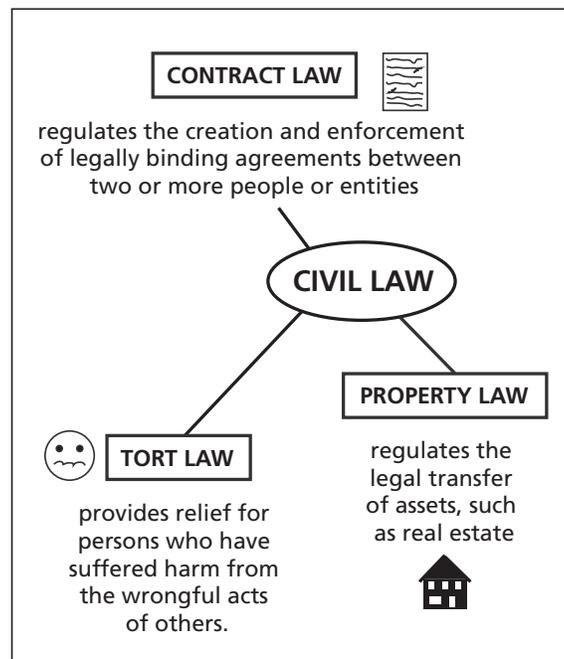


Handout 1: Overview of the Civil Justice System

Purpose

The civil justice system provides a legal forum for resolving disputes and claims of injury—legally recognized harm—between people, companies, and government entities.

There are three main areas of civil law:



A variety of legal claims are handled through the civil justice system, for example:

- **Torts:** Physical, emotional, or financial injuries generally caused either accidentally or intentionally
- **Breach of Contract:** Violations of legal agreements made between two or more people or entities
- **Civil Rights:** Discrimination on the basis of race, ethnicity, gender, disability, age, or, in some states, sexual orientation

Those who file civil lawsuits—called *plaintiffs*—can seek three types of legal relief for injuries caused by the *defendants*, the person or entity that is being sued:

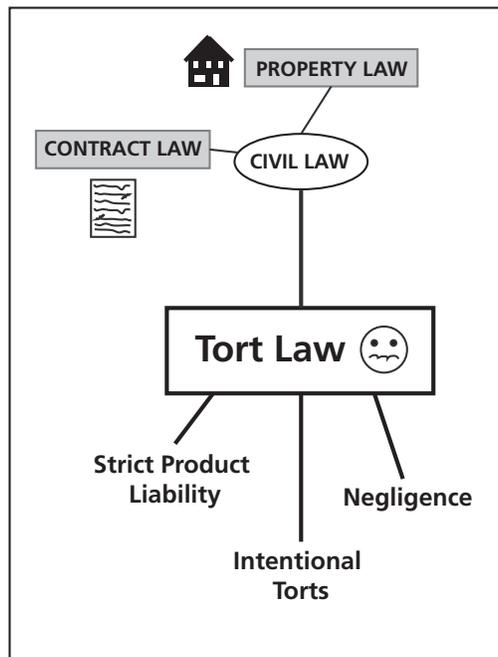
1. **Damages:** Payment of money for costs associated with an injury, and, in some cases, *punitive damages*, which are meant to punish defendants for their actions and to provide a deterrent
2. **Declaratory Relief:** A public statement by the courts that the defendant is responsible for injuring the plaintiff
3. **Injunctive Relief:** A court order requiring the defendant to take some action or to refrain from taking some action

Criminal and Civil Liability

The same conduct can sometimes trigger both civil and criminal liability. For example, the criminal offense of kidnapping can trigger civil liability for false imprisonment, and the *crime* of battery can also trigger civil liability for the *tort* of battery.

About Tort Law

The most common types of civil law claims involve torts. Except for Louisiana, tort law in the United States is based on the *common law*, a body of law developed by judges over many centuries. Under the common law, courts make decisions by looking at earlier cases with similar facts, called *precedents*. There are three major areas of tort law: negligence, intentional torts, and strict product liability.



Negligence

Negligence generally refers to *accidental* behavior and is generally defined as the failure to exercise the amount of care that a reasonably careful person would use under the circumstances.

Here are some examples of negligence:

- **Simple negligence:** While installing a window air conditioner in your apartment, the installer accidentally drops the air conditioner, which falls on someone on the street and causes that person serious injury. A reasonable person would have better secured the air conditioner while installing it.
- **Medical malpractice:** A doctor mistakenly completes surgery on a patient's left knee, when the surgery needed to be done on the right knee. The law holds professionals like doctors to the standards of care within their profession.

Intentional Torts

Intentional torts involve injuries caused by actions done *on purpose*. An *intentional tort* is generally defined as a deliberate act that causes harm to another.

Here are some examples of intentional torts:

- **Battery:** A fan at a baseball game, angry at a fan in front of him who is rooting for the opposing team, pours his soda on top of the other fan's head. This constitutes *battery*, the harmful or unwanted touching of another person.
- **Defamation of Character:** Someone falsely spreads rumors that a co-worker is lazy and dishonest, costing him a big promotion at their company. This constitutes *defamation of character*, false communication intended to cause harm to a person's reputation.

Strict Product Liability

Strict product liability holds the makers and sellers of products responsible for selling products that cause injury. The defendant does not need to have acted negligently or intentionally.

There are three types of strict product liability claims: (1) a defect in the way a product was *designed*, (2) a defect in the way a product was *manufactured*, even if it was designed safely, and (3) a defect in the way a product was *marketed* to the public, which usually means failing to adequately warn consumers of the potential dangers of using the product.

Here are some examples of strict product liability:

- **Design Defect:** A baby's crib is designed so that one side may not lock properly, allowing the baby to fall out of the crib.
- **Manufacturing Defect:** A specific model of mountain bike is designed to be sturdy enough to absorb a great deal of shock. However, several bikes are mistakenly manufactured with lower-quality screws. As a result, the handlebars on those bikes have a tendency to break, causing several riders major injuries.
- **Marketing Defect/Failure to Warn:** A drug company develops a new drug. Testing conducted by the company indicates that taking the drug increases the risk of having a heart attack. The label on the packaging warns customers of several side effects of the drug but does not mention the increased risk of heart attack. Several consumers of the drug suffer heart attacks after taking the drug regularly.

Handout 2: Unit 4 Overview

How does the civil justice system hold people and corporations accountable for their actions? How does civil law compare with criminal law? What is the role of civil litigation and liability in U.S. society? Is U.S. society too litigious, or does civil litigation strengthen legal protections for Americans?

In this unit, you will be introduced to civil law and the legal structures designed to protect people from individuals and corporations that cause harm. You will take on the role of a legal professional and bring a case involving negligence and product liability to trial. You will consider the role that settlement plays in the civil justice system, the myths and facts surrounding reform efforts, and the effects of media and public perception on the legal process. You will not only learn the steps in a civil case; you'll gain a deeper understanding of the purpose and effects of civil litigation in U.S. society, on businesses, corporations, and individuals.

Your work in this unit will focus on the following questions:

- *What are the goals of the civil justice system?*
- *In what ways can civil litigation advance or undermine justice?*
- *What influences the development of law and public policy related to tort liability?*
- *What are the roles of professionals in the civil justice system?*

Understandings

- The civil justice system seeks to regulate relationships, remedy harms, and resolve disputes among individuals, corporations, and government entities.
- Civil litigation can promote individual, corporate, and government accountability, but can also impose costs on society due to excessive damage awards and frivolous lawsuits.
- Law and public policy related to tort liability are shaped by the experiences and perceptions of the public, special interest groups, advocacy organizations, and the media.
- Professionals working in the civil justice system advocate for the rights of individuals, corporations, and government entities involved in legal disputes.

Unit Project

Playing one of the professional roles involved in a lawsuit, you will prepare for and participate in a civil mock trial. There will be two main legal teams, each focusing on a different case—a claim of negligence against an electronics store, and a claim of strict product liability against a cell phone manufacturer. You will use legal reasoning to identify relevant facts and develop legal arguments, and then present opening statements and closing arguments and examine witnesses during a simulated trial. After judgment is rendered on the case, you will decide whether reforms are needed to improve the civil justice system and to promote fair outcomes for individual consumers and corporations.

In This Unit You Will . . .

Become familiar with the steps of and processes in the civil justice system. Apply the elements of civil law to a case and explore the steps in a civil case, both before and during the trial.

Learn about the purposes and components of civil laws. Examine examples of current civil legislation, consider how and why civil laws are created, and analyze tort law.

Understand the components of and the skills needed to conduct a civil mock trial. Construct a theory of the case and use analytical and reasoning skills to prepare for and conduct a mock trial.

Gain insight on the effects of civil litigation on society. Consider the effects of civil laws on individuals and corporations, the advantages and disadvantages of tort reform, and the effects of media, public perception, and interest groups on civil laws.

Analyze how the civil justice system promotes or impedes justice. Determine the degree to which justice is served in civil cases. Reflect on whether and how the civil justice system should be reformed to promote a fair and just system.

Career Portfolio

You will create or complete the following items to keep in your Career Portfolio:

- Internal memo
- Trial materials (opening statements and closing arguments or direct and cross-examination questions)
- People and Careers Profiles
- Unit exam
- Journals (5)

Vocabulary Used in This Unit

Bench trial: A hearing held before a judge only, without a jury.

Breach: A violation of a law, legal obligation, or promise; the defendant's failure to exercise reasonable care when fulfilling a duty owed to plaintiff.

Cause in fact: The action taken by the defendant without which the plaintiff's injury would not have occurred.

Civil law: The body of laws of a state or nation that deal with the rights of private citizens.

Closing argument: A summary of the highlights of the testimony and exhibited documents as they support each side's case.

Compensatory damages: The compensation that plaintiffs receive for their injuries; also called actual damages. The goal of this type of damages is to restore plaintiffs to the condition they were in before their injury occurred.

Complaint: The plaintiff's version of the facts, which specifies the damages and frames the issues of the case. It includes various counts—distinct statements of the plaintiff's cause(s) of action—highlighting the factual and legal basis of the suit.

Contract law: The creation and enforcement of legally binding agreements between two or more people or entities.

Cross-examination: Questions asked of a witness who has already testified for the opposing side; questions may be leading.

Damages: Legally recognized harm or injury to a person or property.

Defendant: The person or entity against whom a case is filed.

Deposition: An examination of a party or witness by lawyers that is conducted under oath and recorded and transcribed by a court reporter.

Direct examination: Non-leading questions asked of a witness by the side who called the witness.

Discovery: The formal process of exchanging information about the witnesses and evidence that will be presented at trial.

Duty: Legal recognition of a relationship between the plaintiff and the defendant, which means that the defendant is obliged to act in a certain manner toward the plaintiff.

Injury: A legally recognized harm, usually in the form of physical injury to a person or to property.

Intentional torts: Injuries caused by behavior or actions that were committed mindfully, rather than accidentally.

Jury: A group of people sworn to hear the evidence and inquire into the facts in a law case, and to give a decision in accordance with their findings.

Leading question: A question that puts into the witness's mouth the words to be echoed back, or plainly suggests the answer that the party wishes to get from the witness.

Liability: The state of being legally obliged and responsible.

Negligence: A legal claim that generally involves accidental behavior that causes injuries.

Opening statement: Initial words delivered by each side that inform the jury of the nature and facts of the case.

Plaintiff: The person making a complaint and filing a lawsuit.

Preponderance of evidence: The greater weight of the evidence required in a civil (non-criminal) lawsuit for the trier of fact (the jury or a judge) to decide in favor of one side or the other.

Property law: Rules governing the legal transfer of assets, such as real estate.

Proximate cause: The scope of the defendant's responsibility; harm that the defendant could have foreseen.

Punitive damages: An award to the plaintiff intended to (a) punish defendants for behavior that is particularly bad and (b) provide a deterrent to such behavior.

Strict product liability: The law that holds makers and sellers of products responsible for selling products that cause injury. The defendant does not need to have acted negligently or intentionally.

Tort law: Provides relief for persons who have suffered harm from the wrongful acts of others.

Tort reform: An organized effort to change laws limiting punitive damages and making it more difficult for individuals to sue.

Unit 4 Journal Assignments

Respond to these journal questions as assigned.

Journal 1

Do you think that justice was achieved in the *Liebeck v. McDonald's Restaurants* case? Why or why not?

Journal 2

Do you think that civil litigation is an effective way to address injuries and other harms that people experience? Why or why not?

Journal 3

Settlements in civil cases often require that the plaintiff be bound by a *non-disclosure agreement*, which is an agreement not to discuss or make specific information public that might otherwise have been introduced at trial. What arguments can you think of in favor or against this practice?

Journal 4

Those who argue in favor of tort reform say lawsuits against corporations reduce personal responsibility at great cost to businesses. Those opposed to tort reform say individuals need to have the ability to hold businesses and corporations accountable for harmful or irresponsible actions. Do you agree? Why or why not?

Journal 5

Think about the careers you learned about in this unit. Which profession do you think would most empower you to shape the civil justice process? Why?

