

Civil Litigation

Fourth Edition

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An accounting and economics graduate of Boston University and of Temple University School of Law, Professor Goldman has an active international law, technology law, and litigation practice. He has worked extensively with paralegals and has received the Boss of the Year award of the Legal Support Staff Guild. He was elected the Legal Secretaries Association Boss of the Year for his contribution to cooperative education by encouraging the use of paralegals and legal assistants in law offices. He also received the Bucks County Community College Alumni Association Professional Achievement Award.

He has been an educational consultant on technology to educational institutions and major corporations and a frequent speaker and lecturer on educational, legal, and technology issues. He was appointed to the American Association for Paralegal Education Board of Directors in October 2005; there, he served as the founding chair of the Technology Task Force, where he initiated the Train the Trainer program and the Cyber Idol competition.



ALICE HART HUGHES, JD, is a practicing attorney and experienced litigator. She is a former Adjunct Professor of Paralegal Studies at Bucks County Community College, where she taught Civil Litigation, Legal Research and Writing, Accounting for Paralegals, Introduction to Paralegal Studies, Negligence, and Family Law. She is the author of *Real Estate Law Fundamentals* and participated in the production and script writing for the Video Law Office Experience. Mrs. Hughes holds a degree in real estate and finance from Temple University and graduated from Temple University School of Law. She has practiced civil litigation extensively, working in mid-sized, multi-office law firms. Her practice is limited to estate planning, administration, and litigation. In 2010, she was appointed to the Pennsylvania Board of Dentistry and lectures on ethical issues in the medical subspecialty of podiatry.

FROM THE AUTHORS

■ WHAT'S NEW IN THE FOURTH EDITION

- **The Virtual Law Office Experience** is now an integrated part of the textbook. The end-of-chapter assignments use online video resources to provide a realistic workplace experience where assignments are presented in the form of e-mail directions from the “supervising attorney” to the paralegal. Students are assigned to watch a scenario as an observer and complete a task that they would be asked to do in practice. Cases include simulations of:
 - A minor traffic accident
 - A major school bus injury case based on an NTSB case report
 - A product liability case
 - Personal injury of a minor injured on a school bus
- **Federal Rules of Civil and Criminal Procedure** have been updated.
- **Electronic discovery rules and decisions** have been updated.
- **Chapter Introduction Videos** by the authors appear online, providing an overview of the chapter topic.
- **Information on paralegal regulation** has been updated.
- **Exhibit and forms** have been updated to reflect current practice.
- **The Technology Resources Website** has been updated with the most recent trial version offers from legal software vendors.

Few students taking a civil litigation class have ever had any actual contact with the courts or been involved in a lawsuit. As a result, most of their information and beliefs about courts and trials come from television dramas, where everything resolves itself in 30 to 60 minutes. In the real world, the process is slower and more complex; in addition, litigation can be a bit of a mystery because most of what happens goes on behind closed doors. We have tried, in both the text and the supplements, to open the doors of the law office and courthouse to present the process and the procedures of the real world of law.

One way we hope to reveal the mysteries of litigation is through the extensive use of videos. The text is now supported by two types of videos built into the text as end of chapter assignments. **Video Case Studies** show students what it is like to work in a practice. They follow the progress of a civil case from the factual setting that gives rise to the lawsuit to the preliminary interviews and investigations. The videos continue through the pretrial phases and conclude with the trial and appeal. These scenarios form a basis for discussion and help create an appreciation for the interconnection between professional ethics and actual practice and procedures. New to this edition is the **Virtual Law Office Experience** that provides a realistic paralegal intern simulation. A variety of cases are presented from the plaintiff view and from the defense view from initial intake to arbitration and trial preparation. Students are asked to complete tasks similar to those they will be given in an actual

practice. Completing these tasks results in the creation of a valuable portfolio of work that can assist students in securing employment. Students can view the cases and assignments at www.pearson.com/goldman-civil-litigation.

In addition to presenting every stage of the litigation process on video, we have included a complete set of pleadings for a comprehensive case involving a school bus accident. This case is based on a real-life accident reported by the National Transportation Safety Board (NTSB). These pleading samples may be used to prepare one of the additional case studies provided in Appendix 2 or 3; in this way, students can gain practice and simulate the handling of a real case. All of the cases are based on actual incidents that may be further researched, if desired, using the Internet.

