

LITIGATION: SAMPLE EXAM



Directions:

1. **DO NOT PUT YOUR NAME ON THE COVER PAGE TO THIS EXAMINATION; PUT IT ON THE SECOND PAGE IN THE SPACE PROVIDED.**



PUT YOUR NAME ON THE SCANTRON & SECOND PAGE OF EXAM.

2. You may use any written material while taking this exam, except another student's answers; **NO TALKING IS ALLOWED.**
3. On multiple choice answers, **there may be more than one correct answer.** You are expected to give *the best* answer.
4. On the multiple choice answers, merely fill in the letter corresponding to your choice. On the two-tier multiple choice questions, choose the letter on the second tier, and fill it in on the scan sheet.
5. On the essays/short answers, make your handwriting legible. What I cannot read, I cannot grade. You will lose points if I cannot read your writing.
6. On the true/false section of the exam, fill in "A" for true and "B" for false on the scan sheet.
7. Service of process means the service of whatever document needs to be served under a particular civil procedure.
8. "P" and "D" are frequently used as both names to the parties and as their status as plaintiff and defendant.
9. You have the entire class period to complete the test.
10. *Unless otherwise stated, New York Law applies.*
GOOD LUCK!

Courts

1. In Justice Court, the judges must be lawyers.
2. The jurisdictional amount in City Courts is \$20,000.
3. John gets into a car accident with Bill. John sustained property damage in the amount of \$3,000 and personal injury damage in the amount of \$3,000. John may aggregate these causes of action and bring the causes of action before a village court.
4. In New York, the Appellate Division courts may review only questions of law.
5. A divorce action cannot be brought in Family Court.
6. The New York Court of Appeals is always permitted to review questions of both law and fact.
7. The United States Supreme Court can issue advisory opinions.
8. The monetary jurisdictional amount in Justice Court is \$2,500.
9. A notice of claim must be filed against the municipality within:
 - a. 20 days after the claim arises.
 - b. 30 days after the claim arises.
 - c. 60 days after the claim arises.
 - d. 90 days after the claim arises.
 - e. None of the above.
10. Judges on the New York Court of Appeals are
 - a. elected to 14-year terms on the bench.
 - b. appointed to 14-year terms on the bench by the governor.
 - c. appointed for life to the bench by the governor.
 - d. appointed for 14-year terms on the bench by the Senate.
 - e. None of the above.
11. Kirk and Spock are both domiciliaries of Rockland County, that is when they are not otherwise roaming the Galaxy. Kirk wants to buy Spock's car. Spock, incapable of telling any lies, tells Kirk that the car is in perfect running condition. Spock tells Kirk that for \$24,000 the car will be delivered to Kirk's house. Kirk agrees. Spock delivers the car, and Kirk gives him the \$24,000. After Spock leaves, Kirk attempts to start the car. It doesn't start and much to Kirk's surprise there is no engine in the car.

Kirk calls Spock to inquire about what has happened to the car's engine. Spock says it doesn't have one. Kirk demands the money back. Spock tells him that he's not going to get any money back because Kirk still owes Spock \$75,500 for the shipment of dead Tribbles he sold Spock last year.

Kirk sues Spock in Rockland County Court for \$24,000. Spock counterclaims for \$75,500. Kirk moves to dismiss Spock's counterclaim since it exceeds the jurisdictional monetary limit of the County Court.

- a. Kirk's motion will be denied because there is no jurisdictional monetary limit on counterclaims in County Court.
- b. Kirk's motion will be denied because Spock's counterclaim has nothing to do with Kirk's claim.
- c. Kirk's motion will be granted because the Uniform Court Act prohibits counterclaims in County Courts.
- d. Kirk's motion will be granted because there is a \$25,000 jurisdictional monetary limit on counterclaims in County Court.

