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Fault, an important consideration in personal injury cases

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Most people go their whole life without ever needing a personal injury attorney, and it is likely to their benefit to never need one.

The people that fall into the category of needing a personal injury attorney learn more than they ever wanted to about the laws governing personal injury claims. The knowledge that is gained by each individual client pales in comparison to the knowledge that has been gained by attorneys' practicing in their respected fields representing client after client in the preceding years.

Even though it is the attorney's job to navigate the various applicable statutes and common law principals, it is equally important that the client knows and understands how the statutes and principals affect their own case.

This column is not legal advice and is not meant to be an in-depth investigation into the procedural history of the various concepts nor their public policy. Consider this column to be a small window into the various considerations that an attorney must make when representing an injured client.

Let's start our discussion with one of the first elements that permeates every personal injury matter: Fault. In order to make a recovery or receive compensation for injuries there needs to be an allocation of fault on the individual who is... well, at fault for the injuries sustained.

It may seem simple at first glance, but that is rarely the case. Even something as basic as a rear-end automotive collision can have various conflicting witness statements and recollections of what truly oc-



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curred, muddying up the determination of fault for not only the responding officer but also any legal matter that may arise in the future.

Sometimes, both the injured individual as well as the party primarily at fault may share some responsibility for the events that led up to the injury. Take a hypothetical scenario of John Jones blatantly running a stop sign and causing an collision with Terry Ticket, who was in turn traveling well over the speed limit through the intersection. A jury could find that both John Jones and Terry Ticket are at fault for the injuries Terry Ticket sustained.

It is exactly for these situations that Florida follows the "Pure Comparative Negligence Doctrine." Under pure comparative negligence a jury could find that John Jones is 80 percent at fault for running the stop sign, and Terry Ticket was 20 percent at fault for speeding. Any recovery that Terry Ticket makes would be reduced by 20 percent to account for his comparative fault in causing his own injuries.

Seems simple at first, but the formula can be infinitely complicated by the addition of other parties. As an example, what happens if there is an allegation that improperly maintained shrubs blocked John Jones' view of the intersection.

What is written above is admittedly vague and as such welcomes a great deal of interpretation and argument by attorneys representing the injured victim as well as the attorneys representing the insurance carriers. The complexity of even this simple concept is one of the many reasons why it's important to retain an attorney as soon as possible to advise you on the hurdles that have been created by our legal system.