

**Instructor's Manual and Test Bank  
to Accompany**

# **The Litigation Paralegal:**

**A Systems Approach**

Sixth Edition



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**JAMES W. H. McCORD**

**PAMELA R. TEPPER**

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# INTRODUCTION

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## A COURSE PLAN

This Instructor's Manual is a resource of teaching ideas and materials to accompany *The Litigation Paralegal: A Systems Approach, Sixth Edition*, by James W. H. McCord and Pamela R. Tepper. The text and Instructor's Manual form an integrated but flexible course plan consisting of substantive text, study aids, exercises in paralegal skills (competencies), classroom activities, Internet exercises, case assignments, discussion points, review questions, systems and application assignments, a test bank, and answer keys to both assignments and tests.

The approach of the text places the student in a law office setting where the instructor assumes the role of the paralegals' supervising attorney. This office training procedure uses a systems approach in which the student incrementally develops a litigation systems folder, complete with forms, documents, checklists, rules, and practice tips. The system is complete at the end of the course and should provide students with a valuable resource as they embark on their careers, and can be used as a job reference manual.

The integrated materials are designed to give the instructor maximum flexibility in determining the course objectives and choosing the assignments and exercises most compatible with those objectives and the time available.

## THE SYSTEMS FOLDER

A systems folder is a detailed procedural manual providing direction, forms, and checklists for tasks regularly performed by a paralegal. As a resource for the paralegal, it provides obvious advantages in efficiency, uniformity, accuracy, and quality. It also can be regularly updated.

Use of the systems folder has proven valuable in both teaching and learning litigation paralegal skills. Because a good systems folder helps the student on the job, and perhaps in securing a job, the systems folder provides an extra incentive to do the assignments thoroughly and accurately. It helps the student learn the benefits of being organized and develop the confidence to create a system in any area of law. Utilization of the systems approach also reinforces the skills presented in the text.

Although this approach can be useful to both the instructor and the students, it is not necessary to the productive use of the text and the Instructor's Manual. The key is flexibility; use a process with which you are comfortable.

Appendix A at the end of the text provides an outline of the contents of a completed systems folder.

## ASSESSMENT

The following features of the integrated course plan can be used as assessment tools:

1. A broad chapter objective
2. The completed systems folder as a course portfolio
3. A collection of selected end-of-chapter assignments and exercises as a course portfolio
4. Internet Exercises and Apply Your Knowledge exercises throughout the chapters
5. Tests compiled from the Instructor's Manual Test Bank as pre- and post-tests
6. Selected Test Bank questions incorporated into an overall program exit assessment exam

## THE TEXT

*The Litigation Paralegal: A Systems Approach, Sixth Edition* introduces students to the law office and takes them chronologically through the steps and tasks involved in litigation, from fact situations of cases they will be working on to judgment enforcement and appeal. Chapter by chapter, students build proficiency in the specific tasks or competencies required of them as paralegals.

In each chapter the student is given the following:

1. One or more specific litigation tasks
2. Substantive and procedural background on the task
3. Guidelines and directions on how to perform the task
4. Examples from a sample case on how to perform the task
5. Key terms and definitions
6. Internet Exercises and Apply Your Knowledge Law exercises to build computer skills
7. Ethical Considerations to offer guidance on the distinction between the role of the attorney and paralegal
8. Trade Secrets to assist paralegals in their day-to-day job assignments
9. Practical systems and application assignments to test understanding of the legal concepts discussed within the text
10. Drafting exercises to introduce students to the types of legal documents they will prepare on the job

### THE INSTRUCTOR'S MANUAL

For each chapter, this manual provides the following:

1. Chapter objective
2. Suggestions for instructional supplements
3. Suggestions for class activities
4. Suggested answers to the text questions and assignments
5. Suggested answers to the additional MindTap questions and assignments and practice tests.
6. Test Bank and Test Bank Answer Key

### MOCK TRIAL

This activity captures student interest and heightens motivation toward the conclusion of the course when the attention of some students begins to wane.

Many of the assignments in the text may be used as building blocks for the mock trial. Any of the Chapter 1 cases can be used, or another case that you might choose. If the *Forrester* or *Ameche* case is used, there are numerous assignments throughout the text that are particularly appropriate for dividing the class into teams representing the plaintiff(s) or defendant(s). The trial can be held over two to three class periods or at a longer special evening or weekend session. This session might be held in a local courtroom to lend an aura of reality. The instructor, a local attorney, or a judge can serve as trial judge. (It is best to ask someone else to serve as judge so you are free to evaluate each student's work.) Background information, pleadings, depositions, and other materials will have been accumulated by the end of the course to provide the gist for the trial.

#### *Procedure*

Divide the class into legal teams for the plaintiff and defendant. Each team can have as many as six or seven members responsible for various aspects of the case, such as opening, direct examination of witness A, cross-examination of defendant's witness C, closing, and so forth. When not actually playing the lawyer's role, students can serve as supporting paralegals keeping track of documents and making suggestions when needed.

Some of the class will be assigned to be key witnesses for each side. Although the witnesses may have the benefit of material covered previously in the text and chapter assignments, all witnesses will need some general parameters for their testimony. To keep workloads as even as possible, witnesses also could be assigned some of the trial preparation tasks to ease the burden of the legal teams. Remaining students can be assigned as jurors. Students from outside class can be used as jurors if you have a small class. (Students from an Introduction to Law class make good jurors. This is a valuable learning experience for them, too.) If the class is particularly large, you could have two juries.

Each juror is responsible for a critique of his or her jury's decision process and why the jury decided the way it did. Several students could be asked to read their critiques as a concluding activity focusing on jury dynamics. For those schools so equipped, a closed-circuit video may be arranged so the student legal teams and witnesses can watch the deliberation process.

The following witnesses could be used for the *Forrester* case:\*

*Ms. Forrester*

*Mr. Hart*

*Mr. or Ms. \_\_\_\_\_, officer at Mercury Parcel*

*Ms. Schnabel*

*Ms. Forrester's physician(s)*

*First police officer on scene*

*Physician for Mercury Parcel*

*Mechanic at Mercury Parcel*

*Mr. Forrester*

For the *Ameche* case:\*

*Mr. and Ms. Ameche*

*Mr. and Ms. Congden*

*Robert Warren*

*Electrical expert (saying fire is possible if conditions were right; it is possible that moving the extension cord may or may not have increased the likelihood of fire)*

*Physician for Mr. Ameche*

*Physician for Congdens*

*First police officer or firefighter on the scene*

The time for opening arguments, direct examination and cross-examination, and other matters will have to be calculated and strictly enforced. The maximum time for jury deliberation will have to be determined according to how much class time remains.

The jury also should be given guidelines, such as the following: choose a foreperson; discuss the most critical aspects of evidence, the plaintiff's burden of proof, whether all elements are proved to their satisfaction, and whether the defendant is negligent and, if so, how much in damages should be awarded.

### ***Critiquing***

This class project can be assessed in several ways. Evaluation can be on the basis of a written analysis by each student of his or her role or task and what the student learned overall from the experience. Another method is based on the individual performance of each student's assigned task.

### ***Further Suggestions***

Opening and closing arguments should be kept brief, possibly no more than five minutes for each side. Most of the time should be allotted to witness testimony through direct examination and cross-examination. Judges should deal with objections quickly, giving some latitude to questions and evidence to speed the trial along. Demonstrative evidence can be permitted but needs to be approved ahead of time by the instructor to see that common sense applies and that such evidence does not impair the speed and

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\* A small team of students could be assigned early in the course the task of drafting the witness background information sheets so that the case is close but slightly tilted in one direction. They could be told to draft it both ways so that you have the choice and can prevent leaks on which direction the testimony will lean. This is a valuable assignment because it forces the students to focus on elements and needed evidence to support those elements.

fairness of the trial. Some instructions may be read to the jury by the judge, but they should be kept brief and go to the heart of the elements in the case. Unless there is a lot of time, jury deliberation should be kept to thirty minutes. It will be the foreperson's job to see that a decision is made in that time.