12. In addition to the CPLR, the _____ Act provides procedure rules for the Surrogate's Court.

13. In addition to the CPLR, the _____ Act provides procedure rules for the Town Courts.

Pleadings:

14. When drafting a complaint, style suggests that the first two allegations should set forth the names of the plaintiff and defendant.
15. A cross-claim is a cause of action asserted by the plaintiff in his reply to a defendant's counterclaim.
16. In John Smith's complaint, he alleges in his first cause of action that defendant intentionally struck him with a bat. In Smith's second cause of action, he claims that defendant negligently struck him with a bat. The defendant moves to dismiss Smith's second cause of action because it is inconsistent with his first cause of action. The defendant's motion will be granted.
17. Stokes sues his general contractor for negligent construction of Stokes' home. The general contractor commences a third-party action against the subcontractor on the job. The third-party complaint alleges that if the general contractor is liable to Stokes, then the subcontractor is liable to the general contractor. This is an example of "alternate pleading."

18. New York does not follow the "single allegation rule" in pleadings.
19. In an action for wrongful death, the plaintiff's complaint must demand a specific monetary amount to be awarded.
20. Prior statements in pleadings are deemed repeated; therefore, a party need not state that "Plaintiff realleges all of the preceding paragraphs *supra* with the same force and effect as if repeated at length herein."
21. The plaintiff must reply to a counterclaim.
22. There is no need to reply to a counterclaim if the counterclaim does not demand a reply.
23. When writing a complaint for a contract cause of action, it is a good practice to also allege a cause of action for "account stated" and a cause of action for "unjust enrichment."
24. In pleading a cause of action for divorce, the complaint only needs to give notice of the misconduct alleged: e.g. "My husband committed adultery."
25. In a New York State Supreme Court complaint, the plaintiff must include any allegations as to the court's subject matter jurisdiction.
26. In a responsive pleading (e.g., an answer), "silence" is considered a denial.
27. A "DKI" in a responsive pleading has the same effect as a "denial."
28. A person must be aware of a battery.
29. Special damages relate to any special talents the plaintiff lost as a result of an accident.
30. Punitive damages relate to any actual medical expenses incurred by the plaintiff.
31. Nominal damages are not allowed in negligence cases.
32. The "soft skull" or "egg shell skull" doctrine stands for the proposition that a defendant "takes the plaintiff as she finds him or her."

33. Jones is in a car accident. He notifies his insurance company right way. Five months later he receives a summons and complaint. He turns them over to his insurance company. The insurance company denies coverage. The company claims that Jones never satisfied the condition precedent in the insurance policy because he failed to give notice of the suit. Jones commences a lawsuit for a declaratory judgment stating that the policy applies and that the company must indemnify him.

Pursuant to the CPLR, Jones, in his complaint,

- a. must allege the performance of her condition precedent.
 - b. need not allege the performance of the condition precedent.
 - c. need not allege the performance of the condition precedent; however, the defendant must specifically set forth the non-occurrence in her answer.
 - d. Both "B" and "C" above.
 - e. Condition precedents are inapplicable under New York law.
34. Legal causation has the effect of expanding a defendant's liability.
35. John's answer does not contain a counterclaim. To amend his answer "as of right," John may wait until 20 days after the responsive pleading is served.
36. If it appears that amending a pleading would cause prejudice to another party, the judge may deny the motion to amend the pleadings.
37. A motion to amend a pleading should contain a copy of the proposed pleading as an exhibit to the motion.
38. On February 1, 1990, Walcox commences an action against Lewis for personal injury by purchasing an index number and personally serving Lewis with the summons and complaint. Lewis services an answer to the complaint, together with counterclaims, on February 20, 1990.

If Lewis wishes to amend his *answer as of right*, he may do so

- a. within 20 days after the service of his answer.
 - b. within 20 days after the pleading responding to his answer is served.
 - c. at any time before the period for responding to his answer expires.
 - d. All of the above.
 - e. None of the above.
39. A defendant can raise the "statute of limitations" as an affirmative defense.
40. The statute of frauds is an affirmative defense to a contract cause of action.

41. P and D are in an accident. P is found 50% at fault and D is found 50% at fault. In a state following the "Not as Great as" rule, P will not be able to recover.
42. In the United States, almost all the states follow the contributory negligence rule.

