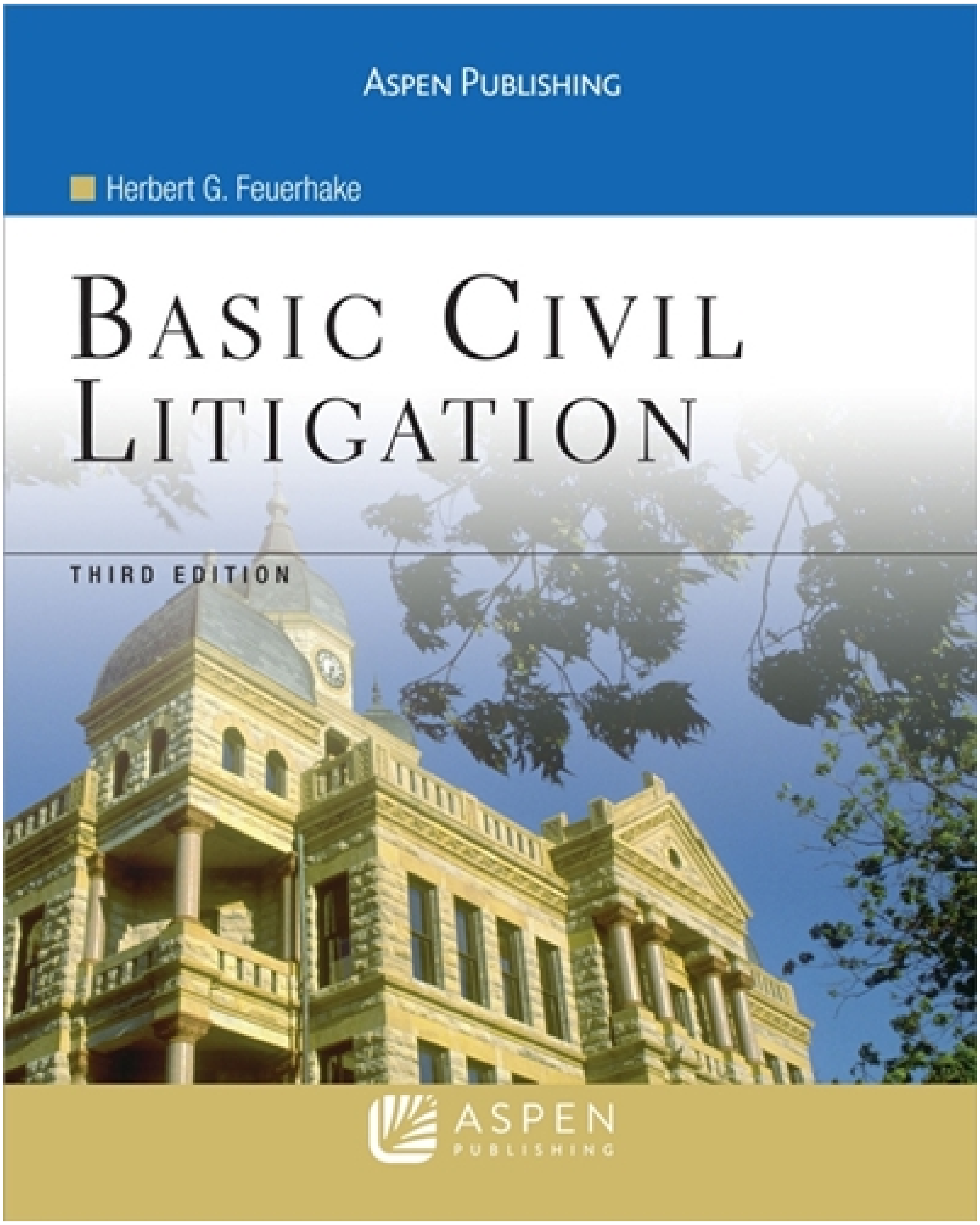
Test Bank for Basic Civil Litigation 3rd Edition by Feuerhake



