

Kristine Hubert

PLEG 220 TORTS

Portfolio Project Final

Submission

08/09/2023



Portfolio Project:

- ❖ Part 1- Interview
- ❖ Part 2- Complaint
- ❖ Part 3- Client Letter
- ❖ Part 4- Defendant Answers
- ❖ Reflection



Memo

To: Will Files, ESQ.

From: Kristine Hubbert, Paralegal

RE: New Client

Dear Mr. Files,

For the client, Kenny Collects who was at the pet adoption event at Pal's Pets looking for a kitten to adopt and was injured by a shy adult cat that was hiding. He was interested in the cat at first and when he went to interact with him the cat attacked him. The wounds the cat caused got infected causing permanent scarring to the face as well as vision loss in one eye. He wants to sue the pet store for negligence, for not providing a safe environment for the event. The intake staff did the pre-screening process, and ran a conflict check to ensure there were no conflicts that would prevent us from working with him.

As you requested, I prepared new intake questions which will give the client the opportunity to share essential information about his background, the situation leading up to the event, and events after the incident. This information will help us access the details of the case and better understand what happened to provide appropriate legal services.

During the intake interview, we will also discuss the injuries sustained, damages incurred, and any other relevant details.

Background questions: These questions are to get personal background information about the client and any relevant factors that may impact this legal matter.

1) **Personal Information:**

- a) a. Full Name:
 - b) Date of Birth:
 - c) Contact Information (Phone, Email, Address)
- 2) Where are you currently living?
- a) How long have you been at this address?
 - b) Is there anyone that lives at this address with you?
- 3) What is the preferred method you would like us to communicate with you?
- 4) What is the highest level of education you completed?
- a) Any specialized education or training relevant to your case:
- 5) Have you ever been arrested, charged, or convicted of a crime? If yes, please provide details:
- 6) Do you have any pre-existing medical conditions that may be relevant to your case?
- a) Are you currently under the care of any healthcare professionals? If yes, please provide their names and contact information:
 - b) What medications are you currently taking? Prescription and over the counter medications?
- 7) Are you currently employed? If yes, please provide details about your employment.
- 8) Do you have any outstanding debts or financial obligations that may impact your cas
- 9) Have you been involved in any previous legal matters or lawsuits? If yes, please provide a brief description of each case.
- 10) Is there any other information or details that you believe would be important for us to know regarding your background or the circumstances of your case?

Event Questions: These questions will help us get an understanding of the circumstances surrounding the incident.

- 1) Please describe the incident or event that led to your legal matter.

2) When and where did the incident occur?

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3) Were there any other individuals involved in the incident? If so, please provide their names and contact information if available.

4) Were there any warning signs or factors that may have contributed to the incident?

5) Were there any witnesses to the incident? If yes, please provide their names and contact information if available.

a) Did anyone else observe or have knowledge of the circumstances surrounding the incident?

6) Do you have any documents, photographs, or other forms of evidence related to the incident? If yes, please describe them and indicate if you can provide copies.

7) Have you had any communication or interactions with the opposing party, witnesses, authorities, or insurance companies regarding the incident? If yes, please provide details.

8) Have you previously taken any legal action or filed any reports related to this incident? If yes, please provide details.

9) Have you filed a police report or incident report regarding the incident? If yes, please provide a copy if available.

10) Is there any additional information relevant to the events leading up to the incident that must be addressed?

Post Event Questions: Understanding the aftermath and the impact on the client's life is crucial in evaluating the full extent of the damages incurred. These questions need to be answered with as many details as possible.

1) Have you sought medical attention for your injuries following the incident? If yes, please provide details, including the names and contact information of healthcare professionals you have consulted.

2) What type of treatment have you received, and what are the ongoing medical requirements, if any?

- 3) Do you have any insurance policies that may provide coverage or assistance for your injuries or damage? This could include health insurance.
- 4) Have you filed a claim with your insurance company or received any communication from them regarding your case?
- 5) Have you incurred any financial losses as a result of the incident? This may include medical expenses, loss of income, or other related costs.
- 6) Please provide an estimate of the financial losses you have experienced thus far.
- 7) How has the incident and its aftermath affected you emotionally and psychologically?
- 8) Have you sought any counseling or therapy to cope with the emotional impact?
- 9) Has the incident and your injuries affected your ability to carry out daily activities, work, or engage in hobbies and recreational activities? If yes, please describe the impact.
- 10) Are there any witnesses or individuals who can provide support or testimony regarding the impact of the incident on your life? If yes, please provide their names and contact information if available.