## STUDENT FAIR

Fellow educator Faith O'Reilly has developed a student fair that provides another focus to the course. At the end of the litigation course, the students display their systems folders to a team of judges and lawyers. Based on some criteria established by the instructor, the judges evaluate the systems folders and ask the students questions. They decide on several top places and some honorable mentions. This provides an extra incentive for each student to be conscientious in the preparation of the systems folder, especially near the end of the course. A further benefit is getting prospective employers to see and appreciate the ability of the students and the quality of their instruction.

## ASSIGNMENTS AND GRADING

*If this text is to be covered in one semester, it is not realistic to expect students to complete all the assignments provided in each chapter.* The purpose of some assignments is simply to provide more practice for those who need it in an area that has already been covered; others repeat an area, but from a different angle. Many assignments are flexible, allowing you to insert material, forms, or cases from your own experience or additional student research. *Select the assignments that best fit the needs of your students and your time frame.* When deciding what assignments are appropriate for your course, consider checking the answer or comment provided in the Instructor's Manual prior to making the assignment to confirm that it is consistent with your objectives and whether added information, such as state practice, is needed.

The chapter exercises require the student to prepare a variety of documents. Every student ought to be able to do many of these assignments accurately and completely, leaving little if any differentiation between a grade of A and a grade of C on the assignment. In such instances, it is the drafting and familiarity with the documents that are paramount. Therefore, you may wish to consider using S (satisfactory) or U (unsatisfactory—to be redone) as a more practical system for grading such assignments. It might be added that eventually all such assignments must be completed satisfactorily to receive a passing grade in the course. This procedure will avoid the problem of watering down your A, which should be reserved for those assignments in which the difference in student learning or abilities will be more apparent and measurable.

James W. H. McCord  
Pamela R. Tepper



# CHAPTER 1: WELCOME TO THE LAW OFFICE: FOUNDATIONS FOR LITIGATION

## CHAPTER OBJECTIVES

- Understand the role of the paralegal in the law office
- Recognize the importance of law office procedures in the practice of law
- Explain the ethical obligations of the paralegal in the legal arena
- Distinguish between the federal and state court systems
- Identify the different types of jurisdiction and in which court cases should be filed

The purpose of this chapter is to give students the feeling that they are starting work in a law office. The first section provides case “stories” that demonstrate the kinds of events that may lead to litigation. The stories give the necessary factual settings for many of the assignments and examples in the text, and bring them to life.

The Paralegal Handbook section is “the firm’s” introduction to the office, its personnel, the role of the paralegal, important procedures, professional ethics, and professional development. It also introduces the systems approach. The section following the handbook provides an introduction to (or review of) court structure, jurisdiction, and venue.

## PREPARING FOR CLASS: INSTRUCTIONAL SUPPLEMENTS

1. Preview the chapter questions and assignments.
2. Re: Case V. Note that sexual harassment under Title VII of the 1964 Civil Rights Act can be based on qualitative and quantitative differences in offensive conduct toward female and male employees, and does not have to be lewd or sexual in nature [*Christopher v. National Education Ass'n*, No. 04-35029 (9th Cir. 2005, Sept. 2)].
3. Have on hand the following information:
  - A diagram of your state court structure and a detailed description of the jurisdiction of each court
  - Names, addresses, and phone numbers of the clerk of court for the federal district court in your state and for any appropriate state courts
  - A list of local paralegal associations, noting officers, addresses, and phone numbers
  - Any provisions of your state’s code of professional responsibility or rules of court that complement the chapter material on ethics for paralegals
  - Pertinent Web sites

## SUGGESTED CLASS ACTIVITIES

1. Have a carefully chosen attorney or paralegal law office manager speak to the class about the typical structure and procedures of the law office.
2. Invite a local judge to lecture on the state and federal courts and their jurisdictions.
3. Have officers of local, state, or national paralegal associations speak to the class about their associations, the importance of professional ethics, and personal professional development.

## SUGGESTED ANSWERS TO THE TEXT QUESTIONS AND ASSIGNMENTS

### QUESTIONS FOR STUDY AND REVIEW

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Questions for study and review test the student's understanding of the chapter. Strongly encourage students to use these questions in the text as a study guide at the completion of each chapter. If students can answer these questions, they should do well on an exam. You may choose to draw some of your exam questions from this list. Answers for these questions are provided here.

1. Define *paralegal*.

**Answer:** A paralegal assists attorneys in preparing client cases. This includes assisting in interviews, investigation, document preparation, pre- and post-trial activities, trial and settlement, and any other activities permitted by statute or case law.

2. Why is a paralegal valuable to a law firm? Identify significant legal authority on billing for paralegal time.

**Answer:** Paralegals can perform a multitude of tasks more economically for the client. This includes preparing letters, preparing documents, and investigative functions when necessary. *Missouri v. Jenkins* is the U.S. Supreme Court case that recognized that a paralegal's time can be billed as a fee and awarded by the court in assessing attorney's fees.

3. Why are timekeeping and deadline control important?

**Answer:** Timekeeping is critical to billing. Deadline control is key in assignments, especially those dealing directly with a court.

4. What are some ethical concerns regarding timekeeping and billing?

**Answer:** Paralegals cannot set fees for a client and cannot split fees with an attorney. The paralegal cannot perform tasks that are considered the unauthorized practice of law.

5. What is a litigation system and why is it beneficial?

**Answer:** A litigation system is a detailed procedure manual that is a chronological collection of the guidelines, forms, correspondences, checklists, procedures, and pertinent law for all steps of the litigation process. As a personal resource, it provides advantages in efficiency, uniformity, accuracy, and quality. It will help you learn the benefits of being organized and can be easily updated.

6. Define *professional ethics* in the context of the practice of law.

**Answer:** Professional ethics, as applied to attorneys, refers to the rules of conduct that govern the practice of law.

7. Why are professional ethics so important to a law firm?

**Answer:** A breach of ethical standards will reflect badly upon the firm or employer and may also lead to the disbarment of an attorney. It may cost a paralegal his or her job and subject the paralegal to prosecution for the unauthorized practice of law.

8. What are the things a paralegal may not do?

**Answer:** Paralegals *may not* perform any of the following functions:

- a. Provide legal services directly to the public without the supervision of an attorney. More states and the federal system are permitting paralegals to represent the public in limited controlled settings, such as landlord/tenant matters, immigration, and Social Security cases.
- b. Give legal advice or counsel a client. Legal advice is independent professional judgment based on knowledge of the law and given for the benefit of a particular client.

- c. Represent a client in court or other tribunal or otherwise act as an advocate for a client unless specifically permitted to do so by law or rule of court. (See previous answer part a for further clarification.)
- d. Accept or reject cases for the firm.
- e. Set any fee for representation of a client.
- f. Split legal fees with an attorney (bonuses and profit-sharing plans not tied to a specific case are permissible).
- g. Be a partner with a lawyer if any of the activities of the partnership include the practice of law [exception: the District of Columbia Ethics Rule 5.4(b)]. The American Bar Association rejected a proposal to relax the prohibition against fee sharing and multidisciplinary practice.
- h. Solicit cases for a lawyer.
- i. Perform tasks that are the unauthorized practice of law as defined in the pertinent state.

