

18 AND LIFE TO GO:

A LEGAL HANDBOOK FOR YOUNG ARKANSANS



Prepared by
Arkansas Bar Association
Young Lawyers Section
Revised Edition 2011

18 And Life To Go:
A Legal Handbook For Young Arkansans

Authored and Edited by the Young Lawyers Section
Of the Arkansas Bar Association

Revised Edition 2011

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PREFACE TO THE FIRST EDITION (APRIL 2009)

Dear Young Arkansan:

“18 & Life To Go: A Legal Handbook For Young Arkansans” is the hard work of Arkansas lawyers who have previously stood in your shoes. The authors and editors of this Handbook have all been your age, and like you have been confronted with the questions, conflicts, issues, and circumstances that now greet you on your own journey to adulthood.

Leaving high school and either seeking more schooling or entering the workforce will present you with a wide range of choices, each of which can have long-lasting, legal consequences. This Handbook is designed to serve as a guide for weighing many of the pros and cons of each choice. We have sought to write it in a simple (as reasonably possible) format so that the information is understandable and applicable to your situation. *Keep in mind that the information contained in this Handbook does not constitute legal advice by any individual or any entity, including the Arkansas Bar Association, and you are strongly advised to seek the assistance of a licensed attorney if you need help relating to a specific legal matter. Laws change over time, and a lawyer will need to verify and further explain any information contained within the Handbook.* That aside, we are hopeful that the Handbook will still provide a basic yet comprehensive overview of many issues that you may experience in the near future.

The path to adulthood is filled with pitfalls and like us you will no doubt make some mistakes. However, never forget that some mistakes can forever dictate the course of your life. We wish you the best, and encourage you to extensively use this Handbook. May you make wise, informed choices in the years to come.

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ACKNOWLEDGMENTS FOR THE FIRST EDITION (APRIL 2009)

Dear Contributing Authors and Editors:

The idea for “18 & Life To Go: A Legal Handbook For Young Arkansans” was conceived in the Summer of 2008 and became a reality only a few months later in the Spring of 2009. You and over 50 other Arkansas attorneys drafted, edited, and finalized a publication that will undoubtedly help future generations of Arkansans. In the cause of public service, you took time out of your professional and personal lives to write, research, cite check, and polish the document that lies in your hands. In light of our desire to provide this document to as many young Arkansans as possible, as quickly as possible, mistakes or omissions may ultimately be found and we want to correct those in future editions of the Handbook. If you spot something, please let us know so that we can address it in the next version of this publication.

We are hopeful that the Handbook will encourage young Arkansans to make wise, informed choices as they enter into the “real world.” Each of us has stood in their shoes, and in hindsight probably wished such a publication had been available when we were first confronted with an emotional domestic relations dilemma, the confusion of a car wreck, the complexity of a landlord’s lease, or the anxiety associated with possible violation of a criminal statute.

Thank you for your time and talents, and we now request your assistance in helping to accomplish our goal of annually distributing this Handbook to high school seniors throughout Arkansas. After all, this information will only be of value if it is actually placed in the hands of those for whom it was written. A link to the electronic version will also be present on the Arkansas Bar Association’s website, www.arkbar.com. Our appreciation is extended to the lawyers listed on the following pages for their authoring and editing, to Regan Gruber at Mitchell Williams in Little Rock who coordinated the “launch” of the Handbook at Hall High on April 30, 2009, and to the Arkansas Bar Association for its support and logistical help. Special thanks is also extended to Satena Scoggin, a legal assistant at James & House, P.A., without whose contributions this Handbook would never have moved from mere concept to reality.

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NOTE TO THE 2011 PRINTING OF THE FIRST EDITION

Dear Young Arkansan:

Since the first printing of "18 & Life To Go: A Legal Handbook For Young Arkansans," we have seen an amazing reception and demand for the Handbook. As such, the Young Lawyers Section of the Arkansas Bar Association has sought to obtain funding to print additional copies of this Handbook for distribution to young Arkansans. With funding from the Sears Consumer Fund, the Pulaski County Bar Association, the Young Lawyers Section of the Arkansas Bar Association, and the Arkansas Bar Association, we are able to print additional copies of this useful Handbook for distribution to you.

We would like to thank all of the editors, contributors, and organizers for making this publication possible. We would further like to recognize all of the efforts of the Executive Council of the Young Lawyers Section for their time and efforts in making the additional printing and distribution possible.

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CHAPTER 1 - MARRIAGE AND FAMILY: Getting Hitched, Breaking Up, and Taking Responsibility

Marriage

1. How does the law view marriage?

Marriage is a civil contract which requires the consent of the parties. This means both parties have to agree to become married. In Arkansas, a person cannot be married if they cannot form the intent to get married. For example, a minor child cannot get married to a man or woman over the age of 18 because the law says that a child cannot form the intent required to marry.

2. Who can get married in the State of Arkansas?

Anyone who is 18 years of age can legally marry another person who is also 18 years of age.

3. What happens if a female under 18 is pregnant; can she get married?

In Arkansas, a pregnant female under 18 may get married but she must have parental consent. This means both of the pregnant child's parents must consent to the marriage. If the parents of the child wishing to get married are divorced, the parent with custody of the child may give consent without the other parent. This law is specific to the underage pregnant female.

4. So what happens if the parents say no?

Should a pregnant female under age 18 be unable to obtain parental consent, she and her would-be spouse may ask a judge to approve the marriage. Whether or not the marriage is approved is entirely up to the judge.

Types of Marriage

1. Void or Voidable: What's the difference?

In Arkansas, some marriages may be *void* and some may be *voidable*. A voidable marriage means that the marriage is okay unless someone can prove it should be dissolved. As an example, two parties under 18 may get married without parental consent but with the permission of a judge. The parents of either child may then sue and ask a judge to dissolve the marriage. Whether a judge agrees to do so is up to him or her. Thus, the marriage may be allowed but it could also be found void. If there is a chance it could go either way, the marriage is voidable.

A void marriage is one that is illegal. In a void marriage, no evidence could make the marriage legitimate.

2. What types of marriages will never be allowed?

Arkansas has determined that some marriages are void. Incestuous marriages are always void. This means marriages between parent and child, brothers and sisters, children and grandparents and between first cousins. Some states allow marriages between first cousins. Should first cousins get married in one of those states, and then move to Arkansas, Arkansas will recognize their marriage.

3. What is a common law marriage?

Some states recognize a “common law marriage.” Years ago, before cars, planes and trains were commonplace, people could sometimes not make it to a county courthouse to secure a marriage license and have a marriage ceremony. In these cases, two people would live together as man and wife. Sometimes these people would tell everyone they knew that they were married. Sometimes they would share a common last name and live together as husband and wife. This became known as a common law marriage. Arkansas does not allow common law marriages. In Arkansas, if you want to be married, you must get a license and perform a ceremony. However, if you had a common law marriage in a state that allows it, like Texas, and then move to Arkansas, your marriage would still be recognized as valid.

4. Does Arkansas recognize same sex marriages between a male and another male, or between a female and another female?

At present, no. The Arkansas Constitution states that “Marriage consists only of the union of one man and one woman.” Until an appeals court or the legislature changes this law, as is slowly taking place in other states across the country, Arkansas will not allow two members of the same sex to marry. Arkansas also does not presently recognize same sex marriages from another state.

5. What is the procedure to get married?

Here are some things you have to do to get married.

- (a) Get a license: The man and woman must get a marriage license from the county clerk. There is a small cost associated with this.

- (b) Sign a notice of intention to wed: To get the license, the parties must sign this form acknowledging that they intend to marry.
- (c) Don't get drunk before you get a license: To get a license, the people getting married cannot be under the influence of drugs or alcohol.
- (d) Be prepared to show proof of age: Both parties have to be 18 or have parental consent if under 18.
- (e) Have a wedding or ceremony: A wedding can be anywhere. Who officiates is the only thing that legally matters. People who can officiate a wedding are: any ordained rabbi, minister or priest, the Governor, a Justice of the Supreme Court, a circuit judge, a justice of the peace, and a mayor.
- (f) Have the officiating officer sign the license and return to the clerk: Although failing to return the license to the clerk will not void the marriage, it can cause problems and may cost the official a \$100-\$500 fine.
- (g) Get your Marriage Certificate: It's a done deal. Congratulations.
- (h) Miscellaneous things you may not know about getting married.
 - An engagement ring and wedding band are gifts to the other spouse and generally do not have to be returned if the marriage ends in divorce.
 - People no longer have to get a blood test before getting married.
 - A woman does not have to take the man's last name as her own and may keep her maiden name.

Divorce and Annulment

1. What are the grounds for divorce?

There are nine grounds for divorce in Arkansas: (1) adultery; (2) impotence; (3) conviction of a felony or other major crime; (4) habitual drunkenness; (5) cruel treatment that endangers one's life; (6) general indignities or problems that make your continued marriage intolerable; (7) separation for 18 continuous months without living together; (8) incurable insanity and your spouse's commitment to an institution for at least three years; and (9) willfully not providing you with life's common needs. Ark. Code Ann. § 9-12-301.

2. What are the steps for getting a divorce?

In its most simple form, the steps for getting a divorce are as follows:

- (a) You must file a complaint for divorce and obtain a summons at the court in your county. The complaint must evidence that you have resided in the county for at least 60 days.
- (b) You must serve the complaint and summons on your spouse. Either the sheriff can do this or you can look for a private process server.
- (c) Your spouse must reply or answer your complaint with his or her side of the story within twenty days or risk an automatic judgment in your favor.
- (d) The court will schedule a hearing for you and your spouse. You will both be able to state your opinions and arguments in front of the judge. He or she will then make decisions on parenting classes, property and debt division, child custody, child support, alimony and perhaps other issues.
- (e) The court will enter a divorce decree no earlier than thirty days after you filed for divorce. At that point, your divorce will be final.

Before a divorce may be granted in Arkansas, one of the grounds for divorce must be proven. Grounds must also be corroborated, or verified, by someone other than one of the spouses.

A lawyer can help you with all aspects of this process and may be able to tailor some parts of the process to your specific needs. A lawyer can be your personal guide at each and every step.

If spouses agree to the terms of a divorce by entering a property settlement agreement and proposed decree of divorce, one of the parties must still present sufficient evidence, with a witness to prove grounds for the divorce and to meet residency requirements.

3. Will you and your spouse have to get marital counseling before getting a divorce?

Marital counseling is not required for getting a divorce unless you have a “covenant marriage.” If you do get a covenant marriage, you and your spouse must undergo counseling with a member of the clergy, licensed counselor, or licensed therapist.

4. Will you and your spouse have to take parenting classes before getting a divorce?

Parenting classes are a *requirement* for a divorce in some counties (Pulaski County, for example), and in counties where they are not a requirement, a judge may still order parenting classes if he or she feels that it is necessary or in the best interest of you, your spouse, or your children.

5. Does Arkansas have a “no-fault” divorce law?

Arkansas is a “fault” state for divorce unless the parties have lived separate and apart for eighteen continuous months. Nothing else needs to be proven in order to get a divorce on the grounds of continuous separation. All other grounds require proof of fault.

6. What should you discuss with and take to your lawyer the first time you see him or her about a divorce?

You should be ready to discuss the history of your marriage, why you want a divorce, your children, and a general idea about the property and debts that you and your spouse have. Be completely honest with your lawyer. He or she will keep everything you say in confidence. If you were served with divorce papers, bring those with you. You might want to bring a specific list of the property, assets, and debts you have, as well.

7. What is the difference between a contested and uncontested divorce?

In a contested divorce, you and your spouse are not able to come to an agreement or compromise about some issue of your divorce, whether it is about child custody, division of property, or child support, for example. A court has to step in and decide these issues. In an uncontested divorce, you and your spouse are able to agree on all issues related to your divorce without the court having to solve or settle any problems.

8. What is the residency requirement to get a divorce?

Either you or your spouse must have lived in Arkansas for the 60 days prior to filing for divorce. Also, either you or your spouse must have lived in Arkansas for the three months prior to the court granting your divorce.

9. Must a couple live separate and apart before getting a divorce?

Living separate from each other is not a requirement for divorce. However, living apart for 18 continuous months is one basis for a divorce. If you have a covenant marriage, you must live separate from your spouse for two years before it becomes a basis for divorce.

10. What is an annulment and what are the grounds for an annulment?

Annulments and divorces are not the same. In a divorce, the court ends a valid marriage. When a couple's annulment is granted, it is as if the marriage never existed. For example, you can get an annulment if you or your spouse were too young to get married, did not consent to the marriage, were forced into a marriage, or were already married to someone else at the time of your marriage.

Child Custody and Visitation

1. What factors does a judge consider when deciding child custody?

In Arkansas, the primary factor the court considers when deciding child custody is the "best interest of the child." Custody is not awarded to reward or to punish either party. Factors that a court often considers in making this determination include:

- A. the moral fitness of each parent;
- B. the age, gender, and health of the child;
- C. the attitude of each parent toward the child;
- D. the psychological relationship between parents and the child;
- E. the physical and mental health of the parties;
- F. the need for stability and continuity in the child's relationship with parents and siblings;

- G. the potential for disruption in the child’s social and family relationship by an award of custody;
- H. the past conduct of the parents toward the child;
- I. the strength and sincerity of parents’ desire to have custody;
- J. the reasonable preference of the child (if older than age 8);
- K. the parents’ affection and guidance; and
- L. the continuation of a religious education.

Custody is awarded in such a way as to assure frequent and continuing contact of the child with both parents. Preferences of young children are typically not considered or, if so, not given much weight (under age eight). During custody proceedings, questioning of young children is often performed in judge’s chambers.

2. Do courts still give preference to the mother in awarding custody?

The preference given to mothers in awarding custody was under the “tender years doctrine.” This old doctrine meant that the younger the child, the more likely the mother was needed to care for and nurture the child. This doctrine was based on the long-held belief that mothers were the presumed caregivers. Arkansas has abolished the use of the “tender years doctrine” in favor of the “best interest of the child” factor.

3. If the mother and father agree on custody and support issues, will the judge follow the parents’ wishes?

If the mother and the father agree on custody and support issues, most judges will go along with that decision. However, the judge will examine the proposed custody and support issues to make sure that they conform to the law, that children are adequately provided for, and that the agreement is not being entered into for purposes of avoiding obligations of one or both of the parents. The judge has the final say and can allow or disallow any agreement that is made by the parents.

4. What is “joint custody,” and what is the difference between “physical custody” and “legal custody”?

Joint custody is an agreement in which both parents share custody of the child on an equal or nearly equal basis, with each parent having the child nearly 50% of the time. True joint custody means each parent has the child for 50% of the time. Many times parties will enter into an agreement that is termed joint custody but in actuality it is not. Simply calling a custody agreement “joint custody” does not make it so. In instances where it is joint custody in name only, the court can still make a determination that one party is the custodial parent.

In Arkansas, joint custody is generally not favored by the courts and will typically only be awarded by agreement of the parties. It needs to be reached by agreement because, in order for joint custody to work, the parties must be in agreement and be able to work together.

Physical custody is a term used to describe which parent has custody of the child subject to visitation rights of the other parent. The custodial parent is often said to have physical custody of the child. Other similar terms such as “sole custody” and “primary custody” are used along with physical custody.

Legal custody is another term used to describe which parent has custody of the child. Generally the term legal custody is used to describe the custody that an unwed mother has. Until paternity is established by the court, the father has no custodial rights and the mother has legal custody. Legal custody is also used to describe the amount of access a parent is given to their child’s records as well as decisions (medical treatment, etc.) made for and on behalf of the child. In some cases the terms legal or joint legal custody are used in a decree to make it clear that both parents have the right to access the child’s school, medical, and any other types of commonly held records.

5. What are some common custody and visitation arrangements?

In Arkansas, the most common visitation arrangement is for the custodial parent to have the child the majority of the time with the noncustodial parent having visitation with the child on an every-other-weekend basis, generally from Friday afternoon to Sunday afternoon, as well as one night per week. Major holidays are generally alternated, with the exception that the child will be with the mother on Mother’s Day and the father on Father’s Day. Another common visitation arrangement would be true joint custody where each parent alternates having the child one week at a time.

Parties are free to adjust and grant additional visitation as they see fit; however, the court will not force anyone to adhere to any agreements that the court has not authorized. Some judges have a standard visitation schedule that they use and will only deviate from it if

good cause is shown. It is best to check with the county court to see if there is a standard schedule for your area.

6. If the paying party is behind on child support payments, may the non-paying party withhold visitation with the children?

No. In Arkansas, child support and visitation are two separate and distinct areas. They do not have any bearing on one another. Visitation cannot be denied due to non-payment of child support nor can it be conditioned upon payment of child support. While a parent paying support has an obligation to support the child, the courts will generally not disturb the child's relationship with the parent by denying visitation until support is paid.

Spousal Support and Child Support

1. Under what conditions is one spouse usually granted spousal support?

"Maintenance" is a term used for the right of a spouse to receive spousal support while the parties are still married. "Alimony" is spousal support after a divorce decree is final. Before maintenance will be ordered in a pending divorce case, many courts will require proof that parties are living separate and apart. Generally, the purpose of maintenance and alimony is to ensure an adequate income stream for persons whose economic dependency has resulted from the marriage. Alimony is also intended to improve any economic imbalance in the earning power and standard of living between the spouses. Alimony can be awarded to either spouse.

There is a trend to order spousal support less frequently than in the past. This trend is a result of the fact that an increased number of couples have both parties working and there is an increased availability of marital property to be divided and distributed between spouses.

Courts have wide discretion in awarding spousal support (maintenance and alimony). An award of spousal support can be in an amount as high as is necessary for the maintenance of the party requesting it. The Arkansas Courts generally consider the following factors in making a determination of whether to award spousal support:

- A. the financial circumstances of both parties;
- B. the financial needs and obligations of both parties;
- C. the couple's past standard of living;

- D. the value of jointly owned property;
- E. the amount and nature of the income, both current and anticipated, of both parties;
- F. the extent and nature of the resources and assets of each of the parties;
- G. the amount of income of each that is “spendable;”
- H. the amounts which, after entry of decree, will be available to each of the parties for payment of living expenses;
- I. the earning ability and capacity of both parties;
- J. property awarded or given to one of the parties, either by the court or the other party;
- K. the disposition made of the homestead or jointly owned property;
- L. the health condition and medical needs of both parties;
- M. the duration of the marriage; and
- N. the amount of child support awarded.

Generally, in Arkansas, marital fault is generally not a factor in deciding whether alimony should be awarded. Key or primary factors for courts in making a spousal support determination are the *requesting spouse's needs* and the *paying spouse's ability to pay*.

There are four (4) types of alimony: 1) permanent periodic alimony (monthly or weekly; to provide maintenance and support); 2) lump sum alimony; 3) rehabilitative alimony (for a limited time to enable the spouse to gain skills or education to support self); and 4) reimbursement alimony (fixed sum based on amount of supporting spouse's contribution to other spouse's professional degree/license acquired during marriage).

An important point to note is that periodic alimony terminates upon the death of either spouse, or the remarriage of the recipient spouse. Spousal support also ends if the recipient establishes a relationship with another person that results in a child and a court ordering the other person to pay support to the recipient spouse.

2. Do both the husband and wife have an obligation to provide support for the family?

The general rule is that both parents equally share in the duty to support their children. This duty exists regardless of whether the parents to a minor child are married. The duty to support a child automatically terminates when a child reaches age 18 unless the child is still in high school. Support also terminates when a minor child marries or becomes emancipated. A duty to support children may allow support to continue beyond the age of majority but only upon agreement of the parties.

3. What if you cannot afford to support your children after your divorce is final?

Child Support is modifiable based on substantial changes in circumstances affecting the needs of the children or the ability of the parents to pay. Pursuant to present Arkansas laws, a change in gross income of the payor of at least 20% or more than \$100 a month permits either the payor or the payee to petition the court for an adjustment in support. Other factors a court may consider with respect to the modification of child support as equivalent to a material change in circumstances include the following: (1) changes in payor's employment; (2) growth of children; (3) inflation; (4) changes in payor's income; (5) retirement of payor; or (6) disabling illness of payor.

4. Does a spouse have to pay the other spouse's living expenses until a final divorce decree is issued?

Generally no. A spouse is typically not required to pay living expenses for the other spouse during the pendency of a divorce. A spouse may at his or her option do so. Of course, a court may order the other spouse to pay maintenance if the circumstances warrant it. This maintenance would be the right the other spouse has to receive spousal support while the parties are married. Typically, courts require proof that the parties are living separate and apart before maintenance will be ordered. In some other states, maintenance can be ordered at any time, even while the parties are still living together. Courts have wide discretion for awarding maintenance.

5. How does child support work where the parents are not married?

Children are occasionally born "out of wedlock" (where the parents are not married). The child of a married woman is presumed to be the child of her husband, a presumption rebuttable only by clear and convincing evidence (*i.e.*, blood tests) that the husband is not the father. Paternity suits or lawsuits brought to establish the father of a minor child are typically brought for the purpose of obtaining support from the child's

putative father. If paternity is established by a divorce, the issue of paternity cannot be raised again. A paternity suit may be brought by the biological mother, the putative father, the minor child, or the Office of Child Support Enforcement. This type of action is brought in the Juvenile Division of Arkansas courts. Such actions can be brought at any time. There is no statute of limitations barring an action for paternity.

In order to corroborate paternity, evidence such as sexual relations between the mother, the alleged father and other men is needed along with blood tests and other scientific examinations. If a paternity test reflects a 95% probability that the putative father is the biological father, such evidence along with the mother's testimony of relations during the probable period of conception will constitute a strong case for paternity. If blood tests establish that the alleged father cannot be the child's father, then the case will be dismissed.

Non-marital children have the same right to child support as marital children. A court can order support until a child is 18. Child support may be awarded retroactively to the birth of the minor child. Even an underage parent may be ordered to pay child support. Essentially, anyone physically capable of bringing a child into the world has a duty to support the minor child.

6. How is the amount of child support determined in Arkansas?

In a divorce action, a judge is directed to make an award for the care of the children as is reasonable from the circumstances of the parties and the nature of the case. An award of child support to one party for the benefit of the parties' children is generally based on the monetary need and ability to pay. In setting child support, the judge is directed to refer to the family support chart drafted by the Arkansas legislature. There is a rebuttable presumption that the amount set forth in the Family Support Chart is the correct amount of support.

The amount of child support is based upon weekly, biweekly, semi-monthly, or monthly take-home pay. Support is based upon all sources of income, not merely that which is received from primary employment. Income includes any form of payment due to an individual including wages, salaries, commissions, bonuses, workers' compensation, disability compensation, payments from pension or retirement, and interest. Items deducted from income are those amounts for federal and state income taxes, FICA, Medicare, medical insurance paid for dependent children, and any support paid to other dependents. Biweekly means a payor of support is paid once every two weeks or 26 times a year. Semi-monthly means a payor is paid twice a month or 24 times a year. Amounts of child support are to be paid to the clerk of the court where a divorce action or custody matter is decided or to the Arkansas Clearinghouse.

Where the payor's income exceeds the amount shown on the Family Support Chart, the following percentages are presently used in calculating periodic support:

One dependent - 15%

Two dependents - 21%

Three dependents - 25%

Four dependents - 28%

Five dependents - 30%

Six dependents 32%

To compute child support when income exceeds the chart, add together the maximum weekly, biweekly, semi-monthly, or monthly chart amount, and the percentage of the dollar amount that exceeds that figure, based upon the number of dependents.

For specific details regarding the Arkansas Family Support Charts, please log on to the Arkansas Judiciary website:

http://courts.arkansas.gov/aoc/acs_guidelines.cfm

There is more discretion in calculating support where the paying parent is self-employed. For self-employed payors, support is calculated based on the last two years' federal and state income tax returns and the quarterly estimates for the current year. A self-employed payor's income should include contributions made to retirement plans, alimony paid, and self-employed health insurance paid. Depreciation should be allowed as a deduction only to the extent that it reflects a decrease in value of an asset. Courts may also consider the amount the payor is capable of earning or a net worth approach based upon property and life-style.

If a payor is unemployed or working below full earning capacity, courts may take the circumstances for such into consideration in determining child support. If earnings are reduced as a matter of choice and not for reasonable cause, the courts may attribute income to a payor up to his or her earning capacity, including payor's lifestyle. Income of at least minimum wage is attributed to a payor who is ordered to pay child support.

In all family support matters, an Affidavit of Financial Means shall be used. Arkansas trial courts will require each party to complete

and to exchange an Affidavit of Financial Means, detailing essentially each party's monthly income and expenses.

In addition to an award of child support, the court may order that the child's healthcare needs be provided for by the parent paying child support.

The above guidelines are used in determining child support for both divorce actions (marital children) as well as paternity actions (non-marital children).

7. What happens if the payor spouse is behind on child support?

Because the duty to support children generally continues until children reach age 18, there are civil remedies for non-paying parents. The non-paying parent may be pursued for civil contempt in order to obtain compliance with a decree of divorce or other court order. An obligor who has the ability to pay may be found in civil contempt and incarcerated, but "holds the keys to the jailhouse" in that he or she can gain release by paying the amounts owed.

A non-paying parent may also be pursued for criminal contempt. A specific criminal sentence may be imposed for willful failure to pay support. Other sanctions can be used to obtain compliance with a child support order: 1) judgment against the non-paying parent; 2) seizure of real estate; 3) attachment or garnishment of non-paying parent's wages; or 4) an order of payment of attorney's fees.

It is important to remember that actions for collections of accumulated child support may be brought at any time up to and including five years after the child reaches age 18. The right to pursue child support arrearages belongs to the custodial parent or the child.

In addition to Arkansas laws, federal laws have impacted the collection of child support. Federal legislation has required states to strengthen procedures for collecting child support. One such mechanism is automatic wage withholding. Once a support order is issued, a court can issue an income deduction order to the obligor's employer. The employer must then deduct the ordered sum from the obligor's check and forward it to the court or clearinghouse. Additionally, federal legislation has also allowed a state to seek to intercept federal tax refunds from individuals who owe at least \$500 in support arrearages.

Many states also make grant or renewal of professional licenses or drivers' licenses contingent on payment of support obligations.

The Child Support Recovery Act (CSRA) has made it a federal crime to willfully fail to pay past-due child support to a child who resides in another state if the amount has been unpaid for more than one year or if the amount due is greater than \$5,000.

8. Under what circumstances may spousal or child support be increased or decreased?

Spousal Support (Alimony) Modification

Once an award of alimony is entered in a divorce, courts retain the authority to modify an alimony award based upon a change in circumstances occurring after the alimony order is entered. If there is no award of alimony in a divorce or no lump sum ordered, there is no ongoing award to modify. Grounds for modification of alimony are “substantial and material circumstances” affecting needs of recipient spouse or ability to pay of obligor spouse. A self-induced reduction is not normally sufficient to reduce alimony (*i.e.*, payor spouse quits job and refuses to look elsewhere).

Child Support Modification

Child support is modifiable based on material changes in circumstances affecting needs of the children or the ability of the parents to pay. According to Arkansas laws, a change in gross income of the payor of at least 20% or more than \$100 a month permits either the payor or the payee to petition the court for an adjustment. Other factors involved with modification of child support equivalent to a material change in circumstances pertain to: 1) employment changes, 2) growth of children, 3) inflation, 4) changes in income, 5) retirement, or 6) disabling illness.

Courts also consider equitable defenses to modification such as “unclean hands” (*i.e.*, reduction denied because the father is in prison as a result of abuse of the child). Regardless of the wording of the settlement agreement of the parties, the court always has the power to modify child support.

Pre-Nuptial Agreements

1. What is a pre-nuptial agreement?

A pre-nuptial agreement, also commonly known as a “pre-nup,” is an agreement made *before* marriage to resolve issues of support and property division if the marriage *later* ends in divorce or by the death of a spouse.

2. Is it required to be in writing?

Yes. Pre-nuptial agreements fall within the “Statute of Frauds” which requires that it be in writing, signed, and acknowledged by both parties.

3. Who needs a pre-nuptial agreement?

There are various reasons why people might want a pre-nuptial agreement. One reason might be to protect property that has been in the family for a very long time. Another reason might be when someone is very wealthy and marries someone that is not as wealthy.

4. When does the pre-nuptial agreement become effective?

The pre-nuptial agreement only becomes effective upon the marriage itself. Pre-nuptial agreements may not affect child support or children, so it is impossible to draft an enforceable pre-nuptial agreement to ensure you get custody of your children and the amount of child support that must be paid.

5. How is a pre-nuptial agreement drafted?

The best way to draft a pre-nuptial agreement is to hire an attorney to ensure all the legal requirements are met. A pre-nuptial agreement can be drafted with respect to division of property upon separation, the amount of alimony or spousal support that must be paid, ownership and rights for the death benefit from a life insurance policy, and the making of a will or trust to carry out the provisions of the agreement, as well as any other matter not in violation of public policy or a criminal statute.

6. What requirements need to be met to make sure a pre-nuptial agreement is enforceable?

First, the agreement must be entered into voluntarily, without fraud, duress or overreaching. Next, a full and fair disclosure by both parties as to their financial worth is generally required for the agreement to be valid. The agreement must also be fair and reasonable in its terms. There may be other legal requirements that an attorney can discuss with you prior to finalizing the pre-nuptial agreement.

Domestic Violence

1. What is domestic violence?

Domestic violence occurs when a family member, current or former partner, or another person engages in certain activity in an attempt to harm another, either physically or mentally.

2. Can you get a restraining order to keep an abuser away from you?

Yes. Under Arkansas law, a victim of domestic violence can petition the court for an order of protection. Also, if an individual is arrested for a crime involving domestic violence, the judge will typically issue a “no contact” order. Both such orders prohibit the abuser from having contact with the victim.