Statute of Limitations:

43. An action is commenced in New York State Supreme Court when the defendant is first served with a summons and complaint.
44. An action is commenced in Justice Court when an index number is purchased.
45. A "claim" involves a set of transactions or occurrences which only gives rise to one cause of action.
46. One of the reasons that "claim splitting" is prohibited is that there is a possibility of inconsistent verdicts between the two actions.
47. The doctrine of *bio judicata* reduces litigation and prevents harassment or hardship to an individual who otherwise may be sued twice for the same cause of action.
48. A cause of action for trespass must be commenced within twenty five (25) years.
49. Typically, intentional torts have a five year statute of limitations.
50. The statute of limitations for personal injury negligence is five years.
51. The statute of limitations on any action can be shortened by the parties, provided that the time agreed upon is reasonable and is in writing.
52. If a person is insane at the time a cause of action accrues, the time in which to commence the action is tolled during the time of the disability; however, the period of the toll shall not be more than 10 years after the cause of action accrues.

53. On June 15, 1990, Harley purchased a house from Davidson. Prior to the purchase, Harley asked Davidson whether the property was ever used to store chemicals, oil, or other potentially hazardous materials. Davidson told Harley that the property was used only for residential purposes and that no hazardous materials were ever stored on the property. Davidson knew, however, that he did repair motorcycles on the premises and that when he changed a motorcycle's oil, he dumped the used motor oil into the ground beneath the house.

On July 21, 1997, Harley begins to work on a new foundation to the house. As the work begins, pools of oil float to the surface of his basement. The health department orders Harley and his family out of his house.

Harley immediately commences an action against Davidson for fraud and demands the return of his money. Davidson answers the complaint and shortly thereafter makes a CPLR §3211 motion to dismiss the action based upon the fact that the statute of limitations has run on Harley's claim. The defendant's motion will be

- a. denied because the statute of limitations on Harley's action is six years accruing at the time of the fraud or two years from the date of the actual or imputed discovery of the fraud.
- b. denied because the statute of limitations on Harley's action is six years computed from the time of the fraud or the time of the actual or imputed discovery of the fraud.
- c. granted because the statute of limitations on an intentional tort is one year.
- d. granted because the statute of limitations for fraud is six years.

54. On June 2, 1997, when Timmy is 16 years old, he makes a contract with a local car dealership wherein he agreed to purchase a Ford Explorer. Due to the demand on that particular car, the dealership informs Timmy that it is not going to deliver the car to Timmy.

On September 15, 2002, Timmy commences an action against the dealership for breach of contract. The dealership makes a motion to dismiss Timmy's complaint claiming that the statute of limitations has run.

The dealership's motion will be

- a. granted because the statute of limitations had run.
- b. granted because Timmy had three years from the time he reached 18 years-of-age to sue, which time has passed.
- c. granted because Timmy was a minor at the time he made the contract
- d. denied because Timmy had until June 1, 2003 to commence the action.
- e. denied because Timmy's time to commence the action was tolled during the time of his infancy and he had six years after turning 18 years-of-age to commence the action.

Getting into the Court House/Appeals:

55. In a standard action, the court will expect that parties be prepared for trial no later than 18 months after the preliminary conference.
56. The "master calendar" system is used in New York Supreme Court.
57. With the IAS "single track" system, a judge stays with the case from cradle to grave.
58. To have the appellate division review a case, a party must file a
- a. note of issue
 - b. certificate of readiness
 - c. a request for judicial intervention
 - d. a request for appellate division intervention
59. In Federal District Court, a judge is appointed to the case as soon as an index number is purchased.
60. In Federal courts, a jury demand is placed on the summons.

