Test Bank for Legal and Ethical Environment of Business 4th Lau

Access Complete Test Bank for Legal and Ethical Environment of Business 4th Lau

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Chapter 2
The Court System

True/False Questions

1. Article I of the Constitution creates the executive power in the president and makes the president responsible for enforcing laws passed by Congress.
   False; Easy

2. The legislative power is vested in the Constitution with administrative agencies.
   False; Easy

3. It is the associate justice who represents the courts to the other branches of government.
   False; Moderate

4. Judge Merrick Garland was appointed to the U.S. Supreme Court by President Barack Obama in 2016.
   False; Moderate

5. Federal judges are appointed for a term of 20 years, which is then renewable for another 10-year term.
   False; Moderate

6. The Judiciary is the only unelected branch of government, and therefore sometimes viewed with a sense of mystery.
   True; Easy

7. The influence of a Supreme Court Justice is eroded as the final term of the president who appointed him or her nears its end.
   False; Moderate

8. The "federal judiciary" comprises nearly three percent of the federal budget.
   False; Moderate

9. John Marshall was appointed as the first Chief Justice of the Supreme Court by President George Washington.
   False; Easy

10. The first three years of the U.S. Supreme Court's existence has consistently been deemed its most productive and controversial.
   False; Moderate

11. The powers of the chief justice over the other associate justices include selecting, hearing and deciding cases.
   False; Moderate

12. In the *Dred Scott v. Sanford* case, the Supreme Court refrained from using the power of judicial review to strike down legislation.
   False; Easy

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13. The power of judicial review makes the U.S. Supreme Court the most powerful judicial body in the world.
True; Moderate

14. Thomas Jefferson came to the presidency with a Supreme Court controlled almost entirely by the Democratic-Republican party.
False; Moderate

15. The modern role of the U.S. Supreme Court emerged in 1803.
True; Easy

16. Politically liberal judges are sometimes known as strict constructionists.
False; Easy

17. Judicial activists believe that the Constitution must be interpreted as it was meant when it was written, whereas originalists believe that the Constitution must be interpreted in light of society's needs.
False; Moderate

18. The modern characterization of judges as politically motivated can be traced to the Great Depression.
True; Moderate

19. In *Roe v. Wade*, judicial activists believe that Roe has no constitutional foundations to stand on since there is no right to privacy mentioned in the Constitution.
False; Moderate

20. A number of cases before *Roe v. Wade* established that the right to privacy exists in the Constitution.
True; Moderate

21. Since federal judges are appointed for a short period of fifteen years, the turnover rate for federal judgeships is high.
False; Moderate

22. The fifty-one separate legal systems in the U.S. represent all 50 states and the District of Columbia.
False; Moderate

23. In 2017, three women serve on the United States Supreme Court, a historical record.
True; Moderate

24. State judicial decisions granting their citizens the right to same-sex marriage based on state constitutions can be invalidated by federal courts.
False; Easy

25. The rules of subject matter jurisdiction dictate whether a case is heard in state or federal court.
True; Easy

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26. Crimes such as murder or manslaughter, and possible defenses to those crimes, are defined differently by the states.
True; Easy

27. Property and probate laws are based on state law.
True; Easy

28. Tort law is an exclusive federal law.
False; Easy

29. Diversity jurisdiction cases must involve racial minorities.
False; Moderate

30. Stare decisis refers to the precedent-oriented nature of the common law legal system.
True; Easy

31. Federal appellate courts are called the United States District Courts.
False; Easy

32. A case heard without a jury is known as a bench trial.
True; Easy

33. Only a few federal litigations are appealed at the U.S. Supreme Court for review.
True; Moderate

34. The Supreme Court's jurisdiction is mandatory, not discretionary. This means the justices do not have a choice in choosing the cases they want to hear.
False; Moderate

35. In forma pauperis petitions are filed by indigent litigants who cannot afford to hire a lawyer to write and file a petition for them.
True; Moderate

36. The Supreme Court is required to hear all cases where potential injustice may occur.
False; Easy

37. The majority of the cases heard by the Supreme Court involve a circuit split.
True; Easy

38. A circuit split arises when a circuit court of appeal hears cases in split sessions.
False; Moderate

39. The U.S. Court of Appeals for the District of Columbia Circuit is a specialized court that hears cases against the federal government and the many federal agencies in Washington, DC.
True; Easy

40. The rule of four is a Supreme Court rule that only four justices need to agree for a case to be heard.
True; Easy

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41. Participation in the cert pool is voluntary and not all the justices participate.
True; Easy

