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THE 50 MOST COMMON LEGAL QUESTIONS

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INTRODUCTION

Many legal emergencies, thankfully, concern relatively simple problems. Consumer, family and small business legal experts deal with the same basic questions day in and day out. The following 50 questions and answers cover the most common legal questions asked attorneys. Some of these topics are covered in our videos or are available in our reading room. We will refer you to them as appropriate.

See

[PUBLICATION DISCLAIMER](#)

PUBLICATION DISCLAIMER

From a statement of principals of the American Bar Association

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

AIRLINES

BUMPING (OVER BOOKED FLIGHTS)

LOST BAGGAGE

MISSED FLIGHTS, DELAYS, CANCELLED FLIGHTS

BUMPING (OVER BOOKED FLIGHTS)

If I am denied seating on a plane flight, what are my rights?

Airlines routinely overbook flights because of no shows. Although the chances are less than 1 in 100,000, (if you believe the statistics provided by the government) airlines do have the legal right to deny boarding to a passenger. Airlines usually avoid any difficulties by asking for volunteers to skip the flight. The volunteers are given compensation agreeable to them, usually a priority in boarding the next flight and free travel on the airline. Airlines have made getting "bumped" attractive enough that there is a topic on the Internet within the various "travel" groups about trying to get bumped. If lightning strikes and you are forced to wait for another flight you are entitled to monetary compensation in an amount stated in the airlines tariff as well as a priority in boarding the next flight.

LOST BAGGAGE

If an airline loses my luggage, what are my rights?

Airlines liability for lost or damaged baggage on flights within the United States is limited to \$1250. Airlines are not liable for "inconvenience" but just for hard losses. Fortunately lost baggage is less and less frequent with airlines having much better tracking of baggage. However, items of unusual value like cameras and jewelry are not covered. You must declare and pay extra if you have items above \$1250. Many airlines as a matter of policy don't accept baggage of higher value. Your homeowner's policy may provide coverage if the airline is not required by law to cover your losses. If an airline totally loses your bags, they will be required to pay the used value of the items, not their replacement cost. At the airport, the airline will, upon polite request, provide funds to obtain "personal comfort items." It is necessary to file a claim if your baggage is lost or delayed, which you can do at the terminal. To get a claim paid it will be much easier if you have receipts for the items which were lost or damaged. In aggravated cases you may go to the FAA, or to local small claims court. Unfortunately the FAA can't actually force a reluctant air line to settle up. The local small claims court will be much more sympathetic to your loss than airlines claims adjusters.

MISSED FLIGHTS, DELAYS, CANCELLED FLIGHTS

Is an airline required to compensate me for my losses if a flight is drastically late?

Airlines are not responsible for losses if due to weather, strikes or fuel shortages, it fails to keep to its schedule. In most cases airlines will re-route passengers on another airline, or will accommodate them on the earliest possible flight that they can arrange. The regulations under which airlines operate do require them to pay for meals and hotels if necessary, together with "personal comfort" items like tooth brushes, etc. If an airline cancels a flight or suspends flying it legally has the option to refund your fare, leaving you responsible for the cost of another reservation, which will probably be at a higher price. A few airlines have not arrangements with others for re-routing, which results in horror stories of persons being marooned. On ultra-cheap fares consider the risk that the airline may not arrangements for alternative transportation. Ask your travel agent or frequent flyers about airlines that you will fly on. Every airline has weather or equipment failures resulting in delays. Good airlines try to help their passengers when forces that they can't control like snow storms cause airports to close. If you are on the Internet, the newsgroup alt.rec.travel and some of the sub-groups are full of messages and advice from both frequent and occasional flyers to the public and is a good place to find out the reputation of an airline that you wish to use.

ARREST

If arrested what should I do?

Remember that you have significant rights when you are arrested. The first is the right to remain silent. You also have the right to have counsel. A video covers this matter in more detail.

ATTORNEY - HOW TO SELECT AN ATTORNEY

What steps should I take to select an attorney?

Getting an attorney that you are confident in is vital. We provide a video on this topic. You should also review the publications on the topic of attorneys in the Electronic Reading Room.