3. What kinds of things can be included in a restraining order?

An order of protection generally prohibits an abuser from contacting the victim, either directly or indirectly, and prohibits him or her from visiting the victim’s home or place of business. If an order of protection is put in place, the abuser is also prohibited from possessing a firearm. Orders of protection can also address matters of child custody, visitation, child support, etc. “No contact” orders typically just order the abuser to stay away from the victim.

4. What if the abuser violates the restraining order?

It is a criminal offense to violate either a “no contact” order or an order of protection. So, if an abuser violates either such order he or she can go to jail. In addition to being a criminal offense, a violation of an order of protection can be punishable by civil contempt.

5. Besides law enforcement, who else can you call if you are being abused?

In addition to law enforcement, a victim of domestic abuse should contact the victim assistance personnel at the local prosecuting attorney’s office. It is imperative that you get an order of protection at your local circuit court house. There are domestic abuse victim advocates at most circuit court houses throughout Arkansas and they provide a wealth of information/guidance. Also, most communities have private shelters that house abused and neglected individuals.

6. What can and should you do if someone is physically or sexually abusing your child?

Report the abuser to your local law enforcement agency and the Arkansas Department of Human Services. If there is a domestic relationship between your child and the abuser, petition the court for an

order of protection prohibiting the abuser from contacting your child. Remove your child from this situation immediately and get your child the appropriate medical care.

7. What can and should you do if you suspect that someone is physically or sexually abusing another person's child?

You could always start by talking to the non-offending parent or guardian. If you feel strongly enough about your suspicions, you should absolutely call your local law enforcement agency and the Child Abuse Hotline to ensure the child is removed from the dangerous environment and receives appropriate medical care.

Parents' Rights, Grandparents' Rights, Children's Rights, and Adoption

1. In general, what are your rights as a parent?

A parent has a fundamental constitutional right to control the upbringing of his or her child, including the right to control the child's education, healthcare, and other major life issues. In some cases, a parent's rights must be balanced with the child's rights or the interest of the public. For example, a parent has the right to control the child's healthcare, but if a parent refuses medical treatment that would likely save a child's life, the state may intervene to protect the interest of the child. A parent has the right to control a child's education, but a parent may not choose to provide no education to a child because the public interest requires that all citizens receive some form of education. The law presumes that a parent will fulfill his or her obligations to act in a child's best interest, but if a parent fails to protect his or her child or to adequately provide for his or her needs, the state may restrict the parent's rights.

2. Can your parental rights be taken away, and if so under what circumstances?

Yes, in cases of extreme abuse or neglect of a child, a parent's rights may be terminated. First, a parent's rights may be terminated if a private party files a petition to adopt a child and the court determines that due to abuse, neglect, or abandonment, adoption is in the child's best interest. The second method of terminating parental rights is by a proceeding initiated by the Department of Human Services (DHS). DHS may initiate a proceeding in court to obtain custody of a child who is abused or neglected. The law requires the court to protect the due process rights of the parent, and usually requires DHS to provide services to the family to accomplish reunification of the family, such as parenting classes or counseling. However, if reunification efforts fail and the parent does not accomplish the necessary goals established by DHS and the court, his

or her parental rights may be terminated when the court determines it to be in the best interest of the child.

3. What are grandparents' rights?

Generally, grandparents are presently not entitled to visitation rights in Arkansas. There are some exceptions, including instances where a child is in the custody of someone other than his or her parents. Additionally, if a court determines that a parent is unfit with regard to disallowing a grandparent visitation and that such visitation would be in the best interest of the child, grandparent visitation may be awarded. If a child's parents are not adequately caring for the child, a grandparent, as any other concerned individual, has the right to petition the court for custody or guardianship of a child. Finally, if one of a child's parents dies, the grandparent has the right to be notified in the event the child is placed for adoption.

4. What is a paternity test, why might one be needed, and how do you get one?

A paternity test is a scientific test of the DNA (deoxyribonucleic acid) of a child, the biological mother, and the putative (or alleged) father that is performed to determine whether the putative father is the biological father of the child. A paternity test is needed when the parties are not absolutely certain who is the father of a child. Paternity testing kits can be purchased online or from other sources, but those types of paternity tests are not admissible evidence in court. The type of paternity test that is admissible in court to prove paternity is performed by a licensed testing facility. Many facilities that perform paternity tests also conduct other types of biological testing, such as drug tests.

A paternity test is not painful for either parent or the child, as the most common method of performing a paternity test involves using a large cotton swab to swipe the inside of each person's cheek to remove saliva that contains DNA cells. The sample is sent off to a scientific lab for testing, and the results are received by the facility that conducted the testing. To make sure that a paternity test will be admissible in court, it is best to first consult with a private attorney or an employee of the Office of Child Support Enforcement (OCSE) before having one performed.

5. What is a paternity suit and what happens in one?

When a child is born out of wedlock (to an unmarried mother) there are two ways to legally establish paternity: (1) the mother and father may marry and the father claims the child as his own or (2) by a paternity suit. A father signing an acknowledgment of paternity or allowing his name on the birth certificate does not legally establish paternity. This does

not mean that a father should not allow his name on the birth certificate or sign an acknowledgment of paternity, but more is needed to legally establish paternity.

A paternity suit may be brought by the mother, the father, or the OCSE. To file a paternity suit, the parties should consult with a private attorney or with an employee of OCSE, who will determine whether OCSE can assist with the case. The main purpose of a paternity suit is to legally declare the father so that child support and visitation rights with the child may be established. Both the mother and the father have the right to request that a paternity test be performed as a part of the paternity suit. The court often divides the cost of a paternity test between the parties, but sometimes the father may be required to pay the full cost if he requests the test and the test results are positive. After the paternity test results are received, the court will conduct a hearing and then enter a decree which establishes paternity and sets forth the rights of the parties regarding child support and visitation with the child.

6. Do children have the same legal rights as adults?

Generally, no, children do not have the right to vote, enter into contracts, marry without parental permission, or own property in their own name. However, children do have some of the same constitutional rights as adults, although not to the full extent of adult rights, such as the First Amendment right to free speech, the First Amendment right to the free exercise of religion and the freedom from the establishment of religion, and certain rights applicable to criminal proceedings.

7. What rights does an adopted child have regarding his or her own adoption?

A child over the age of ten years must consent to his or her own adoption, unless the court determines that, due to the child's best interest, consent is not required.

8. Do adopted children have the same legal rights as the "natural" children in the family?

Yes.

9. Whether giving up a child for adoption or choosing to adopt a child, how does the adoption process work?

A parent who chooses to give his or her child up for adoption has several options. First, he or she may make arrangements to have a family member adopt the child. Next, he or she may go through an adoption agency to locate an adoptive family for the child. Alternatively, a parent

may contact an attorney who practices in the field of adoptions to determine whether the attorney knows of any potential birth parents.

Similarly, parents who are looking to adopt a child may consult an adoption agency, a private attorney who practices in the field of adoptions, or may volunteer to act as DHS foster parents. If the only goal is to adopt a child, foster parenting is probably not the best means of achieving the goal, because most foster children are eventually returned to their families and are not adopted. But if parents want to help other children in their time of need, foster parenting may allow them to eventually adopt a child because, on occasion, foster parents are able to eventually adopt their foster child.

No matter which method is used to match the child with his or her adoptive parent(s), once the match is made, the legal process of adoption is generally the same. A petition for adoption must be filed in court in the state where the child lives. A baby in utero cannot be adopted until after the birth. The biological mother must consent to the adoption. The consent of the father is not required if paternity has not been established by a court and the father has failed to pay child support or visit the child for a period of more than one year, or with infants less than one year of age, when the father has failed to register with the Arkansas Putative Father Registry (see below). Once a consent is executed, it does not become final and may be withdrawn within ten calendar days, or five calendar days if the parent signs a waiver. Once the consent becomes final, the adoption hearing may be held. If the court determines it is in the child's best interest to be adopted, a decree of adoption may be entered. If the child has not lived in the home of the adoptive parent(s) for more than six months, the decree is "interlocutory" and does not become final until the six month period has passed.

Once the decree of adoption is final, the parental rights of the biological parents are terminated and the child is for all legal purposes the child of the adoptive parent(s).

10. What if one parent wants to put the baby up for adoption but the other parent wants to keep it?

The court will be required to determine what is in the best interest of the child. However, a parent who has failed to visit the child or pay child support for a period of more than one year does not have the right to prevent an adoption. With a child younger than one year, the father of a baby born out of wedlock who does not have a court order establishing paternity must register with the Arkansas Putative Father Registry in order to have any right to prevent an adoption. A father registered in the Putative Father Registry will be notified if his child is

placed for adoption. To register, a father should call the Arkansas Department of Health. Registration is free.

11. Can you agree to give up your child for adoption and still have contact with your child?

Once an adoption is final, you no longer have the legal right to contact your child. However, in some situations adoptive parents will allow the biological parents to maintain occasional contact with the child, as in an "open" adoption or possibly a situation where a child is adopted by a family member. Many adoption agencies specialize in arranging "open" adoptions with adoptive families who agree to allow the biological parent to maintain some form of contact with the child.

12. Can an unmarried couple or single person adopt a child?

A single person who does not live with his or her romantic partner may adopt a child. Since the passage of Initiated Act 1 by the majority of Arkansas voters in the November 2008 general election, neither unmarried couples nor individuals cohabiting with their romantic partner are currently eligible to adopt a child.

**CHAPTER 2 - CONTRACTS AND INSURANCE: Entering Into
Agreements and Reducing Risks**

Contracts

1. What is a contract and how old do you have to be to enter into one?

A contract is simply a promise given in exchange for a promise taken. The exchange of promises is usually in the form of an offer by one party and an acceptance by another party. Once those two things occur, a valid contract is created. The most common kind of contract is a promise to pay money in exchange for receiving an item or service. In Arkansas, you generally have to be 18 years of age in order to enter into a contract. A contract can be written (best), oral, or implied by the parties' conduct.

2. If you sell something to your 15-year-old neighbor and then he or she later comes back to you and demands his or her money back, do you have to give the money back?

Generally, yes. A 15-year-old is not old enough to enter into a contract unless he or she has been given permission by a court. In this instance, however, your neighbor must also give you back the thing you sold to him or her in substantially the same condition as he or she received it. If the item is in worse condition than when you received it, he or she should give you an amount of money that will make up the difference in the condition. For example, if you sold him or her your video game system for \$200, and he or she brings it back with a broken controller, you have to give the money back, but he or she will have to give you some amount of money to make up for the broken controller.

3. When considering whether to sign a contract, what can you do if you do not like a term of the contract?

You are free to sign or not sign any contract. It is your decision. The law usually assumes that two parties to an agreement had equal right to negotiate the agreement. If you do not like a term in a contract, ask the person to change the term to your liking. If the person will not change the term to your liking, discuss the term with the person to try and reach a term upon which you can both agree. Many contracts, however, are non-negotiable as a practical matter. One example of this kind of contract is most cellular phone contracts. Often, cellular phone representatives presenting the contract to you have no authority to negotiate the terms. In that instance, you can either choose to sign the contract, refuse to sign the contract, or go somewhere else to find a more favorable contract.

4. Does a contract have to be in writing to be enforceable?

Generally, no. Most contracts do not have to be in writing in order to be enforceable. The necessity of having a written contract is a

very common misconception. In fact, only a few contracts are required to be in writing, including contracts for the sale of land, contracts that cannot be completed within one year, and contracts to pay for the debts of another. Another example of a contract that must be written is a contract to sell goods for an amount in excess of \$500. There are exceptions to many of these circumstances, however (consult an attorney).

5. Does a contract have to be signed by one or both parties to be enforceable?

If a contract is written, the contract must be signed by the party who is said to be bound by it. For example, if you agree to pay for a cellular phone plan that is supposed to last two years, the contract must be in writing because it cannot be performed within one year. In that instance, the cell phone company must have your signature on a written contract in order to enforce the service contract against you.

6. Can you form a valid contract using e-mail?

Yes. Remember, to form a valid contract one only needs a promise by one party in the form of an offer, and a promise by another party in the form of an acceptance. If you offer to pay someone to paint your house by e-mail, and the other person accepts by e-mail, a contract could exist. If the contract by e-mail is one of the contracts required to be in writing, however, you might have problems with the signature, which may make enforcement of such an agreement difficult. The e-mails are nevertheless written, so you should be very careful about your contractual transactions through e-mail communications.

7. Why should you prefer a written contract?

You should almost always prefer a contract in writing over an oral contract because there is less risk of a discrepancy over the terms of a written contract. For example, people can argue about what was offered and what was accepted in a telephone conversation but will have difficulty doing so if the parties signed something written in black and white. There are some contracts that require a writing. It is always best to keep a written record of your contractual transactions.

8. When can you cancel a contract that you entered?

In order to determine whether you may cancel a contract, a review of the contract terms and the reason for your cancellation is necessary. Some written contracts have specific cancellation provisions addressing when and how the parties can cancel the contract. Before entering a contract, you should carefully read your contract to determine whether it has cancellation provisions and whether the terms are

acceptable to you. An oral contract is much more difficult to address with respect to cancellation. In an oral contract, the ability to cancel the contract will usually depend upon the intent of the parties, and each side may express a different intent. This situation is another reason why written contracts are preferred to oral. Generally, you may cancel a contract if the other party breaches, but again, the right to cancel may not apply to your situation.

9. How can you protect your rights when asked to sign a contract?

The number one thing you can do to protect your rights when asked to sign a contract is to read the contract very carefully. In today's society, many people sign contracts without reading the terms. When a dispute arises, the parties who have not read the contract have no idea what rights they have or, worse, may have contracted away. Do not be pressured to quickly sign a document before you have had a chance to read it. Arkansas law will usually assume that you have read the contract and understood its terms if you signed it. If you do not understand the contract, hire a lawyer to explain it to you or take the time you need in order to be able to understand it. You may also be able to talk to the other party about terms that are more favorable and acceptable to you. It also never hurts to ask questions regarding the terms of the contracts so you make sure you understand the terms and find that they are acceptable.

10. What rights do you have if the other party breaches (breaks) the contract?

Before signing a contract, you should read all provisions to learn what your rights are in the event that the other party breaches. Some contracts allow the breaching party time to fix or cure the breach, depending upon the breach. Other contracts allow the non-breaching party the right to bring a lawsuit immediately. Some contracts do not allow either party to bring a lawsuit, but instead engage in a dispute resolution process outside of court. Other contracts allow you the right to additional money or damages in the event of a breach, while some contracts allow you to cancel the contract altogether. Ultimately, your rights after a breach occurs depend upon what you and the other party agreed to in the contract. If your contract is an oral contract, the steps to follow after a breach will depend upon the terms of your oral agreement and the intent of the parties. If you cannot work through a dispute or breach of contract with the breaching party, typically you have the right to bring a lawsuit as a result of the breach unless you have contracted that right away.

11. What is the difference between a "warranty" and a "guarantee"?

There is a subtle difference between a “warranty” and a “guarantee.” Generally, a warranty is an ongoing promise that some condition will continue to happen. An example of a warranty might be a promise from the manufacturer that a vacuum cleaner will continue to work as advertised for one year. If the vacuum cleaner stops working after six months, the warranty from the manufacturer should allow you to either send the vacuum cleaner in for repairs or obtain a new one, depending upon the terms of the warranty. On the other hand, a guarantee is usually a representation that a statement about a product or service is true at the time it was made. An example of a guarantee is a statement by a car dealer that he guarantees his price on a particular type of truck is the lowest price in town. Such a statement does not have to be true forever. If you purchase the truck but see essentially the same one on sale six months later for a lesser amount than you paid, you generally cannot claim the seller breached his guarantee if it was true when he said it. Also, it is important to note that not all guarantees form part of a contract.

Generally, it is easier to get a warranty from a seller or service provider than a guarantee. Most sellers and service providers would rather give you a written warranty document explaining the terms of the warranty in the event the product or service does not operate as intended, rather than an oral guarantee that it will be the “best” product available at the time it was sold. Again, it goes back to knowing exactly what you are getting, reading the contract, and asking questions about the warranty prior to buying product.

12. What are “express” and “implied” warranties?

“Express” and “implied” warranties are two types of warranties that can be given in a contract. Express warranties are warranties that are specifically discussed and agreed to by the parties. An express warranty would be a warranty on a vacuum cleaner that it will continue to satisfactorily operate for one year from the date of purchase. A party can give multiple express warranties. An implied warranty is different from an express warranty. An implied warranty is a warranty that is included in your contract regardless of whether the parties discuss it. The implied warranty might cover the same topics or issues as an express warranty, but is meant to protect the buyer or recipient of products or services in the event the parties do not discuss the express warranties, or discuss express warranties on different topics. An example of an implied warranty would be the implied warranties with respect to the construction and the sale of a new house. Even if the builder of the house does not give an express warranty to the buyer, the law will “imply” a warranty that the house is habitable and made from sound construction and materials. This implied warranty extends for a reasonable amount of time. The law will imply

warranties into many different types of contracts, so you may have additional rights over what is expressed in the contract.

It is also important to note that most implied warranties can be disclaimed by the parties. In the house sale example, the builder might expressly state in the contract that he disclaims all implied warranties, but gives an express warranty that the house will be free from defects for one year. Many written contracts will disclaim implied warranties to the extent applicable. Again, it is very important that you read the house sale contract to see what express warranties you have and how the contract terms address implied warranties.

13. What are some common warranty terms and what do they mean?

It depends upon the type of contract. Some common terms in a contract for the sale of items will require that the items be free from material and manufacturing defects for a certain period of time. With such a warranty, the seller or manufacturer of the item is promising that the item should work if used as intended over that period of time. If you purchased a graphics card for your computer, for example, and the cooling fan failed within the warranty period through no fault of your own, you would probably be entitled to a remedy under the warranty.

In service contracts, people often warrant that their work will be free from defects for one year. An example might be a written contract with a painter to paint your house. The painter could warrant that a paint job will be free from peeling and cracking problems for two years from the date the house is painted. If the paint starts peeling or cracking under normal conditions within that time period, you would be entitled to a remedy under the warranty. If the paint starts peeling and cracking for another reason, such as a fire in the house, you would probably not be entitled to a remedy under the warranty.

14. When you are buying a car, a television, or anything else, what should you consider before deciding to buy an “extended” warranty or “service contract”?

The most important consideration in determining whether to purchase an extended warranty is whether you think the extended warranty or service contract is worth your money. You should ask yourself what the extended warranty or service contract covers that the original warranty or service contract does not. Some extended warranties or service contracts merely extend the time in which you can make a warranty claim, but do not extend any additional rights. Some extended warranty or service agreements will extend additional rights to you under the warranty or service contract, but do not extend the time, while others will charge you fees for making a warranty claim. Consider reviewing the

contract itself to determine whether it disclaims implied warranties, which may cover the same topics that the extended warranty or service contract covers.

Keep in mind that extended warranties and service contracts are an additional way for the seller of the product to make money. The seller would not offer these items to customers if the extended warranty or service agreements resulted in costs to the seller in the long-term. Ultimately before deciding to purchase the extended warranty or service agreement, you have to balance the benefit that the extended warranty or service contract will give you with the risks you will need the services it offers.

15. What does it mean to guarantee a debt?

Guaranteeing a debt can have many meanings. It generally means that you are confirming a debt as valid and promising to pay for it in some manner. The promise to pay debt can take many forms – whether you are promising to pay for a debt of someone else or using something you own to secure payment of the debt in the event you do not pay, such as collateral. Many financial and lending institutions, such as banks, require you to guarantee a debt through the use of collateral. For example, you may have to agree to a mortgage or lien on your house or car in exchange to secure a loan to purchase the house or car. If you do not pay the debt, your guarantee goes into default, and the bank can use a legal process to take your house or car to pay for the loan. Situations arise where family members agree to pay the debts or serve as co-signors for the repayment of debt. For example, you might agree to guarantee the debt of your sister when she purchases furniture. If you do so, you are also liable to pay for the furniture in the event your sister does not pay for it. This situation can get very sticky, especially if you have secured the debt with collateral, such as your car. Family disputes can quickly arise if your sister does not pay for the furniture, and the furniture seller comes to your door asking for payment or your car. Be very careful when you are considering whether to obligate yourself by guaranteeing any debt.

Insurance

1. What is insurance and how does it work?

Insurance is a way for someone to contractually shift his or her risk on something to someone else in exchange for payment. The person pays a premium to the insurance company in exchange for the company agreeing to pay part or all of any damages or assessment against a person if an event that was covered occurs.

Generally, insurance companies evaluate a large group of people with similar characteristics and calculate the likelihood of the covered event (accidents, health issues, etc.) occurring. Based upon the risk level of the group of people, the company determines approximately how much each person would be assessed in trying to pay for these potential occurrences. The company will then offer indemnity, or some monetary coverage, to pay a portion of the damages that arise if the covered occurrence happens. In the event of an accident or the occurrence of a covered event, the individual receives benefits from the insurance company after submitting a claim. If the event does not occur, the insurance company gets to keep the premium. Insurance companies often offer different coverage levels, with higher coverage costing higher premiums. The individual can also assign his or her right to benefits to a third party, such as to a hospital or automobile repair shop. The individual remains responsible for any unpaid amounts after coverage. Often, the individual is responsible for a co-pay or deductible regardless of how much of the occurrence is covered. This amount remains much less than what the person might have been required to pay without insurance.

2. What are some of the different types of insurance, and how do you know what types of insurance that you might need?

There are many types of insurance, and they have changed over the years to address the changing needs of people. Insurance comes in three general categories: (1) property and casualty insurance, (2) health insurance, and (3) life insurance. Property insurance is coverage for the loss of tangible property, usually due to theft or accident, or for the damage done to real property. Health insurance is coverage for health care issues. Health insurance can include dental, vision, and other health-related issues. Life insurance is coverage against the death of an individual in the form of payments to another person, such as the deceased person's spouse or children. It can also include disability insurance.

The type of insurance is dependent upon your circumstances. Generally, the more you have to lose, the more you should consider getting insurance. Arkansas law requires drivers of automobiles to have property and casualty insurance on their vehicles. Automobile insurance falls into this category. This type of coverage will be utilized should the owner of the policy have an accident. Full coverage insurance will usually provide coverage in the event of an accident or in the event of other natural events (such as hail damage), regardless of who was at fault. Other options exist which provide lesser coverage. Different policies have different options, like road-side assistance, that are not mandated for coverage but make them more attractive to consumers. These add-ons to the insurance policy can result in larger premium payments.

This insurance also includes homeowner's or real property and renter's insurance. If you own a home, the terms of your mortgage will generally require that you maintain property insurance. This coverage can cover anything from the shell of your home to the actual contents. You should read any property insurance policy carefully to understand what is covered and what is not. If you do not own a home and are living independently, you should consider purchasing a renter's insurance policy. This insurance covers your personal property where you are living (*i.e.*, furniture and appliances). Some homeowner's and renter's insurance policies include coverage for flood and earthquake damage. More often, however, these items are excluded. If your policy does not cover flood or earthquake, this type of coverage can be purchased as an add-on.

You are not required to have health insurance, but most people try to have some form of health insurance because medical costs are very high. Although private policies can be purchased, people usually receive this insurance through their work. Dental and vision insurance may or may not be included as part of health insurance. It is up to you to compare the cost with the proposed benefits of the plan. Many young adults do not have life insurance, but those who have children or other family depending upon them as a means of support should definitely consider it. Additionally, if the person owns a small business or is in partnership with another person to operate a business, life insurance may be beneficial to ensure that the business may continue to thrive in the event of the death of the owner.

The majority of these products are regulated by the State. Arkansas has certain requirements for property, health, and life insurance policies. The insurance company's application forms are required to be pre-approved by the Arkansas Insurance Department. You may call the Insurance Department to verify that the company from whom you are considering purchasing insurance is indeed registered with the State.

3. What are insurance premiums and what could happen if you do not pay them on time?

Insurance premiums are the amounts you pay the insurance company in exchange for the coverage of the insurance policy. People pay premiums according to what their policy requires, which is usually on a monthly, quarterly, or yearly basis. The insurance company must be paid in a timely manner for coverage to continue. One of the most common mistakes people make is failing to pay a policy premium, and then becoming concerned about whether they have coverage when an accident occurs. If you do not pay your premium on time, do not expect to be covered by your insurance policy. Some insurers automatically cancel coverage when the premium is not paid after a certain date, while others have grace periods allowing some time after the premium was due for the

person to catch up the late payments. Do not rely on grace periods. If you miss a payment, read your policy to see what happens. Call your insurance agent. Never make assumptions about coverage.

With regard to auto insurance premiums, the insurance company is only obligated to give you a ten day notice of cancellation as the result of non-payment of auto premium. If your payment is not received by insurers on the day the premium is due, the insurance company will send you a ten day notice of cancellation, which affords you the chance to pay the insurance before your policy is cancelled. If the money does not reach the insurance company within the ten days, you will no longer have insurance coverage. They will not send out another notice telling you that your policy has been cancelled. If you have an accident and it is your fault following cancellation for non-payment, you will be responsible for the damages. You could also lose your driver's license or vehicle registration for failure to maintain insurance.

The amount of premium you pay is based upon different factors. Every insurance company has their own method for calculating premiums. It is always a good idea to read through your insurance policy and understand what your premium and coverage will be.

4. What should you do if you later discover incorrect information on an insurance application that you completed?

It depends. In Arkansas, statements made during the application process are considered representations of truth at the time you communicated it to the insurance company. You must respond truthfully to the best of your knowledge during any insurance application process. For example, if the insurance company asks whether you have had a certain illness, you should disclose that fact, either in the application or during the insurance company's investigation prior to issuing the insurance policy. On the other hand, statements during the application process are not warranties. As long as what you said was true during the application process, it does not have to continue being true forever. You are generally not obligated tell them something several months or years after obtaining the policy, unless of course you have to re-apply.

The distinction here is important. A misrepresentation during the application process can cause major problems when you have a claim. The insurance company can deny coverage or void the policy if the misrepresentation would have caused the insurance company not to issue the policy or would have caused the insurance company to issue the policy in a different amount. The insurer can also cancel or void the policy if the misrepresentation was material to the risk. Representations can affect the premiums you pay, but paying a slightly higher premium is usually much better than not having coverage when you need it the most.

5. How quickly will an insurance company act once you submit a claim?

It depends. Most insurance policies contain provisions about how quickly the insurance company must investigate the claim and decide to either pay or deny a claim. There are rules and regulations the insurance company must follow, which presently provide that the insurance company should generally investigate and resolve the claim within 45 days of the receipt of a claim. Some claims are simple and can be completed in a few weeks, while others are complex and may require the insurance company to hire outside investigators to help. The key in resolving claims is what is reasonable under the circumstances. The insurance company should keep you notified as to the status of your claim. If the insurance companies do not comply with rules and regulations regarding claim processing, it can run into problems with the Insurance Commissioner, Better Business Bureau, or even legal problems if it does not act in good faith.

6. On what grounds can an insurance company cancel a policy?

Insurance policies are contracts. Like any other contract, insurance policies can be voided by the actions or inactions of the parties. Insurance policies are often complex documents. Even so, it is presumed you have read the policy and know the content of what you signed.

When interpreting insurance policies, courts apply the definitions in the policy, or if there are none, they use the ordinary and generally accepted meanings of words. If the intent of the policy is ambiguous or uncertain (for instance, there are two ways to interpret a clause or sentence in a policy), then the courts usually read the policy against the insurance company and in favor of the consumer. In instances where the enforcement of the policy, as written, would be unconscionable, the contract can be voided by the court, but these are rare.

The most common way for an insurer to cancel a policy is through non-payment of premiums by the policyholder—no money, no coverage. Likewise, if insurance is offered as compensation for employment, insurance can be canceled if you are terminated or quit your job. Almost every insurance contract contains a clause declaring the policy void if the consumer misrepresents facts or hides any fact that is material to the application or claim. This misrepresentation is commonly known as insurance fraud, and insurance fraud on the part of the insured will almost always void an insurance policy. Insurance fraud can also be considered a felony and could result in your going to jail.

Insurance contracts can also be voided if the consumer fails to cooperate with an investigation into the cause of loss. For instance, if an

insurance adjuster wishes to examine a policyholder's damaged vehicle on which a claim has been filed, but the policyholder denies the adjuster access to examine the vehicle, the claim can be denied and the policy voided.

Even acts that are not connected to a filing of a claim can sometimes allow the insurance company to void or cancel a policy. Illegal activity on the part of the policyholder is the most common type of activity. For example, running a methamphetamine lab will most likely void a homeowner's policy. Fleeing the scene of an automobile accident can sometimes allow an insurer to deny a claim in an auto accident policy. State law also allows for the cancellation of an auto policy if you are convicted of driving while intoxicated, homicide or assault with a motor vehicle, three separate convictions of speeding or reckless driving, or a combination of those two within the policy period and three months before the suspension of your driver's license.

Other acts may also cancel an insurance policy depending upon the terms and conditions of the policy. For example, if the owner of a large life insurance policy takes up a perfectly legal, but dangerous, hobby like skydiving, the policy can be voided if such acts were prohibited by the policy. If a homeowner turns his or her home into a bed and breakfast, such an act could void the policy because the home is now a business. In this instance, a change in the condition of the property insured has occurred. Whether a change in use of insured property automatically results in cancellation is dependent upon the language of the policy.

Regardless of the insurance company's reason for canceling, the consumer must usually be sent notice that the policy is going to be canceled. Many times a company will be required to give the insured a grace period of coverage or advanced notice of cancellation (in some instances as long as 180 days) in order to find other coverage. Notice of cancellation is sometimes not required where the consumer fails to pay premiums. It is assumed that the consumer knows he or she did not make payments and therefore elected to cancel the policy. The terms of your policy will indicate whether this applies.

