

Chapter 1—Introduction to Law

TRUE/FALSE

1. Philosophers and jurists agree on a single definition of law: rules of civil conduct prescribed by the supreme power of a state, commanding what is right and prohibiting what is wrong.

ANS: F PTS: 1

2. The law is the same as moral and ethical concepts.

ANS: F PTS: 1

3. Law and justice represent separate and distinct concepts.

ANS: T PTS: 1

4. Substantive law establishes the rules for enforcing rights that exist in a society.

ANS: F PTS: 1

5. The federal Constitution provides that federal statutes and treaties are paramount to state constitutions.

ANS: T PTS: 1

6. Usual remedies granted in a criminal case include compensation for the victim.

ANS: F PTS: 1

7. The law does not change; it is based on unchanging and universal truths.

ANS: F PTS: 1

8. A reason for the application of sanctions is to assure that laws will be enforced.

ANS: T PTS: 1

9. A private citizen may bring a criminal action against an individual for breaking a criminal law.

ANS: F PTS: 1

10. Under the civil law system, adversaries initiate and conduct litigation.

ANS: F PTS: 1

11. The doctrine of *stare decisis* has the disadvantage of not allowing sufficient flexibility for the common law to change.

ANS: F PTS: 1

12. In nearly every jurisdiction in the United States, courts of common law and courts of equity have combined into a single court that administers both systems of law.

ANS: T PTS: 1

13. State statutes are subordinate to state constitutional mandates.

ANS: T PTS: 1

14. Laws that are enacted by legislatures are called statutes.

ANS: T PTS: 1

15. The Uniform Commercial Code is a federal law that applies to commercial transactions among the states.

ANS: F PTS: 1

16. Laws passed by Congress are the supreme law of the land in the United States and take precedence over the United States Constitution.

ANS: F PTS: 1

17. The final arbiter as to the constitutionality of laws passed by Congress or by the legislature of a state is the Supreme Court of the United States.

ANS: T PTS: 1

18. The common law system of law is used in most of Europe, Scotland, and Latin America.

ANS: F PTS: 1

19. Decisions in state trial courts generally are reported or published.

ANS: F PTS: 1

20. The principle of *stare decisis* precludes courts from changing any decisions they previously announced.

ANS: F PTS: 1

21. Under the principle of *stare decisis*, the U.S. Supreme Court must follow a rule of law applied by a district court (federal trial court) in a prior decision involving a similar issue.

ANS: F PTS: 1

22. Common law systems of jurisprudence follow the inquisitorial method of adjudication.

ANS: F PTS: 1

23. Business law topics such as contracts, agency, property, and trusts are governed primarily by the common law.

ANS: T PTS: 1

24. The law is pervasive, and it is in part prohibitory and in part mandatory.

ANS: T PTS: 1

25. If the State of Minnesota negotiates with the Canadian government on issues involving acid rain and eventually reaches an agreement with Canadian officials, this is a valid treaty under the United States Constitution.

ANS: F PTS: 1

26. In the United States, treaties are not subject to judicial review.

ANS: F PTS: 1

27. The party bringing a civil lawsuit must prove the case by a preponderance of the evidence.

ANS: T PTS: 1

28. The primary function of law is to preserve the state.

ANS: F PTS: 1

29. Business law is primarily public law.

ANS: F PTS: 1

30. Decisions of state courts of appeals are published in volumes known as "reports."

ANS: T PTS: 1

31. The terms "law" and "justice" are interchangeable.

ANS: F PTS: 1

32. The President of the United States has the authority to issue laws.

ANS: T PTS: 1

33. You find a decision of the U.S. Court of Appeals in the Federal Reporter.

ANS: T PTS: 1

MULTIPLE CHOICE

1. In the common law system of the United States, a crime is defined as:
- a. a private wrong that necessitates litigation between the victim and the perpetrator.
 - b. any act or omission prohibited by the government and made punishable in a judicial proceeding brought by the government.
 - c. litigation where the injured party sues to recover compensation for the damages and injury sustained as a result of the defendant's wrongful conduct.
 - d. interstate compacts and the rules and regulations of federal and state agencies.

