



NORTH CAROLINA CERTIFIED PARALEGAL EXAMINATION STUDY GUIDE

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Table of Contents

Introduction	1
Examination Overview	3
History of Certification in North Carolina.....	5
North Carolina Certified Paralegal Requirements	8
References	11
Sample Questions	15

DOMAINS

Communication	20
Organization	29
Documentation	35
Analysis	40
Research	45

AREAS OF LAW

Civil Litigation	51
Commercial Law.....	54
Criminal Law.....	57
Ethics	60
Family Law	65
Grammar	67
Real Estate.....	68
Wills, Trusts, and Estates.....	72
Legal Terminology	74

INTRODUCTION

Welcome to the study guide for the North Carolina State Bar's Plan for Certification of Paralegals examination! This study guide was designed to provide a roadmap to assist all those studying to take the certification examination. While your coursework in your paralegal program should have given you the tools to study for the examination, this study guide is much more focused on the examination itself. The examination was not designed as a pedagogical tool; it was designed as a way to determine whether an applicant can demonstrate a basic level of understanding of the law and the legal processes in North Carolina.

The purpose of the North Carolina State Bar's Plan for Certification of Paralegals ([27 NCAC 1G](#)) is to assist in the delivery of legal services to the public by identifying individuals who are qualified by education and training and have demonstrated knowledge, skill, and proficiency to perform substantive legal work under the direction and supervision of a licensed lawyer (including any individual who may be otherwise authorized by applicable state or federal law to provide legal services directly to the public) and to improve the competency of those individuals by establishing mandatory continuing legal education and other requirements of certification. We encourage you to read the Plan for Certification of Paralegals in its entirety, which can be found on the NC State Bar's website at <http://www.ncbar.com/rules>.

The North Carolina State Bar's Plan for Certification of Paralegals includes a requirement that North Carolina Certified Paralegals meet minimum educational standards, pass a basic competency examination, and maintain the certification through continuing education. This guide was created to assist examination applicants to prepare for the examination. This guide is not meant to be comprehensive. The purpose of this guide is to provide applicants with a starting point for studying for the examination and also a source for basic test-taking strategies.

Each of you taking the examination has graduated from a qualified legal studies program. The best resources that you have in studying for this examination are your program materials. You have already learned the elements of a contract, the difference between a general warranty deed and a quitclaim deed, the elements of assault and battery, and rules regarding client confidentiality. We hope that this guide will help you to access the information you have already learned and be successful on the examination.

The examination is all multiple choice questions. Unlike some tests, guessing in itself will not harm your score. If you do not know the answer to one of the questions, first see if you can eliminate one or two answers. Then, see which answer makes the most sense. If all else fails, do not leave any of the questions unanswered – there are no

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penalties for guessing wrong, but your answer will certainly get marked wrong if you fail to answer at all.

This guide is meant to provide you with a place to learn to organize how you study and to provide all applicants with a basic understanding of how the examination is structured. We wish you the best of luck as you prepare for and take the examination, and we look forward to having you join the ranks of North Carolina Certified Paralegals.

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EXAMINATION OVERVIEW

Application process

You may apply to the North Carolina Certified Paralegal program after graduation from a paralegal school with a certificate or diploma, associate's, bachelor's, or master's degree. The paralegal school must have been approved by the Board of Paralegal Certification as a "qualified paralegal studies program" as defined in the "North Carolina Certified Paralegal Requirements" section of this study manual.

Applications are accepted by the North Carolina State Bar on a continuous basis. The application may be found at the North Carolina Certified Paralegal's website (www.nccertifiedparalegal.gov). To apply, complete the application, enclose the application fee, and mail the application to the following address: Director, North Carolina State Bar Board of Paralegal Certification, Post Office Box 25908, Raleigh, NC 27611.

The Board of Paralegal Certification of the North Carolina State Bar currently offers the required examination twice a year, typically in April and October. Please refer to the most recent application form for the amount of the application fee, examination fee, and other examination instructions.

Taking the examination

The examination consists of 150 multiple choice questions. You have three hours to complete the examination. Because the questions change each time an examination is given, the passing score varies with each testing.

The examination is organized into five "performance domains." Performance domains identify the core competencies required for the proficient job performance of a North Carolina Certified Paralegal. Experienced paralegals were surveyed and their responses determined the performance domains. These domains are tested by questions on a particular area of law (e.g., civil litigation). Within these performance domains, there are several tasks that will be tested. Following are the performance domains or core competencies associated with the tasks:

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Domain	Tasks
Communication	Discuss and comprehend work tasks; gather and report investigative information; relay initial and follow-up information; interact with client and attorney; adhere to ethical standards of the legal profession.
Research	Determine applicable sources; understand primary and secondary authorities; gather research information.
Analysis	Determine relevant information; assess client situation and suggest possible courses of action for attorney consideration; analyze proposed courses of action.
Documentation	Draft documents and correspondence; coordinate document execution, filing, and recording; coordinate service of process; create form documents; review documents to maintain validity.
Organization	Coordinate schedules; maintain tickler system; create, utilize, and maintain proper file management techniques; prioritize workload assignments.

Within these domains, applicants will find questions in the following substantive areas of the law: Civil Litigation, Commercial Law, Criminal Law, Ethics, Family Law, Legal Research, Real Property, and Wills, Trusts, and Estate Administration. The legal subjects to be tested are based upon a review of the core curriculum required by the community college system for paralegal studies programs in North Carolina, which generally follows the core curriculum for ABA-approved paralegal studies programs. Please note that exam questions are written to test the domains and the tasks referenced above. The questions may not be equally distributed among the different areas of law.

The examination is based primarily on North Carolina law; however, some federal and/or common law questions may be asked to the extent they are relevant to the core knowledge required of a North Carolina paralegal.

If you do not pass the examination, you may retake the examination the next time it is offered. You must retake the entire examination. The examination is not divided into sections for grading purposes.

Council Proposes Plan for Certification of Paralegals

By J. Michael Booe
Chair, Legislative Study Committee on Paralegal Regulation

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During the 1990's, many paralegals in North Carolina became frustrated with the perceived ambiguity between the widespread recognition of the profession in the legal community and by the public, and the fact that anyone could call himself or herself a paralegal without any formal education or training. In addition, paralegals began to confront the professional development and unauthorized practice of law issues which had led some other jurisdictions to undertake to define the role of paralegals and to regulate the services paralegals provide.

In February 2001, after some paralegal organizations had spent five years researching paralegal regulation issues, conducting educational meetings on paralegal regulation, and polling paralegals across the state on their opinions involving such regulation, the Alliance for Paralegal Professional Standards ("APPS") was formed. See sidebar. An ad hoc organization, APPS' stated purpose was to identify the paralegal profession, to enhance the status of the profession, and to create a unified regulatory voice for North Carolina paralegals. APPS recognized that attorney participation in the process was not only desirable but also necessary, and in June 2001, it invited the State Bar to participate in its deliberations. At the time, the State Bar was reluctant to participate because regulatory authority for paralegals was not expressly delegated to it by the General Assembly and there was no demand from lawyers to seek such authority. Without the involvement of the State Bar, APPS pressed forward.

By the fall of 2002, APPS had revised its goals to be (1) to enhance the quality of legal services provided to the general public by establishing minimum standards for North Carolina paralegals; (2) to facilitate the employment of paralegals by North Carolina attorneys by ensuring that prospective paralegal employees meet minimum standards and (3) to enhance the paralegal profession in North Carolina. As a result of the efforts of APPS, Senator Tony Rand, with the co-sponsorship of Representative Rick Glazer, introduced in April 2003 the Paralegal Professional Act (the bill). The bill resembled an act proposed by APPS, but it contained materials revisions inserted by the bill drafting staff of the General Assembly. Fundamentally, the bill was a titling act; that is, it prohibited anyone in North Carolina from using the designation "paralegal" unless the person met certain educational or experiential qualifications. The bill also established an independent, 19-member, North Carolina Paralegal Regulation Board to

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oversee the program. The bill did not, however, prohibit non-lawyers who were not “paralegals” from performing any task assigned to them by a supervising lawyer.

At its April 2003 meeting, the Emerging Issues and Legislative Committees of the State Bar Council voted to oppose the bill, principally because the definition of “paralegal” contained in the bill appeared to embrace virtually all non-lawyers employed in law offices and because there appeared to be little justification for the creation of a new regulatory agency for service providers who are obligated to act under the supervision of licensed and regulated lawyers. Upon learning that the State Bar opposed the bill, APPS asked the sponsors of the bill to suspend activity. Subsequently, APPS made a presentation to a joint meeting of the Emerging Issues and Legislative Committees in July 2003, at which it urged the State Bar Council to support the bill in some revised form. As a result of that meeting, Jim Dorsett, then President of the State Bar, appointed the Legislative Study Committee on Paralegal Regulation as a subcommittee of the Legislative Committee (“subcommittee”). The subcommittee’s charge was to work with APPS and its constituent groups with the goal of finding a compromise that could be supported by both the paralegals and the State Bar Council.

The subcommittee met with the constituent paralegal groups for the first time on October 1, 2003. After considerable discussion, the subcommittee rejected the concept of regulating the use of the title “paralegal” and also rejected a proposal to license and regulate paralegals. It agreed, instead, to pursue a plan to establish minimum standards for voluntary designation of qualified individuals as “board certified paralegals” while invoking as little legislative change as possible.

With those goals in mind, the subcommittee drafted a plan for paralegal certification modeled loosely on the State Bar’s Plan of Legal Specialization to be added as a new section of the Rules and Regulations of the State Bar. Like specialization, paralegal certification is wholly voluntary. Unlike specialization, however, initial paralegal certification is intended to be broadly inclusive by establishing a minimum level of education and experience in order to be designated a “board certified paralegal,” and requiring a minimum level of continuing education to maintain certification. The subcommittee also proposed amending Chapter 84 to authorize the State Bar to create and enforce such a program.¹ At the April meeting of the council,

¹ The proposed amendment of G.S. 84-23 (Powers of Council) will give the council the authority to take actions to ensure the competency of the nonlawyer assistants of lawyers. The proposed amendment of G.S. 84-37 (State Bar may investigate and enjoin unauthorized practice) will authorize the State Bar to enjoin the unauthorized use of the “certified paralegal” designation. Legislation to amend these statutes will be introduced in the General Assembly this summer. The rules for paralegal certification will not be finally adopted by the council and submitted to the Supreme Court for approval until the statutes are amended.

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the proposed rules for the Plan for Certification of Paralegals were approved for publication by a unanimous vote.

The subcommittee, the Legislative Committee, the State Bar Council and all of the constituent paralegal groups believe that the Plan for Certification of Paralegals strikes an appropriate balance between the interests of paralegals, the interests of the Bar and the interests of the public. First, it's totally voluntary. Second, it does not seek to differentiate services that can be performed by certified paralegals, non-certified paralegals or other non-lawyer employees in a law office. Third, it provides an incentive to paralegals to meet the educational and experiential qualifications for initial certification, and to participate in annual continuing education to maintain certification. Fourth, after the initial two-year alternative qualification period, it requires an examination as a prerequisite to certification to ensure that certified paralegals have a fundamental understanding of North Carolina statutes, practices and ethical considerations. Fifth, it will be a self-funding program administered under the auspices of the North Carolina State Bar by a board appointed and supervised by the State Bar Council. Finally, it will benefit the general public by enhancing the knowledge and skills of the paralegals who support lawyers who, in turn, provide legal services to the citizens of this State.

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NORTH CAROLINA CERTIFIED PARALEGAL REQUIREMENTS

Qualifications

To become a North Carolina Certified Paralegal, you must fulfill the educational requirements of Rule .0119(a) of the Plan for Paralegal Certification ([27 NCAC 1G](#)) and successfully pass an examination.

To be eligible to sit for the examination, an applicant must satisfy the following criteria:

1. Be a legal resident of the United States.
2. Have a degree in paralegal studies from a qualified paralegal studies program. See the “Qualified Paralegal Studies Programs” section below for more information.
3. Submit a completed application along with the appropriate application fee. The application must be sworn to (or affirmed) and signed in the presence of a Notary Public. An official transcript from your paralegal program must also be provided with your application.

Qualified Paralegal Studies Programs

To satisfy the educational requirements for certification, a paralegal studies program must be designated by the Board of Paralegal Certification (“Board”) as “qualified” under Rule .0119(a) of The Plan for Paralegal Certification, [27 NCAC 1G](#), Section .0100. A list of all North Carolina paralegal studies programs designated as “qualified” by the Board and the date upon which the designation became effective can be found at <http://www.nccertifiedparalegal.gov/courses.pdf>.

All programs approved by the American Bar Association (“ABA”) are designated by the Board as qualified effective two years prior to the ABA approval. A list of ABA-approved programs can be found at <http://www.abanet.org/legalservices/paralegals/directory>.

Programs provided by institutional members of the American Association for Paralegal Education (AAfPE) are also designated as qualified effective one year prior to the institution’s membership. A list of AAfPE-approved programs can be found at <http://www.aafpe.org/Directory/index.asp>.

The checklist below sets forth the minimum education criteria for certification of programs that are not ABA-approved or not institutional members of AAfPE. The list contains the ABA requirements that could be reduced to a checklist, but the list does not include evaluation of the underlying quality of the program. Please be advised that a

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program's ability to meet the requirements on this checklist will not necessarily lead to ABA-approval or qualify a program for North Carolina State Bar paralegal certification purposes.

All programs must answer the following questions in the affirmative:

1. Do all of the legal specialty courses developed for paralegals cover substantive law or legal procedures and process and emphasize practical paralegal skills?
2. Does the program offer Legal Research and Writing courses and cover electronic resources?
3. Does the program offer a course in ethics and professional responsibility?
4. Are students required to take at least 10 semester credits, or the equivalent, of traditional (not online) classroom instruction?
5. If some of the legal specialty courses are taught in a non-traditional format (such as online), are the instructors available for feedback and can you identify students submitting homework and taking examinations?

In addition, depending upon the type of degree offered, a program must meet the following requirements:

Associate's or Bachelor's Degree: The program must require at least 60 credit hours, or the equivalent, of general education courses and legal specialty courses. Of the 60 credit hours, at least 18 credit hours, or the equivalent, must be legal specialty courses.

Certificate or Diploma Program: Students must already have either an Associate's Degree or a Bachelor's Degree which was composed of at least 60 credit hours, or the equivalent, of general education courses, and the Certificate or Diploma Program must consist of at least 18 credit hours, or the equivalent, of legal specialty courses.

Please be advised that pursuant to the above checklist, paralegal studies programs that can be completed entirely online cannot be qualified as a "Qualified Paralegal Studies Program," and thus do not fulfill the education requirements to be able to sit for the examination.

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Forms

Application forms for certification can be obtained at <http://www.nccertifiedparalegal.gov/documents.asp> or by calling the NC State Bar at (919) 828-4620.

Cost for Certification

The initial application must be accompanied by a check for \$125.00. When you receive notification of the approval of your application, you must submit a \$50.00 check for the examination fee prior to taking the examination. Both checks should be made payable to the North Carolina State Bar Board of Paralegal Certification. Certification is granted for a period of one year.

Renewals

The annual renewal fee is \$50.00. To qualify for continued certification, each year a certified paralegal must participate in not less than six hours of Board-approved Continuing Paralegal Education (“CPE”) and complete and return the Application for Paralegal Recertification. One hour of the six CPE credits must be in ethics/professional responsibility. Renewals are due on either January 1 or July 1 of each year, depending on the first date of certification. All programs approved for Continuing Legal Education credit for lawyers are automatically approved for CPE credit.

Examination

The examination is administered twice a year, usually in April and October, in various cities around the state. The Board of Paralegal Certification reserves the right to cancel any examination site if there are less than five applicants registered for that location.

Examination Results

The results of the examination will be sent by mail approximately 60 days after the examination. An applicant can also see his or her updated status on the “Paralegal Search” page of our website, www.nccertifiedparalegal.gov. If you do not pass the examination, you may retake the examination the next time it is offered. You must retake the entire examination. The examination is not divided into sections for grading purposes.

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REFERENCES

Listed below are references used in creating the examination. The list is not, and is not intended to be, a complete list of all references which have been used or may be used in the future. *NOTE: This list refers to the current edition of each reference.*

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STATUTES, LAWS, AND REGULATIONS

Federal Rules of Civil Procedure

North Carolina Administrative Code

North Carolina General Statutes

North Carolina Rules of Court, Rules of Civil Procedure

North Carolina State Bar. *The [YEAR] Lawyer's Handbook*.

Rules of Professional Conduct. *Lawyers Trust Account Handbook*.

U. S. Constitution

U. S. Code

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SAMPLE QUESTIONS

Below are sample questions for every task in each domain. The correct answer is **bolded** and *italicized*.

Communication Questions

- Task 1: Generally which does not constitute the unauthorized practice of law for a paralegal?
- a. Appearing in court
 - b. Giving legal advice
 - c. *Interviewing clients***
 - d. Setting legal fees
- Task 2: Which act by a paralegal would be permitted?
- a. Giving a legal opinion
 - b. Establishing standard fees
 - c. *Witnessing the execution of a will***
 - d. Waiving a conflict of interest
- Task 3: It is the responsibility of the _____ to discuss the fee agreement with the client.
- a. Paralegal
 - b. *Lawyer***
 - c. Secretary
 - d. Office Manager
- Task 4: When investigating a case for trial, a paralegal may not speak to:
- a. *The adverse party who is represented.***
 - b. The employer of the adverse party.
 - c. Opposing counsel.
 - d. The judge's clerk.

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- Task 5: Which sentence does not contain an error?
- a. ***Toni carries a small, black book with her everywhere she goes and writes down the e-mail address of each new person whom she meets.***
 - b. My father William has retired from construction; and, although he likes to putter in the workshop, his greatest love is cultivating orchids.
 - c. Each year, hundreds of birds instinctively decide to migrate to the northwest: despite the harsh conditions in that part of the world.
 - d. Mayor Smith had, by all accounts, established herself as an advocate by making the most dubious legal position sound like the only logical choice.

- Task 6: Which sentence is correct?
- a. The road had been closed to traffic do to ice accumulation.
 - b. Most of the clients left unassisted, finding the service fee to costly.
 - c. Most paralegals are use to hard work.
 - d. ***Tardiness, like abuse of alcohol, is not tolerated.***

- Task 7: Which lawyer has engaged in professional misconduct?
- a. A lawyer who advances money for his client to cover litigation expenses and court costs
 - b. A lawyer who, at the conclusion of the representation and with the client's consent, publishes a book about his representation of a particular client
 - c. ***A lawyer who makes an aggregate settlement of the claims of two or more of his clients without the clients' consent***
 - d. A lawyer who conducts a press conference with his or her client's permission

Organization Questions

- Task 1: The court of original jurisdiction for misdemeanors is:
- a. Civil Superior Court.
 - b. ***Criminal District Court.***
 - c. Civil District Court.
 - d. Criminal Superior Court.

- Task 2: How long does a defendant have to answer if served by certified mail?
- a. 30 days
 - b. ***33 days***
 - c. 40 days
 - d. 3 months if an extension is obtained

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- Task 3: Correspondence relating to a client's case should be:
- Filed anywhere in the client's file.
 - In a file with all other correspondence received/sent by the firm.
 - In a Correspondence subfile for the client's case.**
 - Electronically scanned and then destroyed.
- Task 4: When should a file be closed?
- After the final action in the case**
 - December 31 of each year
 - When the final bill is mailed
 - When the responsible lawyer leaves the firm
- Task 5: Which task may a lawyer not delegate to a paralegal?
- Establishing the lawyer-client relationship**
 - Preparing a standard form document
 - Filing documents with the courts or agencies
 - Handling procedural or administrative matters

Documentation Questions

- Task 1: If a civil defendant does not answer a complaint by the deadline for responding, the plaintiff can ask for:
- Res judicata.
 - A default summons.
 - A summary ejectment.
 - A default judgment.**
- Task 2: A Notary Public's function in a deed is to _____ the signature of each grantor.
- Probate
 - Execute
 - Acknowledge**
 - Stamp
- Task 3: When the Register of Deeds probates a document:
- The document is filed with the Clerk of Superior Court.
 - The notarial acknowledgment is reviewed for specific elements.**
 - The document is indexed on the public record.
 - The document is refused because the grantee did not sign.

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- Task 4: Which is not listed on a civil summons?
- Defendant's address
 - Plaintiff's lawyer's address
 - Defendant's date of birth**
 - County where the action is being filed
- Task 5: Every document that is required to be served subsequent to the complaint must contain:
- A verification.
 - A certificate of service.**
 - An affidavit.
 - An acknowledgment.
- Task 6: May paralegals be listed as such on a law firm's letterhead?
- Paralegals may not be listed on the employing lawyer's letterhead.
 - Paralegals may be listed on the letterhead as long as the paralegal's position is clearly indicated.**
 - Paralegals may be listed on the letterhead in the same manner as the lawyers.
 - Paralegals may not be listed on the letterhead unless they are certified.

Analysis Questions

- Task 1: A contract is considered executed when:
- All promises or duties have been carried out.**
 - All requirements for a valid contract have been met.
 - There are still promises or duties to be carried out.
 - The contract has been signed by all the parties.
- Task 2: To modify a child custody order, one party must show:
- Financial need.
 - Parental unfitness.
 - Best interest of the child.
 - Substantial change in circumstances.**

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- Task 3: Jim owns a grocery store. Jim has a one-year contract with Bob for Bob to pick up trash in consideration of \$100.00 a month. Jim sells the grocery store to Steve. Jim and Steve meet with Bob and it is agreed that Bob will continue to pick up the trash for Steve. Steve will pay Bob \$100.00 a month for this service. Bob will have no future contract rights against Jim, and Jim will have no future contract rights against Bob. In contract law, this is called a:
- a. **Novation.**
 - b. Promissory estoppel.
 - c. Counter-offer.
 - d. Revocation.