9. What are the seven criteria that assure a paralegal's actions will not be or cause a breach of ethics?

**Answer:**

- 1. The task must be delegated by an attorney.
- 2. It must be performed under an attorney's supervision.
- 3. Paralegals must clearly designate their status as a paralegal.
- 4. The lawyer must retain a direct relationship with the client (the attorney must retain control over the relationship).
- 5. The task must involve information gathering or be ministerial and cannot involve the rendering of legal advice or judgment (unless the legal advice or judgment is provided by the paralegal directly to the attorney).
- 6. The work must be given final approval or be examined by the attorney.
- 7. The work must not have a separate identity but merge with the attorney's final work product.

10. What is a conflict of interest and the rationale for the relevant ethical standards?

**Answer:** A paralegal should avoid and reveal any conflicts of interest. This requirement rests on the rationale that citizens must have faith in the legal system to seek the peaceful resolution of their disputes. Because conflicts of interest can dilute an attorney's allegiance to the client and damage independent professional judgment, they are barred by the *Model Rules of Professional Responsibility*. A paralegal must also be loyal to the client and avoid such conflicts.

11. What is meant by the term *professional loyalty* as applied to your fellow workers? The client? The practice of law?

**Answer:** In professional working relationships, mutual respect and loyalty between employer and employees is especially important. Publicly criticizing one's fellow workers or one's clients, who deserve the utmost courtesy, respect, and a legal professional's every effort to preserve their dignity, is not consistent with professional loyalty. Relationships with clients must always be kept on a professional level. If a relationship becomes too personal, it threatens objectivity, confidentiality, and one's loyalty to the firm.

Professional loyalty to the firm extends to the practice of law, which supersedes loyalty to any specific individual. Attorneys are directed to call attention to the unethical practices of other attorneys, or, in some instances, of the illegal conduct of their own clients to avoid assisting in fraud or crime.

12. What are the characteristics of the common components of court systems in the United States?

**Answer:** The federal and state court systems have at least two types of courts in common: the trial court and the appellate court.

13. What is jurisdiction? Define the various kinds of jurisdiction: geographical, personal, general, and so on.

**Answer:** *Jurisdiction* is the power or authority of a court to hear and decide the questions of law or fact (or both) presented by a lawsuit. Most courts have *geographical jurisdiction*, meaning that they hear cases that arise within specific geographical boundaries.

The court also has *personal (in personam) jurisdiction*. This means the court must have the power over the particular person named in the lawsuit to enter a judgment against that person.

*In rem (property) jurisdiction* is the authority of the court to attach (seize) property (real estate, jewelry, bank deposits, or other property) within its geographical jurisdiction to resolve claims to the property. *Quasi in rem jurisdiction* is the authority of a court to seize and use property (within its jurisdiction) of a defendant over whom it does not have personal jurisdiction to pay a judgment against the defendant entered in an action indirectly related or unrelated to the property. If a court has *general jurisdiction*, it can hear all types of cases. Most states have trial courts of general jurisdiction in which subject matter jurisdiction is assumed unless one party can demonstrate that the court does not have the necessary subject matter jurisdiction.

*Original jurisdiction* indicates that cases first enter the system at this court level— they “originate” here. Most trial courts are courts of original jurisdiction.

A court has *limited jurisdiction* if its authority to hear and decide cases is limited to specific types of cases. Limited jurisdiction becomes *exclusive jurisdiction* if a court is the only court permitted to handle a specific type of case.

14. What are the personal jurisdictional considerations regarding a defendant when the Internet is involved?

**Answer:** Refer to *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). The *Zippo* case created a new test that focused on Internet cases—a sliding-scale test based on the quality and nature of the Internet activity. Was the defendant actively doing business through the Internet or was the defendant simply posting information (which the court referred to as “passive”)? Where the activity is passive, the court will not assert jurisdiction. The test must be applied on a case-by-case basis by examining the level and nature of the activity of the Internet business involved. Although the *Zippo* analysis has been adopted by the majority of federal courts, there is no commonly accepted test for Internet cases.

15. What three things must a court have in order to hear a case and bind a party to the court’s decision? Be able to apply these concepts to determine what court or courts can hear a lawsuit depending on domiciles of the parties and other factors.

**Answer:** A court must have subject matter jurisdiction and venue. Of the courts that have both subject matter jurisdiction and venue, it must be determined which, if any, of these courts have personal jurisdiction (or in the case of property such as real estate, which has in rem jurisdiction over the property). To gain personal jurisdiction over the defendant, the defendant must be served with a summons and complaint.

## SYSTEMS FOLDER ASSIGNMENTS

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1. Set up a three-ring binder or electronic equivalent with the tab dividers arranged as described in the litigation system section of the text. Copies of the office structure and forms previously discussed should be placed in the systems folder as indicated in Appendix A. Begin a table of contents for your systems folder and add any information assigned by your instructor.

**Answer:** This assignment starts the use of the system. If you decide to have the students develop a systems folder, the setting up of the folder needs considerable emphasis now and throughout the course. You may choose to have the folder turned in periodically for evaluation. Unannounced and random spot checks or turn-ins for a grade might help fight inevitable procrastination.

2. Look up your state's ethical rules that govern confidentiality, conflict of interest, attorney supervision of lay persons and legal assistants, professional integrity, and others. Record the rule numbers in an ethics section of your systems folder. Look up your state's unauthorized practice of law statute; note the wording and the possible penalties. You might want to add this to your folder. As you read further in this text and in other sources, insert in your folder the citations for key ethical rules and guidelines.

**Answer:** What a paralegal may not do:

- Provide legal services directly to the public without the supervision of an attorney.
- Give legal advice or counsel a client.
- Represent a client in court or act as an advocate.
- Accept or reject cases for the firm.
- Set any fee for representation of a client.
- Split legal fees with an attorney.
- Be a partner with a lawyer in practice of law (except in Washington, D.C.).
- Solicit cases for a lawyer.

Limits to what a paralegal may do:

- The task must be delegated by an attorney.
- It must be performed under an attorney's supervision.
- Paralegals must clearly designate their status.
- The attorney must retain a direct relationship with the client.
- The task must involve information gathering or be ministerial and cannot involve the rendering of legal advice or judgment.
- The work must be given final approval by the attorney.
- The work must merge with the attorney's final work product.

Also:

- A paralegal shall hold inviolate the confidences of a client.
- A paralegal must maintain the highest standards of professional integrity and avoid any dishonesty, fraud, deceit, or misrepresentation.
- A paralegal should avoid and reveal any conflicts of interest.
- A paralegal must strive to be competent and current in the field.
- A paralegal should be loyal to the employer and to the legal profession and its standards.

3. Locate the names, addresses, and phone numbers of your local and state paralegal associations. If you need help obtaining this information, try the director of a local paralegal program or any experienced paralegal. The headquarters of the state bar association might also have such information. For future reference, you may choose to place your expanded lists of sources for professional development in your systems folder.

**Answer:** You may choose to provide these as a handout. If placed in the systems folder, they will provide a handy future resource.

State Paralegal	Local Paralegal
Association	Association
Name:	Name:
Address:	Address:
Phone:	Phone:

E-mail:	E-mail:
Web site:	Web site:
Contact Person:	Contact Person:
Meeting Dates and Times:	Meeting Dates and Times:

4. Make a copy of the federal court structure diagram found in this chapter and add any explanatory notes you feel will be useful to you in the future. Include in your diagram the names of U.S. district courts that sit in your state and the U.S. Court of Appeals that covers the circuit in which your state is situated.

Make a similar explanatory diagram for the court system of your state. Research the material to be placed in the diagram, including any jurisdictional amounts, by looking under courts, judiciary, and jurisdiction in the index of your state statutes or constitution, usually located in the law library, or search your State Court Web site. Some states have an administrative office of the courts at the capitol that may provide preprinted state court diagrams.

Place both diagrams and the State Court Web site address in the court section of your litigation systems folder.

