

Chapter 01

The Nature of Law

True / False Questions

1. The U.S. Constitution recognizes the states' power to make law in certain areas.

True False

2. Uniform acts are model statutes drafted by private bodies of lawyers and/or scholars; they become law only after legislature enacts them.

True False

3. Common law is a state law and only state courts can apply it.

True False

4. The Restatements are considered binding laws and are promulgated by the American Law Institute.

True False

5. According to the U.S. Constitution treaties made by the president with foreign governments and approved by two-thirds of the U.S. Senate validate inconsistent state and federal laws.

True False

6. The same behavior will sometimes violate both civil law and the criminal law, and in such a case, both liabilities can be claimed at the same time.

True False

7. A State Homicide statute is an example of a substantive law, criminal law and public law.

True False

8. Though formal natural law defense is not recognized in court, judges do take natural law oriented views while interpreting statutes.

True False

9. American legal realists distinguish between the “law in the books” and the “law in action” and they recognize law as the behavior of public officials (mainly judges) as they deal with matters before the legal system.

True False

10. The “critical legal studies” movement regards law as the product of political calculation and class biases of lawmakers.

True False

11. The doctrine of stare decisis states that like cases should be decided alike.

True False

12. In case of a dispute between the common law and a precedent that has been properly distinguished, the common law prevails.

True False

13. It is unimportant for the court, whether the interpretation of a statute is consistent with the legislative purpose; it is the actual language (plain or ambiguous) of the statute that needs to be studied.

True False

14. The doctrine of standing to sue requires that, in order to be able to mount a civil suit, a plaintiff must have some direct and considerable stake in the outcome of the suit.

True False

15. State and federal declaratory judgment statutes do not allow parties to determine their rights and duties when their controversy has not advanced to the point where harm has occurred and legal relief may be necessary.

True False

Multiple Choice Questions

16. What is a statute?

- A. Laws made and applied by judges
- B. Laws made by Congress or a state legislature
- C. Laws made by administrative agencies
- D. Laws made by the federal judiciary

17. _____ are model statutes drafted by private bodies of lawyers and scholars.

- A. Precedents
- B. Uniform acts
- C. Ordinances
- D. Equitable remedies

18. Which of the following is also called “judgemade law”?

- A. Common law
- B. Statutes
- C. Uniform acts
- D. Equity

19. Which of the following is true of *Restatements*?

- A. They are promulgated by courts.
- B. They can be adopted as common law by the states.
- C. They include only statutory laws.
- D. They are law and can bind courts.

20. A(n) _____ is a cancellation of a contract and a return of the parties to their precontractual position.

- A. injunction
- B. ordinance
- C. rescission
- D. restatement

21. Which of the following is the most important type of equitable remedy provided by the equity courts?

- A. Injunction
- B. Specific performance remedy
- C. Reformation
- D. Rescission

22. Why were equitable remedies developed?

- A. Common law rules were too flexible to produce fair results.
- B. The remedies available in common law courts were too few.
- C. Equitable remedies were rigid rules of law and produced fair results.
- D. Common law rules were less technical and rigid.

23. Which of the following is a characteristic of administrative agencies?

- A. They derive their power from the Supreme Court.
- B. They make ordinances and pass executive orders.
- C. They are generally created by a statute.
- D. They are elected bodies.

24. Ordinances are created by:

- A. Congress.
- B. the Supreme Court.
- C. counties.
- D. equity courts.

25. The power of executive order normally derives from a(n):

- A. legislative delegation.
- B. federal court.
- C. injunction.
- D. restatement.

26. According to the principle of _____, treaties are the supreme law of the land.

- A. judicial activism
- B. separation of powers
- C. federalism
- D. federal supremacy

27. Which of the following defeats a federal statute in case of a clash between them?

- A. A state statute.
- B. A state constitution.
- C. An equitable principle.
- D. The US Constitution.

28. Which of the following is applied in a lawsuit between two private parties?

- A. Criminal law
- B. Civil law
- C. Procedural law
- D. Public law

29. What is substantive law?

- A. The laws that govern the rights and duties of people as they act in society.
- B. The code of conduct of government bodies.
- C. The procedures followed by Congress to make statutes.
- D. The procedures followed by state legislatures in creating ordinances.

30. John was angry because Harry is now dating John's former girlfriend. One day, as John was driving his car, he saw Harry walking by the side of the road. John deliberately swerved and struck Harry with the car. John may be successfully sued under:

- A. criminal law only.
- B. civil law only.
- C. either criminal law or civil law but not both.
- D. both criminal law and civil law.

31. Which of the following covers the rules of contract, and property?

- A. Procedural law
- B. Private law
- C. Criminal law
- D. Ordinances

32. Some legal positivists believe that:

- A. an unjust law is not law.
- B. the validity of enacted laws should be obeyed, just or not.
- C. the law should keep up with changing times.
- D. justice is what the judge ate for breakfast.