Successful civil litigation practice requires a skill set that includes both knowledge of legal concepts and the practical applications of that knowledge. You might think this statement applies only to litigation attorneys, but it also pertains to the lawyers, litigation support paralegals, and information technologists who form the heart of the civil litigation team. Litigation practice today calls on all of the knowledge and skills learned in formal courses of study and on the intangibles learned from life as well. Ethics, soft skills, technology, elements of substantive law, procedural rules, research, and writing skills are all part of the package of skills needed by the members of the litigation team.

Civil litigation today is more complex than ever before. The pressures to be more efficient, more productive, and more cost effective require the legal team to make extensive use of technology when organizing and managing cases as well as when presenting evidence at trial. No contemporary civil litigation text can be complete without an explanation of the impact and use of technology. Trial versions of some of the most widely used software in the legal field is available for download from the Technology Resources Website at www.pearsonhighered.com/techresources. The selected software includes examples of each type of application program found in actual practice: office management, case management, electronic discovery, and trial presentation software.

This book can be used either as a reference or as a refresher course in the basics and the advanced knowledge needed to be successful in civil litigation. It has been written as a teaching text and as a practice reference manual, with a complete set of case documentation that may be used as a template in future assignments or real-life cases. As Albert Einstein said, “I don’t need to know everything; I just need to know where to find it when I need it.”

We hope that you enjoy using this textbook and the supporting videos and case material, and we encourage you to contact us with any concerns or suggestions.

Thomas F. Goldman, JD
Alice Hart Hughes, JD

KEY THEMES EXPLORED THROUGHOUT THIS TEXT

■ UNDERSTANDING THE LITIGATION PROCESS

Litigation is a process, not a single event. Each action taken is the result of some decision made by the client or the legal team. Each decision impacts the future direction of the case, which is a process with rules dictated by the courts. To demonstrate the process, a complete set of documents in this text follows cases from interview and investigation through trial and posttrial activity.

■ DEVELOPING CRITICAL THINKING AND PROCEDURAL SKILLS

End-of-chapter material focuses on developing critical thinking and hands-on skills. It includes exercises and assignments broken down into three sections:

Concept Review and Reinforcement

Key Terms
Chapter Summary
Review Questions and Exercises

Building Your Paralegal Skills

Internet and Technology Exercises
Civil Litigation Video Case Studies
Comprehensive Case Study

Building Your Professional Portfolio

The Virtual Law Office Experience

■ UNDERSTANDING HOW TO HANDLE ETHICAL SITUATIONS IN CIVIL LITIGATION

The text and resources are designed to build a strong foundational understanding of the ethical principles that apply to the members of the legal team in actual practice. Resources include references to national and individual state's codes of legal ethics and professional responsibility, Ethical Perspectives boxes integrated throughout the textbook, and 16 ethics-related video case study segments.

■ ORGANIZATION OF THE BOOK

The book is divided into six units:

- Introduction to Civil Litigation
- Planning the Litigation
- Documents in Civil Litigation
- Formal Discovery Methods
- Trial of the Case
- Posttrial Issues

CHAPTER PEDAGOGY AND FEATURES

■ OPENING SCENARIOS: THE CIVIL LITIGATION TEAM AT WORK

Each chapter opens with a scenario designed to focus the reader on the relationship of the chapter's content to civil litigation practice. These scenarios offer insight into the operation of a civil litigation law firm and describe situations that a professional might encounter on the job. The scenarios revolve around activities in a fictional multi-location law office that is handling a major tort action through to the trial presentation.

■ ADVICE FROM THE FIELD ARTICLES AND INTERVIEWS

These features present professional advice straight from the experts and cover such topics as interviewing skills, developing your portfolio, professional development, handling clients, and more.



■ ETHICAL PERSPECTIVES

This feature raises students' awareness of ethical issues encountered by the legal team and directs students to resources that will help them resolve those issues.