**Answer:** You may decide to provide the state court diagram addressed in this assignment. If so, include the jurisdiction of each court.

5. Consult the state's legal directory in the library or online sites to obtain all court addresses, names of clerks of court, important telephone numbers, and so on. Research state statutes for the subject matter jurisdiction in your state's highest, intermediate, and trial courts. Place this data in the court structure portion of your systems folder.

**Answer:** You may choose to provide this information, but it would be good for students to locate it so they become familiar with the state legal directory.

#### Federal Court System

##### Highest Court

Name: U.S. Supreme Court

Address:

Clerk:

Phone:

Jurisdiction:

1. Appeals from U.S. Court of Appeals and highest state courts
2. State v. state
3. Cases involving ambassadors and other foreign representatives
4. U.S. v. state
5. State v. citizens of another state or country

##### Intermediate Appellate Court

Address:

Name: U.S. Court of Appeals

Clerk:

Jurisdiction: Appeals from district courts

Phone:

##### Trial Courts

Address:

Name: U.S. District Courts

Clerk:

Jurisdiction:      1. Federal questions                      Phone:  
                          2. Diversity of citizenship  
                          3. \$75,000 amount in controversy

#### State Court System

Highest Court    Address:

Name:    Clerk:

Jurisdiction:    Phone:

Intermediate Appellate Court                      Address:

Name:    Clerk:

Jurisdiction:    Phone:

Trial Courts    Address:

Name:    Clerk:

Jurisdiction:    Phone

### APPLICATION ASSIGNMENTS

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1. Using the ethical standards and rules cited in this section, answer the following questions on ethics.
  - a. You have just researched an issue and have found that inattentive driving is a breach of the duty of care that a driver owes to others. In a phone conversation the client asks you, “If the driver of the vehicle that struck was inattentive, is he in the wrong?” How should you answer?  
**Answer:** “I’ll ask [attorney] and get back to you,” or “In response to your question, [attorney] says ‘yes, the driver would be in the wrong.’”
  - b. Ms. Pearlman asks you to draft a release of medical information form for a client. This form is then signed by the client and given to the hospital. Under what conditions can you do this and avoid the unauthorized practice of law?  
**Answer:** The task must be delegated by an attorney; the attorney will have to review it for accuracy; the paralegal will have to identify himself or herself as a paralegal in any dealings with the client; and the attorney will have to maintain control over the client’s case. This task must not involve the giving of any legal advice, and must merge with the overall final work product of the attorney on behalf of the client.
  - c. You are working on a client’s case for Ms. Pearlman. She is gone, so you want to consult with Mr. White, another attorney in the firm. To do so, however, you must reveal to Mr. White some confidential information about the client. Would this be a breach of confidentiality?  
**Answer:** No. the authorization for this disclosure is implied under Rule 1.6(a).
2. You are a paralegal working for an attorney who has represented Safe Bet Insurance Company. A potential client wants to sue Safe Bet. Is there a potential conflict of interest, and if so, may your attorney represent the new client?  
**Answer:** The ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 05–435 (Dec. 8, 2004) says that if the former client and potential client are informed and both consent, representation of the latter is okay. The opinion adds, however, that this practice is likely to lead to distrust.
3. In interviewing a client, you and your attorney are convinced that some information provided by the client is false. What consequences can result from the presentation of such information to the court? What model rule of professional conduct applies?  
**Answer:** The finding that the lawyer is in a serious ethical breach as defined in Rule 3.3(4) could lead to disbarment. The paralegal could be removed from membership in local or national paralegal associations.

4. Determine in which courts subject matter jurisdiction, personal jurisdiction, and venue exist in the following problems.

- a. M, a resident of Wisconsin, and O, a resident of Minnesota, sue Corporations X and Y for industrial injuries amounting to \$40,000 for each plaintiff resulting from an accident that occurred in Illinois. X is incorporated in Delaware and Ohio, and Y is incorporated in North Carolina with its principal place of business in Ohio.

**Answer:** There is not federal jurisdiction because the plaintiffs cannot aggregate the claims to make the jurisdictional amount. All states mentioned have general jurisdiction. State venue exists in at least Delaware and Ohio for X, in North Carolina and Ohio for Y, and in Illinois for both X and Y because that is where the action arose. Personal jurisdiction, however, can be gained only in Ohio over both defendants. The action must be brought in Ohio state court or as two separate actions in any of their resident states.

- b. J and K reside in Oregon and sue R, who resides in Kentucky, and S, who resides in Washington, for a tort (libel) amounting to injuries exceeding \$75,000 each, which occurred in Washington.

**Answer:** All state and federal courts have subject matter jurisdiction (there is diversity). Venue rests in state courts in Kentucky (for R) and in Washington (for S), and in Washington, where the claim arose.

Federal venue for a diversity action against R exists in the district in Kentucky where R resides. Venue for an action against S exists in Washington, where S resides. Venue for an action against both R and S exists in Washington, where the substantial event arose. Personal jurisdiction for a state action exists in Kentucky for R only and in Washington for S only. Personal jurisdiction for a federal action exists in Kentucky for R and in Washington for S. Unless Washington has a long-arm statute that reaches tortfeasors, a separate action must be brought against R and S in both states and in their respective federal districts. If Washington has an appropriate long-arm statute, both a joint state and federal action can be brought in the state of Washington.

5. Glitter is a corporation that rents expensive jewelry to businesses and individuals. It is incorporated in Delaware and has its principal place of business in northern Indiana. It is licensed to do business in every state except Alaska and Hawaii. Flick, Inc., is a movie company incorporated in Idaho with its principal place of business in Utah. It does no business to speak of in any other state.

During Flick's filming in Nevada, an expensive necklace rented from Glitter falls into a piece of machinery on the set and is destroyed. Glitter wants to sue Flick for negligently destroying the jewelry (worth \$700,000). Flick decides to sue Glitter, blaming the loss of a week's filming on the loss of the necklace, which they claim was caused by a faulty clasp made by Glitter. After using the charting method described in this section, answer the following questions:

Charting method applied to the case:

#### GLITTER V. FLICK FOR NECKLACE

Court	Subj. Matter	Juris.	Pers. Venue	Juris.
Delaware State	Yes		No	No
Indiana State	Yes		No	No
Idaho State	Yes		Yes	Yes
Utah State	Yes		Yes	Yes



Nevada State	Yes	(diversity)	Yes	?*
Delaware Federal	Yes	(diversity)	No	No
Indiana Federal	Yes	(diversity)	No	No
Idaho Federal	Yes	(diversity)	Yes	Yes
Utah Federal	Yes	(diversity)	Yes	Yes
Nevada Federal	Yes	(diversity)	Yes	?*

\*ISSUE: Is filming a movie in a state a sufficient contact to allow personal service? (May depend on state statutes and overall degree of contacts.)

#### FLICK V. GLITTER FOR LOSS OF WEEK OF FILMING

Court	Subj. Matter	Juris.	Pers. Venue	Juris.
Delaware State	Yes		Yes	Yes
Indiana State	Yes		Yes	Yes
Idaho State	Yes	No	No	
Utah State	Yes	No	No	
Nevada State	Yes		Yes	?
Delaware Federal	Yes	(diversity)	Yes	Yes
Indiana Federal	Yes	(diversity)	Yes	Yes
Idaho Federal	Yes	(diversity)	No	No
Utah Federal	Yes	(diversity)	No	No
Nevada Federal	Yes	(diversity)	Yes	?