Test Bank

CHAPTER 1
Introduction to Civil Litigation

Classroom Suggestions

1. One of the great difficulties in teaching any subject area, including civil litigation, is that many concepts central to an understanding of the subject are presented at the beginning of the course of study, before the student has developed any real perspective on the subject, then rarely explained again thereafter. Chapter 1 is filled with such central concepts. The student will generally understand these concepts as presented, but since no framework has yet been created into which the student can fit the new concepts, such understanding may prove to be fleeting. Furthermore, the understanding may not be very deep; the student may not fully recognize the significance of nuances. As a general principle, then, redundancy is very useful at this stage. Don't be afraid to explain things more than once; use double reinforcement to bring out the importance of certain concepts; point out to the students that the full significance of some concepts may not register in their minds until later in the course. The students must be encouraged to work hard and helped not to get discouraged; you should make an effort throughout the course to help them avoid losing the forest of general concepts for the trees of specific rules and methods. Encourage questions, and let them know that no question is a stupid question.

2. Visual aids are useful to explain the basics of the court system; they will help to bring the process to life. A copy of a summons and complaint to pass around, a deposition transcript, perhaps even a photograph of a courtroom, will all help to make the basic concepts more real to the students. If possible, plan a trip to a courthouse to show the students an actual courtroom, as well as the clerk's office. If this is not possible, explain to the students what services are performed by the personnel in a clerk's office, and provide addresses and directions to the nearest state courthouse, federal courthouse, and law library.

3. Study groups are often used by law students, and they are equally useful for paralegals. Have the students divide themselves into groups of four. Some of the groups will develop naturally, among friends; some you will have to assign. Explain to the students that such study groups can be of great benefit in identifying troublesome areas; often students can help each other prior to class, and can clarify common areas of confusion.

4. Because of the influence of the entertainment industry and news media, students new to the study of the legal system often bring to their effort preconceptions. Some of these preconceptions may be valid and some not; in any event the students' understanding may be fuzzy at best. The identification of the trial as the focus of litigation in the courts (made in Section 1-8) provides an important point of departure for removing the fuzziness. The student must begin to think about litigation in global terms, even as he or she is learning the details. Emphasizing the trial is a means of achieving this objective; it provides the students with the beginnings of an overall framework into which specific concepts can be fitted.

Ethical Considerations

In line with the trend in legal education generally, it is desirable and valuable to incorporate consideration of *ethical issues* within an introductory civil litigation course. While the textbook places an ongoing emphasis on *appropriate* conduct by paralegals, discussion of specific ethical rules and guidelines has been limited to the brief treatment found in Chapter 3. The reason for this limited treatment is that, insofar as the subject matter of civil litigation will be new and complex and hence challenging for the student, the addition of detailed ethics discussions might only further confuse, rather than enhance, the student's understanding. But this omission in the text can be remedied in the classroom, so as to comply with your curriculum requirements and/or preferences. In each of the chapters of this Instructor's Manual, we will include for your reference a brief discussion of ethical issues that correspond to the material of the relevant chapter, which can then be included in classroom discussion.

For Chapter 1, we would suggest that you point out to the students the existence of the codes of conduct applicable to paralegals, for example the "NALA Code of Ethics and Professional Responsibility" issued by the National Association of Legal Assistants (hereinafter "NALA Code"; the text of the Canons and Guidelines of the NALA Code is found in Chapter 3 of the textbook) and the "Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement" issued by the National Federation of Paralegal Associations, Inc. (hereinafter "NFPA Model Code"; the text is found in the Appendix to the textbook). You should also point out to the students any specific codes or rules adopted or applied in your state or region.

You might also review with the students the obligation of an attorney to avoid unfair or inaccurate criticisms of judges in particular and the legal system generally (in many states this obligation is found in a local version of Rule 8.2 of the Model Rules of Professional Conduct), and the manner in which such a rule applicable to attorneys serves as a guide to the conduct of paralegals (see for example Canon 9 of the NALA Code on page 53 of the textbook).

Answer Key to Questions for Review and Discussion

1. Litigation is the process by which the disputes of opposing parties are administered by a neutral third party, where the neutral third party has the power to render a resolution of the dispute binding upon the disputants.

2. Criminal litigation involves the prosecution and punishment of crimes; civil litigation is noncriminal litigation involving disputes that center on the determination of certain alleged rights, privileges, and/or obligations of the disputants.

3. A typical court system is structured with three levels of courts: the trial court; the intermediate appellate court; and the high court.