Handout 3: Civil Litigation Cases

Case 1: Consumers Sue Apple for Overheating iPads

In 2010, three iPad users filed a class-action lawsuit against Apple, claiming that the iPad failed to live up to consumer expectations because it did not perform as expected under normal weather conditions. When used in direct sunlight, the iPad sometimes exceeds its maximum recommended temperature; it then displays a temperature warning screen which states that it needs to cool down and then “goes into deep sleep mode until it cools”. (*iPad User Guide*, p. 140). Apple’s iPhone and iTouch products do the same when about to overheat. The plaintiffs asserted that Apple’s claims that users can read the iPad just like a book were false, as books do not overheat and turn off. The suit was dismissed on the basis that it was not specific enough about any false claims made by Apple. The judge wrote, “At the least, Plaintiffs must identify the particular commercial or advertisement upon which they relied and must describe with the requisite specificity the content of that particular commercial or advertisement.”

Case 2: Mega Brands Settles Case of Fatal Toys

Kenny Sweet, just two months shy of age 2, died after ingesting magnets that had fallen out of his older brother’s Magnetix building set. The magnets stuck together in Kenny’s intestines, causing a fatal blockage. Kenny’s parents, along with 13 other families, sued the manufacturer, Mega Brands, claiming that the company knew about the faulty design and had done nothing to correct the problem, despite consumer complaints. Although the company had issued a voluntary recall of the toys after pressure from the Consumer Product Safety Commission, Mega Brands continued to sell toys that were already on store shelves. The Sweets and the other parents sought payment for the harm caused to their children, as well as an injunction that would require the company to stop manufacturing and distributing the toys. Mega Brands reached a \$13.5 million settlement, in which the company established a foundation supporting children’s health, the families received \$1,000 each, and the plaintiffs’ law firms received up to \$3.5 million each for court costs. However, the company denies any liability.

Case 3: States Sue Tobacco Industry to Recover Medicaid Costs

During the 1990s, Attorney Generals in almost every U.S. state sued the four largest tobacco manufacturers to recover the cost of providing medical treatment of smokers suffering from cancer, lung disease, emphysema, and other illnesses caused by cigarettes. The theory of their case was that these companies had for decades concealed the risks of their product from consumers, intentionally manufactured cigarettes with a chemical called nicotine to make the product more addictive, and intentionally marketed cigarettes to young people through cartoon characters such as Joe Camel.

In 1998, 46 states and the four largest tobacco companies signed the Tobacco Master Settlement Agreement, which settled the states’ Medicaid claims and also exempted the companies from tort liability claims made by individuals. In exchange, the companies agreed to curtail or cease certain tobacco marketing practices, as well as to pay, in perpetuity, various annual payments to the states to compensate them for some of the medical costs of caring for persons with smoking-related illnesses. These funds were used to create the American Legacy Foundation, a new anti-smoking advocacy group responsible for The Truth and other public awareness campaigns. In total, the companies agreed to pay a minimum of \$206 billion over the first 25 years of the agreement, by far the largest civil law settlement in history.

Case 4: Ku Klux Klan Forced to Pay Millions

In June 1995 in South Carolina, members of the Christian Knights of the Ku Klux Klan set the 100-year-old Macedonia Baptist Church on fire and burned it to the ground. The church was one of several in rural areas with predominantly black congregations that were set on fire during the mid-1990s. The Southern Poverty Law Center filed a lawsuit on behalf of Macedonia Baptist, asking both for damages to pay for the ruined church and for punitive damages to prevent further hate crimes of a similar nature. The lawsuit alleged that the fire was racially motivated and designed to disrupt the church's activities and to discourage the church from holding property in the area. After hearing the case, the jury awarded the church the largest judgment ever against a hate group (\$37.8 million, later reduced to \$21.5 million). The Christian Knights, previously one of the most active chapters of the Klan in the country, was forced to sell its land and became a defunct organization.

Case 5: Extra-Virgin Olive Oil Put to the Test

In 2010, a lawsuit was filed against olive oil retailers and producers after a study from the UC Davis Olive Center revealed that only 69 percent of imported olive oils marketed as "extra virgin" met international standards for that title. Domestic products also did poorly in the study, with only 1 in 10 California brands meeting the standard for "extra virgin" although their labels indicated that they were of higher quality. The lawsuit, filed on behalf of restaurant owners and chefs, stated that consumers had been paying premium prices for a product that was not what it claimed to be. The plaintiffs asked for punitive damages against the companies and reimbursement of any profits made due to false marketing and advertising. However, the attorneys were unable to replicate the study's findings before going to court, and the university refused to allow faculty members to serve as expert witnesses, so the suit was dropped.

Handout 4: Civil Case Notes

Read about your assigned civil litigation case. Working with your group members, respond to and discuss the case using the following questions..

Case

What harm or injury led to the lawsuit? Who was harmed?

Who do you think was responsible for the harm or injury?

Was the lawsuit justified? Why or why not?

Do you think the outcome was fair? Why or why not?

Who benefitted from the case?

What were intended or unintended consequences of the lawsuit?

Handout 5:

Unit 4 Project Description

A scarred fashion model. A cell phone on fire. A 911 call to police. Has wrong been done? Who is to blame? Who should pay?

In this unit, you will take on the case of Jordan Fremont, an aspiring model. After her cell phone catches fire, she suffers from burns that scar her face and potentially ruin her career. Playing the role of a professional on a legal team, you will decide what harm has been done and who is to blame, then attempt to resolve the case through the civil courts. You will be assigned to one of two cases—a negligence case against the electronic store, Casey’s Electronics, or a product liability case against the cell phone manufacturer, New Cellular Solutions. While preparing for and conducting the trial, you will continually consider what it means to achieve justice and how or if the civil justice system needs to be reformed.

Step 1: Learn about the components of the civil justice system through a case study.

After reading about the civil justice system, tort law, and the outcomes of several real cases, you will closely examine the famous “hot coffee case” as an example of a negligence and product liability case. You will consider the effects of media and public perceptions on this case and the legal system.

Step 2: Read your case file and identify relevant information for the Jordan Fremont case.

You’ll be assigned to represent either the plaintiff or the defendant for one of two cases: *Jordan Fremont v. Casey’s Electronics* or *Jordan Fremont v. New Cellular Electronics*. Working in a legal team, read about the case of Jordan Fremont. Identify causes of action and apply elements of negligence or product liability law to the case. Write an internal memo to the senior partner of your law firm describing the theory of the case.

Step 3: Prepare for the mock trial.

Learn about effective opening statements and closing arguments, the role of witness testimony, and strategies for direct and cross-examination. Apply your understanding by preparing for your assigned trial. Learn about how most cases lead to negotiation settlements, and consider what might happen if your case were to go to settlement instead of trial.

Step 4: Conduct the mock trial.

Participate in a trial as a legal professional and hear the decision of the judge. Observe the other trial and assess the strengths and weaknesses of the teams’ legal arguments.

Step 5: Reflect on the role and effects of civil laws on society.

Learn about the debate around tort reform and the role of special interest groups in shaping the legal system. Determine if or what reforms are needed to ensure equity and fairness within the civil justice system.

Step 6: Reflect on your work in this unit.

Respond to the following questions:

- Did your thinking about the unit framing questions and understandings change at all over the course of the unit? If so, how?
- In what ways is the civil justice system an important component of a democratic society?
- How are the knowledge and skills used in a civil trial relevant to other careers?
- How did the work of professionals contribute to a just outcome in the Jordan Fremont case?
- What questions did this unit raise for you? What additional information would you like?

Handout 6: Unit 4 Assessment Checklist

Use this checklist to note the criteria on which you will be assessed during the unit. Refer to Part C: Internal Memo and Part D: Mock Trial to help you plan and assess your unit project. Make sure that you include all the requirements. Your teacher will use this checklist to help evaluate your work.

Requirements	Percentage of Total Grade	Comments
A. Class Discussions and Participation	%	
Student demonstrates a willingness to share his or her thinking with others.	%	
Student listens to and considers the ideas of others.	%	
Student's attendance, completion of assignments, and engagement with class activities demonstrate a commitment to achieving group goals.	%	
Total	%	
B. Journals	%	
Responses answer all components of the question asked.	%	
Responses are complete with no missing entries.	%	
Responses illustrate concepts and ideas addressed in class.	%	
Responses demonstrate reflection and application of ideas to real-world situations and challenges.	%	
Total	%	

Requirements	Percentage of Total Grade	Comments
C. Internal Memo	%	
Each section is clearly written and easy to understand.	%	
Statements made are accurate according to the facts of the case.	%	
No relevant facts have been left out.	%	
Each section supports the team's legal strategy.	%	
Total	%	
D. Mock Trial	%	
Student's participation in the mock trial meets specified criteria for his or her assigned role.	%	
Total	%	
D. Unit Exam	%	
Student's responses demonstrate the following:	%	
<ul style="list-style-type: none"> An accurate understanding of vocabulary and course content 	%	
<ul style="list-style-type: none"> The ability to apply course content to new ideas and questions 	%	
Total	%	

Handout 7: Cause of Action Scenarios

Scenario 1: ABC Toys, Inc., manufactures a baby rattle using lead-based paint, which is widely known to cause permanent brain damage, especially in small children.

Scenario 2: ABC Toys, Inc., designs a baby rattle using safe, lead-free paint. However, during the manufacturing process, one batch of 500 rattles is accidentally painted with lead paint and shipped out to stores before the mistake is discovered.

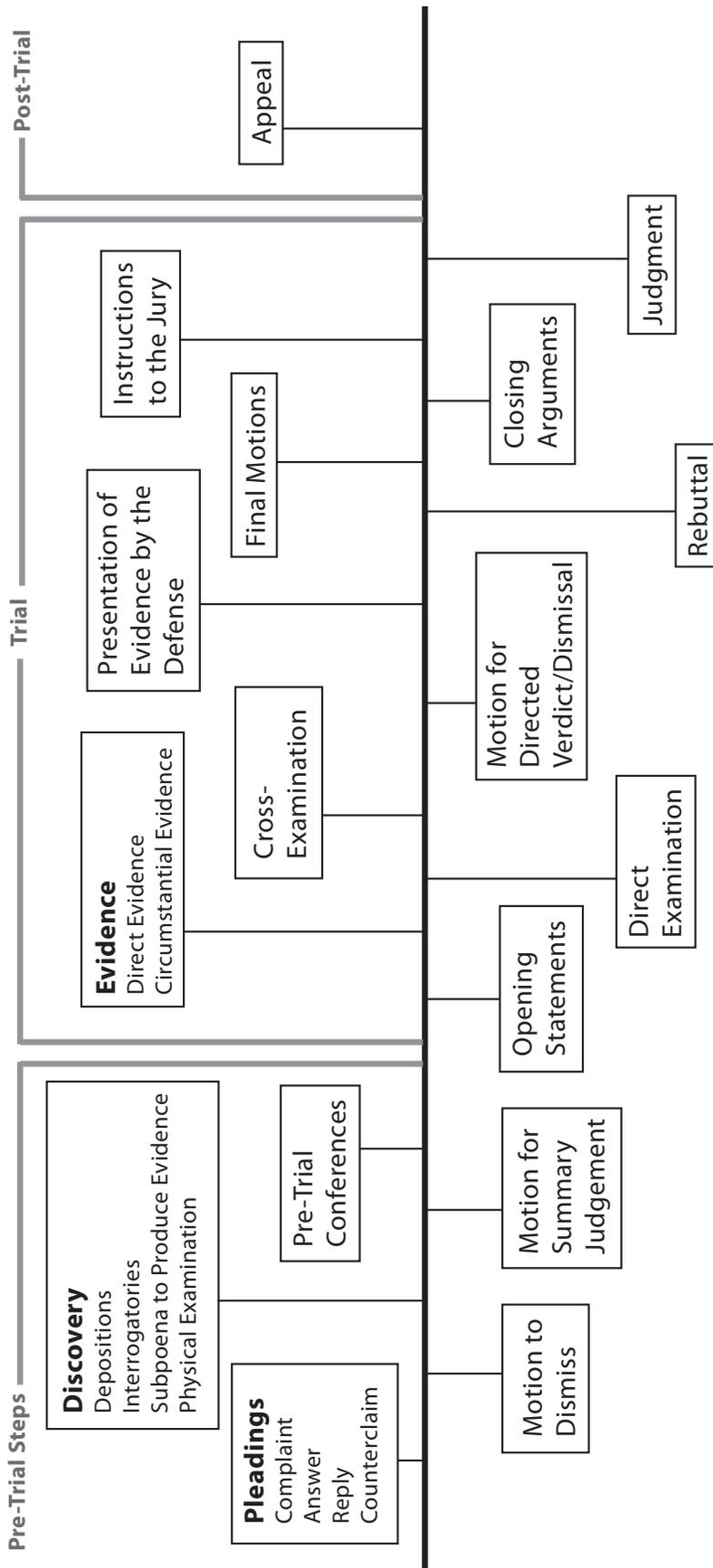
Scenario 3: Bob's neighbor Jim plays his music extremely loudly every night, which is driving Bob crazy. Bob slashes the tires on Jim's car to get back at him.

