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Chapter 02

Sources of the Law

True / False Questions

1. The primary objective of law is to maintain harmony, stability, and justice within a society.

   True False

2. The law is a delicate balancing act between the power of the state and the rights of individuals.

   True False

3. Trade-offs rarely occur within the law.

   True False

4. The language of the law helps in the execution of the law.

   True False

5. In his book, *Law and History,* Professor Anthony Chase writes that the balance between the spirit and the letter of the law is one of the most obvious dualities in the law.

   True False

6. According to the uncertainty principle, when intent and results coincide, it is usually based on the strategic thinking and experience of the persons involved.

   True False

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7. The Articles of Confederation created a strong national government.

   True False

8. The principle of the separation of powers divides power between the state and federal government.

   True False

9. Article III of the U.S. Constitution gives executive power to the President.

   True False

10. Originally, the Bill of Rights was not included in the Constitution because many founders believed that the power to regulate and protect rights, if it existed at all, was the responsibility of the states, not the national government.

    True False

11. The Electoral College was a political compromise created so that the President would be chosen by electors, rather than directly by the people.

    True False

12. In the "Opening Case," the Roman Catholic Archdiocese of Washington D.C. sued the Department of Human Services claiming the Affordable Care Act (ACA) interferes with its First Amendment right to privacy.

    True False

13. The Supremacy Clause of the U.S. Constitution states that the President can veto any state law that conflicts with the U.S. Constitution.

    True False

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14. The ‘devolution' of a right annuls the ethics and morality of a right.

True False

15. A compilation of all the statutes of a particular state or the federal government is known as a code.

True False

16. The common law is the body of previously recorded legal decisions made by courts in specific cases.

True False

17. Persuasive precedent is a precedent that courts must follow.

True False

18. *Stare decisis* means "let the decision stand."

True False

19. Statutory interpretation is the process of determining the constitutionality of various legislative statutes, administrative regulations, or executive actions.

True False

20. The purpose of a complex adaptive system is the survival and improvement of the legal ecosystem.

True False

Multiple Choice Questions

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21. The law is a delicate balancing act. This is evident because:

A. political parties are always competing for power.
B. individuals require restraint to prevent chaos.
C. one corporation's contractual rights may be upheld, while another's are struck down.
D. one company may overcharge consumers.

22. The law has built-in _____—on the one hand, a person discovers the _____ of the law when he understand the law's actual intent, while on the other hand, if a person holds to the _____ of the law the person may have missed the true meaning.

A. dualities; spirit; letter
B. dualities; words; interpretation
C. dualities; abstract; concrete
D. dualities; uncertainty; reason

23. Lillian, who now lives in Oregon, was charged by an Idaho court with molesting several children while she worked for Idaho Social Services. Lillian could be brought back to Idaho for trial based on:

A. the Uniform Commercial Code.
B. persuasive precedent.
C. the Third Amendment to the U.S. Constitution.
D. Article IV of the U.S. Constitution.

24. Outside the Bill of Rights, what is widely recognized as the most important amendment to the U.S. Constitution?

A. 13th Amendment which abolished slavery
B. 18th Amendment which gave 18-year-olds the right to vote
C. 14th Amendment's due process and equal protection
D. 21st Amendment which gave women the right to vote

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25. When Arizona passed state statutes to inspect the identification papers of illegal immigrants, the _____ sued the State of Arizona claiming the state statutes violated the _____ Clause of the U.S. Constitution.

A. Department of Justice; Rights and Privileges
B. Arizona Attorney General; Equal Protection
C. Department of Justice; Supremacy Clause
D. Department of Justice; Freedom of Speech

26. _____ is the process by which the courts decide that a federal statute must take precedence over a state statute.

A. Devolution
B. Revision
C. Uniformity
D. Preemption

27. _____ includes the freedom of the press, freedom of speech, freedom of assembly, and freedom of religion.

A. The Fifth Amendment
B. The Fourth Amendment
C. The Articles of Confederation
D. The First Amendment

28. According to _____, the third type of _____ in the law exists between _____ principles and _____ situations.

A. Anthony Chase; duality; abstract; concrete
B. Anthony Chase; uncertainty; abstract; concrete
C. Anthony Chase; duality; abstract; uncertain
D. John Maynard Keynes; duality; abstract; concrete

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29. If Texas signed a trade agreement with Mexico which established tariffs and importing conditions for goods made in Mexico, the U.S. Constitutional objection to Texas' actions would be based upon the:

A. principle of preemption.
B. doctrine of devolution.
C. principle of separation.
D. principle of supremacy.

30. _____ subdivided into groupings of statutes that deal with a particular area of the law are called _____.

