebars, charts, diagrams, and so forth.

The text contains numerous charts, diagrams, and other illustrations, as well as sidebars designed to illuminate specific topics throughout the chapter.

- Learning styles taken into consideration.

The topics in the chapters are discussed in a variety of ways to take advantage of different student–reader learning styles.

- Significant cases.

The text also places strong emphasis on seminal or otherwise important cases in specific areas of practice to help demonstrate the importance of case law to civil litigation.

- Terms and legal vocabulary.

All terms and legal vocabulary are defined immediately for the student. The first time a key word or legal term is mentioned in the text, a definition of it appears in the margin. This location helps students grasp the meaning without breaking the flow of their reading by having to turn to the glossary.

- Extensive use of hypotheticals.

The author uses hypothetical questions and other scenarios to illustrate the points under discussion in each chapter. These scenarios also provide an excellent foundation for classroom discussion.

- Case in Point features.

Each chapter contains a significant case designed to expand on the topics discussed in the chapter. There are also questions for students based on the case to assist their understanding of the case and its relevance to the chapter concepts.

- “Real world” flavor.

The text places heavy emphasis on the practical aspects of civil litigation practice. Each chapter presents interview excerpts from paralegals who actually work in the field, including not only an overview of what brought them into the law but also their daily activities, outlined in the “Day in the Life” sections that appear at the conclusion of each chapter.

- Eye on Ethics feature.

Ethics is crucial for any legal professional. Each chapter explores an important ethical question and explains the relevance of ethical systems for the day-to-day practice of civil law.

- Examples of court documents.

The text also presents numerous court documents for the student–reader, including contracts of representation, complaints, answers, discovery requests, motions, and many others. Each of these court documents is annotated with an explanation of the various component parts.

- Real Paralegal Life: Building a Skill Set feature.

Each chapter also contains a practical application designed to help students build a specific skill set. These practical applications include analyzing evidence, creating a personal court directory, billing hours, and basic investigative techniques, among others.

- Creating a portfolio.

Each chapter contains a section that requires students to generate a specific document or other work product that will go into their portfolio. The purpose of the portfolio is to create a body of work that demonstrates the student’s competency in this essential area.

## Pedagogy

The text has numerous features that take advantage of the varied learning styles students employ. On the basis of the recognition that students who apply their newly acquired knowledge often retain it much better than those who do not, this text requires students to apply the knowledge that they have gained. Each chapter has practical examples of court documents, pleadings, motions, and other real-life exercises that emphasize the material discussed in each chapter.

The text is written in clear language that engages the student, keeps the reader’s interest, and presents information in a variety of methods to take advantage of different learning styles. Each new concept is presented in a multilayer fashion, first with the basic concepts and then with

greater complexity once the intellectual foundation is laid. Charts and diagrams are provided to illustrate concepts as they are discussed and provide the instructor with additional material for class discussion. Sidebars, tables, and interviews are also presented to supplement the chapter information in a different format for students who may not fully grasp the concepts on initial presentation. Finally, practical, hands-on assignments and discussion questions reiterate and emphasize the concepts, which enables greater comprehension and retention by the student. The author fills the text with a balance of theoretical discussions and practical examples, all presented in a well-written, enjoyable style.

### **Non-Gender-Specific Language**

In recognition of the negative impact of gender-specific language, the author has adopted the convention of employing “he or she” whenever the text demands the use of the third-person singular voice.

## **INSTRUCTOR’S MANUAL**

The author has developed an impressive instructor’s manual to accompany the text. Recognizing the needs of instructors for multiple resources, the author provides the following features:

- Suggested syllabi and lesson plans.
- Annotated outlines for each chapter.
- Answers to all end-of-chapter questions.
- Test bank, which includes a variety of question types:
  - Essay questions (5 per chapter).
  - Short answer (10 per chapter).
  - Multiple choice (25 per chapter).
  - True-False (10 per chapter).
- PowerPoint slides for each chapter.

