**Chapter 1: Introduction to a New Career in Law**

**Review Questions**

* 1. How many lawsuits are filed every year?

**1.2.** Name the five major players in the development of paralegalism.

**1.3.** What is CLE?

**1.4.** What do the following abbreviations mean?

(a) NFPA

(b) NALA

(c) SCOP

(d) NALS

(e) AAPI

(f) IPMA

(g) ALA

**1.5.** What is the World Wide Web address of:

(a) NFPA

(b) NALA

(c) IPMA

**1.6.** What is the name of the primary certification examinations of NFPA and NALA? Which exam is entry level and which is advanced?

(a) NFPA

(b) NALA

**1.7.** Name fourteen categories of paralegal associations.

**1.8.** Why is there no uniformity in the country on the use of titles for this career in law?

**1.9.** What are the two broad categories of paralegals?

**1.10.** What are the two main categories of independent contractors in the field? Of the two, which is the larger and more controversial category?

**1.11.** Are the titles *paralegal* and *legal assistant* synonymous?

**1.12.** Define:

(a) conflicts specialist

(b) depo summarizer

(c) transactional paralegal

(d) nurse paralegal

**1.13.** Under what two circumstances might you find an attorney working as a paralegal?

**1.14.** What are some of the titles used by independent contractors who sell their services to attorneys?

**1.15.** What are some of the titles used by independent contractors who sell their services to the public without attorney supervision?

**1.16.** Define independent paralegal.

**1.17.** Name three sources of controversy over independent contractors who sell their services to the public without attorney supervision.

**1.18.** Name six entities that have written definitions of a paralegal. Which are the most important?

**1.19.** Name three common characteristics of paralegal definitions in most states.

**1.20.**  What is substantive legal work?

**1.21.** What is a major requirement for using the titles *paralegal* and *legal assistant* in California?

**1.22.**  Distinguish between hourly fees and contingent fees.

**1.23.**  Distinguish between the American rule and the English rule on fees.

**1.24.**  What is a statutory-fee case?

**1.25.** The process of forcing one party to pay another’s attorney fees and costs in litigation is called fee \_\_\_\_\_\_\_\_\_\_.

**1.26.**  What is the method of calculating attorney fees to the winning party in a statutory-fee case?

**1.27.**  What are paralegal fees and who receives them?

**1.28.** Give examples of what a court might require an attorney to demonstrate in order to receive paralegal fees.

**1.29.** What are some of the reasons courts have reduced or disallowed fees in statutory-fee cases?

**1.30.**  *Missouri v. Jenkins* held that when paralegal fees must be paid by the losing side, they are calculated by the \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ rate for paralegals.

**1.31.**  In an important statement in *Missouri v. Jenkins,* the Court said: “Of course, purely \_\_\_\_\_\_\_\_\_\_ or \_\_\_\_\_\_\_\_\_\_ tasks should not be billed at a paralegal rate, regardless of who performs them.”

**1.32.**  After *Missouri v. Jenkins,* paralegal fees are to be calculated at the prevailing market rate in every case. True or False? Explain.

**1.33**. What 2008 U.S. Supreme Court case affirmed the *Jenkins* decision?

**1.34.**  Name the six categories of job titles proposed by IPLA for a large law office.

**1.35.**  What factors influence a paralegal’s salary in addition to his or her competence?

**1.36.**  Define leveraging.

**1.37.**  The requirement to bill a minimum number of hours is called a(n) \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_.

**1.38.** When a law firm bills for paralegal time, the paralegal becomes a(n) \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ in the firm, as opposed to simply being part of the firm’s overhead.

**1.39.**  Under the Rule of Three, how much does a firm have to charge clients for paralegal time if the firm wants $40,000 in profit from a paralegal who bills 1,200 hours a year?

**1.40.**  What are some of the factors that can affect the profitability of paralegals to a firm and offset the Rule of Three?

**1.41.**  Name some tasks performed by paralegals that are nonbillable.

**1.42.**  What is a realization rate?

**1.43.**  What kinds of bar association committees have extensively promoted paralegals?

**1.44.** In England: (a) \_\_\_\_\_\_\_\_\_\_ handle the bulk of litigation in the higher courts; (b) \_\_\_\_\_\_\_\_\_\_ handle the day-to-day problems of the public; and (c) \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ were once the equivalent of the American paralegal.