33. Why is sociological jurisprudence seen to resemble natural law?

- A. It advocates the separation of law and morality.
- B. It stresses on the superiority of lawmakers.
- C. It calls for a separation of the judiciary and legislature.
- D. Its definition of law includes social values.

34. Which of the following has the law and economics movement influenced in judicial opinion?

- A. Antitrust law
- B. Homicide statutes
- C. Discrimination policies
- D. Education

35. Which of the following characterizes natural law?

- A. It accepts the need for both good and bad laws.
- B. It reads constitutional law narrowly.
- C. It rejects the separation of law and morality.
- D. It opposes the view that law should be guided by a “higher reason”.

36. Which of the following is a characteristic of legal realists?

- A. They define law as that which is codified in the books.
- B. They believe in the use of discretionary powers.
- C. They believe that the rules in the books—really affect people's lives.
- D. They believe that "law is law, just or not".

37. Which of the following statements is true of statutes and statutory interpretation?

- A. Statutes are easier to interpret than case law.
- B. Courts begin their interpretation statutes with legislative history.
- C. There is deliberate ambiguity in the language of statutes.
- D. Statutes are written in different authoritative forms.

38. One strength of the instrumentalist attitude:

- A. is its willingness to adapt the law to further the social good.
- B. is that legal validity and moral validity always remain separate.
- C. is that the natural law always remains unworkable.
- D. is that it views the law as an unchanging rule that deserves obedience.

39. In which of the following circumstances, under the doctrine of stare decisis, does the common law rule stated in an earlier judgement not apply to a present case?

- A. Only when the case concerns a government agency.
- B. Only when the court distinguishes the earlier decision.
- C. Only when the parties involved jointly appeal to the courts to do so.
- D. The doctrine of stare decisis does not allow this kind of a situation.

40. When a court identifies a meaningful difference between a present and past case, it _____ the earlier decision.

- A. interprets
- B. implements
- C. prioritizes
- D. distinguishes

41. What are legal rules in prior cases called?

- A. Statutes
- B. Precedents
- C. First impressions
- D. Uniform laws

42. Henry and Barbara were sharing a Cool-Ayd cold drink, and were alarmed to find what seemed to be a plastic object floating inside the drink. Distressed and nauseated, they rushed to the hospital to undergo tests. On their doctor's suggestion, they also underwent several tests. In the meantime, in an action for torts, Cool-Ayd analysts proved that the object found in the bottle was indeed a sugar mould. Under the given circumstances, will Henry and Barbara get relief for emotional distress in an action for tort, when no damage has occurred?

- A. No. Since torts remedy accrues to parties as per the impact rule which states that tort remedy flows from injuries sustained in an impact. There was no injury in this case.
- B. No. They should have checked the cold drink before consuming it; the company is hence, not liable.
- C. Yes. Damages for emotional distress should be recoverable even in the absence of a physical injury-producing impact.
- D. Yes. The company is liable to its consumers because the impact rule does not apply in such a case.

43. What are courts and administrative agencies expected to do in case they encounter ambiguously worded statutes while deciding a case?

- A. Keep the particular statute aside
- B. Fill in the details on a case-to-case basis
- C. Refer to a different statute
- D. Initiate a debate in the legislature

44. What do courts begin their interpretation of a clearly worded statute with?

- A. Its plain meaning
- B. Its legislative history
- C. Records of legislative debates
- D. Its different amendments

45. Lido adopted a policy under which its employees aged over 50 years would be given the preference of availing company sponsored transport facility. Marina, aged 55 years was provided transport facility. However Henry, aged 46 years was denied the same. Henry challenged the company policy as violative of the Age Discrimination in Employment Act (ADEA) which forbids discriminatory preferences for the young over the old. Will Henry succeed in the Court of Law?

- A. Yes, as per the plain meaning rule of statutory interpretation.
- B. Yes, as per the rule of general public purpose.
- C. No, as per the rule of legislative purpose.
- D. No, as per federal law.

46. The Supreme Court once denied tax-exempt status to a private university that discriminated on the basis of race. Which of the following is likely to have influenced or guided the interpretation of the statute relevant to this case?

- A. Maxims
- B. Precedents
- C. General public purposes
- D. Standing to sue

47. Which of the following is false about the power of courts?

- A. Courts are not absolutely bound to favor one technique of statutory interpretation over another.
- B. Courts can distinguish prior decisions in common law cases.
- C. State Supreme Courts can overrule their own prior decisions.
- D. Courts can make or interpret law in the absence of a case.

48. What is the main argument for avoiding a statute's plain meaning or legislative history, and instead following prior interpretation in a case?

- A. Plain meaning is subject to debate
- B. Promoting stability and certainty
- C. Legislative history can be contentious
- D. Saving the court's valuable time

49. _____ are general rules of thumb employed in statutory interpretations.