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# A Guided Tour

*Civil Law & Litigation for Paralegals* provides the student with an in-depth analysis of the wide variety of civil cases, laying out the basic foundation of the American legal system, proceeding through the investigation and implementation of a civil case, and following the case through to appeal. It not only teaches the basics of civil litigation but also gives students the chance to build a skill set and create material for a portfolio that can be used for prospective employers. The pedagogy of the book applies three goals:

- Learning outcomes (critical thinking, vocabulary building, skill development, issues analysis, writing practice).
- Relevance of topics without sacrificing theory (ethical challenges, current law practices, technology application).
- Practical application (real-world exercises, portfolio creation, team exercises).

**Chapter Objectives** introduce the concepts students should understand after reading each chapter as well as provide brief summaries describing the material to be covered.

## CHAPTER OBJECTIVES

The student will be able to:

- Explain the differences between civil law and other types of law.
- Describe the burden of proof in a civil case.
- Explain the role of pleadings in civil cases.
- Explain the difference between a finding of liability and a finding of guilt.
- Describe the function of damages in civil cases.
- Define the role of the U.S. Constitution in the American legal system.
- Explain the difference between statutes and case law.

This chapter introduces the U.S. court system and details the important differences between various areas of law.



## SURF'S UP!

### COMPUTER-AIDED EVIDENTIARY PRESENTATIONS

In the age of the Internet and the widespread availability of computer networked law offices, several companies specialize in providing assistance to attorneys preparing to try a civil case. Visual aids are important for juries, whether it is simply providing the details of the accident site or laying out the complexities of a medical malpractice case. Today, companies offer a broad range of services, from simple aids to computer animation. Examples of companies that provide these services include Insight Legal Graphics and Animation

([www.insightlegalgraphics.com](http://www.insightlegalgraphics.com)) or High Impact Litigation, Inc. ([www.highimpactlit.com](http://www.highimpactlit.com)), both of which specialize in assisting attorneys preparing for trial by generating a wide variety of exhibits, diagrams, graphic designs, computer animation, PowerPoint slides, and nearly every type of trial aid imaginable. Other companies, such as Power Graphics, Inc. ([www.power-graphics.com](http://www.power-graphics.com)), concentrate on taking the various evidentiary exhibits in a case and presenting them in as dramatic a fashion as possible. For instance, these companies can blow up an important photograph or diagram so that it is truly enormous—making it much easier for the jury to see all of the important details.

**Surf's Up!** focuses on the increasing use of technology and the Internet, using relevant Web sites and giving students real-world experience with technology.

**Eye on Ethics** raises legitimate ethical questions and situations attorneys and paralegals often face. Students are asked to reference rules governing these issues and make a decision.



## Eye on Ethics

### FREELANCE PARALEGALS

The role of the paralegal in the United States has been slowly changing. The traditional arrangement, in which a paralegal works full-time for an attorney, is slowly giving way to independent contractors: freelance paralegals who hire themselves out to attorneys on a case-by-case basis. Freelance paralegals are part of a new movement of paralegals who take greater control of their own destinies.

Although becoming a freelance paralegal has many attractions, there are some downsides. For one thing, there is the issue of the unauthorized

practice of law. Freelance paralegals, especially those in more conservative parts of the country, have felt pressure from attorneys who do not like competition.

In some states, such as California, where paralegals are regulated and distinctions are made between document preparers and legal assistants, the rule about unauthorized practice of law remains the same. When it comes to giving legal advice, you just can't.

Legal document assistants are not permitted to practice law. They can help people complete legal forms, but they cannot give legal advice.



## SPOT THE ISSUE!

Wally Whistleblower was fired last year by Spurious, Inc. Wally alleges that he was fired when he brought the company's questionable accounting practices to the attention of the shareholders. He has brought a wrongful termination suit against Spurious, Inc. Wally's attorney, Laura Litigator, is questioning a Spurious employee at a deposition. Also present at the deposition is Barry Barrister, representing Spurious, Inc. Laura asks the following question:

Q: At any point in your employment with Spurious, did you ever observe any accounting practices that you thought were questionable, unethical, or illegal?

