"Introduction to Legal Studies".

In Section 1 of this course you will cover these topics:

- Paralegals: A Profession Evolves
- Careers In Law Firms And Beyond
- Paralegal Ethics And Other Professional Issues

Topic : Paralegals: A Profession Evolves

Topic Objective:

At the end of this topic student would be able to:

- Find out Difference between Lawyers and Paralegals
- Identify Difference between paralegals and notaries public
- Comprehend the Trends in usage of paralegals
- Learn about Paralegal Nurse Consultants

Definition/Overview:

Paralegalis a term used in many countries (a.k.a. jurisdictions) to describe non-lawyers who assist lawyers in their legal work.

Key Points:

1. Difference between Lawyers and Paralegals

Paralegals are not lawyers. They are not authorized by government to offer legal services in the same way, nor are they officers of the court (i.e. considered a formal part of the legal system), nor are they usually subject to government/court sanctioned rules of conduct. Paralegals originated as assistants to lawyers at a time when only lawyers offered legal services. In those jurisdictions, such as the United States, where the local legal profession/judiciary is involved in paralegal recognition/accreditation then the profession of paralegal still basically refers to those people working under the direct supervision of a lawyer. In other jurisdictions however, such as the United Kingdom, the lack of local legal profession/judiciary oversight means that the definition of paralegal encompasses non-lawyers doing legal work, regardless of who they do it for. Although most jurisdictions

recognize paralegals to a greater or lesser extent, there is no international consistency as to definition, job-role, status, terms and conditions of employment, training, regulation or anything else and so each jurisdiction must be looked at individually.

The biggest difference between lawyers and paralegals is that lawyers can set fees and give legal advice. If a paralegal attempts to do this they will be in violation the "Unauthorized Practice of Law" (UPL). Other traditional differences between a paralegal and a lawyer (e.g. an attorney in the United States; a solicitor or barrister in the UK or solicitor or advocate in India) are that:

- paralegal expertise/training tends to be niche, whereas a lawyer has a much broader, longer, more formal and holistic training, and
- that the lawyer's primary job is to consider, analyse and strategise, whereas a paralegal's primary responsibility is to carry out the tasks arising from that consideration, analysis and strategy.

However these distinctions are blurring: economic forces are pricing lawyers out of many areas of practice and paralegals are increasingly stepping in to fill the vacuum. How quickly and how far they are doing this varies from jurisdiction to jurisdiction. In the UKthere are now almost 4,000 government registered/regulated paralegal advisory firms offering services that would previously have been offered by lawyers. Elsewhere such as India and Singapore, paralegals work much more along the traditional line of assisting lawyers. Paralegals are found in all areas where lawyers work in criminal trials, in real estate, in government, in estate planning. In the US, paralegals and legal document assistants (LDAs) are often mistaken for one another. In most other jurisdictions the profession is not yet developed enough to have a clear distinction between the two.

Paralegals continue to study more fields everyday, and now with some economic difficulties more people are relying on paralegals to offer more reasonably priced services.

2. Difference between paralegals and notaries public

In the United States a large percentage of paralegals and legal secretaries are also commissioned as notaries public. This link is not necessarily the norm in other jurisdictions. In the United Kingdomfor example notaries are a distinct group, and tend to be solicitors.

3. Trends in usage of paralegals

The United States' experience is that law schools and state bar associations, through admissions and licensing, control the number of licensed attorneys and, as economic theory

would predict, generally act to restrict that number in order to increase salaries over what a truly free market would produce (and, in the case of law schools, allow an increase in tuition by increasing the financial reward of obtaining a law education).

While the strenuous education and bar exams arguably increase the quality of attorneys at the same time as the cost of employing one, there remain many legal tasks for which a full legal education is unnecessary but some amount of legal training is helpful. This is equally true of most other jurisdictions, many of whom exercise an even tighter control over access to the legal profession.

As the cost of litigation has risen, insurance companies and other clients have increasingly refused to pay for a lawyer to perform these certain kinds of tasks, and this gap has been filled in many cases by paralegals. Paralegal time is typically billed at only a fraction of what a lawyer charges, and thus to the paralegal has fallen those substantive and procedural tasks which are too complex for legal secretaries (whose time is not billed) but for which lawyers can no longer bill. This in turn makes lawyers more efficient by allowing them to concentrate solely on the substantive legal issues of the case, while paralegals have become the "case managers."

The United Kingdomhas gone one step further. Much legal work by lawyers for the poorer elements of society is legally aided, or paid for by the government. As overall costs have risen due to more people than ever engaging with the law, the government has reduced such legal aid. As a result the work has become uneconomic for many and they have ceased doing it. Paralegal advisory firms are stepping in to fill the gap.

The increased use of paralegals has slowed the rising cost of legal services and serves in some small measure (in combination with contingency fees and insurance) to keep the cost of legal services within the reach of the regular population. However, one commentator has warned that "our profession makes a serious error if it uses legal assistants only as economic tools."

4. Paralegal Nurse Consultants

Some attorneys who practice in fields involving medical care have only a limited knowledge of healthcare and medical concepts and terminology. Therefore, in addition to Legal Nurse Consultants, a certain number of registered nurses have become fully trained as paralegals in the manner described above and assist behind the scenes on these cases, in addition to serving as expert witnesses from time to time. There is an extremely high demand for nurses to begin with, so the demand for nurses with paralegal skills is expected to remain very high in the near future.

Topic : Careers In Law Firms And Beyond

Topic Objective:

At the end of this topic student would be able to:

- Identify Responsibilities of Lawyers
- Learn about Specializations for Lawyers
- Comprehend Compensation of Lawyers
- Develop learning regarding titles used for Lawyers

Definition/Overview:

Overview: A lawyer, according to Black's Law Dictionary, is "a person learned in the law; as an attorney, counsel or solicitor; a person licensed to practice law." Law is the system of rules of conduct established by the sovereign government of a society to correct wrongs, maintain stability, and deliver justice. Working as a lawyer involves the practical application of abstract legal theories and knowledge to solve specific individualized problems, or to advance the interests of those who retain (i.e., hire) lawyers to perform legal services. The role of the lawyer varies significantly across legal jurisdictions, and so it can be treated here in only the most general terms.

Key Points:

1. Responsibilities of Lawyers

In most countries, particularly civil law countries, there has been a tradition of giving many legal tasks to a variety of civil law notaries, clerks, and scriveners. These countries do not have "lawyers" in the American sense, insofar as that term refers to a single type of general-purpose legal services provider; rather, their legal professions consist of a large number of different kinds of law-trained persons, known as jurists, of which only some are advocates who are licensed to practice in the courts. It is difficult to formulate accurate generalizations that cover all the countries with multiple legal professions, because each country has traditionally had its own peculiar method of dividing up legal work among all its different types of legal professionals.

Notably, England, the mother of the common law jurisdictions, emerged from the Dark Ages with similar complexity in its legal professions, but then evolved by the 19th century to a single dichotomy between barristers and solicitors. An equivalent dichotomy developed between advocates and procurators in some civil law countries, though these two types did not always monopolize the practice of law as much as barristers and solicitors, in that they always coexisted with civil law notaries.

Several countries that originally had two or more legal professions have since fused or united their professions into a single type of lawyer. Most countries in this category are common law countries, though France, a civil law country, merged together its jurists in 1990 and 1991 in response to Anglo-American competition. In countries with fused professions, a lawyer is usually permitted to carry out all or nearly all the responsibilities listed below.

1.1 Oral argument in the courts

Arguing a client's case before a judge or jury in a court of law is the traditional province of the barrister in England, and of advocates in some civil law jurisdictions. However, the boundary between barristers and solicitors has evolved. In England today, the barrister monopoly covers only appellate courts, and barristers must compete directly with solicitors in many trial courts. In countries like the United States that have fused legal professions, there are trial lawyers who specialize in trying cases in court, but trial lawyers do not have a de jure monopoly like barristers. In some countries, litigants have the option of arguing pro se, or on their own behalf. It is common for litigants to appear unrepresented before certain courts like small claims courts; indeed, many such courts do not allow lawyers to speak for their clients, in an effort to save money for all participants in a small case. In other countries, like Venezuela, no one may appear before a judge unless represented by a lawyer. The advantage of the latter regime is that lawyers are familiar with the court's customs and procedures, and make the legal system more efficient for all involved. Unrepresented parties often damage their own credibility or slow the court down as a result of their inexperience.

1.2 Research and drafting of court papers

Often, lawyers brief a court in writing on the issues in a case before the issues can be orally argued. They may have to perform extensive research into relevant facts and law while drafting legal papers and preparing for oral argument. In England, the usual division of labor is that a solicitor will obtain the facts of the case from the client and then brief a barrister (usually in writing). The barrister then researches and drafts the

necessary court pleadings (which will be filed and served by the solicitor) and orally argues the case. In Spain, the procurator merely signs and presents the papers to the court, but it is the advocate who drafts the papers and argues the case.

In some countries, like Japan, a scrivener or clerk may fill out court forms and draft simple papers for lay persons who cannot afford or do not need attorneys, and advise them on how to manage and argue their own cases.

1.3 Advocacy (written and oral) in administrative hearings

In most developed countries, the legislature has granted original jurisdiction over highly technical matters to executive branch administrative agencies which oversee such things. As a result, some lawyers have become specialists in administrative law. In a few countries, there is a special category of jurists with a monopoly over this form of advocacy; for example, Franceformerly had conseil juridiques (who were merged into the main legal profession in 1991). In other countries, like the United States, lawyers have been effectively barred by statute from certain types of administrative hearings in order to preserve their informality.

1.4 Client intake and counseling (with regard to pending litigation)

An important aspect of a lawyer's job is developing and managing relationships with clients (or the client's employees, if the lawyer works in-house for a government or corporation). The client-lawyer relationship often begins with an intake interview where the lawyer gets to know the client personally, discovers the facts of the client's case, clarifies what the client wants to accomplish, shapes the client's expectations as to what actually can be accomplished, begins to develop various claims or defenses, and explains his or her fees to the client. In England, only solicitors were traditionally in direct contact with the client. The solicitor retained a barrister if one was necessary and acted as an intermediary between the barrister and the client. In most cases a barrister would be obliged, under what is known as the "cab rank rule", to accept instructions for a case in an area in which they held themselves out as practicing, at a court at which they normally appeared and at their usual rates.

1.5 Legal advice

Legal advice is the application of abstract principles of law to the concrete facts of the client's case in order to advise the client about what they should do next. In many countries, only a properly licensed lawyer may provide legal advice to clients for good consideration, even if no lawsuit is contemplated or is in progress. Therefore, even conveyancers and corporate in-house counsel must first get a license to practice,

though they may actually spend very little of their careers in court. Failure to obey such a rule is the crime of unauthorized practice of law.

In other countries, jurists who hold law degrees are allowed to provide legal advice to individuals or to corporations and it is irrelevant if they lack a license and cannot appear in court. Some countries go further; in Englandand Wales, there is no general prohibition on the giving of legal advice. Sometimes civil law notaries are allowed to give legal advice, as in Belgium. In many countries, non-jurist accountants may provide what is technically legal advice in tax and accounting matters.

1.6 Protecting intellectual property

In virtually all countries, patents, trademarks, industrial designs and other forms of intellectual property must be formally registered with a government agency in order to receive maximum protection under the law. The division of such work among lawyers, licensed non-lawyer jurists/agents, and ordinary clerks or scriveners varies greatly from one country to the next.

