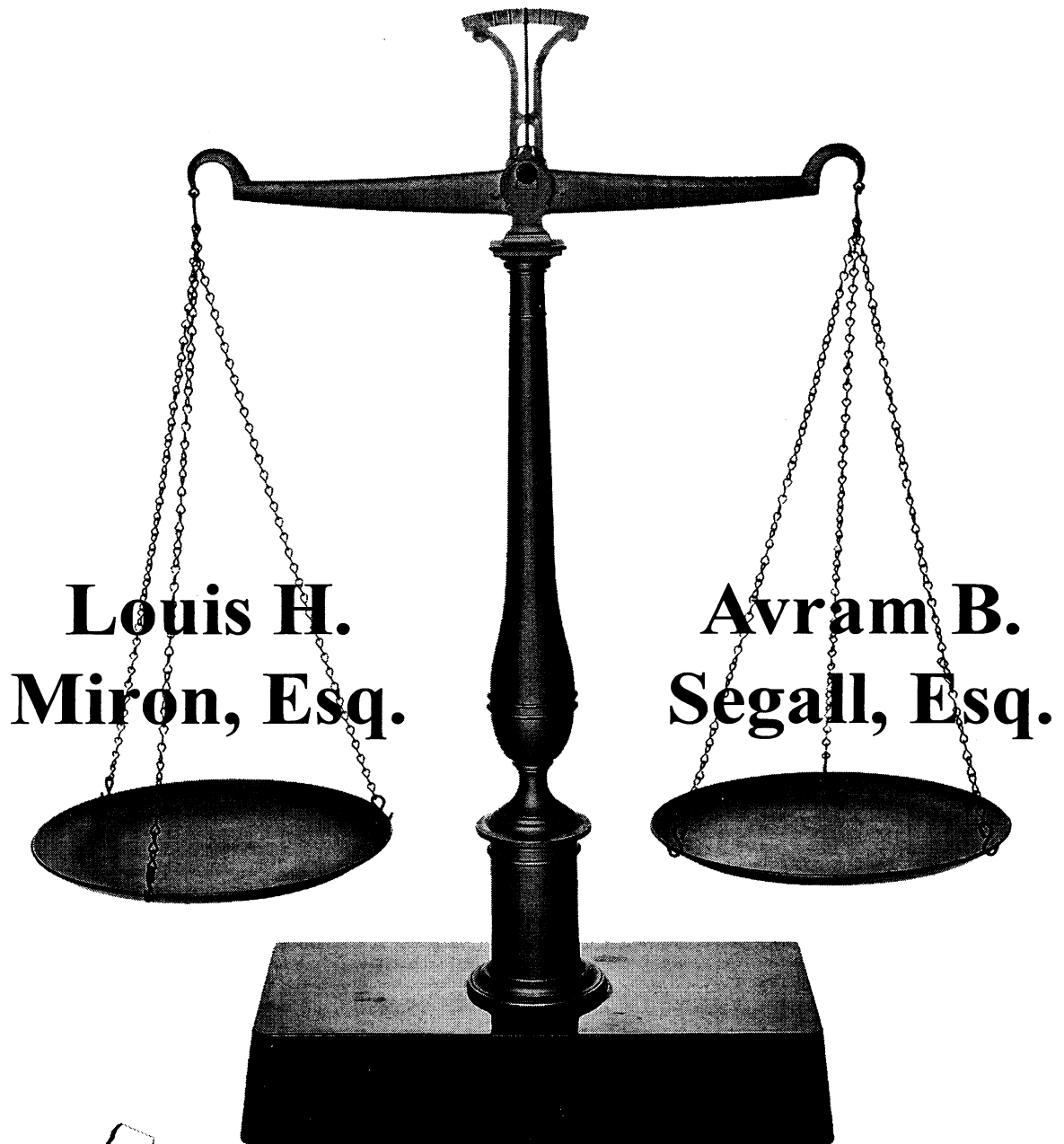


Civil Litigation Fundamentals

Second Edition



New Jersey Institute for Continuing Legal Education



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The New Jersey Institute for Continuing Legal Education was created in 1962 to help lawyers and judges increase their general professional competence, keep abreast of developments in the law, and become more proficient in selected areas of practice. Since 1962, ICLE has served the educational needs of the New Jersey bench and bar and continually strives to respond to their many and varied concerns.

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The Institute administers the Skills Training Course on behalf of the New Jersey Supreme Court, presents more than 230 seminars each year throughout the State, offers audio and video cassettes of seminars, markets software programs especially designed for the practicing attorney, and publishes comprehensive practice manuals and lecture handbooks. Its programs and publications must be financially self-supporting since ICLE is not subsidized in any way. The professional staff of attorneys and administrators, aided by a dedicated support staff, is headquartered at the New Jersey Law Center in New Brunswick, along with the State Bar Association, the State Bar Foundation and IOLTA.

The ingredients that contribute most to the stature of the Institute are the talent, time and effort expended by the very best of New Jersey attorneys, representing every field of specialization and every type of practice. The voluntary participation of practicing lawyers and judges as ICLE lecturers, authors, and advisors is appreciated and encouraged, for without their assistance, high quality continuing legal education would not be possible.

The Institute welcomes this opportunity to serve you.