These questions should allow us to thoroughly address these areas and ensure that we have a complete picture of the client's situation and provide them with effective legal representation. The intake process plays a crucial role in gathering the necessary information to evaluate the case, develop a legal strategy, and provide appropriate guidance and support to the client throughout the legal proceedings. By following a comprehensive intake process and using the gathered information, we can better serve our clients and achieve a favorable outcome.

FORM NUMBER:	ARCivP-93
LAST REVISION DATE:	9/18
TITLE OF THIS FORM:	Cover Sheet Circuit Court – Civil Cases (Not for Domestic Relations Cases)
USERS OF THIS FORM:	Plaintiff/Plaintiff’s Attorney /Clerk
PURPOSE OF THIS FORM:	This form is to be filed with the complaint in a civil action or with the notice of appeal in an appeal of a civil case from district to circuit court to supply general information to the court regarding the nature of the suit and allows the court follow, for organizational purposes, the disposition or status of the case.
APPLICABILITY:	Circuit and District Courts
AUTHORITY:	Rule 3(b), Alabama Rules of Civil Procedure (ARCP), provides as follows: “ Except in domestic relations cases, each original complaint at the time it is filed with the circuit court shall be accompanied by an informational ‘cover sheet.’ ... The plaintiff, or if the plaintiff is represented by counsel, then the plaintiff’s attorney, shall complete and sign the ‘ general information’ portion of the cover sheet before it is filed with the court. If the complaint is tendered to the clerk of the circuit court without a properly completed cover sheet, the clerk shall accept the complaint and inform the person filing it of the requirements of this rule, and the plaintiff, or, if the plaintiff is represented by counsel, then the plaintiff’s attorney, shall promptly file a properly completed cover sheet.” For a party’s failure to comply with the requirements of Rule 3, ARCP, a court may stay the proceedings until the cover sheet is filed or make such other orders as are just, such as contempt of court, or, after proper notice, an order dismissing the action. Additionally, in cases appealed from the district court to the circuit court, the cover sheet shall accompany the notice of appeal.

COVER SHEET
CIRCUIT COURT – CIVIL CASE
(Not For Domestic Relations Cases)

Form AR Civ-93 Rev.9/18

Case Number
 -

Date of Filing: Judge Code:

Month Day Year

GENERAL INFORMATION

IN THE CIRCUIT COURT OF _____, ALABAMA
(Name of County)

v. _____

Plaintiff	<input type="checkbox"/> Business	<input type="checkbox"/> Individual	Defendant	<input type="checkbox"/> Business	<input type="checkbox"/> Individual
First Plaintiff	<input type="checkbox"/> Government	<input checked="" type="checkbox"/> Jefferson	First Defendant	<input type="checkbox"/> Government	<input type="checkbox"/> Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