■ PRACTICE TIPS

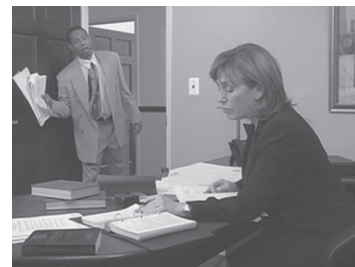
The goal of this feature is to provide practical tips for the litigation team based on the authors' experience. Typical advice can incorporate the simple (*always check the local rules*), the practical (*call the courthouse to determine the electronic features available in the courtroom*), and the obtuse (*make sure the file formats are supported by the program you select*).

■ SKILL-BUILDING EXERCISES USING CASE RESOURCE MATERIALS

End-of-chapter practice materials, continuing case studies, and a comprehensive case study reflect the actual activities of professionals working in the civil litigation area. Samples are placed throughout the chapters for reference and guidance in preparing the assignments.

■ VIDEO CASE STUDIES AND VIRTUAL LAW OFFICE EXPERIENCE

Civil Litigation: Process and Procedures is supported by a wealth of video simulations that provide students with a window into the real world of litigation practice and build the practical skills necessary to succeed in today's workplace.



■ BUILDING YOUR PROFESSIONAL PORTFOLIO



One of the key outcomes of this course is the building of a professional portfolio of litigation documents that can be shown to prospective employers and will function as on-the-job reference material in the future. At the end of Chapter 1, you will find suggestions for organizing your portfolio. Then, as you move through the course, you will find specific assignments that require the production of documents to be included in the portfolio.

NEW! VIRTUAL LAW OFFICE EXPERIENCE

The Virtual Law Office Experience series has been integrated through the text to offer a simulated law office internship. It is a multimedia program designed to allow students to apply their knowledge and skills in a workplace context. Throughout the course, students watch realistic video scenarios, work with case files and documents, and use the technology tools they will find in the law office to do the work a paralegal will be asked to do in practice. Throughout the course, students build a portfolio of work that demonstrates that they have the training and experience employers are seeking.

One of the advantages of the Virtual Law Office Experience is that the student has the ability to work on a case from beginning to end and develop a portfolio of related documents, including case setup, discovery, pleading and posttrial documentation, while using the online demonstration versions of actual law office software. These portfolios may be valuable to students interviewing for positions in law offices as a way of demonstrating their skills and abilities.

- Students engage in a workplace experience throughout the course as a law office intern



- Students see behind closed doors in practice and in the courts



- Students build a comprehensive portfolio of workplace products to show potential employers



Within the Virtual Law Office Experience program students can access a wealth of resources to complete assignments at any time including:

- Ask the Law Librarian Instructional Videos to answer student's research and writing questions.
- Ask Technical Support for technology and legal software support.
- Forms File contains examples of commonly used legal documents for the major legal specialties.

THE CIVIL LITIGATION VIDEO CASE STUDY SERIES



The video case studies incorporated into this text illustrate each step of the litigation process and demonstrate a wide variety of practice and procedural scenarios. Students can view the cases and assignments at www.pearson.com/goldman-civil-litigation.

A complete, 20-minute videotaped deposition of an expert witness and an accompanying written transcript (in both .TXT and .DOC formats) are provided for use in creating a deposition summary; they could also be used in conjunction with trial or deposition programs such as Lexis Nexis Sanction or Lexis Nexis CaseMap DocPreviewer.