1.7 Negotiating and drafting contracts

In some countries, the negotiating and drafting of contracts is considered to be similar to the provision of legal advice, so that it is subject to the licensing requirement explained above. In others, jurists or notaries may negotiate or draft contracts. Lawyers in some civil law countries traditionally deprecated "transactional law" or "business law" as beneath them. French law firms developed transactional departments only in the 1990s when they started to lose business to international firms based in the United Statesand the United Kingdom(where solicitors have always done transactional work).

1.8 Carrying out the intent of the deceased

In many countries, only lawyers have the legal authority to draft wills, trusts, and any other documents that ensure the efficient disposition of a person's property after death. In some civil law countries this responsibility is handled by civil law notaries. In the United States, the estates of the deceased must generally be administered by a court through probate. American lawyers have a monopoly on dispensing advice about probate law (which has been heavily criticized).

1.9 Prosecution and defense of criminal suspects

In many civil law countries, prosecutors are trained and employed as part of the judiciary; they are law-trained jurists, but may not necessarily be lawyers in the sense that the word is used in the common law world. In common law countries, prosecutors

are usually lawyers holding regular licenses who simply happen to work for the government office that files criminal charges against suspects. Criminal defense lawyers specialize in the defense of those charged with any crimes.

2. Specializations for Lawyers

In many countries, lawyers are general practitioners who will take almost any kind of case that walks in the door. In others, there has been a tendency since the start of the 20th century for lawyers to specialize early in their careers. In countries where specialization is prevalent, many lawyers specialize in representing one side in one particular area of the law; thus, it is common in the United Statesto hear of plaintiffs' personal injury attorneys.

Lawyers in private practice generally work in specialized businesses known as law firms, with the exception of English barristers. The vast majority of law firms worldwide are small businesses that range in size from 1 to 10 lawyers. The United States, with its large number of firms with more than 50 lawyers, is an exception. The United Kingdom and Australiaare also exceptions, as the UK,Australia and the U.S. are now home to several firms with more than 1,000 lawyers after a wave of mergers in the late 1990s.

Notably, barristers in England and Wales and some states in Australia do not work in "law firms". Those who offer their services to the general publicas opposed to those working "in house"are required to be self-employed. Most work in groupings known as "sets" or "chambers", where some administrative and marketing costs are shared. An important effect of this different organizational structure is that there is no conflict of interest where barristers in the same chambers work for opposing sides in a case, and in some specialized chambers this is commonplace.

3. Compensation of Lawyers

Lawyers are paid for their work in a variety of ways. In private practice, they may work for an hourly fee according to a billable hour structure, a contingency fee (usually in cases involving personal injury), or a lump sum payment if the matter is straightforward. Normally, most lawyers negotiate a written fee agreement up front and may require a non-refundable retainer in advance. In many countries there are fee-shifting arrangements by which the loser must pay the winner's fees and costs; the United States is the major exception, although in turn, its legislators have carved out many exceptions to the so-called "American Rule" of no fee shifting.

Lawyers working directly on the payroll of governments, nonprofits, and corporations usually earn a regular annual salary. In many countries, with the notable exception of Germany, lawyers can also volunteer their labor in the service of worthy causes through an arrangement

called pro bono (for the common good). Traditionally such work was performed on behalf of the poor, but in some countries it has now expanded to many other causes such as the environment. In some countries, there are legal aid lawyers who specialize in providing legal services to the indigent. France and Spain even have formal fee structures by which lawyers are compensated by the government for legal aid cases on a per-case basis. A similar system, though not as extensive or generous, operates in Australia,Canada, as well as South Africa. In other countries, legal aid specialists are practically nonexistent. This may be because non-lawyers are allowed to provide such services; in both Italy and Belgium, trade unions and political parties provide what can be characterized as legal aid services. Some legal aid in Belgiumis also provided by young lawyer apprentices subsidized by local bar associations (known as the pro deo system), as well as consumer protection nonprofit organizations and Public Assistance Agencies subsidized by local governments. In Germany, mandatory fee structures have enabled widespread implementation of affordable legal expense insurance. The earliest people who could be described as "lawyers" were probably the orators of ancient Athens. However, Athenian orators faced serious structural obstacles. First, there was a rule that individuals were supposed to plead their own cases, which was soon bypassed by the increasing tendency of individuals to ask a "friend" for assistance. However, around the middle of the fourth century, the Athenians disposed of the perfunctory request for a friend. Second, a more serious obstacle, which the Athenian orators never completely overcame, was the rule that no one could take a fee to plead the cause of another. This law was widely disregarded in practice, but was never abolished, which meant that orators could never present themselves as legal professionals or experts. They had to uphold the legal fiction that they were merely an ordinary citizen generously helping out a friend for free, and thus they could never organize into a real professionwith professional associations and titles and all the other pomp and circumstancelike their modern counterparts. Therefore, if one narrows the definition to those men who could practice the legal profession openly and legally, then the first lawyers would have to be the orators of ancient Rome.

4. Titles used for Lawyers

Generally speaking, the modern practice is for lawyers to avoid use of any title, although formal practice varies across the world. Historically lawyers in most European countries were addressed with the title of doctor, and countries outside of Europe have generally followed the practice of the European country which had policy influence through "modernization" or "colonialization." The first university degrees, starting with the law school of the University of Bologna(or glossators) in the 11th century, were all law degrees and doctorates. Degrees in

other fields did not start until the 13th century, but the doctor continued to be the only degree offered at many of the old universities until the 20th century. Therefore, in many of the southern European countries, including Portugal, Spain and Italy, lawyers have traditionally been addressed as doctor, a practice which was transferred to many countries in South America (including Macau in China). Because the law degrees are no longer doctorate level degrees, the formal doctor title for lawyers is either seen as archaic or incorrect, although it is still a legal title in Italy and in use in many countries outside of Europe.

The title of doctor has never been used to address lawyers in Englandor other common law countries (with the exception of the United States). This is because until 1846 lawyers in England were not required to have a university degree and were trained by other attorneys by apprenticeship or in the Inns of Court. Since law degrees started to become a requirement for lawyers in England, the degree awarded has been the undergraduate LL.B. Even though most lawyers in the United States do not use any titles, the law degree in that country is the Juris Doctor, a professional doctorate degree, and some J.D. holders in the United States use the title of "Doctor" in professional and academic situations. In countries where holders of the first law degree traditionally use the title of doctor (e.g. Peru, Brazil, Macau, Portugal, Argentina, and Italy), J.D. holders who are attorneys will often use the title of doctor as well.

Topic : Paralegal Ethics And Other Professional Issues

Topic Objective:

At the end of this topic student would be able to:

- Lean about Paralegals and the Professional Code of Ethics
- Comprehend the procedure of Enforcement of Legal Ethics

Definition/Overview:

Legal ethics: Legal ethics encompasses an ethical code governing the conduct of people engaged in the practice of law. In the United States, the American Bar Association has promulgated model rules that have been influential in many jurisdictions. The model rules address the client-lawyer relationship, duties of a lawyer as advocate in adversary proceedings, dealings with persons other than clients, law firms and associations, public service, advertising, and maintaining the integrity of the profession. Respect of client confidences, candor toward the tribunal, truthfulness in statements to others, and professional

independence are some of the defining features of legal ethics. American law schools are required to offer a course in professional responsibility, which encompasses both legal ethics and matters of professionalism that do not present ethical concerns.

Key Points:

1. Paralegals and the Professional Code of Ethics

Although many paralegals work under the supervision of an attorney, paralegals are professionals in their own right. As many people still have the common misconception that a paralegal's place in the law firm consists of little more than being an underling to a superior, it might be a good idea to get a clearer view of the facts, and possibly set this misconception to rest.

The paralegal's professional status can at once be underscored by what is known as the Professional Code of Ethics. A paralegal is as equally bound to this Code as any attorney in the law firm. He or she is expected to adhere as strictly to the policies set forth in the Code of Ethics, and can face suspension or even termination from both the job and loss of credentials if he or she does not do so. For example, one of the most significant points set forth in the Code of Ethics is that of privileged communications. A paralegal, no different from an attorney, a doctor, or a minister, is bound from disclosing information that he or she is told, has read, or learns, regarding the case and the client. As a paralegal who works in a law firm or for an individual attorney routinely has access to such information in general, and, in many situations, is the person who actually receives the information directly, the information can go no further than the attorney who is actively working on the case.

If someone does not recognize the paralegal in her professional regard, the person may assume that the paralegal is free to talk about a case. This is not true; for whether a paralegal is your best friend, your spouse, or a family member, she is never at liberty to disclose privileged communications. This is a fact which paralegals and the people in their lives must take seriously; for even talking about a case or a client in a vague manner can lead a paralegal to lose not only her job but her credentials to practice in the field. One of the best ways to keep this in its proper perspective is to keep in mind that while you are working for an attorney, you are basically working for the client as well. The trust that the client places in his attorney, he also places in you. This is true whether you have had personal communications

with the client, or whether everything you know about him and the case has come from the paperwork that you have been dealing with on a regular basis in the office. In the legal field, violating a client's confidentiality is something which simply is not allowed, and cannot be allowed. Regardless of the specifics of the case, privileged communications is the client's right, and it is the responsibility of the paralegal as well as the attorney to ensure that this right is not violated.

Even for this reason alone, it is essential for anyone who plans to enter the paralegal field to not only be fully aware of her responsibility for professional conduct, but also be fully willing to adhere to it at all times.

2. Enforcement of Legal Ethics

Every state in theUnited Stateshas a regulatory body (usually called a state bar association) that polices lawyer conduct. When lawyers are licensed to practice in a state, those lawyers subject themselves to this authority. Overall responsibility often lies with the highest court in a state (such as state supreme court). The state bar associations, often in consultation with the court, adopt a set of rules that set forth the applicable ethical duties. As of 2007, 47 states have adopted a version of the American Bar Association's model rules. One state, New York, follows a version of the ABA's older ethical model, the Model Code of Professional Responsibility. California and Maine are the only states that have not adopted either -- instead these states have written their own rules from scratch. There is some debate over whether state ethical rules apply to federal prosecutors. The Department of Justice has held differing opinions through different administrations, with the Thornburgh Memo suggesting these rules do not apply, and the Reno Rules asserting that they do apply. Lawyers who fail to comply with local rules of ethics may be subjected to discipline ranging from private (non-public) reprimand to disbarment.

In Section 2 of this course you will cover these topics:

- The Law: Its Source And Application
- Legal Persons, Property, Contracts And Crimes

Topic : The Law: Its Source And Application

Topic Objective:

At the end of this topic student would be able to:

- Identify the sources of Law

- Learn about Judiciary
- Develop learning regarding the notion of Legislature
- Understand about Executive
- Explore the role of Military and police
- Identify the importance of Bureaucracy

Definition/Overview:

Overview: Law is a system of rules, usually enforced through a set of institutions. It shapes politics, economics and society in numerous ways and serves as the foremost social mediator in relations between people. Writing in 350 BC, the Greek philosopher Aristotle declared, "The rule of law is better than the rule of any individual." Law governs a wide variety of social activities. Contract law regulates everything from buying a bus ticket to trading on derivatives markets. Property law defines rights and obligations related to the transfer and title of personal and real property. Trust law applies to assets held for investment and financial security, while tort law allows claims for compensation if a person's rights or property are harmed. If the harm is criminalised in penal code, criminal law offers means by which the state can prosecute the perpetrator. Constitutional law provides a framework for the creation of law, the protection of human rights and the election of political representatives. Administrative law is used to review the decisions of government agencies, while international law governs affairs between sovereign nation states in activities ranging from trade to environmental regulation or military action

Key Points:

1. Sources of Law

Legal systems elaborate rights and responsibilities in a variety of ways. A basic distinction is generally made between civil law jurisdictions and systems using common law. In some countries, religion informs the law. Scholars investigate the nature of law through many perspectives, including legal history and philosophy, or social sciences such as economics and sociology. The study of law raises important and complex issues concerning equality, fairness, liberty and justice. "In its majestic equality", said the author Anatole France in 1894, "the law forbids rich and poor alike to sleep under bridges, beg in the streets and steal loaves of bread." The central institutions for interpreting and creating law are the three main branches of government, namely an impartial judiciary, a democratic legislature, and an

accountable executive. To implement and enforce the law and provide services to the public, a government's bureaucracy, the military and police are vital. While all these organs of the state are creatures created and bound by law, an independent legal profession and a vibrant civil society inform and support their progress.