- If Glitter sues Flick, is there subject matter jurisdiction in federal district court?  
**Answer:** Yes.
- What, if any, kind of subject matter jurisdiction exists in federal district court?  
**Answer:** Diversity.
- What issue concerning personal jurisdiction exists when considering suit by Glitter against Flick in Nevada state and federal court?  
**Answer:** Whether the state has a long-arm statute that will permit personal jurisdiction on Flick for having filmed one movie in Nevada, where the action arose.
- Aside from Nevada, in what state and federal courts can Glitter sue Flick?  
**Answer:** State courts: Idaho and Utah. Federal courts: District of Idaho and District of Utah.
- If Flick sues Glitter, does venue exist in the state courts of Idaho and Utah? Why or why not?  
**Answer:** No. State court venue normally rests in the state of the defendant and where the action arose.

## CASE ASSIGNMENTS

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1. Your law firm has been hired to represent Ann Forrester in her lawsuit against Mercury Parcel Services, Inc. and its driver Richard Hart. Determine in what court would any future lawsuit be filed and explain the basis for your decision.

**Answer:** State of Columbia: Middleton County.

2. As Mrs. Forrester's attorneys, what ethical obligations do you have regarding any communications you have with her regarding her potential lawsuit? What ethical obligations does your law firm have with regard to Mrs. Forrester's husband William?

**Answer:** A confidential relationship is created between the firm and Mrs. Forrester. That relationship is with her and not her husband. As a paralegal, all communications with Mrs. Forrester are privileged and confidential.

## INTERNET EXERCISES

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### INTERNET EXERCISE

Determine the types of legal activities in your jurisdiction for which a paralegal can be billed by a law firm and which activities cannot be billed. Explain the distinction for what is considered billable time in your jurisdiction.

**Answer:** This response will vary according to the jurisdiction.

### INTERNET EXERCISE

Locate a copy of your state's code of professional responsibility on the Internet. Determine whether your state addresses the professional responsibilities of paralegals and what those entail. If your state does not specifically address the professional responsibility of paralegals, determine what code your state follows and how it is applied.

**Answer:** This response will vary according to the jurisdiction.

### INTERNET EXERCISE

Obtain or create a diagram of your state system, noting which courts function as trial courts (original jurisdiction) and as intermediate or final level courts of appeal (appellate jurisdiction). Be able to identify the subject matter jurisdiction of each of your state courts. This is important because most of your work will be done in state court.

**Answer:** This response will vary according to the jurisdiction.

## APPLY YOUR KNOWLEDGE

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### APPLY YOUR KNOWLEDGE

Under what circumstances, if any, in your jurisdiction may a paralegal practice law unsupervised? Determine under what legal authority this practice is governed, such as a statute, court rule, or bar association opinion. Is there a distinction between paralegal practice in state court practice and federal practice? If so, under what circumstances can a paralegal represent the public?

**Answer:** This response will vary according to the jurisdiction.

### APPLY YOUR KNOWLEDGE

Determine from the map in Exhibit 1.6 the federal circuit and district courts that serve your state. Place that information in your systems folder.

**Answer:** This response will vary according to the jurisdiction.

## APPLY YOUR KNOWLEDGE

Using the facts from Case IV at the beginning of the chapter, determine what state and in what courts could Briar Patch file a lawsuit against Teeny Tiny Clothing.

**Answer:** State court: Massachusetts. Federal court: Massachusetts (diversity) District Court.

**CASE STUDY QUESTIONS FOR REVIEW**

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

**QUESTIONS FOR REVIEW: What was the main issue in the case?** The issue before the U.S. Supreme Court was what constituted billable time for a paralegal and at what market rate a paralegal's time should be billed as part of an award for attorney's fees. **What was the position of the state of Missouri on the payment of paralegal fees?** Paralegal fees should be paid at cost rather than market rates, such as \$30.00 to \$50.00 per hour. **What was the reasoning of the dissent in *Jenkins*?** The dissent was founded on the belief that the Eleventh Amendment does not permit the enhancement of attorney's fees assessed against a State as compensation for delay in payment: "Two general propositions that are relevant here emerge from *Sahw*. First, interest is considered damages and not costs. Second, compensation for delay, which serves the same function as interest, is also the equivalent of damages. These two propositions make clear that enhancement for delay constitutes retroactive monetary relief barred by the Eleventh Amendment."

*Doe v. Condon*, 341 S.C. 22; 532 S.E.2d 879 (2000)

**QUESTIONS FOR REVIEW: What rules of ethics did the Court use to support its conclusion?** S.C. Rules of Professional Conduct, Rule 5.4, S.C. App.Ct. R. 407. **Would the Court have reached the same result if the attorney (1) had been a presenter along with the paralegal at the seminar and (2) had participated in the meeting and interview process with clients?** Most likely, yes. The absence of the attorney's input and supervision caused the problems in the case. The paralegal, in this instance, had too much independence.

**Are there any circumstances where the rules of ethics permit a paralegal to share in the profits from a law firm?** No. The paralegal can earn a bonus, but this is not considered sharing in the profits of the law firm.

*Caiazzo v. American Royal Arts Corp*, 73 So. 3d 245 (Fla. 2011)

**QUESTIONS FOR REVIEW: Determine the test the Court used for specific jurisdiction.** For specific jurisdiction, the Court focused on the Florida long-arm statute and Caiazzo's contacts with the state. The Court found specific jurisdiction, which means that the Court had personal jurisdiction over him. **What is the test for general jurisdiction?** As for general jurisdiction, the Court performed a different analysis focusing on whether Caiazzo had "substantial, continuous, and systematic" minimum contacts. In this instance, the Court found that the contacts were almost exclusively on the Internet, and those contacts were not substantial and continuous enough to warrant general (personal) jurisdiction over Caiazzo. The end result was that the Court did find personal jurisdiction, but under specific and not general jurisdiction. **How do the tests differ?** For specific jurisdiction, the Court focuses on a statutory connection. As for general jurisdiction, the Court looks to the type of contacts with the jurisdiction. **How did the Court analyze the Internet contacts and what case precedent did the Court apply in reaching its decision?** The court found that the Internet connection were tenuous and did not find jurisdiction under that test. The Court looked at U.S. Supreme Court precedent and the leading Internet case of *Zippo Mfg. Co Zippo Dot Com. Inc.*, 952 D. Supp. 1119 (W.D. Pa. 1997).

## SUGGESTED ANSWERS TO THE ADDITIONAL MINDTAP QUESTIONS AND ASSIGNMENTS

### ADDITIONAL QUESTIONS FOR STUDY AND REVIEW

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1. What is a partner, an associate, and a staff attorney?

**Answer:** *Partners* are the attorney-owners of the law firm and share in its profits. *Senior partners* are the partners who have been with the firm the longest and often have the greatest ownership share. Attorneys who have not yet become partners and are salaried are *associates*. More experienced associates are sometimes given the title *senior associate*. *Staff attorneys* are hired for economic reasons and, unlike associates, have no expectation of becoming partners.

2. What is the “chain of command” at White, Wilson & McDuff?

**Answer:** See Exhibit 1.1.

3. State the benefits of having diverse personnel.

**Answer:** Diversity in our office personnel at all levels enriches our work environment, improves communication with an increasingly diverse clientele, and is good for business. Businesses and major corporations are looking to hire law firms with diverse personnel, including women and minority partners. Therefore, striving to develop corresponding policies and benefits, such as better access for the disabled, plus child care, flex time, and family leave programs, will assist a firm in becoming more diversified and attractive to all types of businesses and individuals.

4. Define *civil litigation*.

**Answer:** Cases involving noncriminal matters, such as personal injury, civil rights, contractual claims, and numerous others areas, as cited in the Firm handbook.

5. What are some of the profound effects the Internet is having and will have on the practice of law?

**Answer:** The effect of the Internet on the practice of law is vast. Technology requires knowledge of software, e-mail procedures and security, video conferencing, instant messaging, PIMs, and other means of communicating with each other and our clients. The Internet also poses many ethical and security concerns that must be addressed in the workplace. One area that a paralegal must confront with regard to the Internet is the increased practice of the unauthorized practice of law. This is an area that should be reinforced in any classroom discussion.