Video Case Study List

1. Video Conferencing: Strategy Discussions
2. Confidentiality Issue: Family Exemption
3. UPL Issue: Interviewing a Client
4. Confidentiality Issue: Public Information
5. UPL Issue: When Friends Ask Friends for Legal Advice
6. Parent and Child Consult the Legal Team
7. Solicitation in the ER: Ethical Duties of the Profession
8. Fees and Billing Issue: Contemporaneous Time Keeping
9. Fees and Billing Issue: Using Time Effectively
10. Administrative Agency Hearing
11. Arbitration before Three-Member Panel
12. Settlement Conference with Judge
13. Preparing for Arbitration
14. Altercation on the School Bus
15. School Principal Reacts
16. Zealous Representation Issue: Handling Evidence
17. Zealous Representation Issue: When You Are Asked to Lie
18. UPL Issue: Working with a Witness
19. Zealous Representation Issue: Signing Documents
20. Zealous Representation Issue: Candor to the Court
21. Scheduling Conference with Judge: Discovery Issue Resolution
22. Court Hearing to Decide Who Represents a Minor: The Court's Duty to Protect the Child
23. Truck Driver's Deposition
24. Confidentiality Issue: Need-to-Know Circle
25. Attorney Meet and Confer: Electronic Discovery Issues
26. Confidentiality Issue: Disclosure of Damaging Information
27. UPL Issue: Improper Supervision
28. UPL Issue: Working with Experts—Deposition of a Medical Expert, Dr. Galo
29. Remote Videoconference: Taking Fact Witness Video Deposition
30. Real-Time Reporting Witness Testimony: Deposing a Minor
31. Video Deposition of a Treating Doctor: Deposition of Treating Doctor, Dr. Lee
32. Mechanic's Deposition
33. Final Pretrial Conference: Resolving Evidentiary Issues
34. Preparing for Trial: Preparing for Deposition and Trial
35. Fact or Expert: Resolving Objection in Videotaped Deposition Discussions
36. Jury Selection: Potential Juror Challenged for Cause
37. A Salesman's Courtroom Testimony
38. Trial: Direct and Cross-Examination of a Witness
39. Preliminary Jury Instructions before Trial
40. Closing Argument: A Lawyer's Last Chance
41. Judge Charges the Jury
42. Expert Witness Video Deposition
43. Three-Judge Appellate Panel
44. A Corporate Officer Seeks Legal Advice

CASE RESOURCES AVAILABLE IN TEXT AND ONLINE

A variety of case materials and documents are available for use as examples and for completing assignments throughout the course.

■ CHAPTER OPENING SCENARIO CASE STUDY

The chapter opening scenario case study sets the stage for the chapter topic. The scenarios revolve around activities in a fictional multi-location law office that is handling a major civil action through to the trial presentation. At the end of each chapter, an assignment revisits the scenario and poses questions involving procedural issues.

■ COMPREHENSIVE CASE STUDY: NTSB SCHOOL BUS ACCIDENT, MOUNTAINBURG, ARKANSAS

A sample case, based on a real-life accident as reported by the National Transportation Safety Board (NTSB), provides an overview of the litigation process from beginning to end, including a complete set of documents and pleadings. A brief synopsis of this case is presented in Appendix 2, and the full NTSB report (complete with related exhibits and photographs) is provided online.

A full set of all pleadings and related documents for cases discussed in the text is also provided online; these documents can be used as examples and templates in the completion of assignments in the text. The school bus accident case is presented as a comprehensive demonstration case; however, the pleadings and documents are meant to be used as examples and templates for completing assignments in the text that involve other cases assigned by the instructor.

At the end of each chapter is an assignment that involves analyzing a case and preparing the necessary documents for the attorney's review. The assignment is a task comparable to what an attorney might ask a paralegal to do. The resulting documents contribute to the student's professional portfolio as specific work samples.

The video case studies that are built into this textbook illustrate many of the steps in this sample case and the situations related to the shorter cases described below. The videos deal with scenarios arising from client interviews through to investigation, trial, and appeal.

■ ADDITIONAL, SHORT CASE STUDIES FOR USE IN ASSIGNMENTS

Additional, shorter case studies, including a simple property damage case, a personal injury case, and a civil assault case, are provided in Appendix 3. These case studies may be used for the completion of assignments within the text to provide students with hands-on experience preparing pleadings and working with case documents. Documents for these cases are provided online and include:

Simple Motor Vehicle Property Damage Claim Case

- Police incident report
- Estimate of repairs from Pope's Garage
- Notes of client interview
- Notes of witness interview

Personal Injury Claim (Injured Student) Medical Treatment Case

- School incident report
- Emergency room report
- Treating surgeon (Dr. Lee) report
- Dr. Lee's medical bill
- Medical records
- HIPAA release form signed by parent

Civil Assault on a School Bus Case

- School incident report
- Psychologist for attacker report (antisocial with psychotic tendency)
- Report of school nurse on search of student for knife
- HIPAA release form
- Notice to opposing counsel requesting medical records
- Medical records of victim, Davis Hilary