Research Questions

- Task 1: A gift of personal property by will is called:
- a. **A bequest.**
 - b. A devise.
 - c. An advancement.
 - d. A codicil.
- Task 2: Which would be considered a secondary source?
- a. A North Carolina case
 - b. A North Carolina general statute
 - c. The North Carolina Constitution
 - d. **A North Carolina law review article**
- Task 3: Records for all North Carolina corporations and those foreign corporations authorized to do business in this state are found in the:
- a. Bureau of Vital Statistics.
 - b. Department of Commerce.
 - c. **Office of the Secretary of State.**
 - d. Register of Deeds.

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COMMUNICATION

1. Discuss the matter with the attorney to understand the parameters of the assignment.
2. Interview the client and other persons to obtain information required for the assignment.
3. Relay information between the attorney and the client to facilitate timely communication.
4. Interact with co-workers, attorneys, and outside resources to obtain additional information required for the assignment.
5. Report findings to the attorney to confirm that all necessary information has been obtained.
6. Provide periodic updates to the attorney and the client as necessary regarding progress of the assignment.
7. Adhere to ethical standards of the legal profession by complying with all guidelines to protect the public's interest.

Study strategies for this domain

This domain requires a thorough knowledge of the [North Carolina Rules of Professional Conduct](#) (the "RPC"); a familiarity with law office management; the utilization of proper grammar; the ability to match definitions with legal concepts and documents and vice versa; and an understanding of where to find and from whom to obtain pertinent information for a case. Break down your study strategies into the following areas:

- (1) Study the North Carolina Rules of Professional Conduct.
- (2) Review basic grammar, spelling, vocabulary, and legal terminology. Practice with grammatical self-tests. These tests can be found on-line (Google "grammar self-test") and in libraries.
- (3) Review your law office management material and make lists of what you can and cannot do as a paralegal and what your lawyer can and cannot do.
- (4) As you are reviewing the substantive areas of the law, write WHERE you would find information (i.e., North Carolina General Statutes, North Carolina Rules of Professional Conduct, etc.).
- (5) Make flash cards (or review the flashcards that you made in school) of vocabulary from each of your courses.

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The Communication domain of the test is a very broad category. The tasks also overlap as to subject matter. The same basic question may be asked in more than one task area – but in a different way, highlighting that particular task. We will go over several strategies below.

Task 1: Discuss the matter with the attorney to understand the parameters of the assignment.

There are several factors at work with this task. First, it is important to always keep in mind that paralegals fall under the unauthorized practice of law statute. Paralegals work under the supervision of lawyers and cannot:

- Give legal advice
- Explain legal documents
- Represent a client in court
- Set legal fees

Second, determine circumstances under which lawyers/paralegals cannot represent a particular client. Some key concepts include confidentiality, conflicts of interest, and privilege.

Third, be able to answer questions requiring knowledge of legal concepts. One type of question might provide a term and ask you to choose the answer that correctly defines the term. Another type of question might provide you with the definition of a term and ask you which answer is the correct term. This is an area in which flashcards would be very helpful. Review terms that are bolded in your textbooks from your paralegal program.

SAMPLE QUESTION: Generally which does not constitute the unauthorized practice of law for a paralegal?

- a. Appearing in court
- b. Giving legal advice
- c. Interviewing clients
- d. Setting legal fees

How would you approach this question? This is one of the large subsets of areas in this task: unauthorized practice of law. You should be able to list the four things that paralegals cannot do – that would leave you with Answer (c).

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Task 2: Interview the client and other persons to obtain information required for the assignment.

This task has to do with communicating with clients and other individuals to gain information. Some of the areas that you will want to focus on include: being able to ask for information on the phone or in writing, being able to put together information in chronological order, and being able to write documents which are easy to read. This includes grammar, punctuation, spelling, and word choice.

Be prepared for questions regarding the unauthorized practice of law and malpractice. Know whom you can contact and when you can contact them according to the North Carolina Rules of Professional Conduct.

SAMPLE QUESTION: Which act by a paralegal would be permitted?

- a. Giving a legal opinion
- b. Establishing standard fees
- c. Witnessing the execution of a will
- d. Waiving a conflict of interest

How would you approach this question? This is a question regarding the unauthorized practice of law. What can a paralegal do?

Look at Answer (a) – This is obviously incorrect.

Look at Answer (b) – This is obviously incorrect.

Look at Answer (c) – Can a paralegal witness the execution of a will? Certainly. There are no statutory requirements regarding who can witness the execution of a will. Note that the signatures of witnesses must be notarized, as North Carolina is a self-proving will state. This appears to be the answer, but review all the choices before choosing it.

Look at Answer (d) - Can a lawyer waive a conflict of interest? No, only a client can waive a conflict of interest. If a lawyer cannot waive a conflict of interest, a paralegal certainly cannot.

Look at Answer (c) again. This still appears to be the best answer.

Task 3: Relay information between the attorney and the client to facilitate timely communication.

This task has to do with oral and written communication. Think of the many ways in which a paralegal communicates with a client – in person; over the phone; via letter, fax, or e-mail. The lawyer is not always available to answer a client's call, but it is important

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for the client to be able to communicate with the lawyer. The Rules of Professional Conduct make clear that the attorney-client relationship is a key relationship in any legal representation, but paralegals often help to facilitate communication between the two.

What are the typical types of letters or other correspondence that you might draft for a client? What information should be included in each type of letter? When drafting documents for a client, word choice and placement, grammar, and punctuation are all important. When the document is finished, who should sign the document? What are the Rules of Professional Conduct regarding communications with clients?

This area will again review many of the Rules of Professional Conduct. Be familiar with the areas of attorney-client privilege, unauthorized practice of law, confidentiality, and professional responsibility. A thorough knowledge of ethics remains important for this task as it is for all the tasks in this domain.

SAMPLE QUESTION: It is the responsibility of the _____ to discuss the fee agreement with the client.

- a. Paralegal
- b. Lawyer
- c. Secretary
- d. Office Manager

How would you approach this question? What type of question is this? The question is about the roles of individuals in a law office. Where would you find the answer regarding whose responsibility it is to discuss a fee agreement with a client? The North Carolina Rules of Professional Conduct address the responsibilities of individuals in a law office. Ask yourself with whom the client should discuss how much the legal fees will be. You should remember [Rule 1.5](#) regarding fees.

Look at Answer (a) – The paralegal is often the initial point of contact. Can the paralegal evaluate the type of case and determine how much the lawyer will charge, either as a per hour case, a flat fee case, or a contingency fee case? No.

Look at Answer (b) – This is the correct answer. Evaluating a case and determining how much time and effort the case will ultimately take, how much the case will cost the client, and whether the fee will be hourly, flat, or contingency seems exactly the role the lawyer is meant to have.

Look at Answer (c) – If this authority belongs to the lawyer, a secretary, who is another non-lawyer in the office, could not perform this task and this answer would be incorrect.

Look at Answer (d) – If the authority belongs to the lawyer, the office manager would also be the incorrect answer.

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Task 4: Interact with co-workers, attorneys and outside resources to obtain additional information required for the assignment.

This task is related to Task 2 (*Interview the client and other persons to obtain information required for the assignment*). Unlike Task 2, you have already obtained some information for your assignment and you are now following up on the information. Many of the same strategies will be relevant, including being able to ask for information on the phone or in writing to obtain information required for the assignment and being able to put together information in chronological order and easy to read. This includes grammar, punctuation, spelling, and word choice.

Be prepared for questions regarding the unauthorized practice of law and malpractice. Know whom you can contact and when you can contact them according to the North Carolina Rules of Professional Conduct. Learn the rules regarding conflicts of interest.

Some additional information that you may need to know include being able to understand the names of the different legal offices and courts and where you would find information (i.e., deed information can be found in the office of the Register of Deeds). Also, know the different parties in a legal proceeding – both transactional and litigation.

SAMPLE QUESTION: When investigating a case for trial, a paralegal may not speak to:

- a. The adverse party who is represented.
- b. The employer of the adverse party.
- c. Opposing counsel.
- d. The judge's clerk.

How would you approach this question? Think about the parties in a litigation case and with whom you would need to communicate.

Look at Answer (a) - According to [Rule 4.2](#), during the representation of a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. It is clear that contacting an adverse party who is represented is not allowed.

Look at Answer (b) - It is entirely possible that a paralegal would speak to the employer of an adverse party when investigating a case for trial. The employer may be the client in the matter or may be able to answer questions in an employment matter.

Look at Answer (c) - A paralegal will necessarily be in contact with opposing counsel throughout the course of litigation. This would facilitate the filing of pleadings, the

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execution of discovery, the scheduling of mediations, and the notification of upcoming motions.

Look at Answer (d) - As trial draws near, a paralegal may be contacting the judge's clerk to determine whether a case is likely to be reached for trial to facilitate the drafting of the pre-trial orders for the pre-trial conference.

Answer (a) is the best answer.

Task 5: Report findings to the attorney to confirm that all necessary information has been obtained.

This task relates to several skills necessary for a paralegal. There may be grammar and word usage questions; you need to be able to write and identify writing that is grammatically correct. Know all the steps in a transaction. Understand official documents and the information that you are likely to find in those documents. You will need to know how to perform legal research and correctly cite your findings. This is another area in which using flashcards to understand the definitions of legal terminology would be useful.

SAMPLE QUESTION: Which sentence does not contain an error?

- a. Toni carries a small, black book with her everywhere she goes and writes down the e-mail address of each new person whom she meets.
- b. My father William has retired from construction; and, although he likes to putter in the workshop, his greatest love is cultivating orchids.
- c. Each year, hundreds of birds instinctively decide to migrate to the northwest: despite the harsh conditions in that part of the world.
- d. Mayor Smith had, by all accounts, established herself as an advocate by making the most dubious legal position sound like the only logical choice.

How would you approach this question? If you were not in a room full of test takers, we would recommend that you say the sentences aloud to see which ones did not sound right. You can still utilize that strategy here – just move your lips without sound. This often helps because a sentence or a word just may not “seem right.” Be aware that a word may be misspelled or be the incorrect tense.

Read the question carefully. Note that it is asking you to determine which sentence does not contain an error. This may be the opposite of what you would expect.

Look at Answer (a) - There does not appear to be any grammatical errors. See if you can identify the errors in the other sentences.

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Look at Answer (b) - This sentence should read: "My father, William, has retired from construction; although he likes to putter in the workshop, his greatest love is cultivating orchids." The name "William" should have commas before and after, and there should be a semi-colon without the word "and" in the second half of the sentence.

Look at Answer (c) - This sentence should read: "Each year, hundreds of birds instinctively decide to migrate to the northwest despite the harsh conditions in that part of the world." There should be no colon between "northwest" and "despite."

Look at Answer (d) - This sentence should read: "Mayor Smith had, by all accounts, established herself as an advocate, by making the most dubious legal position sound like the only logical choice." There should be a comma between the words "advocate" and "by."

Answer (a) is the best answer.

***Task 6:** Provide periodic updates to the attorney and the client as necessary regarding progress of the assignment.*

This task is related to Task 5. The main difference between this and Task 5 is that you are continually providing updates to both the lawyer and the client. As in Task 5, there may be a number of grammar and usage questions; be able to write and identify writing that is grammatically correct. Know all of the steps in a transaction. Understand official documents and the information that you are likely to find in those documents. Know how to perform legal research and correctly cite your findings. This is another area in which using flashcards to understand the definitions of legal terminology would be useful. Finally, a number of documents that might need to be generated may include the services of a Notary Public and Notary Public law should also be studied.

SAMPLE QUESTION: Which sentence is correct?

- a. The road had been closed to traffic do to ice accumulation.
- b. Most of the clients left unassisted, finding the service fee to costly.
- c. Most paralegals are use to hard work.
- d. Tardiness, like abuse of alcohol, is not tolerated.

How would you approach this question? Be aware that a word may be misspelled, be the incorrect tense, or be an incorrect word choice.

Look at Answer (a) – "Do" should be "due."

Look at Answer (b) -- "To" should be "too."

Look at Answer (c) – "Use" should be "used."

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Look at Answer (d) – Tardiness is not tolerated. The abuse of alcohol is not tolerated. The phrases are balanced and the sentence does not appear to contain grammatical errors or misspellings. This would be the best answer.

Task 7: Adhere to ethical standards of the legal profession by complying with all guidelines to protect the public's interest.

This task will test your mastery of the [North Carolina Rules of Professional Conduct](#). These rules are critical to the practice of law and a number of questions throughout the test will evaluate your understanding of those rules.

- SAMPLE QUESTION: Which lawyer has engaged in professional misconduct?
- a. A lawyer who advances money for his client to cover litigation expenses and court costs
 - b. A lawyer who, at the conclusion of the representation and with the client's consent, publishes a book about his representation of a particular client
 - c. A lawyer who makes an aggregate settlement of the claims of two or more of his clients without the clients' consent
 - d. A lawyer who conducts a press conference with his or her client's permission

How would you approach this question? What type of question is this? This question is about lawyer misconduct. Where would you find information regarding misconduct? Again, the [North Carolina Rules of Professional Conduct](#) address this.

Look at Answer (a) – You may remember that lawyers, in general, cannot provide financial assistance to a client because of conflict of interest issues (see [RPC 1.8](#)). But there are some exceptions in litigation. This is one of the exceptions (see [RPC 1.8\(e\)\(1\)](#)). “A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter.”

Look at Answer (b) – A lawyer revealing information about a client – information garnered during the representation of a client is confidential and should not be revealed to any third party ([RPC 1.6](#)). What about a FORMER client? Yes, these duties are intact even for a former client ([RPC 1.9](#)). Are there any exceptions that publishing a book would fit under? Yes, if the lawyer has the consent of his or her client, he can publish. Therefore, this answer would not be professional misconduct.

Look at Answer (c) – Each client should have the final say in determining whether a settlement should be accepted. [RPC 1.8\(g\)](#) states that “[a] lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of

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or against the clients...unless each client gives informed consent, in a writing signed by the client.” Answer (c) would be professional misconduct.

Look at Answer (d) – The client has given his or her consent to the lawyer to conduct a press conference. This is not professional misconduct.

Answer (c) is the best answer.

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ORGANIZATION

1. Coordinate schedules by proper calendaring to enhance office efficiency.
2. Maintain a tickler system by utilizing proper resources to ensure that deadlines are met.
3. Organize files for use in specific client matters by utilizing proper file management techniques for efficient delivery of legal services.
4. Maintain files by utilizing proper file management techniques to ensure that files are accurate and up to date.
5. Organize workload by prioritizing assignments to ensure the efficient delivery of legal services.

Study strategies for this section

This section requires a thorough knowledge of law office practices, statutes of limitations, and general organizational skills. Break down your study strategies into the following areas:

- (1) Study your Law Office Management or Introduction to Paralegalism textbook.
- (2) Organize lists of statutes of limitations for common civil and criminal actions.
- (3) Organize lists of deadlines for litigation and transactional filings.
- (4) Study the North Carolina Rules of Professional Conduct with special focus on the Unauthorized Practice of Law.
- (5) Review the information on the North Carolina Court System webpage.
- (6) Review the North Carolina State Bar Ethics Opinions.
- (7) Make flash cards (or review flashcards made previously) of vocabulary from each of your courses.

Organization is a critical part of legal practice – whether you are working in a law firm, a corporation, a governmental agency or non-profit entity. In a high-stress, fast-paced legal environment with hard deadlines, it is imperative that a paralegal create organization out of chaos – and maintain that organization when all conspires against it. Keeping a calendar and a tickler system for deadlines is imperative – just knowing when those deadlines are is essential.

Creating and maintaining files in an organized and timely fashion is critical – when you receive a new item for a file and you fail to insert it into the file, your lawyer may negotiate a case without the necessary information to negotiate zealously for the client. Understanding what a paralegal can and cannot do in a legal environment is also

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important so that a client is not unwittingly given information that does not enhance his ability to have his legal rights represented to his advantage.

Understanding and having in place the necessary systems for file and record management, docket control, and timekeeping procedures allows a paralegal to move productively and efficiently throughout the daily routine. A fundamental understanding of the structure and organization of your employer and its policies are also essential components to effectively meet your organization objective.

Task 1: Coordinate schedules by proper calendaring to enhance office efficiency.

There are a number of elements that go into coordinating schedules and proper calendaring. These include:

- Procedures for initial consultations – including conflicts checks, engagement letter/retainer agreement/nonengagement letter.
- Jurisdictional issues – knowing what courts can hear what cases – including courts of original jurisdiction and appeal, state courts, federal courts, etc.
- Knowing how to find calendars for different jurisdictions.
- Knowing what signatures are needed on what documents.
- How to resolve calendar conflicts.

SAMPLE QUESTION: The court of original jurisdiction for misdemeanors is:

- a. Civil Superior Court.
- b. Criminal District Court.
- c. Civil District Court.
- d. Criminal Superior Court.

How would you approach this question? Think about the North Carolina Court System. What is the court of original jurisdiction for a misdemeanor? Civil Superior Court is only for civil matters, not criminal. Criminal District Court is the jurisdiction for misdemeanors. Civil District Court is only for civil matters. Criminal Superior Court might be the jurisdiction for some high level misdemeanors, but (b) is the BEST answer.

Task 2: Maintain a tickler system by utilizing proper resources to ensure that deadlines are met.

A tickler system is a system that puts all due dates on a calendar and provides reminders of those due dates PRIOR TO THE DUE DATES. A tickler system can be on a manual calendar or a computer or phone calendar – it can be helpful to have it in multiple places. A tickler system helps you not only to know when deadlines are but to also calendar critical dates for completing projects. Among the things that you will want to know for the tickler system:

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- What are the deadlines in a typical civil suit, criminal suit, corporate transaction, or real estate transaction? Do you count all days or only business days?
- What are the statutes of limitations for common civil, criminal, or transactional actions? Do you count all days or only business days?
- Is there a different response deadline if serving someone via mail vs. in person?
- Is there a way to extend any of those deadlines? If so, how and what time will be added?
- What tasks can you include in your billable time?

SAMPLE QUESTION: How long does a defendant have to answer if served by certified mail?

- a. 30 days
- b. 33 days
- c. 40 days
- d. 3 months if an extension is obtained

How would you approach this question? What is the period of time that a defendant has to answer? 30 days. Does serving via certified mail change the period of time? Yes, three days are added. So the answer would be (b).

Task 3: Organize files for use in specific client matters by utilizing proper file management techniques for efficient delivery of legal services.

A law firm will typically have multiple file systems. One type of file is a form file, which is generally computerized. There should be an easy way to find and use common forms so that time is not wasted re-typing the same kind of form over and over again. This can lead to fewer mistakes. These forms should be reviewed and updated on a regular basis.

Another type of file is a client file. Some offices are paperless, but the same general standards apply to computerized files and physical files. Some key standards for a client file include:

- Using a numerical system to identify files. Using a numerical system rather than an alphabetical system is helpful in many ways. First, it helps with client confidentiality by not having client names on files for other clients or persons to see. Second, files are put away in reverse chronological order from the date they were opened which helps in keeping track of multiple files. Third, the system keeps client matters separate and it is less likely that papers will be misfiled.
- Creating common sections in the file (i.e., pleadings, correspondence, contracts, etc.) for organization.
- Attaching checklists to files (i.e., conflicts check, deadlines, etc.).
- Maintaining files will be a priority. These files must be kept up to date.

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- Finding files is important. Generally there will be a centralized place to keep files, and files will be checked out so that if a file is missing, it is clear who has the file.
- Knowing when you can purge the file and what you can purge.

A third type of file is a trial notebook. A trial notebook will generally have the following items in addition to the items from the client file:

- Witness list
- Exhibit list
- Jury selection grid (including number of jurors and number of peremptory challenges allowed)
- Pre-trial order

SAMPLE QUESTION: Correspondence relating to a client's case should be:

- a. Filed anywhere in the client's file.
- b. In a file with all other correspondence received/sent by the firm.
- c. In a Correspondence subfile for the client's case.
- d. Electronically scanned and then destroyed.

How would you answer this question? Where would correspondence regarding a client's case be found? It would be found in the client's file – but not anywhere in the client's file, in a sub-file – and correspondence would be the correct sub-file. If you filed all of the firm's correspondence in one place, you would never be able to find the material relevant to your client's case. You can electronically scan material, but it is not recommended that correspondence be electronically scanned and then destroyed. So the answer is (c).

***Task 4:** Maintain files by utilizing proper file management techniques to ensure that files are accurate and up to date.*

Maintaining files is as important as setting up files. Cases are never stagnant – the information is always being updated and the facts become clearer over time. A case that was filed in your local Civil Superior Court may be moved to Federal District Court and you may have a whole new set of deadlines that you need to calendar and put in your tickler system (while you purge the old items) and new requirements will have to be listed.

Maintaining files also means that you need to make sure everything in the file is accurate. As you receive new materials you need to determine whether documents that you filled out are accurate, correct, and complete. Were documents received before the deadline? The following items should be in the file:

- A narrative of documents or important documents
- Depositions and their digests

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- A checklist of documents needed for the client’s case (i.e., items required for a settlement agreement, forms to create a corporation, agendas for annual corporate meetings, items necessary to complete a residential real estate closing)
- Laws that govern your client’s case (i.e., the Bankruptcy Code is where you would find the rules for bankruptcy cases)
- Key cases and their briefs
- Laws, rules, and regulations that have a bearing on the case
- All correspondence and phone logs
- Where documents should be recorded or filed
- Additional sub-files required by the particular case

SAMPLE QUESTION: When should a file be closed?