6. What is the difference between a personal injury case based on negligence and a product liability case? An antitrust and a civil rights case?

**Answer:** The theories of recovery are different depending on the cause of action. Negligence liability is unintentional, whereas many types of products liability cases involve strict liability, which is a different standard of law. Antitrust cases mostly address aspects of unfair competition, whereas civil rights cases involve unfair treatment of individuals in varying scenarios, such as workplace issues or public access issues (e.g., ADA issues).

7. Define the various billing types and describe the steps in the timekeeping procedure. What is task-based billing?

**Answer:** Some types of billing and fees are:

*Hourly rate billing*—a price based on the total number of hours worked at a specified per hour charge

*Task-based billing*—set prices for different types of tasks that may vary depending on the nature or difficulty of the task (phone call, travel, document drafting, etc.)

*Flat fee billing*—an overall, preset price to handle a matter from start to finish (frequently used for routine, high-volume matters)

*Contingency fee*—an amount to be paid only if the client wins the case, usually a percentage of the money awarded to the client

*Retainer fee*—upfront payment to secure legal services and to cover anticipated costs and attorney fees

*Value billing*—a pricing method (increasingly demanded by many businesses and corporations) that requires the law firm to estimate what the legal representation will cost and what services, specifically, the client will pay for (used to bid for a prospective client’s business and to help the client budget the cost of legal services).

Steps in the timekeeping procedure are as follows:

1. Enter the client’s name, the related file or account number, and the date of entry.
2. Enter your identification code.
3. Enter or click the type of service provided.
4. Click the NC box if time was spent on a nonbillable item such as a professional meeting or public service activity.
5. Enter the number of whole hours worked on the service plus any partial hours, usually in tenths of an hour (six minutes equals one-tenth of an hour).
6. If the software permits, enter a description of the task that accurately conveys to the client the legitimacy of the work.
7. Enter information on any out-of-pocket expenses incurred that are to be reimbursed by the client, such as long-distance phone calls, mileage traveled, and online fees.

#### Task Based Billing

*Task-based billing*—set prices for different types of tasks that may vary depending on the nature or difficulty of the task (phone call, travel, document drafting, etc.)

8. Describe the steps in the deadline control procedure.

**Answer:**

1. Enter the name of the client and the file number of the case to which the deadline applies.
2. Enter the task that must be completed. Some tasks require other related tasks to be done by other people in the firm, or software facilitates the assignment of deadlines to more than one employee. Enter this information.
3. Enter the deadline date and reminder dates for the particular task in the designated boxes.
4. Enter the start date (the day the task should be started) in the designated box.
5. Enter under “Remarks” any specific direction to assist in completing the task.
6. If done electronically, the information is automatically recorded in the firm’s master calendar. If done manually, see that the required form is delivered to the person in charge of recording deadlines.

9. What is the significance of office electronic security? List related security tips.

**Answer:** Electronic security refers to the steps a law office takes to maintain the security and integrity of its electronic systems and communications.

Tips:

- When e-mailing confidential documents, use encryption or, at the very least, use the office’s standard confidentiality disclaimer with intended recipient information and subject as the e-mail message and enclose the confidential document as an attachment only.
- Use a metadata removal program for documents being sent out of the office (metadata is invisible but retrievable electronic information about the preparation and history of a document that can be harmful in the hands of opponents or others).

- In addition to virus protection, use software that prevents others from invading your computer system with spyware, password crackers, network scanners, and the like.
- When out of the office, avoid the use of shared wireless or Internet café services except for with routine, nonconfidential communication.
- Confirm that your computer work is backed up regularly.
- If working at home on office business, be sure your home computer is also protected by a firewall and other needed security devices.
- Take great care to prevent the theft of portable electronic devices used for office business

10. What are the techniques for thriving in the law office?

**Answer:**

- Become acquainted with your fellow employees.
- Review your ethical responsibilities and those of the firm on a regular basis.
- Learn the chain of command in the office and the roles of your supervising attorney or paralegal manager, the secretaries and others to whom you will give assignments, and other members of the firm. Know where authority rests and who is responsible for what.
- Understand that you are a part of a team whose members are likely to have conflicting deadlines and schedules.
- Know how to assign work. Decide to whom the work should be assigned and submitted, how much advance notice is normally required before the expected completion date, what procedure is appropriate in last-minute rushes, whether completion dates should be given, and whether special forms for delegating tasks are used. Compliance with these procedures will enhance your relationship with those to whom you assign work and will contribute to office efficiency.
- Submit work as error-free as possible. Take the time to check grammar, spelling, citations, form, brevity, accuracy, and clarity.
- Keep careful track of client files. Misplaced case files lead to frustration and can adversely affect our representation of a client. Follow strictly the office policy on checking out and returning files.
- When addressing clients, use *Mr.*, *Ms.*, *Dr.*, or other appropriate titles. Avoid first names unless there is no doubt the situation makes it acceptable.
- Be sensible when using the telephone. In addition, some phone conversations are important enough to confirm in writing the terms, dates, or arrangements discussed on the phone. If possible, do this immediately following the phone call. The letter serves as an important record of the conversation. In some instances, if a letter of confirmation seems inappropriate, a brief memo to the file may be useful.
- Learn to complete assignments efficiently. Prioritize your assignments according to deadline, how much time they will take, and other factors.
- Once you have the assignment in mind, decide the best way to complete the task. Use the guides and examples provided during your training. Ask the attorney for additional guidance.
- Remember the importance of your work to your clients.
- Reduce stress and its debilitating effects by learning not to take curtness and gruffness personally, understanding that this is a symptom of the pressure felt by others.
- Dress professionally.
- Learn the criteria in your office for a job well done and those for advancement.
- Keep a sense of humor.

11. State the ethical standard on preserving client confidentiality.

**Answer:** A paralegal shall hold inviolate the confidences of a client. Nothing the client tells you or that you learn about the client may be revealed to anyone outside the office, not even to a spouse or parent. ABA Model Rule 1.6 states that a client's confidences shall not be revealed unless the client gives "informed consent" or the disclosure is "impliedly authorized to carry out the representation."

12. What are the criteria for a proper conflict-of-interest screen according to the *Leibowitz* case?

**Answer:** The preferred method to deal with such real or potential conflicts is to surround the new employee with an “ethical wall” that screens the employee from any contact with the case that causes the conflict. This approach is recommended by the ABA and has been adopted in most jurisdictions [Comment 4, Model Rule of Professional Conduct 1.10; ABA Committee on Ethics and Professional Responsibility, Informal Op. 1526 (1988); and ABA Model Guideline 7 for the Utilization of Paralegal Services (2004)]. In *Leibowitz v. the Eighth Judicial District Court of the State of Nevada*, 78 P. 3d 515 (Nev. 2003), the Nevada Supreme Court reversed a former decision that prohibited such screens for nonlawyer personnel, and reiterated the recommended criteria for a proper conflict-of-interest screen:

1. The new nonlawyer employee must be warned not to reveal any information relating to the representation of the former employer’s client.
2. The employee must be told not to work on any matter the employee worked on for the former employer or on which the employee has information gained during the former employment.
3. The new firm should implement safeguards beyond the above warnings to see to it that the new employee does not work with matters worked on during the prior employment (such as notifying all office lawyers and paralegals that the relevant employee must not work on the specifically identified matter).
4. The new firm must inform the adverse party (or counsel) that their former employee has been hired and of the screening methods used.