4. An intermediate appellate court is one that has the authority to render a decision overruling or upholding the decision of a trial court, but whose decision can itself be appealed to a still higher court.

5. Subject matter jurisdiction is the authority of the court to administer and decide a particular category of dispute. Personal jurisdiction is the authority of a court to exercise its powers over the specific parties involved in the case.

6. Venue is the geographical location in which a lawsuit proceeds.

7. The principal trial courts in the federal system are called United States District Courts.

8. The principal of judicial view grants two significant rights to the courts: first, the right to determine the meaning of the language used in the Constitution, statutes, and regulations; and second, the right to determine whether the activities of the executive and legislative branches of government (including the substantive content and effect of statutes and administrative regulations passed or sought to be enforced) is in accord with the requirements and prohibitions of the Constitution.

9. Procedural rules are those rules that establish the manner in which lawsuits are administered. Substantive law provides the rules that govern the nonprocedural issues presented to the court for decision.

10. Legal remedies involve money damages. Equitable remedies resolve disputes not by the imposition of money damages, but rather by directing the wrongdoer to perform a certain specified act, or to refrain from performing a certain specified act.

TEST QUESTIONS

True-False

For each statement, write *T* in the answer section if the statement is true or *F* if the statement is false.

_____ 1. Civil litigation involves the prosecution of crimes by the government.

_____ 2. The title of a court is always the best indication of its function.

_____ 3. A trial court is a court of original jurisdiction

_____ 4. The complaint and the answer are referred to as motions.

_____ 5. The intermediate appellate court does not conduct a new trial, but rather reviews the record of the trial previously held in the trial court.

_____ 6. The high court in every court system is called the supreme court.

_____ 7. Personal jurisdiction is the authority of a court to exercise its powers over the specific parties involved in a lawsuit.

_____ 8. Even if concurrent jurisdiction exists, a lawsuit may only be filed in one court at a time.

_____ 9. Procedural rules establish such things as the manner of filing a lawsuit, deadlines for the filing of various documents and motions, and the manner in which a party requests a jury trial.

_____ 10. Legal remedies include any remedy available within our legal system.

Multiple Choice

Select the word or phrase that best fits each statement .

11. The "third party" who administers a dispute through the litigation process should:
    a. know the parties well.
    b. be neutral.
    c. have a vested interest in the outcome of the dispute, so that he or she has an incentive to pay careful attention.
    d. be over the age of 35.

12. Which of the following is the branch of government that includes the courts?
    a. executive branch
    b. legislative branch
    c. agency branch
    d. judicial branch

13. Which of the following is a trier-of-fact?
    a. The judge in a bench trial
    b. The judge in a jury trial
    c. The jury in a bench trial
    d. The plaintiff in a civil action ____

14. Which of the following is a litigant?
    a. The judge
    b. The plaintiff
    c. A member of the jury
    d. The justice of a high court

15. Over which of the following will the court's exercise of personal jurisdiction be unquestionable?
    a. A plaintiff who is not a citizen of the forum state
    b. A defendant who has had no contact with the forum state
    c. A defendant who has received notice of the lawsuit
    d. A defendant who is not a citizen of the forum state

16. For a court to have jurisdiction over a particular matter, three of the following factors *must* be present. Identify the exception.
    a. Personal jurisdiction over the parties
    b. Subject matter jurisdiction over the category of dispute
    c. Concurrent jurisdiction with another court
    d. Proper venue

17. A court's jurisdiction over a *thing*, such as land, is called:
    a. *in rem* jurisdiction.
    b. long-arm jurisdiction.
    c. general jurisdiction.
    d. diversity jurisdiction.

18. Which of the following constitute the main trial courts in the federal court system?
    a. The United States Probate Courts
    b. The United States Superior Courts
    c. The United States Circuit Courts
    d. The United States District Courts

19. The concept that grants to the courts the right to determine the meaning and constitutionality of statutes and regulations is called:
   a. the writ of *certiorari*.
   b. the petition for *certiorari*.
   c. the appellate doctrine.
   d. judicial review.

20. Which one of the following is an equitable remedy?
   a. compensatory damages
   b. money damages
   c. an injunction
   d. special damages

Short-Answer or Essay Questions

21. Our definition of *civil litigation* provides that the neutral third party who administers the process must have "the power to render a resolution of the dispute binding upon the disputants." Explain what this means, and explain how the definition continues to apply even in a situation where an appeal of the decision of a court is authorized.