Scenario 4: Janet is driving down the street while texting her best friend. She accidentally drives through a red light and hits a car who has the right of way.

Scenario 5: Celeste and Patricia go to high school together but do not get along. Celeste invites almost everyone in their class to her birthday party except Patricia, who is very upset because she wasn't invited to the party.

Scenario 6: XYZ Pharmaceuticals, Inc., makes a popular cough medicine. The package that the medicine comes in warns customers of certain side effects. However, it does not explain that prolonged use of the drug increases the risk of having a heart attack.

Handout 8: Steps in a Civil Case



Settlement can occur at any point after a **complaint**

Handout 9: *Liebeck v. McDonald's Restaurants*

Article 1: The Actual Facts About the McDonald's Coffee Case

In February 1992, Stella Liebeck of Albuquerque, New Mexico, was in the passenger seat of her grandson's car when she was severely burned by McDonald's coffee. Liebeck, age 79 at the time, ordered coffee that was served in a Styrofoam cup at the drive-through window of a local McDonald's. After receiving the order, the grandson pulled his car forward [and pulled into a parking spot] so that Liebeck could add cream and sugar to her coffee. Liebeck placed the cup between her knees, but as she removed the lid, the entire contents of the cup spilled into her lap.

The sweatpants Liebeck was wearing absorbed the coffee and held it next to her skin. A burn specialist determined that Liebeck suffered third-degree burns over 6 percent of her body, including her inner thighs and groin area. She was hospitalized for eight days, during which time she underwent skin grafting. Liebeck sought to settle her claim for \$20,000, but McDonald's refused, offering \$800 to settle. McDonald's did not increase this offer at any point during her case.

During discovery, McDonald's produced documents showing that the restaurant had issued payments to more than 700 people burned by its coffee between 1982 and 1992. Some claims involved third-degree burns substantially similar to Liebeck's. This documented McDonald's knowledge about the extent and nature of this hazard. McDonald's also claimed that it kept its coffee at 180–190 degrees Fahrenheit to maintain optimum taste. Other restaurants sell their coffee at substantially lower temperatures, and coffee served at home is generally 135–140 degrees. McDonald's quality assurance manager testified that a burn hazard exists with any food substance served above 140 degrees, and that McDonald's coffee is not fit for consumption at the temperature at which it is sold because it would burn the mouth and throat.

McDonald's also argued that consumers know that coffee is hot and that its customers want it that way. The company admitted that its customers were unaware they could suffer third-degree burns from the coffee and that a statement on the side of the cup was not a "warning" but a "reminder," since the location of the writing would not warn customers of the hazard.

The jury awarded Liebeck \$200,000 in compensatory damages. This amount was reduced to \$160,000 because the jury found Liebeck 20 percent at fault in the spill. The jury also awarded Liebeck \$2.7 million in punitive damages, which equals about two days of McDonald's coffee sales. The trial court subsequently reduced the punitive award to \$480,000—or three times the compensatory damages—even though the judge called McDonald's conduct reckless, callous, and willful.

No one will ever know the final ending to this case. The parties eventually entered into a secret settlement that has never been revealed to the public, despite the fact that this was a public case, litigated in public, and subjected to extensive media reporting. Such secret settlements, after public trials, should not be condoned. Many courts in California have adopted policies against enforcement of secret settlements, which is a positive development for consumers and the public.

Source: Excerpted from "Know the Facts: The McDonalds' Coffee Case," Consumer Attorneys of California © 1995, 1996. All rights reserved.

Article 2: The “Real” Stella’s Case

Those of us at Stella Awards believe that much of the media coverage of the Stella Liebeck case has been grossly unfair. . . . Did you know the following aspects of the *Liebeck v. McDonald’s Restaurants* case?

While Stella was awarded \$200,000 in compensatory damages, this amount was reduced by 20 percent (to \$160,000) because the jury found her 20 percent at fault. Where did the rest of the \$2.9 million figure in? She was awarded \$2.7 million in punitive damages—but the judge later reduced that amount to \$480,000, or three times the “actual” damages that were awarded.

But . . .

- The resulting \$640,000 award isn’t the end of the story. Liebeck and McDonald’s entered into secret settlement negotiations rather than go to appeal. The amount of the settlement is not known—it’s *secret!*
- The plaintiffs were apparently able to document 700 cases of burns from McDonald’s coffee over 10 years, or 70 burns per year. But that doesn’t take into account how many cups are sold *without* incident. A McDonald’s consultant pointed out that 700 cases in 10 years represents just 1 injury per 24 *million* cups sold! For every injury, no matter how severe, 23,999,999 people managed to drink their coffee without any injury whatever. Isn’t that proof that the coffee is not “unreasonably dangerous”?
- Even in the eyes of an obviously sympathetic jury, Stella was judged to be 20 percent at fault—she did, after all, spill the coffee into her lap all by herself. The car was stopped, so she presumably was not bumped to cause the spill. Indeed, *she* chose to hold the coffee cup between her knees instead of any number of safer locations as she opened it. Should she have taken more responsibility for her own actions?

And . . .

Here’s the kicker: Coffee is *supposed* to be served in the range of 185 degrees! The National Coffee Association recommends that coffee be brewed at “between 195 [and] 205 degrees Fahrenheit for optimal extraction” and drunk “immediately.” If not drunk immediately, it should be “maintained at 180–185 degrees Fahrenheit.” (Source: NCAUSA.) Exactly what, then, did McDonald’s do wrong? Did it exhibit “willful, wanton, reckless, or malicious conduct”—the standard in New Mexico for awarding punitive damages?

Source: Excerpt from “The ‘Real’ Stella’s Case,” copyright © 2002–2011 by ThisIsTrue.Inc., www.StellaAwards.com/stella.html.

Handout 10: Negligence

Negligence is the failure to exercise the level of care that a reasonable person would exercise in the same circumstances. When individuals or corporations act negligently, the law requires them to compensate those who have been injured as a result.

In tort law, negligence is a distinct cause of action that can be broken down into five elements:

1. Duty
2. Breach
3. Cause in fact
4. Proximate cause
5. Damages

All five elements need to be present to prove negligence.

Elements of Negligence

1. Duty: The defendant owed a duty of care to the plaintiff

The first issue in a negligence case is what level of duty, if any, the defendant owed the plaintiff. Such a duty arises when the law recognizes a relationship between the defendant and the plaintiff, and, because of this relationship, the defendant is required to act in a certain way toward the plaintiff. For example, the owner of a store has a greater duty of care to customers invited onto the store's premises than he or she does to a trespasser. Professionals, such as doctors, are required to provide a standard of care expected in their profession. Sometime statutes define specific duties, such as the duty of a person to rescue another. Duty is an *issue of law* that is determined by a judge, not a jury.

Example: While unloading heavy boxes from a delivery truck that is parked on the street, the employee of a store accidentally drops a heavy box on a passing pedestrian and breaks her ankle. If this incident became a legal matter, the judge would need to decide whether and what legal relationship the store owner owed to pedestrians walking past his or her store.

2. Breach: The defendant failed to fulfill (breached) that duty

A defendant breaches his or her duty by failing to exercise reasonable care in fulfilling the duty owed to the plaintiff. This is generally an *issue of fact* decided by the jury.

Example: In the example above, the jury would have to decide whether the defendant exercised reasonable care in handling the boxes. The plaintiff may argue that the store should have better marked that area of the sidewalk to warn pedestrians of the dangers. The defendant could argue that the plaintiff had ample warning of the dangers and should have been more careful.

3. Cause in fact: The breach of duty caused the plaintiff injury or harm

Plaintiffs in negligence cases must prove that the defendant's actions caused them some injury or harm. This element is also referred to as "*but-for*" causation. In other words, *but for* the defendant's actions, the plaintiff's injury would not have occurred.

Example: In the case above, the injured pedestrian would have to prove that the defendant's failure to exercise reasonable care in unloading the delivery truck caused her injury, in this case a broken ankle.

4. Proximate cause: The injury was reasonably foreseeable

Proximate cause relates to the scope of a defendant's responsibility in a negligence case. Defendants in a negligence case are only responsible for harms that were *reasonably foreseeable* results of their actions. The law imposes this limit on liability to avoid unfair results.

Example: In the case above, imagine that on the way to the hospital, the plaintiff's ambulance gets into a major accident and she suffers whiplash. She could argue that the defendant's failure to exercise reasonable care was the cause in fact of this additional injury. In other words, but for the defendant's breach of duty, she would not have been in the ambulance and would not have suffered whiplash. However, the defendant's actions were not the proximate cause of the whiplash because the accident in the ambulance was not a foreseeable result of defendant's actions.

5. Damages: The plaintiff suffered from a legally recognized harm

A plaintiff in a negligence case must prove that he or she has suffered a legally recognized harm, usually in the form of physical injury to a person or property or, in some cases, emotional stress.

Example: In the case above, if the plaintiff could prove the first four elements of negligence, she would likely recover damages to cover medical expenses and lost wages if she had to miss work. However, if the plaintiff merely sprained her ankle, had no associated medical costs, and did not miss any work, she would not win her case because she suffered no legally recognized harm.

Handout 11: Overview of the Fremont Case

This mock trial is based on a civil case. You will learn the facts of the case from documents produced during the discovery stage of litigation, including exhibits and transcripts of depositions taken of litigants and witnesses (including one expert witness for the plaintiff).

The plaintiff is **Jordan Fremont**, a 27-year-old resident of Riverdale, a fictional municipality in the fictional county of Riverdale, California. Jordan currently works in the fashion industry and has also done some modeling on the side to supplement her income. She hopes one day to break into the international modeling scene and start her own fashion line.

In January 2008, Jordan purchased a new Z-8 cell phone from **Casey's Electronics**, a small business in Riverdale owned and run by **Casey Walker**. Several months after purchasing the phone, Jordan's phone overheated and caught fire while she was using it. Jordan suffered burns on the side of her face, which were treated at a local hospital. While she has recovered medically, she has been told by cosmetic surgeons that it will be difficult to completely remove the scars from her face. She therefore believes that her potentially lucrative modeling career has been ruined.

Jordan initially takes out her anger on Casey, who sold her the cell phone. In her anger, she goes back to the store demanding that Casey pay for her existing medical bills and the cosmetic surgery she wants to get. When Casey refuses to admit any culpability, Jordan calls 911 saying that she has been injured.

After police inform her that the situation sounds like a civil matter, not a criminal one, Jordan consults with a tort lawyer who advises her to sue.

Handout 12: Strict Product Liability

Elements of Strict Product Liability

Strict product liability is a theory of tort law that emerged during the 1960s partly in response to the failure of traditional tort law to adequately deal with the rapid rise of mass production of consumer goods. This theory of tort law holds corporations liable for products they manufacture or sell that cause injuries to consumers.

There are four elements of a strict product liability claim:

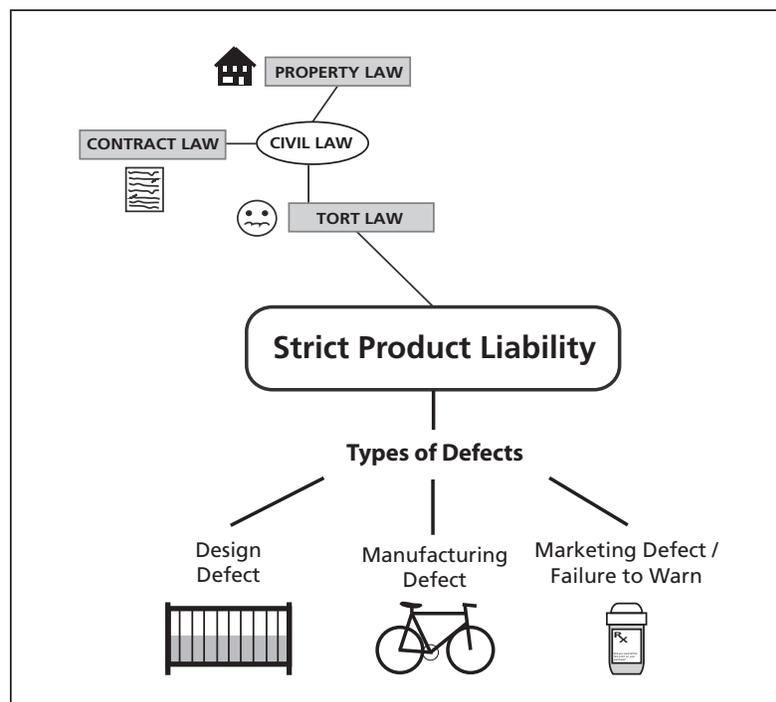
1. A product is sold by a person regularly engaged in the sale of such products.
2. A defect exists in the product at the time it is sold.
3. This defect makes the product unreasonably dangerous.
4. This defect causes physical harm to the user or consumer or to his property.

All four elements must be present to prove a claim of strict product liability.

