



CERTIFIED
PARALEGAL™
GENERAL CERTIFICATION

State Bar of Wisconsin Certified Paralegal™

General Certification Test
Official Study Guide

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Essential Legal Terminology for Paralegal Certification

This section aims to provide an in-depth understanding of key legal terms that are vital for paralegals preparing for their certification exam. Mastery of these terms will not only help you ace the test but also enhance your competency in the legal field.

Interrogatories vs. Depositions

An **interrogatory** is a written set of questions sent by one party to another, to be answered in writing under oath. A **deposition**, on the other hand, is an oral testimony given under oath before a trial, with both parties present. Understanding the distinction helps in effectively gathering and presenting evidence.

Latin Plea Terminology

The proper Latin phrase for a plea where a client neither admits nor contests the charge is **nolo contendere**. This plea, also known as "no contest," implies that the defendant accepts the conviction but does not admit guilt.

Intellectual Property: Identifying Products and Services

In intellectual property law, a **trademark** is a distinctive word, phrase, or symbol that identifies and distinguishes a product or service. For instance, the Nike "swoosh" is a well-known trademark.

Court Decisions as Precedents

A **precedent** is a court decision that serves as a guide or example for deciding similar cases in the future. Precedents are critical for ensuring consistency and predictability in the legal system.

Understanding Procedural Law

Procedural law refers to the rules and processes that govern how legal cases are handled in court. This includes everything from filing lawsuits to conducting trials, ensuring fairness and efficiency in legal proceedings.

Restatements of Law

Restatements of Law are a set of treatises that articulate the principles of common law in the United States. They are highly respected and often cited by courts to clarify the law.

Principles of Tort Law

Tort law deals with civil wrongs that cause harm or loss. The primary principle is to provide relief to injured parties and deter others from committing similar offenses. Key concepts include negligence, intentional torts, and strict liability.

Legal Digests

Digests are compilations of legal summaries and abstracts, organized by subject. They provide a quick reference to case law, statutes, and regulations.

Civil Lawsuit Initiation in Wisconsin

The document that initiates a civil lawsuit in Wisconsin is called a **complaint**. The complaint outlines the plaintiff's allegations and the legal basis for the lawsuit.

Duty to Act Reasonably

The term **duty of care** refers to a legal obligation to act reasonably, often used in negligence claims. This principle ensures that individuals and organizations avoid causing harm to others.

Court Orders: Injunctions

An **injunction** is a court order that requires a party to take or refrain from taking a certain action. Injunctions are used to prevent harm and maintain the status quo pending further legal action.

Mediation vs. Arbitration

Mediation is a voluntary process where a neutral third party helps disputing parties reach a mutually agreeable solution. Unlike arbitration, where an arbitrator imposes a decision, mediation focuses on collaboration and negotiation.

Ethics

Unauthorized Practice of Law

Definition and Scenarios in Wisconsin:

- **Definition:** The unauthorized practice of law includes giving legal advice, representing clients in legal matters, or performing legal services that require a licensed attorney.
- **Examples:**
 - Explaining legal rights and drafting legal documents without supervision.
 - Representing clients in court or legal proceedings.

Scenario:

One afternoon, a client visits the office seeking legal advice regarding a complicated lease agreement. The attorney, Michael, is currently unavailable. Sarah, the paralegal working in the office, decides to assist the client by explaining their legal rights and drafting an email to the landlord. What is the most appropriate action for Sarah to take in this scenario?

- **Appropriate Action for Sarah:** Refrain from giving legal advice or drafting responses. Instead, inform the client that the attorney is unavailable and schedule a follow-up appointment.

Ethics in Paralegal Practice

Money Laundering through Trust Accounts:

- **Definition:** Money laundering is the process of concealing the origins of money obtained illegally by passing it through a complex sequence of banking transfers or commercial transactions.
- **Primary Purpose:** The main purpose is to make the illicit origins of money appear legitimate.
- **Potential Consequences:** Penalties include heavy fines, loss of license, and imprisonment.
- **Signs of Money Laundering:**
 - Frequent large deposits and withdrawals with no clear client connection.
 - Transfer requests involving third-party lenders.
 - Unexplained large sums deposited from unknown sources.