- A. Idioms
- B. Phrases
- C. Quotations
- D. Maxims

50. Cases are said to be _____ when there no longer is a real dispute between the parties.

- A. ripe
- B. moot
- C. feigned
- D. intangible

51. The doctrine of standing to sue requires that:

- A. the lawsuit must benefit the public in general.
- B. the plaintiff have a substantial stake in the outcome of the litigation.
- C. cases must be genuine controversies.
- D. courts must not issue any advisory opinions in cases.

52. Which of the following lets courts help parties determine their rights and duties even though neither may yet have been harmed, so long as there is a real case or controversy between them?

- A. No liability outside privity of contract rule
- B. Ejusdem generis
- C. A declaratory judgment statute
- D. Public law

53. Which of the following allows parties to determine their rights and duties even though their controversy has not advanced to the point where harm has occurred and legal relief may be necessary?

- A. *Ejusdemgeneris*
- B. Standing to sue
- C. Declaratory judgment
- D. Precedents

54. Evan plans to open a company named "Maryland" for which her trademark is "M". This trademark in no way resembles the famous McDonald's Trademark. However, she fears that the latter might think otherwise and sue her in future. Evan does not want to take any risk and hence seeks the court's judgment on the issue. Can she do it?

- A. Yes, she can do it because she wishes to seek the court's opinion.
- B. Yes, she can do it under state and federal declaratory judgment statutes.
- C. No, she cannot agitate an issue that has not yet arisen.
- D. No, she cannot agitate the issue as she knows that the two marks are not similar.

55. Which technique of statutory interpretation was most emphasized (and used) in the Weber case in the text?

- A. The plain meaning rule.
- B. Interpreting a statute consistent with its purpose.
- C. Following prior interpretations of a statute.
- D. Maxims of statutory construction.

Essay Questions

56. What do statutes and administrative regulations have in common?

57. Explain the position adopted by legal positivists regarding law.

58. Sociological jurisprudence has a tendency to say that, when interpreting and applying the law, courts should pay attention to changing social values and let the law reflect those new values. How is this different from the natural law approach, which also talks about values?

59. What is the significance of the instrumentalist attitude in implementing the law?

60. Analyze the liability of Internet Service Provider under Section 230 of

Communications Decency Act (CDA) from the cases of Chicago Lawyers Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc., and Fair Housing Councils of San Fernando Valley v. Roommates.com, LLC.

Chapter 01 The Nature of Law **Answer Key**

True / False Questions

1. The U.S. Constitution recognizes the states' power to make law in certain areas.

TRUE

The U.S. Constitution structures the relationship between the federal government and the states around the system of federalism, recognising the states' power to make law in certain areas.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-01 Identify the respective makers of the different types of law (constitutions; statutes; common law; and administrative regulations and decisions).

Topic: Types and Classifications of Law

2. Uniform acts are model statutes drafted by private bodies of lawyers and/or scholars; they become law only after legislature enacts them.

TRUE

Uniform acts are model statutes drafted by private bodies of lawyers and scholars and do not become law until a legislature enacts them.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-01 Identify the respective makers of the different types of law (constitutions; statutes; common law; and administrative regulations and decisions).

Topic: Types and Classifications of Law

3. Common law is a state law and only state courts can apply it.

FALSE

Although common law exists only at the state level, both state courts and federal courts are involved in applying it.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-02 Identify the respective makers of the different types of law (constitutions; statutes; common law; and administrative regulations and decisions).

Topic: Types and Classifications of Law

4. The Restatements are considered binding laws and are promulgated by the American Law Institute.

FALSE

Restatements are promulgated by the American Law Institute, not the courts; hence, they are not considered binding laws.

AACSB: Ethics

Blooms: Remember

Difficulty: 2 Medium

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

5. According to the U.S. Constitution treaties made by the president with foreign governments and approved by two-thirds of the U.S. Senate validate inconsistent state and federal laws.

FALSE

According to the U.S. Constitution, treaties made by the president with foreign governments and approved by two-thirds of the U.S. Senate become “the supreme Law of the Land.” Treaties invalidate inconsistent state and federal laws.

AACSB: Ethics

Blooms: Remember

Difficulty: 2 Medium

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

6. The same behavior will sometimes violate both civil law and the criminal law, and in such a case, both liabilities can be claimed at the same time.

TRUE

Even though the civil law and the criminal law are distinct bodies of law, the same behavior will sometimes violate both. In such a case, both liabilities can be claimed at the same time.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

7. A State Homicide statute is an example of a substantive law, criminal law and public law.

TRUE

A statute making murder a crime is a rule of substantive law, while public law includes criminal law. Hence, a State Homicide statute is an example of all three laws.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-03 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

8. Though formal natural law defense is not recognized in court, judges do take natural law oriented views while interpreting statutes.

TRUE

While interpreting statutes, judges try to see the impact of valid laws that result in a general welfare of society.

