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CHAPTER 2: THE INITIAL INTERVIEW

Multiple Choice

1. A good interview form
   a. gives you all the questions you will need.
   b. requires specific information on damages.
   c. meets ABA standards.
   d. is available from the clerk of court.

2. A paralegal should not rely entirely on model interview forms because they
   a. are usually too long.
   b. are usually too short.
   c. do not always allow for the uniqueness of the individual case.
   d. often waste time.

3. A good source for researching the elements of a cause of action or defense thereto is a
   a. legal practice manual.
   b. state or federal jury instruction book.
   c. law office procedures manual.
   d. court clerk.

4. That aspect of law that defines the rights of individuals and the duties owed one person by another is the definition of
   a. substantive law.
   b. procedural law.
   c. ethics.
   d. negligence.

5. If A has a miscarriage and sues her doctor for malpractice for giving her x-rays before realizing she was pregnant, and A reveals on the witness stand that she fell down the stairs at home just before the miscarriage, the element of the plaintiff's proof that is in jeopardy is
   a. duty.
   b. breach of duty.
   c. proximate cause.
   d. injury.

6. A orders a large pitcher of beer, as does B. A proceeds to drink his pitcher and half of B's. A dies of asphyxiation (drowning). In an action by A's estate against the bar that sold the beer, the defense most applicable to the action is
   a. contributory negligence.
   b. comparative negligence.
   c. assumption of risk.
   d. last clear chance.

7. A boat strays into the swimming area of a lake. A swimmer sees the boat, but swims directly in front of it to retrieve a beachball and is injured when the boat hits him. The boat operator has the defense of
   a. breach of duty.
   b. comparative negligence.
   c. assumption of risk.
   d. procedural law.

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8. In regard to scheduling the initial interview, it is best to
   a. schedule about an hour and to end at a specified time so the interview will not be unduly prolonged.
   b. leave it open ended to provide flexibility and an unhurried environment.
   c. leave time to allow clients to chat as long as they want.
   d. schedule twenty minutes and let the client know at the end of that time that you have more important things to do.

9. The best way to record a client interview is to
   a. take notes.
   b. tape record it.
   c. have the client sign a written statement.
   d. videotape it.

10. The body language of a person may best be assessed to determine
    a. whether the person is lying.
    b. whether the firm should take the person's case.
    c. how a jury will perceive the person.
    d. a person's intelligence.

11. Fee agreements
    a. are never discussed by paralegals.
    b. are set by paralegals.
    c. are always based on billable hours.
    d. require the client's signature.

12. Doctors or others holding confidential information are authorized to give that information to a lawyer or paralegal through
    a. docket control forms.
    b. release forms.
    c. summons.
    d. writ of certiorari.

13. Permission to access medical records must be
    a. HIPAA compliant.
    b. HIPPO compliant.
    c. compliant with federal regulations only in federal cases.
    d. filed with the clerk of court.

14. Which of the following is an example of a good interview question?
    a. You stopped to look before you crossed the road, didn't you?
    b. Why didn't you pay more attention to traffic?
    c. Do you know what Statute CS § 127 requires?
    d. How long did it take you to cross the road?

15. Professional ethics require the paralegal
    a. to give reliable legal advice to the client.
    b. to question the truth of what the client says.
    c. to keep client information confidential.
    d. not to ask questions that would embarrass the client.

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16. The client should be told not to make statements to others about his or her case or injuries, because such statements
    a. might cause gossip.
    b. can be used against the client in court.
    c. might damage the attorney's reputation.
    d. are against the law.

17. In concluding the interview, be sure to
    a. have the client sign necessary documents.
    b. have the client sign a statement.
    c. avoid any conversation that is not pertinent to the case.
    d. encourage the client to promote his or her side of the case among friends.

18. Typically, at the initial interview the client should sign a
    a. motion to dismiss.
    b. medical information release.
    c. sworn statement about the accident.
    d. malpractice release for the attorney.

19. One of the most frequent client complaints is addressed by paralegals providing
    a. more relaxed interviews.
    b. better legal forms.
    c. better billing procedures for clients.
    d. increased communication with the client.

20. In preparing the interview site the paralegal should
    a. keep other client files on the desk to show how much business the firm has.
    b. have all paper, pencils, diagrams, and forms ready.
    c. arrange the office seating to keep distance between client and interviewer.
    d. arrange for all calls to be put through to the interview site.