- After the final action in the case
- December 31 of each year
- When the final bill is mailed
- When the responsible lawyer leaves the firm

How would you answer this question? Answer (a) seems right. Answer (b) is clearly wrong as your case may go on for multiple years; it may not have even been started until December 30. The final bill mailing would not be correct; there may be additional work that needs to be completed on the case. Even if the responsible lawyer leaves the firm, the file would not automatically be closed; it may be taken over by another lawyer and the office may continue to serve the client on that case.

***Task 5:** Organize workload by prioritizing assignments to ensure the efficient delivery of legal services.*

It is important to determine who completes what projects. Some tasks can be delegated to a paralegal, other tasks must be performed by the lawyer, and some tasks can be done by a paralegal under lawyer supervision. Information about the correct roles of the paralegal can be found in the North Carolina Rules of Professional Conduct and in the Ethics Rules – especially those regarding the unauthorized practice of law.

SAMPLE QUESTION: Which task may a lawyer not delegate to a paralegal?

- Establishing the lawyer-client relationship
- Preparing a standard form document
- Filing documents with the courts or agencies
- Handling procedural or administrative matters

How would you approach this question? First, ask what tasks may be delegated to a paralegal. Reviewing the Ethics Rules and the North Carolina Rules of Professional Conduct make it clear that establishing the attorney-client relationship is something that

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only an lawyer can do. Answers (b), (c), and (d) are all tasks that a lawyer can delegate to a paralegal. Therefore, (a) is the correct answer.

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DOCUMENTATION

1. Draft documents and other written communications for attorney review as required by the assignment.
2. Coordinate the proper execution of documents to ensure their validity.
3. Coordinate filing or recording a document with the appropriate authority to perfect its validity.
4. Coordinate service of process with the appropriate authority to ensure sufficiency of service.
5. Create form documents for use by attorneys and co-workers to enhance efficiency and maintain consistency.
6. Review form documents periodically to incorporate substantive and procedural changes to maintain the validity of the documents.

Study strategies for this domain

Studying for this domain requires review of materials that cover many subjects and topics in which you have received instruction. Put together a list of courses completed in the paralegal program. Under each course, list all documents that were covered in the course and then prepare a flashcard for each document listing the validity requirements for each. Examples of documents include: contracts, wills, trusts, powers of attorney, complaints, answers, interrogatories, discovery requests, motions, separation agreements, articles of incorporation, by-laws, and deeds.

To illustrate the steps referenced above, think about your Wills class and then list all the will-related documents, such as a will, a trust, and a power of attorney. Prepare a flashcard for a will, listing all the commonly included paragraphs: exordium, revocation, payment of debts, funeral instructions, gifts, residuary, appointment of executor, simultaneous death, testimonium, signatures, attestation, and self-proving provisions. Also include on the flashcard the special execution requirements for a will such as how many witnesses are needed. Repeat this information for all documents commonly drafted by paralegals.

Understanding the special execution requirements for a document is helpful. As noted above, a will has specific execution requirements. Real estate documents such as deeds, deeds of trust, or easements have their own set of specific execution requirements.

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Also consider creating flashcards for each type of document a paralegal will likely be asked to draft, noting the definition, purpose, and requirements for each document, along with execution, filing, and recording requirements. For example, litigation and estate documents are commonly filed with the Clerk of Court, real estate documents are recorded in the Register of Deeds, and corporate documents are filed with the Secretary of State.

Examples of documents to include on your flashcards are:

- Affidavit
- Agreements - partnerships, co-parenting, separation, etc.
- Answer
- Articles of Incorporation
- By-laws
- Calendar
- Certificate of Service
- Checklist
- Client correspondence – status letter, opinion letter, demand letter
- Complaint
- Contracts
- Default Judgment
- Interrogatories
- Judgment
- Leases
- Motion
- Order
- Power of Attorney
- Release
- Request for Admissions
- Request for Production of Documents
- Retainer
- Settlement Package/Demand
- Subpoena
- Summons
- Ticker
- Trial Notebook
- Verification
- Waiver

This domain includes six tasks that are common for paralegals. Sample tasks which fall under this domain are drafting a will, assisting with a will execution, filing a complaint and summons and working with the proper agencies to ensure proper delivery and

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service, accessing an office form file, and reviewing office form files to assure completeness and correctness.

Also review the North Carolina Rules of Civil Procedure and Notary Public Laws.

General review questions to answer:

- Where are documents filed?
- How are documents filed?
- Where are documents recorded?
- What government agencies require documents and document filings?
- What are filing fees?
- What are recording fees?
- Are there documents that a paralegal cannot draft?
- Are there documents that a paralegal cannot sign?
- What needs to be in client correspondence?
- How many copies of a document are needed?
- Who receives a copy of a document once it is prepared? Filed? Recorded?
- What documents require special execution?
- What invalidates an execution?
- How can a form document help in drafting assignments?
- Where are form documents located?
- How are form documents updated and maintained?
- What is a checklist?
- What documents require a seal?
- What is a certified copy?

Task 1: Draft documents and other written communications for attorney review as required by the assignment.

SAMPLE QUESTION: If a civil defendant does not answer a complaint by the deadline for responding, the plaintiff can ask for:

- a. *Res judicata.*
- b. A default summons.
- c. A summary ejectment.
- d. A default judgment.

This question requires a review of the related terminology of documents. Knowing the definitions of these terms will assist in selecting (d) as the correct answer.

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Task 2: Coordinate the proper execution of documents to ensure their validity.

SAMPLE QUESTION: A Notary Public's function in a deed is to _____ the signature of each grantor.

- a. Probate
- b. Execute
- c. Acknowledge
- d. Stamp

The correct answer is (c). Review all laws regarding how a Notary Public functions. Again, knowing the definitions of terms related to documents will assist you in identifying the correct answer.

Task 3: Coordinate filing or recording a document with the appropriate authority to perfect its validity.

SAMPLE QUESTION: When the Register of Deeds probates a document:

- a. The document is filed with the Clerk of Superior Court.
- b. The notarial acknowledgment is reviewed for specific elements.
- c. The document is indexed on the public record.
- d. The document is refused because the grantee did not sign.

The correct answer is (b). The question focuses on the duties and functions of the commonly visited governmental agencies.

Task 4: Coordinate service of process with the appropriate authority to ensure sufficiency of service.

SAMPLE QUESTION: Which is not listed on a civil summons?

- a. Defendant's address
- b. Plaintiff's lawyer's address
- c. Defendant's date of birth
- d. County where the action is being filed

The correct answer is (c). Review the information contained in a summons. Commonly used documents and forms can be found on the website of the Administrative Office of the Courts.

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Task 5: Create form documents for use by attorneys and co-workers to enhance efficiency and maintain consistency.

SAMPLE QUESTION: Every document that is required to be served subsequent to the complaint must contain:

- a. A verification.
- b. A certificate of service.
- c. An affidavit.
- d. An acknowledgment.

The correct answer is (b). Understanding the types of documents, including each document's purpose, assists in answering this question.

Task 6: Review form documents periodically to incorporate substantive and procedural changes to maintain the validity of the documents.

SAMPLE QUESTION: May paralegals be listed as such on a law firm's letterhead?

- a. Paralegals may not be listed on the employing lawyer's letterhead.
- b. Paralegals may be listed on the letterhead as long as the paralegal's position is clearly indicated.
- c. Paralegals may be listed on the letterhead in the same manner as the lawyers.
- d. Paralegals may not be listed on the letterhead unless they are certified.

The correct answer is (b). This question requires knowledge of the ethical rules regarding law firm correspondence.

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ANALYSIS

1. Evaluate the information for the attorney by analyzing the data to determine what is relevant to the client's matter.
2. Assess the client's situation by applying the law to the facts to suggest possible courses of action for the attorney's consideration.
3. Analyze the proposed courses of action with the attorney to determine whether any will lead to an acceptable outcome for the client.

Study strategies for this domain

Look over the sections of your introduction to law or paralegal studies textbook. Make an outline using the chapter and section headings. When reviewing each chapter, think in terms of definitions, elements, and processes. Use the chapter in contracts as an example of how to approach each chapter:

Scenario: A client comes into your office to ask about a problem with a contract.

Analysis: You will not be required to understand all of the intricacies of contract law in North Carolina in order to answer this examination question, but you will be expected to know: the basic elements of a binding contract (offer, acceptance, consideration); what each element requires (for example, an offer must contain at least the following four items: the parties, the subject matter of the contract, the price, and the time for performance); the defenses to a valid contract (for example, if a party to the contract is a minor, is the contract void or voidable; know the difference between a void contract and a voidable contract); where contracts should be filed – or whether filing is necessary (does a contract need to be in writing?); and what types of damages are allowed when contracts are breached.

Often important concepts are in bold and definitions are given in your textbook. Look for concepts such as “executed”, “parole evidence rule”, and “statute of frauds.” How do these terms relate to the elements of a contract, the progression of a contract from its creation through the contract being completed by both parties, or the possible litigation that can arise from the contract? Make flash cards (or use a flash card application on your smartphone).

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The Analysis domain includes three tasks that are commonly performed by paralegals. These tasks are necessarily broad, but they are assignments that paralegals are responsible for on a daily basis in the legal field.

One appealing aspect of working in the legal field is that you are not simply putting a square peg in a square hole every day. Every legal matter is different and every client is different. While your employer may use forms for many tasks, these forms are merely the starting point for evaluating a client's position and acting on the client's behalf.

The Analysis questions are important to demonstrate your basic knowledge of the law. Can you evaluate information that you receive to assist the lawyer in determining whether a client has a contract, analyzing whether a client's actions meet the statutory definition of assault, and identifying the rights of someone with joint ownership in a piece of property?

Task 1: Evaluate the information for the attorney by analyzing the data to determine what is relevant to the client's matter.

Paralegals receive information on a continuous basis. This information can be in the form of an interview with a client or witness, written discovery or depositions, a client intake sheet, or documents from various sources. You will often be the first person to look at all of this information and determine its relevance. If you are reviewing a real estate document, remember the basics of real estate law to determine the rights and responsibilities of your client. If you are looking at a contract, remember the basics of contract law to determine the rights and responsibilities of your client.

SAMPLE QUESTION: A contract is considered executed when:

- a. All promises or duties have been carried out.
- b. All requirements for a valid contract have been met.
- c. There are still promises or duties to be carried out.
- d. The contract has been signed by all the parties.

If you have prepared for the examination by looking at the progression of a contract from beginning to end, you will know the answer to this question. Break down this question as follows: First, what area of the law does the question examine? Contracts. What is the question? The question is asking when a contract is considered executed.

How would you approach this question? Think of a simple example of a contract. I agree to sell a DVD to a friend for \$5.00. My friend agrees to purchase the DVD for \$5.00 and agrees to bring the money to work first thing in the morning. When is this contract executed? It is executed when my friend has given me \$5.00 and I have given the DVD to my friend.

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Look at Answer (a) – This appears to be the best answer. All promises and duties have been carried out (I was paid \$5.00 and I gave my friend the DVD). But let’s make sure that you did not miss anything.

Look at Answer (b) – What does it mean to say that all the requirements for a valid contract have been met? It means that I offered to sell the DVD (offer), my friend agreed to purchase the DVD (acceptance), and we agreed that my friend would pay me \$5.00 for the DVD (consideration). Have all the parties to the contract done what they have contracted to do? Not yet.

Look at Answer (c) – There are still promises and duties to be carried out. This one is easy. It is the opposite of (a). Clearly if there are still promises and duties to be carried out, the contract is not executed.

Look at Answer (d) – The contract has been signed by all parties. You know that “executed” can be another word for “signed.” Would that be the best answer?

Look at the first answer again. This one seems to meet the general legal definition of the word “executed” in relation to a contract.

Task 2: Assess the client’s situation by applying the law to the facts to suggest possible courses of action for the attorney’s consideration.

There are wrongs that have no legal solution. You will need to determine whether the facts of the case have a legal solution. Similarly, as documents and additional information are received from your client or from opposing counsel, you will need to constantly reevaluate the case to determine your client’s rights and responsibilities and what can legally be done to protect those rights and responsibilities.

SAMPLE QUESTION: To modify a child custody order, one party must show:

- a. Financial need.
- b. Parental unfitness.
- c. Best interest of the child.
- d. Substantial change in circumstances.

How would you approach this question? This is a question about Family Law – divorce and custody. Think of an easy example: One parent wants an additional night a week with the child. The other parent does not want to grant it. Why would the court change the days of the week that one parent gets? The court will only modify visitation if there has been a substantial change of circumstances.

Look at Answer (a) – Would a court grant a parent an additional night a week with the child because of financial need? Why would the court modify or change the original

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order? Does the question speak to a substantial change of circumstances? This answer does not tell you whether there has been a substantial change of circumstances.

Look at Answer (b) – Would a court grant a parent an additional night a week with the child because of parental unfitness? If parental unfitness was a factor, the original order would have taken this into account. Was this a substantial change?

Look at Answer (c) – The standard that courts use when granting a child custody order would be the best interest of the child. Has there been a substantial change in circumstances that the original order no longer serves the best interest of the child?

Look at Answer (d) – This is the best answer. For the court to modify or change the original child custody order, the moving party must show that there has been a substantial change in circumstances.

***Task 3:** Analyze the proposed course of action with the attorney to determine whether any will lead to an acceptable outcome for the client.*

Once a paralegal has defined the problem (Task 1) and applied the law to the facts (Task 2), a paralegal would then need to determine the correct course of action. How do you resolve the problem?

SAMPLE QUESTION: Jim owns a grocery store. Jim has a one-year contract with Bob for Bob to pick up trash in consideration of \$100.00 a month. Jim sells the grocery store to Steve. Jim and Steve meet with Bob and it is agreed that Bob will continue to pick up the trash for Steve. Steve will pay Bob \$100.00 a month for this service. Bob will have no future contract rights against Jim, and Jim will have no future contract rights against Bob. In contract law, this is called a:

- a. Novation.
- b. Promissory estoppel.
- c. Counter-offer.
- d. Revocation.

How would you approach this question? Again, this is a question about contracts. There are two parties to a contract. One of the parties to the contract has a change in circumstances that makes the continuation of that contract of no real value to that party (in this case, the original owner of the store no longer owns the store and so no longer needs someone to pick up trash at the store).

However, a third party does have an interest in continuing the contract (in this case, the new owner of the store would like someone to continue picking up trash at the store). What is it called when the contract continues with the third party, but the original

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signatories to the contract no longer have rights and responsibilities to each other under the contract?

Look at Answer (a) – Novation is when a third party is substituted for one of the original parties. This appears to be the answer, but review all the choices before choosing it.

Look at Answer (b) – Promissory estoppel is when courts allow detrimental reliance to substitute for consideration. In this case, there is a contract between one of the original parties and a new party. One of the original parties no longer has any rights or responsibilities. This answer does not follow the fact pattern.

Look at Answer (c) - There has been an offer, acceptance, and consideration. A counter-offer occurs when, instead of accepting an offer, the other party makes another offer. A counter-offer does not follow the fact pattern.

Look at Answer (d) - The original offer was not revoked by the offerer. The original contract is still in place, just with a different party taking the place of one of the original parties. Revocation does not follow the fact pattern.

Look at the first answer again. This still appears to be the best answer.

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RESEARCH

1. Determine the applicable sources of information required to complete the assignment.
2. Research primary and secondary authorities to find the law applicable to the assignment.
3. Gather other information for the assignment by searching the Internet; computer-based engines; and local, county, state, federal, and international records as applicable.

Study strategies for this domain

This domain of paralegal work involves knowing how to perform legal and factual research. Review your legal research textbook on traditional, print, and online resources. Paralegals are expected to perform research in an ethical and competent manner, using conventional print sources, computer-assisted research services like Westlaw and LEXIS, and the Internet. A paralegal needs to know both where to look and what to look for. Refresh yourself on the following:

- Statutes and laws.
- Case reporters and digests.
- Legal encyclopedias.
- Differences between primary and secondary authorities.

Make flash cards regarding what type of law is found in what book, i.e., North Carolina Supreme Court cases are published in the North Carolina Reports and the North Carolina Court of Appeals cases are reported in the North Carolina Court of Appeals Reports. Write down whether the book is a federal or state resource, whether it is a primary or secondary resource, and the abbreviations used for regional reporters. Also, make flash cards for the terms that relate to legal research such as cite checking, pocket parts, *stare decisis*, precedent, WESTLAW, and LEXIS. Review the rules of citation.

Also, review the American Legal System. To properly complete a research assignment, a paralegal must understand how the three branches of the government function at both the state and federal levels. Understand how administrative agencies work. Review the court structure information typically found in an introduction to law or paralegal studies, civil litigation, or legal research textbook.

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To perform a research assignment, a paralegal must be skilled in:

- Reviewing the assignment;
- Determining which sources and databases to use;
- Developing a search plan;
- Formulating queries;
- Searching the proper federal or state law;
- Locating administrative regulations;
- Utilizing finding tools and secondary sources;
- Citing the law; and
- Updating the research results.

Task 1: Determine the applicable sources of information required to complete the assignment.

A paralegal must determine the applicable sources of information required to complete an assignment. Questions to be asked include:

- What type of law is needed?
- Is this a municipality, county, state, or federal question?
- Is there a statute or law on point?
- Is this a question answered with case law?
- Is this issue governed by an administrative agency?

For example, if a client has an issue about how long someone needs to be separated from his or her spouse to be able to file for a divorce, look at state/North Carolina materials and, in particular, the North Carolina General Statutes. If a client has an issue with his denied application for Social Security benefits, look at federal materials as the law governing Social Security is federal. If a client wants to have pet chickens in his or her backyard, the appropriate municipality's ordinances need to be reviewed to ascertain if chickens are allowed.

Once a paralegal has determined what sources are needed, a research plan needs to be developed. There are three commonly used research techniques or approaches: the descriptive word approach, the title/topic approach, and the popular name approach.

The descriptive word approach uses words that describe the problem or issue. Those words will be the beginning point when using an index to statutes or a case digest. The proper terms will give references to a statute or case citation on point.

When using the topic approach, a paralegal will go directly to the appropriate title or topic in a source and skip using the index. For example, to find the elements of first degree murder in North Carolina, a descriptive word approach would use the terms "murder" or "homicide" in the index to the North Carolina General Statutes to get the

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reference to N.C. Gen. Stat. §14-17. If you know that crimes are contained in Chapter 14 of the North Carolina General Statutes, you can pull that volume without going to the index first.

The popular name approach uses the popular name of the law, like “ADA” when researching the Americans with Disabilities Act.

SAMPLE QUESTION: A gift of personal property by will is called:

- a. A bequest.
- b. A devise.
- c. An advancement.
- d. A codicil.

A review of the definitions of these terms would reveal that (a) is the correct answer.

***Task 2:** Research primary and secondary authorities to find the law applicable to the assignment.*

The goal in legal research is to find controlling, primary authority. A primary resource or authority is the law itself. A paralegal must know how to research primary and secondary authorities to find the applicable law for an assignment, but only primary authority must be used to support legal assertions.

Primary authorities are binding; they must be followed. The goal in a legal research problem is to find the binding, mandatory authority, give reference to it, and cite it. In the United States, law comes from our written United States Constitution. The Constitution created three branches of government and all branches create law. The legislative branch (Congress) creates federal law, found in the United States Code. The executive branch (the President) signs executive orders. The judicial branch (the courts) makes case law through decisions. Those three branches of government can be found at the state level in North Carolina as well, functioning and making law for state jurisdictional matters.

Examples of primary authorities are:

- Constitutions
- Cases (from the proper court)
- Statutes
- Administrative regulations
- Executive orders
- Treaties

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For a state issue, a North Carolina General Statute would be binding, if there is a state statute or law on point. If there is no statute on point, look for precedent in case law. Following the law set forth in previous cases is the concept of *stare decisis*, which is a Latin term meaning “to stand by things decided.” *Stare decisis* promotes predictability and stability in our legal system. A binding case for a state legal issue would be a case from the North Carolina Court of Appeals or North Carolina Supreme Court.

For a federal issue, a federal statute from the United States Code would be controlling. Binding case law would come from the highest court, the United States Supreme Court. If an issue has not reached the highest court, decisions from the proper lower federal courts would be binding for a federal issue. The proper lower federal court for North Carolina is the Fourth Circuit Court of Appeals, headquartered in Richmond, Virginia, and a decision from that court or the proper federal district court would be applicable.

The goal with any research assignment is to find the controlling primary authority, but there can be times when there is no primary authority on point. Then secondary authorities must be consulted. Secondary authorities are not the laws themselves but are writings about the law and are merely persuasive. Secondary authorities can generally give an overview of a topic and/or explain primary authorities. Some secondary authorities contain references and citations to primary authorities.

Secondary authorities include:

- Legal Encyclopedias, such as Corpus Juris Secundum (CJS) and American Jurisprudence (Am Jur)
- Law Review Articles
- Legal Dictionaries, such as Black’s Law Dictionary and Ballentine’s Law Dictionary
- Restatements
- Periodicals
- Treatises
- Textbooks
- Annotations
- Formbooks
- Law from another state/jurisdiction
- Practice guides
- Attorney General opinions

Finding tools are also helpful in locating primary authorities. A digest is a great finding tool for locating cases. For example, if a paralegal needs to find cases where a grocery store was successfully sued for negligence for injuries a customer received from a slip and fall in the produce section, it would be very time consuming and unproductive to pull case reporter after case reporter looking for a similar case or a case on “all fours”. Using the proper digest, North Carolina Digest or the South Eastern Digest, a paralegal

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should find similar cases to use as precedent by using the terms negligence, slip and fall, grocery store, or merchant. Digests are helpful in that they arrange cases by subject matter, giving a brief overview of each case and its holding by topic. The citation for the case will be given so that the entire case can be referenced and used.

