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True / False

1. The United States was the first country in the world to utilize a federal form of government.
   a. True
   b. False

ANSWER: True
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

2. The U.S. Constitution is the supreme law of the land.
   a. True
   b. False

ANSWER: True
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

3. The U.S. Constitution provides that state judges are not bound by the U.S. Constitution, but by their state constitution.
   a. True
   b. False

ANSWER: False
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

4. The Federal Rules of Evidence must be followed in all state trials.
   a. True
   b. False

ANSWER: False
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

5. The American system of justice is basically an adversary system.
   a. True
   b. False

ANSWER: True
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

6. In the adversary system, each side seeks to present evidence that is most favorable to its position.
   a. True
   b. False

ANSWER: True
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

7. Non-relevant evidence is generally admissible.
   a. True

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b. False

ANSWER: False
REFERENCES: The Adversary System Battle over What is Relevant, Reliable and Competent Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

8. “Competent evidence” is a catch-all term that included reliable and relevant evidence that is not rendered inadmissible by some other rule.

a. True
b. False

ANSWER: True
REFERENCES: The Adversary System Battle over What is Relevant, Reliable and Competent Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

9. Most countries other than the U.S. utilize an inquisitorial system of justice.

a. True
b. False

ANSWER: True
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

10. In an adversary system of justice, each side generally conducts separate investigations and generally does not share advance information with the other side.

a. True
b. False

ANSWER: True
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

11. In our adversary system, the prosecution has no obligation to reveal any evidence to the defense.

a. True
b. False

ANSWER: False
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

12. No state in the United States ever requires that the defendant reveal information or possible defenses to the prosecution.

a. True
b. False

ANSWER: False
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

13. Any time the prosecution loses, displaces, or destroys important evidence in a criminal case, it is automatically a violation of due process.

a. True
b. False

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ANSWER: False
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.7

14. The *Brady* rule requires that the defense disclose clearly exculpatory evidence to the prosecution.
    a. True
    b. False
ANSWER: False
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.6

15. If the prosecution deliberately uses false evidence or perjured testimony to obtain a conviction, the defendant will get a new trial.
    a. True
    b. False
ANSWER: True
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.6

16. The American criminal justice system is both accusatorial and adversarial in nature.
    a. True
    b. False
ANSWER: False
REFERENCES: The American Accusatorial System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

17. In the United States, defendants are never required to reveal anything about their case to the prosecution.
    a. True
    b. False
ANSWER: False
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.6

18. A conviction obtained by the knowing use of false evidence or testimony violates due process and will be reversed.
    a. True
    b. False
ANSWER: True
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.7

19. All jurisdictions in the U.S. utilize the Federal Rules of Evidence.
    a. True
    b. False
ANSWER: False
REFERENCES: Federalism in the United States

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LEARNING OBJECTIVES: CEPC.GARD.16.2.2

20. If the defense loses or misplaces evidence important to the prosecution, it is a violation of due process.
    a. True
    b. False

ANSWER: False
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.7

Multiple Choice

21. The concept of federalism means that government power is shared between _____.
    a. the legislative, executive, and judicial branches
    b. state and federal governments
    c. the federal government and tribal authorities
    d. state and local governments

ANSWER: b
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

22. In 1975, Congress enacted the _____, which had great influence on state rules of evidence.
    a. National Standards of Evidence
    b. Federal Code of Criminal Evidence
    c. National Rules of Evidence
    d. Federal Rules of Evidence

ANSWER: d
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

23. Most crimes committed in the U.S. are _____.
    a. state crimes
    b. federal crimes
    c. a combination of state and federal crimes.
    d. a combination of federal and international crimes.

