A cause of action is a claim for which a court is able to provide a remedy, that is, some form of relief. There are many causes of action. Each cause of action is designed to cover a particular kind of claim. A plaintiff’s complaint must state a cause of action against the defendant or a court will not consider the claim. Some causes of action come from the common law, some have been created by statute, and some arise from contracts between the parties. All causes of action have certain basic requirements. For a cause of action to exist the following must hold true:

1. The defendant must owe a legal duty to the plaintiff.
2. The defendant must have breached the legal duty.
3. The defendant’s breach of the legal duty must be the proximate cause of the plaintiff’s injury, loss, or other harm.
4. The harm must be of a type the law recognizes as real and substantial.

The plaintiff has the burden of proving each element to an alleged cause of action. Some causes of action, such as fraud, must be pleaded with particularity. In other words, the facts supporting each element of the claim must be stated. Each cause of action is subject to a particular standard of proof, such as a fair preponderance of the evidence or clear and convincing evidence. Each cause of action is limited in the kinds of remedies a court can grant. Each remedy has particular items for which damages may be awarded. Consequently, a litigation team must make sure that they have found the best cause of action for the client.

A transaction or occurrence may give rise to more than one cause of action. A plaintiff may pursue two or more causes of action at the same time against the defendant. On occasion, the law requires a party to choose between causes of action. That decision should be made by a lawyer. When more than one cause of action is alleged in the complaint, each should be set forth as a separate count. The plaintiff’s complaint must identify the transaction or occurrence that gave rise to the claim by stating the time and place of the defendant’s alleged breach of legal duty. A complaint should set forth allegations and facts in convenient, numbered paragraphs. The plaintiff’s lawyer or paralegal should draft the complaint in such a manner as to encourage the defendant’s lawyer to admit, by paragraphs, the facts that are not really contested.

The elements of the cause of action determine what facts are material to the case. The plaintiff must prove all the facts material to the cause of action. When assisting the plaintiff or plaintiff’s attorney, a paralegal should focus on gathering evidence to prove the material (controlling) facts. When assisting the defendant, the paralegal should focus on gathering evidence to show that the facts, in truth, do not support the cause of action alleged by the plaintiff.

In a contract case, the usual measure of damages is the loss of the bargain, which may include a loss of expected profits. In a fraud case, the usual measure of damages is the out-of-pocket loss. In most tort cases, the usual measure of
damages is an amount of money that will fully and fairly compensate the plaintiff for the loss.

Rule 11 requires lawyers and parties to believe there is good basis in law and fact for any cause of action asserted in a complaint. A party or lawyer who alleges a claim that does not have merit is subject to disciplinary action by the court.