Finding tools include:

- Digests
- Citators
- Indexes

SAMPLE QUESTION: Which would be considered a secondary source?

- A North Carolina case
- A North Carolina general statute
- The North Carolina Constitution
- A North Carolina law review article

How would you approach this question? Eliminate the choices that are primary sources: statutes and cases. A law review or law journal article would be a secondary source; thus, (d) is the correct answer.

***Task 3:** Gather other information for the assignment by searching the Internet; computer-based engines; and local, county, state, federal, and international records as applicable.*

Often a paralegal must be able to gather other information for the assignment by using Internet search engines and local, county, state, federal, and international records as applicable. This type of research may not involve locating a statute, ordinance, or a case, but rather the focus may be on information. For example, many businesses have a website with contact information listed on a webpage. Government agencies have webpages with contact information and agency information. Real estate title searches can be performed without stepping foot into a Register of Deeds office, and researching a new corporation's name or filing all the proper documentation to perfect a lien can be done by using the North Carolina Secretary of State's website.

Commonly used government offices include Clerks of Court, Sheriff's Departments, District Attorneys, Registers of Deeds, jails, prisons, Vital Records, and the Department of Motor Vehicles. Many legal professionals will access the North Carolina Courts' respective websites to locate court dates, court calendars, and contact information. Review and make a listing of commonly requested information and what agency provides and maintains that information.

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SAMPLE QUESTION: Records for all North Carolina corporations and those foreign corporations authorized to do business in this state are found in the:

- a. Bureau of Vital Statistics.
- b. Department of Commerce.
- c. Office of the Secretary of State.
- d. Register of Deeds.

The correct answer would be (c) because it is the North Carolina Secretary of State's office that regulates businesses.

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CIVIL LITIGATION

Materials to review

Civil Litigation textbook
North Carolina Rules of Civil Procedure

Some general concepts to review follow; this list is not comprehensive. Both flashcards and flow charts can be used to understand concepts and procedures under this topic.

- What is subject matter jurisdiction?
- What is personal jurisdiction?
- What is the venue?
- What are the types of civil litigation cases?
- How is filing an action conducted?
- How is service of process completed?
- What are the various pleadings and documents involved in every case? (complaint, answer, motion, interrogatories, requests, orders, etc.)
- What are the counting rules?
- What tasks are commonly performed by a paralegal?
- What are some common statutes of limitation? (negligence, wrongful death, breach of contract, etc.)
- What are the court structures for both federal and state courts?
- What are the common rules and the numbers from the North Carolina Rules of Civil Procedure? (Service of Process, Rule 4, etc.)
- What types of cases are heard in federal court and what cases are heard in state court?

A paralegal can serve an integral role from the beginning of the case until the end by assisting a lawyer preparing for a civil case. Refresh yourself on the tasks you as a paralegal may perform when you are:

- Interviewing the client and witnesses;
- Opening the client file, recording/tickling all deadlines, including the statute of limitations;
- Gathering evidence such as accident reports, medical records and expenses, lost wage information, photographs of the accident scene, client's injuries, etc.;
- Organizing all documents into a settlement brochure;
- Drafting a complaint and answer;
- Completing a summons, a subpoena, and a cover sheet;
- Filing a complaint at the proper courthouse;
- Effecting service of process on all proper parties;

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- Monitoring a matter to ensure deadlines are met;
- Preparing default judgments if an answer is not timely filed;
- Drafting interrogatories, requests for production of documents, and other related discovery requests;
- Assisting with depositions;
- Reviewing, organizing, and summarizing discovery documents;
- Organizing and preparing a trial notebook; and
- Assisting with trial preparations, including organizing exhibits, issuing subpoenas for all necessary parties, and making travel arrangements.

As you review for the trial stage of your work as a paralegal, review the tasks involved with:

- Delivering all necessary documents, trial notebooks, and exhibits to the courtroom;
- Making travel arrangements;
- Arranging for any special equipment needs;
- Serving subpoenas on all necessary parties;
- Investigating all potential jurors;
- Assisting with *voir dire*;
- Coordinating attendance of clients and witnesses;
- Preparing clients and witnesses for testifying;
- Handling all documents and exhibits;
- Taking notes and observing;
- Maintaining contact with office, court personnel, and witnesses; and
- Reviewing case and presentations for opening and closing statements.

Most litigation work will involve the trial courts. A lawsuit is filed with the Clerk of Court's office in the state that has proper jurisdiction and venue. Most paralegals will find themselves involved in state court matters. Jurisdiction is the power of a court to hear a matter. A court must have subject matter jurisdiction to hear a case. State courts typically hear matters involving domestic, juvenile, real estate, will, and workers' compensation issues, and most crimes and traffic matters. Federal courts have subject matter jurisdiction over bankruptcy; admiralty, maritime, and prize cases; all suits brought by or against the United States, its agencies or officers; patent, copyright, trademark, and unfair competition suits; actions involving civil rights; actions affecting ambassadors, public ministers, and consuls; and federal crimes. Thus, when a paralegal files an action, he or she must select the proper venue by verifying that the court has the proper authority or subject matter jurisdiction to hear that type of case. Venue means the geographical area in which a court with proper jurisdiction can hear the matter.

North Carolina has two levels of trial courts: Superior and District. Superior Court tries all felony criminal cases, civil matters involving more than \$10,000, and misdemeanor

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and infraction appeals from District Court. Juries comprised of twelve members hear Superior Court cases.

District Court hears cases involving divorce, custody, child support, and civil cases involving \$10,000 or less. Misdemeanor criminal cases and infractions are handled in District Court as well. All criminal trials in District Court are without a jury, which is called a bench trial.

Small Claims court is a special sub-court of District Court. A magistrate presides over small claims court, hearing civil matters involving less than \$5,000, recovery of personal property or summary ejection/eviction.

North Carolina has two appellate courts. The North Carolina Court of Appeals, where judges sit in panels of three, is an intermediate appellate body hearing appeals from the trial courts. The top appellate court is the North Carolina Supreme Court, where the seven justices hear appellate matters *en banc*. All state court judges are elected to office, except for magistrates.

There are three levels of federal courts: the trial level, United States District Court; followed by the intermediate court, the United States Court of Appeals; and the United States Supreme Court, which is the highest court in the country. All federal judges and justices are appointed to their positions, and federal judges can serve as long as they wish.

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COMMERCIAL LAW

Materials to review

North Carolina General Statutes:

- Chapter 22 – Contracts
- Chapter 23 – Debtor and Creditor
- Chapter 24 – Interest
- Chapter 25 – Uniform Commercial Code
- Chapter 59 – Partnership
- Chapter 66 – Commerce and Business

Forms from the Office of the Secretary of State, Corporations Division

Some general concepts to review follow; this list is not comprehensive. Both flashcards and flow charts can be used to understand concepts and procedures under this topic.

Contracts

What are the three requirements of a contract? Offer, Acceptance, and Consideration.

1. Offer

- a. An offer is a promise or commitment to do or refrain from doing some specified thing in the future. The offeror must intend to be bound by the offer. Jokes, offers made in anger, etc. do not qualify as offers. An offer must be definite and communicated to the offeree. The offer is made when received by the offeree (mailbox rule).
- b. What is not an offer? Expressions of opinions; statements of intention; preliminary negotiations; advertisements, list process, and catalogues.
- c. How is an offer terminated? Remember that some offers are irrevocable. The offeror usually can revoke the offer by express repudiation or by acts that are inconsistent with the offer and that are made known to the offeree. The offeree can reject the offer or make a counteroffer. Offers can also terminate because of time, because the subject matter is destroyed, as a result of the death or incompetence of offeror or offeree, or by a supervening illegality of the contract.

2. Acceptance

- a. Acceptance is compliance by the offeree (or the offeree's agent) with the terms and conditions of the offer. The offeree (or the offeree's agent) agrees to be bound by the terms of the offeror's proposal. The acceptance must match the offer exactly (mirror image rule) and must be communicated to the offeror.

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Silence is usually not considered acceptance. Acceptance is made when the offer is mailed/dispatched (mailbox rule).

b. Know the difference between a unilateral and a bilateral contract.

3. Consideration

a. Consideration is the value given in return for a promise. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract can be consideration. Some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other party can also be consideration. Two elements must be present: (a) consideration must be something of a legal value; and (b) there must be a bargained-for exchange. A gift is not consideration. Someone's promise of a gift could not be enforced in court; however, under the doctrine of promissory estoppel, a person who relies on the promise of another may be able to recover if: (a) the promise was clear and definite; (b) the reliance was justifiable; (c) the reliance is of a substantial and definite character; and (d) justice would be better served by enforcement of the promise.

b. Contracts that lack consideration include those where someone has a preexisting duty, has past consideration, or makes illusory promises.

4. Additional issues regarding contracts:

a. A contract is void or voidable under the following circumstances:

- One or more of the elements of a contract are missing (offer, acceptance, or consideration).
- At least one of the parties lacks capacity - only parties with capacity can enter into a valid contract. Those who lack capacity are infants, intoxicated, or insane.
- The contract is illegal. A contract to do something that is prohibited by federal or state law is illegal and is a void contract. Also, a party must be able to legally enter into a contract. For example, if a license is required for a profession, then an unlicensed person cannot enter into a valid contract. A person who performs a medical procedure cannot enforce a contract for that procedure if that person is not a licensed doctor.
- Lack of genuine assent can be a defense to a contract being enforced. Genuine assent may be lacking because of mistake, misrepresentation, undue influence, or duress.
- Statute of Frauds: In general, contracts may be oral or written, but some contracts MUST be in writing. According to the Statute of Frauds, the following contracts must be written to be valid and enforceable: contracts involving interests in land, collateral contracts, contracts for the sale of goods over \$500.00, contracts that cannot be performed within a year, and prenuptial agreements. Look also at the parole evidence rule.

b. Can a contract be terminated once it has been formed? Yes. It can be terminated by agreement, by execution of the contract (know the issues

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regarding substantial performance, material breach, and the perfect tender rule), when performance is impossible, due to commercial impracticability, via a settlement of claims through accord and satisfaction, by release, or by covenant not to sue.

- c. Damages for breach of contract may include specific performance, consequential damages, compensatory damages (promised performance - actual performance - mitigation + incidental damages), liquidated damages, or contract reformation (North Carolina has strict limits on contract reformation). Punitive damages are not allowed for a contract claim.

What is the Uniform Commercial Code (UCC)? What does it govern? How are the elements of a contract and its defenses different under the UCC and why?

Business organizations

Be able to compare and contrast the following business entities, looking specifically at ease of formation, name, management, liability, continuity of existence, transferability, and taxation. Also look at corporate management. Know the difference between a foreign and an alien corporation.

- Sole proprietorship
- General partnership
- Limited partnership
- Registered limited liability partnership
- Limited liability company
- Business corporation
- Professional corporation
- S corporation
- Close corporation

Other related topics

Borrowing Money – Know the basics of commercial paper and secured transactions.

Agency – What are the duties of an agent to a business entity? What are the elements which determine whether someone is an agent? What determines whether someone is an agent or an independent contractor? What is a frolic and detour?

Intellectual Property – Know the differences between trademarks, patents, and copyrights.

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CRIMINAL LAW AND PROCEDURE

Materials to review

United States Constitution; the Bill of Rights

North Carolina General Statutes Chapters 14: Criminal Law and 15: Criminal Procedure

The Judicial System in North Carolina by the North Carolina Administrative Office of the Court

Criminal Law textbook

Legal Survey textbook

Some general concepts to review follow; this list is not comprehensive. Both flashcards and flow charts can be used to understand concepts and procedures under this topic.

- What is criminal law?
- Why do we punish criminals?
- What are the theories of punishment?
- How does criminal procedure differ from criminal law?
- What is a felony? A misdemeanor?
- Are thoughts crimes?
- What is *mens rea*? *Actus reus*?
- What is *corpus delicti*?
- What is the year and a day rule?
- Do all crimes require a *mens rea*?
- Do all crimes require an *actus reus*?
- What defenses can be argued?
- When can the following defenses be argued? Entrapment, duress, consent, insanity, alibi, necessity
- What crimes are prosecuted in federal court?
- What crimes are prosecuted in state court?

Courts

Hierarchy of the courts

- North Carolina court system
- Federal court system

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Classification, Types, and Elements of Crimes

- Crimes Against the Person: homicide, assaults, rape, kidnapping
- Crimes Against Property: larceny, arson, robbery, burglary, false pretenses, embezzlement, extortion, forgery
- Felonies
- Misdemeanors
- Inchoate offenses
- Infractions

Pre-Court

- Searches
- Seizures
- Arrests
- Interrogation
- Probable cause
- Evidence
- Exclusionary Rule
- Fruit of the Poisonous Tree
- Search warrant
- Miranda
- Confessions
- Principles
- Accessories
- Jurisdiction
- Defenses

Pre-Trial

- Post-arrest and grand jury
- Initial appearance
- Preliminary hearing
- Grand Jury
- Indictment
- Arraignment
- Discovery
- Pre-trial motions
- Right to an attorney

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- Right to a trial by jury
- Motions

Trial

- Voir dire
- Burden of proof
- Motions
- Trial
- Structured sentencing guidelines
- Double jeopardy

Appeals

- Appealing a North Carolina District Court case (*de novo* in Superior Court)
- Appealing a North Carolina Superior Court case
- Appeals in general

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ETHICS

Materials to review

The North Carolina Rules of Professional Conduct

To really understand the Rules of Professional Conduct, it is important to read the rules. Review each rule and make flashcards of the rules and their exceptions. The North Carolina Rules of Professional Conduct can be found online at <http://www.ncbar.gov/rules/rpcsearch.asp>.

The rules are divided into the following general areas – this is a great way to begin thinking about how to approach the questions that you will find on the test as they relate to ethics and the Rules of Professional Conduct. Look at the following areas and think about how these broad titles show what is important:

- Preamble and Scope
- Terminology
- Client-Lawyer Relationship
- Counselor
- Advocate
- Transactions with Persons Other than Clients
- Law Firms and Associations
- Public Service
- Information about Legal Services
- Maintaining the Integrity of the Profession

A list of the rules follows:

Preamble and Scope

- 0.1 Preamble: A Lawyer's Professional Responsibilities
- 0.2 Scope

Terminology

- Rule 1.0: Terminology

Client-Lawyer Relationship

- Rule 1.1: Competence
- Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer
- Rule 1.3: Diligence
- Rule 1.4: Communication

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- Rule 1.5: Fees
- Rule 1.6: Confidentiality of Information
- Rule 1.7: Conflict of Interest: Current Clients
- Rule 1.8: Conflict of Interest: Current Clients: Specific Rules
- Rule 1.9: Duties to Former Clients
- Rule 1.10: Imputation of Conflicts of Interest: General Rule
- Rule 1.11: Special Conflicts of Interest for Former and Current Government Officers and Employees
- Rule 1.12: Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral
- Rule 1.13: Organization as Client
- Rule 1.14: Client with Diminished Capacity
- Rule 1.15: Safekeeping Property
- Rule 1.15-1: Definitions
- Rule 1.15-2: General Rules
- Rule 1.15-3: Records and Accountings
- Rule 1.15-4: Reserved
- Rule 1.16: Declining or Terminating Representation
- Rule 1.17: Sale of Law Practice
- Rule 1.18: Duties to Prospective Client
- Rule 1.19: Sexual Relations with Clients Prohibited

Counselor

- Rule 2.1: Advisor
- Rule 2.2: Reserved
- Rule 2.3: Evaluation for Use by Third Persons
- Rule 2.4: Lawyer Serving as Third-Party Neutral

Advocate

- Rule 3.1: Meritorious Claims and Contentions
- Rule 3.2: Expediting Litigation
- Rule 3.3: Candor Toward the Tribunal
- Rule 3.4: Fairness to Opposing Party and Counsel
- Rule 3.5: Impartiality and Decorum of the Tribunal
- Rule 3.6: Trial Publicity
- Rule 3.7: Lawyer as Witness
- Rule 3.8: Special Responsibilities of a Prosecutor

Transactions with Persons Other Than Clients

- Rule 4.1: Truthfulness in Statements to Others
- Rule 4.2: Communication with Person Represented by Counsel
- Rule 4.3: Dealing with Unrepresented Person
- Rule 4.4: Respect for Rights of Third Persons

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Law Firms and Associations

- Rule 5.1: Responsibilities of Partners, Managers, and Supervisory Lawyers
- Rule 5.2: Responsibilities of a Subordinate Lawyer
- Rule 5.3: Responsibilities Regarding Nonlawyer Assistants
- Rule 5.4: Professional Independence of a Lawyer
- Rule 5.5: Unauthorized Practice of Law
- Rule 5.6: Restrictions on Right to Practice
- Rule 5.7: Responsibilities Regarding Law-Related Services

Public Service

- Rule 6.1: Voluntary Pro Bono Publico Service
- Rule 6.2: Reserved
- Rule 6.3: Membership in Legal Services Organization
- Rule 6.4: Law Reform Activities Affecting Client Interests
- Rule 6.5: Limited Legal Services Programs
- Rule 6.6: Action as a Public Official

Information about Legal Services

- Rule 7.1: Communications Concerning a Lawyer's Services
- Rule 7.2: Advertising
- Rule 7.3: Direct Contact with Potential Clients
- Rule 7.4: Communication of Fields of Practice and Specialization
- Rule 7.5: Firm Names and Letterheads
- Rule 7.6: Reserved

Maintaining the Integrity of the Profession

- Rule 8.1: Bar Admission and Disciplinary Matters
- Rule 8.2: Judicial and Legal Officials
- Rule 8.3: Reporting Professional Misconduct
- Rule 8.4: Misconduct
- Rule 8.5: Disciplinary Authority; Choice of Law

Pay special attention to matters that directly affect paralegals. Remember the things that paralegals cannot do: give legal advice, represent a client in court, set fees, and accept clients.

All ethical rules are important. Focus on these situations where paralegals are often involved: maintaining confidentiality, performing conflicts checks, assisting with trust account maintenance, communicating ethically, maintaining ticklers, and avoiding giving legal advice.

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SAMPLE QUESTION: It is the responsibility of the _____ to discuss the fee agreement with the client.

- a. Paralegal
- b. Attorney
- c. Secretary
- d. Office Manager

How would you approach this question? What type of question is this? This question is about the roles of individuals in a law office. Where would you find the answer regarding whose responsibility it is to discuss a fee agreement with a client? The North Carolina Rules of Professional Conduct address the responsibilities of individuals in a law office. Ask yourself with whom the client should discuss how much the legal fees will be. You should remember Rule 1.5 regarding fees.

Look at (a) – The paralegal is often the initial point of contact. Can a paralegal evaluate the type of case this is and determine how much the attorney will charge either as a per hour case, a flat fee case, or a contingency fee case? No.

Look at (b) – This is the correct answer. Evaluating a case and determining how much time and effort the case will ultimately take, how much the case will cost the client, and whether the fee will be hourly, flat, or contingency seems exactly the role the attorney is meant to have.

Look at (c) – If this authority belongs to the attorney, a secretary, who is another non-lawyer in the office, could not perform this task and this answer would be incorrect.

Look at (d) – If the authority belongs to the attorney, the office manager would also be the wrong answer.

SAMPLE QUESTION: Which lawyer has engaged in professional misconduct?

- a. A lawyer who advances money to his client to cover litigation expenses and court costs
- b. A lawyer who, at the conclusion of the representation, publishes a book about his representation of a particular client
- c. A lawyer who makes an aggregate settlement of the claims of two or more of his clients without the clients' consent
- d. A lawyer who conducts a press conference with his or her client's permission

How would you approach this question? What type of question is this? This question is about lawyer misconduct. Where would you find out the answer regarding misconduct? Again, the North Carolina Rules of Professional Conduct address this.

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Look at (a) – You may remember that lawyers, in general, cannot provide financial assistance to a client because of conflict of interest issues (see Rule 1.8). But there are some exceptions in litigation. This is one of the exceptions (see Rule 1.8(e)(1)). “A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter.”

Look at (b) – attorney lawyer revealing information about a client - information garnered during the representation of a client - is confidential and should not be revealed to any third party (Rule 1.6). What about a FORMER client? Yes, these duties are intact even for a former client (Rule 1.9). Are there any exceptions that publishing a book would fit under? Yes, if the lawyer has the consent of his or her client, he can publish. Therefore, this answer would not be professional misconduct.

Look at (c) – Each client should have the final say in determining whether a settlement should be accepted. Rule 1.8(g) states that “[a] lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients . . . unless each client gives informed consent, in a writing signed by the client.” Answer (c) would be professional misconduct.

Look at Answer (d) – The client has given his or her consent to the lawyer to conduct a press conference. This is not professional misconduct.

Answer (c) is the best answer.

FAMILY LAW

Materials to review

Family Law Textbook
North Carolina General Statutes, specifically Chapters 48 through 52C
Applicable Administrative Office of the Court (AOC) forms

Some general concepts to review follow; this list is not comprehensive. Both flashcards and flow charts can be used to understand concepts and procedures under this topic.