AACSB: Ethics

Blooms: Understand

Difficulty: 3 Hard

Learning Objective: 01-04 Identify the type of law that takes precedence when two types of law conflict.

Topic: Jurisprudence

9. American legal realists distinguish between the “law in the books” and the “law in action” and they recognize law as the behavior of public officials (mainly judges) as they deal with matters before the legal system.

TRUE

American legal realism defines law as the behavior of public officials (mainly judges) as they deal with matters before the legal system; and it is the actions of such decision makers that really affect people’s lives,

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-04 Describe key ways in which the major schools of jurisprudence differ from each other.

Topic: Jurisprudence

10. The “critical legal studies” movement regards law as the product of political calculation and class biases of lawmakers.

TRUE

The “critical legal studies” (CLS) movement regards law as the product of political calculation and class biases on the part of lawmakers. Articles published by its adherents have controversial assessments of legal rules.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-04 Describe key ways in which the major schools of jurisprudence differ from each other.

Topic: Jurisprudence

11. The doctrine of stare decisis states that like cases should be decided alike.

TRUE

The standard for choosing and applying prior cases to decide present cases is the doctrine of stare decisis, which states that like cases should be decided alike.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-05 Describe the respective roles of adhering to precedent (stare decisis) and distinguishing precedent in case law reasoning.

Topic: The Functions of Law

12. In case of a dispute between the common law and a precedent that has been properly distinguished, the common law prevails.

FALSE

When a precedent has been properly distinguished, the common law rule it stated does not control the present case. The court deciding the present case may then fashion a new common law rule to govern the case.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-05 Describe the respective roles of adhering to precedent (stare decisis) and distinguishing precedent in case law reasoning.

Topic: The Functions of Law

13. It is unimportant for the court, whether the interpretation of a statute is consistent with the legislative purpose; it is the actual language (plain or ambiguous) of the statute that needs to be studied.

FALSE

In case the language of a statute is ambiguous, courts resort to its legislative history. In this, the courts study whether the interpretation of the statute is consistent with its legislative purpose.

AACSB: Ethics

Blooms: Understand

Difficulty: 1 Easy

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

14. The doctrine of standing to sue requires that, in order to be able to mount a civil suit, a plaintiff must have some direct and considerable stake in the outcome of the suit.

TRUE

The doctrine of standing to sue requires that the plaintiff have some direct, tangible, and substantive stake in the outcome of the litigation.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: The Functions of Law

15. State and federal declaratory judgment statutes do not allow parties to determine their rights and duties when their controversy has not advanced to the point where harm has occurred and legal relief may be necessary.

FALSE

State and federal declaratory judgment statutes, however, allow parties to determine their rights and duties even though their controversy has not advanced to the point where harm has occurred and legal relief may be necessary.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: The Functions of Law

Multiple Choice Questions

16. What is a statute?

- A. Laws made and applied by judges
- B. Laws made by Congress or a state legislature**
- C. Laws made by administrative agencies
- D. Laws made by the federal judiciary

Statutes are laws created by elected representatives in Congress or a state legislature. They are stated in an authoritative form in statute books or codes.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-01 Identify the respective makers of the different types of law (constitutions; statutes; common law; and administrative regulations and decisions).

Topic: Types and Classifications of Law

17. _____ are model statutes drafted by private bodies of lawyers and scholars.

- A. Precedents
- B.** Uniform acts
- C. Ordinances
- D. Equitable remedies

Uniform acts are model statutes drafted by private bodies of lawyers and which do not become law until a legislature enacts them.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-01 Identify the respective makers of the different types of law (constitutions; statutes; common law; and administrative regulations and decisions).

Topic: Types and Classifications of Law

18. Which of the following is also called “judgemade law”?

- A. Common law
- B. Statutes
- C. Uniform acts
- D. Equity

The common law (also called judgemade law or case law) is law made and applied by judges as they decide cases not governed by statutes or other types of law.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-02 Identify the respective makers of the different types of law (constitutions; statutes; common law; and administrative regulations and decisions).

Topic: Types and Classifications of Law

19. Which of the following is true of *Restatements*?

- A. They are promulgated by courts.
- B. They can be adopted as common law by the states.**
- C. They include only statutory laws.
- D. They are law and can bind courts.

The *Restatements* are collections of common law (and occasionally statutory) rules covering various areas of the law and are the rules followed by a majority of the states.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-02 Explain the basic differences between the criminal law and civil law classifications.

Topic: Types and Classifications of Law

20. A(n) _____ is a cancellation of a contract and a return of the parties to their precontractual position.

A. injunction

B. ordinance

C. rescission

D. restatement

A rescission is the cancellation of a contract and a return of the parties to their precontractual position. It is one of the equitable remedies.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-02 Explain the basic differences between the criminal law and civil law classifications.