AUTO ACCIDENT

SLOW INSURANCE PAYMENT

SERIOUS PERSONAL INJURY

SLOW INSURANCE PAYMENT

If my insurance company is slow in paying my claim related to an automobile accident, what can I do?

Your first recourse is to request that a supervisor review your file. If this is not successful there are several different things that you can do to get your claim handled. First, you can write your state's insurance commissioner and request that they assist you. Another way to approach the problem is to review your policy and use the dispute resolution mechanism in the policy. Often these provide that you must submit a proof of loss and then if the company disagrees an independent appraiser will set the amount of the loss. In this typical scenario, request a proof of loss form and then return it to the company properly completed. The company must then go through the dispute resolution process or will be responsible for the amount claimed. In aggravated cases, going to small claims court is your best route. The companion program to Legal 911, the Multimedia Law Library provides standard automobile proof of loss documents.

SERIOUS PERSONAL INJURY

I have suffered a serious injury in an automobile accident. What should I do?

Please see our video presentation on this topic. The Electronic Reading Room also contains information on selecting legal counsel should you need it.

BANKRUPTCY

DISCHARGE OF TAXES

OBTAINING CREDIT AFTER FILING

DISCHARGE OF TAXES

Can I discharge unpaid taxes in bankruptcy?

So long as the tax is not for a trust fund liability, like withholding not paid in or social security, and you filed on time, you may discharge the debts by filing bankruptcy three years and one day after the return was filed. The bankruptcy will not discharge any tax lien, but will stop the tax lien from attaching to post petition assets.

OBTAINING CREDIT AFTER FILING

If I file for bankruptcy can I obtain credit in the future?

Filing of a bankruptcy may remain on your credit bureau records for 10 years. (Most other derogatory information can only remain on your credit bureau record for 7 years.) So many persons have filed for bankruptcy that it is no longer possible for those selling real estate, cars and other items on credit to avoid persons who have filed entirely. It is always possible to obtain credit at very high rates, or to purchase automobiles from "buy here, pay here" establishments where the effective cost of the car is quite high. However, standard financial institutions and credit unions have established plans for those who have filed bankruptcy to obtain automotive credit. These programs usually require a higher down payment. To reestablish credit, bank at a credit union or bank for an extended period, and be responsible in handling any debts which you do undertake. The longer it has been since the bankruptcy filing, the higher the chance that if you have otherwise conducted yourself properly that you will be able to obtain credit.

BANKS - AUTOMATIC TELLER CARDS AND ELECTRONIC FUNDS TRANSFER

What are my rights if there are errors in my ATM or EFT transactions, or I lose my card?

The electronic reading room contains information on your rights in the event of an error. Your liability is limited in the event of a stolen or lost card. If there is a discrepancy in your EFT or ATM transactions remember that you must write the bank or financial institution within 60 days of receipt of the statement with the error. You have other rights including the right to a receipt for each transaction and certain rights to stop payments PRIOR to them being deducted from your account.

COLLECTION AGENCY - HARASSMENT

How can I stop a collection agency from contacting me?

We provide a video on this topic, and have further information on fair credit collection laws in the electronic reading room.

COOLING OFF PERIODS

What kinds of transactions can I cancel after entering into them?

Federal law provides for cooling off periods when you are sold goods in your home, or, when a transaction involves a mortgage on your home. In certain instances "time share" and other real estate sales which are regulated by the Federal Land Sales Act may also have cooling off periods, also called "Rights of Recession." Other than these two times, any other cooling off period is a matter of policy of the merchant or service provider, or state laws. For example, there are NO cooling off periods on buying a car, motor home, boat or airplane. In some cases states have additional laws. Your local consumer affairs or Better Business Bureau can provide information on local laws.

COPYRIGHT

Should I copyright a book or computer program which I have created?

Yes. Under U.S. law your work, first created after 1984 is copyrighted once it is "fixed in tangible form." It is advisable to place a copyright notice on your work. This should be either the c in a circle symbol, followed by your name and the year of creation, or, Copyright, followed by your name and the year of creation. The abbreviation Copr. Is also acceptable. Examples:

Copyright 1996, Example Author

Copr. 1996, Example Author

© <C in a circle symbol>, 1996 Example Author

It may also be advisable to register your copyright. The fee is \$20, and filling out the forms is relatively simple. A registration is NOT required to protect your work from plagiarism. Our electronic reading room provides additional information on copyrights.