<p>TORTS: PERSONAL INJURY</p> <p><input type="checkbox"/> WDEA - Wrongful Death</p> <p><input type="checkbox"/> TONG - Negligence: General</p> <p><input type="checkbox"/> TOMV - Negligence: Motor Vehicle</p> <p><input type="checkbox"/> TOWA - Wantonness</p> <p><input type="checkbox"/> TOPL - Product Liability/AEMLD</p> <p><input type="checkbox"/> TOMM - Malpractice-Medical</p> <p><input checked="" type="checkbox"/> X TOLM - Malpractice-Legal</p> <p><input type="checkbox"/> TOOM - Malpractice-Other</p> <p><input type="checkbox"/> TBFM - Fraud/Bad Faith/Misrepresentation</p> <p><input type="checkbox"/> TOXX - Other: _____</p> <p>TORTS: PERSONAL INJURY</p> <p><input type="checkbox"/> TOPE - Personal Property</p> <p><input type="checkbox"/> TORE - Real Property</p> <p>OTHER CIVIL FILINGS</p> <p><input type="checkbox"/> ABAN - Abandoned Automobile</p> <p><input type="checkbox"/> ACCT - Account & Nonmortgage</p> <p><input type="checkbox"/> APAA - Administrative Agency Appeal</p> <p><input type="checkbox"/> ADPA - Administrative Procedure Act</p> <p><input type="checkbox"/> ANPS - Adults in Need of Protective Services</p>	<p>OTHER CIVIL FILINGS (cont'd)</p> <p><input type="checkbox"/> MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/ Enforcement of Agency Subpoena/Petition to Preserve</p> <p><input type="checkbox"/> CVRT - Civil Rights</p> <p><input type="checkbox"/> COND - Condemnation/Eminent Domain/Right-of-Way</p> <p><input type="checkbox"/> CTMP - Contempt of Court</p> <p><input type="checkbox"/> CONT - Contract/Ejectment/Writ of Seizure</p> <p><input type="checkbox"/> TOCN - Conversion</p> <p><input type="checkbox"/> EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction Election Contest/Quiet Title/Sale For Division</p> <p><input type="checkbox"/> CVUD - Eviction Appeal/Unlawful Detainer</p> <p><input type="checkbox"/> FORJ - Foreign Judgment</p> <p><input type="checkbox"/> FORF - Fruits of Crime Forfeiture</p> <p><input type="checkbox"/> MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition</p> <p><input type="checkbox"/> PFAB - Protection From Abuse</p> <p><input type="checkbox"/> EPFA - Elder Protection From Abuse</p> <p><input type="checkbox"/> FELA - Railroad/Seaman (FELA)</p> <p><input type="checkbox"/> RPRO - Real Property</p> <p><input type="checkbox"/> WTEG - Will/Trust/Estate/Guardianship/Conservatorship</p> <p><input type="checkbox"/> COMP - Workers' Compensation</p> <p><input type="checkbox"/> LORP - Petition for Order of Limited Relief</p> <p><input type="checkbox"/> CVXX - Miscellaneous Circuit Civil Case</p>
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ORIGIN (check one): F INITIAL FILING A APPEAL FROM O OTHER:
DISTRICT COURT _____

R REMANDED T TRANSFERRED FROM
OTHER CIRCUIT COURT _____

HAS JURY TRIAL BEEN DEMANDED? YES NO **Note:** Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P, for procedure)

RELIEF REQUESTED: MONETARY AWARD REQUESTED NO MONETARY AWARD REQUESTED

ATTORNEY CODE:

Date Signature of Attorney/Party filing this form

MEDIATION REQUESTED: YES NO UNDECIDED

Election to Proceed under the Alabama Rules for Expedited Civil Actions: Yes No

for the

10th District of Jefferson County

Circuit Division

Kenny Collects

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Pal's Pet Store

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Case No. _____

(to be filled in by the Clerk's Office)

Jury Trial: (check one) Yes No

COMPLAINT FOR A CIVIL CASE ALLEGING NEGLIGENCE (28 U.S.C. § 1332; Diversity of Citizenship)

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name: Kenny Collects
Street Address: 5202 Stratton Road
City and County: Birmingham
State and Zip Code: Al,35062
Telephone Number: 205-555-0555

E-mail Address

kennycollect@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (*if known*). Attach additional pages if needed.

Defendant No. 1

Name

Pal's Pet Store

Job or Title (*if known*)

Street Address

101 21st Street

City and County

Birmingham, US

State and Zip Code

Birmingham Alabama

Telephone Number

Palpets@gmail.com

E-mail Address (*if known*)

A. The Plaintiff(s)

1. If the plaintiff is an individual The plaintiff, (name) Kenny Collects
State of (name) Alabama, is a citizen of the
United States

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

B. The Defendant(s)

2. If the defendant is a corporation

The defendant, (name) Pal's Pet Store, is incorporated under
the laws of the State of (name) Alabama, and has its

principal place of business in the State of (name) Alabama

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

C. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):
50,000

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

On *(date)* June 01, 23 , at *(place)* Pal's Pet Store

the defendant(s): (1) performed acts that a person of ordinary prudence in the same or similar circumstances would not have done; or (2) failed to perform acts that a person of ordinary prudence would have done under the same or similar circumstances because *(describe the acts or failures to act and why they were negligent)*

Kenny Collects seen an ad that the local animal shelter was hosting an adoption event at the Pet Store, Pal's Pets in downtown Birmingham. The ad promoted adoptable animals who had been given all the shots, been spayed and had been medically cleared by a vet. Mr. Collects went to the pet store looking for a cat to adopt. He was shown a large room, that had the same ad on the door promoting healthy adoptable pets. He started interacting with some of the cats seeing if any would be a good match. He noticed one cat that seemed shy in the corner, he went to check the cat out when the cat leapt and attacked Mr. Collects scratching his eyes, nose, mouth and cheeks. The wounds were significant and became infected causing permanent scarring and partial vision loss in one eye. Mr. Collects is suing the Pet Store, Pal's Pet for negligence for failing to ensure a safe environment for customers during the event. They also failed to ensure the animals were ready to be adopted .