2. Judiciary

A judiciary is a number of judges mediating disputes to determine outcome. Most countries have systems of appeal courts, answering up to a supreme legal authority. In the United States, this is the Supreme Court; in Australia, the High Court; in the UK, the House of Lords; in Germany, the Bundesverfassungsgericht; in France, the Cour de Cassation. For most European countries the European Court of Justice in Luxembourg can overrule national law, when EU law is relevant. The European Court of Human Rights in Strasbourg allows citizens of the Council of Europe member states to bring cases relating to human rights issues before it.

Some countries allow their highest judicial authority to over-rule legislation they determined as unconstitutional. In in Roe v Wade, the U.S. Supreme Court overturned a Texas law which forbade the granting of assistance to women seeking abortion. The U.S.'s constitution's fourteenth amendment was interpreted to give Americans a right to privacy, and thus a woman's right to choose abortion. A judiciary is theoretically bound by the constitution, much as legislative bodies are. In most countries judges may only interpret the constitution and all other laws. But in common law countries, where matters are not constitutional, the judiciary may also create law under the doctrine of precedent. The UK, Finlandand New Zealandassert the ideal of parliamentary sovereignty, whereby the unelected judiciary may not overturn law passed by a democratic legislature. In communist states, such as China, the courts are often regarded as parts of the executive, or subservient to the legislature; governmental institutions and actors exert thus various forms of influence on the judiciary. In Muslim countries, courts often examine whether state laws adhere to the Sharia: the Supreme Constitutional Court of Egypt may invalidate such laws, and in Iranthe Guardian Council ensures the compatibility of the legislation with the "criteria of Islam".

3. Legislature

Prominent examples of legislatures are the Houses of Parliament in London, the Congress in Washington D.C., the Bundestag in Berlin, the Duma in Moscow, the Parlamento Italiano in Romeand the Assemble nationale in Paris. By the principle of representative government people vote for politicians to carry out their wishes. Although countries like Israel,Greece, Sweden and China are unicameral, most countries are bicameral, meaning they have two

separately appointed legislative houses. In the 'lower house' politicians are elected to represent smaller constituencies. The 'upper house' is usually elected to represent states in a federal system (as in Australia,Germany or the United States) or different voting configuration in a unitary system (as in France). In the UKthe upper house is appointed by the government as a house of review. One criticism of bicameral systems with two elected chambers is that the upper and lower houses may simply mirror one another. The traditional justification of bicameralism is that an upper chamber acts as a house of review. This can minimize arbitrariness and injustice in governmental action.

To pass legislation, a majority of Members of Parliament must vote for a bill (proposed law) in each house. Normally there will be several readings and amendments proposed by the different political factions.

If a country has an entrenched constitution, a special majority for changes to the constitution will be required, making changes to the law more difficult. A government usually leads the process, which can be formed from Members of Parliament (e.g. the UK or Germany). But in a presidential system, an executive appoints a cabinet to govern from his or her political allies whether or not they are elected (e.g. the United States or Brazil), and the legislature's role is reduced to either ratification or veto.

4. Executive

The executive in a legal system serve as a government's centre of political authority. In a parliamentary system, as with Britain,Italy, Germany, India, and Japan, the executive is known as the cabinet, and composed of members of the legislature. The executive is chosen by the Prime Minister or Chancellor, whose office holds power under the confidence of the legislature. Because popular elections appoint political parties to govern, the leader of a party can change in between elections. The head of state is apart from the executive, and he/she usually lacks formal political power yet symbolically enacts laws and acts as representative of the nation. Examples include the German president (appointed by the Parliament); the Queen of the United Kingdom (a hereditary title), and the Austrian president (elected by popular vote). The other important model is the presidential system, found in France, the U.S. and Russia. In presidential systems, the executive acts as both head of state and head of government, and has power to appoint an unelected cabinet. Under a presidential system, the executive branch is separate from the legislature to which is not accountable.

Although the role of the executive varies from country to country, usually it will propose the majority of legislation, and propose government agenda. In presidential systems, the executive often has the power to veto legislation. Most executives in both systems are

responsible for foreign relations, the military and police, and the bureaucracy. Ministers or other officials head a country's public offices, such as a foreign ministry or interior ministry. The election of a different executive is therefore capable of revolutionizing an entire country's approach to government.

5. Military and police

While military organizations have existed as long as government itself, the idea of a standing police force is relatively modern concept. Medieval England's system of traveling criminal courts, or assizes, used show trials and public executions to instill communities with fear to maintain control. The first modern police were probably those in 17th century Paris, in the court of Louis XIV, although the Paris Prefecture of Police claim they were the world's first uniformed policemen. Weber famously argued that the state is that which controls the legitimate monopoly of the means of violence. The military and police carry out enforcement at the request of the government or the courts. The term failed state refers to states that cannot implement or enforce policies; their police and military no longer control security and order and society moves into anarchy, the absence of government.

6. Bureaucracy

The etymology of "bureaucracy" derives from the French word for "office" (bureau) and the Ancient Greek for word "power" (kratos). Like the military and police, a legal system's government servants and bodies that make up its bureaucracy carry out the directives of the executive. One of the earliest references to the concept was made by Baron de Grimm, a German author who lived in France. In 1765 he wrote,

"The real spirit of the laws in Franceis that bureaucracy of which the late Monsieur de Gournay used to complain so greatly; here the offices, clerks, secretaries, inspectors and intendants are not appointed to benefit the public interest, indeed the public interest appears to have been established so that offices might exist." Cynicism over "officialdom" is still common, and the workings of public servants are typically contrasted to private enterprise motivated by profit. In fact private companies, especially large ones, also have bureaucracies. Negative perceptions of "red tape" aside, public services such as schooling, health care, policing or public transport are a crucial state function making public bureaucratic action the locus of government power. Writing in the early 20th century, Max Weber believed that a definitive feature of a developed state had come to be its bureaucratic support. Weber wrote that the typical characteristics of modern bureaucracy are that officials define its mission, the scope of work is bound by rules, management is composed of career experts, who manage top down, communicating through writing and binding public servants' discretion with rules.

Topic : Legal Persons, Property, Contracts And Crimes

Topic Objective:

At the end of this topic student would be able to:

- Learn about Creation and history of the doctrine of Legal persons
- Identify the limitations of Legal Persons
- Learn about extension of basic rights to legal persons
- Comprehend the notion of Limited Liability
- Develop learning regarding Contractual theory

Definition/Overview:

Legal Person: A legal person, also called juridical person or juristic person, is a legal entity through which the law allows a group of natural persons to act as if they were a single composite individual for certain purposes, or in some jurisdictions, for a single person to have a separate legal personality other than their own. This legal fiction does not mean these entities are human beings, but rather means that the law allows them to act as persons for certain limited purposesmost commonly lawsuits, property ownership, and contracts. This concept is separate from and should not be confused with limited liability or the joint stock principle. Also note that basic rights (like the rights to free speech and due process of law) do not necessarily follow from legal personhood.

Key Points:

1. Creation and history of the doctrine

A legal person is sometimes called an artificial person or legal entity (although the latter is sometimes understood to include natural persons as well). Although the concept of a legal person is more central to Western law in both common law and civil law countries, it is also found in virtually every legal system. In England and the United States, the use of this terminology does not mean that legal persons are considered human beings. It is simply a "technical legal meaning" in which "a 'person' is any subject of legal rights and duties."

Because these entities may have legal rights and duties, they are considered 'legal persons' to distinguish them from natural persons.

In the common law tradition, only a person could sue or be sued. This was not a problem in the era before the Industrial Revolution, when the typical business venture was either a sole proprietorship or partnershipthe owners were simply liable for the debts of the business. A feature of the corporation, however, is that the owners/shareholders enjoyed limited liabilitythe owners were not liable for the debts of the company. Thus, when a corporation breached a contract or broke a law, there was no remedy, because limited liability protected the owners and the corporation wasn't a legal person subject to the law. There was no accountability for corporate wrong-doing. To resolve the issue, the legal personality of a corporation was established to include five legal rights -- the right to a common treasury or chest (including the right to own property), the right to a corporate seal (i.e., the right to make and sign contracts), the right to sue and be sued (to enforce contracts), the right to hire agents (employees) and the right to make by-laws (self-governance).

Since the 1800s, legal personhood has been further construed to make it a citizen, resident, or domiciliary of a state (usually for purposes of personal jurisdiction). In Louisville, C. & C.R. Co. v. Letson, 2 How. 497, 558, 11 L.Ed. 353 (1844), the U.S. Supreme Court held that for the purposes of the case at hand, a corporation is capable of being treated as a citizen of [the State which created it], as much as a natural person. Ten years later, they reaffirmed the result of Letson, though on the somewhat different theory that those who use the corporate name, and exercise the faculties conferred by it, should be presumed conclusively to be citizens of the corporation's State of incorporation. Marshallv. Baltimore & Ohio R. Co., 16 How. 314, 329, 14 L.Ed. 953 (1854). These concepts have been superseded by statute, since U.S. jurisdictional statutes specifically address the domicile of corporations.

2. Limitations of Legal Persons

There are limitations to the legal recognition of legal persons. Legal entities cannot marry, they usually cannot vote or hold public office, and in most jurisdictions there are certain positions which they cannot occupy. The extent to which a legal entity can commit a crime varies from country to country. Certain countries prohibit a legal entity from holding human rights; other countries permit artificial persons to enjoy certain protections from the state that are traditionally described as human rights.

Special rules related to legal persons in relation to the law of defamation. Defamation is the area of law in which a person's reputation has been unlawfully damaged. This is considered

an ill in itself in regard to natural person, but a legal person is required to show actual or likely monetary loss before a suit for defamation will succeed.

3. Extension of basic rights to legal persons

In part based on the principle that legal persons are simply organizations of human individuals, and in part based on the history of statutory interpretation of the word "person," the U.S. Supreme Court has repeatedly held that certain constitutional rights protect legal persons (like corporations and other organizations). Santa Clara County v. Southern Pacific Railroad is sometimes cited for this finding, because the court reporter's comments included a statement the Chief Justice made before oral arguments began, telling the attorneys during pre-trial that "the court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does." Later opinions misinterpreted these pre-argument comments as part of the legal decision. As a result, because of the First Amendment, Congress can't make a law restricting the free speech of a corporation, a political action group or dictating the coverage of a local newspaper. Because of the Due Process Clause, a state government can't take the property of a corporation without using due process of law and providing just compensation. These protections apply to all legal entities, not just corporations.

Article 19, Paragraph 5 of the Basic Law declares: "The basic rights shall also apply to domestic artificial persons to the extent that the nature of such rights permits."

For a typical example of the concept of legal person in a civil law jurisdiction, under the General Principles of Civil Law of the People's Republic of China, "[j]uristic persons are organs which possess the capacity for civil rights and the capacity for civil activity, and in accordance with the law, independently enjoy civil rights and undertake civil obligations." Note however that the term civil right means something altogether different in civil law jurisdictions than in common law jurisdictions.