A. Codes; titles
B. Codes; articles
C. Titles; chapters
D. Codes; divisions

31. The _____ is a unified set of statutes designed to govern almost all commercial transactions.

A. Uniform Common Law Code
B. Uniform Commercial Code
C. Uniform Civil Code
D. Uniform State Code

32. The _____ created _____ dealing with the sale and licensing of digital information, and the _____ dealing with the enforceability of cyber-contracts.

A. NCCUSL; Cyber-Commerce; UCITA
B. NCCUSL; UETA; UCITA
C. NCCUSL; UCITA; UETA
D. UCITA; NCCUSL; UETA

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33. _____ refer(s) to the body of previously recorded legal decisions made by the courts in specific cases.

A. Statutes
B. Amendments
C. A constitution
D. The common law

34. Generally, if there are no modern court decisions or statutes dealing with an issue in dispute, the court hearing the case will:

A. apply common law.
B. inevitably devolve.
C. be unable to decide the case.
D. ask the U.S. Supreme Court for an advisory opinion.

35. Generally, if the Florida Supreme Court issues a decision, that decision would be considered:

A. persuasive precedent in all Florida state courts.
B. binding precedent in all Florida state courts.
C. binding in neighboring state courts.
D. binding precedent in all Florida federal courts.

36. Under the doctrine of _____, courts determine the constitutionality of statutes, regulations or executive actions, taking into account any _____ in its analysis.

A. statutory interpretation; persuasive precedent
B. statutory interpretation; binding precedent
C. judicial review; persuasive precedent
D. judicial review; binding precedent

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37. A business asks a court to interpret the way in which a newly enacted shoplifter detention statute will be applied if the business, at some future point, detains a suspected shoplifter. The court may:

A. issue an advisory memorandum.
B. convene a conference of business and consumer representatives.
C. not interpret the statute until a lawsuit is filed challenging the statute.
D. ask the legislature to issue an advisory memorandum.

38. A _____ is a network of interacting conditions which _____ one another, while at the same time _____ change from agents outside and inside the system.

A. legal ecosystem; adjust to; reinforces
B. complex adaptive system; reinforce; adjusts to
C. legal ecosystem; reinforce; adjusting to
D. complex adaptive system; adjusts to; reinforces

39. A new administrative regulation allowed the Social Security Administration to charge women for Social Security cards, yet enabled men to obtain the cards for free. A lawsuit was filed challenging the constitutionality of this new regulation. If you were a justice on the Supreme Court you would most likely

A. review common law to see whether a precedent exists.
B. use statutory interpretation to clarify the law.
C. rule the regulation unconstitutional.
D. let the regulation stand.

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40. Once a federal regulation is finalized, it is included in the:

A. Administrative Register.
B. Code of Federal Regulations.
C. Uniform Commercial Code.
D. Modern Federal Register.

Essay Questions

41. Stanley runs a business in Middletown. He knows bribing an officer in return for favorable duties is a crime. However, he avoids "bribery" by sending "gifts" to the sheriff as a token of appreciation for the officer's services to the town. The sheriff is impressed by Stanley's act and ensures that his business is "well protected." Analyze the situation.

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42. Small towns want to restrict the speed of trains passing through the towns to 20 miles per hour. The Federal Railroad Administration allows trains to travel through the towns at up to 70 miles per hour. Discuss whether or not the towns may restrict the speed of the trains.

43. A local city council enacts an ordinance that prohibits aircraft from taking off before 7:00 A.M., disturbing the city's residents. An airline whose schedule is subject to federal regulation challenges this ordinance. Discuss the legal basis of this challenge and the likely outcome.

44. A Massachusetts law prohibited governmental agencies of Massachusetts from buying goods from companies that conducted business with Myanmar. If the U.S. Supreme Court were to strike down this law, what might be the basis?

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45. A state law restricts the sulfur dioxide emissions from electric generation plants more severely than those of the federal Clean Air Act. Must an electric generation plant obey the state law or may it follow the federal statute?

46. Pierce was arrested under a city ordinance that made distributing handbills on the city streets a crime. Pierce argued that the U.S. Constitution guaranteed his right to free speech under the First Amendment. The local prosecutor argued that the First Amendment to the U.S. Constitution did not apply to state laws. Was the prosecutor correct? Explain.