Role of a Paralegal:

- **Preventing Money Laundering:** Stay vigilant, report suspicious activities to the attorney, and ensure proper documentation of all transactions.
- **Action Steps for Suspicious Activities:**
 - **Large Unexplained Deposits:** Notify the supervising attorney and halt any suspicious transactions until further review.
 - **Client Transfers from Third-Party Lenders:** Seek clarification from the attorney before proceeding.

Notarization Practices for Paralegals

Procedure and Responsibilities:

- **Role of a Notary Public:** To witness and authenticate the signing of documents, ensuring the integrity and legitimacy of transactions.
- **Procedure for Notarizing Unsigned Documents:**
 - Verify the signer's identity.
 - Ensure the document is signed in the notary's presence.
 - Complete the notarial certificate accurately.

Consequences of Improper Notarization:

- **Notarizing Unsigned Documents:** Such actions can lead to fines, legal repercussions, and loss of notary license.

Proper Practices and Limitations:

- **Circumstances to Notarize:** Only notarize documents signed in your presence and with proper identification.
- **Avoid Unauthorized Practice:** Do not provide legal advice or services during notarization unless supervised by an attorney.

Practical Scenarios and Appropriate Responses

Scenario Responses:

- **Suspicious Deposits or Withdrawals:** Report immediately to the supervising attorney.
- **Client Requests Involving Third-Party Funds:** Seek attorney approval before proceeding.
- **Unexplained Large Sums:** Hold off processing and consult with the attorney.

Legal Research

Legal Citation Styles

1. Common Legal Citation Styles

- Familiarize yourself with commonly used legal citation styles in the United States, such as The Bluebook: A Uniform System of Citation

Effective Legal Research

2. Drawbacks of Using Search Engines

- Understand the potential drawbacks of relying solely on search engines for legal research, including issues with reliability, completeness, and the potential for outdated information

3. Determining Case Relevance

- Learn how to assess the relevance of a legal case by examining key factors such as the facts, legal issues, court jurisdiction, and the case's procedural history

4. Finding Statute Amendments

- Identify resources for finding recent amendments or updates to statutes, such as legal research databases, official state websites, and legislative tracking tools

Drafting Legal Documents

5. Resources for Drafting Legal Briefs

- Explore resources that provide guidance on drafting legal briefs, including legal writing guides, templates, and examples from reputable sources

Authoritative Sources of Law

6. Researching Contract Elements

- Recognize the most authoritative sources for determining the elements of a valid contract under Wisconsin law, such as state statutes, case law, and legal treatises

Interpreting Statutes

7. Proper Interpretation of Statutes

- Learn the steps to properly interpret a Wisconsin statute, including reading the statute's text, reviewing annotations, and consulting relevant case law and secondary sources

8. Resolving Conflicting Information

- Understand how to resolve conflicting information about legal issues by cross-referencing authoritative sources, consulting legal experts, and using legal research databases

Secondary Sources

9. Examples of Secondary Sources

- Identify examples of secondary sources used in Wisconsin legal research, such as legal encyclopedias, law review articles, and practice guides

Wills and Gifts

10. Valid Gift of Personal Property by Will

- Review the requirements for a valid gift of personal property by will in Wisconsin, including the need for proper execution and witnessing

Legislative History

11. Locating Legislative History

- Learn the process for locating legislative history in Wisconsin, including using legislative records, bill tracking services, and official state resources

Litigation

Duties of a Litigation Paralegal

1. Responsibilities in a Law Firm

- Understand the various tasks a litigation paralegal performs, such as drafting legal documents, conducting legal research, managing trial exhibits, and ensuring compliance with state and federal regulations

Statute of Limitations

2. Personal Injury Claims

- Learn the general statute of limitations for personal injury claims in Wisconsin, which is typically three years from the date of injury

3. Filing Personal Injury Lawsuits

- Review the specific time limits for filing personal injury lawsuits in Wisconsin to ensure timely legal action

Defendant's Rights in Civil Lawsuits

4. Right to Trial

- Understand the rights of a defendant in a civil lawsuit, including the right to a jury trial and the procedural steps involved