It is important to remember that a policy of insurance is a contract. The actions of one of the parties may give the other grounds for cancellation. The policy itself should generally cover the cancellation terms.

7. What are your rights if your insurance policy is canceled?

The insurance policy usually states what rights you may have if the policy is cancelled. If the policy is cancelled for non-payment of premium, some policies allow the consumer to catch up payments to start

coverage once more. Some policies allow the consumer other rights, including the right to appeal the insurance company's cancellation decision to another division within the company. Of course, you always have the right to consult with an attorney if you feel the insurance company has wrongfully cancelled your policy.

8. What are some specific questions that you should ask when shopping for life insurance?

How much insurance do I need?

What rates can I afford?

What type of policy should I buy, term or permanent?

Who do I want to list as my beneficiaries?

How many beneficiaries may I list?

What are accelerated benefits and how do they work?

What does this policy do in the event of disability that is short of death?

When does this policy pay the benefits?

Where am I covered?

What is excluded?

9. What are some specific questions that you should ask when shopping for health insurance?

How much insurance do I need?

What rates can I afford?

Who is covered under this policy (*i.e.*, spouse, children)?

How long are the people covered following certain events (divorce, reaching 18 years, etc.)?

My spouse has coverage through his/her job. Will the group policy address all the medical needs of the household?

What is the deductible for an office visit? For an emergency room visit?

What hospitals/doctor's offices/clinics does this policy cover?

If I do not go to one of those hospitals/doctor's offices/clinics, how will it affect my coverage?

At what point do I meet the maximum out-of-pocket deductible?

Can I increase or lower my deductible or co-pay?

What is the maximum this policy will pay?

Will my premium come down if I do not have claims? Will it rise if I do?

What is excluded?

10. What are some specific questions that you should ask when shopping for disability insurance?

What is the length of the term? If you have a stroke, for example, how long are you covered?

How is disability defined? If you cannot work at your stated occupation, but can work somewhere else, are you considered disabled? ("own occupation" vs. "any occupation" - very important)

Is there a "Partial Disability Option"? Persons suffering from MS or diabetes, for example, are often able to work sporadically or part time.

Are the premiums guaranteed? If you start smoking or become high risk for disability in some way, does the company have the right to raise your premiums in the future?

Is there a "Return of Premium Option" or some other option that will allow you to recover your payments after a period of time?

Is there a "Cost of Living Rider"? A monthly income that seems adequate today may be insufficient twenty years from now.

If I miss a premium payment, how much time before my policy is cancelled?

Is my company the First Payor or is there an Integration Clause? That is, if I am unable to work but have some other income, will my insurance policy deduct my other income from the payments (Integration) or will they pay me the full amount (First Payor).

If I relocate to another area or country, will the policy go with me?

What is excluded?

11. What are some specific questions that you should ask when shopping for home insurance?

How much is my home worth, including its contents?

What risks does this policy cover (*i.e.*, fire, flood, force of nature, etc.)? "All risk" may cover everything except those items specifically excluded. Some items that are generally excluded are flood and earthquake. Most of Arkansas is in an area that could be affected by an earthquake.

Does this policy cover the contents? If so, how much?

Are big ticket items covered (*i.e.*, computers, big screen televisions, jewelry)?

Does the policy offer market value or replacement coverage for your items?

Am I in a floodplain?

How can I qualify for any discounts (*i.e.*, fire, smoke and burglar alarms, or claim free for a number of years)?

Does the policy include loss of use? If so, when does it apply? What are its limits? What will it pay for?

What is the liability coverage?

What deductible can I afford?

What is excluded?

12. What are some specific questions that you should ask when shopping for liability insurance?

How much coverage do I need?

Have I shopped around for the best deal? The liability insurance industry is especially competitive, and companies charge different amounts for essentially the same coverage. Shop around and consider all services provided by the company. Also, consider the following:

What kind of deductible can I afford? How does raising the deductible affect the premium?

Are there “Good Student Discounts,” and do I qualify?

Are there other discounts, such as for completing a driver’s education course or being in the military? Are there discounts for multiple vehicles or having multiple policies with the same insurance company?

What kind of car do I drive? High performance cars, sport cars and exotic cars are usually rated higher by insurance companies and are more expensive to insure.

13. What is an insurance adjuster and what do they do?

An insurance adjuster is a person who is retained by the insurance company to investigate claims occurring under the insurance policy. The adjuster is often used to help facilitate the claim process and can in some instances negotiate a settlement for the insurance company. Many adjusters must submit their findings to the insurance company for final approval before a settlement can be offered to the individual. An adjuster must be licensed with the Arkansas Insurance Department in order to adjust a claim in Arkansas.

14. What can you do if your insurance company will not pay a claim?

Read your policy and see what rights you have. You always have the right to consult with an attorney, but often the policy itself will provide you with additional rights. If the insurance company is taking excessive time to pay the claim, a phone call to the agency or the insurance company can help resolve the delay of the claim process. If it is a case where the insurance company has denied a claim, sometimes you can appeal the decision to another division of the company. It is a good idea to document everything. A letter is usually good proof of your position. Always have

your claim number with you when you speak to anyone handling your claim.

15. What is the process for settling a claim and working with the insurance company to have property repaired or replaced?

The process for settling claims differs depending upon the insurance company, the type of insurance, and the type of claim. Generally, you will start with the filing of your claim. The filing of your claim requires you to call your agency or the insurance company using the number in the policy, or as previously provided. You will probably have to fill out a claim form explaining what happened and when it happened. Insurance companies generally have 15 days in which to respond to any pertinent communications where a response is reasonably expected.

Once a claim has been filed, the insurance company will then assign a claim number to your claim and will either contact you, send you confirmation of the claim, or both. An agent or adjuster may want to discuss the claim with you. The insurance company should let you know that they are either going to pay or deny the claim. The insurer may want you to get estimates for the repair or replacement of whatever was destroyed. If the insurer pays the claim, then a check will be issued to you or the place that is performing the repairs or providing a replacement. Generally, the check issuance is processed within ten days of granting the claim. If the insurer denies the claim, refer to your policy to see what rights you may have.

16. What can you do if you believe that the insurance company is not being fair with you?

Insurance companies are required to deal fairly with people and act in good faith. The insurer should seriously consider all allegations of unfairness or bad faith very seriously. If you feel the insurance company is dealing with you unfairly or acting in bad faith, call them and communicate your concerns. You can also write them a letter explaining how you feel and telling them what conduct you think shows they are acting unfairly or in bad faith. Tell them how they can fix the problem. If notifying the insurer does not work, you can contact the State Insurance Commissioner at 800-282-9134 or www.insurance.arkansas.gov or 1200 W. 3rd Street, Little Rock, AR 72201. You can also contact the Better Business Bureau or an attorney.

CHAPTER 3 - LEASE AGREEMENTS: Renting Your First Home

1. What is a lease?

A lease is an agreement between a landlord and a tenant to rent property. The landlord is the person who owns the property. The tenant is the one who lives in the property. A lease tells how much the tenant will pay the landlord to rent the property. It also tells how long the lease will last. It usually includes additional duties and responsibilities of both the tenant and the landlord.

2. Does the lease have to be in writing to be legal?

The lease only has to be in writing if it is for more than one year. Even if the unwritten lease is for more than one year, it may still be enforceable depending on the circumstances. However, it is always best for both parties if there is a written lease.

3. What should you consider before signing a lease?

Make sure you read and understand the entire lease before you sign it.

- Do not sign unless all blank spaces are filled in or crossed out.
- Any changes or additions to the lease should be made on all copies of the lease and initialed by both the landlord and the tenant.
- Get a copy of the lease.
- Get all promises IN WRITING so there is no mistake about what was promised after the contract is signed.
- Look at the property and make sure it is in good condition before you sign the lease.
- List any problems or damages to the property, such as carpet wear or carpet stains or cracks in the wall, on the lease. You should also take pictures of the property before moving in. It is a good idea to attach copies to the lease. If you do not discuss and make note of these before you move in, do not be surprised if the landlord attempts to attribute them to you when you move out.

- Obtain a list from the landlord of repairs to be completed (if any) before moving into the property, and then insist that they be completed.

4. What is the difference between “renting” and “leasing”?

Renting and leasing are the same thing. The technically correct term is “leasing.” “Renting” is the commonly used term.

5. Can a landlord refuse to rent to you because of your race, religion, gender, national origin, disability, ancestry, familial status, or sexual orientation?

Under state and federal law, a landlord may not refuse to rent to you because of your race, religion, gender, national origin, disability, ancestry or familial status. At present, there is no law in Arkansas preventing the landlord from refusing to rent to you because of your sexual orientation.

6. Can a landlord prohibit me from having a roommate?

Yes. A landlord can refuse to allow you to have a roommate. A landlord may also refuse to allow you to live with your boyfriend or girlfriend. If you do have a roommate, the landlord may require the roommate to sign the lease and become equally responsible for paying the rent and maintaining the property. If someone moves in with you who is not a co-tenant on the lease, depending on the terms of the lease, the landlord may: (i) treat that person like a co-tenant (making them responsible for rent), (ii) terminate your lease, or (iii) charge you extra rent.

You can be responsible for anything your roommate does wrong. If your roommate damages the property, you are responsible for fixing it even if you did not cause the damage. Also, you are responsible for all of the rent, even if your roommate does not pay his or her share.

7. Can a landlord refuse to let me have a pet?

Yes. A landlord can refuse to allow you to have a pet. Alternatively, a landlord may charge you extra rent or an extra deposit if you have a pet. You will be responsible for any damage the pet causes. The landlord may evict you if you bring a pet in against the terms of the lease.

8. What is a sublease?

A sublease is an agreement where the tenant leases the property to another tenant, often for a short period of time. Many landlords forbid subleases. You should be certain a sublease is allowed before entering into one.

9. What happens if the original lease agreement expires and it is never renewed? Is the lease still valid?

If the original lease expires, the lease will usually become a “month-to-month” lease. This means that the lease remains in effect but either the landlord or the tenant may cancel the lease at any time by giving the other party 30 days written notice. However, the written lease can have different terms, so it is important to read your lease before you sign it. The concept of a month-to-month lease is discussed more below under the termination section.

10. Should I get renter’s insurance?

It is a good idea to get renter’s insurance. The landlord’s insurance only covers the building. It does not cover your things inside the building. Ask for price quotes from different insurance agents to find the policy that best suits your needs and budget.

11. What is a security deposit?

A security deposit is money given by the tenant to the landlord to make sure the tenant follows the lease. When you move out, it may be used by the landlord to pay rent you owe. It can also be used to repair any damage you caused other than normal wear and tear. The landlord must return any unused security deposit to you after the lease ends. You must move out of the property to get your security deposit returned. You cannot just move out and expect to apply your deposit to the last month’s rent. You must make a written demand for the return of the security deposit. You need to include in your demand your new forwarding address. If you do not make a written demand for your security deposit, then the landlord may get to keep the deposit. Landlords will usually find something to deduct from the deposit before returning it to you, such as cleaning or repair costs, so do not count on getting the entire deposit back.

12. How do you terminate your lease?

If you have signed a lease for a set number of months, you are responsible for the rent for the whole period. However, if you move out before the end of your lease, you do not have to pay for the time on the lease period if the landlord is able to rent the property to someone else for that time. If you do not have a written lease, you rent from month-to-month. If you rent from month-to-month and wish to move, you must give

at least 30 days notice in writing to the landlord. The same rule applies to the landlord if he or she wishes to end the lease with you. Many leases require that at the end of the lease, you give 30 days notice before moving or the lease may automatically renew for as much as another year.

Important: The 30-day notice must be given from rent-paying period to rent-paying period. This means that if your rent is due on the 1st of the month, then notice must be given before the first day of the month. The lease will end on the last day of the month. Example: If your rent is due on the 1st day of the month and you give notice on January 15, you still owe rent for the entire month of February. The lease would end on the last day of February.

13. What could happen if you do not pay your rent on time?

If you do not pay your rent when it is due, the landlord may charge you a late fee. The landlord may also give you notice to pay or move out. This notice can be given to you (or anyone else over the age of 12 who is living with you) to pay or move out within a certain number of days. If the landlord posts a notice on your door and mails you a certified copy, generally you will have only ten days to pay or move out. If you fail to pay rent, you may be taken to court. The court can order you to leave and pay your back rent. If you want to stay, you should read the written notice carefully and pay before the deadline. The landlord may report your failure to pay rent to a credit agency, which will damage your credit rating.

14. When can the landlord enter the property?

The landlord can enter the property occasionally to inspect the premises or to show it to prospective future tenants. Usually, the landlord must give you notice before entering the property, unless there is an emergency.

15. What are the landlord's obligations?

The landlord generally has no obligations unless specified by the lease. Most leases specify that the landlord will maintain the property. If the lease requires the landlord to maintain the property, but he or she does not do so, then you may be allowed to do the maintenance yourself and deduct the cost from your rent. However, many leases forbid you from doing this, so be sure to read the lease first. If the property is in such a terrible condition that you cannot live in it, then you might be able to sue the landlord for "constructive eviction," which means that you may not have to pay rent until the property is fixed or you may be able to terminate the lease.

16. Can I make changes to the property?

You cannot make changes to the property without the landlord's permission. Some landlords may even forbid putting nails in the wall. If you modify the property without the landlord's permission, you will have to pay for the damage.

17. When can the landlord evict me?

The landlord can evict you if you "breach" the lease, which means that you did not do the things you promised to do in the lease. The most common reason for eviction is failing to pay your rent. However, you may also be evicted if you break the law while in the property (for instance, if you keep drugs in the property).

18. What should you do to protect yourself when you move out?

You should document the condition of the property before you move out. You should take pictures to verify the condition.

**CHAPTER 4 - PERSONAL PROPERTY: Taking Care Of Your and
Others' Stuff**

1. How and why should you consider documenting all of your personal property and updating that list regularly?

Most people do not really know what or how much personal property they own. Without looking, attempt to list all of your personal possessions such as electronic equipment, jewelry, and automobiles. Do you think your list is accurate? More than likely you have omitted objects. Imagine if you had to list all of your personal property after an event such as a fire or robbery. Due to such a stressful situation you would probably forget even more property. Therefore, it is a good idea to compile an inventory of all your personal property that provides detailed information regarding your assets. In the event of a fire or a robbery, such a list will help in filing insurance claims or informing police of the property stolen. Detailed information such as serial numbers on electronics and cars will assist police in locating the property and proving that you owned such property. Videotaping each room, closet, etc. is also a good idea.

In conducting your personal property inventory, be sure to take photos of collectibles, art, jewelry, etc. In the event of a disaster, having a detailed inventory will help you file an insurance claim more quickly and accurately and will ensure that any payments you are to receive are timelier. Making sure that serial and model numbers of high-priced items such as televisions and automobiles are included in your inventory is important because under many insurance policies, you will likely be required to show proof of ownership. Having the serial and model numbers plus photographs may provide this proof.

2. If you hit your neighbor's dog by accident with your car, are you responsible for paying the veterinarian's bill?

The answer to the above question depends on where the accident occurred. If you should hit your neighbor's dog by accident when you swerved into the neighbor's yard, then it is likely that you will be responsible for paying for the veterinarian's bill. However, if your neighbor's dog runs into the middle of the street where you accidentally hit the dog with your car, you are not necessarily responsible for paying the veterinarian's bill. This is because the dog was outside of the area in which it belonged and the owner had a duty to prevent the dog from running into traffic where accidents might occur. In fact, it is possible that the dog's owner might be responsible for any damage caused to you or your vehicle.

3. What can you do if the dry cleaners ruin your clothes?

As with so many things, the answer depends greatly on the facts and circumstances. Most dry cleaners have a liability waiver on the ticket

with regard to clothing damaged as a result of the cleaning process. So, often it is difficult to recover any damages from the dry cleaners who ruined your clothing. However, if the damage is egregious or the dry cleaners obviously should have known that a certain procedure would damage clothing, your chances of obtaining a recovery are greater. Even if you do obtain compensation, it will likely be reduced according to how old the clothing already was when it was ruined.

As a useful rule, you should check to see if your dry cleaner is a member of any sort of association regulating the dry cleaning industry. If so, such an association might have rules assisting in determining damages. Further, a dry cleaner might be more likely to reimburse for the damage done if he does not want to lose accreditation with such association.

4. Is your employer liable if your purse or wallet is stolen while you're at work?

In most cases, your employer is probably not liable if your purse or wallet is stolen while you are at work. However, your employer may be liable if the employer requires you to remove all personal effects and store them in a particular area. At this point, the employer may have taken on the duty to ensure the security of the area and the safety of your personal property.

5. What could happen if you buy stolen property by mistake?

Generally, knowingly buying stolen property is a crime known as theft by receiving. In some instances, such knowledge can be inferred when one buys property under such circumstances that require one to inquire whether such property was stolen. However, if a person genuinely buys stolen property by mistake, generally, the only ramification is the property is returned to the rightful owner.

6. How can you avoid buying stolen property?

As with most things in life, if it seems too good to be true, it probably is. If the price seems too low, then you should consider that the property might be stolen. In order to avoid purchasing stolen property, you should probably purchase only from known, reputable sellers. However, if you do purchase from unknown vendors or individuals, you should require proof of ownership of the property. In the case of an automobile, always request to see the previous bill of sale or title to the vehicle.

7. If your friend borrows a watch from you and then it is stolen or she loses it, is your friend responsible for replacing it?

Your friend would be responsible for replacing it if she did not take all reasonable care in preventing the property from being stolen. For instance, if your friend left the watch unattended in a public place, such actions would not be reasonable and your friend would be liable to replace the watch. However, if your friend took all possible precautions to prevent the watch from being stolen such as placing it in a security deposit box at a bank and the watch was stolen from the bank, more than likely your friend would not be responsible for replacing the watch.

8. What should you do if someone borrows something from you and then refuses to return it?

If someone borrows an item, they have permissive possession of the item. However, if you request they return the item, then such permissive possession ceases and they have placed you on notice that they intend to claim some sort of right or ownership in the item. Legally, you have the right to have possession of the item in question. Therefore, you should consult an attorney if the item in question is worth a lot of money. However, you may also consider filing a claim in small claims court (without an attorney) seeking the return of the property. In doing so, you will have to prove that you own the item in question.

9. What if a person promised to give you something but then instead gave it to someone else; are you entitled to it?

In most situations, if the item is truly a gift, then you are not entitled to the item in question. However, if someone promised to give you something in exchange for a promise by you to do or not to do something, you may be entitled to the property. In this situation, you may have an enforceable oral contract. However, if the item is worth more than \$500, then the contract must be in writing. If it is not in writing, such an oral contract is not enforceable.

10. What if you find a wallet with \$100 in it but there is no identification in it and no one is around when you picked it up; can you keep the money?

Typically, there are four types of found property: "abandoned" property, "lost" property, "mislaid" property and "treasure trove." Abandoned property is property discarded with the intention of terminating ownership. Lost property is property unintentionally left because of carelessness or inadvertence. Mislaid property is property intentionally left in a place where the owner can find it and the place is later forgotten. Treasure trove is gold, silver, or paper money concealed in the earth or a private place under circumstances indicating that the treasure has been concealed for so long that the owner is likely dead or unknown. The finder of lost or abandoned property or treasure trove has

a right of possession against everyone except the true owner. In this case, the wallet is probably lost and you have a right of possession against everyone except the true owner. Thus, if the owner cannot be located or if a purported owner cannot prove ownership, you can keep the money. However, if the owner can be located or a purported owner proves that he or she is the rightful owner, then you must return the property to such person.

11. What if you plan to sell your video game system for \$150, should you prepare a written agreement for you and the buyer to sign?

While it is not necessary to prepare a written agreement to sell your video game system, it might not be a bad idea to prepare some document if you have made representations or warranties that the video game system works properly. You may wish to limit these representations or warranties. Further, it might not be a bad idea to evidence the transaction. This will protect both you and the purchaser. The purchaser further will later be able to prove ownership of the video game system.

12. If you own personal property and someone else also owns it along with you, can you sell it and keep the proceeds without the other owner's permission?

Typically, you may not sell property owned jointly or as tenants in common and keep the proceeds without the other owner's permission. While you may sell certain property, the proceeds typically must be divided. If you attempt to keep such proceeds, the other owner may request an accounting of the proceeds and proceed with a claim in a court of law.

13. What is a "lien," and can you sell or give away property that has a lien on it?

Technically, a lien is a legal right or interest that a creditor has in another's property lasting until the payment of a debt that it secures is satisfied. Essentially, a lien is a right that another has in your property granted either by law or an agreement with the creditor that allows the creditor to seek certain remedies including obtaining your property and selling it to pay back a debt. One common example occurs when you purchase a car with a loan. Most times the lender will file a lien on the car. Should you fail to pay the loan, the lender may exercise certain rights such as repossessing the car and/or selling the car to repay the loan.

If a piece of property has a lien on it, the property may be sold or given away, but the lien will remain on the property. If the loan is not repaid, the lender may have the right to repossess the property from the new owner. Thus, you should always be wary of purchasing property that

has a lien on it. Also, you should be aware that sometimes lenders place certain restrictions in the loan agreement regarding the sale or transfer of the property on which there is a lien. You should carefully review any loan document to see if there are provisions restricting the sale or transfer. If so, you may not be able to sell or transfer the property freely.

14. Can creditors ever take your personal property and sell it without your knowledge?

Typically, you will have notice if creditors attempt to repossess personal property and sell it. However, creditors usually do have a right to repossess property if you default on the payment of a note or loan. You should know that they cannot repossess your personal property through the use of violence. Should you believe your property to have been repossessed in error or unjustly, you should obtain legal counsel.

CHAPTER 5 - YOUR CAR: PART I: Buying It and Repairing It

1. What are some tips for buying a car?

Before arriving at the dealership, consider the amount you can afford to spend on a car (including total price, monthly payment, sales tax, gasoline, insurance, and license plate expenses). Research various makes and models of cars, and narrow down the type of car and the particular options that interest you. Research car prices by using the Internet, and comparison shop at different dealers. There is a good deal of information obtainable through consumer-buying guides and through the local newspaper. Choose a reputable dealer. Friends and relatives will likely have suggestions on who is and who is not a reliable dealer. You should also pre-arrange financing before arriving at the dealership.

Upon reaching the dealership, do not forget that the salesperson's goal is to make money. You have the ultimate bargaining position—you can walk away from the dealership at any time. If you feel that the salesperson is pressuring you to make a decision, you can always leave the dealership.

When test driving a car, be sure to test drive it in a variety of road situations, including on hills, in busy intersections and on the highway. This will allow you to get a feel for the handling of the car in a real environment. It is likely that the dealer will require that you provide him with a copy of your driver's license in order to take the car on a test drive. Do not consent to a credit check until you have chosen to make a purchase. Credit checks may affect your credit history. Plan to negotiate a price; dealers often are willing to bargain. Look closely over the warranties to see what services, parts and costs are covered. Ask for written information about any extended warranty options. You will want to review the terms of the warranties and know the additional costs. If you are going to trade in your current vehicle, have an idea of what its value is. Kelley's Blue Book and the newspaper classified advertisements are two excellent sources for this information. It is a good idea not to mention that you want to include your trade-in until the price for the car is negotiated. It is also important not to let anyone pressure you into buying a vehicle you either do not want or cannot afford. Finally, do not sign any documents that you do not understand. Get copies of all documents before you leave the dealership; do not let them mail them to you later.

2. What warranties will you receive if you buy a car?

A new car will probably come packaged with certain express and implied warranties. One express warranty covering the purchase of a new car is the car manufacturer's express limited warranty. The limited warranties vary depending on the type of car but will typically cover your new car's parts against defects for a determined amount of miles or years

(typically 36,000 miles or three years), whichever occurs first. Before you purchase your vehicle, be sure to ask the dealer about the specific terms of this type of express warranty. Make sure you obtain a copy of the warranty terms.

For new car purchases, a buyer will usually have the option of purchasing an extended warranty from the dealer for an additional charge. Each dealership has different options for extended warranties, so be sure to ask the salesman about the various types of coverage. For example, most dealership extended warranties require that covered repairs be made by the dealership or an approved repair shop.

If you do not wish to purchase an extended warranty from the dealership, you may have the option of purchasing an after-market extended warranty from a third-party company. You will want to make this decision prior to purchasing the car, however, as there may be a time limit on purchasing the extended warranty from the dealership. Your insurance company may have information regarding these types of warranties.

If you are purchasing a used car, the original manufacturer's warranty and any extended warranties may still cover your car if those warranties are transferable and if the car has not exceeded the mileage or time limit imposed by the warranties. When purchasing a used car from a used car dealer, federal law requires that the dealer post a buyer's guide on the car window. The buyer's guide contains information about your car, including whether the car comes with a warranty or is being sold "as is." This law does not apply to individuals who sell their used cars. You should inquire from the seller as to whether the used car you are purchasing will include the original warranty or any extended warranties that were purchased by prior owners before you make the purchase.

In addition to express warranties, your car may also come with certain warranties that are implied. The implied warranties of merchantability and of fitness are not written into the sales contract but are implied by law. Unless excluded or modified by a contract, the sale of a car by a dealer includes an implied warranty of merchantability, that is, that the car is good for the ordinary purpose for which it was purchased and that it will operate properly given its age and condition. This warranty will only apply in a transaction between a buyer and a merchant car dealer. It will not apply to a transaction between a buyer and a non-dealer.

If the car dealer is aware that you are purchasing a car for a particular purpose, and you are relying on the car dealer's judgment in making your purchase, the implied warranty of fitness will apply to your situation. The implied warranty of fitness is essentially a guarantee from

the dealer that the car will serve that particular purpose. These implied warranties can be waived by contract. For example, if a car is sold “as is,” then the implied warranties will not apply. If you purchase a car “as is,” then in most situations you will be responsible for any needed repairs.

3. What if you buy a new car and it turns out to be a “lemon”?

When a new car has undergone repairs for the same problem numerous times in two years or 24,000 miles, whichever is later, it could be designated a “lemon,” and the manufacturer may be required to either replace or buy back your vehicle.

Generally speaking, the “Lemon Law” applies only to new cars registered within Arkansas. Only nonconformities that substantially impair the use, value, or safety of the car are covered. If the same nonconformity remains despite four repair attempts, or if the vehicle is in the shop for more than 30 days, or if the vehicle undergoes five or more repair attempts for a combination of non-conformities within the quality assurance period, the vehicle probably is a “lemon.” If you have a “lemon” but are not sure what to do, contact the Arkansas Attorney General’s office or a lawyer for help.

4. What if you buy a used car and it turns out to be a “lemon”?

There is no used car “Lemon Law” in Arkansas. However, if the car seller has misrepresented material facts about your car and you have suffered damage as a result, you may have a cause of action against the seller. In this event, you should contact a lawyer for further guidance.

5. Where can you get the money to buy a car?

While you can pay cash for a car, given the amount of money involved it is more likely that you will be borrowing the money to pay for the car. Loans can be acquired through a bank, the dealer, a finance company, or a credit union. Check to see which has the lowest interest rate. It is best to arrange for financing before visiting the dealership.

6. What are your rights if you put down a deposit on a car and the dealer then sells it to someone else?

If you place a deposit on your car but the dealer sells the car to someone else, the dealer must refund your deposit. Be wary of dealers who ask for a deposit. In all likelihood this is a pressure sales tactic. A deposit should only be necessary in the event you are purchasing a unique or one-of-a-kind vehicle.

7. Can a repair shop charge more than the estimate?

Yes. An estimate is just the repair shop's best guess at how much the repair will actually cost. It is your responsibility to get a written estimate. The repair shop may not be bound by the written estimate, but ask them to call you and get authorization before they exceed the amount of the estimate. Carefully read any repair order before you sign and ask the repair person to explain anything you do not understand. Ask for an itemized bill, after the transaction is completed. Also, it is a good idea to have a repair shop in mind before there is a problem with your car.

8. Can the repair shop charge for diagnosing a problem before doing an estimate?

Yes, but know on the front end how much the diagnosis charge will be, and make sure to tell the repair shop not to make any repairs after the diagnosis without calling and asking for your permission to do so.

9. What if you take your car to the repair shop to fix a problem and they do other work as well without your permission, must you pay for all of the repair work?

This really depends on the particular facts of the situation. In a typical situation, you do not have to pay for unapproved work, and you have the right to ask that your bill be adjusted accordingly. When leaving your car with the dealer, you may be asked to sign paperwork that gives the repair shop the authority to make repairs. Be sure to read the paperwork that you are signing. If you do not want the repair shop to make repairs, make sure that this is clearly written in the paperwork. It is sound practice to request that the mechanic diagnose the problem first, and then contact you and provide a cost estimate before making any repairs. While you may be required to pay for the labor costs of diagnosing the problem, you will also have the option of taking your car to another mechanic for a second opinion.

10. If you take your car in for minor repair work and the repairman causes additional damage, can you be held responsible?

You could be responsible for the damage if you choose to not do anything about it. If you have any questions about the mechanic's repairs or any new damage that you discover, you should speak with the mechanic or the repair shop manager before leaving the repair shop or as soon as you discover the problem. Depending on the nature of the damage and if the repair shop assumes fault, the repair shop may choose to repair the damage if minimal, or if the new damage is substantial, may choose to file a claim against its insurance policy to cover the cost of the repairs.

If the repair shop denies responsibility, you may be faced with filing a lawsuit against the repairman and his shop. You will want to document the specific events and the order in which the events occurred. You will also want to obtain cost estimates from several repair shops in the area. If you were referred to this particular shop by your insurance company, you should call your local insurance company representative to make them aware of the problem.