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47. Matrix Corp. is fined by the Occupational Safety and Health Administration for violations of workplace safety regulations. Matrix challenges the fine on the basis that it was not allowed to have a jury trial before being fined. What resolution will result?

48. A court decides that a state agency, rather than a federal one, can control what government employees, in the course of performing their duties, are permitted to talk or write about in relation to official policies, procedures, and programs. Such a prohibition might appear to violate the employee's Constitutional right of free speech as a U.S. citizen. Analyze.

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49. In a case presented to a Philadelphia court, the judge and the jury realize that no specific statute is applicable and decide to refer to previously recorded legal decisions made in similar cases. Discuss.

50. Helen, a 15-year-old citizen of Illinois, was about to go to the doctor for an abortion when the Supreme Court of Michigan ruled that minors could not receive an abortion without parental consent. What effect might the Michigan Supreme Court's decision have on Helen?

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Chapter 02 Sources of the Law Answer Key

True / False Questions

1. The primary objective of law is to maintain harmony, stability, and justice within a society.

   TRUE

   The law consists of rules of conduct established by the government of a society to maintain harmony, stability, and justice. More often than not, however, "real life" is not harmonious, and justice must be sacrificed for harmony and stability.

   AACSB: Reflective Thinking
   Accessibility: Keyboard Navigation
   Blooms: Remember
   Difficulty: 1 Easy
   Learning Objective: 02-01 List the objectives of the law.
   Topic: The Purpose and the Operation of the Law

2. The law is a delicate balancing act between the power of the state and the rights of individuals.

   FALSE

   The law should be viewed as a delicate balancing act between the competing interests and rights of different groups of people. Further, the limitations and biases of judges, legislators, and the prosecutors require trade-offs and compromises to an already complex legal system.

   AACSB: Reflective Thinking
   Accessibility: Keyboard Navigation
   Blooms: Remember
   Difficulty: 1 Easy
   Learning Objective: 02-01 List the objectives of the law.
   Topic: The Purpose and the Operation of the Law

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3. Trade-offs rarely occur within the law.

FALSE

On the contrary, trade-offs routinely occur within the legal system. One person is allowed to go free, while another is imprisoned, fined, and forced to forfeit his property. One corporation's contracts are upheld, while another's are struck down.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 List the objectives of the law.
Topic: The Purpose and the Operation of the Law

4. The language of the law helps in the execution of the law.

FALSE

Because words are often ambiguous, the language of the law can become a hindrance, rather than a help in the execution of the law.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-02 Clarify the duality of the law.
Topic: The Purpose and the Operation of the Law

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5. In his book, *Law and History,* Professor Anthony Chase writes that the balance between the spirit and the letter of the law is one of the most obvious dualities in the law.

TRUE

Generally, following the "spirit of the law" means following the actual intent of the law, while following the "letter of the law" means the true meaning of the law has been missed. However, there are exceptions.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-02 Clarify the duality of the law.
Topic: The Purpose and the Operation of the Law

6. According to the uncertainty principle, when intent and results coincide, it is usually based on the strategic thinking and experience of the persons involved.

FALSE

On the contrary, intent and results almost never coincide, and when they do, it is generally a matter of luck, nothing more. In fact, the uncertainty principle was one of the lynch pins of the economics theory of John Maynard Keynes.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-02 Clarify the duality of the law.
Topic: The Purpose and the Operation of the Law

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7. The Articles of Confederation created a strong national government.

FALSE

The first constitution of the United States was the Articles of Confederation—not the current Constitution. The Articles of Confederation were created to hold together a fragile coalition of states, each of which was determined to maintain its own independent existence. One of the main weaknesses of the Articles was the inability of Congress to impose taxes or tariffs.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-02 Clarify the duality of the law.
Topic: Constitutional Law

8. The principle of the separation of powers divides power between the state and federal government.

FALSE

The principle of the separation of powers in the U.S. Constitution set up the three branches of the national government—the executive branch, the legislative branch, and the judicial branch. The principle of checks and balances allows each branch to share in the power of the other two branches.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-03 Outline the content of the U.S. Constitution.
Topic: Constitutional Law

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9. Article III of the U.S. Constitution gives executive power to the President.