4. Limited Liability

Limited liability is a concept whereby a person's financial liability is limited to a fixed sum, most commonly the value of a person's investment in a company or partnership with limited liability. A shareholder in a limited company is not personally liable for any of the debts of the company, other than for the value of his investment in that company. The same is true for the members of a limited liability partnership and the limited partners in a limited partnership. By contrast, sole proprietors and partners in general partnerships are each liable for all the debts of the business (unlimited liability). Although a shareholder's liability for the

company's actions is limited, the shareholder may still be liable for its own acts. For example, the directors of small companies (who are frequently also shareholders) are often required to give personal guarantees of the company's debts to those lending to the company. They will then be liable for those debts in the event that the company cannot pay, although the other shareholders will not be so liable. This is known as co-signing.

5. Contract

A contract is an exchange of promises between two or more parties to do, or refrain from doing, an act which is enforceable in a court of law. It is a binding legal agreement. That is to say, a contract is an exchange of promises for the breach of which the law will provide a remedy. Agreement is said to be reached when an offer capable of immediate acceptance is met with a "mirror image" acceptance (ie, an unqualified acceptance). The parties must have the necessary capacity to contract and the contract must not be either trifling, indeterminate, impossible or illegal. Contract law is based on the principle expressed in the Latin phrase pacta sunt servanda (usually translated "pacts must be kept", but more literally "agreements are to be kept"). Breach of contract is recognized by the law and remedies can be provided. Sometimes written contracts are required, such as when buying a house. However, most contracts can be and are made orally, such as purchasing a book or a sandwich. Contract law can be classified, as is habitual in civil law systems, as part of a general law of obligations (along with tort, unjust enrichment or restitution).

According to legal scholar Sir John William Salmond, a contract is "an agreement creating and defining the obligations between two or more parties".

As a means of economic ordering, contract relies on the notion of consensual exchange and has been extensively discussed in broader economic, sociological and anthropological terms. This article mainly concerns contract law in common law jurisdictions (approximately coincident with the English-speaking world and anywhere the British Empire once held sway). However, contract is a form of economic ordering common throughout the world, and different rules apply in jurisdictions applying civil law (derived from Roman law principles), Islamic law, socialist legal systems, and customary or local law. The primacy of discussion of common law principles in writing about contract may derive from the primacy of these systems in international business. Common law jurisdictions usually offer proceedings in the English language, which has become to an extent the lingua franca of international business, tend to have much larger law firms than in civilian jurisdictions, able to satisfy clients that

their range of legal needs can be met, and unlike civilian jurisdictions, judges in common law jurisdictions are generally senior lawyers of considerable practical experience. Another possible reason is that the common law retains a high degree of freedom of contract, with parties largely free to set their own terms, whereas civilian systems typically prescribe large parts of the contents of contracts for the parties, with no opt-out provision. It is very common for businesses not located in common law jurisdictions to opt in to the common law through "choice of law" clauses, with the most common jurisdictions of choice probably being England & Walesand New York.

6. Contractual theory

Contract theory is the body of legal theory that addresses normative and conceptual questions in contract law. One of the most important questions asked in contract theory is why contracts are enforced. One prominent answer to this question focuses on the economic benefits of enforcing bargains. Another approach, associated with Charles Fried, maintains that the purpose of contract law is to enforce promises. This theory is developed in Fried's book, Contract as Promise. Other approaches to contract theory are found in the writings of legal realists and critical legal studies theorists.

More generally, writers have propounded Marxist and feminist interpretations of contract. Attempts at overarching understandings of the purpose and nature of contract as a phenomenon have been made, notably 'relational contract theory' originally developed by U.S. contracts scholars Ian Roderick Macneil and Stewart Macaulay, building at least in part on the contract theory work of U.S. scholar Lon L. Fuller, while U.S. scholars have been at the forefront of developing economic theories of contract focusing on questions of transaction cost and so-called 'efficient breach' theory.

Another dimension of the theoretical debate in contract is its place within, and relationship to a the wider law of obligations. Obligations have traditionally been divided into contracts, which are voluntarily undertaken and owed to a specific person or persons, and obligations in tort which are based on the wrongful infliction of harm to certain protected interests, primarily imposed by the law, and typically owed to a wider class of persons. Recently it has been accepted that there is a third category, restitutionary obligations, based on the unjust enrichment of the defendant at the plaintiffs expense. Contractual liability, reflecting the constitutive function of contract, is generally for failing to make things better (by not rendering the expected performance), liability in tort is generally for action (as opposed to omission) making things worse, and liability in restitution is for unjustly taking or retaining the benefit of the plaintiffs money or work.

Compare with the U.S. context, the Uniform Commercial Code defining "Contract" as "the total legal obligation which results from the partys agreement" and does not attempt to state what act is essential to create a legal duty to perform a promise. The common law describes the circumstances under which the law will recognize the existence of rights, privilege or power arising out of a promise.

In Section 3 of this course you will cover these topics:

- Interviewing And Investigations
- Tort Law And The Indispensable Specialty: Civil Litigation

Topic : Interviewing And Investigations

Topic Objective:

At the end of this topic student would be able to:

- Learn about Interrogation techniques
- Understand the notion of Presentence Investigation
- Comprehend the factors of Investigative psychology

Definition/Overview:

Interviewing: Interrogation or questioning is interviewing as commonly employed by officers of the police and military. The interviewee is also referred to as a "source". It is used for getting information from a suspect, witness or victim after a crime has been committed. Interviewing is not necessarily to force a confession, but rather to develop sufficient rapport as to prompt the source to disclose valuable information. Interrogation is accusatory in nature, and the suspect is told that they committed the offense, and presented with facts to obtain a confession.

Key Points:

1. Interrogation techniques

There are multiple possible methods of interrogation including deception, torture, increasing suggestibility, and using mind-altering drugs.

1.1 Suggestibility

The methods used to increase suggestibility are moderate sleep deprivation, exposure to constant white noise, and using GABAergic drugs such as sodium amytal.

1.2 Reid

One notable interrogation technique is the Reid technique. However, the Reid technique (which requires interrogators to watch the body language of suspects to detect deceit) has been criticized for being too difficult to apply across cultures and is impracticable for many law enforcement officers.

1.3 Deception

Deception can form an important part of effective interrogation. In the United States, there is no law or regulation that forbids the interrogator from lying, from making misleading statements or from implying that the interviewee has already been implicated in the crime by someone else.

1.4 Torture

Interrogations may involve torture, which various human rights organizations claimed to be ineffective at producing accurate information but is effective in getting false confessions which might be useful for political reasons for the officer and organization in question by raising the number of successful investigations. However, some argue that one of the reasons torture endures is that torture does indeed work in some instance to extract information/confession, if those who are being tortured are indeed guilty and provide details of crime/plot only the guilty party could produce. Richard Posner, a highly influential judge on the United States Court of Appeals for the Seventh Circuit, further argues that "If torture is the only means of obtaining the information necessary to prevent the detonation of a nuclear bomb in Times Square, torture should be usedand will be usedto obtain the information. ... no one who doubts that this is the case should be in a position of responsibility."

2. Presentence Investigation

A presentence investigation report (PSI) is a legal term referring to the investigation into the history of person convicted of a crime before sentencing to determine if there are extenuating circumstances which should ameliorate the sentence or a history of criminal behavior to increase the harshness of the sentence. The reports trace their origins to the efforts of prison reformer John Augustus who in the 1840s began a campaign to allow discretion in sentencing to help those who were deemed undeserving of harsh sentences and could be reformed. The practice became firmly entrenched in the 1920s under a theory that crime was a pathology that could be diagnosed and treated like a disease.

The reports had normally been prepared by the government (usually by the probation officer) but in the 1970s and 1980s, defense attorneys began also preparing the reports. This in turn has led to new laws taking away judge discretion and imposing mandatory sentences based on formulas of previous criminal behavior. The basic information now includes:

- identification data
- family history
- marital history
- education history
- employment history
- economic data
- military record
- health history
- substance abuse/use and any mental health history
- arrest record, including any prior or pending cases (non-public record)
- additional information deemed relevant by the probation officer or the defendant

The report is immediately to help the court determine an appropriate sentence and also serves other purposes. Since the advent of the sentencing guidelines, the importance of the presentence report has increased because the document is now designed to frame factual and legal issues for sentencing. Thereafter, if a defendant is incarcerated, the Bureau of Prisons or State Department of Corrections will use information in the report to designate the institution where the offender will serve the sentence and determine the offender's eligibility or need for specific correctional programs. Also, depending on the jurisdiction, the presentence report can be used to calculate the release date. The probation officer assigned responsibility for the offender's case during probation and supervised release will use the report to make an initial assessment of case needs and risks. Additionally, the report may be used as a source of information for future research.

Probation officers investigate by interviewing and reviewing documents. Unless the defendant declines, the defendant is questioned in every case. Additionally, the officer should interview the defense counsel, the prosecutor, law enforcement agents who investigated the conduct that led to the defendant's conviction, victims, the defendant's family, present or previous employers, school officials, doctors, counselors, and others. The diverse interview

settings that probation officers encounter require them to be proficient in a variety of questioning techniques.

During any investigation a probation officer may review numerous documents including: court dockets, plea agreements, investigative reports from numerous agencies, previous probation or parole records, pretrial services records, medical records, counseling and substance abuse treatment records, scholastic records, employment records, financial records, and others. The probation officer must scrutinize each document received and determine the likely accuracy of the record.

Whether interviewing or reviewing documents, the probation officer must weigh the evidence based on the best available information. The final report must contain only accurate information. The goal is to produce a report that the court may rely upon at sentencing. Though it is inevitable that there will be data that the probation officer is unable to verify, that information should be clearly identified. The probation officer must distinguish between facts and the inferences, opinions, or conclusions based upon those facts.

When a defendant is referred for a presentence investigation, the officer must immediately begin to gather the facts. Though the procedure varies somewhat from jurisdiction to jurisdiction, the officer usually conducts several aspects of the investigation concurrently to ensure that the presentence report is submitted to the court on time. Since officers routinely conduct multiple presentence investigations simultaneously, meeting the deadlines can be difficult. Local rules, adopted by the judges of each jurisdiction, supplement the federal rules and set a specific schedule for the disclosure of the initial draft of the presentence report to the defendant and both counsel, for the filing of objections to the report by counsel, and for the submission of the final report to the court, the defendant, and counsel. The report must be disclosed to the court, the defendant, defendant's counsel, and the attorney for the government at least before the sentencing.

The probation officer must manage the investigation process within the time line established by those rules. In addition to gathering information, the officer must plan to verify that information, interpret and evaluate the data, determine the appropriate sentencing guidelines and statutes to the specific facts of the case, and present the results of the investigation in an organized and objective report. The probation officer must set deadlines for the submission of information by the defendant and others and monitor compliance with the deadlines. Ideally, the offender is available for the interview early in the investigation. The defendant interview is the pivotal point around which the presentence investigation turns. Often, the format is a structured interview during which a standard worksheet is completed. The worksheet follows

the format of the presentence report and provides space for recording data about the offense and the offender's characteristics and history. Each item on the form is reviewed with the defendant. Even though some of the data solicited from the offender during this interview may not appear in the final report, it is impossible at this stage to determine what information will be included. No question is asked without a purpose. The defendant's answers will determine follow up questions, items for further investigation or corroboration, and, ultimately, whether the data should be included in the report.

The presentence investigation is often the first inquiry into the offender's past, and the initial interview provides the framework for the report's description of the offender's history and circumstances. The probation officer inquires about the defendant's family and developmental history, familial and marital relationships, education, employment history, physical and mental health, alcohol or controlled substance abuse, and finances. The emphasis throughout the questioning is on identifying information that is relevant for understanding the defendant's offense conduct and present situation. During the interview, the probation officer will ask the offender to sign authorizations to release confidential information. At the conclusion of the initial interview, the offender may be asked to provide numerous documents to the probation officer substantiating the offender's complete life history. Additionally, the offender may be asked to submit an autobiography fleshing out the skeletal information already gathered about the social history.