Unlike negligence cases, strict products liability cases do not focus on the defendant's conduct. Instead, the primary focus is the allegedly defective product.

Types of Product Defects

There are three main types of product defects strict product liability cases: design defects, manufacturing defects, and marketing defects.



A product has a *design defect* if its overall design is inherently dangerous and causes consumers injuries when used properly. For example:

- A new drug can be fatal when taken in conjunction with certain other medicines, but this danger was not discovered until after the drug was on the market.
- A toy has small metal pieces that toddlers can easily pull off and swallow.

Products with a *manufacturing defect* may have been designed safely, but, due to mistakes made during the manufacturing process, one or more of the products were made with a defect and sold to consumers. For example:

- A car is accidentally manufactured with a bolt missing, causing its breaks to fail.
- A batch of medicine was mistakenly manufactured with a poisonous chemical.

A *marketing defect* refers to the failure of companies to adequately warn consumers and the public of the dangers presented by a product. Cases generally involve risks of harm that are not inherently obvious to consumers, or a product that requires extra precaution when using it. For example:

- A new over-the-counter drug fails to warn consumers that taking the drug will increase their risk of heart failure.
- A toxic, heavy-duty cleaning agent fails to provide instructions for its safe use.

Handout 13: Damages in Civil Cases

Damages refers to the amount of money that the defendant in a successful civil suit must pay the plaintiff to compensate for the plaintiff's injury or loss or to punish the defendant for wrongdoing. There are three main categories of damages: (1) compensatory damages, (2) punitive damages, and (3) nominal damages.

Compensatory Damages

Compensatory damages (also called *actual damages*) compensate plaintiffs for their injuries. The goal of this type of damages is to restore plaintiffs to the condition they were in before their injury occurred. There are two types of compensatory damages: economic losses and non-economic losses.

Economic losses refers to money or property that plaintiffs lose as a result of their injuries. For example:

- Medical expenses (e.g., bills from the doctor, hospital, or pharmacist)
- Cost of disability (e.g., home care; renovation of living space to accommodate for loss of mobility)
- Lost wages (i.e., income lost as a result of missing work while recovering)
- Property loss or repair (i.e., the cost of replacing or repairing damaged property)

Non-economic losses refers to physical and/or emotional suffering experienced by the plaintiff. The two most common examples of non-economic losses are as follows:

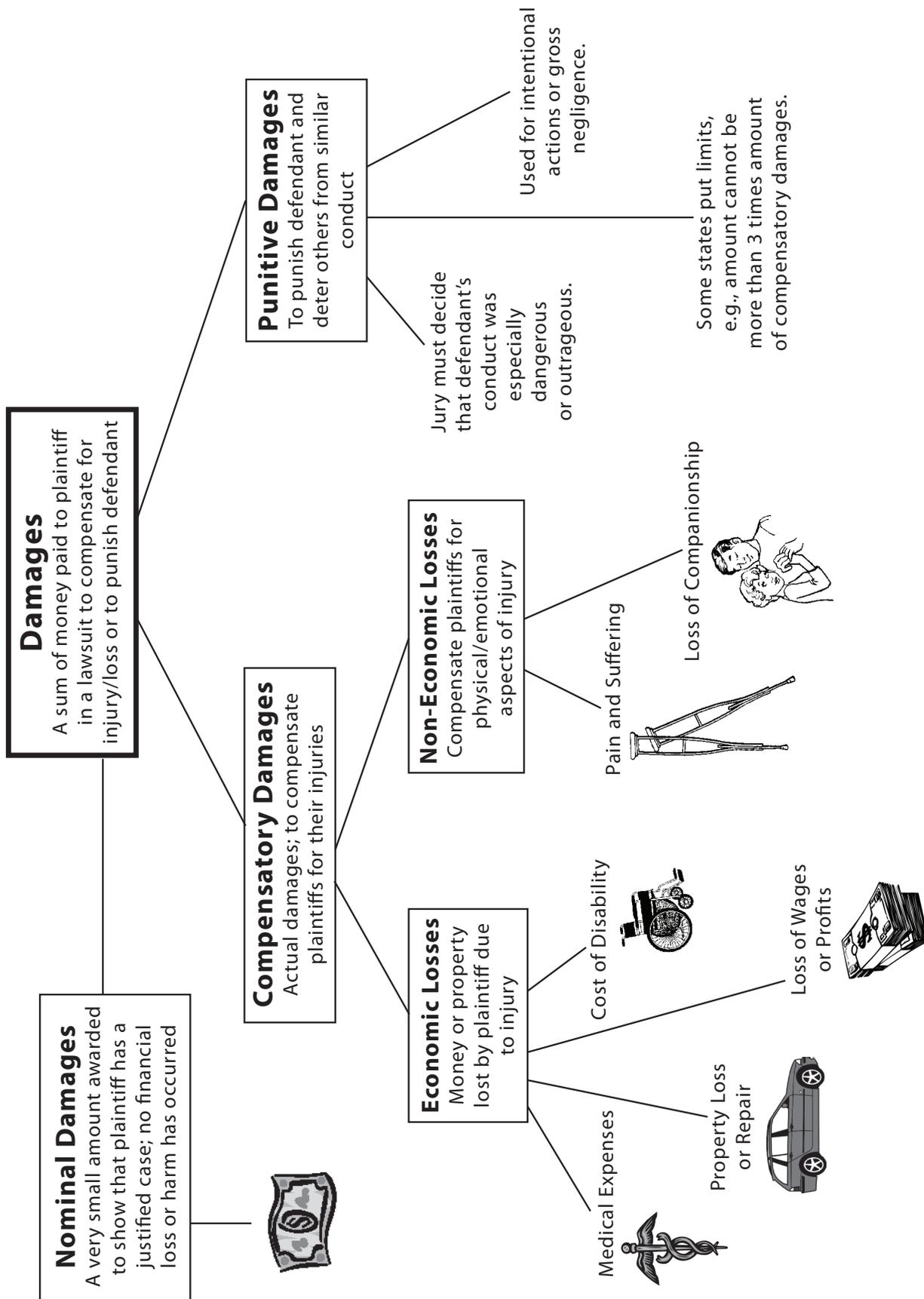
- *Pain and suffering*: This refers to physical or emotional pain or loss of enjoyment of life resulting from an injury. As this can be difficult to quantify, courts will look to damage awards in other, similar cases to guide them.
- *Loss of consortium*: This refers to the negative consequences from an injury on a relationship with the one's spouse, including loss of sexual relations, companionship, emotional support, and affection. In such cases, the plaintiff's spouse may also be able to claim for loss of consortium.

Punitive Damages

In some cases, courts will also impose punitive damages on defendants in addition to compensatory or actual damages. The two main purposes of punitive damages are to (a) punish defendants for behavior that is particularly bad and (b) provide a deterrence to such behavior. While the law varies in different jurisdictions, most states will allow punitive damages in cases involving behavior by the defendant that is either reckless or intentional. In recent years, some states have begun to place statutory limits on the amount of punitive damages that a jury may award.

Nominal Damages

Nominal damages refers to a small monetary award (for example, one dollar) in cases where the court finds that a plaintiff's rights have been violated by the defendant, but that the plaintiff has not suffered any financial loss. In some jurisdictions, the award can also include the plaintiff's legal costs.



Handout 14: Legal Teams

Welcome to the world of civil litigation!

You will serve as a member of one of four legal teams.

Name:

___ Team 1: *Young & Kidd, LLP*, representing plaintiff Jordan Fremont in her case against Casey's Electronics

___ Team 2: *Young & Kidd, LLP*, representing plaintiff Jordan Fremont in her case against New Cellular Solutions

___ Team 3: *Law Offices of Eric Francosi*, representing defendant Casey's Electronics

___ Team 4: *Brown & Holt, LLP*, representing defendant New Cellular Solutions

Role:

___ Junior Partner

___ Associate _____ Witness (dual role)

	Reads	Writes	Presents	Is Assessed On
Junior Partners (up to two students per team)	Memo from Taylor Rhodes to Darryl Gonzalez River Community Hospital bill	Opening and closing statements	Opening and closing statements	Internal memo, opening statement
Associates (up to six students per team)	Deposition for assigned witness role	Direct and cross-examination questions for witnesses	Direct and cross-examination	Internal memo, witness questions

Handout 15: The Case Files

- 15.1 Deposition of Jordan Fremont
- 15.2 Deposition of Jamie Jones
- 15.3 Deposition of Shannon Phillips
- 15.4 Deposition of Darryl Gonzalez
- 15.5 Deposition of Taylor Rhodes
- 15.6 Deposition of Casey Walker
- 15.7 Memo from Taylor Rhodes to Darryl Gonzalez
- 15.8 Riverside Community Hospital Patient Bill
- 15.9 Excerpts from *New Cellular Solutions Z-8 User Guide*

Document 15.1: Deposition of Jordan Fremont

**IN THE SUPERIOR COURT OF RIVERDALE COUNTY
IN AND FOR THE STATE OF CALIFORNIA**

Jordan FREMONT,
Plaintiff

v.

NEW CELLULAR SOLUTIONS, INC., and
CASEY'S ELECTRONICS,
Defendants

CASE NO. 564-984

TRANSCRIPT OF DEPOSITION
OF JORDAN FREMONT

Pursuant to Notice, the Deposition of JORDAN FREMONT was taken on Monday, October 19, 2009, commencing at 10:00 a.m. at the law offices of Brown & Holt before Denise Hoffman, certified court reporter and notary public.

ON BEHALF OF PLAINTIFF JORDAN FREMONT:

Jonathan Kidd, Esq.
Young & Kidd, LLP
1234 Central Avenue
Riverdale, California

ON BEHALF OF DEFENDANT NEW CELLULAR SOLUTIONS, INC.:

Susan Sloan, Esq.
Brown & Holt, LLP
75 Broad Street
Riverdale, California

ON BEHALF OF DEFENDANT CASEY'S ELECTRONICS:

Eric Francosi
Attorney at Law
200 West Broadway
Riverdale, California

JORDAN FREMONT

duly sworn to tell the truth, the whole truth, and nothing but the truth testified as follows:

EXAMINATION BY MS. SLOAN

BY MS. SLOAN:

Q. My name is Susan Sloan, and I represent New Cellular Solutions, Inc., one of the defendants in this case. Are you ready to begin?

A. Yes.

Q. Can you say your full name for the record?

A. My name is Jordan Fremont.

Q. How old are you?

A. I am 27 years old.

Q. How old were you when you began modeling?

A. I began modeling when I was 19.

Q. How many modeling jobs have you had?

A. Seven.

Q. What were the details of the modeling jobs, and how much did you get paid?

A. The first two modeling gigs I did were with Daffodil's Jewelry, a jewelry line started by someone who graduated from my college. In both of these jobs, I modeled jewelry—bracelets and rings. After these jobs, I came in contact with Jamie Jones, who helped me get four other jobs modeling earrings and necklaces in addition to bracelets and rings. Through Jamie, I also did a couple gigs with a well-known facial soap company. I was working on a contract with her company, JJ's Elite Models, when the cell phone incident happened. We were negotiating with a women's accessory company, where I would model various types of women's accessories. In addition to this contract, Jamie was helping me line up two new modeling jobs that were to happen in the next six months.

Q. How much money have you earned for your modeling?

A. I would estimate about \$14,000.

Q. And that's over how many years?

A. Well I started when I was 19, so over eight years.

Q. So that comes to less than \$2,000 per year?

A. Yes, on average, but my rates have steadily increased along with my experience.

Q. What is your primary source of work besides modeling?

A. I work as an assistant to Denise White, a fashion designer here in Riverdale.

Q. What other jobs have you held?

A. When I was in college, I was a hostess at Charlie's Steak House for three years. After school, I applied for jobs with several fashion designers. I worked as an assistant for an emerging accessory designer for two years. Then I found the job with Denise, where I have been for the past three years.

Q. When did you purchase your Z-8 cell phone?

A. I bought it about a year ago from Casey's Electronics.

Q. Did you read the instruction manual for your Z-8 cell phone after you purchased it?

A. Well, I kind of looked at the manual, but two of my friends already had this phone so I already knew how to use it and set most things up. I used to have the Z-5, which is a pretty similar model.

Q. Did you read through any parts of the manual?

A. I just looked at the chapter on setting up the hands-free device. Everything else I figured out on my own.

Q. Please tell us the details of the accident with your cell phone.

A. The phone caught fire on February 5, 2008. I was hard at work that day, assisting for my job, but also working on the details of the business I am trying to start—I want to have my own fashion line. So I was probably on the phone for half the work day, about four hours or so total. Because of all this talking, the battery was probably halfway charged. I was at my desk in the design studio, and I had been on my current call for about 20 minutes when my phone caught fire. I threw it on the ground and screamed out in pain. The phone landed on the tile floor, and my boss was able to put the fire out. I just remember being in a lot of pain and really nervous about what my face looked like. Denise drove me to the hospital.

Q. What happened when you got to the hospital?

A. I was immediately taken to the burn treatment center, where I was treated for third-degree burns on my face and ear. I was in the hospital for two nights while I recovered.