21. Thinking of questions to ask in an interview is a matter of
    a. applying common sense to the substantive law (legal elements).
    b. studying the steps of procedural law.
    c. good psychology.
    d. being a good conversationalist.

22. In some states where comparative negligence is the rule of law, the plaintiff will not be able to recover if the jury determines the plaintiff was _____.
    a. 30 percent
    b. 51 percent
    c. 10 percent
    d. even slightly

23. When an angry client is ranting in your office, first
    a. call the police.
    b. call your supervising attorney.
    c. allow the client to vent.
    d. leave the room as fast as you can.

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24. The interview summary is helpful for
    a. publicizing the case.
    b. a quick review of facts.
    c. evidence at trial.
    d. keeping the client informed.

25. A nonengagement letter informs a potential client that
    a. her further assistance in the case is unnecessary.
    b. a second interview is needed.
    c. the firm has not accepted her case.
    d. the opposing party will settle the case without a trial.

True/False

26. The initial client interview can provide valuable information essential to forming the basis of a lawsuit or a defense thereto.

27. The initial interview sets the tone for the entire relationship between the plaintiff and the defendant.

28. Elements of a cause of action can be found in jury instructions.

29. The most frequent complaint of clients is that they have to communicate with paralegals.

30. Defendants usually pay attorneys on the basis of a contingent fee agreement.

31. It is unethical to create an attorney-client relationship via a Web site.

32. For the most efficient interviews, use only form questions.

33. Because each case is unique, interview form questions are not helpful.

34. An event can be a contributing cause of an injury without being the proximate cause.

35. One element of negligence is that a breach of duty has to be the proximate cause of the injury.

36. Duty of care is an element of negligence.

37. Contributory negligence is not a defense in most states.

38. Comparative negligence is not a defense in most states.

39. Assumption of risk and last clear chance are elements of negligence.

40. It is best to let the client know that it is the client's responsibility to provide for any special needs, such as interpreters, for the initial interview.

41. Because toys are a distraction, do not keep them in the room when interviewing children.

42. In the interview, encourage the client to give all information about the accident, even if it is not in the client's favor.

43. Euphemisms are a good way to deal with sensitive issues in interviews.

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44. Pace and lead is a technique used to elicit information during the client interview.

45. A plaintiff may have to undergo an examination by a doctor hired by the opposition.

46. Signed docket control forms allow confidential information to be given to a lawyer.

47. You know your client is telling the truth if he or she looks you straight in the eye.

48. Procedural law includes the rules for filing a lawsuit.

49. Substantive law includes defenses to actions.

50. The statute of limitations defines the range of damages that can be requested.

51. A paralegal may explain the terms of a fee agreement to a client.

52. An interview summary must be filed with the court within twenty days of the interview.

53. "What do you mean by the phrase 'high as a grasshopper's knee'?" is a good interview question.

54. Time that a defendant spends outside the state may extend the time limit for filing a case.

55. A good way to let potential clients know their cases have not been accepted is to have the secretary call them after a forty-five-day period.

Short Answer

56. The initial client interview is significant for what three reasons?

57. Define substantive law and procedural law.

58. What is an interview plan? State its purposes.

59. How do you generate interview questions for specific cases?

60. List and define the elements of negligence and related defenses.

61. (Special direction to instructor: Give each student a copy of the facts in Case I, Chapter 1.) Referring to the facts on the attached sheet (Case I) and the elements and defenses to negligence, discuss whether there may be a cause of action for negligence and defenses thereto.

62. In planning any initial interview, what special needs should be anticipated? List three.

63. What are some considerations in choosing an interview site?

64. Is the client going to be the one who is suing or being sued in a contingent fee agreement? Explain.

65. What is an Authorization for Release of Information form? Why is it important?

66. What kinds of materials should the personal injury client bring to the interview?

67. List three things clients should not do in order not to jeopardize their case.

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68. A conflict-of-interest check on a potential client should include what two steps?

69. Assume that you are a paralegal in a firm working for the defendant, Mr. Hart, in Case I. For an interview with Mr. Hart:
    a. Draft a set of five questions pertinent to the element of breach of duty, specifically Mr. Hart's attentiveness.
    b. Draft five questions for Mr. Hart regarding plaintiff's comparative negligence.