CREDIT BUREAUS - ADVERSE CREDIT REPORT

Incorrect information is on my credit bureau report. What can I do?

Simple confusion in names can cause difficulties with incorrect information appearing on credit bureau reports. Our electronic reading room contains information on this topic, and we have also devoted a video to it.

CRIMINAL LAW

DRUNK DRIVING

VICTIM OF CRIME

EXPUNGEMENT OF CRIMINAL RECORD

DRUNK DRIVING

If stopped for drunk driving, should I take a breath test?

This one is tough. Most lawyers specializing in DUI recommend against taking a test. This is because most states have a crime called "Driving with unlawful blood alcohol level" and if your breath test comes out too high, unless you can disprove the test results, you will be found guilty. However, if you don't take a breath test, then other proof must be used, and the case is more of an open question. In other words, if your blood alcohol level is too high and you do take the test, the case is probably over unless something very unusual happens. So you keep more options open to defend yourself on the criminal charge if you don't take the breath test, even if you might lose your license.

If a person really isn't drunk, taking a breath test advisable. However, the judgment of most persons stopped for drunk driving is usually impaired, so knowing whether or not you are likely to pass is uncertain.

In the case of accidents involving very serious injuries some state laws permit forced BLOOD testing, and this has been upheld as constitutional when reviewed by the Courts.

Best advice - call a cab. Drunk driving is now one of the most expensive offenses. Between fines, defensive driving schools, monitoring and other conditions related to drunk driving, experts estimate the out of pocket costs to a typical first offender exceed \$5,000.

VICTIM OF CRIME

I have been the victim of a crime. What can I do to recoup my losses?

Many states have established funds for compensating persons who have been the victims of crime. Courts are also more aggressive in awarding restitution. For further information, please see our video on this topic.

EXPUNGEMENT OF CRIMINAL RECORD

How does a person get their criminal record sealed?

In most states if a person has not been in any further trouble, a single conviction for a felony can be expunged after a period of ten years. This process normally requires the assistance of an attorney since an appearance before a Court is necessary to get your criminal record sealed. A good first call to the prosecutor's office which handled the case. Some states require that the prosecutor assent to the expungement.

DEFECTIVE PRODUCTS

If my car or other consumer good is defective, what can I do?

If a consumer product is defective and causes personal injury, the doctrine of products liability requires the distributor and manufacturer to compensate you for your injuries. In the case of "lemon cars" that cause solely financial losses, states have "lemon laws" which govern the transactions. Our electronic reading room contains information on this topic, and you may view a video on this topic as well.

DIVORCE

MOVING CHILDREN OUT OF STATE

COLLECTION OF CHILD SUPPORT

INCREASE OR REDUCTION OF CHILD SUPPORT

MOVING CHILDREN OUT OF STATE

I am divorced and have minor children. I am planning to move to another state. If my spouse objects, what will the court rule?

Courts tend to award joint custody, meaning that both parents have custodial responsibilities as to the children. The Court can grant or deny a request to move. The Court will seek to preserve the children's relationship with each parent. In a "modern" case in which the children in fact live with both parents for extended periods, the Court has the right to decline the request. Generally, and particularly if a move is for a job promotion, the Court will allow the parent that has physical custody of the children to move the children. However, this approval is conditioned on the spouse who is leaving paying transportation costs of the children for visitation.

COLLECTION OF CHILD SUPPORT

How do I collect child support which is due to me?

Every state is required to have a program to assist persons in collecting over due child support. The local prosecutor, state or district attorney usually handles these matters. If you know where the party who owes you support is located, and they are employed, you may wish to retain private legal counsel to obtain enforcement. Our legal reading room contains information from many states concerning the process of using the state provided collection process.

INCREASE OR REDUCTION OF CHILD SUPPORT

What are the steps required to change the level of child support?

Federal regulations, which are being implemented very slowly by states, require that states place mechanisms into place which will result in child support payments being reviewed every two years. This will result in child support levels being more closely based on the child support guidelines. Although specifics vary from state to state, generally support will be changed in the event that there is a substantial change in circumstances. What is a substantial change in circumstances is the criteria that changes from state to state. In some states remarriage (and a presumed increase in income) may be a factor, in others it is not permitted to be a factor. Our legal reading room contains information from many states concerning child support.