Q. How much was your medical bill?

A. The bill for my stay was \$5,000, which I had to charge to a personal credit card. I don't have health insurance through my job, and I can't afford to buy my own insurance.

Q. Please describe any additional medical treatment you had after the cell phone incident.

A. I have undergone two operations to remove the scars on my face and ear, which cost me \$12,000. However, the surgeon was unable to completely remove the scars.

Q. How has the injury affected you?

A. It's devastated me. The injury has left major scarring on one side of my beautiful face. The plastic surgery was not able to totally improve the scarring, and the surgeon said that additional surgeries would probably only offer very minor improvements. My contract with JJ's Elite Models is currently on hold while they decide whether to continue negotiations, since I cannot have the modeling career that I had hoped. The scarring on my face has ruined my modeling career. That defective phone ruined my life and destroyed my dreams of becoming an international supermodel. I am currently seeing a therapist regularly to work through the emotional and self-esteem issues I have been going through as a result of the accident.

Document 15.2: Deposition of Jamie Jones

**IN THE SUPERIOR COURT OF RIVERDALE COUNTY
IN AND FOR THE STATE OF CALIFORNIA**

Jordan FREMONT,
Plaintiff

v.

NEW CELLULAR SOLUTIONS, INC., and
CASEY'S ELECTRONICS,
Defendants

CASE NO. 564-984

TRANSCRIPT OF DEPOSITION
OF JAMIE JONES

Pursuant to Notice, the Deposition of JAMIE JONES was taken on Tuesday, October 20, 2009, commencing at 9:00 a.m. at the law offices of Brown & Holt before Denise Hoffman, certified court reporter and notary public.

ON BEHALF OF PLAINTIFF JORDAN FREMONT:

Jonathan Kidd, Esq.
Young & Kidd, LLP
1234 Central Avenue
Riverdale, California

ON BEHALF OF DEFENDANT NEW CELLULAR SOLUTIONS, INC.:

Susan Sloan, Esq.
Brown & Holt, LLP
75 Broad Street
Riverdale, California

ON BEHALF OF DEFENDANT CASEY'S ELECTRONICS:

Eric Francosi
Attorney at Law
200 West Broadway
Riverdale, California

JAMIE JONES

duly sworn to tell the truth, the whole truth, and nothing but the truth testified as follows:

EXAMINATION BY MS. SLOAN

BY MS. SLOAN:

Q. My name is Susan Sloan, and I represent New Cellular Solutions, Inc., one of the defendants in this case. Are you ready to begin?

A. Yes.

Q. Can you state your full name for the record?

A. My name is Jamie Jones.

Q. What do you do for a living?

A. I run my own modeling agency, JJ's Elite Models, which I started 12 years ago.

Q. Describe your experience in the modeling field.

A. I have been working in the modeling industry for 21 years, first as a model myself and then as a talent scout. I modeled professionally for seven years, doing all the big fashion shows in Los Angeles, New York City, Paris, and Milan. It's a fun but exhausting life, and I knew I could not do it forever. So I started my own company so I could stay in the field, but also settle down and start a family.

Q. Describe JJ's Elite Models.

A. We're a small outfit, but I have used my connections in the business to get a lot of new talent their start. Several of our models have made it to what I call the international circuit. Each year we have grown, negotiating contracts for more and more emerging models. I consider myself good at recognizing potential in emerging models.

Q. How many models does your agency represent?

A. I currently have contracts with 23 models and regularly work with 10-15 others, such as Jordan. I was hoping to make Jordan my 24th contract.

Q. How long have you known the plaintiff?

A. For about four years.

Q. What is your relationship with her?

A. I met Jordan at a networking event, and I immediately thought she had huge potential. After meeting with her and helping her get some better head shots with one of my photographers, I started negotiating jewelry modeling jobs for her. She didn't have much experience, but she seemed to have a lot of potential—especially for the close-ups required in jewelry modeling. I helped her get four jewelry jobs and one job with a facial soap company. It was the first time a soap company had worked with us, and we have worked with them several times since because of the great job Jordan did. I had been in the process of getting her a longer-term contract with an accessory company when the cell phone incident occurred.

Q. Before the accident, do you think you could have secured Jordan a modeling contract?

A. Yes. Even though she is somewhat inexperienced, the accessory line we were negotiating with was really impressed with her. I knew they would be, because that is how I felt about Jordan after the first time working with her. She is really dedicated to the fashion industry and a beautiful girl. I think we could have secured a middle-range contract for her.

Q. Do you think the accident has impacted Jordan's chances of being a successful model?

A. This unfortunate accident has really affected Jordan. She has gone through some tough physical and emotional times. I am still trying to work with the accessory company, but when they heard about Jordan's accident they were reluctant to continue to talk to me. I tried to assure them that they could still use Jordan even if she did have some scarring, but they seem to want someone who can be an all-around model. I may still be able to get Jordan some hand modeling gigs, but they do not pay nearly as much as full body or face gigs. Unless she can repair her scars with more plastic surgery, it will be very difficult for her to make it. This is a highly competitive field with lots of aspiring young models and a limited number of professional opportunities.

Document 15.3: Deposition of Shannon Phillips

**IN THE SUPERIOR COURT OF RIVERDALE COUNTY
IN AND FOR THE STATE OF CALIFORNIA**

Jordan FREMONT,
Plaintiff

v.

NEW CELLULAR SOLUTIONS, INC., and
CASEY'S ELECTRONICS,
Defendants

CASE NO. 564-984

TRANSCRIPT OF DEPOSITION
OF SHANNON PHILLIPS

Pursuant to Notice, the Deposition of SHANNON PHILLIPS was taken on Tuesday, October 27, 2009, commencing at 10:00 a.m. at the law offices of Brown & Holt before Denise Hoffman, certified court reporter and notary public.

ON BEHALF OF PLAINTIFF JORDAN FREMONT:

Jonathan Kidd, Esq.
Young & Kidd, LLP
1234 Central Avenue
Riverdale, California

ON BEHALF OF DEFENDANT NEW CELLULAR SOLUTIONS, INC.:

Susan Sloan, Esq.
Brown & Holt, LLP
75 Broad Street
Riverdale, California

ON BEHALF OF DEFENDANT CASEY'S ELECTRONICS:

Eric Francosi
Attorney at Law
200 West Broadway
Riverdale, California

SHANNON PHILLIPS

duly sworn to tell the truth, the whole truth, and nothing but the truth testified as follows:

EXAMINATION BY MS. SLOAN

BY MS. SLOAN:

Q. My name is Susan Sloan, and I'm representing New Cellular Solutions, Inc., one of the defendants in this case. Are you ready to proceed?

A. Okay.

Q. Can you say your full name for the record?

A. My name is Shannon Phillips.

Q. What is your educational background since high school?

A. I received my bachelor's degree in engineering from East Virginia Polytechnic in 1988 and then received a master's in electrical engineering from California East Virginia Institute of Technology in 1991, where I finished at the top of my class in the Product Design Program.

Q. What did you do after your graduated?

A. I got a job as an electrical engineer in the product design division at American Electric, where I worked on a team of engineers that conceived and designed new electronics products. In 1998, I was given the opportunity to work on a team that was developing new wireless technology for phones, which was a rapidly growing sector. By 2003 I was a product manager, leading a team of more than 15 engineers designing cutting-edge cell phones.

Q. Do you still work at American Electric?

A. No, I left AE in 2006 to become an industry consultant on safety issues.

Q. What led you to make this switch?

A. While at AE, I had the opportunity to work on product safety and testing, which I found very interesting. I now do this work full time, consulting for different companies on safety and quality control issues.

Q. While at AE, were you ever in charge of testing the safety of cell phones?

A. No, but I worked closely with the director of our product safety lab, helping to create safety tests and analyze the results, which constituted 25 percent of my responsibilities.

Q. Have you had the opportunity to review the documents provided by my client during discovery in this case?

A. Yes, I have.

Q. What documents have you reviewed?

A. I have reviewed all of the internal memoranda and e-mail communications during the design and product testing of the Z-8 model cell phone developed by New Cellular Solutions.

Q. What conclusions did you come to when reviewing these documents?

A. I believe that the company failed to take adequate steps to reduce the risk that the Z-8 would overheat and catch on fire, especially when used with inferior-quality batteries. Given these risks, the company should have either required its distributors to only equip the phone with high-quality batteries or taken better steps to warn consumers of the risk inherent in using such batteries.

Q. Does American Electric or any other cell phone manufacturer require its retailers to sell a specific brand of battery?

MR. JONATHAN KIDD: Objection. Ms. Phillips has no basis for knowing current policies and practices of other cell phone manufacturers.

BY MS. SLOAN:

Q. Question withdrawn. I'll rephrase the question. When you were working at American Electric, did the company specify which cell phone battery its phones must be used with?

A. No, but that was not the industry practice at that time. However, phones during that time period did not have as high a risk of overheating as phones like the Z-8 produced today. This risk has increased as cell phones have gotten smaller and more sophisticated in response to consumer demand. To equip phones with the power needed to run complex applications, manufacturers have reduced the amount of ventilation for batteries, which in turn has increased the risk of overheating.

Q. Have you had an opportunity to review the *Z-8 User Guide* that all customers receive when they purchase their Z-8 phone?

A. Yes.

Q. What does the user's guide say about which batteries to use with the Z-8 cell phone?

A. The booklet includes a list of safety precautions, which includes a statement that "use of an unapproved battery could diminish the performance of your phone and could also cause your phone to overheat."

Q. Why don't you believe this is an adequate warning?

A. I believe this warning is inadequate for several reasons. First, it fails to even mention the possibility that the phone might catch fire. Consumers think "overheating" means the phone gets hot, which most users experience regularly after steady and consistent use. Telling consumers that their phone can catch fire would have a much greater impact on consumer behavior. Second, the guide does not provide any information about which batteries are unapproved. Most consumers reasonably assume that their phone has been equipped with an approved and safe battery for their product. Manufacturers and retailers are in the best position to make this decision, not consumers, especially when they are given such vague and meaningless warnings.

Q. What do you know about PowerSource One, the company that produced the battery sold to Ms. Fremont with her Z-8?

A. It's a very disreputable company. Just one month prior to the sale of the phone, one of their other batteries had to be recalled because it was defective. The battery involved in this case wasn't recalled, but that just shows what kind of company we're talking about.

Document 15.4: Deposition of Darryl Gonzalez

**IN THE SUPERIOR COURT OF RIVERDALE COUNTY
IN AND FOR THE STATE OF CALIFORNIA**

Jordan FREMONT,
Plaintiff

v.

NEW CELLULAR SOLUTIONS, INC., and
CASEY'S ELECTRONICS,
Defendants

CASE NO. 564-984

TRANSCRIPT OF DEPOSITION
OF DARRYL GONZALEZ

Pursuant to Notice, the Deposition of DARRYL GONZALEZ was taken on Monday, November 9, 2009, commencing at 9:30 a.m. at the law offices of Young & Kidd before Cliff Pearson, certified court reporter and notary public.

ON BEHALF OF PLAINTIFF JORDAN FREMONT:

Jonathan Kidd, Esq.
Young & Kidd, LLP
1234 Central Avenue
Riverdale, California

ON BEHALF OF DEFENDANT NEW CELLULAR SOLUTIONS, INC.:

Susan Sloan, Esq.
Brown & Holt, LLP
75 Broad Street
Riverdale, California

ON BEHALF OF DEFENDANT CASEY'S ELECTRONICS:

Eric Francosi
Attorney at Law
200 West Broadway
Riverdale, California

DARRYL GONZALEZ

duly sworn to tell the truth, the whole truth, and nothing but the truth testified as follows:

EXAMINATION BY MR. JONATHAN KIDD

BY MR. KIDD:

Q. Good morning. My name is Jonathan Kidd, and I'm representing Ms. Jordan Fremont, the plaintiff in this case. I'm first going to be asking you a series of questions about your professional background and then more specifically about the facts of this case. Are you ready to proceed?