11. What are some ways to avoid car repair rip-offs?

Go to a reputable dealer and take this Handbook or other consumer guide information with you. If you do not feel comfortable with the situation or with the salesperson, leave. If it sounds too good to be true, it probably is. Do not let the salesperson apply high pressure tactics on you, and make sure all terms are discussed up front in understandable detail, and do not sign anything until you understand everything. It might be a good idea to ask your family members who they use and to even take an experienced person with you. Be sure to research what repairs typically cost and the average age that certain repairs for wear-and-tear are usually done on your make and model.

12. Can you get your car back even if you disagree with the repair shop on the amount of the bill?

Yes, but generally you must first pay the bill. If you cannot work out an agreement with the repair shop, you might want to consider filing a claim in court. In the event you do this, make sure to have an experienced car repair person who will testify on your behalf as to why the total amount is incorrect.

13. What happens if you have an accident while driving a rented car?

It depends on the contract that you have with the rental company. Rental companies offer optional (and expensive) insurance which could be used in addition to your personal insurance. In the event you have not purchased the optional insurance, your insurance (or the person with whom you had an accident) may be the one to cover the damages. Call your insurance and credit card companies to see if they insure cars that you rent so that you do not pay for unnecessary coverage and are not left without any insurance at all if you refuse the optional coverage. Call 911 when you have an accident and let your insurance agent know. It is important not to admit fault at the scene of the accident, as well.

14. What records do you need in order to sell your car?

You need the title to the automobile, and you will need to make a bill of sale for the individual purchasing the car.

15. What are some precautions you should take when selling your car?

Remove any documents from your car before the sale. Also, as soon as you sell the car, have the insurance on it discontinued. Have a bill of sale clearly defining who is buying and who is selling, the selling price of the car, how many miles the car has, and whether or not there are any warranties being provided (recommended if a used car). Honesty is the best policy when discussing the condition and history of the car.

16. If you sell your car to someone, do you have to give any warranties?

Arkansas law requires that a car seller provide the car buyer a written disclosure of the cumulative mileage registered by the odometer or a written statement that the mileage amount shown on the odometer is incorrect if the seller knows that the mileage registered by the odometer is incorrect.

CHAPTER 6 - YOUR CAR, PART II: Driving It and Wrecking It

Getting (and Losing) Access to the Open Road

1. Is driving a right or a privilege?

Driving is a privilege. You can lose your driving privileges for a number of offenses, including: being convicted of driving under the influence of alcohol or drugs; refusing a request by a law enforcement officer to be tested for alcohol or narcotics intoxication; leaving the scene of an accident in which you are involved without identifying yourself; failing to notify the Department of Finance and Administration of a reportable traffic crash in which you were involved; giving false information when you apply for a driver license; failing to show proof of financial responsibility or failing to settle a financial judgment made against you for damages resulting from a motor vehicle crash; attempting to change the information on your license or using another person's license when attempting to purchase an alcoholic beverage; failing to appear for re-examination when requested to do so by the Office of Driver Services; using a motor vehicle to commit a felony or cause the death of anyone in a motor vehicle crash; and allowing another person to use your driver license.

2. If you do not already have a driver's license, how do you get one?

Arkansas follows a graduated licensing program. Persons ages 14 to 18 who desire to drive must take part in this program. The gradations include: Instruction Permit, Learner's License, Intermediate License, and Class D License. Any person at least 14 years of age can obtain an Instruction Permit. Those with Instruction Permits may obtain a Learner's License. Those with a Learner's License may obtain an Intermediate License. Those with an Intermediate License may obtain a Class D License. Persons 18 years of age or older who desire to drive can obtain an Instruction Permit and thereafter a Class D License so long as they complete the required vision, skills, and knowledge tests. Tests are administered by the Arkansas State Police. Each highway patrol troop commander is responsible for establishing a regular schedule of driver's license testing in each of the troop counties. Visit the Arkansas State Police website for a complete listing of test sites.

3. Do you need a special type of license to drive some vehicles?

To drive certain vehicles (large trucks, buses, limousines, etc.) you may need a special type of license or what is known as a commercial driver's license. A commercial vehicle is classified by weight or occupancy. If you are driving a vehicle in excess of 26,001 pounds or a vehicle that seats in excess of sixteen, you will probably need a commercial driver's license to legally operate it. To qualify for a commercial driver's

license additional tests are required before obtaining what is referred to as a “CDL.”

4. If you are going to attend college in another state, will you need to get a new driver’s license and new license plates in that state?

If you intend to maintain your Arkansas residency, the answer is no. However, if you take up residency in the state where you are attending college, you will need to obtain a driver’s license and plates in that state.

5. What could happen to you if you are caught driving with an expired driver’s license?

It is a misdemeanor to drive a vehicle with an expired license. For a first offense, at present you could be fined \$100 or imprisoned for up to ten days. For a second offense within one year of the first, you could be fined \$200 or imprisoned for up to 20 days or both. For a third offense within one year of the first, you could be fined \$500 and imprisoned for up to six months or both.

If your license expires before you have a chance to renew it, you can do so within one year of its expiration. After one year, you must re-take the written examination.

6. What is the difference between having your license suspended and having it revoked, and under what circumstances can it be suspended or revoked?

If your license is suspended, it is usually for a specified period of time after which your license is eligible for reinstatement. Arkansas utilizes the Administrative Point System to identify problem drivers. Points are assigned for various traffic violations, including failure to obey a traffic signal (3 points), reckless driving (8 points), and speeding 0-10 (3 points), to name a few. Your driving privileges can be affected if you collect an excessive number of points. For example, 10 to 13 points, a warning letter is issued telling you to be careful; 14 or more points, a notice is sent to you advising you of a proposed suspension action and advising you that you may have a hearing to discuss the proposed action; 14 to 17 points, your license could be suspended for three months; 18 to 23 points, the suspension increases to six months; and 24 or more points, the suspension could last for one year. A hearing will be scheduled before a hearing officer who will decide what action is appropriate. If you fail to attend the hearing at the scheduled time, your license is automatically suspended. It is important that once the suspension period ends, you must pay a reinstatement fee to the Department of Finance and

Administration. If the fee is not paid, your license is still suspended even though the suspension period may have passed.

If your license is revoked, it can be permanent. Your license could be revoked for being convicted of driving under the influence of alcohol or drugs, using a motor vehicle to commit a felony, or causing the death of anyone in a motor vehicle crash.

7. Do bicycle riders have to follow the same traffic laws as motorists?

Bicyclists who ride their bikes on the Arkansas roadways are bound by the same laws as motorists.

8. Do you need a special license to operate a motorboat?

You do not need a special license to operate a motorboat. However, if you were born after 1985, you must complete a boater's education course and carry a valid Boating Education Card while operating a motorboat on Arkansas water. Visit the Arkansas Game and Fish Commission's website for more information on boating education.

Car Insurance

9. Are you required to have automobile insurance?

You are required to have automobile insurance if you own and operate a vehicle in the State of Arkansas.

10. What are some specific questions that you should ask when shopping for automobile insurance?

You should ask such questions as:

What coverage is available?

What policy limits are available?

Whether you are eligible for any discounts, for example, good grades, safe driving, multiple cars being insured under the same policy, or multiple types of insurance with the same company.

What is the premium?

What is the deductible (the higher the deductible, the lower the premium [and vice-versa])?

What is the grace period if I cannot pay my premium on the date it is due?

Who do I call if I need to make claim?

What exclusions are contained in the policy?

11. What is uninsured insurance and why do you need it?

Uninsured insurance covers your losses if you are involved in an accident caused by an uninsured vehicle. It is not a mandatory coverage in the State of Arkansas. Your insurance company will ask you if you want this coverage and will collect an additional premium for it if you choose to accept it. It is a good idea to have uninsured insurance, and the coverage is usually not very expensive. After all, who do you think is going to have to pay for your damages (as a practical matter) if an uninsured person crashes into you and it is his or her fault?

12. What is underinsured insurance and why do you need it?

Underinsured insurance covers your losses if you are involved in an accident caused by another person and that person does not have enough insurance to cover all of your losses. As with uninsured insurance, it is not a mandatory coverage. Your insurance company will ask you if you want this coverage and will collect an additional premium for it if you choose to accept it. Like uninsured insurance, it is a good idea to have underinsured insurance, and the coverage is usually not very expensive. After all, who do you think is going to have to pay for your damages (as a practical matter) if an underinsured person crashes into you and it is his or her fault?

13. How do insurers set car premium rates and what can you do to keep them as low as possible?

Many factors affect how insurers set car premium rates, including your age, gender, the type of vehicle you own, and your driving record. If you own a type of vehicle that is prone to accidents, chances are your premiums will be higher. The same is true if you have traffic citations or accidents. You and your vehicle are more expensive to insure for these reasons, and your premiums will be greater. If you choose a practical vehicle and remain free of traffic citations and accidents, your premiums should be less.

14. Is it legal for your insurance company to cancel your policy after you have been involved in an accident?

Your insurer can choose not to insure you if you are involved in an accident. However, the insurer must give you notice of their intent to cancel your insurance.

Run-Ins (With the Law and Others) Along the Route

15. What are the possible consequences if you are involved in a hit-and-run?

If you are involved in an accident and leave the scene, you could be subject to a fine of not less than \$100 and not more than \$1,000. If someone is harmed or killed, the potential consequences could be much greater. If the violation is willful, your driver's license could also be revoked.

16. What are the consequences of not paying tickets that you receive?

If you fail to pay a ticket, a warrant may be issued for your arrest or your driver's license or license plate may be suspended, or both.

17. Is it against the law to hitchhike or pick up a hitchhiker?

Arkansas law forbids a person from standing in the roadway for the purpose of soliciting a ride from a private vehicle. Though picking up a hitchhiker is not illegal, it is never a good idea (because you are not only contributing to illegal activity, you are also placing your safety at risk).

18. What could happen when you drive after consuming a drink or two?

If you drive after consuming a drink or two, you could be stopped by law enforcement authorities, lose your driving privileges, or worse, you could have an accident and injure yourself and others. There are stiff penalties for drinking and driving, including fines, possible prison, probation, loss of driver's license and alcohol education classes.

19. What happens if you are stopped for driving under the influence (DUI)? What are the penalties?

If you are less than 21 years of age and your blood alcohol level is between .02 and .08, you could be ticketed for driving under the influence. If you are found guilty, your driver's license could be suspended or revoked, and you could face a substantial fine, possible jail time and/or both.

20. What happens if you are stopped for driving while intoxicated (DWI)? What are the penalties?

If you are any age and your blood alcohol level is .08 or greater, you could be ticketed for driving while intoxicated. If you are found guilty, your driver's license could be suspended or revoked, and you face the possibility of a \$1,000 fine and one year in prison for the first offense, as well as the suspension of your driver's license and required alcohol education classes. Subsequent convictions for DWI could result in higher fines and imprisonment.

21. Do you have to submit to a breathalyzer or blood test?

Arkansas law requires you must submit to a breathalyzer or blood test if a law enforcement officer requests it, although that officer must have reasonable cause to believe you are operating a vehicle while intoxicated. If you refuse, your license could automatically be suspended or revoked for a number of months.

22. Do you have to take a field sobriety test if asked to take one by the police officer?

You must comply with a law enforcement officer's request to take a field sobriety test. Failing a field sobriety test does not automatically convict you of DUI or DWI, but it is evidence that you may have been drinking. If you refuse, your license could automatically be suspended or revoked for a number of months.

23. In general, how many drinks make you legally drunk?

It differs from person to person depending upon your gender, weight, tolerance for alcohol and other factors. When in doubt, stop drinking (and never drive).

24. What happens if you are stopped with an open container of an alcoholic beverage in your car?

Arkansas law prohibits drinking in a public place, including your car. It is a crime even if you are not the person driving.

25. What should you do if you are involved in a traffic accident?

If you are involved in an accident and your vehicle can be moved, you should determine whether it will obstruct the flow of traffic. If it does, you should move your vehicle to a safe location but should not leave the scene.

26. What if you hit an unoccupied vehicle or roadside property?

If you hit an unoccupied vehicle or roadside property, at the very least you should attempt to locate the owner of the vehicle or property or leave a written note on the vehicle including your name, address and telephone number. You should also call the police so that they can make a report.

27. What should you do if you accidentally hit and kill a deer crossing the road?

You should call a law enforcement officer and make a report of the incident. Your insurance company may not require a report, but it is always a good idea to have one.

28. If you witness a car accident, do you have a legal obligation to stop or to notify the police and make a statement?

You do not have a legal obligation to stop, but it is a good idea to notify police and make a statement. After all, if you were the one in the car accident you would certainly want someone to do that for you.

29. If you lend your car to a friend, who will be responsible if your friend has an accident with the car and injures someone or causes property damage?

You may be responsible if you entrust your vehicle to someone who you know has a bad driving record. Also, your insurance may have to provide coverage to your friend because you have given him permission to operate your car. This could cause your premiums to go up or your insurance to be canceled.

30. Can the passengers in your car sue you if you are in an accident and they are hurt?

Yes. Some states have guest statutes which prohibit such suits. Arkansas has abolished these laws. You are responsible to others in your car if they are harmed as a result of your negligence.

31. What happens if both drivers involved in an accident are at fault?

Usually, they are responsible for their own damages.

32. What if, after an accident, the other driver offers to pay you money if you will sign a release from further liability? Is this a good idea?

It depends upon the severity of the accident and your injuries. If you are not injured but your car is damaged and the money will compensate you for these damages, this may not be a bad idea. If you are not sure if the money will cover your damages, or if you are unsure as to the extent of any medical injuries, by all means you should not sign a release - let insurance do its job instead.

33. You are involved in a minor fender bender in which no one was cut or bruised . . . should you see a doctor anyway?

Injuries are not always immediate. If you are involved in an accident, no matter how minor, and not feeling well, you should seek medical treatment. Sometimes injuries will not manifest themselves for some time.

CHAPTER 7 - PERSONAL INJURIES (OTHER THAN CAR WRECKS):
Getting Hurt - Who If Anyone Is Responsible

1. What are your legal responsibilities to persons who come onto your property, and how does it differ depending upon the circumstances and their purpose for being there?

As the owner or possessor of property, you have a responsibility to keep your property safe for anyone who may visit you. In Arkansas and other states, the degree of responsibility, however, depends largely upon the reason for the visit. Generally, homeowners are most responsible for the safety of invitees and least responsible for the safety of trespassers.

An "invitee" is someone that you may ask to visit you for some specific purpose, such as to buy something (a customer), to do some work for you (a repairperson), or to deliver something to you (a postal carrier). If an invitee is injured on your property, you may be held liable if you did not take steps to make your home safe or if you did not warn your visitor about the danger. Once an invitee is on your property you generally have a duty to use greater care than usual when performing potentially dangerous tasks.

A "licensee" is generally someone who comes onto your property for their own benefit, such as a door-to-door salesperson or someone soliciting for charity. Social visitors such as friends and relatives who come to visit are also often considered to be licensees. You generally have a duty to warn such visitors about any dangers that are not readily apparent, such as a slippery floor or a weak handrail on your stairs, and to use greater care than usual when performing potentially dangerous tasks.

A "trespasser" is someone who enters your property without your permission, such as a burglar or a person who is lost and stumbles onto your premises. You are generally not liable if such a person is accidentally injured on your property, but you do owe a special duty to children especially if an object or condition on your property is dangerous and likely to attract children. Also, if you know that someone repeatedly trespasses on your property you may have a legal duty to make that person aware of any hidden dangers.

So, the question of responsibility for a person's injuries turns largely upon the specific facts involved. There are any number of possible scenarios that involve personal injuries resulting from events other than car accidents, and as you will see below the question of liability in any given scenario is often "maybe."

2. If you invite some friends over to grill hamburgers in your back yard and one of them breaks his leg because he stepped in a hole in the yard, are you liable for his medical expenses?

A homeowner is not automatically liable for every injury that results in or around his home. Certainly as a host you have a duty to tell your guests about any dangerous conditions that are not already obvious. If you knew about the hole and if the hole was deep or hidden and not obvious, then you might be held to be at fault (especially since you invited the guests over to your back yard). If you did not know about the hole, if the hole was not particularly deep or plainly apparent and obvious, then you might not be held at fault. If the hole was due to natural means (a sinkhole, etc.) as opposed to being manmade, this might also result in a less likely finding of liability.

3. If you slip and fall on a snow-covered sidewalk in front of a department store, is the store liable for your injuries?

Maybe, but not necessarily. In locations where there are frequent snow and ice storms, business owners cannot reasonably be expected to keep their sidewalks clear at all times. Because of this, people must assume the risks involved in walking on slick sidewalks. But this does not mean that the store owner always escapes liability for the person's injuries.

Specifically, if you want to sue you should consider such factors as whether it was snowing or sleeting when you fell (if so, this factor would favor the owner since they cannot be expected to clear the sidewalk during the storm), how long the snow or ice had been there (the longer the amount of time, the more this factor is in your favor), whether you were carefully trying to navigate the obvious hazards (if not, this would favor the store owner), and whether or not the building had defective lighting (if dark) or a defective draining system (if the hazard was not a natural condition this would make your case a stronger one).

4. If you slip and fall on a water puddle in the produce section of the grocery store, is the store liable for your injuries?

Maybe. Your chances of prevailing would depend upon a number of factors, including how carefully the store had attempted to keep the area dry. It is foreseeable in the produce section of a grocery store that there would be moisture in the vicinity; however, because of this fact it is also reasonable to expect that the store will recognize this and take steps to more diligently monitor these floors. The answer also depends upon how long the store employees had notice of the wet area. For instance, if the puddle had only been there for a couple of minutes, your chances of prevailing would be significantly less than if the puddle had been standing for a couple of hours. Another factor is whether you might have contributed to the accident. For instance, if you were hurrying down the aisle because you were late for work and were quickly buying a couple of things for later in the day, or if your water bottle was the one that actually spilled the water, then a finding of liability on the store's part is far less likely.

5. If you go bungee jumping and you sign an agreement not to sue, if you become injured are you prevented from suing the business operator?

Maybe, but not necessarily. The agreement you signed is generally known as a “release” or an “exculpatory clause.” In deciding whether to uphold it, a court will likely review both the language of the agreement and the facts and circumstances surrounding your decision to sign it. Such agreements are generally not favored as courts do not like people to sign away their right to sue. Given the inherently dangerous nature of the activity involved, if you freely signed the document and the language was easy to understand and squarely addressed the potential risks, a court may likely uphold the agreement. In other situations, such as when the activity involved is less dangerous and it is not as foreseeable that you could be injured, when you are under pressure to sign the agreement, or when the agreement is vague or difficult to understand, a court may decline to uphold the agreement thereby allowing you to sue for your injuries. The chances of successfully suing, however, still depends upon whether the party you are claiming was at fault was in fact negligent.

6. If you go to a major league baseball game and are hurt by a fly ball that goes into the crowd, can the baseball park be held liable?

Generally, no. The law assumes that fans at baseball games assume the risk of possibly being injured by a ball that is hit into the stands. Ballpark owners may be required to install protective fencing in the area immediately behind home plate since it is highly foreseeable that someone could be hurt sitting in that location, but the likelihood of injury in other areas is significantly less. If the spectator was injured because the fencing was torn down or inadequate, then in that instance a ballpark owner could possibly be held liable.

7. If someone breaks into your apartment and slips on a banana peel and breaks his arm, can he sue you for damages?

Generally, no. When a burglar trespasses onto your property and forcefully enters your home, he assumes responsibility for whatever hazards and dangers that he may encounter. You should not be held liable for any accidental injuries that a burglar might receive while on your property.

CHAPTER 8 - YOUR MONEY: No One Will Care About It If You Don't

1. What are some good questions to ask before opening a bank account?

- a) Is a minimum balance required on the account?
- b) Can I earn interest on this account?
- c) Is there a charge for the monthly service for check processing?
- d) Is there a charge for printing checks?
- e) Is there a fee to use the automated teller machine or get a banking agent's assistance by phone?
- f) Are the cancelled checks returned or are only images of the checks provided?
- g) What are the fees for bouncing a check (overdrafts) and stopping payment on a check?

2. How long does it take for a check to clear?

The process could be virtually instantaneous. Some merchants now use electronic check conversion. This allows the sales clerk to pass your check through a machine and immediately transfer the funds from your bank account electronically. (The actual check may be returned to you on the spot by the merchant.) A check could still be processed through the Federal Reserve's check clearing system and take as long as three days to clear, but you should never write a check without the funds in your account to pay the check.

3. What happens if my check bounces?

If you write a check for more than the amount you have in your checking account, the bank may handle it several ways. The bank may return the check to the person who attempted to cash it. That person may notify you and charge you a fee as a penalty in addition to collecting the face amount of the check. Writing a check when you do not have enough money in your account to pay it may be a crime, which could result in a fine or even prison. Or the bank may pay the check (and require you to make a deposit to cover the difference) and charge you a fee or a penalty.

4. What is the difference between Non-Sufficient Funds (NSF) and an Overdraft Privilege (ODP) offered by some banks and credit unions?

If there is not enough money in your checking account to pay a check presented for payment, your bank will generally stamp the check “NSF,” return the check to the person who presented it to be paid, and charge your account an NSF fee which can currently exceed \$30 for each insufficient item. The person to whom the check was returned has a right to charge you a fee in addition to the one charged to your account by the bank.

If a bank offers Overdraft Privilege to you on your checking account and you do not have sufficient funds to pay a check presented for payment, the bank will generally pay the check (up to the overdraft limit the bank has determined), charge you an ODP fee which is similar in cost to an NSF fee, and require you to deposit funds within a certain time period (usually 30 days) to bring your account balance positive. This feature is marketed as a way to avoid the embarrassment of repaying a merchant who has had your check returned and avoid paying the merchant’s additional returned check fee. This “privilege” is very costly and should not be relied on to pay usual bills.

5. How do you go about getting your bank to stop payment on a check that you have written? Why might you stop payment?

If you have paid for a purchase with a check and the purchase is not what was promised (such as a paint job on your pick-up that starts chipping the day you bring it home from the body shop), you may ask your bank to stop payment on that check. Most banks will require you to sign a stop payment form that lists the number of the check that should not be paid and the person or business to whom the check was payable. Most banks will also charge you a fee to put a stop payment on a check. A stop payment is good for 180 days from the date requested.

Returning to your paint job, just because you put a stop payment on the check to the body shop does not mean that the body shop is limited in its ability to collect the money that it might believe you owe; however, a court will usually have to decide the matter.

A stop payment is best used in cases where you have written a check for payment of goods or services, and you believe that the person to whom the check is paid will not correct any problem with the item not delivered as promised or the person will not be around to correct the problem. Be very certain you are right before stopping payment on a check because you could owe more money if you improperly stop payment.

6. What should you do if someone steals your checkbook and forges your name on a check?

You should notify your bank immediately when you discover the theft of your checkbook and forged checks. Your bank will generally close your old account and open a new account with a new number to keep any forged check from clearing. The bank may ask you to sign a forgery affidavit to assist the bank in recovering funds paid due to the forged checks. The law limits your right to recover from the bank funds lost through forged documents if not reported to the bank within 60 days from the time the bank first notifies you of the forgeries. The time period starts at the time that you receive your first bank statement showing the forgery whether you look at your statement each month or not. This is one very important reason why you should review your bank statement each month.

7. What are the potential consequences of writing a “hot check”?

In Arkansas, the first offense minimum penalty of the Hot Check Law is a fine of not less than \$50 nor more than \$500 and/or up to 30 days in jail; restitution of the amount of the check; and court costs. The fine and jail terms increase significantly for subsequent offenses and higher check amounts.

8. What is the difference between a certified check and a cashier’s check? When might you need either?

A certified check is a check drawn on your personal checking account which has been certified by your bank to have those funds available when the person to whom the check is made payable presents the check for payment. The face of the check will have “certified” written on it by the bank accompanied by a bank officer’s signature. A cashier’s check is a check drawn on an account of the bank, not your personal account. A cashier’s check may not be dishonored by the bank unless it has been tampered with or is a forgery. When you ask the bank to issue a certified check, the bank will place a hold on the funds in your account which will be used to pay the certified check. Those funds will not be released to pay any other items presented for payment. When you ask the bank to issue a cashier’s check, the bank will withdraw the funds from your account and place those funds in the bank’s own account. If a cashier’s check is lost, the bank may require you to purchase a bond or other insurance policy before it will replace the lost cashier’s check.

You may need a certified or cashier’s check when paying for a large purchase such as a car or boat or when dealing with someone who is unfamiliar with you. An authentic cashier’s check is probably safer for most transactions than handling large sums of cash.

9. What is a promissory note and how are they commonly used?

A promissory note is a written promise to pay a certain sum of money on a certain date with or without interest. They are used in most commercial transactions where you purchase an item and make payments over time. Promissory notes are also used when you borrow money from a bank (a loan) and agree to repay the money over time.

A promissory note will list the amount borrowed, the interest rate (if interest is charged), the date each payment is due, and the maturity date of the note. The promissory note will also state if there is collateral for the note or if the note is unsecured. An unsecured note is one where the lender relies solely on your ability to repay to make the loan. A note secured by property (whether it is a car, boat, furniture or home) usually has a lower rate of interest than an unsecured note, but if you do not make the payments on a note secured by your property, the lender may take your property (either by judicial or non-judicial process), and sell it to pay on the debt that you owe. If the lender does repossess and sell your property, you are still responsible to pay any balance left over.

10. What is usury?

Usury occurs when a lender charges more than the legally permissible maximum rate of interest. An amendment to Arkansas's Constitution limits the maximum interest rate that can be charged to 5% above the Federal Reserve Discount rate (now the Primary Credit Rate). When a contract provides for payment of interest in excess of the amount allowed by law, the unpaid interest shall be void and the borrower may recover twice the amount of interest paid to the lender.

A federal statute limits the applicability of the usury statute to banks and savings and loan, so they may charge interest that is higher than the rate in the Arkansas Constitution; however, the usury limitations still apply to car dealers who "tote the note," furniture stores who finance their own sales, and individuals lending money to others. Interest can add a great deal to any purchase that you finance, so you should be sure that you are charged a legal rate.

11. What if your bank statement shows that you have \$1,000 more in your account than your own calculations say, can you keep this extra money?

First, you should re-balance your checkbook records to see if there is really \$1,000 more in your account. You may have a check that you have written that has not cleared your account yet for various reasons.

Secondly, if there is really \$1,000 more in your account, you should contact the bank to resolve the error. The bank may have deposited the money in your account because another depositor wrote

your account number on the deposit slip in error. Mistakes sometimes happen, but you do not have the right to keep this money because of someone else's mistake. It is not your money.

12. What are some safeguards that you should take for paperless banking?

Paperless banking may save trees and be good for the environment, but you still need to be responsible and watch for the following:

- (a) Check your account at least monthly online to verify charges/debits and deposits made to your account. The law still limits some remedies you may have for wrongful charges even if you do not receive a paper bank statement each month.
- (b) Keep your Personal Identification Number (PIN) and login passwords secret. DO NOT provide this information to anyone else because you could be responsible for their actions on your account.
- (c) Keep your debit card and PIN separate. DO NOT write your PIN on your debit card or keep them together in your wallet. It is difficult to get a bank to reverse any charges made if you lose your wallet and someone uses your debit card and PIN to make a withdrawal from your account.

13. What happens if you have an arrangement with your bank to have certain bills paid automatically and the bank makes a mistake?

You should contact the bank as soon as you recognize a mistake has occurred. If the mistake is the bank's fault (and not the originator of the charge such as your cellular phone provider), the bank will generally investigate the error, correct the mistake and pay any late fees or charges that resulted from its error. Your rights under your arrangement with the bank, however, may be limited depending on the contract you signed with the bank for its Bill Payment Service.

**CHAPTER 9 - CONSUMER RIGHTS: Protection From Those Trying to
Sell You Stuff and Loan You Money**

Credit

1. What is credit?

Credit is any method of buying goods or services with an agreement to pay for them in the future. Some common examples of credit are credit cards, student loans, car loans and home mortgages.

2. What is collateral?

Collateral is an asset that guarantees a loan. If a debt is not repaid, then the lender can have the asset sold to have the debt repaid. For instance, if you borrow money to purchase a car, and then become delinquent in your car payments, the lender can repossess and sell your car to recoup all or part of the money you borrowed to buy the car.

3. What is the cost of credit?

Lenders do not give away money for free - there is a cost associated with wanting something now when you do not have the cash to pay for it now. In order to receive money to buy the item now, you must agree to pay the lender the amount you borrowed plus interest. Interest is most often expressed in the form of an Annual Percentage Rate (APR). The higher the APR, the more money you will have to pay back to borrow the money now.

4. How do you get credit?

There are several places that you may apply for credit: banks, credit card companies and sometimes the store itself.

5. What information does a company need to decide whether to give you credit?

Most businesses that extend credit obtain information from a credit reporting bureau. Companies are looking for your financial history. Basically, they want to know how much debt you have and whether you can and are paying off your other debts in a timely fashion.

6. What is a credit bureau?

There are three major credit bureaus: Equifax, Experian and TransUnion. These companies compile the information creditors look at to determine your credit worthiness. Current contact information:

Equifax: P.O. Box 740241, Atlanta, GA 30374; (800) 685-1111

Experian: P.O. Box 2104, Allen, TX 75013; (888) 397-3742
TransUnion: P.O. Box 2000, Chester, PA 19022; (800) 916-8800

7. What is a credit report and do you have the right to see one?

The credit bureaus produce what is called a credit report that evidences your credit history. It provides information like where you have lived, how many credit cards you have, how much debt you are currently carrying, and if you have any delinquent or late accounts. The credit bureaus take this information and determine your credit score, which ranges between 200 and 900. The higher the number the more likely you will receive credit under good terms.

