PERSONAL INJURY ISSUES

Your client has suffered catastrophic medical injuries, both present and future, both physical and emotional. In addition, your client has suffered significant long term employment losses. Liability is not in dispute (and the nature of the cause of action is irrelevant), and punitive damages are not appropriate.

What questions do you ask? What medical and financial information is required? What defenses may be available? How do you present your demands before litigation? How do you argue the case to a jury?

The following outline is to present the material that is found in the Shoben and Tabb casebook. Use it to organize your case.

I. Medical Bills (§ 29-1)

1) past medical bills

2) future medical bills; Frankel, p. 528; AMI 2204.
a) permanent injury; AMI 2202
b) evidence; Healy, page 544; #1, page 546
c) inflation? § 6-2
d) discounting to present value; AMI 2220; § 6-1

3) adjustment for prior health of plaintiff
a) thin-skulled plaintiff; #1, p. 693
b) AMI 2203: you should consider the full extent of the injury sustained, even though the degree of the injury proximately resulted from the aggravation of a condition that already existed and predisposed the plaintiff to injury to a greater extent than another person.

4) disfigurement, scars and visible results; AMI 2208

5) rehabilitation, caretaker and travel expenses; AMI 2209

6) increased risk of future harm; #2, p. 546

7) shortened life? #3, p. 548

II. Earnings (§ 29-3; § 29-4)

1) Loss of past earnings; AMI 2206

2) Loss of future earnings; AMI 2206
   a) hourly employee
   b) farmer; business owner
   c) homemaker, #4, p. 575
   d) inflation; pages 589-606
   e) reduce to present value; pages 589-606
   f) taxes, #4, page 542

3) Loss of future earning capacity; AMI 2207
   a) Wilburn, page 536
   b) evidence?; elements; #1-2, page 540
   c) double recovery?
   d) Expenses; #3, page 541

III. Physical Pain and Suffering (§ 29-2)

1) how to measure?; AMI 2205; Debus, p. 546
2) lump sum
3) per diem
4) Golden Rule
5) reduce to present value? AMI 2205

IV. Loss of Enjoyment of Life

1) separate instruction? Frankel, p. 528
   2) double recovery? § 4-8
   3) hedonic damages? #6, p. 576
4) in Arkansas?

V. Mental Anguish - tomorrow's class

VI. Loss of Consortium (§ 21-4)

1) Definition:
   a) nature of claim - derivative; tangible and intangible, White, page 557
   b) permanent or temporary; partial or complete; AMI 2211
   c) comparative fault issues
2) Who has a claim?
   a) Spouse injured; marital partner sues for loss of consortium.

b) engaged? common law? live-in?
c) Filial and parental consortium; #2, page 560

3) How much?

VII. Injury to Child (§ 29-5)

1) claim by guardian to age of majority; AMI 2212; Parrott, #3, page 535
2) claim for child; AMI 2213; Healy, p. 544
3) pain and suffering of infants?
4) ethical responsibilities of attorney

VIII. How to structure the award or judgment?

1) lump sum - Frankel, p. 528
2) trust fund, with periodical deposits; #10, page 600
3) structured settlement - #2, p. 533
4) annuity
5) tax aspects - #4, page 542, § 6-3
6) ACA § 16-114-208.

IX. Avoidable Consequences (§ 4-6)

1) Plaintiff's willingness to have medical treatment; Lobermeier, p. 669; AMI 2214
2) Plaintiff's willingness to take another job; pages 622-669.

X. Collateral Sources (§ 6-4)

1) reduction of damages because of insurance payments? pages 674-689, AMI 2215
2) reduction for payments from defendant or joint tort-feasor?
3) reduction for governmental payment?
4) reduction for donations?

09/T/15