Before interviewing the defendant about the offense, the probation officer must review official descriptions of the offense conduct and the applicable guidelines. As a result, it is often necessary to postpone a discussion of the offense until a second interview. The offender is also asked to submit a written statement about the offense conduct.

The second interview may be schedule either in the probation office or in the offender's home. By visiting the home, the probation officer may verify information by talking to other family members and may obtain clues about the offender's standard of living, community ties, and use of alcohol or controlled substances. A second interview is also an opportunity to clarify any vague, contradictory, or confusing information.

The probation officer's investigation of the offense usually begins with an examination of the complaint, information, or indictment charging the defendant and the docket describing the judicial history of the case. These documents may be found in the district court clerk's file. The officer will use them to develop a brief chronological history of the prosecution of the case and identify the specific charges that resulted in the conviction. The review of the clerk's file may also reveal the identities of co-defendants or related cases, the status of which must

be investigated and reported in the presentence report. At the same time, the probation officer may also request information about the offender's history, circumstances, and release status from the pretrial services officer or from a separate pretrial services agency.

Another step that must occur early in the investigation is contact prosecutor assigned to the case. The prosecutor will be asked to provide information about the conduct that resulted in the defendant's conviction, victim's losses, the defendant's history, and any other data relevant to the sentencing decision. During the investigation, the defense counsel will also be asked to discuss the same topics. Additionally, the probation officer must make an inquiry into the offender's criminal history. This is usually accomplished by using databases maintained by the Federal Bureau of Investigation (FBI,) the National CrimeInformation Center(NCIC,) or state law enforcement agencies. Though the guideline criminal history category is based only upon sentences imposed for juvenile adjudications and criminal convictions meeting specific criteria, the probation officer reports all known incidents in which the defendant has been involved in criminal behavior to partially fulfill the statutory mandate to provide information to the court regarding the history and characteristics of the defendant. The early examination of computerized criminal history records enables the officer to identify which law enforcement, court, and correctional records must be reviewed. In addition, the initial interview of the defendant should include questioning about the offender's residential history so that the officer can check local police and court records in every jurisdiction where the defendant has lived.

After the interview of the offender, contact with the prosecutor, and the criminal history inquiry, the probation officer must identify any information gaps, must identify potential sources for the missing information, and must plan on how to eliminate the gaps. It may be necessary for the investigating officer to request another probation officer in another jurisdiction to conduct a collateral investigation about a specific aspect of the case. Supplemental interviews may be scheduled with case agents, victims, family members, employers, counselors, or others. Additionally, the probation officer may request physical and mental health, educational, employment or financial records from a variety of sources to corroborate information provided by the offender. Gradually, the emphasis shifts from gathering information to analyzing data. The probation officer must take the tentative findings of fact regarding the offense conduct and criminal history and must make tentative applications of the sentencing guidelines. The applicable sentencing options that the probation officer must recite in the presentence report. Additionally, the probation officer must study the case to identify potential grounds for departure from the guidelines and then

must analyze any potential departure to determine if it is valid. During the investigation, the probation officer may consult a probation officer specialist who is a subject matter expert about guidelines, financial investigation, mental health, substance abuse, or some other aspect of the case. The probation officer may also consult a supervisor or, in a team environment, other members of the officer's team.

Finally, the probation officer must write a draft of the report for disclosure to the defendant and the attorneys. When objections to report are received, the probation officer must manage the resolution of disputes. The officer must be impartial and open to opposing perspective and must consider all relevant and reliable information before making an independent judgment about the tentative findings of fact and guideline applications that will be recommended to the court. The probation officer must be prepared to report unresolved disputes to the court in a detached, dispassionate manner focusing on the factual or legal disagreement among the parties.

After revising the report in response to objections, the probation officer develops a sentencing recommendation based on the facts and sentencing options identified in the report. The written justification for the recommendation is the probation officer's evaluation and analysis of the offense, the offender, and the sentencing options. The justification provides the officer's rationale for the specific sentencing recommendations. It should address the statutory factors to be considered in imposing a sentence and should assist the court in the preparation of the judge's statement of reasons for imposing a sentence. The officer then discloses the final report and sentencing recommendation to court. Also, the officer discloses the report (excluding the recommendation) to the defendant, and both attorneys, but the job is not finished. The probation officer must be prepared to discuss the case with the sentencing judge in chambers or in court, to answer questions about the report that arise during the sentencing hearing, and, ultimately, to testify under oath in open court as to the basis for the factual findings and guideline applications recommended in the report.

In the Federal System, after the offender's sentencing by the Court, the probation officer must ensure that copies of the pre-sentence report and other requested documents are forwarded to the U.S. Bureau of Prisons and the U.S. Sentencing Commission. If possible, the probation officer must also interview the offender after sentencing and instruct the defendant about the conditions of supervision that the court imposed. A written copy of the conditions of supervision must be provided to each offender.

3. Investigative psychology

It brings together issues in the retrieval of investigative information, the drawing of inferences about that information and the ways in which police decision making can be supported through various systems derived from scientific research. It should not be confused with profiling which grew out of the experience of police officers offering opinions to their colleagues about the possible characteristics of unknown offenders. Investigative Psychology grows directly out of empirical research and logical inference to cover the full range of investigative activities not only the preparation of 'profiles'. The inference processes at the heart of Investigative Psychology contrast with the approach used in the FBI which emphasizes subjective processes such as "thinking like the criminal". Investigative Psychology stresses that the results of scientific psychology can contribute to many aspects of civilian and criminal investigation, including the full range of crimes from burglary to terrorism, not just those extreme crimes of violence that have an obvious psychopathic component.

The contribution to investigations draws on the extent to which an offender displays various tested characteristics. as well as procedures for enhancing the processes by which interviews are carried out or information is put before the courts. One aim of investigative psychology research is determining behaviorally important and empirically supported information regarding the consistency and variability of the behavior of many different types of offenders, although to date most studies have been of violent crimes there is a growing body of research on burglary and arson. It is also important to establish valid and reliable methods of distinguishing between offenders and between offences.

Already the use of statistical analysis techniques such as Multi dimensional scaling in offender profiling has provided support for a theoretical distinction between homicide offenders as either instrumental (43% of offenders) or expressive (31% of offenders) in their use of aggression. This method of analysis has also expanded upon the original theoretical distinction by identifying sub-themes of aggressive action which can be used to further discriminate amongst offenders. These behavioural themes have also been linked to background characteristics and post-offence behaviour, demonstrating their usefulness to the investigation of serial murder cases. The development and application of these techniques to serial offenders is likely to facilitate an increase in the validity of offender profiling of serial murderers.

Topic : Tort Law And The Indispensable Specialty: Civil Litigation

Topic Objective:

At the end of this topic student would be able to:

- Learn about Standard of Care and Tort Law
- Understand Categories of torts
- Identify Negligence under Tort Law
- Develop learning regarding Statutory, Nuisance torts
- Comprehend the notion of Defamation
- Learn about Intentional torts
- Comprehend the basic concepts behind Economic torts

Definition/Overview:

Tort Law: Tort law is the name given to a body of law that addresses, and provides remedies for, civil wrongs not arising out of contractual obligations. A person who suffers legal damages may be able to use tort law to receive compensation from someone who is legally responsible, or "liable," for those injuries. Generally speaking, tort law defines what constitutes a legal injury and establishes the circumstances under which one person may be held liable for another's injury. Torts cover intentional acts and accidents.
For instance, Alice throws a ball and accidentally hits Brenda in the eye. Brenda may sue Alice for losses occasioned by the accident (e.g., costs of medical treatment, lost income during time off work, pain and suffering, etc.). Whether or not Brenda wins her suit depends on if she can prove Alice engaged in tortuous conduct. Here, Brenda would attempt to prove Alice had a duty and failed to exercise the standard of care which a reasonable person would render in throwing the ball.

Key Points:

1. Standard of Care and Tort Law
One of the main topics of the substance of tort law is determining the "standard of care" - a legal phrase that means distinguishing between when conduct is or is not tortuous. Put another way, the big issue is whether a person suffers the loss from his own injury, or whether it gets transferred to someone else.

Going back to the example above, if Alicethrew the ball at Brenda on purpose, Brenda could sue for the intentional tort of battery. If it was an accident, Brenda must prove negligence. To do this, Brenda must show that her injury was reasonably foreseeable, that Alice owed Brenda a duty of care not to hit her with the ball, and that Alicefailed to meet the standard of care required. In much of the western world, the touchstone of tort liability is negligence. If the injured party cannot prove that the person believed to have caused the injury acted with negligence, at the very least, tort law will not compensate them. Tort law also recognizes intentional torts and strict liability, which apply to defendants who engage in certain actions. In tort law, injury is defined broadly. Injury does not just mean a physical injury, such as where Brenda was struck by a ball. Injuries in tort law reflect any invasion of any number of individual "interests." This includes interests recognized in other areas of law, such as property rights. Actions for nuisance and trespass to land can arise from interfering with rights in real property. Conversion and trespass to chattels can protect interference with movable property. Interests in prospective economic advantages from contracts can also be injured and become the subject of tort actions. A number of situations caused by parties in a contractual relationship may nevertheless be tort rather than contract claims, such as breach of fiduciary duty. Tort law may also be used to compensate for injuries to a number of other individual interests that are not recognized in property or contract law, and are intangible. This includes an interest in freedom from emotional distress, privacy interests, and reputation. These are protected by a number of torts such as infliction, privacy torts, and defamation. Defamation and privacy torts may, for example, allow a celebrity to sue a newspaper for publishing an untrue and harmful statement about him. Other protected interests include freedom of movement, protected by the intentional tort of false imprisonment.

The equivalent of tort in civil law jurisdictions is delict. The law of torts can be categorized as part of the law of obligations, but unlike voluntarily assumed obligations (such as those of contract, or trust), the duties imposed by the law of torts apply to all those subject to the relevant jurisdiction. To behave in 'tortuous' manner is to harm another's body, property, or legal rights, or possibly, to breach a duty owed under statute. One who commits a tortuous act is called a "tortfeasor". Torts is one of the American Bar Association mandatory first year law school courses.

2. Categories of torts

Torts may be categorized in a number of ways: one such is to divide them into Negligence Torts, and Intentional Torts. The dominant action in tort is negligence. The tort of negligence

provides a cause of action leading to damages, or to injunctive relief, in each case designed to protect legal rights, including those of personal safety, property, and, in some cases, intangible economic interests. Negligence actions include claims arising primarily from automobile accidents and personal injury accidents of many kinds, including clinical negligence. Product liability cases may also be considered negligence actions, but there is frequently a significant overlay of additional statutory content.

Among intentional torts may be certain torts arising out of the occupation or use of land. One such is the tort of nuisance, which connotes strict liability for a neighbor who interferes with another's enjoyment of his real property. Trespass allows owners to sue for incursions by a person (or his structure, for example an overhanging building) on their land.