Under current law you are entitled to receive one free copy of your credit report from each bureau per year. If you would like other copies you will have to pay for those. You can go to www.annualcreditreport.com to request your free yearly credit report, or you can contact the credit bureaus directly. It is recommended that you check your credit report at least once a year for possible errors.

8. What can you do if you believe your credit report contains erroneous or misleading information?

If you do find errors on your credit report you should file a written dispute with both the credit reporting agency and the company or individual that reported the incorrect information. For more information on how to do this you can go to the Federal Trade Commission's website at www.ftc.gov or contact the Arkansas Attorney General's Office website at www.ag.state.ar.us.

It is important to note that there may be some differences in the information presented among the three major credit reporting agencies and there will be differences in your credit score between the three. Just because there are small variations in your credit score between the three agencies does not mean anything is wrong.

The higher your credit score the more likely you will be granted credit and the better the terms you will receive when you are able to borrow. A low credit score can have consequences that may surprise you, such as:

- having to pay a deposit on a cell phone
- being denied employment
- being denied an apartment
- higher insurance premiums
- no loan or a loan at a higher interest rate

9. How can you establish a good credit history?

The best possible way to build a good credit history is to pay your bills and pay them on time. Avoid opening too many credit cards and other credit accounts.

Keep in mind that there are a number of businesses that claim that they can “repair your credit.” Most of these businesses are scams and should be avoided.

10. What rights do you have if credit is denied to you based upon information provided by a credit bureau?

Any time a lender views your credit report, you are entitled to view a copy of the report the lender used. If there is incorrect information on your credit report then you have the right to have that information removed.

11. What are some common loan terms that you may see in a loan application or agreement, and what do they mean?

Important terms may vary depending on what type of loan. A couple of terms that should be included on most loan agreements are the Annual Percentage Rate (APR) and the finance charge. Federal law requires almost all loans to disclose both the APR and the finance charge.

--Annual Percentage Rate (APR): A standardized measure of the cost of credit expressed as a yearly percentage. The higher the APR the more you are paying to borrow the money.

--Finance Charge: The total cost, expressed in dollars, to borrow a fixed amount of money. In other words, the finance charge tells you how much you will have to pay, including interest and fees, to borrow a certain amount of money.

If you have questions about a term in a loan agreement, ask someone that you know and trust. Ask questions until you are satisfied you understand. Take the time to shop around for the best credit available. You are entitled to take a credit offer with you to compare to another offer. But once you sign, you are probably bound to the terms.

12. What can you do if you sign a loan agreement and later realize that you misunderstood the terms?

There is generally no absolute right to cancel. Therefore you should be careful and read any agreement thoroughly before signing. However, you may be able to cancel the contract after you signed it if:

---You were not legally competent to sign the contract;

---You signed the contract as a result of fraud, misrepresentation, or misleading business practices;

---If the goods you bought were defective;

---You may have other cancellation rights, and you should contact an attorney to discuss your options.

13. What does it mean to “cosign” a loan?

It is fairly common for lenders to want the parents or guardians of young borrowers to “cosign” for a loan. The young borrower does not have a long credit history and may not be on the best financial footing. A cosigner is liable for the debt in the event the young borrower cannot pay off the debt.

14. Can a lender have different rules for making loans to men, women or minorities?

No. Federal and State laws prohibit a lender from discriminating based on race, gender or ethnicity.

15. Under what conditions can a bank demand full and immediate repayment of a loan or take possession of collateral?

Most lending contracts have what is called an “acceleration clause.” If you miss a payment or if you are late on a payment, the bank may have the right to immediately demand full repayment of the loan.

If you are unable to pay the full amount of the loan, the bank can take possession of the collateral under certain circumstances. After taking possession of the collateral, the bank will attempt to sell the collateral to recoup the balance on the loan. A common example of this is home foreclosure.

Credit Cards

1. How do credit cards work?

Credit cards are one of the most common forms of credit and are readily available to young people. Credit cards allow a person a monthly line of credit. At the end of each month, any charges to the card must be paid off or the company will charge the customer interest on the remaining unpaid balance.

Credit card interest is often very high, and it is not usually advisable to carry a balance beyond one month. For instance, if you charge \$1,000 at 18.5% APR and make only the monthly minimum payments, it will take you 11 years and \$1,987 in interest, in addition to the principal, to pay back the \$1,000 you borrowed. In other words, that \$1,000 television would actually cost you almost \$3,000 (not to mention probably break before the 11 years is up). Do your best to pay off the balance in full or at least as soon as possible.

2. What is the “grace period”?

The grace period is the time from when you purchase a good to when payment is due. With most cards, the payment is not considered due until your card’s next monthly bill is due. During the grace period, the credit card does not charge you interest on the balance. Interest is not applied to balances paid off monthly.

However, some cards begin charging interest sooner than the one month billing cycle. You should not take out a card that does not have at least a 20 day grace period.

3. What should you look for in a credit card?

- A low Annual Percentage Rate (APR).
- No Annual Fee (some cards charge a yearly fee to use their card).
- A long “grace period.” At least 20 days.
- Low fees. Some examples are late payment fees, balance transfer fees, over credit limit fees, etc.
- There are lots of different cards. You should try to find one tailored to what you need.

4. Why not use a credit card instead of checks or cash?

There is no legal difference between paying with a credit card, a check or cash. However, if you cannot pay off the balance of your credit card at the end of the month, then you will be paying expensive interest charges on the remaining balance. It is usually best to only put on a credit card what you can pay-off at the end of the month.

5. What if you discover an error in your credit card bill?

Errors should be reported in writing as soon as possible to the credit card company. You have a limited time period to dispute errors so do not delay.

6. What should you do if your credit card is lost or stolen?

Call the card issuer as soon as possible and report that the card has been lost or stolen. Follow up with a letter to the issuer that includes the account number, when the card went missing, and when you reported it to the issuer.

If you report the loss within two business days after you realize your card is missing, you will not be responsible for more than \$50 for unauthorized use. However, if you don't report the loss within two business days after you discover the loss, you could lose up to \$500. You also risk unlimited loss if you fail to report an unauthorized transfer within 60 days after your bank statement containing unauthorized use is mailed to you.

You are not liable for unauthorized Internet transactions where someone has stolen your account number, assuming you report the unauthorized use upon detection.

7. Should you sign the back of your card?

Yes, sign it with a pen as soon as you get it. While some clerks do not check the signature, many do.

Other useful credit card tips:

- Do not lend your card to someone else.
- Keep your receipts. If there is a dispute you will be glad you had them.
- Never give out your credit card information over the phone or on the internet, unless you initiated the transaction.
- Credit Card Offer Opt-out. To slow down the number of "pre-approved" credit card offers you receive you can call (888) 567-8688 or go to www.optoutprescreen.com.

Debit Cards

1. What is the difference between a debit card and credit card?

While a debit card may look like a credit card, it is not the same thing. A debit card is linked to a checking or savings account at your bank or credit union. It is similar to writing a check. If you do not have enough money in your account and do not have overdraft protection, your transaction will be declined.

2. What is overdraft protection and should I have it?

Most banks offer overdraft protection to their customers. If you spend more money than you have in the bank, the bank will cover the charge for a fee. Overdraft protection can be beneficial but it is also expensive. Banks presently charge fees as high as \$35 for a single overdraft item.

If you use your debit card for a \$1 soda and don't have the funds in your checking account, the bank will pay the item and charge you a \$35 overdraft fee. Congratulations, you just bought a \$36 soda!

If you have overdraft protection, it is important to remember that it should not be used as a way to pay for things you cannot afford.

Money Problems

1. What do you do if you are behind on your bills?

If you are having troubles paying your bills do not ignore the problem.

If it is a credit card bill, stop charging things to your card. Contact the credit card company and notify them of the problem. They may be able to offer you a payment plan.

If the problem involves utilities such as water or electricity, you should contact the company as soon as possible. Most companies will be able to offer you an extension or some form of payment plan.

In order to get these debts paid off, you should trim your expenses. Plan a monthly budget, eliminate non-essential purchases, cut costs and stick to your budget. Live below your means.

If you are unable to solve the problem yourself, you may want to talk with a credit counselor. A credit counselor may be able to negotiate better rates on your outstanding bills, as well as payment plans you can afford. Be careful of credit counselors that charge large sums of money for their services. If you have questions about a credit counselor, you can contact the Attorney General's Office.

2. What is bankruptcy and when is it something that you should seriously consider?

Bankruptcy is a special court proceeding operated through the Federal Bankruptcy Court system. A fundamental goal of the federal bankruptcy laws is to give debtors a financial “fresh start” from burdensome debts. This goal is accomplished through the bankruptcy discharge, which releases debtors from personal liability from specific debts and prohibits creditors from taking any action against the debtor to collect those debts.

Bankruptcy is not something you should enter into lightly. For the average consumer, bankruptcy should only be considered if there is no other option to paying your debts. You should consult an attorney before deciding to file bankruptcy. Bankruptcy law now often requires debt counseling prior to filing for bankruptcy.

3. What happens once you declare bankruptcy?

The most common form of bankruptcy is Chapter 7, in which the consumer’s assets are liquidated to pay the consumer’s debts. In Chapter 7 there is a court-supervised procedure by which a trustee takes over the assets of the debtor’s estate, reduces them to cash, and makes distributions to creditors, subject to the debtor’s right to retain certain exempt property and the rights of secured creditors.

4. What can you keep if you declare bankruptcy?

The Bankruptcy Code allows an individual debtor to protect some property from the claims of creditors because it is exempt under federal bankruptcy law or under the laws of the debtor’s home state. In Arkansas a debtor may choose to use the federal exemptions or the Arkansas exemptions.

An attorney should be consulted regarding exemptions, but here are a few things that are typically exempted: your house or homestead, one car that is not subject to a lien by a secured creditor, your clothes and a limited amount of money.

5. What if anything can you do to stop calls and letters from creditors?

The Federal Fair Debt Collection Practices Act (FDCPA) protects consumers from harassment by debt collectors. Personal, family and household debts are covered under the act. This includes money owed for the purchase of an automobile, for medical care or for charge accounts. Among other restrictions, a debt collector may only contact a person

between the hours of 8 a.m. and 9 p.m. Debt collectors may not contact the consumer at his job if the debt collector is aware that the employer prohibits personal calls. A person may notify a debt collector in writing if he or she does not want any further contact with the collector. Once this notice has been received, the debt collector must stop all communications, except to notify the person that a specific action will be taken.

Creditors may not harass you, nor can they make threats that you will be criminally prosecuted or arrested.

Helpful Resources - Government and Private

– The Arkansas Attorney General

Consumer Protection Division
200 Tower Building
323 Center St.
Little Rock, AR 72201
(501) 682-2341 (in Pulaski County)
1-800-482-8982

The Public Protection Division of the Attorney General's Office deals with a wide range of consumer issues including charities, health care, antitrust, tobacco, environmental, public utilities and other areas. If you are having a problem with a company, you can file a consumer complaint with the Public Protection Division to see if the Attorney General's Office can facilitate a resolution to the matter, refer to a more appropriate source for assistance, or otherwise provide you necessary information. Additionally, the Attorney General uses the Arkansas Deceptive Trade Practices Act, which prohibits unlawful, deceptive or unconscionable business practices.

– The Arkansas Public Service Commission

1000 Center St.
P.O. Box 400
Little Rock, AR 72203
(501) 682-1718 (in Pulaski County)
1-800-482-1164

The APSC regulates the rates and services of the public utilities in Arkansas, including phone, natural gas, water and electricity. The Consumer Services Section works with customers to answer questions and resolve complaints about the rates and services of regulated utilities.

– The Better Business Bureau of Arkansas

12521 Kanis Road
Little Rock, AR 72211
(501) 664-7274 (in Pulaski County)

1-800-482-8448
www.bbb.org (National website)

Research a business, find out how long it has been around and its track record of dealing with consumer complaints. If you have a complaint about a company, you can file the complaint with the BBB to see if the BBB can mediate the matter for you.

– The Federal Trade Commission
(877) FTC-HELP (382-4357)
www.ftc.gov

The FTC's Bureau of Consumer Protection works to prevent fraud, deception, and unfair business practices in the marketplace. The Bureau enforces federal laws that protect consumers, provides information to help consumers exercise their rights and spot and avoid fraud and deception, and provides consumers a forum to get information or file a complaint about fraud or identity theft.

– Find a Lawyer

If you need a lawyer and don't know how to find one go to www.arkbar.com. This site allows you to search by name of attorney, city, county or type of service.

Common Scams and Schemes

A scam is a fraudulent scheme which is meant to separate a person from his money or property. Scammers often target the elderly, the uneducated or the desperate. Once a scammer has your money, you may have little chance of seeing it again. So, the best way to protect yourself is to try and recognize a scam before it happens to you. Here are a few signs you should look for:

1. If it seems too good to be true, it probably is. Scammers prey on people's desire for a good deal, as well as their greed.

2. They "need" your money now. Most scammers are trying to get hold of your cash as quickly as possible. Before giving away your money, make sure you are dealing with a legitimate business.

3. High pressure tactics to act now. Scammers may say the offer is only open for a limited time, or they may say it is only available to a select group. Resist the sales pitch. If the offer is legitimate, it will still be there once you have thoroughly checked it out.

4. Ask for details. Often scammers will not want to answer your questions about who they are, where they are or who their other customers are. If they will not answer or cannot answer, it is a good bet that the offer is not legitimate.

5. If they say something is “free,” then you should obviously not have to send them money. If you have to send a shipping fee, a holding fee, or any other kind of “fee,” then whatever they are selling is not free.

–Charities

Most people have a soft spot when it comes to charities. Unfortunately, there are people out there that are willing to play on your sympathies in order to con you out of your money. Not only does this hurt you, but it also hurts legitimate charities that could have made good use of that money. Before making a donation check out to the charity, contact the Better Business Bureau and the Attorney General’s Office. These organizations keep track of charities and how they operate. Here are some things to think about before giving your money:

1. Does the charity publish how much money it raises and what it spends it on?

2. Are you talking to the charity or a paid solicitor? If it is a paid solicitor, how much of your donation will actually reach the charity? Too often, much of the money that goes to a paid solicitor does not end up with the charity.

3. Ask for information about what kind of projects this charity does? Do they have any information they can send you? Do they have a website? Find out as much as you can before you give.

4. Find out how long the charity has been in existence.

5. Be wary of high pressure tactics and emotional appeals. A legitimate charity can wait for your money until you have researched the charity.

If you do not have the money to give, do not give it. A lot of charities need volunteers. Your time is as valuable as your money.

–Home Repair

People who go door to door soliciting odd jobs around your house or yard may be legitimate or they may be trying to take your

money. If they want money up front for the job or for supplies, think before you pay them in advance. Once you pay you may never see them again.

Before you hire someone, ask for references and actually check the references. Get the details of the work to be performed and the estimate of the cost in writing before you allow work to begin. Also, you need to confirm that they are insured and bonded.

–Job Search or Scholarship Scams

Be skeptical of any company that requires an upfront fee to locate a job or a scholarship. A legitimate job finder will only charge a fee once you are placed in a new job. Many charge the business, not you. Scholarship information is easily found using the Internet or contacting university financial aid departments. You should not have to pay for it. Beware of any company that offers you a guarantee that they will find you a job or a scholarship.

–“Phishing” scams

Beware of any phone call, e-mail, or letter that asks for any personal information like your Social Security number, bank account number or birth date. If you did not originate the communication, the scammers may be trying to steal your identity. They may pretend to be with your bank, credit card company or insurance company. They may ask for you to confirm your bank account number or other important information. Do not be fooled. If they are with the bank, they should obviously already have this information.

–Travel Scams & Free Prizes

Businesses that advertise “free” vacations are not usually free. If you have to pay any type of fee for a trip you “won,” then you have not won a trip. Often there are large up-front costs. If you are not careful you may end up paying money and not even getting a trip. If you want to buy a vacation package, do your homework. Use a local travel agent and check out the business with your BBB and the Attorney General’s Office before paying any money for the trip.

–Debt Settlement, Credit Counseling and Credit Repair

There is an upswing in these types of businesses when the economy is in trouble. The main theme these scammers use is that they can fix your economic problems. Of course you have to pay them before they can get started. Often you do not get the results you were promised.

If you are having problems paying your debts, try contacting your creditors yourself first. The creditors may work with you. If this does not work, there are a number of non-profit organizations that will help you for little or no fee. If you need help finding a non-profit credit counselor you can contact the Attorney General's Office.

Do not pay high fees based on promises that your debts or interest rates will be lowered. Put your money to paying off your debts.

Do not pay money to companies promising to "repair" your credit. Remember, only incorrect information can be removed from your credit report. You can accomplish this yourself. Additionally, it is illegal for a credit repair company to take a fee before they actually complete the job.

– Work-at-Home

This scam usually promises easy money while you work at home. Typically, the scammers require you to purchase something in advance before you can start your business. They may have you buy a "how to" manual or sell you an "exclusive" franchise. More often than not, the only person that makes any money is the salesperson. If you have a question about a work-at-home business, contact the BBB or the Attorney General's Office before you become involved.

Other General Consumer Information

1. What precautions should you take when buying items in the mail or over the Internet?

Both the mail and Internet make it easier to purchase goods and services from all over the United States, as well as from other parts of the world. They also make it easier for scammers to take advantage of you. Here are some precautions to take when buying something through the mail or over the Internet.

Do not respond to unsolicited e-mails. Do not respond to e-mail messages asking you to go to a website or click on a Web link and update your account information.

If you are concerned that an institution might really need to reach you, go ahead and contact them directly, but not via the e-mail message you received or the information on the letter. Look up their information from another trusted source.

You could consider using an intermediary service for your online transactions. Using a credit card is a good option. If something goes

wrong, you at least have the option of disputing the charges and possibly getting your money back.

Some credit cards offer a service where they will give you a one-time only transaction number for online purchases. This way your regular credit card number will not be provided to the company.

Look for signs of security. When you reach the point of payment or of sharing your personal information, the website should be secure. Most websites will indicate that you have reached a secure site. You should also look at the web address. Look for “https” in the address.

Do not pay outside the system. Fraudulent sellers will ask you to ignore the regular method of payment and wire them money instead. Or, they may want you to place money in what will turn out to be a phony escrow account. Do not fall for this scheme!

Check the seller’s reputation. You should check the company out with the BBB and/or the Attorney General if you are uncomfortable with doing business with them. Opt for a seller who has sold at least ten items and who has a high satisfaction rating. Most websites allow other buyers to post feedback on previous transactions; take a minute to read about other customers’ experiences.

2. If you buy something from a store and you bring it home and discover that it is defective, what can you do about it?

Many stores have a return policy. Before buying something you should check out what it is. Some stores allow the return of unused or unopened items regardless of condition.

Most stores should allow you to return defective items regardless of whether or not the item has been opened or used. Stores often limit the time in which an item may be returned. Some items have a warranty. Check the terms of the warranty to see what steps to take if the item is defective.

If the store does not allow you to return the defective item, before contacting an attorney you should consider contacting the Better Business Bureau or the Attorney General’s Office. Sometimes, the BBB or the AG can mediate a satisfactory result for both the consumer and the business.

3. What can you do about telemarketers calling you?

The National “Do Not Call Registry” allows consumers to limit the number of telemarketing calls they receive. The registry is run by the Federal Trade Commission. To sign up go to www.donotcall.gov or call 1-

888-382-1222. Most telemarketers have one month to stop making phone calls to numbers that have been listed. The service is free.

If you continue to receive calls from covered telemarketers you can file a complaint with the FTC at www.donotcall.gov or by calling 1-888-382-1222. You will need to provide either the name or the telephone number of the company.

Some telemarketers block their number from your caller ID. This practice is illegal in the State of Arkansas. If this happens to you, you should file a complaint with Attorney General's Office.

**CHAPTER 10 - EMPLOYMENT: Entering the “Real World” and Earning
a Paycheck**

Applying for a Job

1. What are some illegal types of interview questions, and why are they improper?

Title VII of the Civil Rights Act of 1964 and similar laws apply to all employers with 15 or more employees, including the government, employment agencies, and labor organizations. Those laws prohibit discrimination against employees and potential employees on the basis of certain protected characteristics.

Potential employers should not ask you questions related to those protected characteristics, including: your gender, race or color, national origin, marital status, family status (e.g., whether you have children or parents who require care and attention), religion, age, and medical or disability status, including pregnancy. In addition, potential employers should not ask you about your membership in or opinion of unions.

Questions on the above characteristics are improper because, typically, they are not related to your qualifications for a particular job. However, where one of the listed characteristics is a true job qualification (e.g., a job requires that you be at least 18 years of age), a potential employer may ask you specifically about that qualification. Regarding disability status, an employer may only ask whether you can perform the essential functions of the job, either with or without an accommodation. An employer may be required to make an accommodation for any disability you have if the accommodation is reasonable and does not impose an undue hardship on the company.

Some examples of illegal interview questions are:

- A. What country are you from?
- B. Are you pregnant? Do you have young children?
- C. How old are you? When were you born?
- D. What does your husband/wife do for a living?
- E. Do you belong, or have you ever belonged, to a union?
- F. Where do you go to church?

2. What are some legal types of interview questions?

Information about you may be requested either during an interview or on a written application form. Potential employers are allowed to ask you information that is relevant to your qualifications for a particular job or information that may indicate your potential performance on the job. All questions asked of you should be job-related. For example, potential employers may ask whether you will be able to meet the job's attendance requirements. They may also describe or demonstrate job duties and ask whether you will be able to perform those duties (with or without a reasonable accommodation for any disability you may have).

Some examples of legal interview questions are:

- A. What previous work experience do you have?
- B. Are you a citizen of the United States? If not, can you furnish proof of your legal right to work and remain in the U.S.?
- C. Can you work the hours required for this job? Do you have any obligations that would prevent you from working the required hours or any required overtime?
- D. If you are applying for an interstate commercial driving position, are you at least 21 years of age?
- E. How often, in the last year, have you missed work?
- F. What are the names and positions of any relatives employed by this company?
- G. To what organizations do you belong that are related to this job?
- H. Can you perform the essential functions of this job with or without a reasonable accommodation?

Employers may also ask you questions about previous criminal convictions that are reasonably related to a particular job.

3. What if you lie on your job application and your employer later finds out about it?

Most employers have a policy of terminating employees if they find out that the employee made a misstatement on his/her job application. No employer values dishonesty, and a false statement on a job application may indicate that you are not an honest person.

Discrimination, Sexual Harassment and Unsafe Working Conditions

1. What are some types of illegal discrimination?

There are federal, state, and (in some places) local laws prohibiting discrimination. In general, it is illegal for employers to discriminate against you on the basis of your race, color, gender, religion, national origin, age, or disability, including pregnancy. In many locations, it is also illegal for employers to discriminate against you on the basis of your sexual orientation or marital status. Employers may not discriminate against you with regard to hiring, promotion, job assignments, pay or other terms or conditions of employment.

Discrimination may be in the form of unwelcome physical or verbal conduct that is offensive, disparaging or defamatory and is based on a protected characteristic. Such behavior may make you feel uncomfortable at work or may interfere with your ability to perform a job. The posting or distribution of offensive, disparaging and/or defamatory cartoons, drawings, or any other material which negatively portrays a protected characteristic is also illegal.

2. What is sexual harassment and what can you do about it?

Sexual harassment is a form of sex discrimination which is prohibited by Title VII of the Civil Rights Act of 1964. Sexual harassment occurs when unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

The following facts about sexual harassment are important to know:

- The harasser's conduct must be unwelcome.
- The victim and the harasser may be either male or female. The victim does not have to be the opposite sex of the harasser.

- The harasser may be the victim’s supervisor, a supervisor in another area of the company, a co-worker, a customer of the employer, or another non-employee that the victim comes into contact with on the job.
- The victim does not have to be the person who is actually harassed but may be anyone who witnesses and is adversely affected by the offensive conduct.
- Unlawful sexual harassment may have occurred even though no one has been fired or suffered a monetary loss.

3. What should you do if you believe that you have been illegally discriminated against or harassed?

In situations of discrimination or harassment, it is often important for you to inform the offending person directly that the conduct is unwelcome and should stop. You should then contact either your manager or the company’s human resources department to report the conduct and request an investigation. If those avenues do not produce results, you should use any formal complaint mechanism or grievance process that the company has available. If the company still does not handle the situation appropriately, you may contact the U.S. Equal Employment Opportunity Commission (EEOC) at www.eeoc.gov.

If you want the EEOC to assist you, you should contact them as soon as possible. You have only a limited amount of time (typically 180 days) to file a complaint. If you are considering filing a lawsuit against the company, you should know that most complaints of discrimination or harassment must go through the federal or state process before you will be allowed to proceed with a lawsuit.

4. What does “equal pay for equal work” mean and how does it relate to you?

“Equal pay for equal work” means that employees have a right to be free from discrimination in the amount of pay, or compensation, they receive. Pay equality is protected under several federal laws, including the Equal Pay Act of 1963, Title VII, and the Ledbetter Fair Pay Act of 2009. Though it is illegal for an employer to pay you less than a co-worker based on any of the protected characteristics mentioned above, courts will generally look to see whether you are performing work which is substantially similar to the work being performed by a comparable employee. For example, a company should pay equal wages to a man and woman who are performing jobs that require substantially the same skill,

effort, and responsibility, where those jobs are performed under similar working conditions within the same work location. Disparity in pay is probably not illegal when it is based on factors such as the employees' seniority, merit, or quality of work.

5. What should you do if believe that there are dangerous or hazardous work conditions at your place of employment?

If you believe that there are working conditions at your place of employment which cause safety or health risks, you should immediately notify your manager and/or your company's safety department of your concern. If your employer ignores the problem, you may file a formal complaint with the Occupational Health & Safety Administration (OSHA) at www.osha.gov.

Unfortunately, as a general rule, you do not have the right to walk off the job (without facing termination) due to unsafe conditions. Nonetheless, you should request that the company rectify those conditions immediately. You may refuse to work if you genuinely believe there is an immediate danger of death or serious injury and there is not enough time to work through the proper process to have the danger removed.

6. Can you be retaliated against if you report discrimination, harassment or unsafe practices at your job?

It is unlawful for a company to fire, demote, harass, or otherwise retaliate against you for opposing discriminatory employment practices, for filing a discrimination charge, or for participating in an investigation or litigation regarding discriminatory employment practices. The same laws that prohibit discrimination based on protected characteristics also prohibit a company from retaliating against a person who opposes unlawful discrimination or harassment. Likewise, employees who report safety or health concerns are protected from retaliation for exercising their rights under OSHA.

In order to qualify for protection, you must be a covered individual who has engaged in a protected activity. That means you must have outwardly opposed unlawful practices, participated in proceedings or litigation related to unlawful practices, or requested an accommodation based on a protected disability. Also, your employer must take an adverse employment action against you and the protected activity must have contributed to the adverse action. Adverse actions could include: threats, demotion, reduction in pay, discipline, termination, or similar activities.

Taxes

1. Do I need a Social Security number to get employment?

Yes, unless you are ineligible for a Social Security number. In that case, you would need an Individual Taxpayer Identification Number (ITIN). An example of an individual that may need an ITIN is a U.S. resident who is not a citizen.

Your employer is required to report your wages to the Internal Revenue Service (IRS). The IRS is the agency that collects federal taxes from taxpayers. The IRS uses your Social Security number or ITIN to process your federal tax payment. If you need additional information you should check with your local Social Security office, go to www.ssa.gov, or call 1-800-772-1213.

2. What is income tax withholding?

Employers withhold payroll taxes and income tax from employees' pay. Gross pay is the amount the employee earns. Net pay, or take-home pay, is the amount the employee receives after deductions. The difference between gross pay and net pay includes withholdings for Social Security taxes, Medicare taxes, Income taxes withheld (state and federal), and other amounts withheld. Employers send the amounts withheld to the taxing authorities.

3. What is a Form W-4?

Employees complete Form W-4, *Employee's Withholding Allowance Certificate*, to assist the employer in determining how much federal income tax to withhold from employee pay. The amount of federal income tax withholding depends on the employee's marital status, the number of withholding allowances claimed by the employee, any additional amount the employee wants to withhold, and any exemptions from withholding that the employee claims.

4. What are payroll taxes?

Payroll taxes include the Social Security tax, the Medicare tax, and the unemployment tax. Social Security taxes provide the following benefits for employees and their dependents: retirement benefits, benefits for the dependents of retired workers, and benefits for the disabled and their dependents. With the Social Security tax, your employer pays half of the premium, and you pay the other half. The Medicare tax is used to provide medical benefits for certain individuals, including senior citizens and disabled U.S. Citizens. Generally, you are eligible for Medicare if you or your spouse worked for at least ten years in Medicare-covered

employment and you are 65 years or older and a citizen or permanent resident of the United States. If you aren't yet 65, you might also qualify for coverage if you have a disability or End-Stage Renal disease (permanent kidney failure requiring dialysis or transplant).

The unemployment tax provides for payments of unemployment compensation to workers who have lost their jobs.

5. How are federal income taxes used?

Federal income taxes are used to provide for national programs such as defense, veterans and foreign affairs, social programs, physical, human and community development, law enforcement, and interest on the national debt.

6. If I am a full-time student, am I exempt from federal taxes?

There is no exemption from tax for full-time students. Every U.S. citizen or resident must file a U.S. income tax return if certain income levels are reached. Factors that determine whether you have an income tax filing requirement include: the amount of your income (earned and unearned), whether you are able to be claimed as a dependent, your filing status, and your age.