- Prenuptial agreements
- Marriage
- Common law marriage
- Divorce
- Adoption
- Annulment
- Child support
- Child custody
- Parental rights
- Domestic violence/protective orders
- Termination of rights
- Paternity
- Separation agreements
- Equitable distribution
- Alimony/spousal support

Review the North Carolina General Statutes on these topics, noting the following. This list is not comprehensive.

- What are the requirements for getting married?
- What should be contained in a prenuptial agreement?
- What invalidates a prenuptial agreement?
- Where would domestic actions need to be filed?
- What must be contained in a divorce complaint?
- What are the requirements for obtaining a divorce?
- What are the effects of a divorce?
- What are the differences between an absolute divorce and a divorce from bed and board?
- What are the differences between child support and spousal support?
- How can a custody order be modified?
- How is support calculated?

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- What are the differences between joint custody and legal custody?
- How is property divided?
- How does the court determine what is separate property and marital property?
- What are the grounds for obtaining alimony? Terminating alimony?
- When can a parent's rights be terminated?
- Who can be adopted? What are the steps in the adoption process?
- How is a restraining order obtained?
- What is an *ex parte* proceeding?
- How can a woman resume the use of her maiden name?

A paralegal plays a vital role in a domestic practice. Much of the work is similar to that of a civil litigation paralegal. Refresh yourself on the tasks you may perform:

- Interviewing clients and witnesses;
- Opening and maintain the client file;
- Gathering and organizing evidence;
- Drafting a complaint, answer, motion, discovery requests, and other pleadings and documents;
- Drafting a separation agreement, prenuptial agreement, and consent order; and
- Assisting with a hearing, trial, and/or mediation.

Most family law work involves the dissolution of a marriage (annulment, divorce) and the related issues of property distribution, child support and custody, and spousal support. One of the popular questions in a family law practice: How does someone get a divorce? North Carolina law requires that one of the parties be a citizen and resident of the state for six months prior to filing the matter and that the parties have lived separate and apart for one year. Subject matter jurisdiction for divorce and all related matters is in North Carolina District Court. Understanding the divorce process is imperative for a family law paralegal. Grounds for an annulment are very limited; thus, an annulment is rarely a proper remedy. Parties can agree about many items concerning their marriage dissolution. These agreements can be reflected in a separation agreement, which is a contract between the divorcing parties. Child support and custody, visitation, property division, and other matters can also be detailed in a separation agreement. If matters cannot be resolved, a complaint will need to be filed, wherein the plaintiff asks the court to rule on the matters on which the parties cannot agree.

Other family law work may involve domestic violence/protective orders, adoptions, termination of parental rights, name changes, and other related matters. Review the North Carolina General Statutes on these topics.

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GRAMMAR

Materials to review

Legal Survey or Introduction to Paralegalism textbook
Legal Research textbook

Some general concepts to review follow; this list is not comprehensive. Both flashcards and flow charts can be used to understand concepts and procedures under this topic.

- Subject-verb agreement
- Punctuation
- Capitalization
- Proper word choice (i.e., there, their, they're; affect, effect)
- Avoiding passive voice
- Avoiding redundancy

The role of grammar in the legal world cannot be overemphasized. If the world of law revolves around words and ideas, grammar is an essential element to convey those words and ideas to others.

The North Carolina State Bar Certification Examination tests applicants extensively on grammar. While this document is not able to provide a grammar tutorial, there are several resources recommended that applicants review. Once you find which resources best help you, keep those resources as part of your professional library.

For grammar, look at several grammar books that can be found in bookstores or online and determine which one best fits your needs.

While we do not usually recommend specific texts, two texts that have been identified as assisting with style include Strunk & White's The Elements of Style (4th Edition) and Richard Wydick's Plain English for Lawyers (5th edition).

You might also consider online tutorials (there are even some free tutorials available on the web). You might find useful the online self-guided tutorial "Grammar for Lawyers." It can be purchased online and provides both grammar and legal usage forms for applicants to master.

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REAL ESTATE LAW

Materials to review

Real Estate Law textbook

Legal Survey or Introduction to Paralegalism textbook

North Carolina General Statutes:

- Chapter 10B: Notaries
- Chapter 31A: Acts Barring Property Rights
- Chapter 31B: Renunciation of Property and Renunciation of Fiduciary Powers Act
- Chapter 31C: Uniform Disposition of Community Property Rights at Death Act
- Chapter 38: Boundaries
- Chapter 38A: Landowner Liability
- Chapter 38B: Trespasser Responsibility
- Chapter 39: Conveyances
- Chapter 39A: Transfer Fee Covenants Prohibited
- Chapter 40A: Eminent Domain
- Chapter 41: Estates
- Chapter 41A: State Fair Housing Act
- Chapter 42: Landlord and Tenant
- Chapter 42A: Vacation Rental Act
- Chapter 43: Land Registration
- Chapter 44: Liens
- Chapter 44A: Statutory Liens and Charges
- Chapter 45: Mortgages and Deeds of Trust
- Chapter 45A: Good Funds Settlement Act
- Chapter 46: Partition
- Chapter 47: Probate and Registration
- Chapter 47A: Unit Ownership
- Chapter 47B: Real Property Marketable Title Act
- Chapter 47C: North Carolina Condominium Act
- Chapter 47E: Residential Property Disclosure Act
- Chapter 47F: North Carolina Planned Community Act
- Chapter 47G: Option to Purchase Contracts Executed With Lease Agreements
- Chapter 47H: Contracts for Deed

Agencies involved

The Office of the Secretary of State – Notary Public Section

- The Office of the Register of Deeds (by county)
- The Office of the Clerk of Court (by judicial district)

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Key Terms and Concepts

Some general concepts to review follow; this list is not comprehensive. Both flashcards and flow charts can be used to understand concepts and procedures under this topic.

Property

- Real property vs. personal property
- Elements of real property
- Fixtures

Landlord/Tenant

- Types of leases
- Duties

Real Property Ownership (and what terminates a type of ownership)

- Fee simple
- Freehold estate
- Life estates (reversionary interest and remainder)

Limitations on Ownership

- Easements
- Licenses
- Profit a prendre
- Liens
- Assessments
- Air rights
- Riparian rights
- Mineral rights
- Restrictive covenants
- Subdivision rules and regulations
- Nuisance

Concurrent Ownership (how they are created and what terminates each type of ownership)

- Joint tenancy
- Tenancy in common
- Tenancy by the entirety
- Special rules regarding married couples and real property ownership
- Tenancy in severalty

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Transfers of Property

- Statute of frauds
- Contract

Voluntary Transfer

- Sale
- Will/inheritance/devise
- Gift
- Dedication
- Homesteading

Involuntary Transfer

- Condemnation
- Adverse possession
- Foreclosure
- Escheat
- Civil judgment

Taxes

- Ad valorem
- Excise tax
- Tax stamps

Purchase of Property

- Offer to Purchase and Contract (North Carolina form can be found on the internet)
- Parties to the contract
- Defining the property/platted description/metes and bounds surveys
- Properties straddling county lines
- Earnest money

Deeds

- Deed of trust
- Mortgage
- General warranty
- Limited (special) warranty deed
- Non-warranty (quitclaim) deed
- Trustee's Deed
- Seal

Title Search (who owns the property and what they own)

- Where to search
- What to search

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- Chain of title
- Clear title
- Title defects
- Preliminary title opinion
- Final title opinion
- Quieting title
- Title insurance
- Recording and indexing
- Liens
- Lien waivers
- UCC
- Perfecting an interest
- Notice

Real Estate Closing

- Documents
- Notary Public
- Roles of the paralegal and the attorney
- Checklist
- Post-closing checklist
- Recordation
- American Land Title Association
- U.S. Department of Housing and Urban Development
- Privity examination
- Power of attorney and requirements
- Warranties
- Preparing a deed
- NOTE: North Carolina is a pure race state – what does this mean?

What you can do with Real Property

- Zoning
- Building codes
- Planning boards
- Historical districts
- Urban planning
- Interstate land sales full disclosure act
- Environmental issues
- Refinancing

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WILLS, TRUSTS, AND ESTATES

Materials to review

Wills, Trusts, and Estates textbook

North Carolina General Statutes re: wills, trusts, estate administration

Applicable Administrative Office of the Court (AOC) forms

Related terminology

Some general concepts to review follow; this list is not comprehensive. Both flashcards and flow charts can be used to understand concepts and procedures under this topic.

- What is estate planning?
- What role does a paralegal serve in estate planning?
- What is a will?
- Who needs a will?
- Who can and who cannot make a will?
- What happens if a person dies without a will?
- What is a trust?
- What is real property?
- What is personal property?
- How does property ownership affect estate planning?
- How is an estate distributed in North Carolina according to intestate succession statutes?
- Who takes from an intestate's estate and how much?
- How is a degree of relationship counted?
- When does an estate escheat?
- What are the common provisions of a will?
 - Introductory/exordium
 - General revocation
 - Payment of debts/taxes/funeral arrangements
 - Gifts
 - Residuary
 - Appointment(s) of a personal representative/guardian(s)
 - Simultaneous death
 - Testamentary trusts
 - Testimonium
 - Attestation
 - Signatures
 - Self-proving affidavit
- How should a will be executed?

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- How can a will be revoked?
- How can a will be changed?
- When can a will be contested?
- What is a codicil?
- What is a trust?
- What are the types of trusts?
- What is the purpose of a trust?
- When does a trust begin and end?
- What are the requirements for a trust?
- What documents are commonly included in an estate plan?
- When should an estate plan be updated?
- How is estate administration started?
- What AOC forms are required?
- What are the due dates in estate administration?
- How is an estate closed?
- When can an estate be closed?

Paralegals play a vital role in an estate practice. They will be expected to communicate with clients, staff, and court personnel. A paralegal may be asked to interview clients and to draft numerous estate planning documents, including wills, powers of attorney, and trusts. An understanding of property law concepts and how documents need to be properly prepared and executed is required. Paralegals will be asked to participate in will executions and to assist with estate administration. Familiarity with AOC forms is required and the adherence to deadlines for estate administration will be expected.

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LEGAL TERMINOLOGY

Materials to review

Introduction to Paralegalism textbook
Black's Law Dictionary

When preparing for the exam, review and be familiar with the following terms and their commonly used definitions.

acceptance	In contract law, the offeree's indication to the offeror that the offeree agrees to be bound by the terms of the offeror's offer or proposal to form a contract.
acquittal	A certification or declaration following a trial that the individual accused of a crime is innocent, or free from guilt, in the eyes of the law and is thus absolved of the charges.
actionable	Capable of serving as the basis of a lawsuit. An actionable claim can be pursued in a lawsuit or other court action.
active listening	The act of listening attentively to the speaker's message and responding by giving appropriate feedback to show that you understand what the speaker is saying; restating the speaker's message in your own words to confirm that you accurately interpreted what was said.
actual malice	Real and demonstrable evil intent. In a defamation suit, a statement made about a public figure normally must be made with actual malice (with either knowledge of its falsity or a reckless disregard of the truth) for liability to be incurred.
<i>actus reus</i>	A guilty (prohibited) act. The commission of a prohibited act is one of the two essential elements required for criminal liability; the other element is the intent to commit a crime.
<i>ad valorem</i>	Derived from the Latin <i>ad valentiam</i> , meaning "to the value." It is commonly applied to a tax imposed on the value of property.

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address block	That part of a letter that indicates to whom the letter is addressed. The address block is placed in the upper left-hand portion of the letter, above the salutation (or reference line, if one is included).
ademption clause	The revocation, recalling, or cancellation of a legacy, according to the apparent intention of the testator, implied by the law from acts done by the testator during the testator's life.
adjudication	The act of resolving a controversy and rendering an order or decision based on a review of the evidence presented.
administrative agency	A federal or state government agency established to perform a specific function. Administrative agencies are authorized by legislative acts to make and enforce rules relating to the purpose for which they were established.
administrative law	A body of law created by administrative agencies in the form of rules, regulations, orders, and decisions in order to carry out their duties and responsibilities.
administrative law judge (ALJ)	One who presides over an administrative agency hearing and who has the power to administer oaths, take testimony, rule on questions of evidence, and make determinations otherwise authorized by law.
administrative process	The procedure used by administrative agencies in the administration of law.
administrator	A person appointed by a court to serve as a personal representative for a person who died intestate (without a valid will) or if the executor named in the will cannot serve.
adoption	A procedure in which persons become the legal parents of a child who is not their biological child.
adversarial system of justice	A legal system in which the parties to a lawsuit are opponents, or adversaries, and present their cases in the light most favorable to themselves. The impartial decision maker (the judge or jury) determines who wins and who loses based on the evidence presented.

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adverse possession	A process by which premises can change ownership. It is a common law concept concerning the title to real property.
affidavit	A written statement of facts confirmed by the oath or affirmation of the party making it and made before a person having authority to administer the oath or affirmation.
affirm	To uphold the judgment of a lower court.
affirmative defense	A response to a plaintiff's claim that does not deny the plaintiff's facts but attacks the plaintiff's legal right to bring an action.
agency	A relationship between two persons in which one person (the agent) represents or acts in the place of another (the principal).
agent	A person who is authorized to act for or in the place of another person (the principal).
agreement	A meeting of the minds and a requirement for a valid contract. Agreement involves two distinct events: an offer to form a contract and the acceptance of that offer by the offeree.
alimony	Money paid to support a former spouse after a marriage has been terminated. The alimony may be permanent or temporary (rehabilitative).
allegation	A party's statement, claim, or assertion made in a pleading to the court. The allegation sets forth the issue that the party expects to prove.
ALTA (American Land Title Association)	A national trade association representing the interests of the abstract of title and title insurance industries.
alternative dispute resolution (ADR)	The resolution of disputes in ways other than those involved in the traditional judicial process. Negotiation, mediation, and arbitration are forms of ADR.

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American Bar Association (ABA)	A voluntary national association of attorneys, the ABA plays an active role in developing educational and ethical standards for attorneys and in pursuing improvements in the administration of justice.
American Digest System	A system of identifying points of law from reported cases and organizing them by topic and key number. The system was developed by West Publishing to organize the entire body of American law.
American Jurisprudence	An encyclopedia of United States law published by West.
American Law Reports	A resource used by American lawyers to find a variety of sources relating to specific legal rules, doctrines, or principles.
<i>amicus curiae</i> brief	A brief filed with the court by a third party (i.e., a party not directly involved in the lawsuit) who is concerned about the outcome of the litigation. The purpose of such a brief is to convince the court to rule in favor of one of the parties because not to do so would affect a broad interest of society. (<i>Amicus curiae</i> is Latin for “friend of the court.”)
annotation	A brief comment, an explanation of a legal point, or a case summary found in a case digest or other legal source.
annulment	A court decree that invalidates (nullifies) a marriage. Although the marriage itself is deemed nonexistent, children of a marriage that is annulled are deemed legitimate.
answer	A defendant’s response to a plaintiff’s complaint.
antenuptial agreement	A written contract created by two people planning to be married. The agreement typically lists all of the property each person owns, as well as their debts, and it specifies what each person’s property rights will be after they tie the knot. Antenuptial agreements often specify how property will be divided – and whether spousal support (alimony) will be paid – in the event of a divorce.

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appeal	The process of seeking a higher court's review of a lower court's decision for the purpose of correcting or changing the lower court's judgment or decision.
appellant	The party who takes an appeal from one court to another; sometimes referred to as the petitioner.
Appellant's brief	An appellate brief that argues in favor of the appellant's position. This brief will try to convince the court that the lower court's decision was erroneous.
appellate brief	A document submitted to an appellate court setting forth legal arguments and supporting law in favor of the appellant or the appellee.
appellate court	A court that reviews decisions made by lower courts, such as trial courts; a court of appeals.
appellate jurisdiction	The power of a court to hear and decide an appeal; i.e., the power and authority of a court to review cases that already have been tried in a lower court and the power to make decisions about them without actually holding a trial. This process is call appellate review.
appellee	The party against whom an appeal is taken; i.e., the party who opposes setting aside or reversing the judgment; sometimes referred to as the respondent.
appellee's brief	An appellate brief that argues in favor of the appellee's position. This brief will try to rebut (counter) any arguments in the appellant's brief and will emphasize the accuracy of the earlier judgment rendered in its favor.
appropriation	In tort law, the use by one person of another person's name, likeness, or other identifying characteristic without permission and for the benefit of the user.
arbitration	A method of settling disputes in which a dispute is submitted to a disinterested third party (other than a court), who renders a decision that may or may not be legally binding.

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arbitration clause	A clause in a contract that provides that, in case of a dispute, the parties will determine their rights by arbitration rather than through the judicial system.
arraignment	A court proceeding in which the suspect is formally charged with the criminal offense stated in the indictment. The suspect then enters a plea (guilty, not guilty, or <i>nolo contendere</i>) in response.
arrest	To take into custody a person suspected of criminal activity.
arrest warrant	A written order, based on probable cause and issued by a judge or public official (magistrate), commanding that the person named on the warrant be arrested by the police.
arson	The willful and malicious burning of a building (and, in some states such as North Carolina, personal property); arson statutes have been extended to cover the destruction of any building, regardless of ownership, by fire or explosion.
articles of incorporation	The document filed with the appropriate state official, usually the secretary of state, when a business is incorporated. State statutes usually prescribe what kind of information must be contained in the articles of incorporation.
articles of organization	A document necessary for setting up a limited liability company in many U.S. states. It is similar to articles of incorporation used for setting up corporations.
assault	Any word or action intended to make another person fearful of immediate physical harm; a reasonably believable threat.
associate attorney	An attorney working for a law firm who is not a partner and does not have an ownership interest in the firm. Associates are usually less experienced attorneys and may be invited to become partners after working for the firm for several years.
assumption of risk	Voluntarily taking upon oneself a known risk. Assumption of risk is a defense against negligence that can be used when the plaintiff has knowledge of and appreciates a danger and voluntarily exposes himself or herself to the danger.

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attestation clause	A provision at the end of an instrument where the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same. It states that the instrument has been completed in the manner required by law in the presence of the witnesses who placed their signatures in the designated spaces.
attorney general	The chief legal officer of the state who, either personally or through staff, represents the interests of the state in a variety of areas.
attorney-client privilege	A rule of evidence requiring that confidential communications between a client and the client's attorney (relating to their professional relationship) be kept confidential, unless the client consents to disclosure.
authentication	The process of establishing the genuineness of an item that is to be introduced as evidence in a trial.
award	In the context of ADR, the decision rendered by an arbitrator.
bail	The amount of money or conditions set by the court to assure that an individual accused of a crime will appear for further criminal proceedings. If the accused person provides bail, whether in cash or by means of a bail bond, then the person is released from jail.
bailiff	Someone entrusted with the care and protection, guardianship, or jurisdiction of a person, land, or personal property pending further court action. It also refers to a court official or a law enforcement officer, usually a deputy sheriff, marshal, or constable, who keeps order in the courtroom and handles various tasks for the judge and clerk such as calling cases to approach the bench. The bailiff acts as an intermediary between the judge and the attorneys.
bankruptcy court	A federal court of limited jurisdiction that hears only bankruptcy proceedings.

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bankruptcy law	The body of federal law that governs bankruptcy proceedings. The goals of bankruptcy law are (1) to protect a debtor by giving the debtor a fresh start, free from creditors' claims; and (2) to ensure that creditors who are competing for a debtor's assets are treated fairly.
battery	The intentional and offensive touching of another without lawful justification.
beneficiary	The person named to receive proceeds or benefits.
bequest	To give or leave by will — used especially for personal property.
beyond a reasonable doubt	The standard used to determine the guilt or innocence of a person charged with a crime. To be guilty of a crime, a suspect must be proved guilty "beyond and to the exclusion of every reasonable doubt."
bigamy	The act of entering into marriage with one person while still legally married to another.
Bill of Rights	The first ten Amendments to the Constitution.
billable hours	Hours or fractions of hours that attorneys and paralegals spend in work that requires legal expertise and that can be billed directly to clients.
binding mediation	A form of ADR in which a mediator attempts to facilitate agreement between the parties, but then issues a legally binding decision if no agreement is reached.
bonus	An end-of-the-year payment to a salaried employee in appreciation for that employee's overtime work, work quality, diligence, or dedication to the firm.
booking	The process of entering a suspect's name, offense, and arrival time into the police log (blotter) following arrest.
breach	To violate a legal duty by an act or a failure to act.

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breach of contract	The failure, without legal excuse, of a contractual party to perform the obligations assumed in a contract.
brief	A formal outline that sets forth the main contentions with supporting statements or evidence.
briefing a case	Summarizing a case. A typical case brief will indicate the full citation for the case, the factual background and procedural history of the case, the issue(s) raised in the case, the court's decision, the court's holding, and the legal reasoning on which the court based its decision. The brief may also include conclusions or notes concerning the case made by the one briefing it.
browse-wrap terms	Terms and conditions of use that are presented to an Internet user at the time the user downloads certain products, such as software, but that the user need not agree to (by clicking "I agree," for example) before being able to install or use the products.
bureaucracy	In relation to government, the organizational structure, consisting of bureaus and agencies, through which the government implements and enforces the laws.
burglary	Breaking and entering onto the property of another with the intent to commit a felony.
business invitee	A person, such as a customer or client, who is invited onto business premises by the owner of those premises for business purposes.
business tort	Wrongful interference with another's business rights.
bylaws	A set of governing rules adopted by a corporation or other association.
calendar call	The hearing at which a case is set for trial.
capacity	Legal competency or fitness.