3. Negligence under Tort Law

Negligence is a tort which depends on the existence of a breach of duty of care owed by one person to another. One well-known case is Donoghue v. Stevenson where Mrs. Donoghue consumed part of a drink containing a decomposed snail while in a public bar in Paisley, Scotland and claimed that it had made her ill. The snail was not visible, as the bottle of ginger beer in which it was contained was opaque. Neither her friend, who bought it for her, nor the shopkeeper who sold it were aware of its presence. The manufacturer was Mr. Stevenson, whom Mrs. Donoghue sued for damages for negligence. She could not sue Mr. Stevenson for damages for breach of contract because there was no contract between them. The majority of the members of the House of Lords agreed (3-2) that Mrs. Donoghue had a valid claim, but disagreed as to why such a claim should exist. Lord MacMillan thought this should be treated as a new product liability case. Lord Atkin argued that the law should recognize a unifying principle that we owe a duty of reasonable care to our neighbors. He quoted the Bible in support of his argument, specifically the general principle that "thou shalt love thy neighbor." The elements of negligence are:

- Duty of care
- Breach of that duty
- Breach being a proximate or not too remote a cause, in law
- Breach causing harm in fact

4. Statutory torts

A statutory tort is like any other, in that it imposes duties on private or public parties, however they are created by the legislature, not the courts. One example is in consumer

protection, with the Product Liability Directive in the European Union, where businesses making defective products that harm people must pay for any damage resulting. Liability for defective products is strict in most jurisdictions. The theory of risk spreading provides support for this approach. Since manufacturers are the 'cheapest cost avoiders', because they have a greater chance to seek out problems, it makes sense to give them the incentive to guard against product defects. Another example is the Occupiers' Liability Acts in the UK whereby a person, such as a shop-owner, who invites others onto land, or has trespassers, owes a minimum duty of care for people's safety. One early case was Cooke v Midland Great Western Railway of Ireland, where Lord MacNaughton felt that children who were hurt whilst looking for berries on a building site, should have some compensation for their unfortunate curiosity. Statutory torts also spread across workplace health and safety laws and health and safety in food produce. The concept of statutory torts is not held throughout all common-law countries, however. Courts in both the United States and Canada have rejected the concept that a statutory duty can be the basis of a private cause of action, absent a specific provision in statute authorizing such a cause of action.

5. Nuisance

Legally, the term nuisance is traditionally used in three ways: (1) to describe an activity or condition that is harmful or annoying to others (e.g., indecent conduct, a rubbish heap or a smoking chimney); (2) to describe the harm caused by the before-mentioned activity or condition (e.g., loud noises or objectionable odors); and (3) to describe a legal liability that arises from the combination of the two. The law of nuisance was created to stop such bothersome activities or conduct when they unreasonably interfered either with the rights of other private landowners (i.e., private nuisance) or with the rights of the general public (i.e., public nuisance).

The tort of nuisance allows a claimant (formerly plaintiff) to sue for most acts that interfere with their use and enjoyment of their land. A good example of this is in the case of Jones v Powell (1629). A brewery made stinking vapors which wafted onto neighbors' property, damaging his papers. As he was a landowner, the neighbor sued in nuisance for this damage. But Whitelocke J, speaking for the Court of the King's Bench, said that because the water supply was contaminated, it was better that the neighbor's documents were risked. He said "it is better that they should be spoiled than that the common wealth stand in need of good liquor." Nowadays, interfering with neighbors' property is not looked upon so kindly. Nuisance deals with all kinds of things that spoil a landowner's enjoyment of his property. A subset of nuisance is known as the rule in Rylands v. Fletcher where a dam burst into a coal

mine shaft. So a dangerous escape of some hazard, including water, fire, or animals means strict liability in nuisance. This is subject only to a remoteness cap, familiar from negligence when the event is unusual and unpredictable. This was the case where chemicals from a factory seeped through a floor into the water table, contaminating East Anglia's reservoirs.

6. Defamation

Defamation is tarnishing the reputation of someone; it is in two parts, slander and libel. Slander is spoken defamation and libel is printed and broadcast defamation, both share the same features. Defaming someone entails making a factual assertion for which evidence does not exist. Defamation does not affect or hinder the voicing of opinions, but does occupy the same fields as rights to free speech in the United States Constitution's First Amendment, or the European Convention's Article 10. Related to defamation in the U.S. are the actions for misappropriation of publicity, invasion of privacy, and disclosure. Abuse of process and malicious prosecution are often classified as dignitary torts as well.

7. Intentional torts

Intentional torts are any intentional acts that are reasonably foreseeable to cause harm to an individual, and that do so. Intentional torts have several subcategories, including tort(s) against the person, including assault, battery, false imprisonment, intentional infliction of emotional distress, and fraud. Property torts involve any intentional interference with the property rights of the claimant. Those commonly recognized include trespass to land, trespass to chattels, and conversion.

8. Economic torts

Economic torts protect people from interference with their trade or business. The area includes the doctrine of restraint of trade and has largely been submerged in the twentieth century by statutory interventions on collective labour law and modern antitrust or competition law. The "absence of any unifying principle drawing together the different heads of economic tort liability has often been remarked upon." Two cases demonstrated economic tort's affinity to competition and labor law. In Mogul Steamship Co. Ltd. the plaintiff argued he had been driven from the Chinese tea market by competitors at a 'shipping conference' that had acted together to under price his company. But this cartel was ruled lawful and "nothing more [than] a war of competition waged in the interest of their own trade." Nowadays, this would be considered a criminal cartel. In labor law the most notable case is Taff Vale

Railway v. Amalgamated Society of Railway Servants. The House of Lords thought that unions should be liable in tort for helping workers to go on strike for better pay and conditions. But it riled workers so much that it led to the creation of the British Labour Party and the Trade Disputes Act 1906 Further torts used against unions include conspiracy, interference with a commercial contract or intimidation. Through a recent development in common law, beginning with Hedley Byrne v Heller in 1964 a victim of the tort of negligent misstatement may recover damages for pure economic loss caused by detrimental reliance on the statement. Misrepresentation is a tort as confirmed by Bridge LJ in Howard Marine and Dredging Co. Ltd. v A Ogden & Sons.

9. Tort by legal jurisdiction

Legal jurisdictions whose legal system developed from the English common law have the concept of tortious liability. There are technical differences from one jurisdiction to the next in proving the various torts. For the issue of foreign elements in tort see Tort and Conflict of Laws.

- Australian tort law
- Canadian tort law
- English tort law
- Scots Law of Delict (equivalent)
- United States tort law
- Irish tort law

In addition, other legal systems have concepts comparable to torts. See, for instance, the rabbinic category of Damages (Jewish law).

In Section 4 of this course you will cover these topics:

- Basics Of Legal Research And Writing
- Computer Basics For Paralegals

Topic : Basics Of Legal Research And Writing

Topic Objective:

At the end of this topic student would be able to:

- Learn about the basics of Legal Research Process
- Develop learning regarding the concept of authority

- Understand the concept of jurisdiction
- Understand the way of Citing to Legal Documents

Definition/Overview:

Legal Research: Legal research, according to one source, is "the process of identifying and retrieving information necessary to support legal decision-making. In its broadest sense, legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation."

Key Points:

1. Basics of Legal Research Process

The processes of legal research vary according to the country and the legal system involved. However, legal research generally involves tasks such as: 1) finding primary sources of law, or primary authority, in a given jurisdiction (cases, statutes, regulations, etc.); 2) searching secondary authority (for example, law reviews, legal dictionaries, legal treatises, and legal encyclopedias such as American Jurisprudence and Corpus Juris Secundum), for background information about a legal topic; and 3) searching non-legal sources for investigative or supporting information. Legal research is performed by anyone with a need for legal information, including lawyers, law librarians, and paralegals. Sources of legal information range from printed books, to free legal research websites and information portals to fee database vendors such as LexisNexis and Westlaw. Law libraries around the world provide research services to help their patrons find the legal information they need in law schools, law firms and other research environments. Many law libraries and institutions provide free access to legal information on the web, either individually or via collective action, such as with the Free Access to Law Movement.

2. The concept of authority

There are many types of legal authority. However, the main distinction is between primary authority and secondary authority. Primary authority generally consists of case law, statutes, and regulations which are cited in legal documents. A secondary authority leads to and explains the primary authorities. Because it is hard get an overview of how an area of law works by reading the cases, statutes, and regulations alone, a common research strategy is to use secondary sources to get a general overview, and then use the footnote references to

cases, statutes, and regulations. Another major distinction is between mandatory authority and persuasive authority. Mandatory authority is an authority that the court must follow. Persuasive authority is one which the court may optionally follow. Just because something is a primary authority (such as a case) does not mean that the court has to follow it. For example, a Pennsylvania court does not necessarily have to follow anAlabamadecision. In this instance, the primary authority is a persuasive authority in the eyes of the Pennsylvaniacourt. This is due to the concept of jurisdiction.

3. The concept of jurisdiction

Jurisdiction is the area in which a court or other government body is empowered to act. Jurisdiction is most commonly geographical but can be by subject. There is a jurisdiction for the United States federal government as well as for each of the fifty states. Within each of these jurisdictions, there are organs of the Judicial, Legislative, and Executive branch of government. These branches of government further subdivide. From a law librarian's view, each of these branches of government is the sources of law in the U.S. They produce books (or databases) where one can find the primary authorities associated with each of these entities.

4. Common law versus civil law

Much of United Stateslaw comes from the common law, or courts. This is in addition to any statutes and regulations which apply to a legal problem. While legislatures can pass statutes, it is up to the courts to interpret their meaning. Many countries operate under a civil law system, where statutes are the primary source of law. How attorneys think about the common law differs from how they think about statutes. In the common law system, the basic assumption is if there is a case from the past which has facts and legal issues which are similar to the case currently before the court, the outcome of the past case should control the outcome of the present case. This concept is often referred to as precedent. A lawyer is often engaged in the task of finding a case that is "on point," or as close to his or her fact situation as possible. This means that it is often quite difficult to determine what "the rule" is for any given legal issue. In many instances figuring out what the law is consists of comparing many different cases to the fact situation at hand. Rather than an absolute yes/no or true/false answer, the resolution may have to be considered on a strong/weak scale. How similar/dissimilar is one case (or fact situation) from another? One court may decide an issue one way, while another might go the other way. Does the precedent need to be abandoned altogether because of public policy reasons? Depending upon the issue involved, the case may eventually need to be decided by the U.S. Supreme Court. If the Supreme Court declines

to hear the case, then the highest court of the jurisdiction in which the case arose gets the last word.

5. The Process of Legal Research

Although this is a process oriented article, there is no one right way to do legal research. There are however practices that have proven to be more efficient and cost effective. There is an overall "game plan" that is taught in the first year of Law school. The details vary according to the textbook, but a general search strategy might be:

- Frame the Issue (try to figure out what the case is about/ what legal issue or issues you will need to research)
- Brainstorm search terms (think up synonyms - assisted suicide? right to die? euthanasia?
- Determine jurisdiction and time frame (do you have a lot of time to research this? Usually not. You may have to make due with a quick and dirty resource instead of an in-depth, ever so scholarly one)
- Decide which format to use (print or electronic- this often just depends on what you have access to)
- Locate, read, and update secondary sources
- Locate read and update primary authority (cases, statutes, and regulations)
- Lookup rules of procedure, ethics, non-legal and other materials if needed
- repeat the above steps, as needed, depending on your search results.

6. Judicial branch sources (Cases)

The Judicial branch is the court system. Each jurisdiction in the U.S. judiciary (federal and the fifty states) has any number of courts, usually one of three types:

- a trial court,
- an appeals court,
- a "court of last resort," often (but not always) known as a Supreme Court.

On the federal level, there is a Supreme Court of the United States, United Statescourt of appeals, and a trial court, which is known as the United Statesdistrict court. The federal appellate courts are subdivided into numbered "circuits." Pennsylvania, for example, is in the jurisdiction of the Third Circuit Court of Appeals. In general, the decisions of a higher court in a court system may be considered "binding" on the lower courts in that court system. The decisions of the Supreme court of a particular state are binding on the courts within that state.