61. When filing a request for judicial intervention and a notice of motion, a check for _____ must accompany the request.
- \$50
 - \$95
 - \$140
 - \$170
 - There is no charge for filing an RJI and notice of motion.
62. When filing a note of issue and certificate of readiness, a check for _____ must accompany the request if a non-jury trial is requested.
- \$30
 - \$95
 - \$120
 - \$170
 - There is no charge for filing a note of issue and certificate of readiness.
63. When filing an RJI with the court, the paralegal should serve the court with the original affidavit of service, retain a copy for the file, and serve a copy on the opposing parties.
64. When a party files an RJI and requests a preliminary conference, the case is
- assigned to an judge
 - placed on the pre-trial calendar
 - placed on the trial calendar
 - Only "a" and "b" above.
 - Only "a" and "c" above.
65. If a note of issue does not request a jury, a party desiring a jury trial has _____ days after it's filed to demand a jury:
- 10
 - 15
 - 20
 - 30
 - None of the above.
66. When a case is ready for trial, plaintiff will file _____ with the clerk of the court.
- a notice of trial readiness
 - a UJK form
 - a RJI form
 - a trial readiness order
 - None of the above.

Chapter #5: Appearance (Self-Read)

- 67. A party can appear in an action by serving an answer.
- 68. Special appearances have been abolished in the CPLR.
- 69. An infant must appear in an action through a guardian.

Discovery:

- 70. A party can obtain material in discovery only if it will be admissible at trial.
- 71. In a medical malpractice action, a party seeking expert disclosure can obtain:
 - a. the name of each expert, her qualifications, the subject matter of her testimony, the facts and/or opinions to be offered by her, and a summary of the grounds for the opinion.
 - b. the name of each expert, her qualifications, the subject matter of her testimony, and the facts and/or opinions to be offered by her.
 - c. the expert's qualifications, the subject matter of her testimony, and the facts and/or opinions to be offered by her.
 - d. the expert's qualifications, the subject matter of her testimony, the facts and/or opinions to be offered by her, and a summary of the grounds for the opinion.
 - e. Discovery of experts is not allowed.
- 72. A bill of particulars is considered a form of discovery.
- 73. In a personal injury action, a bill of particulars may only seek certain, statutorily defined, particulars.
- 74. In a negligence cause of action, the bill of particulars must only be verified if a subsequent pleading is verified.
- 75. Parties are not required to amend or supplement their discovery responses if the initial responses given are currently incorrect or incomplete.
- 76. Surveillance videos of a plaintiff must be turned over, upon demand, prior to that party's deposition.
- 77. Contents of insurance agreements are not discoverable because whether a party has insurance is inadmissible at trial.

78. A court may order a protective order
- on its own motion.
 - on the motion of a party.
 - on the motion of any person from whom discovery is sought.
 - All of the above.
 - None of the above.
79. Defendant serves plaintiff with a notice for an independent medical exam. The plaintiff, however, fails to attend the examination. The defendant can make
- a motion to preclude.
 - a motion to produce.
 - a motion to produce and preclude.
 - a motion for a protective order.
 - None of the above.
80. In personal injury cases based on negligence, New York law does not require that a party choose between using interrogatories or depositions and both devices can be used without a court order.
81. If an EBT notice is defective, the deponent will still have to comply with the notice unless a timely objection is filed ten (10) days prior to the EBT.
82. An EBT notice may be sent by ordinary mail to a party; however, subpoena to a non-party must be sent in the same manner as a summons.
83. An EBT notice must give at least _____ days notice; however, a cross-notice for an EBT may be given on _____ days notice.
84. The deponent has 30 days to review her EBT transcript, make corrections, and return it to the party that took the deposition. If the transcript is not so returned, the transcript may be used as though fully signed.
85. A deposition of a person can be used at trial if the court finds that person is living more than 100 miles from the place of the trial.
86. Except for in matrimonial actions, a party may not serve interrogatories and
- also serve a bill of particulars.
 - conduct an EBT
 - Both of the above.
 - None of the above.
87. Interrogatories are _____ questions sent to a party to answer.