ANSWER: a
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.3

24. In our adversary system of justice, the defense and prosecution _____.
    a. cooperate to see that justice is done
    b. readily share evidence and information
    c. present their best case and challenge the opponent's case
    d. rarely challenge the admissibility of the opponent's evidence

ANSWER: c
REFERENCES: The American Adversary System

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LEARNING OBJECTIVES: CEPC.GARD.16.2.5

25. Competent evidence is reliable, relevant evidence that _____.
    a. is not excluded by additional rules of evidence
    b. is subject to the exclusionary rule
    c. cannot be heard by the jury
    d. is offered to impeach a witness

ANSWER: a
REFERENCES: The Adversary System and Battles over What is Relevant, Reliable, and Competent Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

26. In the American _____ system of criminal prosecution, the government must prove its case by evidence freely and independently secured and may not coerce the defendant to provide evidence.
    a. fact finding
    b. accusatorial
    c. inquisitorial
    d. peremptory

ANSWER: b
REFERENCES: The American Accusatorial System
LEARNING OBJECTIVES: CEPC.GARD.16.2.4
CEPC.GARD.16.2.5

27. Under the _____ rule, the prosecution must disclose exculpatory evidence to the defense.
    a. *DeAngelis*
    b. *Powell*
    c. *Curtain*
    d. *Brady*

ANSWER: d
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.6

28. If the prosecution destroys evidence important to the defense, this violates a defendant's rights only if the prosecution acted _____.
    a. in bad faith
    b. negligently
    c. with carelessness
    d. in violation of a court order

ANSWER: a
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.7

29. The Constitution allows, and certain states require, that defendants _____.
    a. reveal incriminating evidence
    b. answer questions posed by the police
    c. give notice that they intend to use an alibi or insanity defense

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d. waive their privilege against self-incrimination

ANSWER: c
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.2

30. Unlike the United States, most European democracies _____.
a. use the inquisitorial system
b. give prosecutors less discretion
c. give defendants more protections
d. rely less on confessions

ANSWER: a
REFERENCES: The American Accusatorial System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

31. Reliable evidence is defined as evidence that is likely to be _____.
a. true or accurate
b. prejudicial to one side or the other
c. subject to the exclusionary rule
d. exculpatory

ANSWER: a
REFERENCES: The Adversary System and Battles over What is Relevant, Reliable and Competent Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

32. Evidence is not relevant (irrelevant) if it is _____.
a. not related to any fact or issue in the case
b. subject to a privilege
c. recognized by judicial notice
d. exculpatory

ANSWER: a
REFERENCES: The Adversary System and Battles over What is Relevant, Reliable and Competent Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

33. If reliable, relevant evidence is otherwise excludable (e.g. it is privileged or was obtained in violation of the Constitution), such evidence is said to be _____.
a. precluded
b. incompetent
c. inconsequential
d. indefatigable

ANSWER: b
REFERENCES: The Adversary System and Battles over What is Relevant, Reliable and Competent Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

34. To validly enact federal statutes, Congress must be acting within _____.
a. powers granted by the Constitution
b. authority granted by the United Nations

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c. the scope of consent granted by the States
d. the bounds of international law

ANSWER: a
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.2

35. The states and federal government _____.
a. all use the same rules of evidence
b. all have created the same crimes
c. use the same court system
d. have established 51 different criminal codes

ANSWER: d
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

36. The Tenth Amendment to the U.S. Constitution states that powers not delegated to the United States are _____.
a. reserved to the States or the people.
b. automatically delegated to the federal government.
c. under joint jurisdiction by federal and state governments.
d. ruled by common law.

ANSWER: a
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.2

37. The keystone of American federalism is the _____.
a. U.S. Constitution
b. Bill of Rights
c. Magna Carta
d. separation of church and state

ANSWER: a
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

38. The Federal Rules of Evidence and most state rules of evidence apply in _____ trials.
a. only criminal
b. both civil and criminal
c. only civil
d. only administrative

ANSWER: b
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.2

39. Federal law enforcement agencies are created by _____ to enforce specific federal laws.
a. the President

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b. the Legislature
c. the Senate
d. Congress

ANSWER: d
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.2

40. The main actors at the trial are the judge, the _____, the prosecutor, and the defense attorney.
a. investigator
b. victim
c. jury
d. defendant

ANSWER: c
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

Case 2.1
Dave is pulled over for a motor vehicle violation in his local town in upstate New York. During the course of the motor vehicle stop the officer determines that Dave had relocated in to town from New Jersey six months prior to the stop. Although Dave has a valid New York state license his driving privileges in New Jersey are suspended and he has numerous outstanding motor vehicle warrants. Further inquiry reveals that Dave is a registered violent sexual offender in New Jersey with an extensive criminal history. A check of the local department data base reveals that Dave has not registered as a sexual offender with the local town or state since relocating to New York.