However, the decisions of a Pennsylvaniastate court may or may not be followed by a federal court in the Third Circuit, which includes Pennsylvania. The status of United States Supreme court opinions is complex. Many consider these cases to be binding on all US courts as a practical matter. However, Cohen, Berring, and Olsen, in their book "Finding the Law," state: "The Supreme Court is the court of last resort in any federal dispute and has the final word on federal issues risen in state courts. In most situation, however, it has discretion to decline to review lower court decisions and disposes of most matters by denying petitions for certiorare or dismissing appeals. Only a small percentage of the cases appealed to the Supreme Court are accepted for consideration."

Only a small percentage of court decisions are officially published in a print court reporter. The most published decisions are issued by the United States Supreme court. State trial courts produce the lowest percentage of published cases. Some courts provide copies of their decisions free on the web while others do not. Even if they are on the web they seldom go back before 1994, when the web first became popular. The only exception is with U.S. Supreme Court opinions. Cases on the web can often be found via the website of the individual court. The Supreme Court of the United States, for example, provides the text of recent opinions on its website. It is one of the best places to obtain new opinions. The United Statescourt of appeals and State courts can also be a source of free legal information. In print, to find the cases, legal researchers use indexes of various types. Classification systems provide index terms. For example, there may be a category of law, torts (non-crime injuries to people). There are many types of torts, or causes of Action, such as slander. These causes of actions have various elements which must be proved to establish a claim (there may also be various defenses). The general category, the cause of action and the various elements of the cause of action and defenses may all be index terms. The major classification for finding law cases is the West American Digest System.

Matching your thinking to the mind of the person who wrote the index can be a trying task, particularly to those not generally familiar with the basic legal subject areas. The key to using legal indexes is to identify not only the key facts but the legal issues which are central to the case. "Issue spotting" is a skill that lawyers hone in law school and throughout their careers as they gain experience. For the layperson, reading secondary sources, such as books and journal articles, can help. Once a case has been found, legal researchers must make sure that it has not been overturned by a higher court. Lawyers use citators such as Shepard's Citations to make sure that their case is still "good law." This process is often known as Shepardizing after the name of the service. Citators track resources, written at a later point in time, which

cite back to a particular case. Because cases cite to related cases, citators can be used to find cases which are on the same topic. A common research strategy is to use "one good case" to find related cases.

Legal forms can be some of the hardest documents to find because one person may call a form by one name while another person knows it by an entirely different name (neither of which may be the actual, official name of the form). The same form may be known by a different name in a different jurisdiction. Law libraries often have many sets of formbooks to search. Legal researchers may also need the briefs and other background materials connected with a case, which are included in docket records. Other types of documents may exist in databases which cannot be searched with search engines such as Google. These 'invisible web' sources may take time to ferret out.

7. Legislative branch sources (Statutes)

Some jurisdictions provide copies of their statutes online while others do not. You can often find new, or "slip laws" on the web (arranged in chronological order), as well as the subject arrangement of the statutes, known as the codified version, or code. The official code for federal statutes, the United States Code is usually one to two years out of date both in print and on the web. Legal Researchers often use the more timely, commercially published United States Code Annotated (USCA) or the United States Code Service (USCS). The USCA is available on Westlaw while the USCS is available on Lexis. They are called 'annotated codes' because they include summaries of cases which interpret the meaning of the statute. They may also include references to journal articles, legal encyclopedias and other research materials so it is good to look in an annotated code either in print or online as soon as you know there is a statute involved in your research problem. In addition to the text of the current law itself, legal researchers may also have to research the background documents connected with the statute, which is known as Legislative history. Legislative history is used to find what is known as the "legislative intent," or purpose behind statutory language. Again, legislative history documents may be found both in print in law libraries and government documents libraries, as well as in online formats such as Lexis and Westlaw.

Thomas the Library of Congress legislative information service, provides the full text of proposed bills, bill status information (did it become a public law? who sponsored it? what committee was it referred to?), the text of debates from the Congressional Record, the full text of committee reports and other legislative information. The Library of Congress provides access to legislative documents from 1774 through 1875 as part of its American Memory Project Century of Lawmaking for a New Nation digital library.

8. Citing to Legal Documents

Another challenge is figuring out how to cite to items, or how to decipher a legal citation once you have encountered one in a primary or secondary source. Good advice and sources can be found in the Wikipedia Court citation article. The main problem with online cases is that they may or may not have the official print pagination required by the major legal citation systems. The vendor neutral citation movement has made some inroads here, so there are provisions for citing to "web sources." However, it is by far easier to work with the official cites.

Topic : Computer Basics For Paralegals

Topic Objective:

At the end of this topic student would be able to:

- Learn about the Main Tasks of Paralegals
- Develop learning regarding functions of Paralegals
- Understand the use of Computer in Training of Paralegals

Definition/Overview:

Overview: While lawyers assume ultimate responsibility for legal work, they often delegate many of their tasks to paralegals. In fact, paralegalsalso called legal assistantsare continuing to assume a growing range of tasks in legal offices and perform many of the same tasks as lawyers. Nevertheless, they are explicitly prohibited from carrying out duties considered to be the practice of law, such as setting legal fees, giving legal advice, and presenting cases in court. Computer software packages and the Internet are used to search legal literature stored in computer databases and on CD-ROM. In litigation involving many supporting documents, paralegals usually use computer databases to retrieve, organize, and index various materials. Imaging software allows paralegals to scan documents directly into a database, while billing programs help them to track hours billed to clients. Computer software packages also are used to perform tax computations and explore the consequences of various tax strategies for clients.

Key Points:

1. Main Tasks of Paralegals

One of a paralegals most important tasks is helping lawyers prepare for closings, hearings, trials, and corporate meetings. Paralegals might investigate the facts of cases and ensure that all relevant information is considered. They also identify appropriate laws, judicial decisions, legal articles, and other materials that are relevant to assigned cases. After they analyze and organize the information, paralegals may prepare written reports that attorneys use in determining how cases should be handled. If attorneys decide to file lawsuits on behalf of clients, paralegals may help prepare the legal arguments, draft pleadings and motions to be filed with the court, obtain affidavits, and assist attorneys during trials. Paralegals also organize and track files of all important case documents and make them available and easily accessible to attorneys.

2. Other functions of Paralegals

In addition to this preparatory work, paralegals perform a number of other functions. For example, they help draft contracts, mortgages, and separation agreements. They also may assist in preparing tax returns, establishing trust funds, and planning estates. Some paralegals coordinate the activities of other law office employees and maintain financial office records. Paralegals are found in all types of organizations, but most are employed by law firms, corporate legal departments, and various government offices. In these organizations, they can work in many different areas of the law, including litigation, personal injury, corporate law, criminal law, employee benefits, intellectual property, labor law, bankruptcy, immigration, family law, and real estate. As the law becomes more complex, paralegals become more specialized. Within specialties, functions are often broken down further. For example, paralegals specializing in labor law may concentrate exclusively on employee benefits. In small and medium-size law firms, duties are often more general.

The tasks of paralegals differ widely according to the type of organization for which they work. A corporate paralegal often assists attorneys with employee contracts, shareholder agreements, stock-option plans, and employee benefit plans. They also may help prepare and file annual financial reports, maintain corporate minutes record resolutions, and prepare forms to secure loans for the corporation. Corporate paralegals often monitor and review government regulations to ensure that the corporation is aware of new requirements and is operating within the law. Increasingly, experienced corporate paralegals or paralegal

managers are assuming additional supervisory responsibilities such as overseeing team projects. The duties of paralegals who work in the public sector usually vary by agency. In general, litigation paralegals analyze legal material for internal use, maintain reference files, conduct research for attorneys, and collect and analyze evidence for agency hearings. They may prepare informative or explanatory material on laws, agency regulations, and agency policy for general use by the agency and the public. Paralegals employed in community legal-service projects help the poor, the aged, and others who are in need of legal assistance. They file forms, conduct research, prepare documents, and, when authorized by law, may represent clients at administrative hearings.

3. Use of Computer in Training of Paralegals

There are several ways to become a paralegal. The most common is through a community college paralegal program that leads to an associate degree. Another common method of entry, mainly for those who already have a college degree, is earning a certificate in paralegal studies. A small number of schools offer a bachelors and masters degree in paralegal studies. Finally, some employers train paralegals on the job.

Associate and bachelors degree programs usually combine paralegal training with courses in other academic subjects. Certificate programs vary significantly, with some only taking a few months to complete. Most certificate programs provide intensive paralegal training for individuals who already hold college degrees.

About 1,000 colleges and universities, law schools, and proprietary schools offer formal paralegal training programs. Approximately 260 paralegal programs are approved by the American Bar Association (ABA). Although many employers do not require such approval, graduation from an ABA-approved program can enhance employment opportunities.

Admission requirements vary. Some require certain college courses or a bachelors degree, while others accept high school graduates or those with legal experience. A few schools require standardized tests and personal interviews.

The quality of paralegal training programs varies; some programs may include job placement services. If possible, prospective students should examine the experiences of recent graduates before enrolling in a paralegal program. Any training program usually includes courses in legal research and the legal applications of computers. Many paralegal training programs also offer an internship in which students gain practical experience by working for several months in a private law firm, the office of a public defender or attorney general, a corporate legal department, a legal aid organization, a bank, or a government agency. Internship experience is an asset when one is seeking a job after graduation.

Some employers train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries. Other entrants have experience in a technical field that is useful to law firms, such as a background in tax preparation or criminal justice. Nursing or health administration experience is valuable in personal injury law practices.

Although most employers do not require certification, earning a voluntary certification from a professional society may offer advantages in the labor market. The National Association of Legal Assistants (NALA), for example, has established standards for certification requiring various combinations of education and experience. Paralegals who meet these standards are eligible to take a 2-day examination. Those who pass the exam may use the Certified Legal Assistant (CLA) or Certified Paralegal (CP) credential. The NALA also offers the Advanced Paralegal Certification for experienced paralegals who want to specialize. The Advanced Paralegal Certification program is a curriculum based program offered on the Internet.

The American Alliance of Paralegals, Inc. offers the American Alliance Certified Paralegal (AACP) credential, a voluntary certification program. Paralegals seeking the AACP certification must possess at least five years of paralegal experience and meet one of the three educational criteria. Certification must be renewed every two years, including the completion 18 hours of continuing education. In addition, the National Federation of Paralegal Association offers the Registered Paralegal (RP) designation to paralegals with a bachelors degree and at least 2 years of experience who pass an exam. To maintain the credential, workers must complete 12 hours of continuing education every 2 years. The National Association for Legal Professionals offers the Professional Paralegal (PP) certification to those who pass a four-part exam. Recertification requires 75 hours of continuing education.

Paralegals must be able to document and present their findings and opinions to their supervising attorney. They need to understand legal terminology and have good research and investigative skills. Familiarity with the operation and applications of computers in legal research and litigation support also is important. Paralegals should stay informed of new developments in the laws that affect their area of practice. Participation in continuing legal education seminars allows paralegals to maintain and expand their knowledge of the law. In fact, all paralegals in Californiamust complete 4 hours of mandatory continuing education in either general law or in a specialized area of law.

Because paralegals frequently deal with the public, they should be courteous and uphold the ethical standards of the legal profession. The National Association of Legal Assistants, the National Federation of Paralegal Associations, and a few States have Paralegals usually are given more responsibilities and require less supervision as they gain work experience.

Experienced paralegals who work in large law firms, corporate legal departments, or government agencies may supervise and delegate assignments to other paralegals and clerical staff. Advancement opportunities also include promotion to managerial and other law-related positions within the firm or corporate legal department. However, some paralegals find it easier to move to another law firm when seeking increased responsibility or advancement.