ESTATE TAX - AMOUNT, PLANNING

How much is estate tax?

Estate tax starts about \$600,000 in assets. For the purposes of estate tax, life insurance is included in the value of the estate, as well as gifts above \$10,000 per person per year. One of the easiest ways to plan to reduce sales tax is by a program of gifting. Another way to reduce estate tax is by being sure that each spouse fully uses their exemption of \$600,000 from estate tax. Because of the inclusion of life estate in estates, many persons who are not particularly wealthy still end up being concerned with estate taxes. Using life insurance trusts it is possible to shield life insurance proceeds from being a part of the estate. If you have a substantial potential estate seek professional assistance from an accountant or attorney to plan for the best ways to reduce your tax exposure.

FORECLOSURE

My mortgage (deed of trust) is in default. What should I do?

Lenders would much rather work out an amicable resolution than go through foreclosure. There are many legal and practical ways to handle a foreclosure. Please see our video for more information. The companion program to Legal 911, the Multimedia Law Library provides forms for deed in lieu of foreclosure, extensions of mortgages and related items.

HEALTH CARE - LIVING WILLS - DEATH WITH DIGNITY

LIVING WILLS

HEALTH CARE POWER OF ATTORNEY

LIVING WILLS

What is a living will?

Although the word "will" is in the description of a living will, a living will is NOT used to direct the distribution of your property after death. The term "living will" is used to describe an "Advance declaration" or statement of your desires for medical treatment in the event that you are terminally ill and cannot make your desires known. These documents allow you to state exactly what type of medical care that you want to receive during your terminal illness. Whether your desire is for a "death with dignity" or for all possible life support to be given for as long as possible, your living will can provide for this. If you elect to make a living will, be sure to give a copy to your doctor. In most states doctors are required to make a note in your permanent medical records that you have executed a living will. Even if it isn't the law, almost every doctor will make a note in your records concerning your choice. This is important so that you can be sure that your wishes are carried out.

HEALTH CARE POWER OF ATTORNEY

What is a health care power of attorney?

A living will (discussed above) is an instrument which is used for you to state your desires for medical treatment in the event that you are unable to speak for yourself and are terminally ill. A health care power of attorney is like a living will, except that it provides that another person, like your spouse, relative or a close friend, have the right to speak for you as to your health care if you cannot. If you elect to grant a health care power of attorney, be sure to give a copy to your doctor so that they know that you have made that decision.

INVENTIONS - PATENTS

I've invented something. Should I patent it?

If you feel that the value of the invention is more than a few thousand dollars a patent is an excellent idea. The major drawback to obtaining a patent is that the patent documents must fully disclose the "best means" of using your invention. Patent applications are now made public after about 18 months to 2 years after filing. So whether you get your patent approved or not, you have thoroughly explained your invention to the public. A patent, if issued, gives you an approximately seventeen year period of protection. Of course if you have a patent you still have to catch people violating it. But most large companies thoroughly research patents prior to releasing product, so they are unlikely to violate a patent. Patents should be filed by legal counsel or by a patent agent. The procedures are too complicated for even attorneys not experienced in patent law to follow. A design patent should cost \$3,000 or so to process. A "pioneer" patent, for a new type of invention may cost \$3,000 to \$7,000. In some cases pursuing patents may cost even more, particularly if the patent is in new areas of technology.

JURY DUTY

Can I get out of jury duty?

Courts will normally, on request, postpone jury duty until another date if you have a work conflict, vacation or other good reason for postponing your jury service until another date. If you do not want to serve on a jury, there is only one way to be guaranteed being dismissed. That is to say that you cannot serve as a fair jury because of your opinions on the type of case being tried, or because you know something about the case, or know one of the witnesses, and cannot be fair and impartial. If in fact you can be fair and impartial, you are qualified to sit on a jury for a particular case. Persons who are vocal about the fact that they cannot be fair on the case must be excused. So it's up to you. If you won't say that you could not be a fair and impartial juror, you may have to sit on the case.