A. Yes.

Q. Can you say your full name for the record?

A. My name is Darryl Gonzalez.

Q. Where do you currently work?

A. At New Cellular Solutions, Inc.



- Q. What is your current job at the company?
- A. I am senior vice president in charge of product development.
- Q. What does this job entail?
- A. In short, I am responsible for the development of all new products at the company.
- Q. How long have you been in this position?
- A. For six years.
- Q. Were you responsible for overseeing the design and production of the Z-8 cell phone introduced to the market in January 2008?
- A. Yes, I was. I worked with a team of more than 20 engineers as well as the company's product safety lab for almost a year.
- Q. Can you describe the safety testing conducted during this process?
- A. Safety is a top priority at NCS and one that we take very seriously. Before we roll out any new product, we subject the prototype to extensive testing to assess its safety to consumers and to make any changes necessary to minimize the risk of harm.
- Q. What type of testing did the company conduct to test the battery power function of the Z-8?
- A. I wasn't personally involved with testing the Z-8. Tests are conducted by our product testing lab, headed by Taylor Rhodes, who reports to me on a regular basis. Like we do for all our phones, we test the phone's likelihood to overheat in a wide variety of conditions, including high external temperatures. Like all cell phones, the Z-8 has a minimal risk of overheating when there is a combination of several factors, which consumers can take steps to avoid. These include using the phone continuously for long periods of time, exposing the phone to high external heat, and using a low-quality or knock-off battery.
- Q. Did your testing reveal that the Z-8 was more susceptible to overheating than other, previous models of cell phones?
- A. We did find that the Z-8's risk of overheating was slightly higher than previous models. However, this comports with industry-wide trends due to increased power needs of cell phones. Consumers want more and more powerful phones that can take photos and videos, send e-mail, and search the Internet. That takes additional power, and power generates heat. It's simple physics. But we have taken every precaution to make our phones as safe as possible.
- Q. Did you warn consumers of the known risks associated with using the Z-8?
- A. Yes. The user's guide provided with every Z-8 and available on our website warns consumers of the risk that the phone can overheat. The user's guide specifically warns consumers of the risks of using unapproved batteries in the phone.
- Q. Does the company require retailers to sell the phone with approved batteries?
- A. Yes, to be a certified dealer of our phones, a retailer must sell phones with approved batteries only. However, we have no control over uncertified dealers.
- Q. Are you aware that some retailers sell your phones with inferior-quality and knock-off batteries in order to increase their profit margins?
- A. Yes, I am aware that this sometimes happens. Working in the cell phone industry, I am of course aware of recent cell phone battery recalls issued by the Consumer Product Safety Commission. As I mentioned, we have taken every precaution to warn our customers of the risks of using such inferior batteries with their phones.

Q. What steps did NCS take to reduce the risk of the phone overheating?

A. We chose to not alter the design of the Z-8 because the risk of overheating was negligible, especially when consumers used it in accordance with the safety tips provided in the user's guide. These include keeping the phone away from external heat sources, turning the phone off if you feel it getting warm, and using a high-quality battery. If followed, these simple steps are a much better way of reducing any risk of overheating than anything we could have done to redesign the phone.

Q. How much would it have cost the company to redesign the prototype after product testing?

A. It's hard to put an exact number on it, but I would say between \$1 million and \$1.2 million, which includes not only redesigning the phone but also conducting additional tests on the new prototype.

Q. How much profit did NCS make off sales of the Z-8 last year?

A. Globally, we sold 5 million units of the Z-8 last year, which amounts to approximately \$600 million in gross sales revenue and a net profit for NCS of \$110 million. Those data are all publicly available in our annual report.

Document 15.5: Deposition of Taylor Rhodes

**IN THE SUPERIOR COURT OF RIVERDALE COUNTY
IN AND FOR THE STATE OF CALIFORNIA**

Jordan FREMONT,
Plaintiff

v.

NEW CELLULAR SOLUTIONS, INC., and
CASEY'S ELECTRONICS,
Defendants

CASE NO. 564-984

TRANSCRIPT OF DEPOSITION
OF TAYLOR RHODES

Pursuant to Notice, the Deposition of TAYLOR RHODES was taken on Wednesday, November 11, 2009, commencing at 9:00 a.m. at the law offices of Young & Kidd before Cliff Pearson, certified court reporter and notary public.

ON BEHALF OF PLAINTIFF JORDAN FREMONT:

Jonathan Kidd, Esq.
Young & Kidd, LLP
1234 Central Avenue
Riverdale, California

ON BEHALF OF DEFENDANT NEW CELLULAR SOLUTIONS, INC.:

Susan Sloan, Esq.
Brown & Holt, LLP
75 Broad Street
Riverdale, California

ON BEHALF OF DEFENDANT CASEY'S ELECTRONICS:

Eric Francosi
Attorney at Law
200 West Broadway
Riverdale, California

TAYLOR RHODES

duly sworn to tell the truth, the whole truth, and nothing but the truth testified as follows:

EXAMINATION BY MR. JONATHAN KIDD

BY MR. KIDD:

Q. My name is Jonathan Kidd, and I'm representing Ms. Jordan Fremont, the plaintiff in this case. Are you ready to proceed with your deposition?

A. Yes I am.

Q. Can you say your full name for the record?

A. My name is Taylor Rhodes.

Q. What is your educational background?

A. I received my bachelor's degree in engineering from Stanford and my master's in electrical engineering from UCLA. I have also received additional professional training in product design and quality control.

- Q. How long have you worked in the field of product safety?
- A. For almost 20 years now. After getting my master's degree, I got a job working at an independent product safety lab that works with mid-size manufacturing firms to test their products.
- Q. How long did you work there?
- Q. For 12 years. Then I was hired by NCS to be assistant director of their Product Safety Lab.
- Q. What does NCS stand for?
- A. New Cellular Solutions, Incorporated.
- Q. Is that where you currently work?
- A. Yes. Four years ago I was promoted to director of product safety.
- Q. Was that your position during the design phase of the Z-8?
- A. Yes, that was one of the first products we developed after I became director.
- Q. What types of tests do you do before manufacturing begins?
- A. We conduct extensive testing, recording a wide variety of data, analyzing how our phones will perform in different conditions.
- Q. Did the Z-8 cell phone present any unique challenges, particularly with respect to its ventilation system and likelihood of overheating?

BY SUSAN SLOAN: Objection. Leading the witness.

BY MR. KIDD:

- Q. Withdrawn. Describe for us any tests you conducted regarding the safety of the battery and ventilation system.
- A. Sure. Like we do for all our phones, we conduct tests to measure the likelihood of the phone to overheat in different conditions. We control for a variety of variables, including outside temperature, length of use, and battery quality. What we have consistently found is that while the risk of overheating in optimal conditions is extremely small—0.006 percent, to be precise—the risk increases slightly when there is a confluence of factors: high outside temperature, low-quality battery, and continuous use of the phone for over three hours.
- Q. Were these risks higher for the Z-8 than for other phones manufactured by NCS?
- A. Only slightly, but that was to be expected. As cell phones have gotten smaller and more powerful throughout the industry, there is a slight increase of risk of overheating. This is an industry-wide trend, not just at NCS or with the Z-8.
- Q. What did you explain to Darryl Gonzalez, head of production at NCS, in an e-mail dated September 15, 2008?
- A. Darryl had asked me some questions about our heat tests of the Z-8. I explained that the phone had similar, minimal risks of overheating to the Z-7.
- Q. Can you describe those risks?
- A. When used properly, the risks are virtually non-existent. Like all phones, when faced with a confluence of high-risk factors, such as high external temperature, a low-performance battery, and excessive use, the risk of overheating is still only .01 percent, or a 1 in 10,000 chance.
- Q. What does NCS define as a "high external temperature"?
- A. For purposes of our testing, this variable is defined as 120 degrees Fahrenheit.

Q. Aren't there communities in the United States in which that is not a high temperature but in fact a normal temperature?

A. I am not a meteorologist, but I would not describe 120 degrees as a normal temperature at which to store electronic equipment like a cell phone.

Q. What about the dashboard of a car in southern California?

BY SUSAN SLOAN: Objection. Leading question.

BY MR. KIDD:

Q. Withdrawn. How did NCS arrive at defining "high external temperature" as 120 degrees?

A. This is a standard protocol for heat tests throughout the cell phone industry, and one that has been recognized by the Consumer Product Safety Commission, an agency of the federal government.

Document 15.6: Deposition of Casey Walker

**IN THE SUPERIOR COURT OF RIVERDALE COUNTY
IN AND FOR THE STATE OF CALIFORNIA**

Jordan FREMONT,
Plaintiff

v.

NEW CELLULAR SOLUTIONS, INC., and
CASEY'S ELECTRONICS,
Defendants

CASE NO. 564-984

TRANSCRIPT OF DEPOSITION
OF CASEY WALKER

Pursuant to Notice, the Deposition of CASEY WALKER was taken on Monday, November 16, 2009, commencing at 10:00 a.m. at the law offices of Young & Kidd before Cliff Pearson, certified court reporter and notary public.

ON BEHALF OF PLAINTIFF JORDAN FREMONT:

Jonathan Kidd, Esq.
Young & Kidd, LLP
1234 Central Avenue
Riverdale, California

ON BEHALF OF DEFENDANT NEW CELLULAR SOLUTIONS, INC.:

Susan Sloan, Esq.
Brown & Holt, LLP
75 Broad Street
Riverdale, California

ON BEHALF OF DEFENDANT CASEY'S ELECTRONICS:

Eric Francosi
Attorney at Law
200 West Broadway
Riverdale, California

CASEY WALKER

duly sworn to tell the truth, the whole truth, and nothing but the truth testified as follows:

EXAMINATION BY MR. JONATHAN KIDD

BY MR. KIDD:

Q. Good morning. My name is Jonathan Kidd, and I'm representing Ms. Jordan Fremont, the plaintiff in this case. I'm first going to be asking you a series of questions about your professional background and then more specifically about the facts of this case. Are you ready to proceed?

A. Yes.

Q. Can you say your full name for the record?

A. My name is Casey Walker.

Q. Where do you work?

A. At my store, Casey's Electronics, located in downtown Riverdale.

Q. What is your current job?

A. I own the store, which is a sole proprietorship.

Q. How long have you been in this position?

A. I started the store just over two years ago, in July 2007.

Q. What did you do before opening the store?

A. I was a stockbroker in New York, where I made a lot of money during the Internet boom in the '90s.

Q. Why did you decide to leave Wall Street to start your own business in Riverdale?

A. Well, I always had this dream of owning my own business and being my own boss. Being a trader was exciting, but you can only do that for so long. I saved up some money from when the economy was going strong. When the economy started tanking after the housing market crashed, I was let go by the brokerage firm. No one on Wall Street was hiring, so I decided to start my store.

Q. Why did you choose to start an electronics store?

A. Well, I read several books about starting a small business, and they all said to choose a product or service that you're passionate and knowledgeable about. Since I was kid, I've always liked taking things apart to see how they worked. I took apart fans, phones, remote-control cars, stereos, everything. It's always been a hobby of mine. So I figured I would really enjoy selling and repairing electronics.

Q. Find something you love doing, and you'll never work another day?

A. Well, that's what I thought when I got started, but let me tell you—running your own store is no picnic. The hours are brutal, and the profit margins are slim.

Q. Your store wasn't successful?

A. Well, people just don't get things repaired any more. We've become a throw-away society. If something doesn't work, we toss it out and buy a new one. And it's really tough to compete with the big chain stores, which get their merchandise much cheaper than I can. It's totally unfair.

Q. When did you start selling cell phones?

A. Within a few months of opening the store, I knew I had to find some additional revenue streams. I figured cell phones were hugely popular, and I could get customers into the store selling phones, wireless service, and accessories.

Q. Did you sell Ms. Fremont a Z-8 cell phone on September 15, 2008?

A. Yes, I did.

Q. Did you equip her phone with a PowerSource One brand battery?

A. Yes, according to my store records, that is the battery that was sold with that phone.

Q. Was that battery approved by the manufacturer, New Cellular Solutions, Inc.?

A. At that time, NCS did not provide retailers with a list of approved batteries for its phones. It merely recommended that you use the batteries it manufactures.

Q. Why didn't you use their recommended battery?

A. I figured they were just trying to squeeze the little guy for a little more money. Our profit margin is slim. It's the big corporations like NCS that are making all the big bucks. Trust me, I know that world from my days on Wall Street. I'm just out here trying to survive.

Q. Are you aware that there was an increased risk that the phone will overheat when using an inferior or knock-off battery?

A. No, I was not aware of that at the time.

BY ERIC FRANCOSI: Was the battery you sold a so-called "knock-off"?

A. No. It was made by a reputable manufacturer. I've sold many phones with these batteries and never had any problems with them.

Document 15.7: Memo from Taylor Rhodes to Darryl Gonzalez

Taylor Rhodes

From: Taylor Rhodes
Sent: Monday, September 15, 2008, 3:54 PM
To: Darryl Gonzalez
Subject: Z-8 Product Testing

Hello Darryl,

I am writing in response to your recent inquiry about our latest heat tests of the Z-8 prototype. As you know, we have been testing the phone's risk of overheating in different conditions and combinations of factors.

In general, we have found the Z-8's performance to be comparable with that of the Z-7, even though there have been slight reductions in the size of the phone's ventilation system. In order to make the phone more compact, the Z-8's ventilation space has been reduced by 10 percent. This has led to a 0.05 percent increase in the overheating rate when the phone is in continual use for over three hours. This was to be expected. Overall, the rate of overheating in optimal conditions is still negligible: a .006 percent chance when in use continuously for three or more hours.

Furthermore, as we have seen in previous models, the phone's risk of overheating increases by 5 percent when the phone is powered using a mid-level-quality battery and up to 10 percent when using a low-quality battery.

Finally, when there is a combination of the following three variables—(1) continuous use of the phone for three or more hours, (2) external temperature over 120 degrees Fahrenheit, and (3) use of a low-quality battery—the risk of overheating rises to .01 percent, meaning, its likelihood of overheating in that situation is 1 in 10,000.