41. In the above scenario would Dave be required to register as sexual offender in New York for a previous conviction in New Jersey?
a. No, under the Federalism doctrine each state is a sovereignty and the regulations of another state or federal government cannot be imposed on their residents.
b. No because Dave has only been living in New York for six months and the law allows convicted sexual offenders up to a year to register when relocating from out of state.
c. Yes under the federal of Violence Against Women Act (VAWA) 18 U.S.C.A. 2265 requires the equal recognition and enforcement of out of state orders of protection.
d. Yes under the federal sexual offender registration and notification act (SORNA) of 2006 18 U.S.C.A. 16913 as well as under New York State law, Dave must register.

ANSWER: d
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.3

42. Which Constitutional Amendment would Dave use to challenge the charge of failing to register as a sexual offender in New York?
a. The Sixth Amendment, that provides that “the accused shall enjoy the right to a speedy and public trial.”
b. The Tenth Amendment, that provides that “The powers not delegated to the United States by the Constitution are reserved to the States … or to the people.”
c. The Fourth Amendment, that forbids unreasonable searches and seizures by officers of the federal and state governments.

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d. The Fifth Amendment, that provides the right of the defendant to right remain silent.

ANSWER: b
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.2

43. What would be the constitutional basis to uphold federal charges brought against Dave under SORNA?
a. Federalism
b. Common Law
c. Necessary and Proper Clause of the Constitution.
d. Federal Rules of Evidence

ANSWER: c
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.3

44. Dave is charged under SORNA in New York and is being tried in the federal courts. Which rules of evidence would apply to his trial?
a. New York state rules of evidence because that was where he was arrested
b. New Jersey state rules of evidence because that is where the original crime occurred
c. New York state rules of evidence because the federal court is located in New York.
d. Federal rules of evidence because the case is being tried in a federal court.

ANSWER: d
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.3

Case 2.2
New Jersey State Police incept a truck load of marijuana at during a truck enforcement detail. The truck operator, Bill Smith is arrested. The ensuing investigation reveals that the shipment originated form a legal marijuana dispensary in Denver, Colorado, owned by Mick Stoner. As a result of joint investigation involving the New Jersey State Police and the DEA, Mick Stoner was arrested at his Denver dispensary by DEA agents and charged with the manufacture and distribution of a controlled or dangerous substance.

45. Which agency would charge Mick Stoner?
a. the New Jersey State Police, as that is where the drugs were discovered.
b. the Denver Police, because that is where the drugs were manufactured and shipped from
c. The Colorado State Patrol, because of the interstate commerce clause of the U.S. Constitution
d. The Drug Enforcement Agency (DEA), because the manufacture of marijuana is legal in Colorado, but it is a federal crime for which the DEA has jurisdiction

ANSWER: d
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.2

46. Which Court System would have jurisdiction for Mick Stoner's criminal trial?
a. the New Jersey Court System due to the division of powers under federalism
b. the New Jersey Court System pursuant the interstate commerce clause of the U.S. constitution
c. the Federal Court System pursuant the interstate commerce clause of the U.S. constitution
d. the Colorado Court System due to the division of powers under federalism

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ANSWER: c
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

47. At trial, Mick Stoner's defense attorney challenges the _____ of the evidence, claiming that the initial search of the truck was in violation of the Fourth Amendment.

a. competence
b. probable cause
c. preponderance
d. probative value

ANSWER: a
REFERENCES: The Adversary System and Battles over What is Relevant, Reliable, and Competence Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

Case 2.3
Police respond to the scene of shooting outside a local bar. The scene is chaotic with ambulance personnel attending to a nonresponsive shooting victim. In the course of rendering aid to the victim, the victim and the victim's clothing were removed from the scene. The victim's clothing and personal effects are collected by an emergency room nurse at the hospital. The investigating officer responds to the hospital and takes custody of the victim's personal effects. A suspect is identified and charged with the murder of the victim. At trial, it is determined that some of the victim's personal effects of evidentiary value were misplaced by hospital personnel. During the trial the prosecution uses a cell mate of the defendant as a witness. Under oath the witness claims that the defendant admitted to murdering the victim.