LANDLORD-TENANT DISPUTES

What can you tell me about landlord and tenant disputes?

Our electronic reading room contains information from various states on landlord and tenant disputes. In addition we have a video available with specific information concerning handling the most common disputes between landlords and tenants.

LAWSUIT

What should I do if I'm served with a lawsuit?

Immediate action is necessary. A video explaining the steps to take is available.

MARRIAGE

DEBTS AND MARRIAGE

COMMON LAW MARRIAGES

DEBTS AND MARRIAGE

Is one spouse liable for the debts of the other spouse?

Except for necessities and health care, one spouse is not liable for the debts of another unless they are joint makers of the debt or agreement. Necessities include food, rent, essential clothing and medicine. During a divorce proceeding the court can divide debts between the parties, but this does not change the legal liability as to the creditor. For example, a divorce court can enter a decree requiring that one spouse pay a credit card bill. However, the credit card debt is not affected. The credit card company can still pursue the parties that are liable on the debt. If a spouse is required to pay a credit card bill, but the divorce court has assigned the debt to the other spouse, the spouse who paid the bill can request that the divorce court enforce its order. The companion program to Legal 911, The Multimedia Law Library, contains pre-nuptial and divorce settlement documents.

COMMON LAW MARRIAGES

What is a common law marriage and where is it recognized?

A common law marriage results when parties agree to be legally married, and then hold themselves out as legally married. Acid tests include whether the parties filed tax returns as married, filled out insurance papers listing the other person as their spouse or other clear acknowledgment that the parties held themselves out to be married. New common law marriages can only be entered into in the following states: Alabama, Colorado, District of Columbia, Georgia, Idaho, Iowa, Kansas, Montana, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas and Utah.

If parties enter into a common law marriage in one of these states, the marriage will be recognized by other states. For example if A and B enter into a common law marriage in Alabama and move to Florida, Florida will recognize the marriage even though an attempt to create a new common law marriage will be invalid if Floridians try to create a common law marriage.

In any event, common law marriages are not recommended since proof of them is more difficult than regular marriage. Note that in Texas, parties can register a common law marriage and obtain the equivalent of a marriage certificate.

MINORS - CONTRACTS

My child signed up for a record club, what now?

Unless they are for necessities, such as food, a minor cannot enter into a contract. (Some states have laws which allow children to have savings accounts, or, to enter into student loans or to obtain life insurance.) Once a minor becomes 18, they may either affirm or reject any contracts which they made before they were 18. So your child is not responsible for signing up for the record club, although you should speak to them about doing it again.

NEIGHBORS

DOGS, CATS, LOOSE ANIMALS

NOISE

TREES

DOGS, CATS, LOOSE ANIMALS

Neighbors' animals are running loose - what can I do?

Unfortunately, the answer to this question varies from area to area. In some states you can catch the animal and hold it - at a charge, until the animal is picked up. In others, only local ordinances apply, and these ordinances may limit the animal control or police to impounding animals. A call to the local animal control or SPCA can get you further information. As with other neighbor issues, local mediation or neighborhood justice centers can assist.

NOISE

What can I do to get my neighbors to turn down loud noise?

If the neighbors are renting, a call or two to the landlord or the management company normally result in quiet prevailing. Like other disputes, those with the most credible information win. If noise is a persistent problem, have independent witnesses to the noise level and get them to jot down a statement about the times and levels of noise. If your area has a "neighborhood justice" or "mediation" program bringing your dispute to them usually results in the problem being worked out. In the worst cases, having witnesses available to the level of noise is important because criminal cases or civil injunctions are available to put an end to the problem. It may take some work but tenacity wins out.

TREES

What can I do if my neighbors trees have limbs hanging over my property?

In the event that a limb from a neighbor's tree falls, your property (or a person) could be harmed. As a result many local ordinances exist that provide for one of two solutions to the problem. The first is that the local government orders trimming and then actually does trimming if the neighbor will not. The other permits you to do the pruning yourself. In either event, since these are local laws, you should consult legal counsel before undertaking to do the work yourself.

PURCHASING A HOME

When should I have an attorney's help in purchasing a home?