FALSE

Article III gives judicial power to the Supreme Court and other courts established by Congress.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-03 Outline the content of the U.S. Constitution.
Topic: Constitutional Law

10. Originally, the Bill of Rights was not included in the Constitution because many founders believed that the power to regulate and protect rights, if it existed at all, was the responsibility of the states, not the national government.

TRUE

James Madison and other delegates to the Philadelphia convention in the late 1700s believed that Congress should have no power to enforce, eliminate, or modify rights. Some delegates warned that if some rights were listed, it would give the impression that those were the only rights that mattered. Therefore, it would be better to leave all mention of rights out of the original Constitution.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-03 Outline the content of the U.S. Constitution.
Topic: Constitutional Law

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11. The Electoral College was a political compromise created so that the President would be chosen by electors, rather than directly by the people.

TRUE

Although extreme, it is likely that many of the delegates to the Philadelphia convention would have actually preferred Congress choose the President. However, the delegates compromised on the Electoral College in which the people would directly vote for electors, who in turn would vote for the President. Note that the framers, who wanted a buffer between the people and the President, assumed that electors would always be land-owning, educated men of high class.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

12. In the "Opening Case," the Roman Catholic Archdiocese of Washington D.C. sued the Department of Human Services claiming the Affordable Care Act (ACA) interferes with its First Amendment right to privacy.

FALSE

In the *Roman Catholic Archdiocese of Washington D.C., et al. v. Kathleen Sebelius, Secretary of the United States Department of Health and Human Services, et al.* the plaintiffs (the Diocese) claim that the ACA interferes with its First Amendment right to free exercise of their religion by requiring Catholic institutions, including universities, hospitals, and social service organizations, to provide insurance for certain birth control-related services that the Church forbids.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Analyze
Difficulty: 3 Hard
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

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13. The Supremacy Clause of the U.S. Constitution states that the President can veto any state law that conflicts with the U.S. Constitution.

FALSE

Although the Supremacy Clause of the U.S. Constitution does in fact state that, "(t)his Constitution and the Laws of the United States... shall be the supreme Law of the Land", neither the President nor Congress can veto a state law. But state laws that conflict with the Constitution can be held to be "unconstitutional" by a federal court after a lawsuit is filed by a federal agency or a private party.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

14. The ‘devolution' of a right annuls the ethics and morality of a right.

FALSE

Devolution has nothing to do with the ethics or morality of a right. Rather, devolution simply redistributes the enforcement of that right to a lower authority, usually a state agency.

AACSB: Ethics
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

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15. A compilation of all the statutes of a particular state or the federal government is known as a code.

TRUE

For example, all federal statutes are gathered in the United States Code (USC).

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-05 Explain the role of statutory law in the legal system.
Topic: Statutory Law

16. The common law is the body of previously recorded legal decisions made by courts in specific cases.

TRUE

The term "common law" comes from the attempts of early English kings to establish a uniform and consistent body of decisions that courts in the kingdom would hold ‘in common." So when a judge was faced with a similar set of circumstances that had previously been ruled upon, he could look to that decision for guidance.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-07 State the role of common law in the legal system.
Topic: Court Decisions

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17. Persuasive precedent is a precedent that courts must follow.

FALSE

Binding precedent is precedent that a court must follow. Persuasive precedent is precedent that a court is free to follow or ignore, depending on the court's location and jurisdiction.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-08 Describe how the principle of stare decisis provides stability within the law.
Topic: Court Decisions

18. *Stare decisis* means "let the decision stand."

TRUE

Stare decisis is Latin for "let the decision stand." The phrase is derived from the common law, and comes from the process of judges recording and sharing their decisions with other judges. So *stare decisis* is the process of relying on previously recorded legal decisions, called precedents.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-08 Describe how the principle of stare decisis provides stability within the law.
Topic: Court Decisions

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19. Statutory interpretation is the process of determining the constitutionality of various legislative statutes, administrative regulations, or executive actions.

FALSE

Statutory interpretation is the process by which a court analyzes a statute that may be unclear or ambiguous. However, a court will only analyze a statute when a lawsuit is filed challenging the statute itself.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-09 Differentiate between statutory interpretation and judicial review.
Topic: Court Decisions

20. The purpose of a complex adaptive system is the survival and improvement of the legal ecosystem.

TRUE

A complex adaptive system (CAS) is a network of interacting conditions which both reinforce each other, while being flexible enough to adjust to change from the outside. There are many examples of a CAS in nature—beehives, anthills, and the neural network of the human brain.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-10 Account for the legislature's need to establish administrative agencies.
Topic: Administrative Regulations

Multiple Choice Questions

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21. The law is a delicate balancing act. This is evident because:

A. political parties are always competing for power.
B. individuals require restraint to prevent chaos.
C. one corporation's contractual rights may be upheld, while another's are struck down.
D. one company may overcharge consumers.