**1.45.**  What dangers does a paralegal student face when friends and relatives find out he or she is studying law?

**ANSWERS**

**Chapter 1: Introduction to a New Career in Law**

* 1. Eighty million lawsuits are filed every year.
  2. The five major players in the development of paralegalism are:
* National Federation of Paralegal Associations
* National Association of Legal Assistants
* American Bar Association
* Your state bar association
* Your local paralegal association
  1. CLE is continuing legal education or training in the law, usually short term, received

after one’s formal training.

* 1. Meaning of abbreviations:

1. NFPA—National Federation of Paralegal Associations
2. NALA—National Association of Legal Assistants
3. SCOP—American Bar Association Standing Committee on Paralegals
4. NALS—The Association for Legal Professionals (**Note**: NALS no longer says that its name stands for National Association of Legal Secretaries)
5. AAPI—American Alliance of Paralegals
6. IPMA—International Paralegal Management Association
7. ALA—Association of Legal Administrators
   1. Web Sites:
8. NFPA: [www.paralegals.org](http://www.paralegals.org)
9. NALA: [www.nala.org](http://www.nala.org)
10. IMPA: [www.paralegalmanagement.org](http://www.lamanet.org)

**1.6.**  Certification examinations:

1. NFPA—The PACE exam. It is an advanced exam; paralegal experience is required to take it.
2. NALA—The CLA exam. It is an entry-level exam. No paralegal experience is required to take it. (**Note**: NALA also has an advanced examination that *does* require paralegal experience to take it.)

**1.7.** Fourteen categories of paralegal associations:

1. nationwide (e.g., NFPA and NALA)
2. statewide (e.g., Illinois Paralegal Association)
3. regionwide encompassing more than one state (e.g., Rocky Mountain Paralegal Association)
4. regionwide within a state (e.g., South Florida Paralegal Association)
5. countywide (e.g., Santa Clara County Paralegal Association)
6. citywide (e.g., San Francisco Paralegal Association)
7. theme-specific (e.g., Houston Corporate Paralegal Association)
8. division of a bar association (e.g., Paralegal Division of the State Bar of Texas)
9. association of associations (e.g., Empire State Alliance of Paralegal Associations)
10. schoolwide (e.g., Fresno City College Paralegal Association)
11. association that is manager-focused (e.g., International Paralegal Management Association)
12. association whose membership is limited to paralegals (e.g., Orange County Paralegal Association)
13. association whose membership consists of paralegals, legal secretaries, and other nonattorneys (e.g., NALS, or the Association for Legal Professionals)
14. foreign (e.g., Canadian Paralegal Association)

**1.8.** There are no national standards regulating the paralegal field. Every state is free to regulate or to refuse to regulate a particular occupation. Most states have not imposed the kind of regulation on paralegals that would lead to greater consistency of titles within a particular state. For example, most states have not imposed minimum educational requirements or licensing. Hence (with the exception of states like California, Florida, and Maine) few restrictions exist on who can call themselves paralegals, legal assistants, or related titles.

**1.9.** The two main categories of paralegals are:

* traditional paralegals (employees of attorneys)
* independent contractors

**1.10.** The two main categories of independent contractors are:

* those who sell their services to attorneys
* those who sell their services to the public without attorney supervision.

(**Note:** The latter is the larger and more controversial group.)

**1.11.** The titles *paralegal* and *legal assistant* are synonymous. There is a trend, however, in favor of the paralegal title, particularly when legal secretaries use the legal assistant title.

**1.12.** Definitions:

(a) Conflicts specialist—A law firm employee, often a paralegal, who helps the firm determine whether a conflict of interest exists between prospective clients and current or former clients. Also called a conflicts analyst or a conflicts technician.

(b) Depo summarizer—An employee whose main job is digesting (summarizing) discovery documents, particularly depositions.

(c) Transactional paralegal—A paralegal who provides paralegal services for an attorney who represents clients in transactions such as entering contracts, incorporating a business, closing a real estate sale, or planning an estate.