This question is phrased to make it clear that you **MUST** have the assistance of an attorney in purchasing a home. This is the largest transaction that you will ever make, and if you can't afford an attorney, you can't afford to buy the home. There are many misconceptions surrounding buying a home. For example, because a bank has an attorney present, this does **NOT** mean that anything is being done to watch out for your interests - even if you pay for a lawyer. You are reimbursing the bank for the cost to them of having legal counsel, not hiring your own. A bank attorney will do everything to secure the bank's position, but has no obligation to work on your behalf. In fact, a bank attorney would overlook minor flaws in the transaction since it would not affect the mortgage or deed of trust. The appropriate time for having an attorney **BEFORE** you make an offer on the property. The rather innocuous documents which are used to make offers on real estate are generally legal contracts that complete the contract. In other words, seeing an attorney after the offer made is too late. Although the attorney can help with the closing, you are not in a position to be legally protected as to the deal itself. Have a relationship with an attorney before you go house hunting.

SMALL BUSINESS - SHOULD I INCORPORATE?

I have a small business. Should I incorporate it?

All businesses cause the owner to take on liability. The reward for taking liability and risks is profits. In order to encourage the formation of businesses, all states have provided ways to limit ones liability to the amount invested in a venture. General incorporation and limited partnership laws allow persons to limit their risk in the event of liability in relation to the business. Some states also provide for limited liability companies, a cross between a corporation and a limited partnership. You should take advantage of these laws so that you don't bet everything you own on every decision that you make. For the same reason different businesses and different locations of the same business should be separate companies. Seek the advice of an experienced business attorney.

TAX

OFFER IN COMPROMISE

RECORD KEEPING

MISTAKE ON TAX RETURN

IRS AUDIT

HOBBY VERSUS BUSINESS

INDEPENDENT CONTRACTOR STATUS

OFFER IN COMPROMISE

Can you settle with the IRS for pennies on the dollar?

Indeed so - if it is a fair deal. The Internal Revenue Service has encouraged taxpayers who cannot pay their taxes in full to make offers in compromise. An offer in compromise requires you to provide a full disclosure of your financial affairs to the IRS. Let's take a person owing a million dollars in taxes as a test case. If you withhold data from the IRS it will not accept an offer - extreme truthfulness is required. If that person's realistic capability to pay is \$10,000, the IRS will probably settle for the \$10,000 rather than try to collect the million. In order to make an offer in compromise you must be current on filing all other returns. We strongly suggest that you consult a CPA, attorney, enrolled agent or other tax professional for advice in completing the offer, as failure to fill out the forms properly will result in delays or refusal to accept the offer.

RECORD KEEPING

How long should I keep tax records?

If you file your returns on time, or, on time with an extension, the IRS is generally limited to going back for three years. However, a return which fraudulently understates income by 25% or more can be reopened at any time.

As a practical matter, keeping returns and records for slightly more than three years is enough.

However, you should keep returns that reflect the basis of property which you purchased until the property is sold. Estate tax returns which show the basis (acquisition value) of the estate should be retained until the property is sold.

MISTAKE ON TAX RETURN

If I make a mistake on a tax return, what should I do?

You may claim an additional refund due to you for three years after filing. If you owe more money, and the mistake is an honest one, you should amend the return. You will be responsible for interest. If the mistake is of small magnitude (less than 25% understatement of income) you are not legally required to amend the return if more than three years have passed if you filed the return on time. However, you should rectify the error by filing an amended return.

IRS AUDIT

I am being audited by the IRS. Do you have any advice?

Legal 911 provides a video presentation regarding IRS audits. The IRS performs very few complete audits. Generally it checks just questionable items. The audit notice should specify exactly what income or deduction items are being reviewed. In this case, all you need to do is gather what proof that you might have concerning the item(s) and bring them to the audit. Receipts are not 100% necessary to support deductions. Testimony by yourself or witnesses can support your claim of deductions. The examiner who reviews your return has very little authority to do anything but take a very hard stand. However, if you are dissatisfied you may then go to higher appeals levels within the IRS or to tax court. At higher levels the IRS does attempt to reach a realistic conclusion on a case, including considering the response of the Tax Court to the matter. You may be represented at any audit by a representative of your choice, including an attorney, CPA or an "enrolled agent." An enrolled agent is either a former IRS employee who has passed examinations on IRS matters, or, a person who has passed an examination on tax law. Remember that the IRS becomes more flexible as you get to higher authority officers. In most cases you can handle an audit. For those who need to know how the IRS will do an audit, you can read the IRS auditing manual, which is reprinted by various legal and tax publishers at a large business library or law library. At any time if you feel that an audit is proceeding unfairly, or if the audit involves complicated factual or legal issues, representation is essential. Generally CPAs and enrolled agents will be better at handling audits than attorneys since they have more experience with the IRS internal procedures. The companion program to Legal 911, The Multimedia Law Firm contains IRS power of attorney forms.