I hope that helps to answer your question. We can talk further about these issues during our meeting tomorrow afternoon.

Thanks,
Taylor

Taylor Rhodes
Director of Product Safety
New Cellular Solutions, Inc.

Document 15.8: Riverside Community Hospital Patient Bill



River Community Hospital
600 Redwood Avenue
Riverdale, CA 93656

Patient Name: Jordan Fremont
Date of Service: 02/05/08–02/07/08
Statement Date: 03/25/08

Current Insurance Provider:
None/Uninsured _____
Policy #: _____

Payment Method: _____
Credit Card #: _____
Expiration Date: _____ Card Type: _____
Amount Enclosed: _____

Jordan Fremont
19 B Western Street
Riverdale, CA 93651

Account #	Previous Balance	Charges	Est Ins Coverage	Amt Due from Patient
1654-27	0	5000.00	0	5000.00

Date	Description	Charges	Est Ins Coverage	Payment
02/05/08	Endothelial Cell Burn Treatment, Face and Ear	1850.00		
02/05/08	Antibiotic Topical Ointment	250.00		
02/05/08	Dilaudid Intravenous	550.00		
02/05/08	Double Room/Private Bath	900.00		
02/06/08	Dilaudid Intravenous	550.00		
02/06/08	Double Room/Private Bath	900.00		
			0	
River Community Hospital			Amount Due from Patient	5000.00

Thank you for your payment. Your payment is due in full within two weeks of this statement. If you are unable to pay in full, you may call to inquire about our monthly payment option. Please call the credit department at 559-896-3342, during regular business hours, M–F.

Document 15.9: Excerpts from *New Cellular Solutions Z-8 User Guide*

Page 89:

For Your Safety

Please read all the information in this section carefully to prevent any damage to or misuse of the phone. Failure to adhere to these safety instructions could void your warranty for this equipment.

- To reduce the possibility of electric shock, do not expose your phone to high-humidity areas, such as the bathroom, a swimming pool, or a sauna.
- Never store your phone in settings that may expose it to temperatures less than 32°F or greater than 104°F, such as outside during extreme weather conditions or in your car on a hot day. Exposure to excessive cold or heat will result in malfunction, damage, and/or catastrophic failure.
- Do not use an unauthorized battery, which could diminish the performance of your phone and could also cause your phone to overheat.
- Unplug the charger from the power socket during lightning storms to avoid electric shock or fire due to power surges.
- Make sure that no sharp items come into contact with the battery. This could pose a fire risk.

Page 92:

For Your Safety

Cautions for the Battery

Please read all the information in this section carefully to prevent any damage to the battery. Failure to adhere to these safety instructions could void your warranty for this equipment.

- Do not modify or remanufacture the battery, attempt to insert foreign objects into it, immerse the battery in or expose it to water or other liquids, or expose it to fire, explosion, or other hazard.
- Only use the battery for the system for which it is specified.
- Only use the battery with a charging system that has been qualified with the system per this standard. Use of an unqualified battery or charger may present a risk of fire, explosion, leakage, or other hazard.
- Replace the battery only with another battery that has been qualified for your model phone. Use of an unqualified battery may present a risk of fire, explosion, leakage, or other hazard.
- Improper battery use may result in a fire, explosion, or other hazard.

Page 97:

For Your Safety

Battery Information and Care

- Please dispose of your battery properly or take it to your local wireless carrier for recycling.
- Use only NCS-approved adapters (chargers) specific to your phone model, since they are designed to maximize battery life.
- Do not disassemble or impact the battery, as this may cause electric shock; the battery may also short-circuit or catch fire.
- Store the battery where it is out of children's reach.
- Keep the battery's metal contacts clean.
- Replace the battery when it no longer provides acceptable performance. (The battery can be recharged several hundred times before it needs to be replaced.)
- Recharge the battery after long periods of non-use to maximize battery life.

Things to keep in mind:

- Battery life will vary due to usage patterns and environmental conditions.
- Talking on your phone for a long period of time may reduce call quality due to heat generated during use.
- Using a damaged battery may cause serious injury.

Page 98:

For Your Safety

Explosion, Shock, and Fire Hazards

- Do not put your phone in a place subject to excessive dust. Keep the minimum required distance between the power cord and heat sources.
- Unplug the power cord prior to cleaning your phone, and clean the power plug pin when it is dirty.
- If you put your phone in a pocket or bag without covering the receptacle of the phone (power plug pin), metallic articles (such as a coin, paperclip, or pen) may short-circuit the phone. Always cover the receptacle when not in use.
- Do not short-circuit the battery. Metallic articles, such as a coin, paperclip, or pen in your pocket or bag, may short-circuit the battery and cause an explosion.

Handout 16: Document Analysis

As a civil litigator, you are responsible for reading key documents to help your legal team prepare for trial. Complete this handout as you read in order to help you identify and share important information with your team.

1. What type of document is it?

2. Where did the document come from (what is the source)?

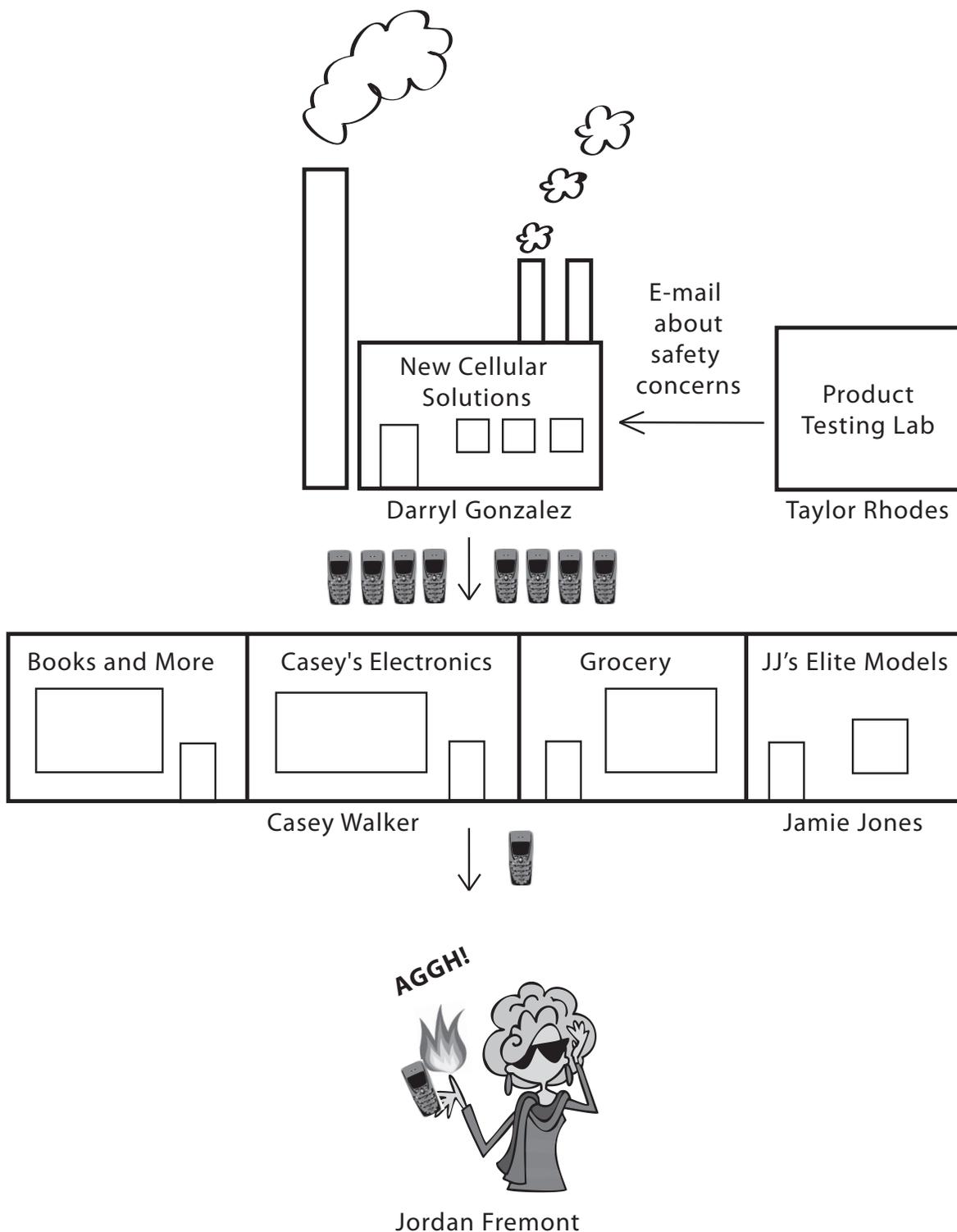
3. What kinds of information does the document contain? Is the information factual, inferential, or both? List the key facts and inferences.

Facts	Inferences	Notes

4. What questions about the case does this document raise for you? What else would you like to know?

Handout 17: Sample Case Facts Visual

Refer to this sample visual for ideas as you and your group create a visual representation of key facts.



Handout 18: Identifying Key Facts

Negligence Claim Against Casey's Electronics

Claim

Jordan Fremont is suing Casey's Electronics for negligence. She alleges that Casey knew or should have known of the risks of using her Z-8 cell phone with a low-quality battery manufactured by PowerSource One.

Legal Issue

Is Casey's Electronics liable for negligence for selling Jordan her Z-8 cell phone with a low-quality battery that may have caused the phone to overheat and catch on fire?

	Facts Supporting	Facts Undermining
Duty <i>Was Jordan's injury reasonably foreseeable?</i>		
Breach of Duty <i>Would a reasonable person in Casey's shoes have acted in the same way?</i>		

<p>Cause in Fact <i>Did Casey's actions in fact cause Jordan's injury?</i></p>		
<p>Proximate Cause <i>Were there any intervening facts that made the injury unforeseeable?</i></p>		
<p>Damages <i>Did Jordan suffer injury as a result of the alleged breach?</i></p>		

Strict Product Liability Claim Against New Cellular Solutions, Inc.

Claim

Jordan Fremont has filed a civil suit against New Cellular Solutions, Inc. (NCS), the manufacturer of her cell phone, for strict product liability. Her complaint alleges that the company did not adequately warn her of the risk that her cell phone might catch fire and cause her serious bodily injury.

Legal Issue

Can NCS be held strictly liable for producing a defective product or for failing to adequately warn consumers of the dangers of using the product?

	Facts Supporting	Facts Undermining
<p>Injury <i>Did Jordan suffer an injury or loss?</i></p>		
<p>Product Defect <i>Was the product designed, manufactured, or marketed defectively?</i></p>		

<p>Cause <i>Did the defect cause Jordan's injury?</i></p>		
<p>Product Used as Intended <i>Did Jordan use the product as intended?</i></p>		

Handout 19: Practice IRAC Memo

MEMORANDUM

TO: Senior Partner
FROM: Associate Attorney
DATE: February 1, 2010
RE: *Jill v. Water Wells, Inc.*

Statement of Facts

"Jack and Jill went up the hill to fetch a pail of water. Jack fell down and broke his crown, and Jill came tumbling after. Up Jack got and home did trot as fast as he could caper. He went to bed and bound his head with vinegar and brown paper."¹

That night the wound on Jack's head got seriously infected, and Jack ended up in the hospital. He then sued the owner of the hill, Water Wells, Inc., for his hospital bills. Jack's complaint alleges that he fell due to the poor maintenance of paths on the hill. According to the deposition of Dr. Hubbard, an expert witness for Water Wells, Inc., Jack's failure to get professional medical help was the primary cause of his infection.

Issue

Is Water Wells, Inc., liable for Jack's injuries because of its negligence in maintaining the pathways on its property?

Rule of Law

Negligence exists when the defendant owes a legal duty to the plaintiff, and the defendant's breach of that duty is both the cause in fact and the proximate cause of the plaintiff's injury. When a business invites a person onto its premises, the business has a duty to take reasonable steps to assure the person's safety while the person is on the premises.

Under California's comparative negligence system, a plaintiff's damages may be reduced based on the degree to which the plaintiff's own negligence contributed to the injury. Juries are instructed to assign a percentage of fault to the plaintiff's own actions and to reduce the damage award accordingly.

Application

Conclusion

Handout 20: Sample IRAC Memo

MEMORANDUM

TO: Senior Partner
FROM: Associate Attorney
DATE: February 1, 2010
RE: *Jill v. Water Wells, Inc.*

Statement of Facts

"Jack and Jill went up the hill to fetch a pail of water. Jack fell down and broke his crown, and Jill came tumbling after. Up Jack got and home did trot as fast as he could caper. He went to bed and bound his head with vinegar and brown paper."¹

That night the wound on Jack's head got seriously infected, and Jack ended up in the hospital. He then sued the owner of the hill, Water Wells, Inc., for his hospital bills. Jack's complaint alleges that he fell due to the poor maintenance of paths on the hill. According to the deposition of Dr. Hubbard, an expert witness for Water Wells, Inc., Jack's failure to get professional medical help was the primary cause of his infection.