Often, the law is a balance between competing interests and rights. When people sue in court, for example, one party wins and one loses. In a criminal trial, one person is acquitted of a crime and allowed to go free, while another person is convicted and sent to prison.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-01 List the objectives of the law.
Topic: The Purpose and the Operation of the Law

22. The law has built-in _____—on the one hand, a person discovers the _____ of the law when he understand the law's actual intent, while on the other hand, if a person holds to the _____ of the law the person may have missed the true meaning.

A. dualities; spirit; letter
B. dualities; words; interpretation
C. dualities; abstract; concrete
D. dualities; uncertainty; reason

According to Professor Anthony Chase, one of the most obvious dualities in the law is the balance between the spirit and the letter of the law. Generally, a person who follows the spirit of the law has found its actual intent, while one who is tied to the letter of the law has missed its true meaning.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium

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Learning Objective: 02-02 Clarify the duality of the law.
Topic: The Purpose and the Operation of the Law

23. Lillian, who now lives in Oregon, was charged by an Idaho court with molesting several children while she worked for Idaho Social Services. Lillian could be brought back to Idaho for trial based on:

A. the Uniform Commercial Code.
B. persuasive precedent.
C. the Third Amendment to the U.S. Constitution.
D. Article IV of the U.S. Constitution.

Article IV of the U.S. Constitution provides for extradition of those accused of crimes in other states (found in Table 2-1 "Articles of the U.S. Constitution.").

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Analyze
Difficulty: 3 Hard
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

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24. Outside the Bill of Rights, what is widely recognized as the most important amendment to the U.S. Constitution?

A. 13th Amendment which abolished slavery
B. 18th Amendment which gave 18-year-olds the right to vote
C. 14th Amendment's due process and equal protection
D. 21st Amendment which gave women the right to vote

Although there are many important amendments, what is widely recognized as the single most important amendment outside of the Bill of Rights is the 14th Amendment that guarantees due process and the equal protection of the law to all people. Since its inception in 1868, the courts have decided the 14th amendment means that the Bill of Rights must be enforced by the states as well as by the national government. States may expand rights, but they cannot limit or eliminate them.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

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25. When Arizona passed state statutes to inspect the identification papers of illegal immigrants, the _____ sued the State of Arizona claiming the state statutes violated the _____ Clause of the U.S. Constitution.

A. Department of Justice; Rights and Privileges
B. Arizona Attorney General; Equal Protection
C. Department of Justice; Supremacy Clause
D. Department of Justice; Freedom of Speech

In fact, U.S. Attorney General Eric Holder and the Department of Justice sued the State of Arizona claiming the Arizona statutes violated the Supremacy Clause found in Article IV of the U.S. Constitution (see *Arizona v. United States*, 567 U.S. ___(2012).

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Analyze
Difficulty: 3 Hard
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

26. _____ is the process by which the courts decide that a federal statute must take precedence over a state statute.

A. Devolution
B. Revision
C. Uniformity
D. Preemption

Preemption is the process by which the courts decide that a federal statute must take precedence over a state statute.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-04 Explain several central constitutional principles and powers.

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Topic: Constitutional Law

27. _____ includes the freedom of the press, freedom of speech, freedom of assembly, and freedom of religion.

A. The Fifth Amendment
B. The Fourth Amendment
C. The Articles of Confederation
D. The First Amendment

The First Amendment contains some of the most important rights in the Bill of Rights. These include freedom of the press, freedom of speech, freedom of assembly, and freedom of religion.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

28. According to _____, the third type of _____ in the law exists between _____ principles and _____ situations.

A. Anthony Chase; duality; abstract; concrete
B. Anthony Chase; uncertainty; abstract; concrete
C. Anthony Chase; duality; abstract; uncertain
D. John Maynard Keynes; duality; abstract; concrete

Chase explained that duality in the law exists between abstract principles and concrete situations.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Analyze
Difficulty: 3 Hard
Learning Objective: 02-02 Clarify the duality of the law.