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FOREWORD

For more than 40 years, the New Jersey Institute for Continuing Legal Education (ICLE) has been serving the professional development needs of the New Jersey bench and bar. Our seminars, publications, audio/videotapes, and other educational materials are specifically designed to facilitate the practice of law and to enable judges and lawyers to more effectively exercise their responsibilities.

Thanks to the efforts of our authors and speakers, ICLE is recognized as one of the leading providers of continuing legal education in North America. Our success in developing one of the most comprehensive, least costly collections of multi-media educational resources would not be possible without the judges, lawyers, and other professionals who voluntarily participate in our programs and publications. The Institute is grateful for the opportunity to serve as the conduit through which they share their knowledge, skills, and expertise with their fellow professionals.

Civil Litigation Fundamentals was conceived and developed by Louis H. Miron, Esq. and Avram B. Segall, Esq., who recognized the need for a basic guidebook to help paralegals successfully navigate the fundamental aspects of civil litigation. Without their commitment to continuing legal education and, in particular, to this important area of the legal profession, this publication would not be possible. ICLE greatly appreciates their efforts and perseverance.

This book would also not be possible without a dedicated publishing staff. It is, therefore, fitting to acknowledge the efforts of Michael Weisberg, Esq., the Director of Publications, and Sara Levenstein, ICLE's Seminar Materials Administrator. They assured that this book was published promptly, accurately, and efficiently. Donna Chamberlain, the Publications Administrator, and Dudley Engram, also of ICLE's staff, assure that orders are processed quickly and courteously.

Your total satisfaction with the Institute and the CLE services we provide is very important to us. So that we may continue to provide the very best in educational materials, ICLE welcomes any comments or suggestions you may have about this book.

Lawrence M. Maron, Esq.

Executive Director,
New Jersey Institute for Continuing Legal Education

PREFACE

At the outset we wish to make clear that this book is not an all-encompassing and detailed treatise on litigation. Rather, it is the product of our many years of litigation experience and teaching the subject to students. This book represents a long-sought goal by the authors: to provide a basic explanation of the litigation process in general — as practiced in the courts of New Jersey in particular — in a logical and readily understandable fashion.

Although in our dual roles as lawyers and educators we found excellent practice series and textbooks written on the subject of litigation, none seemed to address the fundamental reasoning behind the process or was geared to the beginner for testing the litigation waters in New Jersey. Indeed, while you will find the text addresses litigation in a general sense, it focuses specifically on the courts of New Jersey.

Our objective for this book was to combine the theoretical and what we teach in the classroom with the reality of the practice. In striving to meet this objective, we have incorporated what we hope will be useful insights along the way. Our hope is that the uninitiated will be able to use the text and forms incorporated in the appendix as a guide to navigating what might, for many of you, be an uncharted sea. You should consider this text as a compass to take you through that process. It may not provide you with all the answers to your questions but it will certainly point you in the right direction.

Sincerely,

Louis H. Miron and Avram B. Segall

ABOUT THE AUTHORS

LOUIS H. MIRON, a Westfield attorney, is a trustee of the New Jersey State Bar Foundation. He is a member of its Public and Law-Related education committees and also serves on the editorial advisory board of *The Legal Eagle*, the Foundation's legal newspaper for children, and *Respect*, a newsletter about law and diversity. Mr. Miron frequently lectures to students on various legal issues and helped prepare the Westfield High School mock trial team for competition. He has served as an adjunct faculty member at Fairleigh Dickinson University and Montclair State University, where he has taught paralegal studies courses and pre-law courses.

Appointed to several New Jersey Superior Court Committees, Mr. Miron was designated by the Chancery Division a court-appointed monitor and court-appointed fiscal agent during the pendency of consumer fraud actions. He has also been designated court-appointed counsel for patients in emergency medical guardianship cases. Mr. Miron is a member of the New Jersey, New York, and District of Columbia bars, as well as the U.S. District Court for the District of N.J., U.S. Second and Third Circuits, and U.S. Supreme Court bars.

Mr. Miron graduated *cum laude* from Lehigh University and received his law degree from American University, Washington College of Law.

AVRAM B. SEGALL practices law in Clifton, New Jersey. He has been a half-time member of the Montclair State University Legal Studies Department faculty since 1979, where he has been involved in curriculum development. Among other courses, he developed and teaches "Law and Litigation" to undergraduates in the department's ABA approved paralegal program. He also teaches "Ethical and Professional Issues in the Legal Environment" in the department's Master's program in Legal Studies. A former member of American Association for Paralegal Education's Board of Directors, he has also served as the Chairperson of the New Jersey State Bar Association's Paralegal Committee and was a member of the New Jersey Supreme Court Standing Committee on Paralegal Education and Regulation, where he chaired its Subcommittee on Paralegal/Attorney Ethics.

The instructor/advisor of the Montclair State University NJSBA Mock Trial Team for several years, he currently serves as the Clifton High School NJSBA mock trial team attorney advisor, teaching students about evidence and trial concepts and strategies. He is a frequent presenter for the NJSBA and a published author who presents nationally on the subject of litigation and ethics.

Mr. Segall, who is a member of the New Jersey and New York bars, received his B.S. from the University of Wisconsin and his J.D. from New York Law School.

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