Issue

Is Water Wells, Inc., liable for Jack's injuries because of its negligence in maintaining the pathways on its property?

Rule of Law

Negligence exists when the defendant owes a legal duty to the plaintiff, and the defendant's breach of that duty is both the cause in fact and the proximate cause of the plaintiff's injury. When a business invites a person onto its premises, the business has a duty to take reasonable steps to assure the person's safety while the person is on the premises.

Under California's comparative negligence system, a plaintiff's damages may be reduced based on the degree to which the plaintiff's own negligence contributed to the injury. Juries are instructed to assign a percentage of fault to the plaintiff's own actions and to reduce the damage award accordingly.

Application

In this case, Water Wells, Inc., invited Jack and Jill onto its property ("the hill") to use its water for a monthly fee. The company therefore owed them a duty to reasonably protect them from harm while on company property. Jack argues that the company breached this duty by failing to maintain a safe pathway up the hill with smooth paving, handrails, and safety lights that are the standards in the water well industry. He further alleges that his injury was reasonably foreseeable because at least three customers had complained to the company about similar injuries during the last five years, giving the company notice that the hill was unsafe. Water Wells, Inc., can counter that the path had recently been repaved and that lights are not necessary because customers are only allowed on the property during the

daytime. However, given that customers have previously been injured on these pathways, it is likely that the company will be liable for failing to provide a handrail on a path located on such a steep incline.

Jack's damages may be reduced due to his own negligence by failing to seek immediate medical attention for his head wound and treating his wound with vinegar and brown paper. According to the deposition of Dr. Hubbard, expert witness for Water Wells, Inc., this treatment is what caused the wound to get infected. It is therefore likely that while Water Wells, Inc., will be held liable for the initial injury that Jack suffered, the company is not likely to be held liable for the infection Jack subsequently suffered as a result of his own actions.

Conclusion

Water Wells, Inc., will likely be held liable for negligence for failing to properly maintain its hills in a reasonably safe manner and for failing to adequately warn its customers of the dangers in climbing its hills.

Handout 21: Internal Memo Template

MEMORANDUM

TO:
FROM:
DATE:
RE:

Statement of Facts

Issue

Rule of Law

Application

Conclusion

Handout 22: Trial Script

Clerk/Bailiff	All rise! The Honorable Judge [name of judge] presiding. <i>The judge enters the courtroom and takes his or her seat</i> You may be seated. The court is now in session. We will now hear the case of <i>Fremont versus Casey's Electronics</i> . <i>OR:</i> We will now hear the case of <i>Fremont versus New Cellular Solutions</i> .
Judge	Are the attorneys from all sides ready to proceed?
Attorneys	Yes, your Honor.
Judge	<i>[To plaintiff's counsel]</i> Counselor, do you wish to make an opening statement?
Plaintiff's Attorney	Yes, your Honor.
Judge	We will now hear the opening statement from the attorney representing the plaintiff in this matter, Jordan Fremont.
Plaintiff's Attorney	<i>The attorney gives his or her opening statement.</i>
Judge	<i>[To defendant's counsel]</i> Counselor, do you wish to make an opening statement?
Defendant's Attorney	Yes, your Honor.
Judge	We will now hear the opening statement from the attorney representing the defendant in this matter, Casey Walker. <i>OR:</i> We will now hear the opening statement from the attorney representing the defendant in this matter, New Cellular Solutions, Inc.
Defendant's Attorney	<i>The attorney gives his or her opening statement.</i>
Judge	We are now ready to proceed to the evidentiary stage of the trial. Is the plaintiff's counsel ready to call its witnesses?

Plaintiff's Attorney Yes, your Honor. We call to the stand [name of witness].

Clerk/Bailiff Will [name of witness] please approach the bench?

The witness approaches the bench.

Please raise your right hand. Do you swear or affirm to testify to the truth, the whole truth, and nothing but the truth in this proceeding?

Witness I do.

Judge You may be seated.

The witness sits in the witness stand.

Plaintiff's Attorney *The attorney conducts a direct examination of the witness.*

Judge Does the defendant's counsel have any questions for this witness?

Defendant's Attorney Yes, [or No] your Honor.

If they want to, defendant's counsel cross-examines the witness.

Judge Would the plaintiff's counsel like to redirect?

Plaintiff's Attorney Yes [or No], your Honor.

If they want to, plaintiff's counsel can conduct a redirect examination of the witness, but this examination must be limited to issues that arose during the cross-examination.

Judge and Clerk/Bailiff *The judge and clerk/bailiff follow the same steps for the remaining witnesses for the plaintiff.*

Plaintiff's Attorney At this time, the plaintiff has no further witnesses and rests its case.

Judge Is the defendant's counsel ready to call its first witness?

The judge follows the same process for the defendant's witnesses as for the plaintiff's witnesses.

Defendant's Attorney At this time, the defendant's counsel has no further witnesses, and the defense rests its case.

**Plaintiff's
Attorney**

Plaintiff's counsel presents closing argument to the jury.

**Defendant's
Attorney**

Defendant's counsel presents closing argument to the jury.

Judge

The evidence phase of the trial has come to a close. It is time for me to deliberate and reach a decision.

The judge deliberates aloud.

Handout 23:

Effective Opening Statements and Closing Arguments

Opening Statements in a Civil Case

Purpose: To inform the jury of the nature and facts of the case from your client's point of view.

What to include:

- The name of the case
- Your name
- Your client's name
- Your opponent's name
- A simple explanation of the required elements for the cause of action (and why they are or are not met in this case)
- Your theory of the case
- A summary of the key facts each witness will bring out in testimony and the importance of any documents to be introduced
- Conclusions and request for damages (if representing the plaintiff)

Closing Arguments (Summation) in a Civil Case

Purpose: To summarize the evidence presented at trial from the perspective of your client and to convince the jury to rule in your client's favor.

What to include:

- A reminder of the original complaint and required elements
- A short summary of your theory of the case
- Highlights of the evidence presented at trial that supports or does not support the required elements for the cause of action

(Note: You may not refer to any evidence that was not introduced during the trial!)

- A reminder of the weaknesses of the opposing counsel's case
- Conclusions and request for damages (if representing the plaintiff)

Elements of a Good Opening Statement or Closing Argument

A good opening statement or closing argument is:

- Believable
- Simple, clear, and understandable
- Organized
- Accurate
- Interesting
- Convincing
- Descriptive
- Audible (loud enough for everyone to hear)
- Other:

Helpful Hints

- Speak directly to the jury. Be open and friendly.
- Know what you are talking about.
- Be respectful of others in the courtroom.
- Follow courtroom and trial procedure.
- Stay within your time limits.
- Try to limit your use of notes when speaking.
- Practice!

Handout 24: Direct and Cross-Examination

Direct Examination of Witnesses

Purpose: To ask questions of your *own* witnesses to get them to testify to facts that help your case. You want the evidence your witnesses provide to be clear, convincing, and credible to the jury.

Tips and Guidelines:

- Ask general questions. Leading questions are not permitted on direct examination.

General questions: Those designed to get the witness to provide facts but do not lead the witness to give a particular answer.

Example: "What color was the car you saw driving away?"

Leading questions: Those that put words in the witness's mouth or suggest an answer because of the question's wording.

Example: "The car you saw driving away was red, wasn't it?"

- Use words such as *who*, *what*, *when*, *where*, or *how* to get your witness to describe what he or she knows.
- Avoid questions that allow the witness to tell long stories. Design questions that will let the witness give short, clear responses.
- Decide what information you want to get from the witness, then write a question that will get the witness to share it.
- Don't ask questions unless you know what answer you are going to get.

Cross-Examination of Witnesses

Purpose: To discredit the testimony of witnesses for the other side, raise doubts about the claims or facts made by the other side, or point out evidence that shows weaknesses in the other side's case.

Tips and Guidelines:

- Use cross-examination to ask questions that will make the jury skeptical about the witness's testimony or his or her credibility.
- Use leading questions to get the witness to respond in a narrow, specific way. Try to highlight any bias or inconsistencies in the witness's testimony.
- Don't ask questions that will allow the witness to tell a story or explain his or her viewpoint.
- Be respectful in the way you ask your questions. You don't want the jury to get a negative impression of you.
- Decide what information you want to get from the witness, then write a question that will get the witness to share it.
- Don't ask questions unless you know what answer you are going to get.

Handout 25: General and Leading Questions

Here are examples of general and leading questions. Decide whether each question is General (G) or Leading (L), then rewrite it in such a way that it becomes the other kind of question—that is, rewrite general questions so they become leading questions, and leading questions so they become general.

Question	General (G) or Leading (L)?	Rewrite
You didn't like David Smith, did you?		
What did you do after you were injured?		
Did the defendant then threaten you?		
What happened after the police arrived?		
After you started arguing, didn't your mother tell you to get out of the house?		
What was the condition of the building when you arrived?		

Handout 26: Criteria for Direct and Cross-Examination

Members of your legal team will be assessed on how effectively they ask and answer questions during the trial. Use the criteria listed here to help you plan your questions, practice your witness testimony, and provide feedback to your teammates.

Direct and Cross-Examination

Criteria
Questions are clearly worded.
Questions elicit the information desired from the witness.
Clear understanding of evidentiary objections is demonstrated.
The speaker is able to reword questions appropriately when necessary.
Unexpected responses are handled effectively.
There are clear connections between evidence from witnesses and the claims being made in the case.

Witness Testimony

Criteria
The speaker has a clear understanding of the facts in the deposition.
The speaker stays in character and responds accurately.
The speaker makes an effort to be believable.
The speaker performs according to requests made by the legal team.

Handout 28: Settlements in Civil Suits

Most civil lawsuits never reach the trial stage and therefore never receive a verdict from a jury (or a judge in a bench trial). Instead, they are settled earlier in the process through a negotiated agreement—a *settlement*—between the parties. Settlement can occur at any time—before a lawsuit is even filed, and up to the moment a verdict is reached. When a case is settled, the plaintiff agrees to drop his or her lawsuit in exchange for the defendant paying some or all of the alleged damages. The parties sign a written settlement agreement stating that the plaintiff gives up his or her right to pursue further legal action against the defendant related to the claims in the case. Often, the settlement agreement also states that the defendant did nothing wrong. In many cases, the presiding judge may encourage the parties to settle their dispute and will help foster the negotiations. This is seen as a legitimate way to amicably resolve disputes and reduce costs incurred by taxpayers.

The decision to settle a lawsuit is not an easy one. Here are some facts that a litigant may consider before settling:

- The amount of money that the plaintiff and the plaintiff's attorney think the case is worth
- Verdicts and settlements in similar cases
- The chances of winning the case if it goes to trial
- The risk of bad publicity if the case goes to trial
- The practical difficulties in trying the case
- The strengths and weaknesses of the evidence on both sides
- The defendant's ability to pay the damages sought by the plaintiff (i.e., whether the defendant has "deep pockets")

The following are examples of settlements based on real cases:

- A woman injured in a collision with a police car received a \$350,000 settlement. Her lawyer was able to show that the police officer failed to employ warning lights or other reasonable precautions before backing down a city street at high speed.
- A chemical company agreed to pay a \$2.5 million civil penalty to the U.S. Environmental Protection Agency and the U.S. Department of Justice in order to settle alleged violations of the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act at its chemical manufacturing and research complex.
- A construction worker received a \$3,000,000 settlement in a civil case. His claim was that two companies were negligent in their control of the work site by not removing the grease shaft or ensuring that it was properly secured before the construction worker began working under it.
- A company agreed to pay \$200,000 to settle a job discrimination class-action lawsuit. Eight employees filed the suit in federal court and accused the company of denying them desirable job assignments and promotions. A lawyer for the plaintiffs said that this lawsuit will change the company's practices.

Handout 29: Unit Exam

1. How is criminal law different from civil law? Give at least three examples. (You may write a short answer, make a list, or create a chart to answer this question.)

2. What are the three major areas of civil law? List and define them.

3. Do you think that Jordan Fremont would have benefited more from a bench trial or a jury trial? Explain.

4. Read the following scenario:

Alexa purchased a new Xtreme-brand skateboard, made by Xtreme Sports, Inc., from a local sporting goods store. While Alexa was skateboarding down a very steep hill the next day, the front right wheel of the skateboard fell off, sending her flying into the street. Alexa was then hit by a car. The driver of that car, Ben, was driving while texting. Alexa suffered serious physical injuries. After receiving several complaints of similar incidents (the front right wheel falling off), Xtreme Sports recalled that model of skateboard to repair the axle.

Explain whether any person or company could be held liable for civil damages based on this scenario. What cause of action would the person or company have, and why? What types of damages might the person or company have to pay?

5. Which arguments for or against tort reform have you found most convincing? Explain, using examples from class to support your answer.
6. Short essay: Is U.S. society too litigious, or does civil litigation strengthen legal protections for Americans and consumers? Explain, using examples from your research and/or class discussions to support your arguments.