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Topic: The Purpose and the Operation of the Law

29. If Texas signed a trade agreement with Mexico which established tariffs and importing conditions for goods made in Mexico, the U.S. Constitutional objection to Texas' actions would be based upon the:

A. principle of preemption.
B. doctrine of devolution.
C. principle of separation.
D. principle of supremacy.

A basic principle of constitutional law is that the U.S. Constitution is the supreme law of the land. This principle of constitutional supremacy means that all other laws must be in line with constitutional principles. If a law somehow conflicts with the Constitution, that law is said to be unconstitutional. If it does not conflict, it will be upheld by the court as constitutional.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-03 Outline the content of the U.S. Constitution.
Topic: Constitutional Law

30. _____ subdivided into groupings of statutes that deal with a particular area of the law are called _____.

A. Codes; titles
B. Codes; articles
C. Titles; chapters
D. Codes; divisions

In general, codes are subdivided into titles, which are groupings of statutes that deal with a particular area of the law.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation

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Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-05 Explain the role of statutory law in the legal system.
Topic: Statutory Law

31. The _____ is a unified set of statutes designed to govern almost all commercial transactions.

A. Uniform Common Law Code
B. Uniform Commercial Code
C. Uniform Civil Code
D. Uniform State Code

The Uniform Commercial Code (UCC) is a unified set of statutes designed to govern almost all commercial transactions.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-06 Defend the need to set up a system of uniform laws.
Topic: Statutory Law

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32. The _____ created _____ dealing with the sale and licensing of digital information, and the _____ dealing with the enforceability of cyber-contracts.

A. NCCUSL; Cyber-Commerce; UCITA
B. NCCUSL; UETA; UCITA
C. NCCUSL; UCITA; UETA
D. UCITA; NCCUSL; UETA

The NCCUSL has responded to the explosion in cyber-commerce by creating two model laws—the Uniform Computer Information Transactions Act (UCITA) which deals with the sale or licensing of digital information, and the Uniform Electronic Transactions Act (UETA) which helps make certain that cyber-contracts are enforceable.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-06 Defend the need to set up a system of uniform laws.
Topic: Statutory Law

33. _____ refer(s) to the body of previously recorded legal decisions made by the courts in specific cases.

A. Statutes
B. Amendments
C. A constitution
D. The common law

Common law is the body of previously recorded legal decisions made by the courts in specific cases, and *stare decisis* is the process of courts relying on those decisions.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy
Learning Objective: 02-07 State the role of common law in the legal system.

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Topic: Court Decisions

34. Generally, if there are no modern court decisions or statutes dealing with an issue in dispute, the court hearing the case will:

A. apply common law.
B. inevitably devolve.
C. be unable to decide the case.
D. ask the U.S. Supreme Court for an advisory opinion.

Modern courts still apply the common law when there are no modern court decisions or statutes dealing with an issue in dispute. When other cases may help in the decision, but are factually different, they may rely on *stare decisis* to apply precedents to the case before them.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-08 Describe how the principle of stare decisis provides stability within the law.
Topic: Court Decisions

35. Generally, if the Florida Supreme Court issues a decision, that decision would be considered:

A. persuasive precedent in all Florida state courts.
B. binding precedent in all Florida state courts.
C. binding in neighboring state courts.
D. binding precedent in all Florida federal courts.

Whether a precedent is binding or persuasive is determined by the court's location. For instance, decisions made by the Florida Supreme Court would be binding in all Florida state courts, but persuasive in all other states' courts.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-08 Describe how the principle of stare decisis provides stability within the law.

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Topic: Court Decisions

36. Under the doctrine of _____, courts determine the constitutionality of statutes, regulations or executive actions, taking into account any _____ in its analysis.

A. statutory interpretation; persuasive precedent
B. statutory interpretation; binding precedent
C. judicial review; persuasive precedent
D. judicial review; binding precedent

When exercising its power of judicial review, a court will analyze whether the statute or regulation in question is compatible with Constitutional precedent. If the two are compatible, no problem exists; however if they are contradictory, the statute or regulation will be "struck down" as unconstitutional.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-09 Differentiate between statutory interpretation and judicial review.
Topic: Statutory Law

37. A business asks a court to interpret the way in which a newly enacted shoplifter detention statute will be applied if the business, at some future point, detains a suspected shoplifter. The court may:

A. issue an advisory memorandum.
B. convene a conference of business and consumer representatives.
C. not interpret the statute until a lawsuit is filed challenging the statute.
D. ask the legislature to issue an advisory memorandum.