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capital case	Capital punishment, the death penalty, or execution is the killing of a person by judicial process as a punishment for an offense.
caption	The part of a legal document that shows where, when, and by what authority it was taken, found, or executed.
case law	Rules of law announced in court decisions.
case of first impression	A case presenting a legal issue that has not yet been addressed by a court in a particular jurisdiction.
case on “all fours”	A case in which all four elements of a case (the parties, the circumstances, the legal issues involved, and the remedies sought by the plaintiff) are very similar to those in the case being researched.
case on point	A case involving factual circumstances and issues that are similar to those in the case being researched.
causation in fact	Causation brought about by an act or omission without which an event would not have occurred.
cease-and-desist order	An administrative or judicial order prohibiting a person or business firm from conducting activities that an agency or court has deemed illegal.
certificate of incorporation (corporate charter)	The document issued by a state official (usually the secretary of state) granting a corporation legal existence and the right to function.
certification	Formal recognition by a private group or a state agency that an individual has satisfied the group’s standards of proficiency, knowledge, and competence; ordinarily accomplished through the taking of an examination.
certified copy	A photocopy of a document, judgment, or record that is signed and attested to by a public official in whose custody the original has been placed for safekeeping as an accurate and a complete reproduction of the original document.

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chain of custody	A series describing the movement and location of evidence from the time it is obtained to the time it is presented in court. The court requires that evidence be preserved in the condition in which it was obtained if it is to be admitted into evidence at trial.
chain of title	A list of successive owners of a parcel of land, beginning from the government, or original owner, to the person who currently owns the land.
challenge	An attorney's objection, during <i>voir dire</i> , to the inclusion of a particular person on the jury.
challenge for cause	A <i>voir dire</i> challenge for which an attorney states the reason why a prospective juror should not be included in the jury.
charge	The judge's instructions to the jury, following the attorneys' closing arguments, setting forth the rules of law that the jury must apply in reaching its decision or verdict.
child support	The financial support necessary to provide for a child's needs. Commonly, when a marriage is terminated, the noncustodial spouse agrees or is required by the court to make child-support payments to the custodial spouse.
chronologically	In a time sequence; naming or listing events in the time order in which they occurred.
circumstantial evidence	Indirect evidence that is offered to establish, by inference, the likelihood of a fact that is in question.
citation	In case law, a reference to the volume number, name, and page number of the reporter in which a case can be found. In statutory and administrative law, a reference to the title number, name, and section of the code in which a statute or regulation can be found. In criminal procedure, an order for a defendant to appear in court or indicating that a person has violated a legal rule.

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citator	A book or online service that provides the history and interpretation of a statute, regulation, or court decision and a list of the case, statutes, and regulations that have interpreted, applied, or modified a statute or regulation.
civil law	The branch of law dealing with the definition and enforcement of private or public rights, as opposed to criminal matters.
civil law system	A system of law derived from that of the Roman Empire and based on a code rather than case law; the predominant system of law in the nations of continental Europe and the nations that were once their colonies.
clerk of court	An officer of the court whose responsibilities include maintaining the records of a court. Another duty is to administer oaths to witnesses, jurors, and grand jurors.
click-on-agreement	An agreement that arises when a buyer, engaging in a transaction on a computer, indicates assent to be bound by the terms of an offer by clicking on a button that says, for example, "I agree"; sometimes referred to as a <i>click-on license</i> or a <i>click-wrap agreement</i> .
client confidentiality	The principle that an institution or individual should not reveal information about their clients to a third party without the consent of the client or a clear legal reason.
client file	Folder/file that is opened after client is accepted and a conflicts check is performed. Usually assigned a numerical and/or alphabetical sequence maintained by the office. All documents related to the case, including client contact information, intake sheet, research, correspondence, notes, and work product, are stored within.
close corporation	A corporation owned by a small group of shareholders, often family members; also called a <i>closely held corporation</i> . Shares in close corporations cannot be publicly traded.
closed-ended question	A question phrased in such a way that it elicits a simple "yes" or "no" answer.

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closing	A final comment to a letter that is placed above the signature, such as “Sincerely” or “Very truly yours.”
closing argument	An argument made by each side’s attorney after the cases for the plaintiff and defendant have been presented. Closing arguments are made prior to the jury charge.
code	A systematic and topically organized presentation of laws, rules, or regulations.
codify	To collect and organize systematically and logically a body of concepts, principles, decisions, or doctrines.
collateral heirs	A successor to property — either by will or descent and distribution — who is not directly descended from the deceased but comes from a parallel line of the deceased’s family, such as a brother, sister, uncle, aunt, niece, nephew, or cousin.
collective bargaining	The process by which labor and management negotiate the terms and conditions of employment, including wages, benefits, working conditions, and other matters.
common law	A body of law developed from custom or judicial decisions in English and U.S. courts and not by a legislature.
common law marriage	A marriage that is formed solely by mutual consent and without a marriage license or ceremony. The couple must be eligible to marry, must have a present and continuing agreement to be husband and wife, must live together as husband and wife, and must hold themselves out to the public as husband and wife. Only fourteen states recognize common law marriages.
community property	Defined in ten states as all property acquired during the marriage, except for inheritances or gifts received during the marriage by either marital partner. Each spouse has a one-half ownership interest in community property.
comparative negligence	A theory in tort law under which the liability for injuries resulting from negligent acts is shared by all persons who were guilty of negligence (including the injured party) on the basis of each person’s proportionate carelessness.

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compensatory damages	A money award equivalent to the actual value of injuries or damages sustained by the aggrieved party.
complaint	The pleading made by a plaintiff or a charge made by the state alleging wrongdoing on the part of the defendant.
computer information	Under the Uniform Computer Information Transactions Act, information in electronic form obtained from or through use of a computer, or that is in digital or an equivalent form capable of being processed by a computer.
computer-assisted legal research (CALR)	Any legal research conducted with the assistance of computers. CALR includes the use of CD-ROMs, fee-based providers such as Westlaw and Lexis, and the Internet.
concurrent jurisdiction	Jurisdiction that exists when two different courts have the power to hear a case. For example, some cases can be heard in either a federal or a state court.
confirmation letter	A letter that states the substance of a previously conducted verbal discussion to provide a permanent record of the oral conversation.
conflict of interest	A situation in which two or more duties or interests come into conflict, as when an attorney attempts to represent opposing parties in a legal dispute.
conflicts check	A procedure for determining whether an agreement to represent a potential client will result in a conflict of interest.
consideration	Something of value, such as money or the performance of an action not otherwise required, that motivates the formation of a contract. Each party must give consideration for the contract to be binding.
consolidation	A process in which two or more corporations join to become a completely new corporation. The original corporations cease to exist.
constitutional law	Law based on the U.S. Constitution and the constitutions of the various states.

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consumer	An individual who purchases products and services for personal or household use.
consumer law	Statutes, agency rules, and judicial decisions protecting consumers of goods and services.
contingency fee	A legal fee that consists of a specified percentage (such as 30 percent) of the amount the plaintiff recovers in a civil lawsuit. The fee must be paid only if the plaintiff prevails in the lawsuit (recovers damages).
contingent beneficiary	A person who receives the benefits only if predetermined conditions have been met.
continuing legal education (CLE) program	Courses through which attorneys and other legal professionals extend their education beyond school.
contract	An agreement or bargain struck between parties in which each party assumes a legal duty to the other party. The requirements for a valid contract are agreement, consideration, contractual capacity, and legality.
contractual capacity	The threshold mental capacity required by law for a party who enters into a contract to be bound by that contract.
contributory negligence	A theory in tort law under which a complaining party's own negligence contributed to or caused his or her injuries. Contributory negligence is an absolute bar to recovery in a minority of jurisdictions.
conversion	The act of wrongfully taking or retaining of a person's personal property and placing it in the service of another.
copyright	The exclusive right of an author (or other creator) to publish, print, or sell an intellectual production for a statutory period of time.
corporate law	Law that governs the formation, financing, merger and acquisition, and dissolution or liquidation of corporations, as well as the rights and duties of those who own and run the corporation.

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<i>Corpus Juris Secundum</i>	An encyclopedia of U.S. law. Its full title is <u>Corpus Juris Secundum: Complete Restatement of the Entire American Law as Developed By All Reported Cases</u> (1936-). It contains an alphabetical arrangement of legal topics as developed by U.S. federal and state cases and is considered secondary authority.
counteradvertising	New advertising undertaken pursuant to a Federal Trade Commission order for the purpose of correcting earlier false claims that were made about a product.
counterclaim	A claim made by a defendant in a civil lawsuit against the plaintiff; in effect, a counterclaiming defendant is suing the plaintiff.
<i>court en banc</i>	Latin term “on the bench” meaning with all judges or a quorum of judges present or in full court.
court of equity	A court that decides controversies and administers justice according to the rules, principles, and precedents of equity.
court of law	A court in which the only remedies that could be granted were things of value, such as money damages. In early England, courts of law were distinct from courts of equity.
court reporter	A person whose occupation is to transcribe spoken or recorded speech into written form, typically using machine shorthand or a voice silencer and digital recorder to produce official transcripts of court hearings, depositions, and other official proceedings.
crime	A broad term for violations of law that are punishable by the state and are codified by legislatures. The objective of criminal law is to protect the public.
criminal law	The branch of law that governs and defines those actions that are crimes and that subjects persons convicted of crimes to punishment imposed by the government (a fine or jail time).
cross-claim	A claim asserted by a defendant in a civil lawsuit against another defendant or by a plaintiff against another plaintiff.

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cross-examination	The questioning of an opposing witness during the trial.
cyber crime	A crime that occurs online, in the virtual community of the Internet, as opposed to the physical world.
cyber stalker	A person who commits the crime of stalking in cyberspace. The cyber stalker usually finds victims through Internet chat rooms, newsgroups, bulletin boards, or e-mail and proceeds to harass that person or put the person in reasonable fear for his or her safety or the safety of that person's immediate family.
cyber tort	A tort committed in cyberspace.
cybernotary	A legally recognized authority that can certify the validity of digital signatures.
damages	Money awarded as a remedy for a civil wrong, such as a breach of contract or a tortious act.
deceptive advertising	Advertising that misleads consumers, either by unjustified claims concerning a product's performance or by the failure to disclose relevant information concerning the product's composition or performance.
deed	A document by which title to property is transferred from one party to another.
defalcation	The act or an instance of embezzling.
defamation	Anything published or publicly spoken that causes injury to another's good name, reputation, or character.
default judgment	A judgment entered by a clerk or court against a defendant who has failed to appear in court to answer or defend against a claim that has been brought against the defendant by another party.
defendant	A party against whom a lawsuit is brought.
defense	The reasons that a defendant offers and alleges why the plaintiff should not recover or establish what the plaintiff seeks in a lawsuit.

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defense of others	The use of reasonable force to protect others from harm.
defense of property	The use of reasonable force to protect one's property from the harm threatened by another. The use of deadly force in defending one's property is seldom justified.
delegation doctrine	A doctrine that authorizes Congress to delegate some of its lawmaking authority to administrative agencies. The doctrine is implied by Article I of the U.S. Constitution, which grants specific powers to Congress to enact and oversee the implementation of law.
demand letter	A letter in which one party explains its legal position in a dispute and requests that the recipient take some action (such as paying money owed).
demonstrative evidence	Evidence in the form of a representation of an object as opposed to testimony or other forms of evidence used at trial.
demonstrative legacy	A gift by will of money or other personal property that is to be paid to an heir from a fund designated in the provisions of the will but, in any event, is to be paid if there are sufficient available assets in the estate.
deponent	A party or witness who testifies under oath during a deposition.
deposition	A pretrial question-and-answer proceeding, usually conducted orally, in which a party or witness answers an attorney's questions. The answers are given under oath and the session is recorded.
deposition summary	A condensed version of a deposition, usually organized by a chronological, narrative, or topical method.
deposition transcript	The official transcription of the recording taken during a deposition.
devise	To give real estate by will.
<i>dicta</i>	A Latin term referring to nonbinding (nonprecedential) judicial statements that are not directly related to the facts or issues presented in the case and thus not essential to the holding.

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digest	A compilation in which brief summaries of court cases are arranged by subject and subdivided by jurisdiction and court.
direct evidence	Evidence establishing the existence of a fact that is in question without relying on inferences.
direct examination	The examination of a witness by the attorney who calls the witness to the stand to testify on behalf of the attorney's client.
director	A person elected by the shareholders to direct corporate affairs.
disbarment	A severe disciplinary sanction in which an attorney's license to practice law in the state is revoked because of unethical or illegal conduct.
discovery	Formal investigation prior to trial. During discovery, opposing parties use various methods, such as interrogatories and depositions, to obtain information from each other and from witnesses to prepare for trial.
discovery plan	A plan formed by the attorneys litigating a lawsuit, on behalf of their clients, that indicates the types of information that will be disclosed by each party to the other prior to trial, the testimony and evidence that each party will or may introduce at trial, and the general schedule for pretrial disclosures and events.
dissolution	The formal disbanding of a partnership or a corporation.
district attorney	An elected official of a county or a designated district with the responsibility for prosecuting crimes.
diversion program	In some jurisdictions an alternative to prosecution that is offered to certain felony suspects to deter them from future unlawful acts.

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diversity of citizenship	Under Article III, Section 2 of the Constitution, a basis for federal district court jurisdiction over a lawsuit between (1) citizens of different states, (2) a foreign country and citizens of a state or different states, or (3) citizens of a state and citizens or subjects of a foreign country. The amount in controversy must be more than \$75,000 before a federal court can take jurisdiction in such cases.
dividend	A distribution of profits to corporate shareholders, disbursed in proportion to the number of shares held.
divorce	A formal court proceeding that legally dissolves a marriage.
docket	The list of cases entered on a court's calendar and thus scheduled to be heard by the court.
double billing	Billing more than one client for the same billable time period.
double jeopardy	To place at risk (jeopardize) a person's life or liberty twice. The Fifth Amendment to the Constitution prohibits a second prosecution for the same criminal offense in all but a few circumstances.
dram shop act	A state statute that imposes liability on the owners of bars and taverns, as well as those who serve alcoholic drinks to the public, for injuries resulting from accidents caused by intoxicated persons when the sellers or servers of alcoholic drinks contributed to the intoxication.
due process of law	Fair, reasonable, and standard procedures that must be used by the government in any legal action against a citizen. The Fifth Amendment to the U.S. Constitution prohibits the deprivation of "life, liberty, or property without due process of law."
duty of care	The duty of all persons, as established by tort law, to exercise a reasonable amount of care in their dealings with others. Failure to exercise due care, which is normally determined by the reasonable person standard, constitutes the tort of negligence.

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early neutral case evaluation	A form of ADR in which a neutral third party evaluates the strengths and weaknesses of the disputing parties' positions; the evaluator's opinion forms the basis for negotiating a settlement.
easement	The right of a person to make limited use of another person's real property without taking anything from the property.
elder law	A relatively new legal specialty that involves servicing the needs of older clients, such as estate planning and making arrangements for long-term care.
emancipation	The legal relinquishment by a child's parents or guardian of the legal right to exercise control over the child. Usually, a child who moves out of the parents' home and supports himself or herself is considered emancipated.
embezzlement	The fraudulent appropriation of the property or money of another by a person entrusted with the property or money.
eminent domain	The power of a government to take land for public use from private citizens for just compensation.
employment at will	A common law doctrine under which employment is considered to be "at will"; either party may terminate the employment relationship at any time and for any reason, unless a contract specifies otherwise.
employment manual	A firm's handbook or written statement that specifies the policies and procedures that govern the firm's employees and employer-employee relationships.
enabling legislation	A statute enacted by a legislature that authorizes the creation of an administrative agency and specifies the name, purpose, composition, and powers of the agency being created.
environmental law	All state and federal laws or regulations enacted or issued to protect the environment and preserve environmental resources.
equitable principles and maxims	Propositions or general statements of rules of law that are frequently involved in equity jurisdiction.

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e-signature	An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record, according to the Uniform Electronic Transactions Act.
estate administration	The process in which a decedent's personal representative settles the affairs of the decedent's estate (collects assets, pays debts and taxes, and distributes the remaining assets to heirs); the process is usually overseen by a probate court.
estate planning	Making arrangements, during a person's lifetime, for the transfer of that person's property or obligations to others on the person's death. Estate planning often involves executing a will, establishing a trust fund, or taking out a life insurance policy to provide for others, such as a spouse or children, on one's death.
<i>et al</i>	An abbreviation for the Latin phrase <i>et alii</i> meaning "and others."
<i>et tu</i>	A Latin phrase meaning "and you also."
<i>et ux</i>	An abbreviation for the Latin words <i>et uxor</i> meaning "and wife."
<i>et vir</i>	Latin for "and man," it is often used interchangeably with " <i>et con</i> " to mean "and husband."
ethical wall	A term that refers to the procedures used to create a screen around a legal employee to shield that employee from information about a case in which there is a conflict of interest.
evidence	Anything that is used to prove the existence or nonexistence of a fact.
<i>ex parte</i> communication	Contact with a person represented by an attorney, outside the presence of the attorney.
<i>ex parte</i> order	An Order made by the court upon the request of one party without prior notice to the other party.
excise tax stamps	Revenue stamps imposed by law on each deed or instrument where real property is conveyed.

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exclusionary rule	In criminal procedure, a rule under which any evidence that is obtained in violation of the accused's constitutional rights, as well as any evidence that is obtained illegally, will not be admissible in court.
exclusive jurisdiction	Jurisdiction that exists when a case can be heard only in a particular court, such as a federal court.
exculpatory clause	Absolution from liability; clear from a charge; clear from alleged guilt.
executive agency	A type of administrative agency that is either a cabinet department or a subagency within a cabinet department. Executive agencies fall under the authority of the president, who has the power to appoint and remove federal officers.
executor	A person appointed by a testator to serve as a personal representative on the testator's death.
exordium clause	A clause at the beginning of a will. The exordium clause identifies the testator (or person making the will), states his/her residence, and the fact that he/she is of sound mind. It also revokes all previous wills.
expense slip	A slip of paper on which any expense or cost incurred on behalf of a client (such as the payment of court fees or long-distance telephone charges) is recorded.
expert witness	A witness with professional training or substantial experience qualifying him or her to testify as to an opinion on a particular subject.
eyewitness	A witness who testifies about an event personally observed or experienced firsthand.
family law	Law relating to family matters, such as marriage, divorce, child support, and child custody.
federal question	A question that pertains to the U.S. Constitution, acts of Congress, or treaties. A federal question provides a basis for jurisdiction by the federal courts. This jurisdiction is authorized by Article III, Section 2, of the Constitution.

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federal register	A daily publication that makes available to the public the rules, regulations, and other legal notices issued by federal administrative agencies.
Federal Rules of Civil Procedure (FRCP)	The rules controlling all procedural matters in civil trials brought before the federal district courts.
fee agreement	A contract that states the type of fee (hourly, contingency, or flat fee) and the relevant amount of that fee.
fee simple	Ownership rights entitling the holder to use, possess, or dispose of the property however the holder chooses during the time the property is owned by the holder.
felony	A crime - such as arson, murder, rape, or robbery - that carries the most severe sanctions. Sanctions range from one year in a state or federal prison to life imprisonment or (in some states) the death penalty.
fiduciary relationship	A relationship involving a high degree of trust and confidence.
file transfer protocol (ftp)	An interface program that connects one computer to another used to copy files over the Internet.
fixed fee	A fee paid to the attorney by a client for having rendered a specified legal service, such as the creation of a simple will.
fixture	An item of movable property so incorporated into real property that it may be regarded as legally a part of it.
forgery	The fraudulent making of any writing in a way that changes the legal rights and liabilities of another.
forms file	A reference file containing copies of the firm's commonly used legal documents and informational forms. The documents in the forms file serve as a model for drafting new documents.
foster care	A temporary arrangement in which a family is paid by the state to care for a child for a limited period of time, often pending adoption.

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fraudulent misrepresentation	Any misrepresentation, either by misstatement or by omission of a material fact, knowingly made with the intention of deceiving another and on which a reasonable person would and does rely to that person's detriment.
freelance paralegal	A paralegal who operates his or her own business and provides services to attorneys on a contractual basis. A freelance paralegal works under the supervision of an attorney, who assumes responsibility for the paralegal's work product.
friendly witness	A witness who is biased against your client's adversary or sympathetic toward your client in a lawsuit or other legal proceeding.
garnishment	A proceeding in which a creditor legally seizes a portion of a debtor's property (such as wages) that is in the possession of a third party (such as an employer).
general legacy	A monetary gift, payable out of the collective assets of the estate of a testator — one who makes a will — and not from a designated source.
general licensing	A type of licensing in which all individuals within a specific profession or group (such as accountants) must meet licensing requirements imposed by the state before they may legally practice their profession.
general partner	A partner who participates in managing the business of a partnership and has all the rights and liabilities that arise under traditional partnership law.
general warranty deed	An instrument that transfers real property from one person to another and in which the grantor promises that title is good and clear of any claims.
genuineness of assent	Knowing and voluntary assent to the contract terms. If a contract is formed as a result of mistake, misrepresentation, undue influence, or duress, genuineness of assent is lacking and the contract will be avoidable.