Topic: Types and Classifications of Law

21. Which of the following is the most important type of equitable remedy provided by the equity courts?

- A. Injunction
- B. Specific performance remedy
- C. Reformation
- D. Rescission

Equity courts provide several remedies that are not available in the common law courts; the most important of these equitable remedies is the injunction—a court order forbidding or commanding a party to do something.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

22. Why were equitable remedies developed?

- A. Common law rules were too flexible to produce fair results.
- B. The remedies available in common law courts were too few.
- C. Equitable remedies were rigid rules of law and produced fair results.
- D. Common law rules were less technical and rigid.

Equitable remedies developed due to the failure of common laws to provide justice in many cases.

AACSB: Ethics

Blooms: Remember

Difficulty: 2 Medium

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

23. Which of the following is a characteristic of administrative agencies?

- A. They derive their power from the Supreme Court.
- B. They make ordinances and pass executive orders.
- C. They are generally created by a statute.
- D. They are elected bodies.

Administrative agencies normally are created by a statute that specifies the areas in which the agency can make law and the scope of its power in each area.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

24. Ordinances are created by:

- A. Congress.
- B. the Supreme Court.
- C. counties.
- D. equity courts.

State governments have subordinate units, such as counties and municipalities that are given limited powers to exercise various government functions. The enactments of counties and municipalities are called ordinances.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

25. The power of executive order normally derives from a(n):

- A. legislative delegation.
- B. federal court.
- C. injunction.
- D. restatement.

The power of executive orders normally results from a legislative delegation.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

26. According to the principle of _____, treaties are the supreme law of the land.

- A. judicial activism
- B. separation of powers
- C. federalism
- D. federal supremacy

According to the principle of federal supremacy, the U.S. Constitution, federal laws enacted pursuant to it, and treaties are the supreme law of the land. This means that federal law defeats conflicting state law.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

27. Which of the following defeats a federal statute in case of a clash between them?

- A. A state statute.
- B. A state constitution.
- C. An equitable principle.
- D. The US Constitution.

The U.S. Constitution defeats any kind of inconsistent laws.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-02 Identify the type of law that takes precedence when two types of law conflict.

Topic: Types and Classifications of Law

28. Which of the following is applied in a lawsuit between two private parties?

- A. Criminal law
- B. Civil law**
- C. Procedural law
- D. Public law

Disputes between private parties is generally subject to civil law.

AACSB: Ethics

Blooms: Remember

Difficulty: 2 Medium

Learning Objective: 01-03 Explain the basic differences between the criminal law and civil law classifications.

Topic: Types and Classifications of Law

29. What is substantive law?

- A. The laws that govern the rights and duties of people as they act in society.**
- B. The code of conduct of government bodies.
- C. The procedures followed by Congress to make statutes.
- D. The procedures followed by state legislatures in creating ordinances.

Substantive law sets the rights and duties of people as they act in society.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-03 Explain the basic differences between the criminal law and civil law classifications.

30. John was angry because Harry is now dating John's former girlfriend. One day, as John was driving his car, he saw Harry walking by the side of the road. John deliberately swerved and struck Harry with the car. John may be successfully sued under:

- A. criminal law only.
- B. civil law only.
- C. either criminal law or civil law but not both.
- D. both criminal law and civil law.

Even though the civil law and the criminal law are distinct bodies of law, the same behavior will sometimes violate both. If a person commits an intentional act of physical violence, he may face both criminal prosecution by the state and the plaintiff's civil suit for damages.

AACSB: Reflective Thinking

Blooms: Apply

Difficulty: 2 Medium

Learning Objective: 01-03 Explain the basic differences between the criminal law and civil law classifications.

Topic: Types and Classifications of Law

31. Which of the following covers the rules of contract, and property?

A. Procedural law

B. Private law

C. Criminal law

D. Ordinances

Private law establishes a framework of legal rules that enables parties to set the rights and duties they owe each other. A rule of contract law would be civil, substantive, and private.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-03 Explain the basic differences between the criminal law and civil law classifications.

Topic: Types and Classifications of Law

32. Some legal positivists believe that:

- A. an unjust law is not law.
- B. the validity of enacted laws should be obeyed, just or not.
- C. the law should keep up with changing times.
- D. justice is what the judge ate for breakfast.

Legal positivists believe that laws may be good, bad, or indifferent. They have to be obeyed irrespective of their content.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-03 Explain the basic differences between the criminal law and civil law classifications.

Topic: Types and Classifications of Law

33. Why is sociological jurisprudence seen to resemble natural law?

- A. It advocates the separation of law and morality.
- B. It stresses on the superiority of lawmakers.
- C. It calls for a separation of the judiciary and legislature.
- D. Its definition of law includes social values.

Since its definition of law includes social values, sociological jurisprudence seems to resemble natural law.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-04 Describe key ways in which the major schools of jurisprudence differ from each other.