ANS: B PTS: 1

2. What is the supreme law of the land in the United States?
- Federal statutes
 - The UCC
 - The common law
 - The U.S. Constitution

ANS: D PTS: 1

3. Statutory law is:
- not well suited for making drastic or comprehensive changes, thus its importance as a source of law has diminished since the end of the nineteenth century.
 - the primary source of law for such business law topics as contracts, agency, property, and trusts.
 - a primary source of new law and ordered social change in the United States.
 - created by legislatures, which are less likely to repeal prior enactments than courts are likely to overrule prior decisions.

ANS: C PTS: 1

4. The courts are likely to provide remedies in all but which of the following cases?
- A person refuses to return your friend's book.
 - A passerby refuses to help rescue a drowning woman.
 - A person pushes a man into the lake.
 - A person does not drive carefully on a busy street.

ANS: B PTS: 1

5. Which one of the following is NOT true of a suit brought under criminal law?
- It must be brought by the government.
 - It is brought on the ground of public policy.
 - Proof of guilt must be "by a preponderance of the evidence."
 - Conviction may result in imprisonment.

ANS: C PTS: 1

6. Sources of federal law include all but which of the following?
- Rules of administrative agencies
 - Decisions of federal courts
 - Executive orders of the President of the United States
 - Hearings before the Senate

ANS: D PTS: 1

7. American jurists ____ and ____ defined law in a functional sense as predictions of the way that a court will decide specific legal questions.
- Roscoe Pound and Alexander Hamilton
 - Blackstone and Austin
 - Roscoe Pound and Benjamin Cardozo
 - Oliver Wendell Holmes and Benjamin Cardozo

ANS: D PTS: 1

8. The separation of powers involves:
- the federal judiciary.
 - the Congress.
 - the executive branch.

d. All of the above.

ANS: D PTS: 1

9. The law is in part:
- prohibitory.
 - mandatory.
 - permissive.
 - All of the above.

ANS: D PTS: 1

10. A(n) ____ is the fundamental law of a particular level of government.
- Restatement of law
 - executive order
 - constitution
 - code

ANS: C PTS: 1

11. A ____ is any act or omission prohibited by public law in the interest of protection of the public and made punishable by the government in a judicial proceeding brought by it, whereby proof must be beyond a reasonable doubt.
- rescission
 - sanction
 - crime
 - maxim

ANS: C PTS: 1

12. The courts in common law systems have developed a body of law that serves as precedent for determination of later controversies. This is called:
- judge-made law.
 - case law.
 - common law.
 - All of the above.

ANS: D PTS: 1

13. In a court of equity, a chancellor could issue an order called a ____, compelling a defendant to do or refrain from doing a certain act.
- judgment
 - decree
 - stare decisis*
 - rescission

ANS: B PTS: 1

14. The branch of public law that deals with the various regulatory functions and activities of the government is:
- criminal law.
 - administrative law.
 - constitutional law.
 - substantive law.

ANS: B PTS: 1

15. The common law system is found in:

- a. Australia.
- b. Louisiana.
- c. England.
- d. (a) and (c) above.

ANS: D PTS: 1

16. A constitution:

- a. restricts the powers of government.
- b. specifically enumerates certain liberties of the people.
- c. establishes governmental structure.
- d. All of the above.

ANS: D PTS: 1

17. The person who files or commences a civil lawsuit is known as the:

- a. plaintiff.
- b. prosecuting attorney.
- c. defendant.
- d. attorney general.

ANS: A PTS: 1

18. Because of the increasing complexity of the social, economic, and industrial life of the nation, the scope of ____ law has expanded enormously.

- a. common
- b. administrative
- c. procedural
- d. equity

ANS: B PTS: 1

19. A court order requiring that a person do or refrain from doing a particular act is known as a(n):

- a. injunction.
- b. maxim.
- c. statute.
- d. executive order.