42. The Supreme Court maintains a backlog of cases to hear since a case heard in a term is usually carried over to the next term.
False; Moderate

43. A majority of the Supreme Court justices must agree in order for a petition for certiorari to be granted.
False; Moderate

44. A dissenting opinion is an opinion of a judge who disagrees with the outcome and reasoning employed by the court majority.
True; Easy

45. Oral arguments in front of the Supreme Court are both open to the public and televised.
False; Moderate

46. Members of the press who are given special access to the Supreme Court oral arguments are permitted to take handwritten notes only, with no electronic aids.
True; Moderate

47. John Marshall was the first Supreme Court justice to be impeached and was accused of being overly political.
False; Moderate

Multiple Choice Questions

1. Article I of the Constitution allocates the legislative power to _____.
   a. the chief justice
   b. the president
   c. Congress
   d. the Cabinet
   e. associate justices
   c; Easy

2. Article II of the Constitution establishes:
   a. the executive power of the president
   b. the will of the people
   c. at what point the president appoints new justices
   d. the tenure of judicial appointments
   e. the role of the chief justice
   a; Moderate

3. The only unelected branch of government is the:
   a. legislative branch.
   b. judicial branch.
   c. executive branch.
   d. political branch.
   e. congressional branch.
   b; Easy

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4. Which agency manages day-to-day responsibilities for the federal court system?
   a. Administrative Office of the United States Courts
   b. United States Sentencing Commission
   c. Federal Judicial Center
   d. Judicial Conference of the United States
   e. United States General Services Administration
   a; Easy

5. Identify a true statement about the United States Sentencing Commission (USSC).
   a. Established by the president.
   b. Established by Congress.
   c. An agency exclusively dedicated to conducting research on judicial administration.
   d. An elected branch of government.
   e. Runs the day-to-day issues for all the courts.
   b; Moderate

6. Which of the following agencies serves to conduct research into judicial administration and provide judicial education?
   a. Administrative Office of the United States Courts
   b. United States Sentencing Commission
   c. Federal Judicial Center
   d. Judicial Conference of the United States
   e. United States General Services Administration
   c; Easy

7. The chief justice:
   a. is elected by the people
   b. serves a maximum term of twenty-five years.
   c. has superior power over the other associate justices when deciding cases.
   d. earns approximately $260,700 per year
   e. is appointed by Congress.
   d; Moderate

8. Which of the following statements is true about associate justices?
   a. They are solely responsible for running the day-to-day issues for all the federal courts.
   b. The number of associate justices is determined by the chief justice.
   c. There are nine associate justices at present.
   d. They are currently paid the same salary as the chief justice.
   e. They have the same power as the chief justice when it comes to deciding cases.
   e; Hard

9. Identify a true statement about judicial review.
   a. The president can hold any act of the federal judges to be unconstitutional.
   b. First used in *Roe v. Wade* case to strike down legislation.
   c. A power used by Congress as a means of checking the judiciary.
   d. A power that rests with each of the more than eight hundred federal judges.
   e. The absolute power of the president to name federal judges.
   d; Moderate

10. *Marbury v. Madison* established the doctrine of:

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a. the right to privacy.
b. the right to habeas corpus.
c. judicial review.
d. fair use.
e. incorporation.
c; Easy

11. Which of the following refers to the power of courts to declare legislative or executive acts unlawful?
a. Discretionary review
b. Judicial restraint
c. The rule of law
d. The rule according to a higher law
e. Judicial review
e; Easy

12. The appointment of who among the following changed the tradition of routine confirmation of presidential nominees to the Supreme Court?
a. James Marshall
b. Robert Bork
c. Harriet Miers
d. Sandra Day O'Connor
e. Sam Alito
b; Moderate

13. Who acts as the primary means of enforcing judicial decisions?
a. The President
b. The Supreme Court justice
c. The legislative branch
d. A special administrative agency
e. The people
a; Easy

14. Which of the following is NOT a role played by Congress in controlling the judiciary?
a. Confirming judicial selections
b. Controlling annual budgetary process
c. Determining what kind of cases the courts can hear
d. Reducing judicial salaries
e. Determining the courts' jurisdictions
d; Moderate

15. Which of the following is NOT true about the role of Congress concerning the judiciary?
a. The most obvious role of Congress is in confirming judicial selections.
b. Congress controls the judiciary through its annual budgetary process.
c. Congress is obligated to grant raises in judicial salaries.
d. Congress can control the judiciary by determining how the courts are organized.
e. Congress can control the judiciary by determining what kind of cases the courts can hear.
c; Moderate

16. Judges who adhere to the judicial activist philosophy believe:
a. that any right not listed in the Constitution does not exist.