Topic: Jurisprudence

34. Which of the following has the law and economics movement influenced in judicial opinion?

- A. Antitrust law
- B. Homicide statutes
- C. Discrimination policies
- D. Education

The *lawand economics* movement examines legal rules through economic theory and analysis. This movement's influence has extended beyond academic literature, with law and economics-oriented considerations, factors, and tests sometimes appearing in judicial opinions dealing with such matters as contract, tort, or antitrust law.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-04 Describe key ways in which the major schools of jurisprudence differ from each other.

Topic: Jurisprudence

35. Which of the following characterizes natural law?

- A. It accepts the need for both good and bad laws.
- B. It reads constitutional law narrowly.
- C. It rejects the separation of law and morality.
- D. It opposes the view that law should be guided by a “higher reason”.

Natural law adherents usually contend that some higher law or set of universal moral rules binds all human beings in all times and places. It also takes issue with legal positivism by rejecting the positivist separation of law and morality.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-04 Describe key ways in which the major schools of jurisprudence differ from each other.

Topic: Jurisprudence

36. Which of the following is a characteristic of legal realists?

- A. They define law as that which is codified in the books.
- B.** They believe in the use of discretionary powers.
- C. They believe that the rules in the books—really affect people’s lives.
- D. They believe that “law is law, just or not”.

Legal realists feel that the modern judge should be a social engineer who weighs all relevant values and considers social science findings when deciding a case; this requires discretionary rules that allow judges to decide each case according to its unique facts.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-04 Describe key ways in which the major schools of jurisprudence differ from each other.

Topic: Jurisprudence

37. Which of the following statements is true of statutes and statutory interpretation?

- A. Statutes are easier to interpret than case law.
- B. Courts begin their interpretation statutes with legislative history.
- C. There is deliberate ambiguity in the language of statutes.
- D. Statutes are written in different authoritative forms.

Statutes are often ambiguously worded because legislators are unwilling or unable to deal specifically with each situation that the statute was enacted to regulate; there is a need for legislative compromise, and/or legislators' desire to avoid taking any controversial positions.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-05 Describe key ways in which the major schools of jurisprudence differ from each other.

Topic: Legal Reasoning

38. One strength of the instrumentalist attitude:

- A. is its willingness to adapt the law to further the social good.
- B. is that legal validity and moral validity always remain separate.
- C. is that the natural law always remains unworkable.
- D. is that it views the law as an unchanging rule that deserves obedience.

An instrumentalist attitude denotes the willingness to adapt existing laws to current situations.

AACSB: Ethics

Blooms: Understand

Difficulty: 3 Hard

Learning Objective: 01-04 Describe the respective roles of adhering to precedent (stare decisis) and distinguishing precedent in case law reasoning.

Topic: The Functions of Law

39. In which of the following circumstances, under the doctrine of stare decisis, does the common law rule stated in an earlier judgement not apply to a present case?

- A. Only when the case concerns a government agency.
- B. Only when the court distinguishes the earlier decision.**
- C. Only when the parties involved jointly appeal to the courts to do so.
- D. The doctrine of stare decisis does not allow this kind of a situation.

When a precedent has been properly distinguished, the common law rule it stated does not control the present case. The court deciding the present case may then fashion a new common law rule to govern the case.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-05 Describe the respective roles of adhering to precedent (stare decisis) and distinguishing precedent in case law reasoning.

Topic: The Functions of Law

40. When a court identifies a meaningful difference between a present and past case, it _____ the earlier decision.

- A. interprets
- B. implements
- C. prioritizes
- D. distinguishes

When a precedent has been properly distinguished, the common law rule it stated does not control the present case. The court deciding the present case may then fashion a new common law rule to govern the case.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-05 Describe the respective roles of adhering to precedent (stare decisis) and distinguishing precedent in case law reasoning.

Topic: The Functions of Law

41. What are legal rules in prior cases called?

- A. Statutes
- B. Precedents**
- C. First impressions
- D. Uniform laws

According to the doctrine of stare decisis, like cases must be decided alike.

Appropriate legal rules from earlier cases are called precedents.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-05 Describe the respective roles of adhering to precedent (stare decisis) and distinguishing precedent in case law reasoning.

Topic: The Functions of Law

42. Henry and Barbara were sharing a Cool-Ayd cold drink, and were alarmed to find what seemed to be a plastic object floating inside the drink. Distressed and nauseated, they rushed to the hospital to undergo tests. On their doctor's suggestion, they also underwent several tests. In the meantime, in an action for torts, Cool-Ayd analysts proved that the object found in the bottle was indeed a sugar mould. Under the given circumstances, will Henry and Barbara get relief for emotional distress in an action for tort, when no damage has occurred?
- A. No. Since torts remedy accrues to parties as per the impact rule which states that tort remedy flows from injuries sustained in an impact. There was no injury in this case.
 - B. No. They should have checked the cold drink before consuming it; the company is hence, not liable.
 - C. Yes. Damages for emotional distress should be recoverable even in the absence of a physical injury-producing impact.
 - D. Yes. The company is liable to its consumers because the impact rule does not apply in such a case.