Regardless of your income, you should file an income tax return as you may have income tax withholding that you would like refunded to you, or you may be entitled to certain refundable credits.

7. Will I get back any of the tax that I pay?

If certain income levels are reached, you (or your accountant) must complete an income tax return each year and mail it to the Internal Revenue Service (IRS) no later than April 15. If it turns out that you paid too much tax for your level of income, you may be entitled to a refund. If it turns out that you did not pay enough, you will be required to pay the difference to the IRS. Therefore, it is important that when you begin employment you fill out the appropriate paperwork so that enough tax is being deducted from your paycheck.

Workers' Compensation

1. In general, what is workers' compensation and how does it work?

The purpose of workers' compensation is to pay benefits to workers who are injured on the job. Benefits are available for three types of work-related injuries: 1) injuries caused by specific accidents, 2) injuries

that occur gradually because of some work-related cause, and 3) work-related diseases.

When an employee suffers a work-related injury, the employer (or its insurance company) is required to pay for appropriate medical treatment for the injury, including the costs of medication, travel expenses, ambulance fees, and other related expenses. The employer or its insurance company is entitled to choose the doctor who treats the employee, but if the employee wants to switch to a different doctor she can request a "Change of Physician" from the Workers' Compensation Commission.

If the employee misses more than a week from work because of the injury, the employer must usually pay weekly disability benefits (called "temporary total disability" or TTD) until the employee is able to return to work or until she completes her medical treatment, whichever occurs first. If the injury causes permanent damage to the employee's body, the employer must usually pay benefits for that damage (called "permanent partial disability" or PPD).

Sometimes a work injury is severe enough that the worker cannot return to her old job. If the worker cannot do any meaningful work because of the injury, she is considered to be "permanently totally disabled" and is entitled to weekly disability benefits until she reaches the age of 65. If she cannot do her old job but can possibly do other types of work, she may be entitled to additional disability benefits (called "wage-loss") for up to 450 weeks after the end of her medical treatment. A worker who cannot return to her old job may also be entitled to job training or education expenses to help her find other employment.

When an employer or insurance company denies a claim or refuses to pay a benefit, the employee can file a claim with the Arkansas Workers Compensation Commission in Little Rock. The Commission has a staff of judges who conduct hearings on disputed claims. A claim can be filed with the Commission at any time for up to two years after the injury (or, past that time, for up to a year after the last time the employer or insurance company paid for any benefits).

2. Who is and is not eligible for workers' compensation?

Generally, an employer is required to carry workers' compensation insurance if it has at least three employees, including the owner. Some employers are required to carry workers' compensation insurance even if they have only one or two employees—almost all contractors and subcontractors in the construction industry fall in this category.

The vast majority of employees are eligible for workers' compensation benefits if their employer is required to carry coverage. Sometimes employers try to avoid this obligation by calling their employees "independent contractors." If those employees meet the criteria of the law, they are entitled to benefits regardless of whether they are called independent contractors, and regardless of whether they signed a contract or waiver that claimed they were independent contractors.

A few categories of employees are not covered by workers' compensation, but most are. Federal government employees fall under a different system, as do railroad workers. Farm laborers are usually not entitled to benefits, unless their employer carries insurance coverage.

If you are injured on the job and do not know if you are entitled to benefits, talk to an attorney—do not assume you are ineligible and do not automatically believe your employer if he says you are not eligible.

3. Must the injured worker prove that the employer was at fault in order to collect workers' compensation benefits?

No. In workers' compensation, an injured worker is entitled to benefits regardless of who was at fault or how the accident happened. However, there is an exception to this rule. If the worker was intoxicated or under the influence of illegal drugs at the time of her injury, she may be disqualified from receiving benefits. The law allows employers to require that their workers be tested for drugs when they get hurt on the job.

4. Can an employer fire an injured worker for filing a workers' compensation claim?

The law makes it a crime for an employer to fire an injured worker for filing a claim, but this does not mean you cannot be fired after filing a claim. Arkansas is known as an "at-will employment" state. This means that an employer can fire an employee for almost any reason, so long as the reason is not illegal. If you file a workers' compensation claim, your employer cannot fire you for doing so, but he can fire you if he has some other reason to justify your termination.

5. How long is an employee entitled to receive workers' compensation?

Generally, an employee is entitled to receive weekly disability benefits until she is able to return to work, or until she completes her medical treatment, whichever occurs first. She is also entitled to medical treatment for as long as it is reasonably necessary, for up to two years after the injury. After two years she may still be entitled to medical treatment,

but the law sets certain deadlines she must meet for getting treatment and filing claims.

If you are ever hurt on the job, talk to an attorney about your options. The Arkansas Workers Compensation Commission has a staff of Legal Advisors who can answer questions about your rights under the law. They can be reached, toll-free, at (800) 250-2511.

CHAPTER 11 - MEDICAL AND PRIVACY RIGHTS: Protecting and Making Decisions About Your Body and Personal Affairs

1. What are your rights with respect to obtaining or declining medical treatment?

As a competent adult, you generally have the right to request or refuse medical treatment for yourself. If you are under the age of 18 or lack capacity to make health care decisions for yourself, a health care provider will look to a parent or guardian to make decisions about your care. You have a right to refuse medical treatment (including life-sustaining treatment under certain circumstances), after your provider has informed you of the risks and benefits of treatment and the consequences of refusing such care.

2. What is a hospital's obligation to treat someone who comes to their emergency room for medical assistance, even if they do not have medical insurance or an ability to pay?

Under federal law, a hospital that participates in Medicare and has an emergency room is required to provide any individual who comes to the hospital's emergency room for a potential emergency with a medical screening to determine if a medical emergency actually exists. If the examination shows that an emergency condition exists, the hospital is then required to stabilize the patient prior to discharging that patient or transferring the patient to another hospital. This federal law, known as the "Emergency Medical Treatment and Active Labor Act of 1986" or "EMTALA," imposes these requirements regardless of the patient's insurance status or ability to pay.

Be aware that some hospitals have a "charity care" policy that may allow you to receive free or discounted treatment depending on your income and circumstances. If you find yourself in need of hospital treatment that you are unable to pay for, you should ask a hospital representative for a copy of the hospital's charity care policy, and ask the representative to explain the policy to you.

3. Can a hospital force you to leave if you are not able to pay your bills, and if so, when?

Once you are admitted to a hospital, the hospital is generally required to stabilize your condition, regardless of your ability to pay. This means that a hospital cannot discharge you simply for failing to pay your hospital bills, particularly if you require continued treatment to prevent deterioration of your condition. A hospital that discharges a patient before the patient is stable may be liable for possible violations of EMTALA and/or for medical malpractice.

4. What are some examples of medical malpractice?

Medical malpractice is any act of medical treatment by a medical care provider that does not live up to the expected level or standard of care. The classic example of medical malpractice is that of the surgeon who leaves something, such as a sponge, bandage, or piece of gauze, inside a patient after an operation. Other examples of medical malpractice include failing to properly read an x-ray, failing to perform the proper medical tests or misreading test results, giving a patient medicine in the wrong dose or medicine to which the doctor or nurse knows or should know the patient is allergic, failing to properly perform a surgery or other procedure, and failing to properly explain the risks of a surgery or procedure.

It is important to keep in mind that the fact that you have had a complication or unexpected outcome following a surgery or medical procedure does not mean that you have been the victim of medical malpractice. Every procedure carries a certain amount of risk, and sometimes things will go wrong despite everyone's diligence and best efforts. However, Arkansas law imposes strict requirements for pursuing a medical malpractice lawsuit, so if you do believe that you have been the victim of medical malpractice, consult an attorney experienced in medical malpractice cases as soon as possible.

5. What is a "living will" and what are some of its benefits?

A "living will" is a legal document that tells medical professionals and members of your family to what extent special means should be used to keep you alive if you are terminally ill or become permanently unconscious. A living will is a type of advance directive, meaning it allows you to make decisions about your care ahead of time while you are competent and able to communicate your wishes. A living will allows you to decide, for example, whether you want to receive such interventions as surgery, CPR, dialysis, a ventilator, or a feeding tube to keep you alive. You can request that all possible measures be taken to save your life, indicate that there are some that you want and some that you do not want, or ask that none be given at all. In the event that you direct that no lifesaving interventions be provided, your health care provider will make sure you are given comfort care, such as pain medications.

Living wills are helpful because they allow you to have control over your treatment, even after you are no longer able to direct your care. They can take the burden off of family members who would otherwise be left to make difficult decisions regarding your end-of-life care, and can minimize disagreement among family members regarding the care you should be provided. Many people mistakenly believe that living wills are

only needed for the elderly or seriously ill - to the contrary, living wills may be especially useful in situations where a younger person suffers an unexpected, traumatic injury or illness, as these situations are likely to be particularly difficult for family members faced with end-of-life decisions.

6. What are the benefits of organ donation and how do you go about it?

The benefits of organ donation are that you will be helping to alleviate a severe, nationwide shortage of organs. According to the Arkansas Regional Organ Recovery Agency (“ARORA”), there are currently over 100,000 people waiting for organs in the United States, and a new person is added to the national waiting list every 14 minutes. One third of those waiting for an organ will die before they get a transplant.

To become an organ donor, simply say “yes” when you obtain your driver’s license and are asked if you would like to become an organ donor. You can also contact any Arkansas revenue office or ARORA at 501-907-9150 or 866-660-5433 for a “donor data change form,” which will allow you to add or delete yourself from the state organ donor registry.

More information on organ transplants and becoming an organ donor is available at the ARORA website, www.arora.org.

7. What are a woman’s legal rights to have an abortion?

Arkansas law requires that, except in the case of a medical emergency, a woman who requests an abortion must be informed of possible medical risks associated with the procedure to be employed; probable gestational age of the fetus at the time the abortion is to be performed; medical risks of carrying the fetus to term; that a spouse, boyfriend, parent, friend or other person cannot force her to have an abortion; and the ramifications of having an abortion, including fetal pain, before the decision to go forward is made. Abortion after viability has been reached—which is around the end of the 25th week of the pregnancy—is prohibited unless it is necessary to “preserve the life” of the woman. If an abortion is required after the 25th week, then the doctor must specify in writing that the procedure was necessary to save the woman’s life or prevent irreversible impairment of one of her major bodily functions. A second doctor must be present for the procedure, and he or she must take all reasonable steps to preserve the baby’s life and health.

Arkansas law requires parental consent for a minor—someone who is under the age of 18—to get an abortion. Minors seeking an abortion must have their parents notified at least 48 hours ahead of time, unless they have received a waiver from a judge (“judicial bypass”). In order to apply for a judicial bypass, the minor must fill out a form and talk

privately with a judge about the reasons the minor's parents should not be notified of the abortion.

8. Does a woman have to get the father's permission to have an abortion?

No.

9. What are your rights with respect to birth control?

Arkansas requires contraceptive equity, which means that insurance companies that cover other prescription medications must also cover the costs of birth control. However, "religious employers" can choose to exclude this coverage from their employees' health benefits if they have a religious or moral objection to birth control. "Religious employer" is not specifically defined in the law.

Emergency contraception (EC) is now available without a prescription to women over the age of 18. Women under the age of 18 must have a prescription. EC is most effective when taken within 72 hours of unprotected sex. EC is not the "abortion pill." In fact, it is not effective if you are already pregnant, and it will not terminate an existing pregnancy. The cost of EC varies, depending upon where you go. The cost at most pharmacies is \$50-\$65 or \$35 at Planned Parenthood in Little Rock.

Arkansas is one of a few states with legislation requiring emergency rooms to have EC available for sexual assault victims. However, a health care professional who is employed by a health care facility that provides emergency care to a sexual assault victim is not required to inform her of the availability of emergency contraception if the health care professional has religious or moral objections to birth control.

10. What is "HIPAA" and what are your rights with respect to medical records under those laws?

"HIPAA," short for the "Health Insurance Portability and Accountability Act of 1996," is a federal law that protects health insurance coverage for persons who change or lose their jobs, that dictates standards for electronic health care transactions, and that establishes requirements for ensuring the privacy and security of health care information. The privacy requirements are perhaps the most well-known component of HIPAA, as these provisions govern when and how health care providers may use patient information. HIPAA's privacy requirements apply to health care providers, including physicians, dentists, hospitals, pharmacies and mental health centers.

Under HIPAA, a health care provider generally cannot use or disclose your health information without your written authorization, unless the provider uses or discloses the information for purposes of payment (for example, your doctor submits a claim to your health insurance company), treatment (for example, your allergy doctor sends the results of your allergy tests to your primary care physician) or “health care operations” (for example, internal audits, in-service staff training, legal services). A provider may also discuss your health information with friends or family members who are involved in your care. Your health care provider is required to provide you with a comprehensive list of the types of uses or disclosures that the provider may make in its Notice of Privacy Practices. You can ask for a copy of your provider’s Notice of Privacy Practices at any time.

HIPAA also requires your health care provider to make your medical records available to you or to your personal representative (generally, a parent if you are a minor, or a person who you have agreed can access your records in a written authorization) within a reasonable time frame. If you want copies of your records, a provider may charge you for its costs.

If you have questions about your health care provider’s obligation to protect your health information, or if you are concerned that your provider has improperly used or disclosed your information, you have a right to complain to your provider’s Privacy Officer. If you are not comfortable talking to the Privacy Officer or you are not satisfied with the Privacy Officer’s response, you have a right to complain to the Office of Civil Rights Enforcement of the U.S. Department of Health and Human Services. HIPAA provides civil and criminal penalties for providers who violate HIPAA, but it does not allow you to file a lawsuit against your provider for HIPAA violations.

11. Can someone tape record a conversation with you without your permission or knowledge?

Yes. Under Arkansas law, it is legal to tape record a conversation so long as one party to the conversation consents to the recording. For example, if two people are having a conversation, it is legal for one of the people to record the conversation. Likewise, it is legal for one of the parties to the conversation to direct someone who is not part of the conversation to record the conversation. However, it is not legal for someone who is not a party to a conversation to record the conversation. For example, if two people are having a conversation, and unknown to them someone else is recording the conversation, the recording is illegal.

12. How do you get placed on the “Do Not Call” List?

There are two ways to get placed on the “Do Not Call” List. First, you can log on to www.donotcall.gov and complete a simple form. Second, you can call 1-888-382-1222 and ask to be added to the Do Not Call List. You must call from the home or mobile number that you want to be added to the List. Once a number is added to the Do Not Call List, telemarketers have approximately one month from the date of registration to stop calling. Registration on the Do Not Call List is permanent and does not expire.

There is one thing about the Do Not Call List that you should keep in mind. Arkansas and the federal government do not allow third parties to add telephone numbers to the Do Not Call List. If you get a call of solicitation from a person or service offering to add your telephone number to the Do Not Call List, especially for a fee, beware. It is probably a scam that could result in identity theft.

13. How can you put a stop to obscene phone calls?

An obscene phone call is any call in which a person uses threatening or offensive language, or uses conduct, such as heavy breathing or just plain silence, to convey threatening or offensive messages. They are generally anonymous, which makes them difficult for police to investigate and prosecute. Because telephone use is so common and central to the way we communicate, obscene phone calls are one of the toughest invasions of privacy and forms of harassment to stop. However, there are a number of simple things you can do to protect yourself from obscene calls and to make it easier for police to investigate and prosecute serious, and potentially dangerous, callers.

1. Hang up. Most crank callers are looking for attention. Do not give it to them. Do not engage them in conversation and do not give them the satisfaction of a reaction. Instead, just hang up.

2. Leave a deterring answering machine message. If hanging up does not work, let the caller know you will aggressively pursue your privacy by putting a message on your voice mail or answering machine along the following lines, after your standard greeting:

I/we are receiving annoying phone calls right now and the phone company has a trap on this line. If you do not leave a message, I/we will assume that you are the annoying caller and this call will be traced.

(Phone traces and traps are discussed below.) To complement this tactic, when you answer a call and the harassing caller is on the line, say,

“Operator, this is the call” or “trace” or “trap,” followed by the time and date, and hang up.

3. Use caller ID to identify the caller and the caller’s phone number. Not only is this information that you can pass on to police, but most telephone companies offer a service called “inbound call blocker” that allows you to stop certain callers. Once you know who the caller is, you can block the call.

4. Screen calls using your answering machine or voice mail. If you are going to do this, let friends and family know that you are having problems with obscene and harassing callers and to leave a message.

5. File a police report. Different law enforcement agencies will handle reports of obscene or harassing calls differently, depending on the amount of information you have and the frequency and content of the calls. But the police will always make a report, and it will never hurt to have this additional piece of documentation.

6. Contact your telephone company. The company may be able to set a “trap” on your line, which will allow the company to identify the harassing caller’s telephone number. For this to work, you must keep a log of the time and date when the calls are received. Your company may also offer a service called “call trace,” which will allow you to enter a code (such as *57) immediately after receiving a harassing call and trace the call.

7. Change your telephone number. This is probably the choice of last resort, but if the problem is severe enough you should not hesitate to simply get a new telephone number.

14. How do you protect your identity?

While there is no guaranteed way to keep your identity from being stolen, a few basic precautions will greatly minimize your risk of identity theft.

Protect your personal information. Information such as your Social Security number, birth date, driver’s license number, bank account and credit card numbers, PIN numbers and passwords, and even your mother’s maiden name, can all be used to steal your identity. To the greatest extent possible, keep this information secret, safe, and secure. Do not share your Social Security number, PIN numbers, and passwords with others. Do not loan your driver’s license, passport, ATM, or credit cards, even to roommates, friends and family. Do not keep information in your purse or wallet that you do not need, and do not carry your Social Security card with you unless you know that you are going to need it. Keep your

personal documents and passports in a secure place. Protecting this information is the best way to prevent identity theft.

Be careful to whom you give information. Phone and e-mail solicitations are popular tools of the identity thief. Do not give personal information over the phone, online, or by e-mail unless you know who you are dealing with. For example, you will never be asked to give your Social Security number or a credit card number as part of a legitimate phone survey. Likewise, banks and credit card companies will not e-mail you asking for personal information like account numbers, PINs, access codes, passwords, and the like. Your bank and credit card companies will already have this information.

Be careful with your mail and your trash. Do not leave mail sitting in your mailbox or in a public place, and be sure to mail bills from a safe and secure location. Consider using a United States Postal Service for mail containing personal or financial information. Likewise, destroy, such as by shredding, documents that contain personal information. This includes bank statements, credit card statements, credit card solicitations, and checks.

Be careful online. If you can, access the Internet from a computer that is protected with anti-virus and anti-spyware software. Avoid using passwords that are obvious, like your birth date, initials, last name, or pet's name. Instead, use passwords that contain a combination of numbers and upper and lower case letters, and change your passwords frequently. If you access your e-mail account from a public computer, such as in a library or at a hotel, be sure to log out of your account and close the browser when you are done. Do not post your personal information or pictures in "blogs" or on sites like Facebook, MySpace, and Twitter. Once information is posted online, it is there forever, and for anyone to find and use (future employers, the admissions officers who will review your college applications, etc.).

Above all, use your common sense! Your passwords, PINs, account numbers, and Social Security numbers are meant to be secrets. Keep them that way.

15. What can you do if you are the victim of identity theft?

If you suddenly stop receiving bills or mail that you normally get, start receiving unexpected bills or seeing unfamiliar charges on your credit card and bank statements, or start receiving calls from debt collectors about debts and accounts that you know are not yours, you need to recognize that these are signs your identity has been stolen. If this happens, you need to act quickly. The quicker you act, the more likely you will be able to reclaim your identity and minimize the damage.

First, file a “fraud alert” with one of the three national credit bureaus – TransUnion, Experian, or Equifax. Once you file with one, that company is required to contact the other two.

Second, contact law enforcement and file a report.

Third, notify any banks, credit card companies, or other financial institutions that you believe your account with the company has been stolen. Notify the company of the fraudulent charges or transactions, and dispute the charges or transactions if necessary. Be sure to keep notes of who you talk to and when. Follow up in writing. It is important for you to keep written records, so keep copies of any letters or documents, such as an affidavit of fraud that you send to a company. Use certified mail so that you will have proof of mailing. Close the accounts if necessary.

Fourth, file an identity theft complaint with the Federal Trade Commission online at www.consumer.gov/theft or by calling 1-877-IDTHEFT.

Fifth, place a “security freeze” on your credit report. This will restrict access to your credit report.

Last, the Arkansas Attorney General offers an Identity Theft Passport. An Identity Theft Passport is an official document issued by the state confirming your identity. It may be presented as proof of identity to anyone who challenges your identity, such as a police officer, merchant, or airport security guard. The application for an Arkansas Identity Theft Passport can be found at www.ArkansasAG.gov/identity_theft.

**CHAPTER 12 - CRIMINAL LAW: Staying Out of Trouble
and Dealing with Law Enforcement**

NOTE: Emphasis in this section of the Handbook is upon state rather than federal law. Federal criminal rules and procedures may be somewhat different.

1. What happens when you are charged with a crime?

If you are charged with a felony and have not been arrested, then a judge, upon a finding of probable cause, will issue a warrant for your arrest and you will be arrested pursuant to that warrant. Under certain circumstances, you may be arrested without a warrant. (Arrest without warrant is addressed below.) If it is a felony charge, you will either be charged via a document called an "Information" or by an "Indictment." After being arrested or upon being formally charged, the accused is entitled to a "first appearance" wherein the judicial officer will inform the accused of the charge(s). When charged with a crime, you have the right to retain an attorney. If you cannot afford an attorney, you may have the right to request that an attorney be appointed on your behalf.

2. What should you do if you are stopped by the police?

If you are stopped by any law enforcement agent, you should always indicate to the law enforcement officer that you wish to remain silent and you should do so. You should never curse or argue with any law enforcement agent. If you are operating a motor vehicle and are asked to produce your driver's license, you should be compliant and produce that identification. If you are asked to produce a form demonstrating that you have compulsory liability insurance, you should produce this information. Otherwise, seek the assistance and advice of an attorney before answering any questions or before producing any other documents. Never give consent to search your person or automobile.

3. What can you do if you think a police officer is mistreating you?

You can contact the police officer's supervisor and make a report. Additionally, if the treatment arises to a violation of your civil rights, then you can file a lawsuit in the appropriate court.

4. What are your rights if you have been arrested?

You may or may not have a right to bail. You have the right to an attorney. You have the right to remain silent. You have the right to call witnesses on your behalf and you have a right to confront those witnesses whom the State may call to testify against you. You have the right to a trial by jury and you have the right to be presumed innocent.

5. What happens after you have been arrested and booked?

You have the right to have an attorney represent you. You have the right to file motions in support of your defense. You have the right to a jury trial to determine whether you are guilty of the allegations as made against you.

6. What happens when you are taken before a judge?

Upon arrest, if a bail has not been set, then the judge may set bail. You may or may not be asked to enter a plea to the charges. If asked to enter a plea to the charges, you should plead not guilty until you have had the opportunity to discuss any defenses with an attorney.

7. What do you do if you cannot afford an attorney in a criminal case?

If you cannot afford an attorney, then you have the right to have an attorney appointed to represent you. An accused's desire for, and ability to retain, counsel should be determined by a judicial officer before the first appearance, whenever practicable. Whenever an indigent is charged with a criminal offense and, upon being brought before any court, does not knowingly and intelligently waive the appointment of counsel, the court shall appoint counsel to represent the indigent.

However, there are certain circumstances when an accused is not entitled to counsel. For instance, when an indigent is charged with a misdemeanor and the court has determined that under no circumstances will incarceration be imposed as a part of the punishment if the indigent is found guilty, then the accused indigent may not be entitled to appointment of counsel.

8. What could happen if you help a juvenile break the law?

You could and most likely will be arrested. If you are an accomplice or an accessory to a crime, then you may be charged as such. Likewise, if you provide liquor to any person under the age of 21 years of age, then you can be prosecuted. It should be noted that if charged as an accomplice or accessory to a crime, the juvenile may be charged as such and may receive only those penalties prescribed by the juvenile code. However, you, as an adult, will be charged as an adult and punished accordingly if found guilty.

9. What could happen if you file a false police report?

If you file a false police report, then you may be prosecuted.

(1) Filing a false report is a Class D felony if:

(A) The alleged criminal wrongdoing is a capital offense, Class Y felony, Class A felony, or Class B felony;

(B) The law enforcement agency or prosecuting attorney's office to whom the false report is made has expended in excess of \$500 in order to investigate the false report, including the costs of labor;

(C) Physical injury results to any person as a result of the false report;

(D) The false report is made in an effort by the person filing the false report to conceal his or her own criminal activity; or

(E) The false report results in another person being arrested.

(2) Otherwise, filing a false report is a Class A misdemeanor.

10. Is it legal for a police officer to stop and frisk you merely because they think you "look suspicious"?

No.

11. Can a store employee stop you from leaving a store even if you have not done anything wrong?

The knowing concealment, upon an actor's person or the person of another, of an unpurchased good or merchandise offered for sale by any store or other business establishment, gives rise to a presumption that the actor took the good or merchandise with the purpose of depriving the owner or another person having an interest in the good or merchandise. A person engaging in conduct as addressed above may be detained in a reasonable manner and for a reasonable length of time by a law enforcement officer, merchant, or merchant's employee in order that recovery of a good may be effected. Likewise, if sufficient notice has been posted to advise patrons that an anti-shoplifting or inventory control device is being utilized, the activation of an anti-shoplifting or inventory control device as a result of a person's exiting an establishment or a protected area within the establishment constitutes reasonable cause for the detention of the person so exiting by the owner or operator of the establishment or by an agent or employee of the owner or operator.

However, any detention shall be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the anti-shoplifting or inventory control device or for the recovery of a good. Otherwise, before a store employee can make a citizen's arrest, the private person must have reasonable grounds for believing that the person arrested has committed a felony. A store employee (private citizen) cannot make an arrest for a misdemeanor.

12. Can the police arrest you without an arrest warrant, and, if so, under what circumstances?

A Law Enforcement agent may arrest you without a warrant if:

The officer has reasonable cause to believe that such person has committed a felony; the officer has reasonable cause to believe that such person has committed a traffic offense involving:

(A) death or physical injury to a person; or

(B) damage to property; or

(C) driving a vehicle while under the influence of any intoxicating liquor or drug;

The officer has reasonable cause to believe that such person has committed any violation of law in the officer's presence;

The officer has reasonable cause to believe that such person has committed acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined by law against a family or household member and which occurred within four hours preceding the arrest if no physical injury was involved or 12 hours preceding the arrest if physical injury was involved; or the officer is otherwise authorized by law.

A warrantless arrest by an officer not personally possessed of information sufficient to constitute reasonable cause is valid where the arresting officer is instructed to make the arrest by a police agency which collectively possesses knowledge sufficient to constitute reasonable cause.

A person arrested without a warrant shall not be held in custody unless a judicial officer determines, from affidavit, recorded testimony, or

other information, that there is reasonable cause to believe that the person has committed an offense. Such reasonable cause determination shall be made promptly, but in no event longer than 48 hours from the time of arrest, unless the prosecuting attorney demonstrates that a bona fide emergency or other extraordinary circumstance justifies a delay longer than 48 hours. Such reasonable cause determination may be made at the first appearance of the arrested person.

13. Can the police search your friend's car while it is parked in front of his house?

If law enforcement has a search warrant which authorizes the search of the vehicle, they may search the vehicle. If any occupant of the vehicle is committing a crime, the police may search the vehicle as a search incident to arrest or may be allowed to perform an inventory search. If the vehicle is merely parked in your front yard and is unattended and the law enforcement agent does not have a search warrant authorizing search of that vehicle, he or she cannot search the car. Of course, if the owner of the vehicle gives consent to search the vehicle, a law enforcement agent may search the vehicle.

14. What is a "hate crime"?

Hate crimes are offenses that are committed against a person or group of people (or even property in certain situations) due to their membership in a certain group or class. For example, the criminal defendant commits the offense due to his or her bias against a particular race, gender, or national origin.

15. Does Arkansas have a "three strikes law"?

Yes, Arkansas has a three strikes law. The Arkansas "three strikes law" applies only to certain offenses. However, in Arkansas, we also have habitual offender laws that create greater or enhanced penalties for offenders that have more than one prior felony conviction.

16. Can you get your criminal record sealed or expunged?

Yes, but not all crimes can be expunged or sealed. The legislature designates what crimes can be expunged or sealed.

17. What are some legal consequences of having a criminal record?

If you are convicted of a felony, you must provide a DNA sample, you cannot vote, you cannot sit on juries, and you cannot own or possess a firearm.

18. What is a “search warrant”?

A search warrant is a document that gives officers the authority to search for persons or things. It is issued only by a judicial officer. The document must contain the persons or things for which a police officer is looking. It must also state reasonable cause to believe the persons or things being sought are in the location to which the search warrant applies.

19. Under what circumstances can the police search without a warrant?

They can search, for example, with the consent of the owner; they can search open lands; they can search for purposes of officer safety; they can search when they have reason to believe there is contraband (*i.e.*, when a drug canine hits on a vehicle); they can search under exigent circumstances (*i.e.*, when they feel someone is in danger); they can search incident to an arrest; and they can perform an inventory search when having vehicles towed.

20. What should you do after you have received a phone call from your friend saying that he has been arrested?

Find out if he is eligible for a bond and the amount of the bond. If there is a bond amount, contact a bail bondsman to see if you can post that bond. Then, go post bail for him.

21. How do you “post bail”?

Contact a bail bondsman and, under most circumstances, give the bail bondsman 10% of the bond amount. However, a serious consideration before deciding to post bond for someone else is that if that person fail to appear in court on the assigned dates, you may lose any collateral that you posted to secure the bond.