Attorneys' Fees Responsibility

5. Payment of Attorneys' Fees

- Familiarize yourself with the general rule that each party is responsible for their own attorneys' fees in Wisconsin, with some exceptions where fee-shifting statutes apply

Burden of Proof

6. Plaintiff's Burden of Proof

- Learn the burden of proof a plaintiff must meet in a civil lawsuit, which is typically "preponderance of the evidence" in Wisconsin

Elements of Negligence

7. Establishing Negligence

- Review the necessary elements to establish negligence under Wisconsin law, including duty, breach, causation, and damages

Default Judgments

8. Setting Aside Default Judgments

- Understand the circumstances under which a default judgment can be set aside in Wisconsin, such as mistake, inadvertence, surprise, or excusable neglect

Small Claims Court

9. Maximum Disputed Amount

- Learn the maximum amount that can be disputed in Wisconsin's small claims court, which is generally \$10,000 for most claims

Punitive Damages

10. Punitive Damages

- Review the conditions under which punitive damages may be awarded in Wisconsin, including the requirement that the defendant's conduct was egregious and intended to punish and deter future misconduct.

Business Contracts

Contract Enforceability

1. Essential Elements of a Valid Contract

- Understand the key elements required for a contract to be enforceable in Wisconsin, including offer, acceptance, consideration, and mutual assent

2. Non-Compete Agreements

- Learn about the enforceability of non-compete agreements in Wisconsin, including the requirements for reasonable time and geographic scope, and the necessity for protecting legitimate business interests

3. Breach of Contract Claims

- Review the elements necessary to establish a breach of contract claim in Wisconsin, such as the existence of a valid contract, a material breach, and resulting damages

Arbitration and Dispute Resolution

1. Arbitration Clauses

- Understand the enforceability of arbitration clauses in business contracts and the implications of specifying arbitration in another state, such as Minnesota

2. Boundary Disputes and Discovery

- Learn about the discovery process under Rule 26 of the Federal Rules of Civil Procedure, including what types of information are discoverable in boundary disputes and other contract-related litigation

Types of Business Contracts

1. Restrictive Covenants

- Identify different types of restrictive covenants, such as non-compete agreements, and understand their purpose in preventing specific activities by one party

2. Uniform Commercial Code (UCC)

- Familiarize yourself with the UCC, which governs commercial transactions, including the sale of goods and other business contracts

3. Operating Agreements

- Review the purpose and content of operating agreements, which outline how a business will be run and specify decision-making processes

Confidentiality and Data Protection

1. Non-Disclosure Agreements (NDAs)

- Understand the role of NDAs in protecting confidential information and facilitating the sharing of sensitive data between companies

Real Estate

Dispute Resolution in Construction Contracts

1. Arbitration Clauses

- Understand the enforceability of arbitration clauses in Wisconsin contracts and the process for initiating arbitration when a contractor fails to meet contractual specifications

2. Right to Cure Law

- Learn about the Wisconsin Right to Cure Law, which requires homeowners to provide contractors with written notice of defects and an opportunity to remedy the issues before pursuing legal action.

3. Contract Termination Provisions

- Review the essential provisions that should be included in a termination agreement, such as mutual release of obligations, settlement of outstanding payments, and handling of incomplete work

Real Estate Transactions and Buyer Protections

1. Seller Misrepresentation

- Understand the legal recourse available to buyers when a seller makes false assurances about property conditions, such as undisclosed roof damage. This includes potential claims for misrepresentation and breach of contract

2. Undisclosed Defects

- Learn the steps a buyer can take when significant defects, like mold, are discovered during the inspection period. This includes negotiating repairs, price adjustments, or potentially rescinding the contract if the seller fails to disclose known issues

3. Appliance Condition at Closing

- Review the buyer's rights and options when appliances included in the sale are not in good working order at the time of closing. This may involve requesting repairs, replacements, or financial compensation.

Civil Procedure

1. **Serving Summons and Complaint**

- Understand the timeline and requirements for serving a defendant with a summons and complaint after filing.

2. **Motion for Summary Judgment**

- Learn the criteria and standards for granting a motion for summary judgment, including the absence of genuine disputes over material facts.