13. Why are professional integrity and honesty so important?

**Answer:** Be mindful that one’s actions reflect upon this firm and the professions we each represent. Ethics are the key to the legal profession and represent who the firm is and the people within the firm. The more that is known about the ethical responsibilities of the attorney and paralegal, the more likely it is that trouble will be avoided.

14. What is personal professional development? Why is it important?

**Answer:** Personal professional development is the practice of improving oneself professionally by keeping abreast of developments within the legal profession, such as ethics, cases, and trends. The importance of professional development is that it allows both the attorney and paralegal the opportunity to keep current on new developments in the legal profession.

15. What are the names and jurisdictions of the various levels of courts in both the federal and your state system?

**Answer:** Other than the federal system, which has district courts, federal appeals courts, and the U.S. Supreme Court, the answer will vary depending upon the student’s jurisdiction of practice.

16. What federal circuit is your state in?

**Answer:** This answer will vary depending on the student’s jurisdiction of practice.

#### **ADDITIONAL SYSTEMS FOLDER ASSIGNMENTS**

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1. To develop a timekeeping habit during this training period, keep track of your time spent on assignments in the following time log, similar to that in Exhibit 1-2. Use a separate notebook or loose-leaf paper that can be placed at the back of your systems folder or keep track of your time in an electronic timekeeping program, if one is available.

**Answer:** The students may need occasional reminders to keep up their time logs. If you have timekeeping software available, students could keep track of their time by computer.

2. Set up a simple deadline calendar for this training period. Use any type of standard calendar. Enter all important deadlines such as assignment due dates and exam dates. Use a system of advance reminder dates prior to the actual deadline and post-deadline reminders for necessary corrective action.

**Answer:** This should instill a deadline calendaring habit. Use of post-deadline reminders should be emphasized. If your program has access to deadline control computer software, you might require students to use it for the various deadlines in the course.

### ADDITIONAL APPLICATION ASSIGNMENTS

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1. An attorney relied on a non-attorney calendar clerk to let him know when a notice of appeal was due. The deadline was missed, and the attorney filed for an extension of time because of excusable neglect, allowable if there is good cause for the mistake. Should the extension be granted?

**Answer:** The court in *Pincay v. Andrews*, 351 F.3d 947 (9th Cir. 2003) ruled that delegation of responsibility for knowledge of the law to a nonlawyer is not acceptable. It added that delegation of services involving knowledge of the law to nonlawyers such as paralegals is common and acceptable as long as responsibility is retained by the lawyer.

2. Your supervising attorney asks you to release to the press a letter from a third party. The attorney says, “I’ll finally get even by truly embarrassing the s.o.b.” What should you do?

**Answer:** The attorney’s conduct is unethical under Rule 4.4 (“a lawyer shall not use means that have no substantial purpose other than to embarrass”). It is the professional duty of a paralegal to point this out to the attorney. There may be a satisfactory explanation. If not, the paralegal must refuse to commit the act or be a party to the unethical breach. This is an example where loyalty to the profession and its ethics may supersede loyalty to the attorney.

3. Determine in which courts subject matter jurisdiction, personal jurisdiction, and venue exist in the following problems.

- a. A, a resident of Florida, sues B, a resident of Washington, who is also the Secretary of the Interior, in a First Amendment freedom-of-speech issue arising in southeast Georgia.

**Answer:** Subject matter jurisdiction rests in the federal district courts (federal question cases) and all state courts (general jurisdiction).

State venue rests with the residence of the defendant (Washington) or where the cause arose (Georgia). Federal venue where the defendant is an officer of the United States, regardless of the fact that this is a federal question case, exists under §1391(e) in the district where defendant resides (Washington), or where a substantial part of the event or omission arose (Southeastern District of Georgia), or where the plaintiff resides if there is no real property involved (Florida).

The courts with personal jurisdiction, however, include only Washington state courts or the District Court for Washington, absent any long-arm provisions. Therefore, the action can be brought in the District of Washington or in a Washington state court. Section 1391(e), however, suggests that personal jurisdiction can be gained by mail, and therefore the action could be filed in the appropriate district in Florida or southeast Georgia.

- b. What happens in problem 3 if S is a Canadian citizen living in Louisiana?

**Answer:** Only Louisiana can get personal jurisdiction and venue for a state suit against S. Under federal law (§1391), federal venue exists in any district, but personal jurisdiction exists only in the appropriate district in Louisiana. Therefore, separate state and federal actions would be necessary in Kentucky and in Louisiana. Again, a long-arm statute in Washington could lead to combined state or federal actions in Washington.

- c. E sues Great Britain for damages exceeding \$500,000 for the illegal impounding of E’s commercial plane.

**Answer:** The United States District Court for the District of Columbia [§1391(f)(4)].



**ADDITIONAL INTERNET EXERCISES**

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1. Go to [www.abanet.org](http://www.abanet.org). In the search window, type: model guidelines for the utilization of paralegal services. Find paragraph 3 of the comment to Guideline 1. What must a lawyer do to conform to Guideline 1?

**Answer:** “[A] lawyer must give appropriate instruction to paralegals . . . about the rules governing the lawyer's professional conduct, and require paralegals to act in accordance with those rules.”

2. Ask your instructor for the name of your state and local paralegal associations. Using a general search engine, see if that association has a Web site. If so, note the Web address in your systems folder.

**Answer:** No answer is required for this exercise.

3. Go to both the NALA and NFPA Web sites and note the variety of career information available.

**Answer:** No answer is required for this exercise.

4. Using your own search strategy, locate the Web site for your state courts. Note what general categories of information are available and enter this information in your systems folder.

**Answer:** No answer is required for this exercise.

**ADDITIONAL LEARNING EXERCISES**

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1. Without trying to use legal terminology or technical theories, answer the following questions for each of the five hypothetical cases presented in this chapter.

- a. Who is suing and what basis might they have?
- b. Against whom is the suit brought and what defenses might they have?
- c. Who do you think will win and why?

**Answer:**

Case I

- a. Ann Forrester is suing because Richard Hart was not driving carefully (failed to stop), and because the Mercury Parcel van was poorly maintained (no brakes).
- b. Mercury Parcel, that Ms. Forrester was not watching for traffic; that Hart was at fault, not the van. Richard Hart, that Ms. Forrester was not watching traffic and that the van was poorly maintained by Mercury Parcel.
- c. This answer is subjective. For each case, however, students should consider such things as disparity in each party's resources, jury sympathy factor, difficulty of proof, comparative long-term waiting power of the parties, likelihood of hiring a better attorney, and other factors.

Case II

- a. Carl Ameche, because his injuries were caused by unsafe electrical conditions at the campground.
- b. The Congdens, that Ameche had moved the cord.
- c. This answer is subjective.

Case III

- a. Sam and Emma Coleman for Sean Coleman, because the vehicle was unsafe to be operated as advertised.
- b. Make Tracks, that the vehicle was operated in a reckless manner.
- c. This answer is subjective.

## Case IV

- a. Briar Patch Dolls, because unfilled contract orders caused massive business losses.
- b. Teeny Tiny Manufacturing, that unfilled orders were unavoidable because of Ms. Meyers' death.
- c. This answer is subjective.

## Case V

- a. Darlene Rakowski, because unpleasant working conditions (sexual harassment) forced her to leave her job.
  - b. Montez Construction, that Ms. Rakowski was unable to perform her job.
  - c. Subjective.
2. Apply the directions for preparing a time slip to enter these activities. Assume your hourly rate is \$40 an hour and the date is today. Round to the nearest tenth of an hour.
- 6-minute phone call to client A. Forrester, Case I.  
 16 minutes to draft letter on behalf of client Heinz, Case IV.  
 1 hour and 18 minutes to research cause of action for client Ameche, Case II.  
 1 hour and 20 minutes to attend continuing education luncheon to improve general knowledge, but which may be useful on Cases III and IV. Cost: \$5. (Should this be charged to the client?)
- Answer:** See box with completed permanent time log.