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Good Samaritan statute	A state statute stipulating that persons who provide emergency services to, or rescue, others in peril - unless they do so recklessly, thus causing further harm - cannot be sued for negligence.
grand jury	The group of citizens called to decide whether probable cause exists to believe that a suspect committed the crime with which he or she has been charged and should stand trial.
grantee	One to whom a grant is made.
granting clause	The portion of an instrument of conveyance, such as a deed, containing the words that transfer a present interest from the grantor to the grantee.
grantor	One who gives possession or title of property by a deed.
guardian	One who has the care of the person or property of another.
guardian <i>ad litem</i>	A person appointed by the court to represent the interests of a child or a mentally incompetent person before the court.
<i>habeas corpus</i>	Latin for "you have the body." A writ (court order) that commands an individual or a government official who has restrained another to produce the prisoner at a designated time and place so that the court can determine the legality of custody and decide whether to order the prisoner's release.
hacker	A person who uses one computer to break into another.
headnote	A note near the beginning of a reported case summarizing the court's ruling on an issue.
health care power of attorney	A document that lets a patient appoint someone to make medical decisions should the patient become unable to do so.
hearsay	Testimony that is given in court by a witness who relates not what he or she knows personally but what another person said. Hearsay is generally not admissible as evidence.

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historical school	A school of legal thought that emphasizes the evolutionary development of law and that looks to the past to discover what the principles of contemporary law should be.
holding	The binding legal principle, or precedent, that is drawn from the court's decision in a case.
home page	The main page of a Web site. Often, the home page serves as a table of contents to other pages at the site.
hornbook	A single-volume scholarly discussion, or treatise, on a particular legal subject (such as property law).
hostile witness	A witness who is biased against your client or friendly toward your client's adversary in a lawsuit or other legal proceeding; an adverse witness.
hung jury	A jury whose members are so irreconcilably divided in their opinions that they cannot reach a verdict. The judge in this situation may order a new trial.
hypertext transfer protocol (http)	An interface program that enable computers to communicate. Hypertext is a database system by which distinct objects, such as text and graphics, can be linked. A protocol is a system of formats and rules.
hypothetical question	A question based on hypothesis, conjecture, or fiction.
identity theft	The theft of a form of identification, such as a name, date of birth, or Social Security number, which is then used to access the victim's financial resources.
immigration law	All laws that set forth the requirements that persons must meet if they wish to visit or immigrate to the United States.
impeach	To call into question the credibility of a witness by challenging the truth or accuracy of his or her trial statement.
incompetent	Not legally qualified.

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independent adoption	A privately arranged adoption, as when a doctor, lawyer, or other individual puts a couple seeking to adopt a child in contact with a pregnant woman who has decided to give up her child for adoption.
independent contractor	A person who is hired to perform a specific undertaking but who is free to choose how and when to perform the work. An independent contractor may or may not be an agent.
independent regulatory agency	A type of administrative agency that is more independent of presidential control than an executive agency. Officials of independent regulatory agencies cannot be removed without cause.
indictment	A charge or written accusation, issued by a grand jury, that probable cause exists to believe that a named person has committed a crime for which that person should stand trial.
information	A formal criminal charge made by a prosecutor with a grand jury indictment.
informative letter	A letter that conveys certain information to a client, a witness, an adversary's counsel, or other person regarding some legal matter (such as the date, time, place, and purpose of a meeting) or a cover letter that accompanies other documents being sent to a person or court.
injunction	A court decree ordering a person to do or refrain from doing a certain act or activity.
insanity	Such unsoundness of mind or lack of understanding as prevents one from having the mental capacity required by law to enter into a particular relationship, status, or transaction or as removes one from criminal or civil responsibility.
insider trading	Trading in the stock of a publicly listed corporation based on inside information about the corporation that is not available to the public. One who possesses inside information and has a duty not to disclose it to outsiders may not profit from the purchase or sale of securities based on that information until that information is available to the public.

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insolvent	Insufficient to pay all debts.
intellectual property	Property that results from intellectual, creative processes. Copyrights, patents, and trademarks are examples of intellectual property.
intentional tort	A wrongful act knowingly committed.
inter vivos trust	A trust created by the grantor (settlor) and effective during the grantor's lifetime - i.e., a trust not established by a will.
internal memorandum of law	Document that summarizes the law found on a client's issue; will include strengths and weaknesses of case. Work product that should stay within the office.
international law	The law that governs relations among nations. International customs and treaties are generally considered to be two of the most important sources of international law.
Internet Service Provider (ISP)	A company that provides dedicated access to the Internet, generally through a local phone number, cable, or satellite.
interrogatories	A series of written questions for which written answers are prepared and then signed under oath by a party to a lawsuit (the plaintiff or the defendant).
interviewee	The person who is being interviewed.
intestacy laws	State statutes that specify how property will be distributed when a person dies intestate (without a valid will).
intestate	The state of having died without a valid will.
investigation plan	A plan that lists each step involved in obtaining and verifying the facts and information that are relevant to the legal problem being investigated.
joint and several liability	Shared and individual liability. In partnership law, joint and several liability means that a third party may sue one or more of the partners separately or all of them together. This is true even if one of the partners sued did not participate in or know about whatever gave rise to the cause of action.

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joint custody	Custody of a child that is shared by the parents following the termination of a marriage.
joint liability	Shared liability. In partnership law, partners incur joint liability for partnership obligations and debts.
joint tenancy	The joint ownership of property by two or more co-owners in which each co-owner owns an undivided portion of the property. On the death of one of the joint tenants, his or her interest automatically passes to the surviving joint tenant(s).
judge	A public official authorized to decide questions brought before a court.
judgment	The court's final decision regarding the rights and claims of the parties to a lawsuit.
judgment creditor	A creditor who is legally entitled, by a court's judgment, to collect the amount of the judgment from a debtor.
jurisdiction	The authority of a court to hear and decide a specific action.
jurisprudence	The science or philosophy of law.
justiciable controversy	A controversy that is real and substantial, as opposed to hypothetical or academic.
key number	A number (accompanied by the symbol of a key) corresponding to a specific topic within West's key number system to facilitate legal research of case law.
KeyCite	An aid to legal research developed by the editors of Westlaw®. On Westlaw®, KeyCite can trace case history, retrieve secondary sources, categorize legal citations by legal issue, and perform other functions.
laches	The equitable doctrine that bars a party's right to legal action if the party has neglected for an unreasonable length of time to act on the party's rights.

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larceny	The wrongful or fraudulent taking and carrying away of another person's personal property with the intent to deprive the person permanently of the property.
law	A body of rules of conduct established and enforced by the controlling authority (the government) of a society.
law clerk	A law student working as an apprentice with a law firm, during the summer or part-time during the school year, to gain practical experience. Some law firms refer to law clerks as <i>summer associates</i> .
law journal	A magazine or newspaper that contains articles, news items, comments on new laws and case decisions, court calendars, and suggestions for practicing law, for use by attorneys.
law review	A law school publication containing both case summaries written by student members and scholarly articles written by law professors, judges, and attorneys. These articles focus on current developments in the law, case decisions, and legislation. Law reviews are edited by students, who contribute notes to featured articles.
lay witness	A witness who can truthfully and accurately testify on a fact in question without having specialized training or knowledge; an ordinary witness.
leading question	A question that suggests, or "leads to," a desired answer. Interviewers may use leading questions to elicit responses from witnesses who otherwise would not be forthcoming. Generally, in court leading questions may be asked only of hostile witnesses.
lease	In real property law, a contract by which the owner of real property (the landlord) grants to a person (the tenant) an exclusive right to use and possess the property, usually for a specified period of time, in return for rent or some other form of payment.
legal administrator	An administrative employee of a law firm who manages the day-to-day operations of the firm. In smaller law firms, legal administrators are usually called office managers.

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legal advice	The giving of a formal opinion regarding the substance or procedure of the law by an officer of the court, ordinarily in exchange for financial or other tangible compensation.
legal assistant (or paralegal)	A person qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity who performs specifically delegated substantive legal work, for which a lawyer is responsible.
legal custody	Custody of a child that confers on the parent the right to make major decisions about the child's life without consulting the other parent.
Legal Nurse Consultant (LNC)	A nurse who consults with legal professionals and others about medical aspects of legal claims or issues. Legal nurse consultants normally must have at least a bachelor's degree in nursing and a significant amount of nursing experience.
legal technician (or independent paralegal)	A paralegal who offers services directly to the public, normally for a fee, without attorney supervision. Independent paralegals assist customers by supplying them with forms and procedural knowledge relating to simple or routine legal procedures. North Carolina does not allow paralegals to offer services directly to the public.
legal-assistant manager	An employee in a law firm who is responsible for overseeing the paralegal staff and paralegal professional development.
legislative rule	A rule created by an administrative agency that is as legally binding as a law enacted by a legislature.
letter of engagement	A document that defines the legal relationship between a professional firm and its client(s). This letter states the terms and conditions of the engagement, principally addressing the scope of the engagement and the terms of compensation for the firm.
letter of intent	A written statement expressing the intention of the undersigned to enter into a formal agreement, especially a business arrangement or transaction.

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letters of administration	A formal document nominating a specified person to take over, administer, and dispose of an estate when there is no executor to carry out the testator's will.
letters testamentary	The formal instrument of authority and appointment granted by the proper court to an executor (one designated in a will to manage the estate of the deceased) empowering that person to execute the functions of the office.
levy	The imposition or collection of an assessment.
libel	Defamation in writing or some other form (such as videotape) having the quality of permanence.
licensing	A government's official act of granting permission to an individual, such as an attorney, to do something that would be illegal in the absence of such permission.
limited jurisdiction	Courts' authority over certain types of cases such as bankruptcy, claims against the government, probate, family matters, immigration and customs, or limitations on courts' authority to try cases involving maximum amounts of money or value.
limited liability company (LLC)	A hybrid form of business organization authorized by a state in which the owners of the business have limited liability and taxes on profits are passed through the business entity to the owners.
limited liability partnership (LLP)	A business organizational form designed for professionals who normally do business as partners in a partnership. The LLP is a pass-through entity for tax purposes, like the general partnership, but limits the personal liability of partners.
limited licensing	A type of licensing in which a limited number of individuals within a specific profession or group (such as legal technicians within the paralegal profession) must meet licensing requirements imposed by the state before those individuals may legally practice their profession.

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limited partner	One who invests in a limited partnership but does not play an active role in managing the operation of the business. Unlike general partners, limited partners are only liable for partnership debts up to the amount that they have invested.
limited partnership	A partnership consisting of one or more general partners and of one or more limited partners.
lineal ascendant	An heir or relative related in a direct line upward (parent, grandparent).
lineal descendant	An heir or relative related in a direct line downward (child, grandchild).
liquidation	In regard to corporations, the process by which corporate assets are converted into cash and distributed among creditors and shareholders according to specific rules of preference.
listserv list	A list of e-mail addresses of persons who have agreed to receive e-mail about a particular topic.
litigation	The process of a lawsuit going through the court system.
litigation paralegal	A paralegal who specializes in assisting attorneys in the litigation process.
long arm statute	A state statute that permits a state to obtain jurisdiction over nonresident individuals and corporations. Individuals or corporations, however, must have certain “minimum contacts” with that state for the statute to apply.
magistrate	A public civil officer or official with limited judicial authority, such as the authority to issue an arrest warrant.
mailbox rule	A rule providing that an acceptance of an offer takes effect at the time it is communicated via the mode expressly or impliedly authorized by the offeror, rather than at the time it is actually received by the offeror. If acceptance is to be by mail, for example, it becomes effective the moment it is placed in the mailbox.

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malpractice	Professional misconduct or negligence - the failure to exercise due care - on the part of a professional, such as an attorney or a physician.
managing partner	The partner in a law firm who makes decisions relating to the firm's policies and procedures and who generally oversees the business operations of the firm.
mandatory authority	Any source of law that a court must follow when deciding a case. Mandatory authorities include constitutions, statutes, and regulations that govern the issue before the court, and court decisions made by a superior court in the jurisdiction.
marital property	All property acquired during the course of a marriage, apart from inheritances and gifts made to one or the other of the spouses.
material fact	A fact that is important to the subject matter of the contract.
mediation	A method of settling disputes outside of court by using the services of a neutral third party, who acts as a communicating agent between the parties; a method of dispute settlement that is less formal than arbitration.
mediation arbitration (Med-Arb)	A form of ADR in which an arbitrator first attempts to help the parties reach an agreement, just as a mediator would. If no agreement is reached, then formal arbitration is undertaken and the arbitrator issues a legally binding decision.
memorandum of law	A document (known as a brief in some states) that delineates the legal theories, statutes, and cases on which a motion is based.
<i>mens rea</i>	A wrongful mental state or intent. A wrongful mental state is a requirement for criminal liability. What constitutes a wrongful mental state varies according to the nature of the crime.
merchant	A buyer and seller of commodities for profit.
merger	A process in which one corporation (the surviving corporation) acquires all of the assets and liabilities of another corporation (the merged corporation).

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metadata	Embedded electronic data recorded by a computer in association with a particular file, including the file's location, path, creator, date created, date last accessed, hidden notes, earlier versions, passwords, and formatting. Metadata reveals information about how, when, and by whom a document was created, accessed, modified, and transmitted.
metes and bounds	The boundary lines of land, with their terminal points and angles. A way of describing land by listing the compass directions and distances of the boundaries.
mini-trial	A private proceeding that assists disputing parties in determining whether to take their case to court. During the proceeding, each party's attorney briefly argues the party's case before the other party and (usually) a neutral third party, who acts as an adviser. If the parties fail to reach an agreement, the adviser renders an opinion as to how a court would likely decide the issue.
<i>Miranda</i> rights	Certain constitutional rights of accused persons taken into custody by law enforcement officials, such as the right to remain silent and the right to counsel, as established by the United States Supreme Court's decision in <i>Miranda v. Arizona</i> .
mirror image rule	A common law rule that requires that the terms of the offeree's acceptance adhere exactly to the terms of the offeror's offer for a valid contract to be formed.
mirror site	A Web site that duplicates another site. A mirror site is used to improve the availability of access to the original site.
misdemeanor	A less serious crime than a felony, punishable by a fine or incarceration for up to one year in jail (not a state or federal penitentiary).
mistrial	A trial that has no legal effect by reason of some error or serious prejudicial misconduct in the proceedings.

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M’Naghten Test	The most popular test for defining a person as insane under the law, which will find a defendant insane if the defendant had a diseased mind that caused a defect of reason, such that when the defendant acted, the defendant either didn’t know the act was wrong or didn’t understand the nature and quality of the actions.
money laundering	Falsely reporting income that has been obtained through criminal activity, such as illegal drug transactions, as income obtained through a legitimate business enterprise to make the “dirty” money “clean.”
mortgage	A written instrument giving a creditor an interest in the debtor’s property as security for a debt.
motion	A procedural request or application presented by an attorney to the court on behalf of a client.
motion for a change of venue	A motion requesting that a trial be moved to a different location to ensure a fair and impartial proceeding, for the convenience of the parties, or for some other acceptable reason.
motion for a directed verdict (motion for judgment as a matter of law)	A motion requesting that the court grant a judgment in favor of the party making the motion on the ground that the other party has not produced sufficient evidence to support the other party’s claim.
motion for a new trial	A motion asserting that the trial was so fundamentally flawed (because of error, newly discovered evidence, prejudice, or other reason) that a new trial is needed to prevent a miscarriage of justice.
motion for judgment notwithstanding the verdict	A motion (in federal courts also referred to as a motion for judgment as a matter of law) requesting that the court grant judgment in favor of the party making the motion on the ground that the jury verdict against the moving party was unreasonable or erroneous.

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motion for judgment on the pleadings	A motion that may be filed by either party in which the party asks the court to enter a judgment in that party's favor based on information contained in the pleadings. A judgment on the pleadings will only be made if there are no facts in dispute and the only question is how the law applies to a set of undisputed facts.
motion for summary judgment	A motion that may be filed by either party in which the party asks the court to enter a judgment in that party's favor without a trial. Unlike a motion for judgment on the pleadings, a motion for summary judgment can be supported by evidence outside the pleadings, such as witnesses' affidavits, answers to interrogatories, and other evidence obtained prior to or during discovery.
motion <i>in limine</i>	A motion requesting that certain evidence not be brought out at the trial, such as prejudicial, irrelevant, or legally inadmissible evidence.
motion to dismiss	A motion filed by the defendant in which the defendant asks the court to dismiss the case for a specified reason, such as improper service, lack of personal jurisdiction, or the plaintiff's failure to state a claim for which relief can be granted.
motion to recuse	A motion to remove a particular judge from a case.
motion to sever	A motion to try multiple defendants separately.
motion to suppress evidence	A motion requesting that certain evidence be excluded from consideration during the trial.
mutual mistake	Mistake as to the same material fact on the part of both parties to a contract. In this situation, either party can cancel the contract.
National Association of Legal Assistants (NALA)	One of the two largest national paralegal associations in the United States; formed in 1975. NALA is actively involved in paralegal professional development.
National Federation of Paralegal Associations (NFPA)	One of the two largest national paralegal associations in the United States; formed in 1974. NFPA is actively involved in paralegal professional development.

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national law	Law that pertains to a particular nation (as opposed to international law).
natural law school	A school of legal thought that holds that government and the legal system should reflect the universal moral and ethical principles that are inherent in human nature. The natural law school is the oldest and one of the most significant schools of legal thought.
negligence	The failure to exercise the standard of care that a reasonable person would exercise in similar circumstances.
negligence <i>per se</i>	An action of failure to act in violation of a statutory requirement.
negotiation	A process in which parties attempt to settle their dispute informally, with or without attorneys to represent them.
networking	Making personal connections and cultivating relationships with people in a certain field, profession, or area of interest.
newsgroup (Usenet group)	An online bulletin board service. A newsgroup is a forum, or discussion group, that usually focuses on a particular topic.
no-fault divorce	A divorce in which neither party is deemed to be at fault for the breakdown of the marriage.
<i>nolo contendere</i>	Latin for “I will not contest it.” A criminal defendant’s plea in which the defendant chooses not to challenge, or contest, the charges brought by the government. Although the defendant will still be convicted and sentenced, the plea neither admits nor denies guilt.
Notary Public	A public officer who attests or certifies writings (as a deed) to make them authentic and takes affidavits, depositions, and protests of negotiable paper — also called a Notary.
nuncupative will	The oral expression of a person’s wishes as to the disposition of that person’s property to be performed or to take effect after the person’s death, dictated by the person during a final illness before a sufficient number of witnesses and afterward reduced to writing.

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of counsel	An attorney who has been employed to aid in the preparation and management of a particular case but who is not the principal attorney in the action.
offer	A promise or commitment to do or refrain from doing some specified thing in the future.
offeree	The party to whom the offer is made.
offeror	The party making the offer.
office manager	An administrative employee who manages the day-to-day operations of a business firm. In larger law firms, office managers are usually called legal administrators.
officer	A person hired by corporate directors to assist in the management of the day-to-day operations of the corporation. Corporate officers include the corporate president, vice president, secretary, treasurer, and possibly others, such as a chief financial officer and chief executive officer. Corporate officers are employees of the corporation and subject to employment contracts.
online dispute resolution (ODR)	The resolution of disputes with the assistance of an organization that offers dispute-resolution services via the Internet.
open-ended question	A question phrased in such a way that it elicits a relatively unguided and lengthy narrative response.
opening statement	An attorney's statement to the jury at the beginning of the trial. The attorney briefly outlines the evidence that will be offered during the trial and the legal theory that will be pursued.
opinion	A statement by the court setting forth the applicable law and the reasons for its decision in a case.
opinion (advisory) letter	A letter from an attorney to a client containing a legal opinion on an issue raised by the client's question or legal claim. The opinion is based on a detailed analysis of the law.

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order of attachment	Court document which orders property seizure to satisfy a judgment.
ordinance	An order, rule, or law enacted by a municipal or county government to govern a local matter unaddressed by state or federal legislation.
original jurisdiction	The power of a court to take a case, try it, and decide it.
overtime wages	Wages paid to workers who are paid an hourly wage rate to compensate them for overtime work (hours worked beyond forty hours per week). Under federal law, overtime wages are at least one and a half times the regular hourly wage rate.
paralegal (or legal assistant)	A person qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity who performs specifically delegated substantive legal work, for which a lawyer is responsible.
parallel citation	A second (or third) citation for a given case. When a case is published in more than one reporter, each citation is a parallel citation to the other(s).
parole evidence rule	Agreement between two parties, creating an enforceable obligation to do, or to refrain from doing, a particular thing.
partner	A person who has undertaken to operate a business jointly with one or more other persons. Each partner is a co-owner of the business firm.
partnership	An association of two or more persons to carry on as co-owners a business for profit.
party	With respect to lawsuits, the plaintiff or the defendant. Some cases involve multiple parties (more than one plaintiff or defendant).
passive listening	The act of listening attentively to the speaker's message and responding to the speaker by providing verbal or nonverbal cues that encourage the speaker to continue; in effect, saying, "I'm listening, please go on."

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patent	A government grant that gives an inventor the exclusive right or privilege to make, use, or sell that invention for a limited time period.
paternity suit	A lawsuit brought by an unmarried mother to establish that a certain male is the biological father of her child. DNA testing or a comparable procedure is often used to determine paternity.
peremptory challenge	A <i>voir dire</i> challenge to exclude a potential juror from serving on the jury without any supporting reason or cause. Peremptory challenges based on racial or gender criteria are illegal.
performance	In contract law, the fulfillment of one's duties arising under a contract with another; the normal way of discharging one's contractual obligations.
personal liability	An individual's personal responsibility for debts or obligations. The owners of sole proprietorships and partnerships are personally liable for the debts and obligations incurred by their business firms. If their firms go bankrupt or cannot meet debts as they become due, the owners will be personally responsible for paying the debts.
personal property	Any property that is not real property. Generally any property that is movable or intangible is classified as personal property.
personal representative	A person who manages the financial affairs of another person who is unable to do so.
persuasive authority	Any legal authority, or source of law, that a court may look to for guidance but on which it need not rely in making its decision. Persuasive authorities include cases from other jurisdictions or secondary sources of law, such as scholarly treatises.
petition for divorce	The document filed with the court to initiate divorce proceedings. The requirements governing the form and content of a divorce petition vary from state to state.
petty offense	In criminal law, the least serious kind of wrong, such as a traffic or building-code violation.