88. Admission requests are discovery devices which seek to _____ issues at trial.
89. Defendant wants to see any photographs plaintiff may have taken of her injuries. The most appropriate discovery device to use would be _____.
- interrogatories
 - a demand for discovery and inspection of documents or things
 - a request for admission
 - a demand for an accident report
 - an EBT
90. Defendant seeks to establish that the plaintiff had not been seriously physically injured in the car accident. The most appropriate discovery device to use would be _____.
- interrogatories
 - a demand for discovery and inspection of documents or things
 - an independent physical examination
 - an independent mental examination
 - a notice to admit
91. Plaintiff wants to inspect and test the floor at Big D's Hotdogs where he fell to determine the "antislip coefficient" of the floor tiles. The most appropriate discovery device to use would be _____.
- interrogatories
 - a demand for discovery and inspection of documents or things
 - a request for admission
 - a demand for the contents of an insurance agreement.
 - a notice of entry
92. Physical and mental examinations are allowed in *all* cases.
93. Requests for admission may go to the "heart of the matter" in a controversy.
94. Plaintiff serves defendant with a notice to admit the genuineness of his signature. Defendant refuses to admit that the signature on the document is his. At trial, plaintiff established that the signature on the document belonged to defendant. Regardless of whether the plaintiff wins or loses the trial, plaintiff is entitled to the costs incurred for proving the authenticity of defendant's signature.
95. If a party serves a notice to admit the genuineness of a photograph, the notice shall contain a copy of the photograph, unless a copy has already been furnished.

96. A notice to admit may be served _____.
- at any time after service of the answer
 - after the expiration of twenty from service of the summons
 - not later than twenty days before trial
 - Any of the above.
 - None of the above.

Motion Practice:

97. A cross-motion need not be related to the main motion.
98. The movant sets the return date in a motion brought on by an order to show cause.
99. When calculating the return date of a motion, you count all calendar days, including weekends or holidays.
100. The "5-day mail" rule applies to serving opposition/answering papers in a motion.
101. For the moving party to win a summary judgment motion, the movant must demonstrate to the court that there is no genuine issue of material fact to be decided in the case.
102. The affirmation of the attorney should set forth the factual allegations which are the foundation of the law suit.
103. If a motion is served by federal express, five days must be added to the return date of the motion.
104. A verified pleading may never be used in lieu of an affidavit.
105. A notice of motion must set forth the grounds for the relief.

On the next two questions don't worry about weekends, because I'm not going to change this sample exam every year.

106. On June 6, 2001, you are going to *federal express* a notice of motion for summary judgment on your opponent. Using the "8/2 Rule," the earliest you can set the return date on your motion is _____. Your opponent must serve her opposition papers to your motion on you by _____.
107. On June 6, 2001, you are going to *fax* a notice of motion for summary judgment on your opponent. Using the "8/2 Rule," the earliest you can set the return date on your motion is _____. Your opponent must serve her opposition papers to your motion on you by _____.

Worry about weekends and holidays on the next three questions:

108. Using the "12/7/1 Rule," if the non-moving party is served by mail with a Notice of Motion on December 15, 2004, when is the earliest the return date may be set.
- a. December 23, 2004
 - b. December 28, 2004
 - c. January 1, 2004
 - d. January 2, 2004
 - e. None of the above.
109. Based upon the preceding question, the opposition papers from the non-moving party must be served on which date.
- a. December 19, 2002
 - b. December 23, 2002
 - c. December 24, 2002
 - d. December 26, 2002
 - e. None of the above.
110. Based upon the preceding question, the reply papers from the moving party must be served on which date.
- a. December 26, 2004
 - b. December 28, 2004
 - c. January 1, 2004
 - d. January 2, 2004
 - e. None of the above.
111. Based upon the preceding question, if the non-moving party in this case wanted to make a cross-motion in the Second Department and *serve it by mail*, when must the cross-motion be made by?
- a. December 18, 2002
 - b. December 19, 2002
 - c. December 23, 2002
 - d. December 25, 2002
 - e. None of the above.