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b. they do not have the power to "invent" a new right.
c. that the Constitution is a "living document."
d. in preserving the original meaning of the Constitution.
e. that their role is to strictly interpret the Constitution and nothing more.

c; Moderate

17. The New Deal:
a. Altered the makeup of the Supreme Court by increasing the number of judges and appointing new justices in the Supreme Court.
b. Was President Richard Nixon's action plan to alter the relationship between the people and their government.
c. Was a legislative package that rewrote the role of government, vastly increasing its size and its role in private commercial activity.
d. Faced much opposition from the White House and the Congress.
e. Was never implemented due to the public's reaction.

c; Moderate

18. *Roe v. Wade* was criticized:
a. By judicial activists as an assault on privacy.
b. As not going far enough to protect a woman's right to privacy
c. As being the first case to declare that a right to privacy exists in the Constitution.
d. By constructionists as an activist decision that bypassed the electorate.
e. By activists for too strictly adhering to the "originalist" view of the Constitution.

d; Moderate

19. The judges who criticized *Roe v. Wade* believed that:
a. Majority rule can lead to the baser instincts of humanity becoming the rule of law.
b. Judges have a role in shaping a "more perfect union" as described in the Constitution.
c. The Constitution is a "living document" and should be interpreted in light of society's needs.
d. Their role is to safeguard the voice of the minority groups and the oppressed and to deliver the promise of liberty in the Constitution to all Americans.
e. The Constitution must be interpreted as it was meant when it was written as opposed to how society would interpret the Constitution today.

e; Hard

20. Which of the following statements is true regarding the composition of the Supreme Court between 1994 and 2005:
a. Justice Sandra Day O'Connor was named the first female Chief Justice.
b. Merrick Garland's nomination was delayed for approximately eleven years.
c. Harriet Miers was the first non-judge to serve on the U.S. Supreme Court.
d. The Supreme Court experienced no changes in its composition.
e. Chief Justice William Rehnquist was the first sitting member of the Supreme Court to die while serving.

D. Moderate

21. Which of the following rights exemplifies the difference in views between judicial conservatives and judicial liberals?
a. The right to vote.
b. The right to privacy.
c. The right to own property.

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d. The right to know.
e. The right to education.

b; Moderate

22. The dynamic power sharing between state and federal governments is known as:
a. constitutionalism.
b. liberalism.
c. originalism.
d. federalism.
e. confederation.

d; Easy

23. Which of the following is most likely to be subject to federal court jurisdiction?
a. Cases involving adoption from surrogate mothers.
b. Cases involving tort claims.
c. Cases involving domestic issues such as divorce and family law governing gay marriages.
d. Cases involving the interpretation of treaties to which the United States is a party.
e. Cases involving the implementation of child custody laws.

d; Easy

24. The rules of subject matter jurisdiction determine:
a. whether a case is heard in state or federal court.
b. whether punitive damages are appropriate.
c. whether a bench trial should take place.
d. the type of jury in a case.
e. the nature of precedents in the federal and state court system.

a; Moderate

25. Original jurisdiction cases constitute:
a. Cases in which the Supreme Court has no jurisdiction.
b. Cases that exceed the threshold damages amount.
c. A small category of cases that go straight to the U.S. Supreme Court to hear the case for a first time, rather than on appeal.
d. Lawsuits that deal with state issues.
e. Cases in which it the state or federal jurisdiction is not clear.

C.; Moderate

26. Which of the following is NOT true of torts?
a. A decision based on a tort cannot be appealed.
b. Torts are state based.
c. A tort is any civil wrong outside of a breach of contract.
d. Some states are friendlier towards tort claims than others.
e. Torts cover situations in which legal injury is suffered by people and businesses.

a; Easy

27. Most individuals and businesses are likely to find their judicial interactions in _____.
a. the U.S. Supreme Court.
b. federal circuit courts.
c. state courts.
d. federal district courts.
e. international courts.