The acts or omissions caused or contributed to the cause of the plaintiff's injuries by *(explain)*

Pat's Pets owed a duty of care to its customers, including Mr. Kenny Collects, to provide a safe environment during the adoption event. This duty includes taking reasonable measures to prevent foreseeable harm to individuals attending the event. Pat's Pets breached its duty of care by failing to take reasonable precautions to ensure the safety of attendees Pat's Pets did not properly assess the temperament or behavior of the cats available for adoption, leading to an unreasonably dangerous situation.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

Plaintiff reports that his physician has advised him that he currently has a 40% loss of vision in the left eye, which is likely to be long-lasting or permanent. The scarring on the Plaintiff's face is obvious, and permanent. Aside from the scars, there is no long-term damage to the mouth.

The client has incurred medical bills of over \$36,000 so far, with additional expenses likely should the client need eye surgery in the future. The client missed approximately four days of work at the time of the initial injury and another six half-days for follow-up medical care. WHEREFORE, Plaintiff seeks compensatory damages in the amount of \$50,000, plus all attorney fees and costs incurred by Plaintiff in connection with this action. Additionally, Plaintiff seeks Court cost and Attorney cost.

Kristine Hubbert
0721/2023
Pleg 220 Torts
Week 4- Portfolio



Dear Mr. Collects,

I wanted to update you on where we are with your case. Upon further investigation, we discovered new information about your case. The cat that attacked you managed to escape the pet store and got hit by a car. It got taken to a vet, who determined that it was not a domestic cat but a baby mountain lion that got brought to the shelter. Unlike the other cats that had gotten spayed or neutered and were cleared for adoption, the mountain lion was not due to the uncertainty regarding its species. While in the vet's care, the mountain lion got released back into the wild before the vet knew about it attacking a human. The city cited the shelter and the pet store for unlawful possession of a dangerous animal. With this information, I wanted to go over adding shelter to the lawsuit.

In Alabama, the elements of a negligent tort typically require the following:

- Duty: The defendant owed a duty of care to the plaintiff.
- Breach: The defendant breached that duty of care through their actions or inactions.
- Causation: The defendant's breach of duty was the proximate cause of the plaintiff's injuries.
- Damages: The plaintiff suffered actual damages because of the defendant's breach.

Pat's Pets (the Store): The cause of action would be negligence. Pat's Pets had a duty to exercise reasonable care in ensuring the safety of its customers and providing accurate information about the animals for adoption. They breached this duty by failing to identify the wild mountain lion and allowing customers to interact with the potentially dangerous animal without sufficient caution. They may be held liable for the resulting damage.

The Animal shelter: is also a potential defendant in the lawsuit. The cause of the action would also be negligence under Alabama law. They had a duty to provide appropriate medical care and ensure the safety of animals, including the wild mountain lion. The shelter breached this duty by failing to identify the animal correctly and neglecting to provide medical care, especially considering the doubts about its domesticity. They may be held responsible for the damage caused. We can also look into strict liability. If a person is injured or killed by a wild animal kept by another person, there might be a strict liability claim available.

Requires the following elements:

- A person either introduced a wild animal to the person or into the area.
- The Wild animal had dangerous characteristics.
- The dangerous nature of the animal caused the plaintiff's injury.

In a personal injury lawsuit, the plaintiff asserts that their injuries were caused by the defendant's negligence or recklessness. In a strict liability case, the plaintiff is not required to prove that the defendant acted negligently. Under strict liability, the plaintiff does not have to prove the defendant's state of mind at the time of the accident, only that there has been harm suffered because of the defendant's actions. Regarding strict liability for dangerous animals in Alabama, the state has adopted a strict liability statute that imposes liability on owners or keepers of dangerous animals for any injuries or damages caused by their animals. In this situation, strict liability might apply to both the pet store and the shelter, given that the wild mountain lion was mistakenly turned in for adoption. The strict liability doctrine may hold these entities liable for injuries caused by the dangerous animal, regardless of whether they were negligent.