Appeals:

112. A notice of appeal must be filed ____ days after serving the notice of entry.
- a. 20
 - b. 30
 - c. 40
 - d. 120

Parties/Class Actions/Intervention:

113. To have a class action, there must be an identifiable class.
114. Class actions are limited to personal injury actions against a common carrier.
115. Prior to commencing a class action, you need not obtain a court order authorizing the class action.
116. To commence a class action, a party must
- a. make an *ex parte* motion to certify a described class.
 - b. make a motion, on notice, to certify a described class.
 - c. file a summons and complaint.
 - d. Class actions are only permitted in Federal Court.
117. If a plaintiff amends his complaint to assert a claim directly against a third-party defendant, plaintiff needs to serve only his complaint—and not a summons—on the third-party defendant.
118. Only plaintiffs can intervene in an action.
119. In New York, cross-claims are always permissive.
120. In Federal courts, third-party practice is always permissive.
121. In New York, a defendant has 20 days after serving his answer to commence a third-party action *as a matter of right*.
122. Defendants are the ones who have the right to choose whether plaintiffs should be joined in an action.
123. A severance motion can be made at any time.
124. It is easier to join claims than to consolidate actions.

125. The attorney-general can intervene in an action *as of right* to defend the constitutionality of a state statute.
126. In a defensive interpleader, the stakeholder must file a summons and interpleader complaint and serve it, together with a copy of all prior pleadings, on a claimant not in the action.
127. Impleader is always permissive.
128. For a stakeholder to be discharged from an action as a defendant, the stakeholder must only demonstrate that pleading time has expired, and that, as a matter of law, her only involvement is holding the stake.
129. Williams has an accident with Mason and Clark. Williams commences an action for personal injuries against just Mason. Mason answers Williams complaint and commences a third-party action against Clark. In his third-party complaint, Mason claims that Clark was comparatively negligent for Williams' injury. As such, Mason seeks contribution from Clark for any damage due to Williams. In addition to his contribution claim, Mason also adds a cause of action for his own personal injuries which he claims Clark is responsible.

Clark answers the third-party complaint, and he counterclaims against Williams for a breach of contract which is not transactionally related to the original action. Williams amends his complaint and sues Clark for slander in a totally unrelated incident.

All of the parties move for dismissal of the new claims because they are not transactionally related.

- i. Upon a *strict reading* of the statute, Mason's claim for his own personal injuries should not be permitted.
 - ii. Upon a leading commentator's (and we all know who that is) suggestion, Mason's claim for his own personal injuries should be permitted.
 - iii. Clark's claim for breach of contract will not be allowed because it is not transactionally related to the main claim.
 - iv. Clark's claim for breach of contract will be allowed.
 - v. William's claim for slander will not be allowed because it is not transactionally related to the main claim.
 - vi. William's claim for slander will be allowed.
- a. Only i, iii, and v above.
 - b. Only ii, iv, and vi above.
- (Choices continue on next page. . .)

- c. Only i, ii, iv, and vi above.
 - d. All of the above.
 - e. None of the above.
130. John, Peter, and Rubin are sharing a cab. The cab crashes into a telephone pole and all three are injured. They join together as plaintiffs in the action and sue the owner of the cab. Defendant moves to dismiss because each of the defendants have different injuries: John broke his arm, Peter his finger, and Rubin his leg. Defendant claims, therefore, this is no common question of law or fact.
- Defendant's motion will be:
- a. granted because there must be a 100% identity of facts.
 - b. granted because plaintiffs are not allow to join together in an action like this.
 - c. denied because there is some common questions of law or fact here.
 - d. denied because no transactional relationship is required.
131. If a person is considered a necessary party, the court shall
- a. order that person summoned if the court has jurisdiction over him.
 - b. consider whether the plaintiff has another effective remedy if the case is dismissed.
 - c. consider whether prejudice might be avoided if that person is not made a party to the action.
 - d. All of the above.
 - e. None of the above.