HOBBY VERSUS BUSINESS

I engage in a lot of buying and selling of art (or other activity). Can I deduct losses?

If substantial dollars are involved in the activity, you may want to incorporate as a business. First, you may defer paying sales tax on purchases that you have an intent to resell. Obviously this can't be used as a dodge, but if you buy automobiles, paintings or any other high value items, you should consider the fact that there will not be sales tax to pay if you buy the items for resale. Sales tax is only paid when your customer buys the item. In the case of buying and trading extremely expensive items the corporate tax rate is less than the individual rate. If you accumulate expensive items, you can do some estate tax planning by gifting stock. (Remember that you may gift \$10,000 a year per person without incurring estate tax liability). The companion program to Legal 911, The Multimedia Law Library, contains dozens of forms for business corporations, stock transfers and gifts.

INDEPENDENT CONTRACTOR STATUS

What test is used for tax purposes to determine if someone is an independent contractor?

Employers generally like working with independent contractors. There is no requirement for providing expensive benefits like worker's compensation or insurance to independent contractors. And more importantly, there is no legal requirement to match withholding. An employer must match the amount of money withheld for social security and related social benefits. That makes an employee who is making \$10 per hour cost \$10.70 or so just for matching withholding, without considering other benefits. For the last several years the Internal Revenue Service has made identifying persons who are treated as independent contractors who are actually employees a major item of emphasis. The test for whether a person is an independent contractor or an employee is whether or not the "employer" has control over the contracting party. An independent contractor must be responsible for results only, and cannot be controlled in any significant way by the employer. Setting the hours of work and other regulations other than the results of the work indicate an employment arrangement, rather than independent contract work. The Internal Revenue Service lists many factors to consider, but the overall decision is a nebulous one. A person who offers their services to the general public, has their own business location, has their own tools and supplies will almost always be ruled to be an independent contractor. On the other hand, a person who does services for just one party, does not have their own equipment and is physically housed within the same premises as the "employer" will probably be found to be an independent contractor. Consult an accountant or legal counsel for a definitive review of your particular situation since the penalties for wrongly characterizing an employee as an independent contractor are significant.

TELEPHONE - 900 LINE CHARGES

What are my rights with errors in billing of 900 (pay per call) area code calls.

The Electronic Reading Room contains detailed information on this topic. Under federal law you may have 900 line access blocked at no charge each time that you begin telephone service. A nominal charge may be made for 900 line blocking if you do not request it within this period. In the event of a dispute, you can make a written complaint to the telephone company or other party billing for the service.

TRADEMARKS

Should I trademark my business or service name?

Generally you should go through the steps of registering your name with either the state or federal governments. Federal registration is the best because this permits you, once your trademark becomes "incontestable" to require someone else to stop the use of your name, even if they are not on notice of it. Large public libraries will have trademark registration listings available. Just ask the reference librarian. This can assist you in determining if your proposed name is already registered. The Electronic Reading Room contains further information on trademarks.

TRAFFIC TICKETS - SPEEDING

Can I fight a speeding ticket?