A: Well, I would have to say—

Mr. Barrister: Objection. This question goes into privileged matter. I direct the witness not to answer this question.

Is this question objectionable? What privilege could Mr. Barrister be asserting in this case? Is this a legitimate objection or could it be subject to a motion for sanctions under the discovery rules?

**Spot the Issue!** introduces a situation asking students to think critically about identifying or solving the legal issue at hand.

**Legal Research Maxim** offers students tips for specific research and assistance in researching chapter issues.



## LEGAL RESEARCH MAXIM

Whenever there is an issue surrounding discovery, it is always best to begin with the rules of discovery, usually found in the Rules of Civil Procedure. However, you must keep in mind that these rules may be

supplemented, enacted, or otherwise modified by statutes. You should review the rules, the statutes, and case law to have a solid understanding of discovery issues.



## RESEARCH THIS!

Does your state elect or appoint judges? How does the process work? Research your state statutes and determine exactly how judges are selected to serve in various courts. Locate recent cases from your state's highest appellate courts

that clearly define the practice of law and delineate the roles of paralegals and attorneys. Are these rules clear? Do they make clear distinctions between the two roles?

**Research This!** engages students to research cases in their jurisdiction that relate to chapter material, reinforcing the critical skills of independent research.

**Practice Tips** offer dos and don'ts in the practice of law, as well as provide helpful hints and reminders for paralegals.



## PRACTICE TIP

Because more and more paralegals are being named in civil actions by disgruntled former clients, it is vitally important for a paralegal to stay away from any allegation of unauthorized practice of law. There are two methods to avoid an allegation of overstepping professional boundaries. One is to always introduce yourself as a

paralegal or legal assistant. In addition to this practice, you should always inform individuals who seek legal advice that you are not authorized to give it. By maintaining these practices, you may avoid becoming involved as a named party in a civil action.



## CASE IN POINT

Georgia Community Support & Solutions, Inc.  
v.  
Berryhill  
275 Ga. App. 189, 620 S.E.2d 178 (2005)  
PHIPPS, Judge.

Georgia Community Support and Solutions, Inc. (GCSS), a non-profit organization that assists disabled adults and their families, sued Shirley Berryhill, whose disabled son had used its services, for defamation and tortious interference with business relationships. The verified complaint alleged that Berryhill had maliciously published false information about GCSS and its executive director, Whitney Fuchs, in emails and on an internet website. The trial court dismissed the complaint under Georgia's anti-SLAPP (Strategic Lawsuits Against Public Participation) statute, OCGA § 9-11-11.1, finding that Berryhill's statements were privileged and that GCSS had brought the suit for the improper purpose of chilling her right to speak out on an issue of public concern. GCSS appeals, arguing that substantial evidence supported its claims and that Berryhill's statements were not privileged. Because the undisputed facts do not support the trial court's findings, we reverse.

The undisputed facts are as follows. Berryhill's adult son, Robert, suffers from mental retardation and requires constant supervision and care. In July 2000, GCSS placed him with an independently contracted home caregiver. On July 15, 2002, Berryhill posted a message on an internet website for families of disabled adults complaining about the quality of care her son had received from GCSS. In the message, Berryhill stated that her son had been "dumped" at a house where he slept on a "4-foot settee in a back corner, lost a rapid 35-40 pounds, [and] became afraid to speak to [his family]." She further stated that she could not locate the house and that she would not be able to locate it by a local newspaper.

*Constitution*, the Department of Human Resources, and other private individuals might be able to investigate the nature of my concerns about my son's treatment and care, and to remedy such concerns, if possible."