Whenever the plaintiff demonstrates a causal relationship between the negligent act and the reasonably foreseeable mental and emotional suffering, damages are recoverable.

AACSB: Reflective Thinking

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 01-05 Describe the respective roles of adhering to precedent (stare decisis) and distinguishing precedent in case law reasoning.

43. What are courts and administrative agencies expected to do in case they encounter ambiguously worded statutes while deciding a case?

- A. Keep the particular statute aside
- B. Fill in the details on a case-to-case basis
- C. Refer to a different statute
- D. Initiate a debate in the legislature

The natural ambiguity of language serves as one reason courts face difficulties when interpreting statutes. When this happens, the legislature expects courts and/or administrative agencies to fill in the details on a case-by-case basis.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: The Functions of Law

44. What do courts begin their interpretation of a clearly worded statute with?

- A. Its plain meaning
- B. Its legislative history
- C. Records of legislative debates
- D. Its different amendments

Courts begin their interpretation of a statute with its actual language. If the statute's words have a clear, common, accepted meaning, courts often employ the plain meaning rule.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: The Functions of Law

45. Lido adopted a policy under which its employees aged over 50 years would be given the preference of availing company sponsored transport facility. Marina, aged 55 years was provided transport facility. However Henry, aged 46 years was denied the same. Henry challenged the company policy as violative of the Age Discrimination in Employment Act (ADEA) which forbids discriminatory preferences for the young over the old. Will Henry succeed in the Court of Law?

- A. Yes, as per the plain meaning rule of statutory interpretation.
- B. Yes, as per the rule of general public purpose.
- C. No, as per the rule of legislative purpose.
- D. No, as per federal law.

This is valid as per the general public purpose rule. It has been implemented for the benefit of a segment of society.

AACSB: Reflective Thinking

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

46. The Supreme Court once denied tax-exempt status to a private university that discriminated on the basis of race. Which of the following is likely to have influenced or guided the interpretation of the statute relevant to this case?

- A. Maxims
- B. Precedents
- C. General public purposes
- D. Standing to sue

Courts sometimes construe statutory language in the light of various general public purposes. These purposes are not the purposes underlying the statute in question; rather, they are widely accepted general notions of public policy.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

47. Which of the following is false about the power of courts?

- A. Courts are not absolutely bound to favor one technique of statutory interpretation over another.
- B. Courts can distinguish prior decisions in common law cases.
- C. State Supreme Courts can overrule their own prior decisions.
- D. Courts can make or interpret law in the absence of a case.

A fundamental limit on the power of courts is that they cannot make or interpret laws until parties present them with a case to decide.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

48. What is the main argument for avoiding a statute's plain meaning or legislative history, and instead following prior interpretation in a case?

- A. Plain meaning is subject to debate
- B.** Promoting stability and certainty
- C. Legislative history can be contentious
- D. Saving the court's valuable time

Courts sometimes follow prior cases and administrative decisions interpreting a statute, regardless of the statute's plain meaning or legislative history. The main argument for following these prior interpretations is to promote stability and certainty.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

49. _____ are general rules of thumb employed in statutory interpretations.

- A. Idioms
- B. Phrases
- C. Quotations
- D. Maxims

Maxims are general rules of thumb employed in statutory interpretation.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

50. Cases are said to be _____ when there no longer is a real dispute between the parties.

A. ripe

B. moot

C. feigned

D. intangible

Courts may also refuse to decide cases that are moot, i.e., there no longer is a real dispute between the parties.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

51. The doctrine of standing to sue requires that:

- A. the lawsuit must benefit the public in general.
- B. the plaintiff have a substantial stake in the outcome of the litigation.**
- C. cases must be genuine controversies.
- D. courts must not issue any advisory opinions in cases.

The doctrine of standing to sue, requires that the plaintiff have some direct, tangible, and substantial stake in the outcome of the litigation.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

52. Which of the following lets courts help parties determine their rights and duties even though neither may yet have been harmed, so long as there is a real case or controversy between them?

- A. No liability outside privity of contract rule
- B. Ejusdem generis
- C. A declaratory judgment statute
- D. Public law

State and federal declaratory judgment statutes, however, allow parties to determine their rights and duties even though their controversy has not advanced to the point where harm has occurred and legal relief may be necessary.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

53. Which of the following allows parties to determine their rights and duties even though their controversy has not advanced to the point where harm has occurred and legal relief may be necessary?