Answers

1. (f) This is the only court where judges don't have to be lawyers.
2. (f) It's \$15,000.
3. (f) John can't do this. The entire injury is arising from one claim, not distinct claims giving rise to different causes of action.
4. (f)
5. (t)
6. (f) The Court of Appeals can only hear facts in two types of situations. Which are . . .
7. (f) Unlike the Court of Appeals can do under some very limited situations, the Federal Courts can never do this. That would violate the "case and controversy" requirement in the Constitution.
8. (f)
9. (d)
10. (b)
11. (a)
12. Surrogate's Court Procedure Act
13. Uniform Justice Court Act
14. (t)
15. (f) A cross-claim is a claim asserted by a party on the "same side of the v." (e.g. Plaintiff v. defendant one and defendant two. If defendant one makes a claim against defendant two, it is a cross-claim.)
16. (f) This is a perfectly fine "inconsistent" pleading. *See* CPLR R.3014.
17. (f) It's not alternate pleading. What is it?
18. (f) Sure we do. *See* CPLR R.3014.
19. (f) This is the result of a 11/27/03 change in the rules. Now, parties in personal injury or wrongful death cases need not state the amount of damages, but shall simply set forth a prayer for general relief.
20. (t) For some reason attorneys still insist on using this language. As Prof. Davies puts it, "tradition and caution" are the reasons attorneys still use the language.
21. (t) You do not "answer" a counterclaim; you "reply" to it.
22. (f) This is the rule for a cross-claim, not a counterclaim.
23. (t) This is easier to get a summary judgment motion granted on account stated cause of action rather than the breach of contract cause of action.
24. (f) CPLR R.3016 requires that in pleading a cause of action for divorce, each act of misconduct, together with its time and place, shall be pled.
25. (f) In federal courts this is true because they are courts of limited jurisdiction; but, with the New York Supreme Court, it is presumed to have subject matter jurisdiction over the matter.
26. (F)
27. (T)
28. (f) Although this is true with assault, it is not true with battery (e.g. get punched in the back of the head).

29. (f) No they don't. Special damages relate to a plaintiff's actual expenses, such as lost wages.
30. (f) Those are "specials."
31. (t) You'd be missing the element of "damages" in that case.
32. (t) Hence, it does not matter if a defendant could not foresee a plaintiff being injured by the contact.
33. (d) See CPLR R.3015.
34. (F)
35. (f) There is no responsive pleading to an answer without a counterclaim. If this answer contained a counterclaim, that would work.
36. (t)
37. (t)
38. (d) The counterclaim makes all of these applicable.
39. (T)
40. (T)
41. (t) You would read a different result in a "not greater than" state.
42. (f) Very few states follow this rule.
43. (f) It is when you buy the index number.
44. (f) It is when you serve the defendant with the summons and complaint.
45. (f) It could give rise to one or more causes of action.
46. (T)
47. (f) There is no such thing as *bio judicata*. It's *res judicata*.
48. (f) See CPLR §212.
49. (f) See CPLR §215.
50. (f) See CPLR §214.
51. (T)
52. (t) See CPLR §208.
53. (A)
54. (D) You don't apply the toll because **six years is longer** [6/2/98 (year #1), 6/2/99 (year #2), 6/2/2000 (year #3), 6/2/2001 (year #4), 6/2/2002 (year #5), 6/2/2003 (year #6)].
55. (f) It's 12 months.
56. (f)
57. (t)
58. (d)
59. (t) This, as you all know, is the opposite for state court.
60. (t) This is different than the New York rule. In Supreme Court, we place the jury demand on the note of issue.
61. (c) If it was just the RJJ, it would be \$95.
62. (a) If a jury trial was requested it would cost the party an extra \$65.
63. (f) Although the opposing party will be served with the RJJ and an accompanying papers, opposing counsel need not be served a copy of the "affidavit of service."
64. (d)
65. (b) What is the time limit for vacating the note of issue?