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c; Easy

28. _____ refers to any case involving a federal law or the federal Constitution that gives rise to subject matter jurisdiction in federal courts.
    a. Federal Clause
    b. Federal arbitration
    c. Federal question
    d. Federal negotiation
    e. Federal decisis

    c; Easy

29. Diversity jurisdiction requires plaintiffs to claim an amount in excess of _____.
    a. twenty-five thousand dollars.
    b. thirty-five thousand dollars.
    c. forty-five thousand dollars.
    d. seventy-five thousand dollars.
    e. sixty-five thousand dollars.

    d; Easy

30. If a defendant lives in one state and the plaintiff lives in another state, and the amount in controversy exceeds seventy-five thousand dollars, their case may be heard in federal court because:
    a. there is a federal question involved.
    b. the defendant always gets to choose the court.
    c. there is subject matter jurisdiction.
    d. the rule of four requires it.
    e. there is diversity jurisdiction.

    e; Moderate

31. Removal refers to a process in which:
    a. a case is heard only by a judge, wherein the judge acts as both trier of law and trier of fact.
    b. a case is moved from state court to federal court under diversity jurisdiction.
    c. a petition is filed with a Supreme Court arguing why the case should be heard.
    d. a case is sent back from a court of appeals to a trial court for reconsideration.
    e. a court allows indigent litigants to proceed without paying any fees.

    b; Moderate

32. What is true of "stare decisis"?
    a. It is the principle which states that all courts are bound to follow precedent established by the U.S. Supreme Court.
    b. It dictates that cases such as a state court interpreting its own state's Constitution come under the jurisdiction of the U.S. Supreme Court.
    c. It states that the Supreme Court has discretionary jurisdiction to hear any case it wishes to hear.
    d. It is a law related to the transfer of property, vehicle or watercraft ownership registration, and the disposition of property after death.
    e. It is a term used to describe a legislature in which two bodies exist.

    a; Moderate

33. _____ is the trial court in the federal system.
    a. The U.S. Supreme Court

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b. A U.S. District Court
c. A U.S. circuit court of appeal
d. The U.S. Department of Justice
e. An intermediate court of appeal
b; Easy

34. A _____ is a case heard only by a judge, wherein the judge acts as both trier of law and trier of fact.
a. bench trial
b. speedy trial
c. trial by ordeal
d. jury trial
e. mock trial
a; Easy

35. Which of the following is true about the federal court system?
a. As a trial court, the U.S. district courts hear only civil trials.
b. There are sixteen circuit courts of appeals in the United States.
c. Under the court administration system, there are sixty-five judicial districts in the country.
d. All states have more than one judicial district.
e. Only a few federal litigations end at the U.S. Supreme Court level for review.
e; Hard

36. In all fifty states, a trial court of _____ jurisdiction accepts most types of civil and criminal cases.
a. general
b. limited
c. diversity
d. federal question
e. special
a; Easy

37. A(n)_____ is an example of a limited jurisdiction court.
a. intermediate court of appeals
b. superior court
c. U.S. circuit court
d. U.S. district court
e. juvenile court
e; Moderate

38. Intermediate court of appeals:
a. accept only criminal cases which involve the application of the Constitution to criminal procedure, evidence collection, or punishment.
b. require both parties to be from different states.
c. allow the party losing the appeal to usually file one more time with the state Supreme Court.
d. preserve a trial record for review by a state trial court.
e. determine the facts of a case by initially hearing the cases and reviewing evidence and testimony.
c; Moderate

39. Identify a true statement about remand.

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a. It is a process in which a case is heard only by a judge, wherein the judge acts as both trier of law and trier of fact.
b. It is the process of moving a case from state court to federal court under diversity jurisdiction.
c. It is the process in which a court allows indigent litigants to proceed without paying any fees.
d. It is the process of sending a case back from a court of appeals to a trial court for reconsideration.
e. It is a process of filing a petition with a Supreme Court arguing why the case should be heard.

d; Moderate

40. A party that has lost at appeal may file which of the following to argue why a case should be heard by a Supreme Court.
a. a writ of mandamus.
b. a writ of habeas corpus.
c. a writ of quo warranto.
d. a writ of scire facias.
e. a writ of certiorari.

e; Easy

41. What type of petitions can be filed by indigent litigants who cannot afford to hire a lawyer to write and file a petition for them?
a. In forma pauperis
b. Trial record
c. Amicus brief
d. Ex post facto
e. Pari passu

a; Easy

42. The Supreme Court is most likely to grant certiorari when:
a. the defendant has no criminal records.
b. asked by the president.
c. there is a circuit split.
d. well-known lawyers file the petition.
e. indigent litigants file in forma pauperis petitions.