## Permanent Time Log

## Service Codes

BG	Budgeting Settlement	DM	Document	M	Memorandum	SE
C	Conference Telephone		Management	MO	Motion	T
CT	Court	DS	Discovery	P	Preparation	TR Travel
D	Document Drafting	I	Investigation	PL	Planning	O Other
		L	Letter	R	Research	

## No-Charge Items

NC	No Charge	CE	Continuing Education	PS	Public Service
B	Bar Function	CR	Client Relations		

Date	File No.	Client	Att/Plgl	Serv Code	Hrs	10th	Rate/Hr	Amt
	1	A. Forrester		T		1	40	4.00
	4	Heinz, Briar Patch		L		3	40	12.00
	2	C. Ameche		R	1	3	40	52.00
				CE*	1	3		NC

Comments:

\*Out-of-pocket expense of \$5 to be reimbursed by firm

- Fill out disbursement records based on this information.  
 100 photocopies at 10¢ per copy, business records for Heinz, Case IV.  
 Trip to investigate accident scene for client McVay, Case X: \$60, motel; \$5, lunch; \$11, dinner; 100 miles at .25 per mile.  
 Computer research time, 10 minutes at \$5 per minute for Montez Construction, Case V.  
**Answer:** See box with completed permanent disbursement record.

Permanent Disbursement Record

Expense Codes:

C	Photocopies	L	Lodging	P	Postage	T	Telephone
CT	On-line Computer	M	Meals	\$	Cash	TR	Travel
F	Filing & Other Fees	O	Overnight Express	TG	Telegrams	O	Other

Date	File No.	Client	Atty/Plgl	Exp. Code	Amt.
	4	Heinz, Briar Patch		C	10.00
	10	McVay		L	60.00
	10	McVay		M	16.00
	10	McVay		TR*	25.00
	5	Montez Construction		CT	50.00

Comments: \*Note destination and mileage.

- Assume that you have just opened the morning mail and received a copy of a complaint alleging a cause of action against Mr. Holton, who is represented by your firm. His file number is 92-1000. You know that you have 20 days, starting tomorrow, to file an answer and that it is your job to draft an answer for your supervising attorney’s review. You have received the complaint on September 5. Making up the names you need, prepare the following deadline control slip so the document will be ready to mail on the 20th day. Ignore the fact that some days may be weekend days for purposes of this assignment only. Assume it will take a half day to research and draft the answer, one hour for the attorney to review it, a half hour for you to make revisions, and a half hour for the secretary to type it and have it ready for mailing. Complete all sections of the slip.  
**Answer:** See box with completed deadline slip. Check that appropriate places are filled in on the slip and that the time sequence is logical and reasonable.

## Deadline Slip

Client: Holton File Number: 92-1000

Atty:	Start:	Due:	Plgl:	Start:	Due:	Staff:	Start:	Due:
I.P.	9/20	9/22		9/15	9/17	M.D.	9/23	9/24
Task: Review, review amendments,			Task: Draft answer			Task: Prepare Answer sign answer for review, signature, then mail.		
Remarks:			Remarks:			Remarks:		
Reminder: 1 2 Final			Reminder: 1 2 Final			Reminder: 1 2 Final		
Done:			Done:			Done:		

5. Of all the techniques mentioned for thriving in the law office, which two are most important? Explain.

**Answer:** This answer is subjective.

6. Describe a paralegal litigation systems folder and its advantages.

**Answer:** A systems folder is a detailed procedure manual that is a collection of directions, forms, and checklists for tasks regularly performed by the paralegal.

Advantages include efficiency, uniformity, accuracy, quality, and currentness. It can be a learning device, a factor in securing employment, and an aid on the job.

7. Read thoroughly the *Model Rules of Professional Conduct* or your state rules of conduct to gain a fuller understanding of your ethical responsibilities. Why is confidentiality so important?

**Answer:** If there is no confidentiality, clients will not confide essential details or will not consult a lawyer at all. Consequently, this could result in less use of the system, more self-help, and possibly chaotic results in dispute—and, ultimately, system failure. Lack of confidentiality could also allow information, and advantage, to leak to the opponent, endangering the adversarial system.

### ANSWERS TO THE MINDTAP PRACTICE TESTS

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1. Paralegals are responsible for clerical and word processing services for the law firm.

**Answer:** False

2. Disbursements are expenses incurred on behalf of the client.

**Answer:** True

3. Help your clients feel comfortable by using their first names immediately.

**Answer:** False

4. Pro-bono cases are cases involving malpractice.

**Answer:** False

5. The U.S. Court of Appeals for the Federal Circuit hears appeals from the U.S. Commissioner of Patents.

**Answer:** True

6. The U.S. Court of Appeals has original jurisdiction over controversies between two or more states.

**Answer:** False

7. An adverse party for whom a newly hired paralegal once worked should be informed of the hiring and of the nature of the conflict-of-interest screen.

**Answer:** True

8. Industrial espionage might lead to which type of litigation?

- a. Contract case
- b. Civil rights case
- c. Corporation case
- d. Products liability case

**Answer:** c

9. Timekeeping is important for

- a. analyzing productivity.
- b. setting speed records.
- c. determining billable hours.
- d. a and c
- e. none of the above.

**Answer:** d

10. A tickler system

- a. helps with legal research.
- b. is a calendaring process.
- c. keeps law office personnel in a jovial mood.
- d. indicates proper venue.

**Answer:** b

11. Professional telephone use includes all of the following *except*

- a. a chatty conversation.
- b. repetition of facts.
- c. brevity.
- d. identification as a paralegal.

**Answer:** a

12. Paralegals may

- a. give legal advice to a friend.
- b. accept cases for the firm.
- c. represent clients at federal administrative hearings.
- d. split fees with an attorney.

**Answer:** c

13. Florida court decisions and legislation introduced in some states have pointed toward possible changes in rules regarding

- a. unauthorized practice of law.
- b. conflict of interest.
- c. confidentiality.
- d. a and d.
- e. all of the above
- f. licensing of paralegals.

**Answer:** d

14. Ethical responsibility in a law firm rests with
- attorneys.
  - the senior partner.
  - paralegals.
  - legal secretaries.
  - all of the above.

**Answer: e**

15. A court has personal jurisdiction
- when a summons and complaint are served within its geographical district.
  - when a summons and complaint are served out of state under a long-arm statute.
  - over everyone in its district.
  - a and b.
  - b and c.

**Answer: d**

16. The jurisdictional amount
- can determine in which court a case can be tried.
  - is the attorney's fee.
  - is the same in all courts.
  - can be waived for indigents.

**Answer: a**

17. Legislative courts include all of the following *except* the
- United States Claims Court.
  - United States District Court.
  - United States Tax Court.
  - United States Court of Veterans Appeals.

**Answer: b**

18. Except in class action cases, the jurisdictional amount in federal diversity cases
- is the combined claim for multiple plaintiffs.
  - is the value of all claims made by one plaintiff against one defendant.
  - can never include attorney's fees.
  - is the value of each plaintiff's interest in the property in question rather than the actual value of the property.

**Answer: b**

19. Venue is all of the following *except*
- the county where the incident occurred.
  - the county where all the defendants reside.
  - each county where multiple plaintiffs reside.
  - neighborhood.

**Answer: c**

20. The law that substantially extends diversity jurisdiction in class action cases
- is the Class Action Fairness Act.
  - is the State Class Action Limitation Act.
  - sets the jurisdictional amount for all plaintiffs combined at \$10 million.
  - requires all plaintiffs and defendants to be diverse.

**Answer: a**