Liability, Damages and Collectivity

• What is Liability?
• Whether you were responsible for the act
• If the harm was wrongful, intentionally or negligently
• If the harm results from a special category of conduct that leads to strict liability regardless of whether it was intentional, negligent or innocent.
• Liability means to be legally responsible for something.
Damages

• What are damages?
• The amount of money awarded to the plaintiff upon establishing a cause of action against defendant for personal or property damage.
• The amount can be from nominal, compensatory to pains and suffering.
Collectivity

• What is collectivity?
• That actual probability and possibility of collecting the damages that may be awarded.
Alternative Dispute Resolution

• What is ADR?
• Arbitration?
• Rent-a-Judge?
• Mediation?
• Med-Arb?
• Neighborhood justice center?
• Summary jury trial?
Gathering Facts

• Who gather the facts of the case
• Paralegals do!
• There are two major categories of facts to collect by paralegals in a tort case, what are they?
• Background facts(page 54)
• The facts needed to establish a prima facie case
• Prima facie case has to be established by the attorney under tort law with evidence and testimony
Gathering Facts

• The evidence and testimony has to prove the elements of the law.
• The evidence may be documents which have to be determined that they will be admissible in court
• Testimony of witnesses that prove certain elements as well and these witness have to be competent to testify on the matter.
Gathering Facts

• What are the major characteristics of fact gathering?
• Specificity
• Comprehensiveness
• Some of these gathering techniques are also found in the form books with questions that lead you to comprehensiveness
• What is fact version?
• To determine credibility;
• People perceive events differently. (To be able to meet the standard of proof) (57)
Gathering Facts

• You have to first determine what the burden of proof is in your case then look at the witness statements to determine who your are going to call.
• Fact Particularization
• What is this?
• To look at the details of the facts.
Gathering Facts

• You particularize a fact you already have by:
• By assuming that what you know about this fact is inadequate;
• By assuming that there is more than one version of this fact;
• By asking a larger number of basic who, where, how, when, and why questions about the fact.
• Examples (59)
Taking Witness Statement

- How many types of witness statements are there?
- Handwritten;
- Recorded statement with audio or video tape;
- Responses to a questionnaire mailed to witness;
- Statements taken in question and answer format before a court reporter.
Tort Complaints

• What is a pleading?
• Complaint;
• Answer and affirmative defenses;
• Counterclaim;
• Cross-Claim;
• Third Party Complaint.
Tort Complaints

• What is included in a complaint?
• caption
• Name of pleading
• Body and facts to support a cause of action
• Prayer for relief
• Subscription
• No need to verify the complaint in most cases
• (64)
Discovery

• What is discovery? (paralegals role)
• The method to gather evidence and information from your opponent.
• There are six methods of discovery what are they?
• Written interrogatories?
• Oral depositions?
• Written depositions?
• Production of documents?
• Physical or mental examinations?
• Request for production?
Discovery

• What is the real purpose for discovery?
• To gather information;
• To formulate a strategy; (Impeachment)
• To evaluate your case;
• To narrow the issues for trial;
• To preserve evidence;
• To lay a foundation for a motion for summary judgment.
• What is a motion for summary judgment?
Trial and Appeal

• Once you finish your discovery then you are ready for trial.
• What is the role of the paralegal at trial?
  • Well the role is everything from carrying boxes into the courtroom to making sure all the trial exhibits are in sequence, the case law is there to support the evidence, all witnesses have been coordinated to come and testify and to keep the witnesses happy.
• Appeal?
• Make a list of all the exhibits that have been introduced so they can be preserved for appeal.
THE END