■ ADDITIONAL COMPREHENSIVE CASE STUDIES

We have provided two additional school bus accident cases and a major plane crash case. These case studies can be used in place of the Mountainburg case study to complete assignments in the Comprehensive Case Study section at the end of each chapter. Each of the complex cases is based on an NTSB report of an actual event and allows students to further develop their research skills as they find information on the cases through Internet searches. These full NTSB reports are provided online:

- **School Bus–Truck Case, Albany, New York**
- **School Bus–Truck Case, Arlington, Virginia**
- **Airplane Crash, Buffalo, New York**

LEGAL SOFTWARE RESOURCES

Students can download the latest (time-limited) versions of the most popular legal software from the Technology Resources Website at www.pearsonhighered.com/techresources. This website also contains links to software tutorials, video overviews, teaching notes, and a variety of other useful resources, including forms for faculty to request lab copies of software from vendors.

■ OFFICE MANAGEMENT AND ACCOUNTING SOFTWARE

Most law firms, from the sole practitioner to large, multi-office practices, use office management and accounting software extensively. This software is useful for keeping accurate calendars of appointments, schedules, and deadlines; for tracking time and billing information, client funds, and costs; and for preparing accurate billing records. One of the most popular and best-supported programs is **CLIO**.

■ CASE ORGANIZATION AND MANAGEMENT SOFTWARE

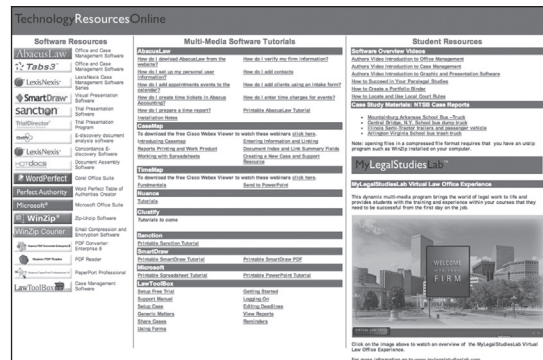
Case management software can be used to organize the cast of characters in a case, the documents, the relevant timetables, the relevant issues, legal authority, and other desired information. Top programs useful here are **LexisNexis CaseMap** and **LexisNexis TimeMap**.

■ PRESENTATION AND TRIAL GRAPHICS SOFTWARE

Graphic creation programs, such as **SmartDraw**, can be used to create stand-alone presentations. They can also be used to create graphics for presentations created with other programs such as Microsoft PowerPoint. The obvious advantage of this type of software is that it gives the legal team the ability to create its own graphics, thus eliminating the need to hire graphic artists and outside consultants.

■ THE ELECTRONIC COURTHOUSE

Litigation support software, such as Lexis Nexis **Sanction**, is used for in-court displays of documentary evidence, graphic presentations, and simulations of accident cases. Relevant portions of illustrations and documents can be displayed as a witness testifies, thus eliminating the need to distribute paper copies in court.



INSTRUCTOR RESOURCES

■ INSTRUCTOR'S MANUAL WITH TEST BANK

Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

■ TESTGEN

This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating, and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen's random generator provides the option to display different text or calculated number values each time questions are used.

■ POWERPOINT LECTURE PRESENTATIONS

Our presentations are clear and straightforward. Photos, illustrations, charts, and tables from the book are included in the presentations when applicable.

To access supplementary materials online, instructors need to request an instructor access code. Go to www.pearsonhighered.com/irc, where you can register for an instructor access code. Within 48 hours after registering, you will receive a confirming email, including an instructor access code. Once you have received your code, go to the site and log on for full instructions on downloading the materials you wish to use.

■ ALTERNATE VERSIONS: EBOOKS

This text is also available in multiple eBook formats. These are an exciting new choice for students looking to save money. As an alternative to purchasing the printed textbook, students can purchase an electronic version of the same content. With an eTextbook, students can search the text, make notes online, print out reading assignments that incorporate lecture notes, and bookmark important passages for later review. For more information, visit your favorite online eBook reseller or visit www.mypersonstore.com.

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Our appreciation to all the students over the years who have taught us lessons on presenting the material covered in this text. The tips and practice pointers are gleaned from many years of trying cases; for those, we thank opposing counsel everywhere and the judges before whom we have practiced.

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