3. **Medical Malpractice Actions**

- Identify the necessary documents and procedures for initiating a medical malpractice lawsuit.

4. **Right to Trial by Jury**

- Review the conditions under which a party is entitled to a trial by jury and how this right can be waived or demanded.

5. **Removal to Federal Court**

- Understand the circumstances under which a civil case can be transferred from state to federal court, including jurisdictional requirements.

E-Discovery

1. **E-Discovery Process**

- Familiarize yourself with the steps involved in e-discovery, including identifying, collecting, preserving, and producing electronically stored information (ESI).

2. **Duty to Preserve ESI**

- Learn about the obligations of parties to preserve relevant ESI and the consequences of failing to do so.

3. **Searching and Filtering ESI**

- Understand the tools and methods used to search and filter ESI to identify relevant information for litigation.

4. **Protection of ESI**

- Review the measures in place to protect against the disclosure of privileged or confidential information during the production of ESI.

Cultural Competency

1. Definition and Importance

- Understand the concept of cultural competency and its importance in legal practice.

2. Training Requirements

- Learn about the requirements for cultural competency training in Wisconsin and who must undergo this training.

3. Key Elements

- Identify key elements of cultural competency, including recognizing and understanding one's own cultural biases and assumptions.

4. Effective Communication

- Review strategies for effectively communicating with individuals from diverse cultural backgrounds.

Discovery Rule

1. Purpose and Application

- Understand the purpose of the discovery rule and how it is applied in Wisconsin.

2. Timeframe for Invocation

- Learn the time limits within which a party must invoke the discovery rule.

3. Requirements and Exceptions

- Identify the requirements for invoking the discovery rule and any exceptions to these requirements.

4. Effects of Invocation

- Review the legal effects of invoking the discovery rule on a case.

Torts

1. Intentional Torts vs. Negligence

- Understand the differences between intentional torts and negligence, including examples of each.

2. Strict Liability

- Learn about strict liability in tort law and identify examples of situations where it applies.

3. Defamation

- Review the elements of a tort involving defamation and examples of such cases.

4. Affirmative Defenses

- Identify common affirmative defenses used in tort cases and understand their application.

5. Eggshell Skull Rule

- Understand the "eggshell skull" rule and its implications in Wisconsin tort law.

6. Statute of Limitations

- Learn the time limits for filing a tort claim in Wisconsin.

Law Office Management

1. Document Management

- Review best practices for managing documents in a law office, including organization and security.

2. Client File Management

- Learn best practices for managing client files, ensuring confidentiality and accessibility.

3. General Best Practices

- Understand general best practices for law office management, including workflow and efficiency.

4. Tickler Files

- Learn the purpose and use of tickler files for managing deadlines and important dates.

5. Vendor Contracts

- Understand the purpose of contracts when dealing with vendors and the key elements to include.

Tax Law

1. Property Tax Exemptions

- Learn about the types of property that are generally exempt from property taxes in Wisconsin, such as government-owned properties, certain nonprofit organizations, and specific agricultural structures

2. Non-Deductible Expenses

- Understand which expenses are not deductible for Wisconsin income tax purposes, including personal living expenses, certain insurance premiums, and fines or penalties

3. **Sales Tax Applicability**

- Review the types of goods and services subject to Wisconsin's state sales tax, such as tangible personal property, certain digital goods, and specific services

4. **Wisconsin Homestead Credit**

- Familiarize yourself with the Wisconsin Homestead Credit, including eligibility requirements, income limits, and how to claim the credit

Bankruptcy

1. **Foreclosure and Bankruptcy**

- Understand the process and implications when a borrower files for bankruptcy after foreclosure proceedings have begun, including the automatic stay and the lender's next steps

2. **Bankruptcy Code Chapters**

- Learn about the different chapters under the Bankruptcy Code that individuals and businesses can file under, such as Chapter 7 (liquidation), Chapter 11 (reorganization), and Chapter 13 (repayment plan)

3. **Small Business Bankruptcy**

- Review the types of bankruptcy typically used by small businesses, including Chapter 11 and its streamlined version, Subchapter V

4. **Debt Inclusion in Bankruptcy**

- Understand whether a debtor can choose which debts to include in their bankruptcy case and the implications of doing so