ANS: A PTS: 1

20. The three distinct and independent branches of the United States government are:

- a. the executive branch, the House of Representatives, and the U.S. Senate.
- b. the federal judiciary, the House of Representatives, and the U.S. Senate.
- c. the federal judiciary, the Congress, and the executive branch.
- d. the state government, the Congress, and the executive branch.

ANS: C PTS: 1

21. Which of the following is a true statement?

- a. A treaty signed by the President and approved by the Senate has the legal force of a federal statute.
- b. A federal statute may supersede a prior treaty.
- c. Both (a) and (b).
- d. Neither (a) nor (b).

ANS: C PTS: 1

22. The ____ are orderly compilations of the general common law of the United States, prepared by a distinguished group of lawyers, judges, and law teachers.
- a. Statutes
 - b. Executive Orders
 - c. Maxims
 - d. Restatements of Law

ANS: D PTS: 1

23. The sources of law in the American legal system include which of the following?
- a. State administrative regulations
 - b. Executive orders
 - c. Ordinances
 - d. All of the above.
 - e. (b) and (c), but not (a) or (d).

ANS: D PTS: 1

24. Which of the following is a common purpose of the civil and criminal law?
- a. Compensation
 - b. Rehabilitation
 - c. Deterrence
 - d. Punishment

ANS: C PTS: 1

25. Which of the following is characteristic of a common law legal system?
- a. It relies heavily on the adversary method for settling disputes.
 - b. It depends heavily on comprehensive legislative enactments called Codes.
 - c. It applies the principle of *stare decisis*.
 - d. Both (a) and (c) are characteristics of common law systems.

ANS: D PTS: 1

26. The area of public law that creates the most rules and decides the most controversies is:
- a. criminal law.
 - b. judicial law.
 - c. legislative law.
 - d. administrative law.

ANS: D PTS: 1

27. Which of the following is NOT considered to be an equitable remedy?
- a. Specific performance
 - b. Injunction
 - c. Reformation
 - d. Money damages

ANS: D PTS: 1

28. Which of the following is NOT true about the equity courts?
- a. They were originally presided over by a chancellor.
 - b. They provided remedies not available in courts of law.

- c. They provided for trials by jury.
- d. They followed maxims.

ANS: C PTS: 1

29. Characteristics of a common law system include which of the following?
- a. A common law system relies heavily on comprehensive legislative enactments and an inquisitorial system of determining disputes.
 - b. In a common law system the judiciary initiates litigation, investigates pertinent facts, and conducts the presentation of evidence.
 - c. The common law system prevails in most of Europe and Scotland.
 - d. A common law system relies heavily on the judiciary as a source of law and on the adversary system for settling disputes.

ANS: D PTS: 1

30. The doctrine of *stare decisis* means that:
- a. the common law has not been able to evolve in a stable and predictable manner.
 - b. certain decisions cannot be appealed.
 - c. courts adhere to and rely on rules of law that they or superior courts announced and applied in prior similar decisions.
 - d. courts are not allowed to correct erroneous decisions or choose among conflicting precedents.

ANS: C PTS: 1

31. Which of the following is correct with regard to treaties in the United States legal system?
- a. They have no legal effect.
 - b. Under the U.S. Constitution they must be signed by the President and approved by the U.S. Senate.
 - c. They have no effect on business law.
 - d. They must be approved by the States before they have the force of law.

ANS: B PTS: 1

32. Which of the following is correct regarding the decisions of state trial courts?
- a. They are generally not reported.
 - b. They are reported in regional reports.
 - c. They are reported in state court reports.
 - d. They are binding upon higher courts based upon the principle of *stare decisis*.

ANS: A PTS: 1

33. The law that creates, defines, and regulates legal rights and obligations is known as:
- a. substantive law.
 - b. procedural law.
 - c. Constitutional law.
 - d. criminal law.

ANS: A PTS: 1

34. Which of the following is correct regarding the English courts of equity?
- a. They were presided over by a chancellor.
 - b. They could only award money damages.
 - c. They could issue a decree ordering a defendant to do or refrain from doing a specific act.
 - d. Both (a) and (c) are correct.