22. Briefly describe what happens at a trial, and compare a bench trial to a jury trial.

23. Explain how an intermediate appellate court reaches its decision.

24. Describe the role and composition of the United States Supreme Court, and briefly describe how cases are brought to its attention.

25. Identify several major areas of substantive law, and describe the nature of each.

Answer Key

True-False

1. False. Criminal litigation involves the prosecution of crimes.
2. False. You can't rely on the name; you must check the statute or constitutional provision that defines the court.
3. True. It is the forum in which pursuit of a claim is initiated, which fits the definition or "original jurisdiction."
4. False. They are pleadings.
5. True.
6. False. See question 2. In New York, for example, it is the trial court that is called the supreme court.
7. True.
8. True.
9. True
10. False. Legal remedies involve money damages. There are other remedies available within our legal system, specifically such equitable remedies as injunctions and specific performance.

Multiple Choice

11. b
12. d
13. a
14. b
15. a. The plaintiff is deemed to have submitted to the personal jurisdiction of the court. A court would not have personal jurisdiction over an out-of-state defendant who has received notice of the lawsuit if the defendant has no contact with the forum state, making option c incorrect. Options b and d establish neither adequate notice nor sufficient contact.
16. c
17. a
18. d
19. d
20. c. The others are legal remedies involving money damages.

Answers to Short-Answer or Essay Questions

(Answers will vary.)

21. The requirement that a neutral third party have "the power to render a resolution of the dispute" means that he or she must have the authority to choose between the competing positions of the disputants. The process of litigation, in other words, must lead toward an ultimate decision. The process itself might not actually resolve the dispute (for example,

the disputants might decide to settle the dispute themselves), but it must be designed so that, if followed to its conclusion, it will result in a resolution.

The phrase "binding upon the disputants" implies that the disputants are compelled to accept the decision of the neutral third party. This phrase can be applicable even to a court process that authorizes an appeal of the decision, for two reasons: (1) if there is no appeal, the decision is, in fact, final and binding; and (2) if there is an appeal, the appellate court is considered to be merely a subsequent step in the same system, at the pinnacle of which will come an ultimate resolution that cannot be appealed further.

22. In a trial, evidence is presented by the competing parties, with rulings as to the admissibility of contested evidence made by the judge. At the conclusion of the presentation of evidence, a decision must be made. All questions of law (relating to the interpretation of legal rules and precedents) are decided by the judge. If the case is a bench trial, questions of fact (relating to disputed aspects of the events leading up to, or in some way affecting, the dispute) are also decided by the judge. If the case is a jury trial, questions of fact are decided by the jury, whose decision is called a verdict. The final decision of the court, whether in a jury trial or bench trial, is called a judgment.

23. An intermediate appellate court reaches its decision in a way that is distinguishable from the methods of a trial court. In the trial court, witnesses are questioned and other evidence is presented in a full-scale trial. In the intermediate appellate court, no witnesses are questioned, no new evidence is presented, and no trial is held; rather, the court reviews the record of the trial court. The record is made up of the transcript of proceedings in the trial court, as well as the exhibits offered into evidence. The intermediate appellate court reviews the record to determine whether the grounds on which the appeal was raised—that is, the specific reasons on which the appealing party seeks to overturn the decision of the trial court—in fact justify a reversal. Sometimes the intermediate appellate court will remand the case back to the trial court for some further action. Finally, you should note that, generally speaking, the decisions of an intermediate appellate court are subject to review by a high court.

24. The United States Supreme Court is the high court in the federal court system, and is composed of nine justices (one Chief Justice and eight Associate Justices) who are appointed for lifetime terms by the President, subject to approval by the Senate.

The jurisdiction of the United States Supreme Court is defined by the U.S. Constitution and sections 1251 *et seq.* of Title 28 of the United States Code. Although the Supreme Court has original jurisdiction over a few limited types of cases (cases involving ambassadors and foreign officials, or cases in which a state is a party), the great majority of cases heard by the Supreme Court involve a review of the decision of some lower court. The justices have a great deal of discretion over which cases they hear. A party desiring to have its case reviewed by the Supreme Court must file a petition for *certiorari,* which summarizes the issues presented for review. If the justices decide to hear the case, they grant a writ of *certiorari*, authorizing the appeal.