5. **Financial Management Course Requirement**

- Learn about the requirement for debtors to attend a financial management course and the consequences of failing to do so

6. **Challenging Bankruptcy Discharge**

- Review the circumstances under which a creditor can challenge a bankruptcy discharge, such as fraud or willful misconduct

Environmental Law

1. Federal Agencies and Environmental Regulation

- Identify the federal agencies that regulate environmental law in Wisconsin, such as the Environmental Protection Agency (EPA), and those that do not

2. Clean Air Act of 1970

- Understand the key provisions of the Clean Air Act of 1970 and its impact on Wisconsin, including the establishment of air quality standards and enforcement mechanisms

E-Filing

1. E-Filing Steps for Paralegals

- Learn the steps a paralegal should take when e-filing documents in Wisconsin courts, including preparing documents, ensuring proper formatting, and submitting through the e-filing system

2. E-Filing Procedures

- Review the specific procedures and requirements for e-filing in Wisconsin courts, such as obtaining electronic signatures and paying filing fees

3. Attorney Requirements for E-Filing

- Understand the requirements and exceptions for attorneys when e-filing in Wisconsin, including registration and compliance with court rules

4. Case Types for E-Filing

- Familiarize yourself with the types of cases that can be filed electronically in Wisconsin, such as civil, family, and small claims cases

5. Features of the E-Filing System

- Learn about the features and limitations of the Wisconsin e-filing system, including document management and notification services

6. E-Filing Requirements

- Review the technical and procedural requirements for e-filing in Wisconsin courts, such as file format specifications and system compatibility

Employment & Labor Law

1. Protected Activities

- Understand what constitutes protected activities under labor and employment law, such as filing a complaint about workplace discrimination or participating in a union

2. Workplace Discrimination

- Learn about the types of workplace discrimination prohibited by federal law, including discrimination based on race, color, religion, sex, national origin, age, disability, and genetic information

3. Protected Classes under Wisconsin Fair Employment Act

- Familiarize yourself with the protected classes under the Wisconsin Fair Employment Act, such as race, color, creed, ancestry, national origin, age, sex, disability, arrest or conviction record, marital status, sexual orientation, and military service

4. Full-Time Employment

- Review the definition of full-time employment in Wisconsin, which is typically considered to be 40 hours per week, though employers may set their own standards

5. At-Will Employment and Termination

- Understand the concept of at-will employment in Wisconsin, where employers can terminate employees without cause, provided the termination does not violate any employment laws

6. Overtime Pay Exemptions

- Learn about the requirements for an employee to be exempt from overtime pay under Wisconsin law, including criteria for executive, administrative, and professional employees

Family Law

1. Grounds for Divorce

- Understand that Wisconsin is a no-fault divorce state, meaning that the only ground for divorce is the irretrievable breakdown of the marriage

2. Child Custody Laws

- Review Wisconsin's child custody laws, which prioritize the best interests of the child and consider factors such as the child's wishes, the parents' ability to cooperate, and the child's adjustment to home, school, and community

3. Divorce Laws

- Familiarize yourself with the basic steps and legal issues involved in obtaining a divorce in Wisconsin, including filing procedures, temporary orders, and final hearings

4. Child Support Guidelines

- Learn about Wisconsin's child support guidelines, which are based on the parents' income, the time the child spends with each parent, and whether a parent is supporting other children
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Tips for Exam Preparation:

1. *Understand Legal Research Tools: Familiarize yourself with different legal research databases and their features.*
2. *Practice Analyzing Sources: Work on interpreting statutes, case law, and secondary sources to strengthen your research skills.*
3. *Stay Updated: Frequently check for updates and amendments in relevant legal areas.*
4. *Understand Key Concepts: Familiarize yourself with the definitions and responsibilities related to money laundering, unauthorized practice of law, and notarization.*
5. *Memorize Important Steps: Ensure you know the proper procedures for notarization and steps to prevent unauthorized practice and money laundering.*
6. *Practice Different Ethics Scenarios: Review practical scenarios and appropriate responses to common situations you may encounter as a paralegal.*

Good luck with your studies!