First of all, if you go to Court, believe it or not, the officer might not show. This has happened to me on three occasions. On roads that the police do major sweeps it may require two or more officers to appear (one who wrote the ticket, the other who ran radar). If either fails to show, you win the case. If you were speeding but not as fast as the police claim, you may be able to get the Court or the prosecutor (if there is one) to agree to your pleading guilty to a smaller number of miles over the limit. It's like a plea bargain in a criminal case. If there is any variance between the ticket and your car or your license, this may also invalidate the ticket. There are several issues to raise on radar tickets. The first is whether the radar was calibrated. You can usually call around (try the public defenders traffic office) and find out what the state standard is for how frequently radars must be calibrated. If you know a police man, they will probably explain to you the standards applied by the Courts in the area for how long a person must be followed before a citation can be issued. Radar operates on a line of sight basis only. If there are any trees, curves or hills, the radar reading is not reliable. Finally, there are state regulations requiring that speed limits be marked at certain minimum intervals. Take a picture or film of the road to prove your point. A call to the state highway or transportation departments local office should get you that information. If the ticket could result in the loss of your license, or even worse, severe fines or jail, consult an attorney.

WILLS

SHOULD I HAVE A WILL?

AVOIDING PROBATE

DISINHERTING

HANDWRITTEN WILLS

REVOKING A WILL

SHOULD I HAVE A WILL?

Is it necessary for me to have a will?

Yes. Without a will the resolution of your affairs may be very difficult and you will cause additional work in disposing of your property after death. Unless you are willing to have your property distributed under the state intestacy (dying without a will law) you should make a will. It is particularly important to do so in the event that you have minor children. Without a will your property may be placed in guardianships which are extremely expensive and cumbersome and significantly reduce the amount of money which will be paid to the children due to the high cost of administration of guardianships.

AVOIDING PROBATE

What is probate and why is it important for me to avoid it?

Probate is the legal process in which the Court settles the affairs of persons. Contrary to popular belief, in most cases probate is not a long, expensive or drawn out process. If relatives are contending for the estate whether or not there is a living will the settling of the persons estate may enter a court since litigation can ensure both in probate or over the terms or administration of a living trust. Wills which are not complicated are usually handled summarily in a single legal appearance. However, probate is a public matter, and if a person's estate is complex, may require a significant amount of time to resolve. Therefore many estate planning experts recommend living trusts to simplify matters. Note that a "pour over" will is still necessary if you have a living trust. A "pour over" will provides that any assets which you have not conveyed to the trust are added to the trust at the time of your death. The worst idea to handle estate planning is to "put your children" on the deed. Although this avoids probate it creates many other problems. Once you put a child on a deed, that's it. You do not have the right to remove them. In fact, in order to sell or mortgage the property you'll need their consent, and in many states, their spouses consent as well. If a judgment or tax lien is entered against your child, the government can seized their interest in the property. That's right - the seemingly innocent act of "putting your children on the deed" gives your children a present interest in the property that can be seized, or even sold. Living trusts or wills are how estate planning should be done.

DISINHERTING

Can a spouse or child be disinherited?

State laws provide that a spouse cannot be entirely disinherited, except if there is a valid prenuptial agreement waiving inheritance rights. An "elective share" law usually applies, resulting in a certain part of the estate being reserved for the surviving spouse. Some states also allow a spouse to use the principal home of the parties during the spouse's life (life estate on the homestead.)

If the parties have no other children except those of their marriage, they may leave their estate to their spouse. The law requires that the surviving parent support the children if they are minors. In other cases minor children are entitled to a minimum share of their parent's estate. An adult child CAN be disinherited. Wills, codicils and other estate planning documents are available in the companion program to Legal 911, the Multimedia Law Library.

HANDWRITTEN WILLS

Can I hand write a will?

A handwritten will is called a holographic will. A few states will accept a will which is entirely handwritten as a valid will. Most states require that wills must be witnessed by two persons to be valid, whether they are hand written or word processed. The best practice is to have a properly witnessed and notarized will. A will with three witnesses and a notary is known as a "self-proving" will. A self providing will can be entered into court without further proof of its validity, although interested parties can still object to the will. Best bet - if you do have a will, be sure to make it self-proving. Examples of self-proving wills are available from the companion program to Legal 9111, the Multimedia Law Library.

REVOKING A WILL

How do I revoke a will?

The traditional way to revoke a will is to do so in writing. When you make a new will, the first clause of a well drafted will specifically provides that you are revoking all previous wills. Other ways to revoke a will are to write "cancelled" or "void" on the will, or, destroying the will (and its copies!) Revocations of wills and other estate planning documents are a major feature of the companion program to Legal 911, the Multimedia Law Firm.