- A. *Ejusdemgeneris*
- B. Standing to sue
- C. Declaratory judgment
- D. Precedents

State and federal declaratory judgment statutes, allow parties to determine their rights and duties even though their controversy has not advanced to the point where harm has occurred and legal relief may be necessary. This enables them to determine their legal position without taking action that could expose them to liability.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

54. Evan plans to open a company named “Maryland” for which her trademark is “M”. This trademark in no way resembles the famous McDonald’s Trademark. However, she fears that the latter might think otherwise and sue her in future. Evan does not want to take any risk and hence seeks the court’s judgment on the issue. Can she do it?

- A. Yes, she can do it because she wishes to seek the court’s opinion.
- B. Yes, she can do it under state and federal declaratory judgment statutes.
- C. No, she cannot agitate an issue that has not yet arisen.
- D. No, she cannot agitate the issue as she knows that the two marks are not similar.

State and federal declaratory judgment statutes, however, allow parties to determine their rights and duties even though their controversy has not advanced to the point where harm has occurred and legal relief may be necessary.

AACSB: Reflective Thinking

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

55. Which technique of statutory interpretation was most emphasized (and used) in the Weber case in the text?

- A. The plain meaning rule.
- B. Interpreting a statute consistent with its purpose.
- C. Following prior interpretations of a statute.
- D. Maxims of statutory construction.

Title VII of the Civil Rights Act of 1964. Section 703(a) of the Act states: “It shall be an unlawful employment practice for an employer...to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” Weber’s application was rejected because of the presence of the affirmative action feature under which 50 percent of the trainees had to be Black. Hence, in case of a conflict between the two features, the court followed the “plain meaning rule” of the Civil Rights Act of 1964.

AACSB: Reflective Thinking

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 01-06 Identify what courts focus on when applying the major statutory interpretation techniques (plain meaning; legislative purpose; legislative history; and general public purpose).

Topic: Legal Reasoning

Essay Questions

56. What do statutes and administrative regulations have in common?

Like statutes, administrative regulations appear in a precise form in one authoritative source.

AACSB: Ethics

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 01-02 Identify the respective makers of the different types of law (constitutions; statutes; common law; and administrative regulations and decisions).

Topic: Types and Classifications of Law

57. Explain the position adopted by legal positivists regarding law.

Legal positivists define law as the command of a recognized political authority. The commands of recognized political authorities may be good, bad, or indifferent in moral terms. To legal positivists, such commands are valid law regardless of their “good” or “bad” content. In other words, positivists see legal validity and moral validity as entirely separate questions.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-03 Explain the basic differences between the criminal law and civil law classifications.

Topic: Types and Classifications of Law

58. Sociological jurisprudence has a tendency to say that, when interpreting and applying the law, courts should pay attention to changing social values and let the law reflect those new values. How is this different from the natural law approach, which also talks about values?

The difference is that, this kind of sociological jurisprudence is indifferent to whether these new values are good or bad. They examine law within its social context. Recall the “right or wrong” at the end of Holmes’s statement on the subject.

To make the contrast clear, imagine that Country X is going to the dogs in a moral sense. Sociological jurisprudence at issue here might counsel that courts follow the new values (or anti-values) anyway-possibly because law that doesn’t fit with a society’s dominant values cannot be enforced or obeyed and will not last. But natural law would reject this stance, because it would mean the creation of unjust laws, which according to them aren’t law at all.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-04 Describe key ways in which the major schools of jurisprudence differ from each other.

Topic: Jurisprudence

59. What is the significance of the instrumentalist attitude in implementing the law?

In societies of the past, people often viewed law as unchanging rules that deserved obedience because they were part of the natural order of things. In modern societies, law and lawmakers take into account the changing circumstances in society and try to decide cases based on their understanding of society. One strength of this instrumentalist attitude is its willingness to adapt the law to further the social good.

AACSB: Ethics

Blooms: Understand

Difficulty: 3 Hard

Learning Objective: 01-04 Describe key ways in which the major schools of jurisprudence differ from each other.

Topic: Jurisprudence

60. Analyze the liability of Internet Service Provider under Section 230 of Communications Decency Act (CDA) from the cases of Chicago Lawyers Committee for Civil Rights Under Law, Inc. v. Craigslist, Inc., and Fair Housing Councils of San Fernando Valley v. Roommates.com, LLC.

Though in the case of Craigslist, the court held that Craigslist, being a service provider is not liable for the information put online because they are the views of the user and further Craigslist is not causing the user in any way to say such statements. Thus, the user becomes liable for issuing any statement. However in case of Roommates.com, the court held just the opposite making the service provider liable for causing the user to say things that are prohibited as per the CDA. Roommates.com had designed an interactive questionnaire session for registration of users which included answers to be picked from a drop-down menu. Thus the service provider was liable for causing the user to mention such things contrary to CDA. Look at these cases for a detailed and interesting analysis.

AACSB: Ethics

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 01-05 Describe the respective roles of adhering to precedent (stare decisis) and distinguishing precedent in case law reasoning.

Topic: Legal Reasoning