25. Major areas of substantive law include the following: contract law (which relates to disputes arising over the performance, or lack of performance, of agreements); tort law (which relates to disputes arising when one party accuses another party of wrongfully causing an injury or damage to person or property); domestic relations law (which governs marital status, child custody, and other circumstances associated with family relations); and property law (which concerns interests relating to land, known as "real property," and other tangible things, known as "personal property"). There are many other related subdivisions of substantive law, such as securities law, admiralty law, zoning and planning law, products liability law, and other areas.

CHAPTER 2
Basic Law Office Structure and Procedure

Classroom Suggestions

1. The *Martindale/Hubbell Law Directory* lists virtually every major law firm in the country, by state and city, with individual entries for each lawyer. The entries often distinguish between partners, associates, and of counsel. One of the activities at the end of the chapter suggests that the students review the volume for your state. It would be useful for you to bring to class that volume, both as a tool for illustrating basic law firm structure (for example, showing how associates are generally more recent graduates of law school than are partners), and as a practical resource for paralegals seeking jobs. You might also make reference to some of the other materials contained in the directory, such as the summaries of the laws of each state.

2. Don't take for granted the students' familiarity with something even as basic as a case file. If you can bring to class an expandable folder with several subfiles (as discussed in the text), simply showing it to the students will enhance their grasp of an important and fundamental aspect of litigation practice (and prepare them for their first day on the job). If using an actual file, make sure no client confidences are violated; a better alternative might be to set up a "dummy" or sample file for instructional purposes.

3. The text provides some examples of time sheets and billing practices. To the extent that you can, augment this with your own additional examples. A sample tickler file is also useful to see, as well as such things as motion calendars or other documents establishing deadlines that must be tracked.

4. It would be especially useful if you could arrange a visit to a law firm.

Ethical Considerations

Chapter 2 addresses (among many other things) the importance of a “conflicts check” when opening a new file. This provides a great opportunity to discuss with your students some of the ethical issues surrounding conflicts of interest, including a review of section 1.6 of the NFPA Model Code (found in the Appendix to the textbook).

Answer Key to Questions for Review and Discussion

1. A partner is a senior lawyer with ownership status, a voice in firm management, and a share in the firm's profits. An associate is a less experienced lawyer without ownership status and without a voice (at least not a decisive voice) in firm management.

2. A lawyer who is "of counsel" is generally affiliated with a firm in some way other than as a full-time employee, either as an occasional advisor or as a retired (but still somewhat active) former partner.

3. Categories of law-firm personnel include lawyers, paralegals, law clerks, legal secretaries and receptionists, word-processing personnel, title searchers, messengers, private investigators, law librarians, billing and accounting specialists, computer specialists, a marketing consultant, and an office manager.

4. The office manager, also called an office administrator, coordinates the hiring and management of staff.

5. A billable hour is one hour during which tasks are performed on behalf of a specific client; the value of this time is ultimately billed to that client (except in contingent fee cases).

6. A retainer letter should include both the fact of representation and the manner of billing (contingent or hourly).

7. The eight subfiles in a typical litigation case file include: correspondence; pleadings; motions and other court filings; exhibits and original documents; discovery; legal research; investigation; and billing.

8. A conflicts check, in which the firm determines whether it cannot represent a certain client because of a conflict, can be performed by (1) circulating to all attorneys a sheet identifying all parties involved in the client's matter, or (2) by having a designated person identify the involved parties and compare them to a centralized list of clients and opposing parties maintained by the firm, or (3) by using both of these methods, or (4) by using some other acceptable system, such as a computerized conflicts check.

9. The statute of limitations establishes the time limit within which a claim may be raised in the courts. If a lawsuit is not filed within that time limit, the right to pursue the claim in the courts is lost forever.

10. When closing a case file, first determine the system that your firm employs for closing and storing files, then be sure to follow it precisely. Remove extraneous matter, such as multiple uses of the same document, in order to minimize necessary storage space. Finally, make sure that everything has been filed correctly to facilitate any future searches in the file.

TEST QUESTIONS

True-False

For each statement, write T in the answer section if the statement is true or F if the statement is false.