The damages available to you may vary depending on if the case is based on negligence and you are entitled to compensatory damages, including economic (medical expenses, lost wages) and non-economic damages (pain and suffering, emotional distress). The damages are intended to compensate you for the losses incurred. If strict liability is established against the store and the shelter, you would also be entitled

to compensatory and punitive damages. Punitive damages are intended to punish the defendants for their reckless or intentional conduct and to deter others from engaging in similar behavior.

The incident at Pat's Pets involving the wild mountain lion has raised significant legal concerns. They both are viable defendants in the lawsuit, and the cause of action against each would be negligence. The involvement of a dangerous animal may create strict liability, which could further impact the outcome of the case. We are still working very hard and preparing for the next steps in order to move forward. As always thank you so much for trusting our law firm with your case. Please reach out if you have any questions or concerns.

Sincerely,

Kristine Hubbert, Paralegal- khubbert@fixinharmllawfirm.com



FIXIN AND HARMS LAW FIRM

"REPAIRING LIVES, RESTORING JUSTICE"

REFERENCES

Code 1907, § 2470; Code 1923, § 5678; Code 1940, T. 3, § 3.)

2006 Alabama code - Section 3-1-3 - liability of owner, etc., permitting vicious or dangerous animal to be at liberty, etc., for injuries caused by same..Justia Law. Available at: <https://law.justia.com/codes/alabama/2006/2220/3-1-3.html> (Accessed: 20 July 2023).

Alabama statutes (no date) Animal Law Legal Center. Available at: <https://www.animallaw.info/statutes/us/alabama> (Accessed: 20 July 2023).

2550 Justice Lane

Birmingham, AL 35065



FIXIN AND HARMS LAW FIRM
"REPAIRING LIVES, RESTORING JUSTICE"

Memo

To: Will Files, Attorney

From: Kristine Hubbert, Paralegal

CC: Defendant Answer

Mr. Files,

I have reviewed the answers filed by the Pet Store and conducted a well-structured and comprehensive analysis, which will assist in understanding the potential outcomes and implications of each defense raised by the Pet Store. By considering the relevant legal elements and examining the specific facts at hand, we can gain a clearer picture of the strengths and weaknesses of their arguments.

1. Contributory Negligence of the Plaintiff

- Under contributory negligence, a plaintiff can be barred from recovering damages if they are found to have "contributed" in any way to the underlying accident or event that caused their injury, even 1%. This makes it an uphill battle for those who have been injured because another party was negligent. Alabama is among the five states that follow the contributory negligence rules. You're not

eligible to recover damages in a contributory negligence state if you're partially responsible for an accident. §11-93-1 et. seq.

- You can't recover any money in Alabama through a lawsuit if you're even 1% responsible for your injuries.

Defense Claim:

- The Defendant argues that the Plaintiff's lawsuit is invalid due to the Plaintiff's contributory negligence. The Plaintiff placed his face near an unknown animal without taking any precautions. AL Code § 3-1-3 (2022)

Merits of the Defense:

- In Alabama, the doctrine of Contributory Negligence is applied, meaning that if the Plaintiff is even 1% at fault for their injuries, they may not be able to recover any damages. The Defendant must prove that the Plaintiff's negligence directly caused the harm. Contributory negligence is an affirmative and complete defense to a claim based on negligence. To establish contributory negligence, the defendant bears the burden of proving that the plaintiff (1) had knowledge of the dangerous condition; (2) had an appreciation of the danger under the surrounding circumstances; and (3) failed to exercise reasonable care, by placing himself in the way of danger. Campbell v. Kennedy, 275 So. 3d 507, 509 (Ala. 2018)

2. Comparative Negligence of the Plaintiff:

- Comparative negligence, also known as comparative fault, is a legal principle in tort law that determines the degree of blame for multiple parties involved in an incident based on their respective levels of negligence. If the injured victim is found to have contributed to the incident through their own negligence, both the victim and the defendant will be assigned a percentage of blame by the jury,

judge, or insurance company. However, it is important to note that Alabama does not follow the comparative fault principle. In Alabama, even if the victim is only 1% responsible for their injuries, they cannot recover any money through a lawsuit.

Defense Claim:

- The Defendant argues that even if they were partially negligent, the Plaintiff's own conduct should be considered to offset the claim and reduce the damages.