70. On what two calculations are attorney's fees based?

71. Define and explain the significance of the statute of limitations.

72. Describe the technique of pace and lead in dealing with difficult clients.

73. What are three ways you can help keep your client informed?

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3. A good source for researching the elements of a cause of action or defense thereto is a
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23. When an angry client is ranting in your office, first
    a. call the police.
    b. call your supervising attorney.
    c. allow the client to vent.
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    a. her further assistance in the case is unnecessary.
    b. a second interview is needed.
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    d. the opposing party will settle the case without a trial.
    ANS: c

True/False

26. The initial client interview can provide valuable information essential to forming the basis of a lawsuit or a defense thereto.
    ANS: True

27. The initial interview sets the tone for the entire relationship between the plaintiff and the defendant.
    ANS: False

28. Elements of a cause of action can be found in jury instructions.
    ANS: True

29. The most frequent complaint of clients is that they have to communicate with paralegals.
    ANS: False

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30. Defendants usually pay attorneys on the basis of a contingent fee agreement.
ANS: False

31. It is unethical to create an attorney-client relationship via a Web site.
ANS: False

32. For the most efficient interviews, use only form questions.
ANS: False

33. Because each case is unique, interview form questions are not helpful.
ANS: False

34. An event can be a contributing cause of an injury without being the proximate cause.
ANS: True

35. One element of negligence is that a breach of duty has to be the proximate cause of the injury.
ANS: True

36. Duty of care is an element of negligence.
ANS: True

37. Contributory negligence is not a defense in most states.
ANS: True

38. Comparative negligence is not a defense in most states.
ANS: False

39. Assumption of risk and last clear chance are elements of negligence.
ANS: False

40. It is best to let the client know that it is the client's responsibility to provide for any special needs, such as interpreters, for the initial interview.
ANS: False

41. Because toys are a distraction, do not keep them in the room when interviewing children.
ANS: False

42. In the interview, encourage the client to give all information about the accident, even if it is not in the client's favor.
ANS: True

43. Euphemisms are a good way to deal with sensitive issues in interviews.
ANS: False

44. Pace and lead is a technique used to elicit information during the client interview.
ANS: False

45. A plaintiff may have to undergo an examination by a doctor hired by the opposition.
ANS: True

46. Signed docket control forms allow confidential information to be given to a lawyer.
ANS: False

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47. You know your client is telling the truth if he or she looks you straight in the eye.
ANS: False

48. Procedural law includes the rules for filing a lawsuit.
ANS: True

49. Substantive law includes defenses to actions.
ANS: True

50. The statute of limitations defines the range of damages that can be requested.
ANS: False

51. A paralegal may explain the terms of a fee agreement to a client.
ANS: True

52. An interview summary must be filed with the court within twenty days of the interview.
ANS: False

53. "What do you mean by the phrase 'high as a grasshopper's knee'?" is a good interview question.
ANS: True

54. Time that a defendant spends outside the state may extend the time limit for filing a case.
ANS: True

55. A good way to let potential clients know their cases have not been accepted is to have the secretary call them after a forty-five-day period.
ANS: False

Short Answer

56. The initial client interview is significant for what three reasons?
ANS: Establishes client-firm relationship, establishes client-paralegal relationship, begins investigation.

57. Define substantive law and procedural law.
ANS: Substantive law defines the duties owed by one person to another. Procedural law defines the steps that must be followed in a lawsuit.

58. What is an interview plan? State its purposes.
ANS: An interview plan is a step-by-step procedure for planning all details of an upcoming interview. Its purpose is to see that the maximum benefit is derived from the time spent with the client and that important areas of questioning are not missed.

59. How do you generate interview questions for specific cases?
ANS: Consider what is needed to prove elements of substantive law.

60. List and define the elements of negligence and related defenses.
ANS:
- Duty: The existence of a duty of due care owed by one person to another.
- Breach of duty: Failure to conform to the required standard of care; that is, what is reasonable under the circumstances.

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- Cause of the injury: the conduct in question (the breach) was the natural and probable (proximate) cause of the resulting harm.
- Injury in fact: An actual injury or loss must have resulted.
- Contributory negligence: Any negligence on the part of the plaintiff that contributes to the plaintiff's injury is a bar to the plaintiff's recovery.
- Last clear chance: Defeats defense of contributory negligence by showing defendant had the last clear chance to avoid the accident or injury and the defendant did not avoid the injury to the plaintiff.
- Comparative negligence: A process whereby the plaintiff's own negligence is assessed at a certain percentage of the entire responsibility for the injury and the plaintiff's award is reduced accordingly. In some states if a plaintiff is assessed at more than 51 percent of the responsibility, the plaintiff may not recover.
- Assumption of risk: A doctrine that denies any recovery of the plaintiff if the plaintiff knows the risks and still enters into the conduct in question.