After a non-evidentiary hearing, the trial court granted Berryhill's motion to dismiss, finding that GCSS had not met the substantive verification requirements of the anti-SLAPP statute. In particular, the court found that Berryhill's statements were privileged communications and that GCSS had sued her for the improper purpose of preventing her "from bringing the plight of her son under the care of GCSS to the attention of the media, the government and the public at large."

The General Assembly enacted the anti-SLAPP statute to encourage Georgians to participate "in matters of public significance through the exercise of their constitutional rights of freedom of speech and the right to petition government for the redress of grievances." The statute requires, among other things, that a written verification under oath accompany any claim asserted against a person arising from an act "which could reasonably be construed as an act in furtherance of the right of free speech or the right to petition government for a redress of grievances." The statute defines such an act as any written or oral statement, writing, or petition made before or to a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, or any written or oral statement, writing, or petition made in connection with an issue under consideration or

**Case in Point** offers a significant case designed to expand on the topics discussed in the chapter. Students are given questions based on the case to further assist their understanding of the case and its relevance to the chapter materials.

**Cyber Trip** provides a list of links relevant to the chapter topics. Students can access these links to learn more about the material in the text.



## CYBER TRIP

National Federation of Paralegal Associations  
<http://www.paralegals.org/>  
National Association of Legal Assistants  
[www.nala.org](http://www.nala.org)  
American Association for Paralegal Education  
[www.aafpe.org](http://www.aafpe.org)



## COMMUNICATION TIP

### Memoranda to File

Whenever you speak with someone important to a case or discuss an issue that may have any significance to a client, always write up a memorandum about it. You might think that you will remember any significant conversation or discovery in a case, but the human memory is a great deal more fragile than most of us are willing to believe. Whenever you discuss anything of significance with a client, witness, judge's secretary, or anyone else having a bearing on a case, immediately create a memo and put it into the file. Save the digital version of the memo in the client's file on the computer or network, but also make a back-up hard copy. If this sounds like overkill, keep in mind that a short telephone conversation could become the major focus of a legal malpractice action several years from now. Being able to produce a contemporaneously written memo may short-circuit a potential claim and also as-

quick memorandum to the file about any conversation. Consider this example:

#### Memorandum to File

TO: File  
 From: Paula Paralegal  
 RE: TC with John Smith  
 Date: May 24, 2006

I spoke with client John Smith this morning, and he said that he definitely does not want his Aunt, Myra Smith, called to testify in this case. I explained to him that Ms. Smith has critical information in this case and by not calling her, we put the entire case in jeopardy, but he was adamant. I discussed this decision with Allison Attorney, and she agreed that we would not call the client's aunt to the stand in this case. Ms. Attorney suggested that I send a letter to the

**Communication Tips** in each chapter help students with one of the most crucial aspects of a professional career—communication. Students will examine all forms of communication and their importance on the job.

**A Day in the Life** presents interview excerpts from paralegals who actually work in the field, giving an overview of not only what brought them into law but also their daily activities.



## A Day in the Life: John Purvis

### SCREENING CASES

John Purvis spends a large part of his day screening potential cases. He summarizes his screening duties as follows: "What usually happens is a possible client will call the office and I or one of the other legal assistants will screen the call. There are a multitude of calls that you are going to get. Many people will call up complaining about something that a doctor did. Seventy-five percent of those are things that are not actionable as medical malpractice claims. When we are screening calls, if a case sounds like one with real merit, we then present it to one or all of the partners. We usually have a weekly meeting where we go over all of the pending cases, their status, and any potential statutes of limitations problems. The attorneys then vote on whether or not it's a case that they want to investigate. Then we have the person come in and have a sit-down meeting with them. At the meeting there is at least one attorney and one legal assistant. We listen to what the person has to say about their medical treatment. Then we try to give them an overview of what is involved in bringing a medical malpractice case, what it takes to proceed on a case, and also inform them about the low likelihood of getting a recovery. The statistics show that only a small percentage of the medical malpractice cases that are brought are successful. If the client is willing to proceed and understands that there are risks associated with going forward, and that there will be expenses that they are going to incur in continuing with the action, then we agree to take the matter on an inv-



## Career Prep

Locate a recent news report of an automobile accident and then prepare a legally sufficient complaint based on the report. Make sure that you not only make correct factual allegations but also allege the jurisdictional basis and satisfy the other required elements of a complaint. Finally, locate your state court rules on notice pleading and include copies of these rules with the final draft of your complaint.