In Section 5 of this course you will cover these topics:
- The Paralegal Role In Family, Probate, Bankruptcy And Administrative Law
- Identifying--And Getting--The Right Job For You

Topic : The Paralegal Role In Family, Probate, Bankruptcy And Administrative Law

Topic Objective:

At the end of this topic student would be able to:

- Lean about Origin of Paralegal
- Identify difference between paralegals and lawyers
- Comprehend trends in usage of paralegals
- Learn about Paralegal Nurse Consultants
- Comprehend the role of Paralegals in television and literature

Definition/Overview:

Paralegalis a term used in many countries (a.k.a. jurisdictions) to describe non-lawyers who assist lawyers in their legal work. Paralegals are not lawyers. They are not authorized by government to offer legal services in the same way, nor are they officers of the court (i.e. considered a formal part of the legal system), nor are they usually subject to government/court sanctioned rules of conduct.

Key Points:

1. Origin of Paralegal

Paralegals originated as assistants to lawyers at a time when only lawyers offered legal services. In those jurisdictions, such as the United States, where the local legal profession/judiciary is involved in paralegal recognition/accreditation then the profession of paralegal still basically refers to those people working under the direct supervision of a

lawyer. In other jurisdictions however, such as the United Kingdom, the lack of local legal profession/judiciary oversight means that the definition of paralegal encompasses non-lawyers doing legal work, regardless of who they do it for. Although most jurisdictions recognize paralegals to a greater or lesser extent, there is no international consistency as to definition, job-role, status, terms and conditions of employment, training, regulation or anything else and so each jurisdiction must be looked at individually.

2. Difference between paralegals and lawyers

The biggest difference between lawyers and paralegals is that lawyers can set fees and give legal advice. If a paralegal attempts to do this they will be in violation the "Unauthorized Practice of Law" (UPL). Other traditional differences between a paralegal and a lawyer (e.g. an attorney in the United States; a solicitor or barrister in the UK or solicitor or advocate in India) are that:

- Paralegal expertise/training tends to be niche, whereas a lawyer has a much broader, longer, more formal and holistic training, and
- That the lawyer's primary job is to consider, analyse and strategise, whereas a paralegal's primary responsibility is to carry out the tasks arising from that consideration, analysis and strategy.

However these distinctions are blurring; economic forces are pricing lawyers out of many areas of practice and paralegals are increasingly stepping in to fill the vacuum. How quickly and how far they are doing this varies from jurisdiction to jurisdiction. In the UKthere are now almost 4,000 government registered/regulated paralegal advisory firms offering services that would previously have been offered by lawyers. Elsewhere such as India and Singapore, paralegals work much more along the traditional line of assisting lawyers. Paralegals are found in all areas where lawyers work in criminal trials, in real estate, in government, in estate planning. In the US, paralegals and legal document assistants (LDAs) are often mistaken for one another. In most other jurisdictions the profession is not yet developed enough to have a clear distinction between the two.

Paralegals continue to study more fields everyday, and now with some economic difficulties more people are relying on paralegals to offer more reasonably priced services.

3. Trends in usage of paralegals

The United States' experience is that law schools and state bar associations, through admissions and licensing, control the number of licensed attorneys and, as economic theory

would predict, generally act to restrict that number in order to increase salaries over what a truly free market would produce (and, in the case of law schools, allow an increase in tuition by increasing the financial reward of obtaining a law education).

While the strenuous education and bar exams arguably increase the quality of attorneys at the same time as the cost of employing one, there remain many legal tasks for which a full legal education is unnecessary but some amount of legal training is helpful. This is equally true of most other jurisdictions, many of whom exercise an even tighter control over access to the legal profession.

As the cost of litigation has risen, insurance companies and other clients have increasingly refused to pay for a lawyer to perform these certain kinds of tasks, and this gap has been filled in many cases by paralegals. Paralegal time is typically billed at only a fraction of what a lawyer charges, and thus to the paralegal has fallen those substantive and procedural tasks which are too complex for legal secretaries (whose time is not billed) but for which lawyers can no longer bill. This in turn makes lawyers more efficient by allowing them to concentrate solely on the substantive legal issues of the case, while paralegals have become the "case managers." The United Kingdomhas gone one step further. Much legal work by lawyers for the poorer elements of society is legally aided, or paid for by the government. As overall costs have risen due to more people than ever engaging with the law, the government has reduced such legal aid. As a result the work has become uneconomic for many and they have ceased doing it. Paralegal advisory firms are stepping in to fill the gap.

The increased use of paralegals has slowed the rising cost of legal services and serves in some small measure (in combination with contingency fees and insurance) to keep the cost of legal services within the reach of the regular population. However, one commentator has warned that "our profession makes a serious error if it uses legal assistants only as economic tools."

4. Paralegal Nurse Consultants

Some attorneys who practice in fields involving medical care have only a limited knowledge of healthcare and medical concepts and terminology. Therefore, in addition to Legal Nurse Consultants, a certain number of registered nurses have become fully trained as paralegals in the manner described above and assist behind the scenes on these cases, in addition to serving as expert witnesses from time to time. There is an extremely high demand for nurses to begin with, so the demand for nurses with paralegal skills is expected to remain very high in the near future.

5. Paralegals in television and literature

Unlike nurses and physician assistants, paralegals have not caught the popular imagination and rarely are seen or mentioned in fictional or non-fiction legal television programs, or in legal fiction in print. There are however exceptions.

The most famous is probably Erin Brockovich, a real legal clerk whose participation in a toxic tort case became a major motion picture. Another notable exception is the character Della Street, from the Perry Mason novel, television and movie series. Although Mason identifies Della as "my confidential secretary", the projects he assigns her are entirely consistent with the law office work performed by experienced paralegals.

John Grisham includes many paralegals in his novel; for example, Rudy Baylor (the main character in Rainmaker) works briefly as a paralegal - and his asociate Deck subsequently become Rudy's paralegal when he starts his own firm. Harvey Birdman: Attorney at Law, an esoteric cartoon comedy, features a paralegal in the form of Avenger, who is usually seen managing files, preparing and presenting documents to the attorneys, and drafting letters to clients. Avenger will usually accompany the charismatic, yet often under-prepared, Birdman into court, and whisper case information and advice into his ear. Despite not knowing English, he is by far the most competent employee of Sebben & Sebben.

The most current example is likely contained in FX's The Riches in which Doug Rich, a con-artist played by Eddie Izzard, impersonates a lawyer at a cutthroat real estate development company. Rich's apparent lack of legal knowledge is often compensated by Aubrey McDonald, a highly-skilled paralegal who manages to help guide the under-educated anti-hero through more than a few sticky situations.

Topic : Identifying--And Getting--The Right Job For You

Topic Objective:

At the end of this topic student would be able to:

- Comprehend Responsibilities of Lawyers
- Learn earning the right to practice law
- Learn the Career structure
- Identify the notion of Common law/civil law
- Develop learning regarding specialization of Lawyers
-

Definition/Overview:

Overview: A lawyer, according to Black's Law Dictionary, is "a person learned in the law; as an attorney, counsel or solicitor; a person licensed to practice law." Law is the system of rules of conduct established by the sovereign government of a society to correct wrongs, maintain stability, and deliver justice. Working as a lawyer involves the practical application of abstract legal theories and knowledge to solve specific individualized problems, or to advance the interests of those who retain (i.e., hire) lawyers to perform legal services.

Key Points:

1. Responsibilities of Lawyers

In most countries, particularly civil law countries, there has been a tradition of giving many legal tasks to a variety of civil law notaries, clerks, and scriveners. These countries do not have "lawyers" in the American sense, insofar as that term refers to a single type of general-purpose legal services provider; rather, their legal professions consist of a large number of different kinds of law-trained persons, known as jurists, of which only some are advocates who are licensed to practice in the courts. It is difficult to formulate accurate generalizations that cover all the countries with multiple legal professions, because each country has traditionally had its own peculiar method of dividing up legal work among all its different types of legal professionals. Notably, England, the mother of the common law jurisdictions, emerged from the Dark Ages with similar complexity in its legal professions, but then evolved by the 19th century to a single dichotomy between barristers and solicitors. An equivalent dichotomy developed between advocates and procurators in some civil law countries, though these two types did not always monopolize the practice of law as much as barristers and solicitors, in that they always coexisted with civil law notaries. Several countries that originally had two or more legal professions have since fused or united their professions into a single type of lawyer. Most countries in this category are common law countries, though France, a civil law country, merged together its jurists in 1990 and 1991 in response to Anglo-American competition.

2. Earning the right to practice law

Some jurisdictions grant a "diploma privilege" to certain institutions, so that merely earning a degree or credential from those institutions is the primary qualification for practicing law. Mexico allows anyone with a law degree to practice law. However, in a large number of countries, a law student must pass a bar examination (or a series of such examinations) before

receiving a license to practice. In a handful of U.S. states, one may become an attorney (so-called a country lawyer) by simply "reading law" and passing the bar examination, without having to attend law school first (although very few people actually become lawyers that way). Some countries require a formal apprenticeship with an experienced practitioner, while others do not. For example, a few jurisdictions still allow an apprenticeship in place of any kind of formal legal education (though the number of persons who actually become lawyers that way is increasingly rare).

3. Career structure

The career structure of lawyers varies widely from one country to the next.

4. Common law/civil law

In most common law countries, especially those with fused professions, lawyers have many options over the course of their careers. Besides private practice, they can always aspire to becoming a prosecutor, government counsel, corporate in-house counsel, administrative law judge, judge, arbitrator, law professor, or politician. There are also many non-legal jobs which legal training is good preparation for, such as corporate executive, government administrator, investment banker, entrepreneur, or journalist. In developing countries like India, a large majority of law students never actually practice, but simply use their law degree as a foundation for careers in other fields. In most civil law countries, lawyers generally structure their legal education around their chosen specialty; the boundaries between different types of lawyers are carefully defined and hard to cross. After one earns a law degree, career mobility may be severely constrained. For example, unlike their American counterparts, it is difficult for German judges to leave the bench and become advocates in private practice. Another interesting example is France, where for much of the 20th century, all magistrates were graduates of an elite professional school for judges. Although the French magistracy has begun experimenting with the Anglo-American model of appointing judges from accomplished advocates, the few advocates who have actually joined the bench this way are looked down upon by their colleagues who have taken the traditional route to magistracy. In a few civil law countries, such as Sweden, the legal profession is not rigorously bifurcated and everyone within it can easily change roles and arenas.

5. Specialization of Lawyers

In many countries, lawyers are general practitioners who will take almost any kind of case that walks in the door. In others, there has been a tendency since the start of the 20th century for lawyers to specialize early in their careers. In countries where specialization is prevalent,

many lawyers specialize in representing one side in one particular area of the law; thus, it is common in the United Statesto hear of plaintiffs' personal injury attorneys.

Lawyers in private practice generally work in specialized businesses known as law firms, with the exception of English barristers. The vast majority of law firms worldwide are small businesses that range in size from 1 to 10 lawyers. The United States, with its large number of firms with more than 50 lawyers, is an exception. The United Kingdom and Australiaare also exceptions, as the UK,Australia and the U.S. are now home to several firms with more than 1,000 lawyers after a wave of mergers in the late 1990s.

Notably, barristers in England and Wales and some states in Australia do not work in "law firms". Those who offer their services to the general publicas opposed to those working "in house"are required to be self-employed. Most work in groupings known as "sets" or "chambers", where some administrative and marketing costs are shared. An important effect of this different organizational structure is that there is no conflict of interest where barristers in the same chambers work for opposing sides in a case, and in some specialized chambers this is commonplace.