61. (Special direction to instructor: Give each student a copy of the facts in Case I, Chapter 1.) Referring to the facts on the attached sheet (Case I) and the elements and defenses to negligence, discuss whether there may be a cause of action for negligence and defenses thereto.
ANS:
- Duty: It is clear that Mr. Hart had a duty to avoid unreasonable risk to Ms. Forrester, a pedestrian.
- Breach of duty: Investigation would have to reveal whether Mr. Hart was inattentive, reckless, speeding, or had obscured vision. There is a good possibility of such a breach.
- Cause of injury: It would seem highly likely that Ms. Forrester's injuries were the actual and probable consequences of Mr. Hart's conduct. There is room, however, for the fact that the most natural cause of the injury was Ms. Forrester's own carelessness in crossing the highway.
- Injury: Because Ms. Forrester was hit by the van it is likely that there would be some injuries.

Defenses:
- Contributory negligence: If Ms. Forrester failed to check for traffic and/or kept her head tucked into her coat such that she could not see, there is a good possibility of contributory negligence.
- Last clear chance: If it can be demonstrated that Mr. Hart had a chance to avoid the accident despite any carelessness of Ms. Forrester; Ms. Forrester should be able to recover.
- Comparative negligence: Possibility for this as indicated in contributory negligence response. It may also be possible that Ms. Forrester's own negligence could be so great as to bear 51 percent of the fault.
- Assumption of risk: It seems unlikely there will be evidence of this.

62. In planning any initial interview, what special needs should be anticipated? List three.
ANS: The need for an interpreter; the need for playthings for a child; preparation in special vernacular or medical terminology; and the need to deal with special sensory impairments.

63. What are some considerations in choosing an interview site?
ANS: Convenience, privacy, access to evidence.

64. Is the client going to be the one who is suing or being sued in a contingent fee agreement? Explain.
ANS: The one suing—must be likely to win damages to pay the attorney a percentage.

65. What is an Authorization for Release of Information form? Why is it important?
ANS: It is a document that, when signed by the client, authorizes holders of confidential records regarding the client to release those records to the paralegal. The information released by the document can be essential to investigation and may not be available by other means.

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66. What kinds of materials should the personal injury client bring to the interview?
ANS: Information on employment, insurance, medical treatment, bills, etc.

67. List three things clients should not do in order not to jeopardize their case.
ANS: Sign documents releasing others from liability, accept payment for damages, make statements to others about the case, file an accident report without attorney approval.

68. A conflict-of-interest check on a potential client should include what two steps?
ANS:
1. Pre-interview call to determine nature of case and people involved.
2. Form signed by potential client that preliminary information disclosed will not prevent the firm from representing another party in the matter.

69. Assume that you are a paralegal in a firm working for the defendant, Mr. Hart, in Case I. For an interview with Mr. Hart:
a. Draft a set of five questions pertinent to the element of breach of duty, specifically Mr. Hart's attentiveness.
b. Draft five questions for Mr. Hart regarding plaintiff's comparative negligence.
ANS: Questions on attentiveness could cover:
- Distraction on either side of road
- Reaching for anything in car
- Adjusting radio, tape player, clock, etc.
- Lighting cigarette, pushing in lighter
- Reading directions to house
- When first saw plaintiff
- How long it took to brake
- Others

Questions on comparative negligence could cover:
- When did plaintiff see you?
- Where was plaintiff looking when you first saw her?
- Did she move further into the path of the van after you saw her?
- Was anything obscuring her vision?
- What was she wearing?
- Was she walking fast or slow?
- Once you saw her, was there anything she could have done to avoid the accident?

70. On what two calculations are attorney's fees based?
ANS: Fees are calculated as a percentage of the award or by an hourly rate.

71. Define and explain the significance of the statute of limitations.
ANS: The statute of limitations defines the period of time in which a particular type of action must be brought. Should the statute's deadline be missed, the plaintiff may not sue.

72. Describe the technique of pace and lead in dealing with difficult clients.
ANS: The interviewer first identifies with the emotion of the client, agreeing with opinions expressed by the client, then sympathetically leads the client toward a more compliant attitude.

73. What are three ways you can help keep your client informed?
ANS: Schedule regular client report letters, promptly respond to all client inquiries, acknowledge receipt of information and material sent to you from the client.

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