c; Moderate

43. There are _____ circuit courts of appeals in the United States.
a. ten
b. eleven
c. twelve
d. thirteen
e. fourteen

d; Easy

44. How many Justices must agree in order for a writ of certiorari to be granted?
a. Three
b. Four
c. Five
d. Six

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e. Seven

b; Easy

45. The majority opinion is:
    a. an opinion expressed in the friend-of-the-court brief.
    b. an opinion of only one judge who agrees with the outcome and reasoning employed by the court.
    c. an opinion written by a judge who agrees with the outcome of a case but disagrees with the reasoning behind it.
    d. an opinion of the court, written by a single judge and joined by other judges who voted the same way.
    e. an opinion of the Supreme Court that only three justices need to agree for a case to be heard.

d; Moderate

46. An opinion that expresses agreement with the majority's outcome, but not their reasoning, is called a:
    a. concurring opinion.
    b. dissenting opinion.
    c. majority opinion.
    d. nonconforming opinion.
    e. memorandum opinion.

a; Easy

47. Within the cert pool, the task of reading thousands of filed petitions and recommending ether or not to grant the task is initially assigned to:
    a. The Chief Justice
    b. Associate justices
    c. Law clerks
    d. Circuit court judges
    e. Trial judges

C; Moderate

48. Who is permitted in the conferences of the Supreme Court?
    a. Aides
    b. Clerks
    c. Supreme Court justices only
    d. Attorneys
    e. The media

C; Easy

49. Supreme Court justices are permitted to hire how many law clerks each term to assist with their work?
    a. One
    b. Up to four
    c. Ten
    d. Two
    e. Up to three

B; Easy

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50. Which Supreme Court case involved a poor defendant convicted of burglary without being represented by a lawyer?
    a. *Bush v. Gore*
    b. *Roe v. Wade*
    c. *Marbury v. Madison*
    d. *Gideon v. Wainwright*
    e. *Fisher v. University of Texas*

    D; Easy

Short Answer Questions

1. How is the judiciary different from the other two branches of government?

    Easy

    The judiciary is the only unelected branch of government. The entire federal court system consumes less than two-tenths of one percent of the federal budget. The political branches capture the public imagination with monuments and landmarks (Air Force One, the White House, the Capitol), while the federal judiciary works in relative anonymity. (All federal judges, for example, travel commercially and do not have access to government-owned planes.) The judiciary is designed to be the most remote branch from the people. In addition to being unelected, federal judges have life tenure and can be removed from office only through impeachment. They also tend to be in public office far longer than politicians.

2. Summarize the events which led the U.S. Supreme Court to institutionalize judicial review.

    Hard

    The Presidential election of 1800 was fought between John Adams and Thomas Jefferson. Jefferson won but wasn't declared the winner until early in 1801. In the meantime, Adams and other Federalists in Congress attempted to leave their mark on government by creating a slate of new life-tenured judgeships and appointing Federalists to those positions. For the judgeships to become effective, certain paperwork (known as commissions) had to be delivered in person to the new judges. At the time power transitioned from Adams to Jefferson, several commissions had not been delivered, and Jefferson ordered his acting secretary of state to stop delivering them. When Jefferson came to power, he wasn't keen on expanding the Federalist influence on the bench any further. One Federalist judge, William Marbury, sued the secretary of state, James Madison, to deliver his commission. The case was filed in the Supreme Court, led by Chief Justice John Marshall. In a shrewd and calculated move, he ultimately ruled against Marbury but at the same time declared that it was the Supreme Court's role to decide the meaning of the Constitution. This is called judicial review, and it makes the U.S. Supreme Court the most powerful judicial body in the world. Chief Justice Marshall did not invent judicial review. He did, however, institutionalize judicial review at the U.S. Supreme Court at a time when there was great uncertainty about the Court's future role in government.

3. Briefly discuss the *Dred Scott v. Sandford* case.

    Easy

    The *Dred Scott v. Sandford* case involved a slave who traveled to many states—including free states—with his owner, a doctor in the army. Dred Scott filed suit for his freedom, and the case

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ended up before the Supreme Court. In what many commentators call the Supreme Court's "self-inflicted injury," the Court, in an opinion written by Chief Justice Roger Taney, used judicial review to overturn the Missouri Compromise and held that Dred Scott was not a person under the Constitution and therefore could not file suit. The decision hastened the country into Civil War, and it took years for the Supreme Court to recover its standing with the public.