48. At trial, the defense attorney claims that the prosecution failed to turn over exculpatory evidence thereby violating the _____.

a. First Amendment
b. Second Amendment
c. Brady Rule
d. Fourth Amendment

ANSWER: c
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.6

49. Which constitutional rights could the defense attorney cite with regard to violations of due process, if it is later discovered that the witness had lied to get a deal of charges he was currently facing?

a. First and Tenth Amendments
b. First and Second Amendments
c. Fifth and Fourteenth Amendments
d. Fourth and Seventh Amendments

ANSWER: c
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

50. What might the defense attorney challenge regarding the admissibility of the witness testimony presented in this case?

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a. reliability of the evidence
b. chain of custody
c. accountability of the evidence
d. mental competence of the witness

ANSWER: a
REFERENCES: The Adversary System and Battles over What is Relevant, Reliable, and Competence Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

Completion

51. The system in which power is shared between state and federal governments is called _____.
ANSWER: federalism
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.1

52. The U.S. _____ is the supreme law of the land.
ANSWER: Constitution
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.2

53. In a(n) _____ system of justice, a trial is a battle between two opponents.
ANSWER: adversary
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

54. _____ evidence is that which possesses a significant degree of believability.
ANSWER: Reliable
REFERENCES: The Adversary System Battle over What is Relevant, Reliable and Competent Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

55. Relevant, reliable evidence may be inadmissible if it is _____.
ANSWER: incompetent
REFERENCES: The Adversary System Battle over What is Relevant, Reliable and Competent Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

56. The American system of criminal justice is an adversarial one, not a(n) _____ one like many European democracies have.
ANSWER: inquisitorial
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

57. Under the _____ rule, the prosecution must disclose to the accused any evidence which is favorable to the accused.
ANSWER: *Brady*
REFERENCES: Disclosing Information in the Adversary System

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LEARNING OBJECTIVES: CEPC.GARD.16.2.6

58. If evidence potentially favorable to the accused is lost, destroyed, or misplaced, it is a violation of due process only if the government acted in _____.
ANSWER: bad faith
REFERENCES: Disclosing Information in the Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.7

59. At a trial, the _____ solves questions of law.
ANSWER: judge
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

60. At a jury trial, the _____ determines the facts of the case.
ANSWER: jury
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

61. The legal and ethical obligation of the prosecutor is to seek _____.
ANSWER: justice
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

62. If the judge or jury is not allowed to see or hear the evidence, the evidence is said to be _____.
ANSWER: inadmissible
REFERENCES: The Adversary System Battle over What is Relevant, Reliable and Competent Evidence
LEARNING OBJECTIVES: CEPC.GARD.16.2.4

63. The scope of federal criminal jurisdiction under the _____ Clause is a contentious issue.
ANSWER: Commerce
REFERENCES: Federalism in the United States
LEARNING OBJECTIVES: CEPC.GARD.16.2.3

64. In the adversarial system, evidence that a third party committed the crime is likely to be challenged by the _____.
ANSWER: prosecutor
REFERENCES: The American Adversary System
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

65. Most state statutes require only that the person seeking a civil commitment have a _____ the person to be committed is potentially dangerous.
ANSWER: reasonable belief
REFERENCES: Civil Commitment: Evidence Needed to Commit a Person Who Might Be Violent
LEARNING OBJECTIVES: CEPC.GARD.16.2.5

Essay

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66. Define and describe an adversary system of justice. What role do the rules of evidence play in such a system? Be sure to provide examples.

ANSWER: In the American adversary system, the prosecutor and the defense attorney assume adversarial roles; that is, they do not seek to establish the facts in cooperation with each other, but in opposition. Each side has two goals: to present the facts most advantageous to their position, and to seek to prevent and make it difficult for their opponent to do the same.

