**Civil Damages in the American Judicial System**

**Lecturer:** Cynthia A. Braun – senior lawyer, USA

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**Course Overview**

In this course, you will learn about the general purpose and structure of the American judicial system,with a focus oncivil claims. By the end of the two-week course,you should have a good understanding of why and how people can seek compensation for losses suffered at the hands of wrongdoers. You will gain knowledge of the types of damages that can be pursued and how liability insurance plays into this system. We will talk about some of the pitfalls of the civil justice system and examine a few of the most infamous and/orunusual jury awards in recent years.

**Schedule**

Session 1

Introduction and summary of what the course will cover. We will discuss the development the common law in American courts. We will talk about why we have laws and where they come from. What are the differences between criminal and civil laws and how do they both serve the interests of justice and fairness? We will go over the basics of the American judicial system and the hierarchy of the different courts.

Session 2

This session will go over four (4) types of civil claims: contracts, property, probate and torts. We will talk about the kinds of damages or recoveries available for these types of claims. We will talk about the burden of proof and start looking at sample jury instructions on damages.

Session 3

This lecture is where we start to drill down into Tort Law. What are the elements of a tort? What is an intentional tort? What is negligence? What is negligence *per se*? *Res ipsa loquitur?* What does the plaintiff have to prove? Why does the law require the claimant to have suffered harm? Why are damages so important? What are examples of damages or harm? Are these bad enough to pursue a lawsuit? These are decisions we have to make at the initial intake with a new client. There will be more jury instructions to review.

Session 4

We will talk about common personal injury claims (e.g., vehicles collisions, slip/trip &falls, dog bites,etc.) and associated damages. We will examine the jury instructions and talk about real-life examples of cases that went to trial where unpredictable things happen!

Session 5

We will continue talking about tort claims, focusing on “strict liability”claims. Why are some defendants absolutely liable and what damages can be recovered in these cases? We will go

over cases where big companies have had to pay out millions (or even billions) because of defective products. The class will consider fact patterns to decide whether strict liability should apply. We will go over the American legal process of certifying a class action and the benefits and drawbacks of class actions.

Session 6

In this session, we will focus on professional negligence (“malpractice”). What duties to professionals, such as lawyers, accountants and doctors owe to clients or patients? We will look at real-life cases and examine the elements of damages sought by the plaintiffs. After being given sample jury instructions, the class will be asked to decide whether and how much money should be awarded to the plaintiffs.

Session 7

This lecture will focus on insurance. We will talk about different types of insurance including commercial general liability, no-fault, medical payments coverage, auto and homeowner’s liability and property damageinsurance. We will look at examples of policy language to figure out what it covers (and does not cover). Why do attorneys go after insurance, rather than individuals? What does “policy limits”mean? What if the insurance company refuses to pay a claim and the jury awards more than policy limits? What is Bad Faith?

Session 8

This lecture will focus on “punitive”or “exemplary damages”and the claims that give rise to such damages. We will look at New Mexico statutes concerning exemplary damages in cases such as Unfair Trade Practices and Unfair Insurance Claims Practices. Sometimes, insurance covers those damages, but often they are excluded. We will talk about the types of cases where we always pursue punitive damages and what evidence can be presented to a jury or judge to justify imposition of those damages. Example: *The Hot Coffee Case (McDonald’s).* There will be a hand-out to help the class prepare for the multiple-choice examin the final session.

Session 9 (Last Class)

Final remarks, question and answer session followed by written multiple-choice exam with an optional short-answer essay for extra points.

**Course Materials**

There will be a Power Point presentation and handouts. No textbook.

**Assessment/Exam**

Multiple-choice exam on last day of class with an optional short answer essay for extra points.

**Cynthia A. Braun** has been a civil litigation attorney in the State of New Mexico for more than 27 years, specializing in personal injury and medical negligence. She is a 1991 graduate of The National Law Center, George Washington University, in Washington D.C., and has an undergraduate degree in Journalism from the University of Wyoming. For the past 16 years, she has focused on plaintiff’s cases, helping hundreds of clients who suffered needless injuries and damages at the hands of wrongdoers. Cynthia has extensive trial experience and is licensed to practice in New Mexico, Arizona, Virginia and on the Navajo Nation.