ANS: D PTS: 1

35. The ____ to the U.S. Constitution makes it clear that the enumeration of rights found in the Constitution does not in any way deny or limit other rights that the people retain.
- 1st Amendment
 - 10th Amendment
 - 12th Amendment
 - 9th Amendment

ANS: D PTS: 1

36. The party who files an appeal is the:
- appellant.
 - appellee.
 - defendant.
 - plaintiff.

ANS: A PTS: 1

37. The ____ is composed of a distinguished group of lawyers, judges, and law teachers who have assumed the task of preparing "an orderly restatement of the general common law of the United States."
- New York City Bar
 - American Law Institute
 - U.S. Supreme Court
 - National Reporter System

ANS: B PTS: 1

ESSAY

1. What is the relationship between rights and duties under the law?

ANS:

A right is the capacity of a person, with the aid of the law, to require another person(s) to perform, or refrain from performing, a certain act. A duty is an obligation the law imposes upon a person to perform, or to refrain from performing, a certain act. Duty and right are correlatives; no right can rest upon one person without a corresponding duty resting upon some other person or, in some cases, upon all other persons.

PTS: 1

2. What is *stare decisis*? Discuss its place in the American legal system.

ANS:

Stare decisis is the principle that courts should apply rules that they or superior courts applied in prior, substantially similar cases. This principle is followed in the American legal system to allow the common law to evolve in a stable, predictable manner.

PTS: 1

3. What are the various kinds or sources of American law? Discuss how these various types of law interrelate to form the system of law in the United States.

ANS:

The sources of American law include the U.S. Constitution and the constitutions of the various states; judicial decisions in precedent-setting cases, the common law that has developed over centuries; statutes passed by Congress and by state legislatures; ordinances passed by local legislative bodies such as city councils; treaties; executive orders; and administrative rules or regulations adopted by federal and state administrative agencies. Constitutions are the supreme law. Federal statutes and treaties are paramount to state constitutions and statutes, and state constitutions and statutes are paramount to local ordinances. Administrative rules and regulations and executive orders of the president have the force of law.

PTS: 1

4. What is law? Discuss the various definitions of law by legal scholars. What is the relationship between law and morality and between law and justice?

ANS:

Numerous philosophers and jurists have attempted to define law. American jurists Oliver Wendell Holmes and Benjamin Cardozo defined law as predictions of the way a court will decide specific legal questions. On the other hand, the English jurist Blackstone defined law as "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong." Roscoe Pound, a distinguished American jurist, described law as having multiple meanings including the legal order, the aggregate of legal precepts, and the judicial process. Law and morality can be viewed as intersecting circles, but they are not concentric. Each includes some common area, but they are not exactly the same. Law and justice are separate and distinct concepts. Without law, there can be no justice, but law is no guarantee of justice.

PTS: 1

5. You have just been asked to serve as a host for a visitor from France who is very interested in the American legal system and the formation of law in the United States. How would you explain the nature of the legal system in this country to your guest?

ANS:

France has a civil law system, which is based upon the Napoleonic Code, whereas the U.S. has a common law system, which is based on the English common law. The answer should compare the common law system of the U.S. to the civil law system as described in the text. For example, the answer should explain that the U.S. legal system relies heavily on the judiciary as a source of law and on the adversary system for the adjudication of disputes. In an adversary system, the parties rather than the court initiate and conduct the litigation.

PTS: 1

6. What is the function of law? Some observers claim we have too much law today. What accounts for the increased number of laws that exist today?

ANS:

The primary function of law is to maintain stability while simultaneously permitting change. Other functions are protection of property, dispute resolution, facilitation of voluntary agreements, and preservation of the state. Many factors and opinions can be cited by students. In general, the complexity of today's society accounts for the increase in law, especially the statutory and administrative law.

PTS: 1

7. Explain how the terms *civil law* and *civil law system* differ.

ANS:

Civil law *systems* depend on comprehensive legislative enactments called codes and the inquisitorial method of adjudication. The "civil law" defines duties the violation of which constitutes a wrong against the party injured by the violation.

PTS: 1