**Career Prep** suggests questions for students to pose to working paralegals. This exercise sends the student in pursuit of more information about what a career as a paralegal will really be like.



**Real Paralegal Life** in each chapter offers a practical application designed to help students build a specific skill set, including analyzing evidence, creating a personal court directory, billing hours, and basic investigative techniques.



### Real Paralegal Life: Building a Skill Set

#### JOHN PURVIS

John Purvis is a senior legal assistant at a firm that specializes in civil litigation. He has worked there for years and spends a great deal of his time concentrating on medical malpractice cases. "When it comes to med/mal," he says, "we handle strictly plaintiff work in medical malpractice cases." When the firm decides to accept a case, Purvis's focus is investigation. According to him, "We have the client list of every physician they have ever seen; we have them execute medical authorization releases. We take that information and immediately send out requests to all medical providers for complete copies of all their records, diagnostics, lab reports, that type of thing. Depending on the type of injury, we may also request actual copies of x-rays, MRIs, CAT-scans, any diagnostic tool that may be useful in the ultimate evaluation and potential review by an expert."

At his firm, they use a team approach to litigation, so "when we take a case to trial, we use two or three attorneys, letting [the opposition] know that we are bringing the full resources of the firm to a case."

#### Summary

The process of evaluating a potential civil case involves many different elements. A case evaluation must take into account various factors, including the nature of the possible claim, the facts setting out the defendant's liability, the law, the likelihood of recovery, and the extent of the plaintiff's injuries. Rule 11 of the Federal Rules of Civil Procedure—and its analog found in most state court rules—requires that an attorney must investigate a claim before bringing it. This investigation must focus on not only the facts of the case but also a review of the applicable laws. Before a plaintiff can bring an action against a defendant, the plaintiff must have a cause of action. A cause of action is a legally recognized wrong committed against the plaintiff that entitles the plaintiff to recovery in a court of law.

To investigate a claim adequately, the law firm must first meet and consult with the client to gather as much information as possible. The initial client consultation involves obtaining extensive information from the client, including the details of the plaintiff's injury, background on the

**Chapter Summary** provides a quick review of the key concepts presented in the chapter.

**Key Terms** used throughout the chapters are defined in the margin and provided as a list at the end of each chapter. A common set of definitions is used consistently across the McGraw-Hill paralegal titles.

#### Key Terms

Case evaluation, 62  
Rule 11, 64  
Liability, 65  
Cause of action, 66  
Initial client meeting, 67

Medical authorization, 67  
Statute of limitation, 70  
Witness locator service, 73  
Skip tracing, 73

### Review Questions

1. What are the terms that refer to the two main parties in a lawsuit?
2. How is a person defined as a "party" to a lawsuit?
3. What is personal jurisdiction?
4. What role does a paralegal have in drafting a complaint?
5. What is a forum, and what relation does it have to a court's jurisdictional power?
6. Compare and contrast obtaining personal jurisdiction through the defendant's presence in the forum and his or her domicile in the forum.
7. Explain how a forum can obtain personal jurisdiction over a defendant through minimum contacts under the *International Shoe* case.

**Review and Discussion Questions** ask students to apply critical thinking skills to the concepts learned in each chapter. The Review Questions reinforce the objectives of the chapter. The Discussion Questions focus on more specific legal topics and promote dialogue among students. Both sets of questions are found at the end of each chapter.

**Exercises** at the end of each chapter offer short scenarios to test the students' retention and understanding of the chapter materials.