Courts are not free to interpret statutes without a lawsuit that challenges the particular statute. When analyzing a statute, courts look to a variety of sources, including the legislative history, why the old statute was replaced, and any binding precedent that interprets that statute.

AACSB: Analytical Thinking

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Accessibility: Keyboard Navigation
Blooms: Understand
Difficulty: 2 Medium
Learning Objective: 02-09 Differentiate between statutory interpretation and judicial review.
Topic: Court Decisions

38. A _____ is a network of interacting conditions which _____ one another, while at the same time _____ change from agents outside and inside the system.

A. legal ecosystem; adjust to; reinforces
B. complex adaptive system; reinforce; adjusts to
C. legal ecosystem; reinforce; adjusting to
D. complex adaptive system; adjusts to; reinforces

The ultimate purpose of a Complex Adaptive System (CAS) is the survival and improvement of the system itself. Natural examples of CASs would include beehives, anthills, and the neural network of the human brain. All CASs share at least five elements—interaction with many agents, no central controlling agent, complexities, long-term adeptness to changes, and inferential to future events.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-10 Account for the legislature's need to establish administrative agencies.
Topic: Administrative Regulations

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39. A new administrative regulation allowed the Social Security Administration to charge women for Social Security cards, yet enabled men to obtain the cards for free. A lawsuit was filed challenging the constitutionality of this new regulation. If you were a justice on the Supreme Court you would most likely

A. review common law to see whether a precedent exists.
B. use statutory interpretation to clarify the law.
C. rule the regulation unconstitutional.
D. let the regulation stand.

Because the Constitution is the supreme law of the land, any regulation or statute that is contrary to it must be held unconstitutional. In this case, because the regulation treats men and women differently, it would be held unconstitutional because it violates the equal protection clause of the 14th Amendment.

AACSB: Analytical Thinking
Accessibility: Keyboard Navigation
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-09 Differentiate between statutory interpretation and judicial review.
Topic: Court Decisions

40. Once a federal regulation is finalized, it is included in the:

A. Administrative Register.
B. Code of Federal Regulations.
C. Uniform Commercial Code.
D. Modern Federal Register.

Once a federal regulation is finalized, it is included in the Code of Federal Regulations (CFR) which is updated each year.

AACSB: Reflective Thinking
Accessibility: Keyboard Navigation
Blooms: Remember
Difficulty: 1 Easy

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Learning Objective: 02-10 Account for the legislature's need to establish administrative agencies.
Topic: Administrative Regulations

Essay Questions

41. Stanley runs a business in Middletown. He knows bribing an officer in return for favorable duties is a crime. However, he avoids "bribery" by sending "gifts" to the sheriff as a token of appreciation for the officer's services to the town. The sheriff is impressed by Stanley's act and ensures that his business is "well protected." Analyze the situation.

According to Professor Anthony Chase, one of the most obvious dualities in the law is the balance between the spirit and the letter of the law. Generally, a person who follows the spirit of the law has found its actual intent, while one who is tied to the letter of the law has missed its true meaning. In this case, Stanley seems to have complied with the letter of the law, but not the spirit of the law, missing the true meaning of the prohibition of bribery which ensures all citizens are treated equally.

AACSB: Analytical Thinking
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-02 Clarify the duality of the law.
Topic: The Purpose and the Operation of the Law

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42. Small towns want to restrict the speed of trains passing through the towns to 20 miles per hour. The Federal Railroad Administration allows trains to travel through the towns at up to 70 miles per hour. Discuss whether or not the towns may restrict the speed of the trains.

The administration should analyze if this decision of the state comes with the intent of taking extra precautions for public safety. Have accidents occurred in the past? Notwithstanding, state statutes can be preempted by federal statutes in areas that are traditionally that of the federal government.

AACSB: Analytical Thinking
Blooms: Evaluate
Difficulty: 3 Hard
Learning Objective: 02-03 Outline the content of the U.S. Constitution.
Topic: Constitutional Law

43. A local city council enacts an ordinance that prohibits aircraft from taking off before 7:00 A.M., disturbing the city's residents. An airline whose schedule is subject to federal regulation challenges this ordinance. Discuss the legal basis of this challenge and the likely outcome.

The principle of supremacy—the commerce clause in this case—allows federal regulations enacted under Constitutional authority to be superior to state law. The airline wins.