_____ 1. Associates share in the net profits of a law firm.

_____ 2. A retired attorney often remains with the firm in an "of counsel" capacity.

_____ 3. In a contingent fee case, the attorneys are paid at a specific rate for each billable hour of legal services performed.

_____ 4. It is best to fill out time sheets once a week, so that you can see, all at once, how your work habits varied from one day to the next.

_____ 5. The correspondence subfile will contain all the correspondence that your supervising attorney expects to offer into evidence at trial.

_____ 6. In a relatively uncomplicated case, pleadings, motions, and other court filings may be combined into one subfile.

_____ 7. A conflicts check involves performing the legal research necessary to understand the conflict between your firm's client and the opposing parties. D

_____ 8. Because the parties need time to gather basic information and perform necessary legal research, a lawsuit cannot be started until after the date identified in the statute of limitations.

_____ 9. A proper system for notifying attorneys of approaching deadlines will provide several reminders at varying intervals before the deadline expires.

_____ 10. Copies of pleadings that your firm has filed with the court should be filed in your pleadings subfile on a regular basis.

Multiple Choice

Select the word or phrase that best fits each statement .

11. Which one of the following probably has the most power to affect the decisions of a law firm?

a. An of-counsel attorney
b. A partner
c. A senior partner
d. An associate

12. Which one of the following is a lawyer?
    a. An office manager
    b. An associate
    c. A summer associate
    d. A legal secretary

13. A title searcher:
    a. verifies ownership rights in real estate.
    b. verifies that trademark titles have not previously been utilized.
    c. is primarily responsible for searching for litigation case files, given the correct title.
    d. determines which attorneys in an opposing law firm have the title, "of counsel."

14. Which of the following law firm employees typically records on a time sheet all those tasks that he or she has performed so that the time may be billed to the client?
    a. A legal secretary
    b. A messenger
    c. The office manager
    d. None of the above

15. In a contingent fee case:
    a. the fee charged for legal services rendered will generally be a percentage of the amount of the judgment.
    b. if the client loses at trial, the law firm cannot recover for out-of-pocket expenses or disbursements.
    c. both a and b are true.
    d. neither a nor b is true.

16. In a contingent fee case:
    a. time sheets need not be maintained because time is not billed to the client.
    b. billable hours worked by the paralegal are billed to the client, but billable hours worked by the attorneys are not billed.
    c. time sheets should be maintained so that the firm can determine which types of cases are profitable, and which of the firm's lawyers and paralegals are must efficient.
    d. the client pays a retainer, against which fees for legal services rendered are
    e. withdrawn at regular intervals.

17. The original of a letter from the attorney for the opposing party to your supervising attorney, requesting information pertinent to a pending motion, would be filed in:
    a. the correspondence subfile.
    b. the discovery subfile.
    c. the investigation subfile.
    d. the exhibits and original documents subfile.

18. In a typical law firm, the procedure for opening a litigation case file:
    a. involves many people, so that errors will likely be caught by at least one person.
    b. involves one person or a small group of persons, so that coordination is maximized and errors are minimized.
    c. will not require the gathering of background information such as names of attorneys involved or names of opposing parties, since that might lead to confusion and errors.
    d. is generally postponed until the law firm is sure that a lawsuit will be filed, either by or against the client.

19. A good method for avoiding conflicts is to:
    a. circulate a sheet on which new clients and opposing parties are identified for review and sign-off by all attorneys.
    b. establish a computerized system with which attorneys can check for the existence of conflicts.
    c. neither a nor b, since it is the file opener who is always responsible for checking for the existence of conflicts.
    d. both a and b.

20. Storage of closed files is important because:
    a. it may become necessary or desirable to consult the pleadings at some later date, even though the lawsuit involved has been completed
    b. legal research prepared for that case might be useful in another case.
    c. neither a nor b, because any materials contained in the pleadings subfile or the legal research subfile will be outdated.
    d. both a and b.

Short-Answer or Essay Questions

21. Explain what is meant by a "sole practitioner," and describe the staffing requirements in the office of a sole practitioner.

22. Describe the information that is entered on a typical time sheet.

23. Describe the contents of a typical subfile for exhibits and original documents, and explain why some correspondence might be kept in such a subfile rather than in the correspondence subfile.