REFERENCES: The American Adversary System

LEARNING OBJECTIVES: CEPC.GARD.16.2.5

67. What is the *Brady* rule? Provide an example of a violation of this rule. What are the consequences of a violation of the *Brady* rule?

ANSWER: The Brady rule requires that a prosecutor has a duty to disclose evidence favorable to an accused upon request, where the evidence is material to guilt or innocence. Where such evidence is in the exclusive possession of the prosecution, it must be disclosed even when there is no request for disclosure by the defense if such evidence is "clearly supportive of a claim of innocence." An example of a violation of the Brady rule would be where the prosecution failed to notify the defense that a key witness was a paid informant. If a *Brady* violation occurs, the penalty often will be more severe, and could be a new trial or even a complete dismissal of the criminal charges.

REFERENCES: Disclosing Information in the Adversary System

LEARNING OBJECTIVES: CEPC.GARD.16.2.6

68. The jurisdiction of the federal government in interstate commerce issues is often challenged. Use *Gonzales v. Rich* as a foundation for your discussion. Discuss the situations in which you believe the federal government should become involved. Do you agree with the *Gonzales* decision? Why or why not?

ANSWER: Examples may include where there is a perceived conflict between state and federal law, typically this would be in situations where state law was deemed to be more lenient or permissive of behaviors/actions that would be in violation of federal law.

REFERENCES: Federalism in the United States

LEARNING OBJECTIVES: CEPC.GARD.16.2.3

69. Delineate and discuss the duties of law enforcement agencies at the local, state and federal levels.

ANSWER: Local law enforcement agencies such as police and sheriff departments enforce city and county ordinances in addition to the criminal laws of their state. They bring their cases to city attorneys and state attorneys (district attorneys) for charging and prosecution. Municipal police officers often spend more time in municipal courts on ordinance violations than they spend in state courts appearing in criminal cases. Federal law enforcement officers work in the many federal law agencies created by Congress. They enforce specific federal laws assigned to their agencies and take most of their cases to federal prosecutors for trial in the federal court system.

REFERENCES: Federalism in the United States

LEARNING OBJECTIVES: CEPC.GARD.16.2.2

70. Why are some states' rules of evidence different from the federal rules of evidence?

ANSWER: Most states have adopted rules of evidence almost identical to the Federal Rules, however, each state retains the power to interpret and modify those rules of evidence. Thus, the meaning and application of the Federal Rules of Evidence can vary between

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federal courts and state courts and between the states.

REFERENCES: Federalism in the United States

LEARNING OBJECTIVES: CEPC.GARD.16.2.2

71. What is the main function of a jury? Why is this duty imposed on the jury?

ANSWER: The determination of truth is the function of the jury. Because the jury must determine truth based only on the often-conflicting versions presented by the adversaries, however, the system has elaborate rules to control how those versions of the truth are presented. The purpose of the rules of evidence is to ensure each adversary's version of the truth is put before the jury by relevant, reliable, and competent evidence.

REFERENCES: The American Adversary System

LEARNING OBJECTIVES: CEPC.GARD.16.2.5

72. What is an alibi defense, and if used by a defendant, what rules of evidence must be followed?

ANSWER: In using the alibi defense, a defendant is alleging that he or she physically could not have committed the crime that is charged because the defendant was at another place at the time the crime was committed. Because an alibi can easily be fabricated, it must be carefully investigated. Most states have notice of alibi statutes that require defendants who plan to use an alibi defense to serve notice on the prosecutor before trial.

REFERENCES: Disclosing Information in the Adversary System

LEARNING OBJECTIVES: CEPC.GARD.16.2.5

73. In terms of lost, misplaced, or destroyed evidence, the Supreme Court has held that a violation of due process has not occurred unless the following is shown:

ANSWER: *Bad faith on the part of the police or other law enforcement official:* The Court held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *The evidence also would be of likely significance to the defendant's defense:* The Court held that "[the] evidence must both possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means."

REFERENCES: Disclosing Information in the Adversary System

LEARNING OBJECTIVES: CEPC.GARD.16.2.7

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