Merits of the Defense:

- Alabama is not a comparative fault state. Instead, it follows the contributory negligence rules. In a contributory negligence state like Alabama, you cannot recover damages if you are partially responsible for an accident. Even if you are just 1% responsible for your injuries, you cannot recover any money through a lawsuit in Alabama.

3. Assumption of Risk:

- During a personal injury case, the assumption of risk affirmative defense may be raised to prevent a payout to the injured party. This defense asserts that the victim understood the potential for injury and still willingly exposed themselves to the danger. If successful, the defendant is not held liable for the injury. This defense is commonly used in cases involving voluntary participation in sports and recreational activities, as well as premises liability cases where "no trespassing" signs shift responsibility to the victim. There are two distinctions of assumption of risk: express and implied.

Defense Claim:

- The Defendant asserts that the Plaintiff was aware of the dangers associated with engaging with a strange animal in the manner they did, and thus, assumed the risk of injury. As a result, the lawsuit should be barred. Ala. Code § 3-1-3

Merits of the Defense:

- In Alabama, assumption of risk is a valid defense if the Defendant can demonstrate that the Plaintiff was fully aware of the risks involved and voluntarily chose to proceed despite such knowledge. To assess the merit of this defense, it is crucial to examine the evidence regarding the Plaintiff's awareness of potential dangers and whether they knowingly accepted those risks. The Defendant must prove that the Plaintiff's conduct was a direct cause of their injuries, and mere knowledge of the risks may not be sufficient to establish assumption of risk.

Failure to Name a Necessary Party:

- A necessary party is someone whose interests are directly affected by the outcome of a case. In federal cases, necessary parties are distinguished from indispensable parties, as outlined in *Shields v. Barrow*. According to Rule 19 of the Federal Rules of Civil Procedure, necessary parties must be joined unless there is a valid reason for excluding them. *Fed. R. Civ. P 19(b)*

Defense Claim:

- The Defendant argues that the animal shelter, and not Pat's Pets, was the negligent party responsible for the injuries. Since the animal shelter was not named as a defendant, the case should be dismissed. Federal Rule of Civil Procedure 19 serves the purpose of allowing the inclusion of all relevant parties in a single lawsuit. This is done to protect the interests of those involved and to prevent unnecessary strain on the judicial system.

Merits of the Defense:

- In Alabama, the failure to name a necessary party in a lawsuit may result in dismissal. The Defendant must demonstrate that the animal shelter's negligence was the primary cause of the injuries and that the shelter's presence as a defendant is essential to resolving the matter fairly. However, if the Defendant was also negligent and their actions contributed to the injuries, the failure to name the animal shelter may have less significance as a defense.
- **Elements to Prove:**

- The animal shelter's negligence was the proximate cause of the Plaintiff's injuries
- The animal shelter was a necessary party to the lawsuit
- The failure to name the animal shelter as a defendant resulted in prejudice to the Defendant

The Rule 19 Test

- Rule 19 provides a two-step process to determine whether a complaint should be dismissed for failure to join an indispensable party, provides that a person is Required Party if complete relief cannot be accorded in that person's absence, or resolving the claims without that person may impair the absent party's interest or subject an existing party to the risk of double, multiple or otherwise inconsistent obligations.. Under Rule 19(a), if joinder of a required person is feasible, then that person must be joined. If joinder is not feasible, the analysis proceeds to the second step. Fed. R. Civ. P. 19(b). The second step of the analysis, set forth in Rule 19(b), directs a court to "determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed." "Dismissal of an action for non-joinder of a party is an extreme remedy which should only be granted where a party is truly 'indispensable.'"

Conclusion:

After carefully reviewing the defenses raised by the Pet Store and conducting a thorough analysis of the relevant legal elements and specific facts, we can draw several key conclusions regarding each defense.

- **Contributory Negligence of the Plaintiff:** In Alabama, the doctrine of contributory negligence is strictly applied. Even if the Plaintiff is found to be just 1% at fault for their injuries, they may be barred from recovering any damages. The strength of the Defendant's defense relies on proving that the Plaintiff's negligence directly caused the harm. Conversely, the Plaintiff's chances of weakening this defense lie in demonstrating that their conduct was reasonable and not a significant factor in causing the injuries.