AACSB: Analytical Thinking
Blooms: Apply
Difficulty: 2 Medium
Learning Objective: 02-03 Outline the content of the U.S. Constitution.
Topic: Constitutional Law

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44. A Massachusetts law prohibited governmental agencies of Massachusetts from buying goods from companies that conducted business with Myanmar. If the U.S. Supreme Court were to strike down this law, what might be the basis?

The Supreme Court of the United States can use the preemption doctrine to strike down this Massachusetts law. Preemption is the process by which the courts decide that a federal statute must take precedence over a state statute. The courts can preempt a state statute that has entered an area of the law that is traditionally an area that the federal government handles, such as national security or immigration.

AACSB: Analytical Thinking
Blooms: Analyze
Difficulty: 3 Hard
Learning Objective: 02-03 Outline the content of the U.S. Constitution.
Topic: Constitutional Law

45. A state law restricts the sulfur dioxide emissions from electric generation plants more severely than those of the federal Clean Air Act. Must an electric generation plant obey the state law or may it follow the federal statute?

State statutes can be preempted by federal statutes when they conflict with the objectives of federal legislation. The courts will preempt a state statute that has entered an area of the law that is exclusively an area belonging to the federal government. Since clean air regulation is not one of those areas, a state may have more stringent requirements for air pollution than the federal government, as long as the state statute is not in conflict with the federal Clean Air Act.

AACSB: Analytical Thinking
Blooms: Evaluate
Difficulty: 3 Hard
Learning Objective: 02-03 Outline the content of the U.S. Constitution.
Topic: Constitutional Law

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46. Pierce was arrested under a city ordinance that made distributing handbills on the city streets a crime. Pierce argued that the U.S. Constitution guaranteed his right to free speech under the First Amendment. The local prosecutor argued that the First Amendment to the U.S. Constitution did not apply to state laws. Was the prosecutor correct? Explain.

The prosecutor was wrong. Pierce's argument was correct in that the Fourteenth Amendment extends the protections of the Bill of Rights to state governments.

AACSB: Analytical Thinking
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

47. Matrix Corp. is fined by the Occupational Safety and Health Administration for violations of workplace safety regulations. Matrix challenges the fine on the basis that it was not allowed to have a jury trial before being fined. What resolution will result?

Matrix Corp. will lose because the Seventh Amendment to the U.S. Constitution only guarantees trials in common law cases, not administrative agency actions.

AACSB: Analytical Thinking
Blooms: Analyze
Difficulty: 3 Hard
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

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48. A court decides that a state agency, rather than a federal one, can control what government employees, in the course of performing their duties, are permitted to talk or write about in relation to official policies, procedures, and programs. Such a prohibition might appear to violate the employee's Constitutional right of free speech as a U.S. citizen. Analyze.

Devolution occurs when the courts redefine a right and shift the obligation to enforce a right from an upper level authority to a lower one. In such cases, the court has decided that the duty and the power to define and enforce that right belong to the state, rather than to the federal government. It is important to note that the devolution of a right does not destroy that right. Rather, devolution simply redistributes the authority to define the nature of that right in certain situations.

AACSB: Analytical Thinking
Blooms: Analyze
Difficulty: 3 Hard
Learning Objective: 02-04 Explain several central constitutional principles and powers.
Topic: Constitutional Law

49. In a case presented to a Philadelphia court, the judge and the jury realize that no specific statute is applicable and decide to refer to previously recorded legal decisions made in similar cases. Discuss.

The judge and the jury will arrive at a decision using common law—a body of previously recorded legal decisions made by the courts in specific cases. The process of relying on common law is known as *stare decisis*. The court is likely to use a precedent in using the principle of *stare decisis*. A precedent is a model case that a court can follow when facing a similar situation.

AACSB: Analytical Thinking
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-08 Describe how the principle of stare decisis provides stability within the law.
Topic: Court Decisions

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50. Helen, a 15-year-old citizen of Illinois, was about to go to the doctor for an abortion when the Supreme Court of Michigan ruled that minors could not receive an abortion without parental consent. What effect might the Michigan Supreme Court's decision have on Helen?

The ruling of the Michigan Supreme Court will have only persuasive power in Illinois where Helen lives. Persuasive precedent is a precedent that a court is free to follow or ignore.

AACSB: Analytical Thinking
Blooms: Apply
Difficulty: 3 Hard
Learning Objective: 02-08 Describe how the principle of stare decisis provides stability within the law.
Topic: Court Decisions

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