22. What do you do if you do not have enough money to post bail?

Most bondsmen will allow property to be used as collateral (*i.e.*, title to real property or a vehicle) to secure the bond.

23. What are the steps of a criminal case after charges have been filed against you?

If the charge is a misdemeanor, you will be given a court date in one of the district courts. Appear in court on that day where you will be able to plead either guilty or not guilty. If you plead not guilty, a trial date will be set for you to return to court with anyone you need as a witness.

If the charge is a felony, you will be given a court date in one of the district courts. Appear in court on that day where you must enter a plea of not guilty. Those charges may then be filed in circuit court, where you will have another date to appear before a circuit judge and enter either a guilty plea or a not guilty plea. If you enter a not guilty plea, you may have either a jury trial date or a bench trial (the judge decides) date set.

24. What might happen if you do not go to court on the day that you are supposed to appear?

A failure to appear warrant will be issued by the judge. These usually have a “no bond” condition so that you may sit in jail until your next court appearance.

25. What is a “plea bargain,” and what is involved in pleading guilty?

A plea bargain is an agreement between the prosecution and the defense about what charges the person is pleading guilty to and what the recommended punishment will be. When a person pleads guilty he forfeits the right to a trial and the right to an appeal.

26. Can you plead guilty or innocent against your attorney’s advice?

Yes.

27. What does pleading “no contest” to a criminal offense mean?

The Latin term is *nolo contendere*. This is a plea that is sometimes accepted instead of a guilty plea. It has all of the connotations of a guilty plea, but is used when a defendant may not be able to admit to specific details of the offense (*i.e.*, he knows he committed the offense but was too intoxicated to remember exactly what he did).

28. If someone is charged with a crime, does that mean he is guilty as charged?

No. Each person is presumed innocent until proven guilty or until he pleads guilty in a court of law.

29. If you are the defendant in a criminal case, must you testify, and what are the pros and cons of testifying versus not testifying?

No defendant in a criminal case has to testify. If one testifies and has any prior criminal history, that history may come out in trial at that time. Another consideration is whether the defendant is claiming self-

defense as his defense. If so, then he will have to testify to explain the self-defense.

30. If you are a victim of a crime, do you have a legal duty to report the crime to the police?

No, but here are some thoughts on the subject. First, you are generally not allowed to seek your own retribution, such as by stealing something “back” or, worse, by exacting revenge or punishment on your own. The nature of our criminal justice system replaced the vigilantism approach and, while not perfect, gives legal authority to punish criminals to the neutral magistrates (judges) in that system. “Taking the law into your own hands” will likely subject you to criminal prosecution.

Second, should you not report a crime, for whatever reason, you gave a criminal a reason to repeat the criminal behavior, since the criminal will have “gotten away” with it in your case. Also, a police report of the incident may be a requirement for pursuing insurance claims for property damage.

31. If you do report a crime to the police, what can you expect them to do in response?

At the very least, you can expect the police to take the report and investigate what you have reported. A representative from the police department may be in touch with you to check some facts. If there is sufficient information, the police may seek an arrest warrant from a judge for any suspects. Depending on the investigation, the information may then be shared with the prosecuting attorney for a decision on whether to prosecute someone for the crime.

32. What does it mean to “press charges”?

Common usage of this term suggests that one will report the matter to the police and/or prosecuting attorney by direct communication with the police or by filing a formal complaint at the prosecutor’s office. Only the prosecuting attorney can get the criminal charge filed, resulting in court appearances for the suspect of a crime.

33. Can the victim of a crime be required to testify at the suspect’s trial?

Yes, if the victim is competent to do so. Physical or mental disability or age may prevent some crime victims from being witnesses. If subpoenaed by the prosecutor (or even by the defense), a crime victim is obligated to come to court and testify, though any witness does not have to

answer questions for which the Fifth Amendment bar to self-incrimination may apply.

34. How is committing a crime at age 18 or older different than committing a crime when younger than 18?

It is easier to think of whether a person is being charged in criminal court or juvenile court to understand the primary differences based on age. A person whose court involvement is in juvenile court is subject to very different consequences if he or she is found to have violated the criminal code. The consequences in juvenile court are aimed more at teaching and rehabilitating, rather than punishing, and may include orders for family members as well as the delinquent juvenile. The consequences usually require court appearances for reviews that may leave a case open much longer than it would be if in criminal court. Criminal court is more about punishing behavior (through fines, probation and incarceration) and hopefully preventing habitual offenders.

All misdemeanor offenses found in the criminal code (except for a few like DWI or DUI) and committed by someone under the age of 18 can only be handled in juvenile court. Any 16-year-old can be charged as an adult, subject to adult consequences, for any felony offense. Some of the most serious felony offenses committed by someone as young as 13 years of age may also find a juvenile facing adult criminal charges.

35. What if you do something illegal but you do not know it?

A person is presumed to know the law, especially once he or she reaches age 18. So even if a person did not know an act was a violation of the law, he or she may still be subject to prosecution, with some particular exceptions. "Ignorance of the law is no excuse."

Many misdemeanors are not listed in the criminal code, but are governed by the language in other sections of the Arkansas Code. Hopefully, job training or orientation would address these specific instances, such as what type of information may or may not be disseminated by a particular agency. No matter the career or employment field one enters, it would be a good practice to get as much information about the law and regulations surrounding that job, thus improving job success and avoiding violations.

36. Is the failure to act ever considered a crime?

Yes, failure to act may be considered a crime and subject the person to penalty. Examples surround treatment of children, disabled persons and the elderly. A doctor, teacher, and social worker are among a long list of "mandatory reporters" of suspected child maltreatment. Failure

to report, then, would subject such a person to criminal liability. Likewise, a person in a position to prevent abuse may also be held responsible for failing to act in the prevention of abuse. "Omission" and "omit to act" are defined in a few different places in the criminal code, suggesting that there may be many instances where an individual has an affirmative duty to act, *i.e.*, if through your affirmative actions you place a person in a position of peril you may have a legal duty to act.

37. Can you report a crime to the police and remain anonymous?

While anonymity hinders future investigation and prosecution of a crime, a police department employee may take action from information given anonymously. Some programs, such as reporting guns or planned violence at school, encourage anonymous reporting. However, a person reporting criminal activity will be encouraged to share basic information, and information given anonymously may not result in any police action.

38. What is the difference between a misdemeanor and a felony?

Misdemeanors are less serious types of crimes than are felonies. The biggest difference between them involves the consequences if guilty, as described under the next two sections.

Felony convictions also have a greater impact on a person's future, affecting such things as holding public office, serving on a jury, serving as a guardian, voting, and possessing a firearm (even a hunting rifle). Many employers are more interested in whether a person has a felony record than a misdemeanor record, and a job application may have a question such as "have you ever been arrested or convicted of a felony?" as one of its questions. Convicted felons can find it very difficult to find employment.

39. What are the possible consequences of a misdemeanor?

For an adult, misdemeanors basically fall into three levels or classes. For the highest level, an "A" misdemeanor, a guilty person may be committed to jail for up to one year, and may be fined up to \$2,500. "B" and "C" misdemeanors have lower ranges of fines and jail commitments. A fine and probation, usually with a requirement to pay probation fees and submit to random drug screens, are common sentences for first-time offenders.

It is important to note that some offenses are misdemeanors the first time a person is convicted, but may be considered felonies if it happens again. Possession of marijuana is one such charge, as is domestic battering (causing injury to a family or household member, including

persons with whom there is or was a dating relationship or with whom there was shared household).

40. What are the potential consequences of a felony?

Felonies are also classified into levels, with the highest level punishable by life in prison without parole or the death penalty. Depending on the nature of the felony offense (sexual, violent, committed with a firearm, committed in front of children, for example) and its level, a felon is subject to fines of up to \$15,000 and imprisonment for up to 40 years or life. Capital murder may be punishable by death administered by the State of Arkansas. Persons who commit more than two felonies are subject to enhanced penalties for third or subsequent felonies.

A person convicted of a felony may be sentenced to a term of probation and a fine, and probation may include requirements of holding a job, submitting to drug screens, and not committing new offenses. Felons committed to the penitentiary may be released early and placed on parole, which involves supervision similar to probation. Convictions for most sex offenses will result in a lifetime of reporting address, work, and telephone information as maintained in the sex offender registry.

41. What are some common state crimes?

Common state crimes are possession of controlled substances (including marijuana, cocaine, and prescription drugs without a prescription, such as Xanax), theft of property, theft by receiving (possessing stolen property), drug possession and sales, driving while intoxicated, domestic battery, writing a "hot check," battery, assault, burglary, manslaughter, murder, and any of various sexual assault offenses.

42. What are some common federal crimes?

Common federal crimes include weapons charges, mail fraud, wire fraud, drug smuggling, bank robbery, racketeering, immigration offenses, and possessing or distributing pornography.

43. Can your criminal conviction be appealed and if so how?

Yes. To appeal a criminal conviction, you (or preferably through your attorney) must file a notice of appeal with the clerk of the trial court within 30 days of your conviction (the time period is much shorter in federal court).

44. If you win your criminal case, can the government appeal?

Typically not, but in some circumstances yes.

45. If you are convicted, how is your punishment decided and when will you start serving it?

If convicted, your punishment is decided by either a judge or a jury. In most cases, you will generally be required to begin serving your sentence immediately unless you can persuade the judge to stay enforcement of your sentence pending appeal.

**CHAPTER 13 - THE PRICE OF INDEPENDENCE: Confronting the
Issues which Confront Those with New-Found Freedoms (Sex,
Computers, Alcohol, Drugs, Guns, etc.)**

1. What is sexual assault and battery?

“Sexual assault and battery” is a phrase commonly used to describe the crime of forcible sexual contact. Arkansas law defines “sexual contact” as “any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person, or the breasts of a female.”¹ Arkansas law prohibits forcible sexual contact, and it is punishable as sexual assault in the second degree, which is a felony.²

The crime of sexual assault and battery can be committed under circumstances that do not involve force. For example, a person can be convicted of sexual assault and battery by instigating sexual contact with another person who has a severe physical or mental handicap or with someone under the age of 14.³

Under Arkansas law, there are four different degrees of sexual assault; however, only the previously mentioned 2nd degree and part of 4th degree concern improper sexual contact, or what is commonly referred to as “sexual assault and battery.” The remaining degrees of sexual assault prohibit improper sexual intercourse and could be described as reductions in the severity of the rape offense (much like manslaughter is a reduction in the severity of the murder offense).

2. What is rape and statutory rape?

The common understanding of the word “rape” is obtaining sex through force or the threat of force. Under Arkansas law, a person commits the crime of rape if he or she engages in sexual intercourse or deviant sexual activity with another person: (1) by forcible compulsion; (2) who is incapable of consent because he or she is physically helpless, mentally defective, or mentally incapacitated; (3) who is less than 14 years of age; or (4) who is less than 18 years of age and the actor is the victim’s guardian, uncle, aunt, grandparent, step-grandparent or grandparent by adoption, brother or sister of the whole or half blood or by adoption, nephew, niece, or first cousin.⁴

¹ Arkansas Code Annotated § 5-14-101(9).

² Arkansas Code Annotated § 5-14-125(a)(1).

³ Arkansas Code Annotated § 5-14-125(a)(2) – (6).

⁴ Arkansas Code Annotated § 5-14-103.

“Statutory rape” is defined slightly differently than the term “rape.” Specifically, in Arkansas, as in many jurisdictions, the phrase “statutory rape” is not actually used in any laws; rather, it is a generic term used to describe the crime of sex with minors, with or without consent. In Arkansas, a person commits statutory rape by engaging in sexual intercourse with an individual that is less than the age of 14; however, there is an exception – that is, if the actor is not more than three years older than the victim, it will not constitute rape.⁵

3. What are the penalties for committing sexual offenses?

The severity of punishment for committing sexual assault or rape varies depending upon the severity of the crime prosecuted. A prosecution for rape, for example, carries the most severe consequences and is defined as a Class Y felony.⁶ The following sets forth the range of penalties associated with the various sexual offenses in Arkansas:⁷

RAPE (Class Y Felony)

Jail Sentence: 10-40 years or life

FIRST DEGREE SEXUAL ASSAULT (Class A Felony)

Jail Sentence: 6-10 years

Potential Monetary Fine: \$15,000

SECOND DEGREE SEXUAL ASSAULT (Class B Felony)

Jail Sentence: 5-20 years

Potential Monetary Fine: \$15,000

THIRD DEGREE SEXUAL ASSAULT (Class C Felony)

Jail Sentence: 3-10 years

Potential Monetary Fine: \$10,000

FOURTH DEGREE SEXUAL ASSAULT (Class D Felony)

Jail Sentence: 0-6 years

⁵ Arkansas Code Annotated § 5-14-103(3)(B).

⁶ Arkansas Code Annotated § 5-14-103(c)(1).

⁷ Arkansas Code Annotated §§ 5-4-201, 5-4-401, and 5-14-124 – 127.

Potential Monetary Fine: \$10,000

FOURTH DEGREE SEXUAL ASSAULT - SEXUAL CONTACT
(Class A Misdemeanor)

Jail Sentence: 0-1 year

Potential Monetary Fine: \$1,000

4. What are date rape drugs and for what should you look?

Date rape drugs are those substances used to assist predators in a sexual assault and battery and/or rape. There are three main types of date rape drugs: Rohypnol, GHB, and Ketamine. Rohypnol causes its victims to appear drunk with effects such as difficulty standing, slurred speech, dizziness, nausea, loss of memory, unconsciousness, or even death in some cases. Rohypnol “comes as a pill that dissolves in liquids. Some are small, round, and white, while some are oval and green-gray in color. When slipped into a drink, a dye in these new pills makes clear liquids turn bright blue and dark drinks turn cloudy. But this color change might be hard to see in a dark drink, like cola or dark beer, or in a dark room.”⁸

The second category of date rape drugs is GHB, or gamma hydroxybutyric acid. GHB usually causes its victims to feel an intense state of relaxation, drowsiness, loss of memory, or dizziness, and it has the potential to cause loss of consciousness or even death. “GHB has a few forms: a liquid with no odor or color, white powder, and pill. It might give your drink a slightly salty taste, but beware because a sweet drink such as fruit juice can mask the taste.”⁹

The third type of date rape drugs is Ketamine. Ketamine induces more hallucinogenic effects than Rohypnol or GHB. Victims introduced to Ketamine typically experience “distorted perceptions of sight and sound, lost sense of time and identity, out of body experiences, dream-like” sensations, impaired mobility, and other symptoms. Sometimes, victims of Ketamine are aware of the sexual assault or rape, but cannot physically move during the attack. Ketamine usually “comes as a liquid and a white powder.”¹⁰

5. What are the potential risks of surfing the Internet?

⁸ <http://www.4woman.gov/faq/date-rape-drugs.cfm>.

⁹ Id.

¹⁰ Id.

Surfing the Internet carries many risks. One of the most detrimental of these is the risk to your privacy and security. "When you surf the Internet, any web resource you access can gather and record usage information about you such as your IP address [and] your Internet identification number. Using your IP, it is possible to know your country, city, internet provider, and even physical address. Hackers and identity thieves can use this information to steal personal information, spy on you, or cause damage to your computer."¹¹

Some other risks include: false information that often attempts to mislead readers into believing in the agendas of the site promoters; sites that fraudulently portray banks or other reputable services that ask users to input personal information to create accounts or for other bogus purposes; SPAM messages that can slow the performance of your computer and constantly pile up in your electronic mailboxes; sexual predators who lurk in chat rooms; and the Internet can be addictive to some people who become unable to lead normal, healthy lives.¹² There are many other risks involved with surfing the Internet, and new risks will arise in the future, as it is a constantly evolving technology.

6. Is it okay to download music, movies, and other materials without paying for it?

Just because it may seem like everyone you know is pirating music, movies, etc., it remains an illegal activity. Anyone who violates any of the exclusive rights of a copyright owner commits copyright infringement. The copyright owner has the exclusive rights to reproduce the copyrighted work, prepare derivative works based upon the work, distribute copies of the work to the public, perform the work, and display the work.¹³ Downloading items for free violates the copyright owner's exclusive rights to reproduce the works and distribute copies to the public. Remedies for copyright infringement can be very severe. In addition to merely stopping further infringement or impounding infringing articles, copyright owners can pursue civil damages for each offense (or more if they can prove they have suffered more) and/or criminal charges that carry heavier fines and possible jail sentences.¹⁴

¹¹ <http://www.proxyway.com/www/internet-privacy.html>.

¹² <http://www.coedu.usf.edu/internetsafety/internet/sld009.htm>.

¹³ See 17 U.S.C.S. §§ 106 and 501.

¹⁴ See 17 U.S.C.S. §§ 502 – 506.

It is possible to commit copyright infringement even though you may not have downloaded the material for free. For instance, if you transfer the tracks of a CD you purchased onto your computer and then e-mail them to a friend, you have committed infringement. Also, because criminal copyright infringement can be committed by making a work “available on a computer network accessible to members of the public,” if you put those CD tracks into a “shared folder” on a peer-to-peer network, you can be severely punished.

7. Is it legal to view sexual images over the Internet?

Viewing most sexual images over the Internet is not illegal. Even though some sexual images might be considered obscene by legal standards,¹⁵ and thus not protected by the First Amendment, possessing such materials in the home is still protected by the United States Constitution.¹⁶ However, printing a sexual image or reproducing a pornographic movie and possessing such materials outside of the home will potentially violate criminal statutes in Arkansas if it is deemed obscene.¹⁷

Possessing child pornography via the Internet is almost always illegal. Arkansas and federal laws prohibit any person from knowingly possessing any materials which involve the use of a minor engaging in sexually explicit conduct.¹⁸ For these purposes, a minor is someone who is under 18 years old.¹⁹ Even if the user is not required to download the material in order to view it, the image or other material is nonetheless stored onto the user’s computer when viewed.²⁰

8. What are the rules governing the consumption and purchase of alcoholic beverages?

¹⁵ See Miller v. California, 413 U.S. 15, 93 S. Ct. 2607 (1973).

¹⁶ See People v. O’Gorman, 274 N.Y. 284, 8 N.E.2d 862 (1937); U.S. v. Thoma, 726 F.2d 1191 (1984).

¹⁷ Arkansas Code Annotated §§ 5-68-203 and 5-68-405(b).

¹⁸ Arkansas Code Annotated §§ 5-27-304 and 5-27-603; 18 U.S.C.S. §§ 2252 and 2252A.

¹⁹ 18 U.S.C.S. § 13(c).

²⁰ See <http://cookiescache.tripod.com> and <http://searchwarp.com/swa7843.htm>.

In Arkansas, it is “unlawful for any person under the age of 21 years to purchase or have in possession any intoxicating liquor, wine, or beer.”²¹ If an individual who is under 21 is holding an alcoholic beverage or has one in his or her pockets, possession is implied.²² However, if an alcoholic beverage is merely in one’s immediate proximity, then possession may or may not be established.²³

Purchasing or possessing alcohol while under the age of 21 is a crime punishable as a misdemeanor, and the culprit will have to pay a fine between \$100 and \$500.²⁴ However, in addition to the fine, the judge or magistrate may also require the culprit to write an essay on the effects of alcohol, place him or her under probationary conditions in order to educate and prevent future violations, or both.²⁵

9. What happens if you use a fake identification to buy alcohol and get caught?

It is illegal in Arkansas for “a person under 21 years of age to attempt to purchase an alcoholic beverage or use a fraudulent or altered personal identification document for the purpose of purchasing an alcoholic beverage.”²⁶ An alcohol vendor is allowed to detain someone for a reasonable time to determine whether he or she has used a fake or altered ID. Typically, vendors call law enforcement once they have detained the alleged culprit. Once law enforcement has determined the detained culprit has used a fake ID in the attempt to purchase alcohol illegally, the culprit’s false ID is taken, his or her real driver’s license is taken and suspended, and he or she may be arrested.²⁷

The use of a fake ID to buy alcohol illegally is prosecuted as a Class B misdemeanor upon the first offense, which carries a fine up to \$500

²¹ Arkansas Code Annotated § 3-3-203(a)(1).

²² Arkansas Code Annotated § 3-3-203(a)(2).

²³ See Kastl v. State, 303 Ark. 358, 796 S.W.2d 848 (1990).

²⁴ Arkansas Code Annotated § 3-3-203(c).

²⁵ Arkansas Code Annotated § 3-3-203(d).

²⁶ Arkansas Code Annotated § 5-27-503(a)(3).

²⁷ Arkansas Code Annotated § 5-27-503(b)(3).

and possible jail time up to 90 days.²⁸ Upon conviction, the culprit's driving privileges will be revoked for up to one year.²⁹ For each successive offense, the culprit will be charged with a Class A misdemeanor and face more severe punishment.³⁰

10. What are the penalties for buying, making, or selling a false identification?

Buying a fake ID will subject the buyer to the same punishments listed in the previous section. That is a Class B misdemeanor upon the first offense and Class A misdemeanor for each subsequent offense. This is because mere possession of the false identification card by someone under the age of 21 violates the law.³¹ Thus, a person under the age of 21 who has the false ID in his or her pocket and is merely riding a bike down the street can be punished as severely as someone under the age of 21 who uses the fake ID in an attempt to buy alcohol.

Manufacturing or producing a fake identification card, or altering a personal identification document, for the purpose of assisting someone under 21 years old to purchase alcohol is prosecuted as a Class C felony offense in Arkansas.³² Similarly, selling or otherwise distributing fraudulent identification documents to a person under age 21 is a Class C felony.³³ A subsequent offense is a Class B felony.³⁴

11. Is it a crime to give alcohol to someone who is not yet 21 years of age?

It is "unlawful for any person knowingly to give, procure, or otherwise furnish any alcoholic beverage to any person less than twenty-

²⁸ Arkansas Code Annotated §§ 5-27-503(c)(1), 5-4-201(b)(2), and 5-4-401(b)(2).

²⁹ Arkansas Code Annotated § 5-27-504.

³⁰ Arkansas Code Annotated § 5-27-503(c)(2).

³¹ Arkansas Code Annotated § 5-27-503(a)(1).

³² Arkansas Code Annotated § 5-27-502(a)(1)-(2).

³³ Arkansas Code Annotated § 5-27-502(a)(3) and § 5-27-502(b)(1).

³⁴ Arkansas Code Annotated § 5-27-502(b)(2).

one (21) years of age.”³⁵ However, this law does “not apply to the serving of such to one’s family or to the use of wine in any religious ceremony or rite in any established church or religion.”³⁶ Knowingly furnishing alcohol to persons under the age of 21, unless within the two limited exceptions previously mentioned, is a criminal offense prosecuted as a misdemeanor upon the first offense and as a felony upon the second offense occurring within three years of the first.³⁷ Additionally, the penalty for knowingly *selling* alcohol to someone under 21 years old is a more severe crime that is prosecuted as a felony upon the first offense.³⁸

As the above crimes require knowledge of the fact that the recipient was underage, it should be noted that the sale, gift, or other disposition of alcohol to a minor can be prosecuted as a different crime in Arkansas where the guilty provider or seller did not know the recipient was a minor.³⁹ Though the penalties are less severe than the knowledge-based crimes, jail time is possible for a second offense.⁴⁰

12. Is it okay to drink alcohol in public or in a park?

Drinking alcohol in public or in a park is a criminal offense in Arkansas. It is prohibited by the State’s laws regarding public intoxication. It is unnecessary to be drunk or impaired to commit the crime. “A person commits the offense of drinking in public if the person . . . consumes any alcoholic beverage in any public place; on any highway or street; upon any passenger coach, streetcar, or in or upon any vehicle commonly used for the transportation of passengers; or in or about any depot, platform, waiting station or room, or other public place.”⁴¹ The crime of public intoxication, including drinking alcohol in public, is

³⁵ Arkansas Code Annotated § 3-3-202(a)(1).

³⁶ Id.

³⁷ Arkansas Code Annotated § 3-3-202(a)(2).

³⁸ Arkansas Code Annotated § 3-3-202(b).

³⁹ Arkansas Code Annotated § 3-3-201.

⁴⁰ Arkansas Code Annotated § 3-3-201(b).

⁴¹ Arkansas Code Annotated § 5-71-212(c).

punished as a Class C misdemeanor, which is punishable with a jail sentence up to 30 days and a possible fine up to \$100.⁴²

13. When would a party be disruptive enough to illegally disturb the peace?

Disturbing the peace is locally prohibited and enforced, meaning it is against city law. Checking your city's municipal code will show you what constitutes disturbing the peace in your area. As an example, under the Little Rock Code of Ordinances, a party may be disruptive enough to disturb the peace if any of the following acts occur: (1) the sounding of any horn or any automobile except as a signal of danger; (2) the playing of any radio or other audio equipment in such a manner or with such volume, especially at night, as to annoy or disturb the quietness, comfort, or peace of others; or, (3) any group yelling, hooting, shouting out, or playing audio equipment on the public streets, at any time or place, in such a manner as to annoy or disturb the quietness, comfort, or peace of others, or otherwise create an annoyance or problem.⁴³

As is apparent, the above-referenced provisions are fairly loose; therefore, it is easy to imagine many parties in violation of the Little Rock Ordinance. Violation of this Ordinance is punished "by a fine not exceeding five hundred dollars (\$500), or double . . . for each repetition thereof."⁴⁴

14. What can I do if strangers "crash" my party?

If people are at your party and you want them to leave, ask them to leave. If they do not leave upon your request, contact the police to remove the unwanted guests. In Arkansas, an unwanted party "crasher" is committing criminal trespass, which is a crime generally punishable as a Class B misdemeanor.

15. Can you play your music in your home or your car as loud as you want?

The answer to this question depends on how loud you may want to play your music. As discussed above, local city ordinances govern what

⁴² Arkansas Code Annotated §§ 5-71-212(d), 5-4-201(b)(3), and 5-4-401(b)(3).

⁴³ Little Rock City Code § 18-52.

⁴⁴ Little Rock City Code § 1-9.

constitutes “disturbing the peace.” In Little Rock, for example, if you play your home or car radio with such volume that it annoys or disturbs the quietness, comfort, or peace of others, the police can make you turn it down and fine you.⁴⁵

16. You might be worried about what might happen during your college fraternity/sorority initiation. Are there limits to what they can do?

In Arkansas, “hazing” is defined as: (1) a willful act, on or off school property, directed at another student for the purpose of intimidating that student or threatening him or her with ostracism or submitting him or her to “ignominy, shame, or disgrace among . . . fellow students;” (2) playing abusive or truculent tricks upon a student “to frighten or scare;” (3) a willful act upon another student designed to humble pride, stifle ambition, impair courage, or discourage him or her from remaining at the school; or, (4) a willful act of “striking, beating, bruising, maiming,” or offering, threatening, or attempting to strike, beat, bruise, or maim another student.⁴⁶

In Arkansas, “no student of any school, college, university, or other educational institution . . . shall engage in . . . hazing or encourage, aid, or assist any other student in the commission of this offense.”⁴⁷ One may even be convicted of hazing by failing to report promptly to school officials any knowledge one may have about the presence or practice of hazing.⁴⁸ Hazing is a Class B misdemeanor, and any student convicted of hazing may also be expelled from school.⁴⁹

17. What are the penalties for possessing or selling illegal drugs?

The penalties for possessing or selling illegal drugs in Arkansas vary widely. The Department of Health organizes controlled substances into Schedules. The penalties for selling or possessing a controlled substance are determined by which Schedule it is assigned.

⁴⁵ Little Rock City Code §§ 1-9 and 18-52.

⁴⁶ Arkansas Code Annotated § 6-5-201(1).

⁴⁷ Arkansas Code Annotated § 6-5-202(a).

⁴⁸ Id.

⁴⁹ Arkansas Code Annotated § 6-5-203.

There are six Schedules of drug classification in Arkansas. The Federal Drug Enforcement Agency (DEA) has five.⁵⁰ Schedules I through V in Arkansas generally correlate to the DEA Schedules. Schedule I drugs are the most prohibited drugs. They have the highest potential for abuse, no accepted medical use, and carry the stiffest penalties.⁵¹ The following chart displays the penalties, under Arkansas law, for the first offense of possessing or selling illegal drugs.⁵²

⁵⁰ <http://www.usdoj.gov/dea/pubs/scheduling.html>.

⁵¹ Arkansas Code Annotated § 5-64-201 *et seq.*

⁵² Arkansas Code Annotated §§ 5-64-215, 5-64-401;
<http://www.usdoj.gov/dea/pubs/scheduling.html>.

<u>Schedule</u>	<u>Examples</u>	<u>Possession</u>	<u>Sale</u>
I	Heroin, LSD, Ecstasy	Class C felony	Class Y felony
II	Cocaine, Opium, Morphine	Class C felony	Class Y felony
III	Steroids, Ketamine, Hydrocodone	Class A misdemeanor	Class B felony
IV	Valium, Xanax, Rohypnol	Class A misdemeanor	Class C felony
V	Codeine cough suppressants, ephedrine	Class A misdemeanor	Class C felony
VI	Marijuana	Class A misdemeanor	Class C felony

Be aware that the penalties for sale can also vary depending upon the specific drug sold and the amount sold, usually measured in grams. Also, under Arkansas law, a prosecutor may change a possession charge into a sale charge if the culprit possesses a sufficiently large amount of the controlled substance.⁵³

18. Is it worse if you sell illegal drugs at school?

If convicted of selling illegal drugs at school, the offender will face enhanced penalties in Arkansas. Under Arkansas law “an additional term of imprisonment of ten (10) years” will be served by the offender if the sale was “on or within one thousand (1,000) feet” of a “public or private elementary or secondary school, public vocational school, or private or public college or university.”⁵⁴ Thus, the guilty party will face the general punishment for conviction of selling the illegal drug(s) plus an

⁵³ Arkansas Code Annotated § 5-64-401(d).