- **Comparative Negligence of the Plaintiff:** Alabama does not follow the comparative fault principle. Regardless of the percentage of responsibility attributed to the Plaintiff for their injuries, they cannot recover any compensation through a lawsuit.
- **Assumption of Risk:** For the assumption of risk defense to be valid in Alabama, the Defendant must show that the Plaintiff was fully aware of the potential dangers involved and voluntarily chose to proceed despite such knowledge. Simply having knowledge of the risks may not be enough to establish assumption of risk.
- **Failure to Name a Necessary Party:** In Alabama, the failure to name a necessary party in a lawsuit can lead to dismissal. The Defendant must demonstrate that the animal shelter's negligence was the primary cause of the injuries and that the shelter's presence as a defendant is essential to resolving the matter fairly.

Each defense has its own set of requirements and challenges. The Defendant's success in asserting these defenses will depend on the strength of the evidence they present and how well they can meet the specific criteria set forth by Alabama law. Please let me know if you have any questions or concerns about the research.

Sincerely,

Kristine Hubbert, Paralegal

References

Ala. Code § 3-1-3

§11-93-1 et. Seq.

Campbell v. Kennedy, 275 So. 3d 507, 509 (Ala. 2018)

Fed. R. Civ. P 19(b)

Kristine Hubbert

08/12/2023

Pleg 220 Torts

Portfolio Project- Reflection

This portfolio project involved simulating a case and performing tasks that a paralegal would typically do when preparing for a trial. As part of this project, I prepared an Interview Memo, Complaint Letter, Client Letter, and Analysis Memo.

The Interview Memo allowed me to create a comprehensive summary of the client's case by gathering relevant information during the interview process. This project helped me develop my legal research skills, practice drafting formal documents, and improve my communication abilities. The assignment aligns with the program and institutional outcomes by:

- Enhancing your ability to gather pertinent information from clients, a crucial skill for a paralegal.
- Practicing effective communication and active listening, which are essential for understanding client needs and case details.
- Applying legal interviewing techniques, contributing to your understanding of ethical and professional conduct

I prepared the Official Complaint Letter that would be sent to the defendant outlining details of the case and asserting the client's claims. This assignment addresses the program and institutional outcomes:

- Developing your written communication skills is an important aspect of conveying legal arguments and claims clearly and persuasively.
- Applying legal drafting principles to create a formal complaint letter that follows legal standards and conventions.

- Demonstrating your understanding of legal concepts and your ability to articulate them to establish a valid legal claim.

The next assignment was the Client Letter to provide the client with an update on the progress made on the case. This Showed my ability to communicate effectively with clients while keeping a professional tone. This assignment relates to the program and institutional outcomes by:

- Enhancing your ability to communicate effectively with clients, fostering trust, and supporting professional relationships.
- Practicing the skill of summarizing legal progress and updates for clients in a clear and concise manner.
- Reflecting your understanding of the ethical responsibilities involved in client communication.

Lastly, I prepared an Analysis Memo requiring me to assess the strengths and weaknesses of the client's case based on legal precedents and evidence. This process fostered critical thinking, enabling me to evaluate complex situations, find issues, and make informed recommendations.

This assignment meets the program and institutional outcomes by:

- Strengthening your legal research skills as you analyze case law, statutes, and regulations relevant to personal injury cases.
- Developing critical thinking skills by assessing the strengths and weaknesses of the case based on legal precedents and evidence.
- Demonstrating your ability to apply legal reasoning to real-world scenarios, which is fundamental in legal practice.

By working on the Analysis Memo and Complaint letter, I developed legal research skills, and practiced drafting formal documents. These experiences taught me how to structure my arguments, use

proper legal language, and find relevant statutes, regulations, and case law. Being able to analyze information and applying the facts to a client's case is crucial for conducting research and making informed decisions.

Additionally, working on the Client Letter and Interview Memo helped me improve my communication abilities. I learned how to effectively summarize complex legal concepts and case details for clients and attorneys alike. These experiences also showed me how to interact with clients in a professional manner. Above all, I learned the importance of clear communication in maintaining professional standards.

I gained a deep understanding of the ethical considerations involved in client communication, legal research, and case analysis. This knowledge has prepared me to navigate potential ethical dilemmas that may arise in my future paralegal career. I had the opportunity to complete assignments that closely mirror the responsibilities of a paralegal in a personal injury law office, which helped me develop essential skills such as legal research, communication, writing, critical thinking, and client interaction. These skills will undoubtedly prove valuable in my paralegal career, allowing me to provide the best possible service to my clients while upholding ethical standards.