(d) Nurse paralegal—A nurse who has become a paralegal, using his or her medical training to help personal injury attorneys locate and decipher medical records and perform other litigation tasks.

**1.13.** Under the following circumstances, you might find an attorney working as a paralegal:

* An unemployed attorney might apply for a paralegal job.
* A disbarred or suspended attorney might be allowed to work as a paralegal.

**1.14.** Titles used by independent contractors who sell their services to attorneys include:

* independent paralegal
* freelance paralegal
* freelance legal assistant
* contract paralegal
* legal technician

**1.15** Titles used by independent contractors who sell their services to the public without attorney supervision include:

* independent paralegal
* paralegal
* contract paralegal
* legal technician

**1.16.** An independent paralegal is an independent contractor who (a) sells his or her paralegal services to, and works under the supervision of, one or more attorneys or (b) sells his or her paralegal services directly to the public without attorney supervision. Independent paralegals are also called freelance paralegals or legal technicians. (**Note**: In some states, the paralegal and legal assistant titles are limited to those who work under attorney supervision.)

**1.17.** Three sources of controversy over independent contractors who sell their services to the public without attorney supervision:

* A few disgruntled clients of the independent contractors have filed complaints against them that have resulted in state prosecution for the unauthorized practice of law (UPL).
* The organized bar has instigated similar UPL charges on the ground that the public needs protection from this kind of independent contractor. The bar also complains that the public might be confused into thinking that anyone called a paralegal works for an attorney. An unstated reason for opposition from the bar is the unwelcome competition that independent paralegals give to some practicing attorneys.
* A significant number of traditional paralegals resent the use of the paralegal title by independent contractors who have not had training that is similar to their own.

**1.18.** Six entities that have written definitions of a paralegal:

1. state legislatures and state courts
2. state bar associations
3. local bar associations
4. American Bar Association
5. national paralegal associations
6. local paralegal associations

(**Note**: The most important are those written by state legislatures and state courts.)

**1.19.** Three common characteristics of paralegal definitions in most states:

1. The paralegal has special qualifications due to education, training, or on-the-job

experience;

1. The paralegal works under attorney supervision; and
2. The paralegal performs substantive legal work that the attorney would have to perform if the paralegal were not present.

**1.20.** Substantive legal work consists of nonclerical tasks that require legal experience or training; tasks for which paralegal fees can be awarded.

**1.21.** A major requirement for using the titles paralegal and legal assistant in California is that you work under the supervision of an attorney.

**1.22.** Hourly fees are determined, in the main, by how much time is spent on a client’s case. In general, hourly attorney fees are paid regardless of whether the client wins or loses. A contingent fee is dependent on the outcome of the case; it is paid only if the case is successfully resolved by litigation or settlement.

**1.23.** Definitions:

* American rule: The winning party cannot recover attorney fees and costs of litigation from the losing party unless (a) a statute authorizes such payment, (b) a contract between the parties provides for such payment, or (c) the court finds that the losing party acted in bad faith in the litigation.
* English rule: The losing side in litigation must pay the winner’s attorney fees and costs.

**1.24.** A statutory-fee case is a case involving a special statute that gives a judge authority to order the losing party to pay the winning party’s attorney and paralegal fees.

**1.25.** The process of forcing one party to pay another’s attorney fees and costs in litigation is called *fee shifting*.

**1.26.** In a statutory-fee case, the court uses a lodestar to calculate attorney fees to the winning party. The number of reasonable hours spent on the case is multiplied by a reasonable hourly rate. Other factors might also be considered above the lodestar in setting the fee (e.g., the quality of representation, any delay in receiving payment, and the risk at the outset of the litigation that the prevailing attorney will receive no fee).

**1.27.** Paralegal fees are fees that attorneys can collect for the nonclerical work performed by their paralegals on client cases. They are received by the employer of the paralegal.