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plain-meaning rule	A rule of statutory interpretation. If the meaning of a statute is clear on its face, then that is the interpretation the court will give to it; inquiry into the legislative history of the statute will not be undertaken.
plaintiff	A party who initiates a lawsuit.
plea bargaining	The process by which the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case, subject to court approval. Usually, plea bargaining involves the defendant's pleading guilty to a lesser offense in return for a lighter sentence.
pleadings	Statements by the plaintiff and the defendant that detail the facts, charges, and defenses involved in the litigation.
pocket part	A separate pamphlet containing recent cases or changes in the law that is used to update hornbooks, legal encyclopedias, and other legal authorities. It is called a "pocket part" because it slips into a sleeve, or pocket, in the front or back binder of the volume.
point heading	A brief recapitulation of the point being made in a section of an appellate brief. Point headings separate the text into logical sections and make the argument easier to follow.
positivist school	A school of legal thought centered on the assumption that there is no law higher than the laws created by the government. Laws must be obeyed, even if they are unjust, to prevent anarchy.
potentially responsible party (PRP)	A party who may be liable under the Comprehensive Environmental Response, Compensation, and Liability Act, or Superfund. Any person who generated hazardous waste, transported hazardous waste, owned or operated a waste site at the time of disposal, or currently owns or operates a site may be responsible for some or all of the clean-up costs involved in removing the hazardous chemicals.
power of attorney	The authority to act for another person in legal or financial matters or a legal document giving such authority to someone.

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prayer for judgment	A plea that can be entered in a courtroom and is neither an admission of guilt nor a plea of innocence.
prayer for relief	A statement at the end of the complaint requesting that the court grant relief to the plaintiff.
precedent	A court decision that furnishes an example or authority for deciding subsequent cases in which identical or similar facts are presented.
predatory behavior	Business behavior that is undertaken with the intention of unlawfully driving competitors out of the market.
preliminary hearing	An initial hearing in which a magistrate decides if there is probable cause to believe that the defendant committed the crime for which the defendant is charged.
prenuptial agreement	A contract formed between two persons who are contemplating marriage to provide for the disposition of property in the event of a divorce or the death of one of the spouses after they have married.
pretrial conference	A conference prior to trial in which the judge and the attorneys litigating the suit discuss settlement possibilities, clarify the issues in dispute, and schedule forthcoming trial-related events.
primary source	In legal research, a document that establishes the law on a particular issue, such as a case decision, legislative act, administrative rule, or presidential order.
principal	In agency law, a person who, by agreement or otherwise, authorizes another person (the agent) to act on the principal's behalf in such a way that the acts of the agent become binding on the principal.
privilege	In tort law, the ability to act contrary to another person's right without that person's having legal redress for such acts. Privilege may be raised as a defense to defamation.

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privileged information	Confidential communications between certain individuals, such as an attorney and a client, that are protected from disclosure except under court order.
privity exam	At common law, a separate exam given to a married woman to ensure she freely consented to selling property and was not forced.
probable cause	Reasonable grounds to believe the existence of facts warranting certain actions, such as the search or arrest of a person.
probate	The process of “proving” the validity of a will and ensuring that the instructions in a valid will are carried out, including settling matters pertaining to the administration of a decedent’s estate and guardianship of a decedent’s minor children.
probate court	A court that handles proceedings relating to wills and the settlement of deceased persons’ estates; usually a county court.
procedural law	Rules that define the manner in which the rights and duties of individuals may be enforced.
product liability	The legal liability of manufacturers, sellers, and lessors of goods to consumers, users, and bystanders for injuries or damages that are caused by the goods.
professional corporation (P.C.)	A corporation which is engaged in rendering professional services pursuant to a certificate of registration issued by the Licensing Board regulating the profession or practice, and which has as its shareholders only those licensees of that profession or practice.
professional portfolio	A job applicant’s collection of selected personal documents (such as school transcripts, writing samples, and certificates) for presentation to a potential employer.
promise	An assurance that one will or will not do something in the future.

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promissory estoppel	A doctrine under which a promise is binding if the promise is clear and definite, the promisee justifiably relies on the promise, the reliance is reasonable and substantial, and justice will be better served by enforcement of the promise.
property settlement	The division of property between spouses on the termination of a marriage.
prospectus	A document that discloses relevant facts about a company and its operations so that those who wish to purchase stock (invest) in the corporation have the basis for making an informed decision.
proximate cause	Legal cause; exists when the connection between an act and an injury is strong enough to justify imposing liability.
public defender	A court-appointed attorney who is paid by the state to represent a criminal defendant who is financially unable to hire private counsel.
public law number	An identification number that has been assigned to a specific statute, or public law, following the legislative process.
public policy	A governmental policy based on widely held societal values.
public prosecutor	An individual, acting as a trial lawyer, who initiates and conducts criminal cases in the government's name and on behalf of the people.
publicly held corporation	A corporation whose shares are publicly traded in securities markets, such as the New York Stock Exchange.
punitive damages	Money damages that may be awarded to a plaintiff to punish the defendant and deter future similar conduct.
real estate	Land and things permanently attached to the land, such as houses, buildings, and trees and foliage; also known as "real property".
real property	Immovable property consisting of land and the buildings and plant life thereon.

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reasonable person standard	The standard of behavior expected of a hypothetical “reasonable person”; the standard against which negligence is measured and that must be observed to avoid liability for negligence.
record on appeal	The items submitted during the trial (pleadings, motions, briefs, and exhibits) and the transcript of the trial proceedings that are forwarded to the appellate court for review when a case is appealed.
recross-examination	The questioning of an opposing witness following the adverse party’s redirect examination.
redirect examination	The questioning of a witness following the adverse party’s cross-examination.
reference line	The portion of the letter that indicates the matter to be discussed in the letter, such as “RE: Summary of Cases Applying the Family and Medical Leave Act of 1993.” The reference line is placed just below the address block and above the salutation.
reformation	An equitable remedy granted by a court to correct, or “reform,” a written contract so that it reflects the true intentions of the parties.
Register of Deeds	Custodian and manager of large volumes of public records related to real property.
registered agent	A business or individual designated to receive service of process (SOP) such as a lawsuit or summons when a business entity is a party in a legal action.
relevant evidence	Evidence tending to prove or disprove the fact in question. Only relevant evidence is admissible in court.
remand	To send a case back to a lower court for further proceedings.
remedy	The means by which a right is enforced or the violation of a right is prevented or compensated for.

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remedy at law	A remedy available in a court of law. Money damages are awarded as a remedy at law.
remedy in equity	A remedy allowed by courts in situations where remedies at law are not appropriate. Remedies in equity are based on settled rules of fairness, justice, and honesty.
reply brief	An appellate brief filed by the appellant to rebut (counter) arguments made by the appellee in the appellee's brief.
reporter	A book in which court cases are published or reported.
reprimand	A disciplinary sanction in which an attorney is rebuked for the attorney's misbehavior. Although a reprimand is the mildest sanction for attorney misconduct, it is nonetheless a serious one and may significantly damage the attorney's reputation in the legal community.
rescission	A remedy whereby a contract is terminated and the parties are returned to the positions they occupied before the contract was made.
residuary clause	Any portion of the testator's estate that is not specifically devised to someone in the will or any property that is part of a specific devise that fails.
<i>respondeat superior</i>	A doctrine in agency law under which a principal-employer may be held liable for the wrongful acts committed by agents or employees while acting within the scope of their agency or employment.
responsible corporate officer doctrine	A common law doctrine under which the court may impose criminal liability on a corporate officer for actions of employees under the officer's supervision regardless of whether the officer participated in, directed, or even knew about those actions.
restitution	An equitable remedy under which a person is restored to that person's original position prior to loss or injury, or placed in the position that person would have been in had the breach not occurred.

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restraining order	A court order that requires one person (such as an abusing spouse) to stay away from another (such as an abused spouse).
retainer	An advance payment made by a client to a law firm to cover part of the legal fees and/or costs that will need to be incurred on that client's behalf.
retainer agreement	A signed document stating that the attorney or the law firm has been hired by the client to provide certain legal services and that the client agrees to pay for those services in accordance with the terms set forth in the retainer agreement.
return-of-service form	A document signed by a process server and submitted to the court to prove that a defendant received a summons.
reverse	To overturn the judgment of a lower court.
right of survivorship	The right of the other owner(s) to continue to own the property when one owner dies.
robbery	The taking of money, personal property, or any other article of value from a person by means of force or fear.
rule against perpetuities	The rule in common law that invalidates certain future interests.
rule of four	A rule of the United States Supreme Court under which the Court will not issue a writ of certiorari unless at least four justices approve of the decision to issue the writ.
rulemaking	The actions undertaken by administrative agencies when formally adopting new regulations or amending old ones.
rules of construction	The rules that control the judicial interpretation of statutes.
rules of evidence	Rules governing the admissibility of evidence in trial courts.
sales contract	A contract for the sale of goods, as opposed to a contract for the sale of services, real property, or intangible property. Sales contracts are governed by Article 2 of the Uniform Commercial Code.

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salutation	The formal greeting to the addressee of the letter. The salutation is placed just below the reference line.
search warrant	A written order, based on probable cause and issued by a judge or public official (magistrate), commanding that police officers or criminal investigators search a specific person, place, or property to obtain evidence.
seasonable	Occurring or performed at the proper time; timely.
secondary source	In legal research, any publication that indexes, summarizes, or interprets the law, such as a legal encyclopedia, a treatise, or an article in a law review.
Secretary of State	An official with various duties, such as keeping records.
security interest	Any interest in a property that secures the payment of an obligation.
self-defense	The legally recognized privilege to protect oneself or one's property against injury by another. The privilege of self-defense only protects acts that are reasonably necessary to protect oneself or one's property.
self-incrimination	The act of giving testimony that implicates one's own guilt or participation in criminal wrong-doing. The Fifth Amendment to the Constitution states that no person "shall be compelled in any criminal case to be a witness against himself."
self-proving will	A will which has been properly witnessed (by either two or three witnesses depending on state laws) and the witnesses have signed an affidavit before a Notary Public stating that all of the proper formalities of the will's execution have been complied with.
self-regulation	The regulation of the conduct of a professional group by members of the group. Self-regulation usually involves the establishment of ethical or professional standards of behavior with which members of the group must comply.
sentence	The punishment, or penalty, ordered by the court to be inflicted on a person convicted of a crime.

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separate property	Property that a spouse owned before the marriage, plus inheritances and gifts acquired by the spouse during the marriage.
service by publication	The act of delivering a writ or summons by publishing a notice in a newspaper.
service of process	The delivery of the summons and the complaint to a defendant.
session law	Law as officially published in volumes in which statutes are organized chronologically by year or legislative session.
settlement agreement	An out-of-court resolution to a legal dispute, which is agreed to by the parties in writing. A settlement agreement may be reached at any time prior to or during a trial.
settlement brochure	An organized, persuasive presentation of facts, reports, and exhibits prepared and sent to the opposing side in litigation, forcing an evaluation of the plaintiff's claim.
sexual harassment	In the employment context, (1) hiring or granting of job promotions or other benefits in return for sexual favors (<i>quid pro quo</i> harassment) or (2) language or conduct that is so sexually offensive that it creates a hostile working environment (hostile-environment harassment).
share	A unit of stock; a measure of ownership interest in a corporation.
shareholder	One who purchases corporate stock, or shares, and who thus becomes an owner of the corporation.
shrink-wrap agreement	An agreement whose terms are expressed in a document located inside the box in which the goods (usually software) are packaged.
sibling	One of two or more individuals having one or both parents in common; a brother or sister.
slander	Defamation in oral form.

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slip law	The first official publication of a statute, which comes out shortly after the legislation is passed (presented as a single sheet or pamphlet).
slip opinion	A judicial opinion published shortly after the decision is made and not yet included in a case reporter or advance sheets.
sociological school	A school of legal thought that views the law as a tool for promoting justice in society.
sole proprietorship	The simplest form of business organization, in which the owner is the business. Anyone who does business without creating a formal business entity has a sole proprietorship.
specific performance	An equitable remedy requiring exactly the performance that was specified in a contract; usually granted only when money damages would be an inadequate remedy and the subject matter of the contract is unique (for example, real property).
staff attorney	An attorney hired by a law firm as an employee. A staff attorney has no ownership rights in the firm and will not be invited to become a partner in the firm.
stakeholder	One who has a share or an interest, as in an enterprise.
standing to sue	A sufficient stake in a controversy to justify bringing a lawsuit. To have standing to sue, the plaintiff must demonstrate that he or she has been either injured or threatened with injury.
star pagination	The use of asterisks by Westlaw and LexisNexis to indicate page numbers in multiple case reporters.
<i>stare decisis</i>	The doctrine of precedent, under which a court is obligated to follow the earlier decisions of that court or a higher court within the jurisdiction if the same points arise again in litigation. This is a defining characteristic of the common law system.
state bar association	An association of attorneys within a state. In most states, an attorney must be a member of the state bar association to practice law in the state.

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status letter	Correspondence sent to client which provides an update on case status.
statute	A written law enacted by a legislature under its constitutional lawmaking authority.
Statute of Frauds	A state statute that requires certain types of contracts to be in writing to be enforceable.
statute of limitations	A statute setting the maximum time period within which certain actions can be brought or rights enforced. After the period of time has run, no legal action can be brought.
statutory law	The body of written laws enacted by the legislature.
stockholder	One who owns a share or shares of stock in a company. Also called stockowner.
strict liability	Liability regardless of fault. In tort law, strict liability may be imposed on a merchant who introduces into commerce a good that is so defective as to be unreasonably dangerous.
structured sentencing	A set of guidelines for determining an offender's sentence.
submissive agreement	A written agreement to submit a legal dispute to an arbitrator or arbitrating panel for resolution.
subpoena	A document commanding a person to appear at a certain time and place to give testimony concerning a certain matter.
subpoena <i>duces tecum</i>	A writ issued by a court at the request of one of the parties to a suit; it requires a witness to bring to court or to a deposition any relevant documents under the witness's control.
substantive law	Law that defines the rights and duties of individuals with respect to each other, as opposed to procedural law, which defines the manner in which these rights and duties may be enforced.

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summary jury trial (SJT)	A method of settling disputes (used in some federal courts) in which a trial is held but the jury's verdict is not binding. The verdict only acts as a guide to both sides in reaching an agreement during the mandatory negotiations that immediately follow the trial. If a settlement is not reached, both sides have the right to a full trial later.
summons	A document served on a defendant in a lawsuit informing the defendant that a legal action has been commenced against the defendant and that the defendant must appear in court or respond to the plaintiff's complaint within a specified period of time.
support personnel	Employees who provide clerical, secretarial, or other support to the legal, paralegal, and administrative staff of a law firm.
supporting affidavit	An affidavit accompanying a motion that is filed by an attorney on behalf of a client. The sworn statements in the affidavit provide a factual basis for the motion.
supremacy clause	The provision in Article VI of the U.S. Constitution that declares the Constitution, laws, and treaties of the United States are "the supreme Law of the Land."
surname	A name shared in common to identify the members of a family, as distinguished from each member's given name. Also called family name or last name.
suspension	A serious disciplinary sanction in which an attorney who has violated an ethical rule or a law is prohibited from practicing law in the state for a specified or indefinite period of time.
syllabus	A brief summary of the holding and legal principles involved in a reported case, which is followed by the court's official opinion.
table of cases	An alphabetical list of the cases that have been cited or reproduced in a legal text, case digest, or other legal source.
tenancy by the entirety	A type of concurrent estate in real property held by a husband and wife whereby each owns the undivided whole of the property.

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tenancy in common	A form of co-ownership of property in which each party owns an undivided interest that passes to his or her heirs at death.
tenancy in severalty	Absolute and sole ownership of property
testamentary trust	A trust that is created by will and that does not take effect until the death of the testator.
testate	The condition of having died with a valid will.
testator	One who makes a valid will.
third party	A person or entity not directly involved in an agreement (such as a contract), legal proceeding (such as a lawsuit), or relationship (such as an attorney-client relationship).
tickler system	A reminder system that allows time-sensitive documents to be filed according to the future date on which each document needs action.
time slip	A record documenting, for billing purposes, the hours (or fractions of hours) that an attorney or a paralegal worked for each client, the date on which the work was done, and the type of work that was undertaken.
title abstracting	To give a summary of the ownership of land, showing the original grant, conveyances, and any encumbrances.
title search	The process of examining official county records to determine whether an owner's rights in real property are good.
topical summary	A condensed version of a deposition organized by topic/subject.
tort	A civil wrong not arising from a breach of contract; a breach of a legal duty that proximately causes harm or injury to another.
tortfeasor	One who commits a tort.

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toxic tort	A wrongful act (tort) that occurs when a person or business fails to properly use or clean up toxic chemicals that cause harm to a person or to society; also used to refer to an action brought against a toxic polluter.
trade journal	A newsletter, magazine, or other periodical that provides a certain trade or profession with information (products, trends, or developments) relating to that trade or profession.
trade name	A term that is used to indicate part or all of a business's name and that is directly related to the business's reputation and goodwill. Trade names are protected under the common law (and under trademark law, if the business's name is the same as its trademark).
trade secret	Information or processes that give a business an advantage over competitors who do not know the information or processes.
trademark	A distinctive mark, motto, device, or emblem that a manufacturer stamps, prints, or otherwise affixes to the goods it produces so that they may be identified on the market and their origins made known. Once a trademark is established (under the common law or through registration), the owner is entitled to its exclusive use.
treatise	In legal research, a work that provides a systematic, detailed, and scholarly review of a particular legal subject.
treaty	An agreement, or compact, formed between two independent nations.
trespass to land	The entry onto, above, or below the surface of land owned by another without the owner's permission or legal authorization.
trespass to personal property	The unlawful taking or harming of another's personal property; interference with another's right to the exclusive possession of the other's personal property.
trial court	A court in which cases begin and in which questions of fact are examined.

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trial notebook	A binder that contains copies of all of the documents and information that an attorney will need to have at hand during the trial.
trust	An arrangement in which title to property is held by one person (a trustee) for the benefit of another (a beneficiary).
trust account	A bank or escrow account in which one party (the trustee, such as an attorney) holds funds belonging to another person (such as a client); a bank account into which funds advanced to a law firm by a client are deposited.
unauthorized practice of law (UPL)	The act of engaging in actions defined by a legal authority, such as a state legislature, as constituting the “practice of law” without legal authorization to do so.
Uniform Commercial Code (UCC)	A uniform code of laws governing commercial transactions that has been adopted in part or in its entirety by all of the states. Article 9 of the UCC governs secured transactions.
unilateral mistake	Mistake as to a material fact on the part of only one party to a contract. In this situation, the contract is normally enforceable against the mistaken party, with some exceptions.
unreasonable search and seizure	Search of an individual or the individual’s premises (including an automobile) and/or seizure of evidence found in such a search by a law enforcement officer without a search warrant and without “probable cause” to believe evidence of a crime is present. Such a search and/or seizure is unconstitutional under the Fourth Amendment of the U.S. Constitution (applied to the states by the Fourteenth Amendment), and evidence obtained thereby may not be introduced in court.
unreasonably dangerous product	In product liability, a product that is defective to the point of threatening a consumer’s health and safety. A product will be considered unreasonably dangerous if it is dangerous beyond the expectation of the ordinary consumer or if a less dangerous alternative was economically feasible for the manufacturer, but the manufacturer failed to produce it.
venue	The geographical district in which an action is tried and from which the jury is selected.

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verdict	A formal decision made by a jury.
vicarious liability	Legal responsibility placed on one person for the acts of another.
visitation rights	The right of a noncustodial parent to have contact with his or her child. Grandparents and stepparents may also be given visitation rights.
<i>voir dire</i>	A proceeding in which attorneys for the plaintiff and the defendant ask prospective jurors questions to determine whether any potential juror is biased or has any connection with a party to the action or with a prospective witness.
warranty	An express or implied promise by a seller that specific goods to be sold meet certain criteria, or standards of performance, on which the buyer may rely.
white-collar crime	A crime that typically occurs only in a business context; popularly used to refer to an illegal act or series of acts committed by an individual or business entity using nonviolent means.
will	A document directing how and to whom the maker's property and obligations are to be transferred on his or her death.
will beneficiary	A person to whom the decedent's property is given.
winding up	The process of winding up all business affairs (collecting and distributing the firm's assets) after a partnership or corporation has been dissolved.
witness	A person who is asked to testify under oath at a trial.
witness statement	The written record of the statements made by a witness during an interview, signed by the witness.
work product	An attorney's mental impressions, conclusions, and legal theories regarding a case being prepared on behalf of a client. Work product normally is regarded as privileged information.

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workers' compensation laws	State laws establishing an administrative procedure for compensating workers for injuries that arise in the course of their employment, regardless of fault.
World Wide Web	A hypertext-based system through which specially formatted documents are accessible on the Internet.
writ of <i>certiorari</i>	A writ from a higher court asking the lower court to send the higher court the record of a case for review. The United States Supreme court uses certiorari to review most of the cases it decides to hear.
writ of execution	A writ that puts in force a court's decree or judgment.
wrongful discharge	An employer's termination of an employee's employment in violation of the law.

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