### Exercises: Skill Builders

Locate a fellow student who has been involved in a car accident. Interview this person, using the details provided in this chapter as a guide to the comprehensive nature of your interview. Pretend that this student is a new client. Prepare a complete client questionnaire and prepare as much detail as possible about this incident.



## Portfolio Assignment

**Portfolio Assignment 5-1:** Draft a complaint in the Cherry case. Using the facts set out in Appendix A, draft a complaint in the Cherry case.

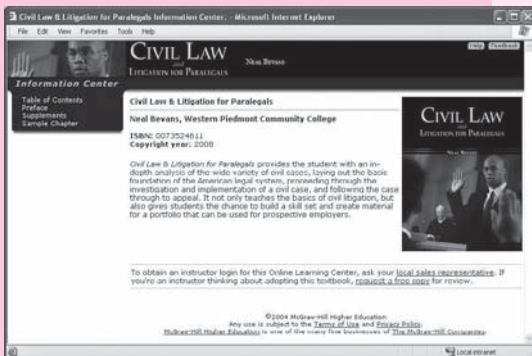
**Portfolio Assignment 5-2:** Draft a letter to a client. Using the facts in the Baker case in Appendix B, draft a letter to Mr. Baker explaining that your firm has decided not to accept Mr. Baker's case and also explaining that the statute of limitations for Mr. Baker's action appears to have run out. Your letter should detail not only the firm's conclusion that the case should not be filed but also the meeting with Mr. Baker and the facts as the firm has come to understand them.

**Portfolio Assignments** are designed to use the skills mastered in the chapter and convert them into a practical legal document that can be used as samples of work during interviews to fully demonstrate the student's competency in each area.



# Supplements

**Instructor's Resource CD-ROM** An Instructor's Resource CD-ROM (IRCD) will be available for instructors. This CD provides a number of instructional tools, including PowerPoint presentations for each chapter in the text, an instructor's manual, and an electronic test bank. The instructor's manual assists with the creation and implementation of the course by supplying lecture notes, answers to all exercises, page references, additional discussion questions and class activities, a key to using the PowerPoint presentations, detailed lesson plans, instructor support features, and grading rubrics for assignments. A unique feature, an instructor matrix, also is included that links learning objectives with activities, grading rubrics, and classroom equipment needs. The activities consist of individual and group exercises, research projects, and scenarios with forms to fill out. The electronic test bank will offer a variety of multiple choice, fill-in-the-blank, true/false, and essay questions, with varying levels of difficulty and page references.



**Online Learning Center** The **Online Learning Center (OLC)** is a Web site that follows the text chapter-by-chapter. OLC content is ancillary and supplementary and is germane to the textbook—as students read the book, they can go online to review material or link to relevant Web sites. Students and instructors can access the Web sites for each of the McGraw-Hill paralegal texts from the main page of the Paralegal Super Site. Each OLC has a similar organization. An Information Center features an overview of the text, background on the author, and the Preface and Table of Contents from the book. Instructors can access the instructor's manual and PowerPoint presentations from the IRCD. Students see the Key Terms list from the text as flashcards, as well as additional quizzes and exercises.

The OLC can be delivered multiple ways—professors and students can access the site directly through the textbook Web site, through PageOut, or within a course management system (i.e., WebCT, Blackboard, TopClass, or eCollege).

**PageOut: McGraw-Hill's Course Management System** PageOut is McGraw-Hill's unique point-and-click course Web site tool, enabling you to create a full-featured, professional-quality course Web site without knowing HTML coding. With PageOut, you can post your syllabus online, assign McGraw-Hill Online Learning Center or eBook content, add links to important offsite resources, and maintain student results in the online grade book. You can send class announcements, copy your course site to share with colleagues, and upload original files. PageOut is free for every McGraw-Hill/Irwin user and, if you're short on time, we even have a team ready to help you create your site! To learn more, please visit <http://www.pageout.net>.



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