**1.28.** To receive paralegal fees, some courts require attorneys to demonstrate that (1) the services performed by the nonlawyer personnel are legal in nature; (2) the performance of these services are supervised by an attorney; (3) the qualifications of the person performing the services are specified in the request for fees in sufficient detail to demonstrate that the person is qualified by virtue of education, training, or work experience to perform substantive legal work; (4) the nature of the services performed are specified in the request for fees in order to allow the reviewing court to determine that the services performed were legal rather than clerical; (5) as with attorney time, the amount of time expended and set forth is reasonable; and (6) the amount charged reflects reasonable community standards for charges by that category of personnel.

**1.29.** Statutory fees have been reduced or disallowed by courts because attorneys have performed paralegal tasks and paralegals have performed secretarial or clerical tasks.

**1.30.** *Missouri v. Jenkins* held that when paralegal fees must be paid by the losing side, they are calculated by the prevailing market rate for paralegals.

**1.31.** In an important statement in *Missouri v. Jenkins*, the Court said: “Of course, purely clerical or secretarialtasks should not be billed at a paralegal rate, regardless of who performs them.”

**1.32.** The statement “After *Missouri v. Jenkins,* paralegal fees are to be calculated at the prevailing market rate in every case” is false. The following categories of cases are not required to adopt the conclusion of *Jenkins*: federal cases interpreting federal statutes other than the Civil Rights Act and state cases interpreting state statutes. A state court, for example, could refuse to award paralegal fees or, if it awards paralegal fees, it could calculate them at actual cost rather than at the prevailing market rate.

**1.33**. In 2008, the U.S. Supreme Court case affirmed the *Jenkins* decision in *Richlin Sec. Service Co. v. Chertoff*.

**1.34.** Six categories of job titles proposed by IPLA for a large law office:

* paralegal clerk (legal assistant clerk)
* paralegal (legal assistant)
* senior paralegal (senior legal assistant)
* supervising paralegal (supervising legal assistant)
* case manager
* paralegal manager (legal assistant manager, paralegal administrator, director of paralegal services)

**1.35.** Factors influencing a paralegal’s salary (in addition to his or her competence) include:

* experience of the paralegal
* size of the office where he or she works
* whether the office is a private law firm or a corporation
* whether the office is a government or legal service/legal aid office
* whether the office is in a large city
* whether the attorneys in the office understand the value of paralegals

**1.36.** Leveraging is the ability to make a profit from the income-generating work of others.

**1.37.** The requirement to bill a minimum number of hours is called a billable hours quota.

**1.38.** When a law firm bills for paralegal time, the paralegal becomes a profit center in the firm, as opposed to simply being part of the firm’s overhead.

**1.39.** Under the Rule of Three, a firm must charge clients $100 per hour ($120,000 divided by 1,200) for paralegal time if the firm wants $40,000 in profit from a paralegal who bills 1,200 hours a year.

**1.40.** Factors affecting profitability of paralegals that offset the Rule of Three include:

* A high turnover of paralegals in the office often means that the office will have substantially increased overhead costs in recruiting and orienting new paralegals.
* The extent to which attorneys have more billable time because of a paralegal’s performance of nonbillable tasks. The more nonbillable tasks a paralegal performs, the less time he or she will have available to devote to billable tasks. This, however, does not mean that the paralegal is a drain on profits. A nonbillable task that a paralegal performs is often a task that the attorney does *not* have to perform. This, of course, enables the attorney to direct more of his or her efforts to fee-generating (i.e., billable) matters.

**1.41.** Nonbillable tasks that paralegals sometimes perform include recruiting new employees, helping to maintain the law library, organizing the office’s closed case files, and doing most of the work on certain kinds of cases that an attorney would normally do for free (e.g., probating the estate of the attorney’s brother-in-law).

**1.42.** A realization rate is the hourly rate that a law office actually collects from the billable hours submitted by an attorney or paralegal.

**1.43.** Bar association committees that have extensively promoted paralegals include:

* bar association paralegal committees
* bar association committees on legal economics and law office management

**1.44.** In England: (a) barristers handle the bulk of litigation in the higher courts; (b) solicitors handle the day-to-day problems of the public; and (c) legal executives were once the equivalent of the American paralegal.

**1.45.** When friends and relatives find out that a paralegal student is studying law, there is a danger that they will ask the student questions that call for legal advice. If the student answers the questions, he or she may be engaging in the unauthorized practice of law.