⁵⁴ Arkansas Code Annotated § 5-65-411(a)(2).

additional ten year jail sentence. Also, if convicted of the enhanced penalty, the offender will not be eligible for early release on the enhanced portion of the jail sentence.⁵⁵

19. If you use steroids to help pump up your muscles, are you breaking the law?

You are breaking the law when you possess steroids without a prescription. Anabolic steroids are a Schedule III controlled substance, and possession without a prescription is a Class A misdemeanor in the State of Arkansas.⁵⁶

20. Can you share your prescription drugs with your family or friends?

Sharing your prescription drugs with family or friends is prohibited in Arkansas. One delivering controlled substances to another is subject to the same punishments as a seller of those narcotics.⁵⁷ Therefore, even if you legally possess the drugs as a result of a medical prescription, you commit a serious crime if you deliver them to others.⁵⁸ The fact that no money or anything of value is exchanged will not prevent a conviction for delivery of a controlled substance.⁵⁹

21. What are some of the laws relating to guns and other weapons?

There are several laws that prohibit and/or regulate guns and other weapons in Arkansas. The most general restriction is against possessing "any instrument of crime with a purpose to employ it criminally,"⁶⁰ which is prosecuted as a Class A misdemeanor.⁶¹ An

⁵⁵ Arkansas Code Annotated § 5-64-411(c).

⁵⁶ Arkansas Code Annotated § 5-64-401(c)(2)(B); <http://www.usdoj.gov/dea/pubs/scheduling.html>.

⁵⁷ Arkansas Code Annotated § 5-64-401(a).

⁵⁸ See Miller v. State, 253 Ark. 1060, 490 S.W.2d 445 (1973).

⁵⁹ See Marshall v. State, 289 Ark. 462, 712 S.W.2d 894 (1986); Anderson v. State, 275 Ark. 298, 630 S.W.2d 23 (1982).

⁶⁰ Arkansas Code Annotated § 5-73-102(a).

⁶¹ Arkansas Code Annotated § 5-73-102(b).

“instrument of crime” is defined as “anything manifestly designed, made, adapted, or commonly used for a criminal purpose.”⁶² Other restrictions prohibit possession of firearms by convicted felons,⁶³ altering or defacing firearms or possessing altered or defaced firearms,⁶⁴ handgun possession by minors or on school property,⁶⁵ carrying a weapon with the purpose of using it against another person,⁶⁶ possessing a concealed handgun without a license,⁶⁷ possessing a machine gun,⁶⁸ possessing a taser or stun gun if under the age of 18,⁶⁹ possessing a deadly weapon in publicly owned buildings and facilities,⁷⁰ and installing or maintaining booby traps,⁷¹ as well as other prohibitions.

Also, some weapons are deemed so dangerous that, except as authorized by law, possessing, making, repairing, selling, or otherwise dealing them is a felony in Arkansas. These “prohibited weapons” include bombs, machine guns, sawed-off shotguns or rifles, firearms with silencers, metal knuckles, and other weapons that can inflict serious physical injury or death.⁷² Violations involving a bomb, machine gun, or firearm with a silencer will be prosecuted as Class B felonies, while the others will be pursued as Class D felonies.⁷³

⁶² Arkansas Code Annotated § 5-73-101(8).

⁶³ Arkansas Code Annotated § 5-73-103.

⁶⁴ Arkansas Code Annotated §§ 5-73-106 – 107.

⁶⁵ Arkansas Code Annotated § 5-73-119.

⁶⁶ Arkansas Code Annotated § 5-73-120.

⁶⁷ Arkansas Code Annotated § 5-73-301 *et seq.*

⁶⁸ Arkansas Code Annotated § 5-73-201 *et seq.*

⁶⁹ Arkansas Code Annotated § 5-73-133.

⁷⁰ Arkansas Code Annotated § 5-73-122.

⁷¹ Arkansas Code Annotated § 5-73-126.

⁷² Arkansas Code Annotated § 5-73-104(a).

⁷³ Arkansas Code Annotated § 5-73-104(c).

22. Do you need a license to hunt or fish?

Hunting and fishing in Arkansas is regulated by the Arkansas Game and Fish Commission. Licenses are required by the Commission for both activities. It is unlawful to “take or attempt to take any wild animal or bird by any means in Arkansas without having on the person the appropriate Arkansas Hunting License.”⁷⁴ Also, the Commission requires any person who is 16 years of age or older to have a fishing license “to fish in any manner or attempt to take frogs, minnows, or mussels in Arkansas.”⁷⁵ Illegally hunting or fishing without a license is punished as a misdemeanor and carries a fine no less than \$10 and no more than \$200.⁷⁶

23. Can you get into trouble just for pointing a gun at someone?

You can certainly get into trouble for pointing a gun at someone in Arkansas. Displaying a firearm “in such a manner that creates a substantial danger of death or serious physical injury to another person” is one of the definitions of aggravated assault⁷⁷ which is prosecuted as a Class D felony.⁷⁸ A culprit will even be guilty of the crime if the gun is unloaded.⁷⁹ However, it is not aggravated assault if pointing the gun is in self-defense or in defense of a third party.⁸⁰

24. Are there any restrictions on where you can practice your shooting?

Under State law, you cannot practice your shooting in or around a publicly-owned or maintained building such as a school, fire department station, government agency building, or the State Capitol.⁸¹ Nor can you practice shooting firearms on a publicly-owned or maintained football

⁷⁴ Ark. Game & Fish Comm. Code of Reg., Reg. 3.03-A.

⁷⁵ Ark. Game & Fish Comm. Code of Reg., Reg. 3.02.

⁷⁶ Arkansas Code Annotated § 15-42-101.

⁷⁷ Arkansas Code Annotated § 5-13-204(a)(2).

⁷⁸ Arkansas Code Annotated § 5-13-204(b).

⁷⁹ See Harris v. State, 72 Ark. App. 227, 35 S.W.3d 819 (2000).

⁸⁰ Arkansas Code Annotated § 5-13-204(c).

⁸¹ Arkansas Code Annotated § 5-73-122.

field, baseball field, soccer field, or similar “municipally owned or maintained recreational structure or property.”⁸² Those rules, however, are derived from the fact that one generally cannot *possess* firearms in those areas.

The State of Arkansas gives counties the majority of regulatory power over the discharge of firearms.⁸³ Thus, most restrictions on discharging firearms are in county codes. For example, the Pulaski County Code restricts people from knowingly firing or discharging “a firearm within one (1) mile of any residence anywhere in the county, without first having obtained the written permission of the owner of the residence,” unless the person is the owner of the property.⁸⁴ Also, “no person shall discharge a firearm over a public road.”⁸⁵

25. How do you obtain a concealed handgun license?

Under Arkansas law, you can obtain a license to carry a concealed handgun if you meet the qualifications. To qualify, you must: (i) be a citizen of the United States, (ii) be a resident of Arkansas for at least 90 days, (iii) be at least 21 years old, (iv) not suffer from any mental or physical infirmity that prevents the safe handling of a gun, (v) have never threatened or attempted suicide, (vi) have never been convicted of a felony, (vii) pass a background check through the Department of Arkansas State Police, (viii) pass a background check through the FBI, (ix) not chronically or habitually abuse a controlled substance (*i.e.*, alcohol or drugs), (x) have never been voluntarily or involuntarily committed to a treatment facility for the abuse of a controlled substance, (xi) have never been convicted of a misdemeanor involving controlled substances within the last three years, (xii) have never been found mentally incompetent by a court, (xiii) have never been voluntarily or involuntarily committed to a mental institution or mental health treatment facility, (xiv) sign a statement of allegiance to the United States Constitution and the Arkansas Constitution. The applicant must also satisfactorily complete a training course in the use of a handgun. The applicant must also pay a license fee, which is currently \$144.25 for a license that is good for five years (renewal of the license costs \$35). This fee does not include the cost of the training course, which can vary but usually costs between \$100 to \$200.

⁸² Id.

⁸³ Arkansas Code Annotated § 14-16-501 *et seq.*

⁸⁴ Pulaski County Code 13-1(a).

⁸⁵ Id.

26. If I have a concealed handgun license, may I carry any type of gun that I want?

No. First, any gun that you carry has to be concealed such that no one around you knows that you have the gun with you. Second, the gun must be a handgun (in other words, you can't carry a machine gun or a sniper rifle). Third, you can only carry a revolver unless you pass a training course to qualify you to carry a semi-automatic pistol.

27. If I have a concealed handgun license, may I carry a handgun wherever I want?

No. Even with a concealed handgun license, guns are still prohibited at police stations, most government facilities, prisons, jails, courthouses, polling places (*i.e.*, you can't take your gun when you go to vote), any athletic event, bars (other than restaurants that happen to sell alcohol), schools, universities, airports and churches, among other places. Any business can also prohibit guns by placing a sign at the entrance. You also have to notify the occupants of a home before entering while carrying a concealed handgun.

28. If I have a concealed handgun license, may I carry a handgun into other states?

Not necessarily. Arkansas has reciprocity with many, but not all, states. Currently, Arkansas's concealed handgun license is recognized in Alabama, Alaska, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia and West Virginia. This list is subject to change at any time. Also, each of these states has its own rules on where a gun can be carried, and you are subject to that state's rules while in that state (in other words, just because a gun is permitted some place in Arkansas does not mean that it is permitted in the same places in Texas).

29. How do you register to vote?

Once you turn 18 years of age, you have the right to vote in federal, state, and local elections. You can find voter registration forms in many places (for example, the U.S. Post Office, the public library, or if in Pulaski County the Pulaski County Circuit Clerk's website). You will need to particularly pay attention to the instructions regarding what type of identification you will need to register to vote, and what you need to bring later on when you are actually ready to vote. Where you live will control the precinct in which you can vote.

If you will be away from home on election day, you can vote through the mail using an absentee ballot. You will need to call your county clerk's office for specific instructions regarding the process for absentee voting.

30. How do you register with the Selective Service?

The Selective Service System is the program that calls up people for military service. All males between the ages of 18 and 25 must register with the Selective Service System so that the United States government will have information available regarding potential soldiers in the event of war. While there is presently no military draft, if you are male you must sign up with the Selective Service System once you turn 18 years of age.

**CHAPTER 14 - LAWSUITS AND LITIGATION: The Basics of
Resolving Civil Disagreements**

The Dispute Resolution Process

1. What is the difference between a hearing and a trial?

A court hearing is a hearing in front of a judge to determine anything other than guilt or innocence in a criminal matter or liability in a civil case. By way of example, if you are criminally charged with possession of drugs as a result of a search, and your attorney files a motion to have the search results ruled inadmissible at trial, there will be a hearing (prior to the trial) to determine whether the search was valid. If it is, a trial will be held to determine whether you are guilty.

2. What are the pros and cons of a civil lawsuit vs. arbitration vs. mediation?

Litigation can be a time-consuming, expensive, and frustrating way to resolve disputes; thus, there are options such as Alternative Dispute Resolution (“ADR”) to resolve lawsuits before trial. ADR includes both arbitration and mediation, and while they are different procedures, their goal is the same – that is, to minimize the expense and delay associated with a civil lawsuit.

3. What is arbitration?

Arbitration is an adversary proceeding in which the parties present competing evidence and arguments before a neutral third party, who then decides the dispute much like a judge would in a trial. Arbitration can be voluntary, judicially mandated or contractual, and the outcome of arbitration can be binding or nonbinding (advisory). Many contracts today contain provisions that compel binding arbitration of potential disputes.

4. What is mediation?

In mediation, a neutral third party attempts to facilitate communication and devise a compromise between the conflicting parties. Mediation is not a legal proceeding. Unlike arbitration, the neutral third party’s role in mediation is not to determine who wins; rather the neutral party is expected to bring the conflicting parties closer together and assist in overcoming obstacles to settlement. The actual structure and conduct of mediation is typically much less formal than arbitration.

5. Arbitration vs. Mediation

The parties’ attitudes and relative circumstances of the parties are the factors that typically determine whether arbitration or mediation is an option. To successfully mediate, both parties must want to settle their

dispute and participate in good faith with one another. Mediation is unlikely to be effective when there is a great deal of hostility between the parties. In such circumstances, arbitration may be the only hope of avoiding civil litigation and trial.

Courtroom “Do’s and Don’t’s”

How To Dress For Court. DO dress as you would for an important event. DON’T wear t-shirts with messages. DON’T dress down to gain sympathy. DON’T chew gum.

Your Courtroom Behavior. DO exercise self-control at all times no matter what is said in the courtroom. DO be on time for court. DON’T react to the answers of witnesses. DON’T argue with the opposing party or his/her attorney.

When You Are Testifying. DO listen to the entire question being asked before you answer. DO ask the questioner to repeat or clarify any question you do not understand. DO direct your answer to the person who asked the question (make eye contact with that person). DO answer with only “yes” or “no” when you can. DO answer questions that may seem stupid or foolish to you – after all, it is your attorney’s job to object to improper questions. DON’T mumble. DON’T memorize answers. DON’T lie about anything. DON’T feel the need to explain every answer. DON’T argue with the questioner. DON’T assume that the questioner has a hidden motive for every question.

Lawsuits

1. How are damages determined in a civil lawsuit?

Typically, it is the judge who determines the types of damages a plaintiff may recover. A court may also decide that damages should be limited because the plaintiff could have avoided injury or a loss. For instance, suppose that you lost control of your car and drove it through the window of a store. If the owner fails to board up the window or post a guard after the incident, you cannot be held responsible for losses the store incurs when looters enter it later that night and steal the merchandise. In jury trials, the jury will decide how much money should be awarded, although a judge usually has the discretion to increase or reduce the amount of a jury award.

2. What type of relief, other than damages, may be available in a civil lawsuit?

The type of relief in a civil lawsuit can vary. One can sue for money/compensatory damages, an injunction (keeping someone from

doing something), and/or specific performance (forcing someone to do something), to name a few examples. The type of relief one can receive is dependent on the type of civil lawsuit filed.

3. If you are not a party (either plaintiff or defendant) but instead are a witness in a lawsuit, what can you expect to happen prior to and at trial?

A witness is one who gives relevant information to a court relating to a matter pending before a court of law. As a witness, you will give your evidence in person in court (or in a deposition) under oath. Both parties will have an opportunity to question you.

Prior to proceeding to court, the parties may want you to visit their office before the trial to go through your evidence. This is useful and will give you an idea of the type of questions you can expect at the trial.

On the date of the trial, you may be required to wait to give your evidence. While you are waiting to give your evidence, you may sit in the courtroom unless told otherwise by a court official. When your name is called, walk forward to the front of the judge's bench and stand until you are sworn in. You will then enter the witness box and sit for questioning.

4. Why do witnesses have to wait outside the courtroom before testifying at trial?

When a party to a lawsuit "invokes the rule" at trial, he or she is seeking to implement the rule of sequestration – that is, the rule requiring that certain witnesses remain outside of the presence of other testifying witnesses. The reason behind the rule is that it prevents witnesses from hearing the testimony of other witnesses so that each person's testimony is his or her own and not influenced because of another witness's testimony. While waiting outside of the courtroom to testify, you are not to discuss the case or your testimony with anyone.

5. What could happen if you do not tell the truth in court?

If you knowingly do not tell the truth under oath in court you commit perjury. Perjury is a serious criminal offense. If you perjure yourself in court you could face time in prison.

6. What options do you have if you lose your lawsuit?

Almost in every state, the losing party to a lawsuit has approximately 30 days to file an appeal and have a higher/appellate court review the lower court's decision. In the event you are on the losing end

of a lawsuit and you do not wish to appeal, you may attempt to negotiate a settlement of the lawsuit with the opposing party.

7. Can you get the other side to pay your attorney's fees if you win your lawsuit?

Many other countries make the losing party pay the winning party's attorney fees; however, the general rule (*i.e.*, the so-called "American Rule") in the United States is that each party pays its own attorney fees. Nonetheless, there are exceptions to the American Rule, such as in breach of contract lawsuits.

**CHAPTER 15 - DEALING WITH ATTORNEYS: What They Are, Where
They Are, and What They Can Do For You**

1. Which is better, an older lawyer or younger lawyer?

A lawyer's age has no bearing on whether he or she is better than any other lawyer. An "older" lawyer may be more experienced than a "younger" lawyer but may have a heavier case load and be more expensive. A younger lawyer, on the other hand, may be more accessible, less expensive, be more attuned with the latest technology, and easier to talk to about your particular problems than an older lawyer. However, the foregoing generalities do not always hold true, so your choice of an attorney should simply be based on who is the right fit for you under the facts and circumstances. In order for you to benefit from your attorney-client relationship, it is necessary that your attorney be someone with whom you feel comfortable telling your story or problem including all of the details, whether good or bad. Whether younger or older, it is imperative that the attorney be honest, diligent, a good communicator, and a hard worker.

2. What are the differences, advantages, and disadvantages of different fee arrangements?

There are generally three types of fee arrangements between a lawyer and client: hourly, contingent and flat fee. An hourly fee arrangement is one in which you will pay your lawyer based on his or her hourly rate. Hourly rates generally vary by attorney, law firm, and area of the state where the attorney practices. For example, hourly rates in the central Arkansas area currently range from around \$100 per hour to several hundred dollars per hour. In this arrangement, you only pay your attorney for his or her time working on your case. Typically, an attorney will bill you for his or her time on a monthly basis. You are generally responsible for out-of-pocket expenses incurred as well.

A contingent fee, on the other hand, is one which is based on the outcome of the case. You may be familiar with this arrangement already by seeing commercials or other advertisements which say something along the lines of "we'll win your case or you don't pay." Generally, with a contingent fee arrangement, an attorney will be paid based on a percentage of your recovery, if any. Percentages of recovery depend upon many factors, including but not limited to the time of recovery (before trial or after trial), the complexity of the case, and the necessity of appeal. In some cases, a lawyer's percentage of your recovery may vary at different stages of a case. For example, a contingent fee arrangement may provide that your attorney will be compensated at 25% if recovery is had before trial, 33% if recovery is had after trial, or 40% if recovery is had after an appeal. In contingent fee arrangements, you are generally responsible for

all costs associated with your case other than the lawyer's fee, although often the lawyer will advance these costs.

A flat fee is the third general type of fee arrangement. A flat fee is just what it says. You pay a flat fee to an attorney for his or her work. A flat fee arrangement is often the arrangement where attorneys are hired to draft a client's will or obtain an uncontested divorce for a client. The scope of the work should be clearly defined so that there are no misunderstandings as to what you are getting for your money.

Some cases are handled with mixed arrangements combining elements of the three main arrangements described above. Just like with choosing an attorney, you should only enter into a fee arrangement with which you feel completely comfortable. Depending upon the type of fee arrangement you have with your lawyer, he or she may require you to pay a retainer. A retainer is money that is held in trust by your lawyer during the course of your case. Typically, at the end of your case, if you have an outstanding balance on your account, the attorney may apply the retainer to your balance or, if your account is paid in full, will return the retainer to you in accordance with your agreement. The amount of retainer required varies among lawyers and cases, and often it will need to be "replenished" every month.

Whether or not you have an hourly, contingent, or flat fee arrangement, you should have an engagement letter prepared by your attorney. An engagement letter is a letter prepared by your attorney and signed by you that confirms his or her agreement to represent you and your agreement to such representation. Also, the letter is a means by which the lawyer makes you aware of his or her expectations of payment, including the type of fee arrangement, the attorney's billing cycle, and the attorney's policies on costs and expenses incurred in his or her representation of you. This way you will know in advance your obligations of payment to your attorney.

3. How can you tell if your attorney is handling your case properly?

Your attorney should be communicating with you periodically about the status of your case. For example, he or she may call, write, or send you copies of all filings and correspondence he or she receives or sends out in your case. If you feel that you are not being kept up to date about the status of your case, call or write to your attorney. While his or her response may not be immediate, you should receive a response in a timely manner. If you have questions or concerns about the way your case is being handled, you should likewise call or write to your attorney. Do not be afraid to question your attorney. If he or she is committed to you as a client, your attorney will welcome your questions and will try his or her best to address each of your questions and concerns. If you feel that your

attorney will not communicate with you concerning the status of your case or if you believe that your case is being handled improperly, you should consider looking for another attorney. If your lawyer's actions in failing to communicate with you or handle your case properly are serious, you should consider contacting the Arkansas Supreme Court Committee on Professional Conduct to file a formal complaint.

4. If you become dissatisfied with your attorney, can you get a new one?

Yes. If you become dissatisfied with the way your attorney is handling your case, you can get a new attorney. This does not necessarily mean that you will not have to pay your previous attorney, though. Depending upon your fee arrangement, you may still owe your attorney for his or her services performed, or your attorney may still have a claim to any recovery in a contingent fee arrangement. Often your ability to terminate the attorney and/or his or her ability to withdraw as your attorney will be a part of the engagement letter.

5. What are your attorney's obligations to you as the client?

Your attorney's obligations to you as the client come from various sources. First, the Arkansas Rules of Professional Conduct provide a code of ethics by which lawyers must abide in representing clients, communicating with third parties, and dealing with the courts. This code of ethics provides the greatest source of a lawyer's obligations to a client.

A lawyer's obligation to you includes the duty to provide competent representation. Competent representation means that the attorney possesses the legal knowledge, skill, thoroughness and preparation that are required by your case. A lawyer must also represent you with reasonable diligence, promptness, and should make reasonable efforts to expedite your case. Your attorney's obligations may also come from your engagement letter. In the engagement letter prepared by your attorney and signed by you, there will generally be a provision that addresses the scope of the attorney's representation of you, as well as his or her obligations to you as a client. If at the time you hire an attorney you are unclear about his or her obligations to you as a client, you should ask specific questions. In order to benefit from the attorney-client relationship, you should fully understand and be comfortable with both your obligations to your attorney, as well as your attorney's obligations to you as a client.

6. What are your obligations to your attorney?

Your obligations to your attorney include fully and accurately disclosing all of the facts and details regarding your case, as well as any

developments or changes in the facts that may arise. It is your duty to cooperate with your attorney to allow for an efficient, timely resolution of your case. It is your obligation to make yourself available for communication with your attorney, including telephone calls and office conferences. Also, you may be responsible for attending proceedings such as depositions, hearings, and trial if required by the circumstances of your case.

7. Do attorneys have a code of ethics they must follow?

Yes. Attorneys must follow a code of ethics. The code of ethics in Arkansas is called the Arkansas Rules of Professional Conduct. These rules govern the client-lawyer relationship, a lawyer's transactions with people other than clients, a lawyer's role as advocate and counselor, law firms and associations, and a lawyer's pro bono public service. Each of the rules is designed to maintain the integrity of the legal profession while defining the expectations and obligations of attorneys to their clients and others. If you believe your attorney is in violation of the ethical rules that govern attorneys, you may file a complaint with the Arkansas Supreme Court Committee on Professional Conduct.

CHAPTER 16 - JURY DUTY: Doing Your Civic Duty

1. What are the qualifications for serving on a jury in a criminal or civil case?

In all Arkansas counties, every registered voter is legally qualified to act as a juror in state court. However, some counties in Arkansas broaden the jury pool by also allowing licensed drivers and persons issued identification cards to serve as jurors. Persons otherwise legally qualified to act as jurors can be disqualified for several reasons, which include, but are not limited to, the following: (1) a person is less than 18 years of age at the time he or she is required to appear; (2) a person is unable to speak, understand, read, or write the English language; (3) a person has a mental or physical disability that makes them unable to perform jury services; or (4) a person has been convicted of a felony and has not been pardoned.

The qualifications for serving on a jury in federal court are similar to the qualifications for jury service in state court. To be legally qualified for federal jury service, an individual must: (1) be a United States citizen; (2) be at least 18 years of age at the time he or she is required to appear; (3) reside primarily in the judicial district for one year; (4) be adequately proficient in English; (5) have no disqualifying mental or physical condition; (6) have no pending felony charges; and (7) have never been convicted of a felony (unless civil rights have been legally restored).

2. If you are called, do you have to serve?

Yes. All citizens called for jury duty in both state and federal court, unless disqualified or excused, have a duty to serve as a juror. The court may excuse jurors from service for undue hardship or extreme inconvenience; however, this is a discretionary decision made only by the court. A person who fails to respond to a notice of jury duty may be subject to a penalty.

3. How does your name get on a jury list?

People are randomly selected for jury duty. In Arkansas state courts, the names of prospective jurors are chosen from those persons who are registered to vote. In some Arkansas counties, the names may also be chosen from persons who are licensed to drive or are issued an identification card and reside in the county in which they are summoned for service. In federal court, the names are drawn from lists of registered voters and sometimes lists of licensed drivers.

4. How long does jury service usually last?

In both state and federal court, the length of jury service will vary according to the circumstances of each case. Usually, jury duty will last less than one week.

5. Do jurors get paid for their service?

Does my employer have to pay me if I serve on jury duty?

Neither Arkansas state law nor federal law requires a non-government employer to pay wages to an employee while an employee is on jury duty. Although not required to do so, many employers will pay employees while on jury duty.

Does the court have to pay me if I serve on jury duty?

Arkansas Jurors: Upon being summoned to the courthouse and answering the roll, you are entitled to receive a fee even if you are not selected to serve on the jury. If you are seated, you will receive an amount not to exceed \$20 per day of service. You may also be reimbursed for mileage to the courthouse. The exact amount of payment is determined in part by the quorum court of the county and the practice of the judge which may include combining a flat sum for mileage with your fee.

Federal Jurors: Federal jurors are paid \$40 per day of service. While the majority of jury trials last less than a week, jurors can receive up to \$50 per day after serving 30 days on a trial (employees of the federal government are paid their regular salary in lieu of this fee). Jurors are reimbursed for reasonable transportation expenses and parking fees. Jurors also receive a minimal allowance covering their meals and lodging if they are required to stay overnight.

6. Can you lose your job or your pay when you serve on a jury?

You may not be discharged from employment or receive any other form of penalty on account of absence from employment by reason of jury duty. Under Arkansas state law, any person violating these provisions shall be guilty of a Class A misdemeanor. If you have trouble taking off work for jury duty, you should contact the judge.

7. What kinds of questions might the attorneys or judge ask you during jury selection?

The attorneys or the judge may pose questions to determine whether a potential juror is: (1) biased; (2) knows any of the parties, counsel, or witnesses; or (3) should otherwise be excluded from jury duty. The types of questions asked often vary depending upon the type of case. For example, if the case involves a claim for large damages, you may be

asked if you would have any reason not to make such an award even if the plaintiff proved his or her entitlement to a large award. If the case involves a lot of documents, you may be asked if you like working crossword puzzles. An affirmative answer may reveal that this potential juror is highly literate, has a strong vocabulary, is persistent, and will read and understand complex documents.

8. What will you do if you are selected as a juror?

The date and time you are to appear at the courthouse should be written on your summons. If a written summons is not used, you will be notified by a proper judicial official or through your local newspaper.

Those persons for whom jury service would be an extreme personal hardship may be excused because of their occupation or their age. If you have a serious problem or conflict, write or visit the circuit clerk's office at once. He or she will tell you how to apply for an excuse from jury duty.

CHAPTER 17 - WILLS AND ESTATES: You Only Live Once

1. What does a will do?

In a Last Will & Testament (will), you appoint a person or financial institution to gather your assets, pay your creditors, and distribute your assets in accordance with your wishes. This person is referred to as a personal representative. In a typical will for a young adult, you would give your property to a surviving spouse, or if none, to your children, siblings, or parents. Often times, a person will include in his will a trust for minors who are beneficiaries so that they do not receive an inheritance in one lump sum at a young age. It is also common for a person making a will to leave a portion of his/her assets to a charity or university.

2. What happens if I die without a will?

Typically, if you are a resident of Arkansas at your death, Arkansas law will determine who inherits your assets and how they will be divided. For example, if you were unmarried and had no children at your death, your assets would go to your parents. If you were married and had a child, your spouse would receive a portion of your assets and your child would receive the other portion of your assets. Most states have statutes that set out how your assets will be divided if you die without a will.

3. Do I need a will?

In most cases, it is not crucial that you have a will until you are married, have children, or have accumulated assets. If you are married, it is important to have a will because your spouse, by virtue of marriage, becomes entitled to a portion of your assets upon your death; however, if you desire that all of your assets, or more than his/her legal entitlement, pass to your spouse, then it is important to have a will to direct these assets to your spouse. If you have minor children, it is crucial to have a will in order to nominate a guardian to care for the children in the event both natural parents are deceased. In this situation, a court will appoint a guardian over the minor children, and in making such appointment, it will give preference to a nomination in the parent's will. If you are an individual with assets, you need a will in order to direct who will inherit your assets upon your death. A will should be revised as your life circumstances change – when you get married, have children, or gain more assets.

4. Upon my death, what happens to my estate?

When you die, there is a court procedure known as probate to administer your estate and distribute your assets in accordance with a will, or if none, in accordance with state law. The probate process is very similar regardless of whether or not you had a will. The primary difference in the process is the division of your assets. In most circumstances, if you have a will, your assets are distributed in accordance with your will, and if you do not have a will, your assets are distributed in accordance with state law. At the beginning of the probate process, the court appoints a personal representative to gather and protect your assets, pay any creditors or claimants, and distribute your assets in accordance with your will, or if no will, in accordance with state law. If you have a will, the personal representative is typically the person nominated in the will. If you do not have a will, the personal representative can be any person who qualifies under state law. The personal representative has the duty and legal obligation to properly administer the estate, and once the probate process is completed, the personal representative is released of his/her duties and obligations.