66. (e)
67. (t)
68. (t)
69. (t)
70. (F) The only requirement is basically that it may lead to admissible evidence.
71. (d) Unlike with a straight personal injury action for negligence, in a medical malpractice action the doctor's name does not need to be disclosed.
72. (f) A bill of particulars is an amplification of the pleadings.
73. (t) *See* CPLR R.3043
74. (f) This is true for all negligence actions. *See* CPLR §3044
75. (f) *See* CPLR 3101(h).
76. (t) Although there was conflicting case law early in this subsection of discovery, the Court of Appeals resolved the issue in its 2003 *Tai Tran* decision.
77. (f) Although it is true that the contents of insurance agreements are not admissible at trial, the contents are discoverable since it may lead to early settlement of the case.
78. (d) *See* CPLR §3101.
79. (b) This is the exception to the "dual motion" methodology we discussed. Generally, a party can seek a motion to "produce or preclude" pursuant to CPLR R.3124 and §3126. Because of a limitation set for in CPLR R.3122, motions to produce documents, permit entry, or conduct IMEs are limited to a R.3124 motion.
80. (F) You have to choose if the personal injury, injury to property or wrongful death action is based solely on negligence. If there is a different basis for the injury (e.g. battery) or if the action is not for negligence, you can serve both interrogatories and conduct an EBT. *See* CPLR §3130.
81. *See* CPLR §3112 for the correct number of days.
82. (t) Do recall that in addition to sending the non-party a subpoena, the paralegal must also serve, via regular mail, a non-party subpoena notice on the other parties.
83. 20/10 *See* CPLR §3107
84. (f) *See* CPLR R.3116
85. (t) *See* CPLR R.3117(3)
86. (a) *See* CPLR §3130.
87. written
88. limit
89. (b) You actually have several potentials in this question. As you know, interrogatories can demand the production of photographs. Likewise, an EBT notice can demand that you produce the photographs at the deposition. But the device specifically cut out for this task is the CPLR R.3120; the old "D&I" request.
90. (c) You are not going to use interrogatories, because then you couldn't do an EBT. You could seek discovery of the hospital records; but, since the question does not allow you to choose both "b" and "c," you have to go with the physical exam. You can't do a medical examination since that does not appear to be in issue/controversy. A notice to admit wont work because you are asking the "heart of the matter" question. It is for a jury to determine if the plaintiff was injured.
91. (e) *See* CPLR R.3120(1)(ii).

92. (F) A party's physical or mental condition must be in "issue" or in "controversy."
 93. (F)
 94. (T) It doesn't matter who wins. *See* CPLR 3123(c).
 95. (t) *See* CPLR 3123.
 96. (d) *See* CPLR 3123(a).
97. (t) No relationship is needed between the main motion and cross-motion.
 98. (F) Although the movant sets the return date on a notice of motion, it is the judge or her clerk that will fill in the return date for the order to show cause.
 99. (T) This is like what you learned with the statute of limitations. You count all of the days. If the last day lands on a holiday or weekend, you would set the return date on the next business day.
 100. (F) Look at your handout on setting return dates. In the table, that date never moves.
 101. (T)
 102. (F) NO! That would violate the rule that an affidavit or affirmation must come from someone with personal knowledge of the facts. Although the attorney could do this for procedural facts, it is rare that the attorney has personal knowledge of the underlying facts to the lawsuit.
 103. (f) *See* CPLR R.2103(b)(5).
 104. (f) *See* CPLR §105(UC).
 105. (T) That and other things.
 106. June 15th for service of main papers & June 13th for service of opposition papers.
 107. June 14th for service of main papers & June 12th for service of response papers.
 108. (d) January 1st is a holiday; hence, you need to set the return date for the next business day, which in 2004 is a Friday.
 109. (d) Do notice that in 2004, this is a Sunday. That does not matter. It is only if the return date lands on a weekend or holiday are we concerned.
 110. (c) See what you have done to yourself. By setting the return date on January 2nd, you have to work on New Years day to get your reply papers in. I hope you took it easy last night.
 111. (d) This is the result of that odd *Perez* ruling in the Second Department. *See New York Practice* 3rd Ed., p.403.
 112. (b)
 113. (t)
 114. (f) Class actions may be the subject of any kind of substantive claim that can be asserted.
 115. (t) Certification is necessary afterwards.
 116. (c)
 117. (t)
 118. (f) Plaintiffs or defendants can intervene in an action.
 119. (t) As you know, the federal rules are different here.
 120. (t)
 121. (f) There is no time limit. *See* CPLR §1007.
 122. (f)
 123. (t) *See* CPLR §603.

- 124. (t) There is no transactional relationship required. CPLR §601.
- 125. (t) *See* CPLR §1012(b)(1).
- 126. (t) *See* CPLR §1006(b).
- 127. (t) *See* CPLR §1007.
- 128. (f) There is more to it than that. *See* CPLR §1006(f).
- 129. (c)
- 130. (c)
- 131. (d)