4. What is judicial review?

   Easy

   Judicial review is the power of a court to declare legislative or executive acts unlawful. It means that any federal court can hold any act of the president or Congress to be unconstitutional. It makes the U.S. Supreme Court the most powerful judicial body in the world. It is an exclusive power first established by the Supreme Court in the 1803 case of *Marbury v. Madison*. Chief Justice Marshall did not invent judicial review; it is a feature of most common-law countries and as a concept goes back centuries. He did, however, institutionalize judicial review at the U.S. Supreme Court at a time when there was great uncertainty about the Court's future role in government. While all three branches are bound to uphold the Constitution, on all matters relating to the meaning of the Constitution, the Supreme Court has the final say.

5. How does the president exercise control over the judiciary?

   Easy

   The President can control the judiciary by making careful judicial selections. The President has the absolute power to name judges—he is not required to consult with any other individual in making his choice. In addition to nominating judges, the president serves as a check on the judiciary by being the primary means of enforcing judicial decisions. Federal judges do not control any police force and as such are unable to ensure their decisions are carried out. That responsibility falls on the executive branch. No matter how much a president may disagree with a judicial decision, it is a testament to the republican form of government, and the rule of law, that the president nonetheless faithfully executes a federal court's decision.

6. Describe how Congress can serve as a check on the judiciary.

   Moderate

   Congress plays an important role in "checking" the judiciary. The most obvious role is in confirming judicial selections. In addition to confirmation, Congress also controls the judiciary through its annual budgetary process. Although the Constitution protects judicial salaries from any reductions, Congress is not obligated to grant any raises. Finally, Congress can control the judiciary by determining how the courts are organized and what kind of cases the courts can hear. The Constitution gives Congress the authority to determine the courts' jurisdictions. Congress has used this authority in the past to take away controversial cases from judicial consideration. In the recent past, members of Congress have also introduced legislation prohibiting federal courts from hearing cases about the public display of religion and flag burning or from using any foreign law as support for their decisions.

7. Describe what is meant by strict constructionism.

   Easy

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On the politically conservative right, judges are described as either strict constructionists or originalists. Judges who adhere to this philosophy believe that social change is best left to the politically elected branches of government. The role of judges is therefore to strictly interpret the Constitution, and nothing more. Strict constructionists also believe that the Constitution contains the complete list of rights that Americans enjoy and that any right not listed in the Constitution does not exist and must be earned legislatively or through constitutional amendment. Judges do not have the power to "invent" a new right that does not exist in the Constitution. These judges believe in original meaning, which means interpreting the Constitution as it was meant when it was written, as opposed to how society would interpret the Constitution today. Strict constructionists believe that interpreting new rights into the Constitution is a dangerous exercise because there is nothing to guide the development of new rights other than a judge's individual conscience.

8. What is judicial activism?

Easy

On the politically liberal left are judges who are described as activist. Judicial activists believe that judges have a role in shaping a "more perfect union" as described in the Constitution and that therefore judges have the obligation to seek justice whenever possible. They believe the Constitution is a living document that should be interpreted in light of the circumstances and needs of modern society. They believe that sometimes the political process is flawed and that majority rule can lead to the baser instincts of humanity becoming the rule of law. They believe their role is to safeguard the voice of the minority and the oppressed and to deliver the promise of liberty in the Constitution to all Americans. Judicial activists believe in a broad reading of the Constitution, preferring to look at the motivation, intent, and implications of the Constitution's safeguards rather than merely its words.

9. Give an example to illustrate how modern characterization of judges as politically motivated can be traced to the Great Depression.

Hard

President Roosevelt vowed to alter the relationship between the people and their government to prevent the sort of destruction and despair wreaked by the Depression. The centerpiece of his action plan was the New Deal, a legislative package that rewrote the role of government, vastly increasing its size and its role in private commercial activity. The New Deal brought maximum working hours, the minimum wage, mortgage assistance, economic stimulus, and social safety nets such as Social Security and insured bank deposits. Although the White House and the Congress were in near-complete agreement on the New Deal, the Supreme Court was controlled by a slim majority known as the "Four Horsemen of the Apocalypse" because of their dire warnings of the consequences of economic regulation. Three justices known as the "Three Musketeers"—Justice Brandeis, Justice Cardozo, and Justice Stone—opposed the Four Horsemen. In the middle sat two swing votes. The Four Horsemen initially prevailed, and one by one, pieces of President Roosevelt's New Deal were struck down as unconstitutional reaches of power by the federal government. Frustrated, President Roosevelt devised a plan to alter the makeup of the Supreme Court by increasing the number of judges and appointing new justices. The "court-packing plan" was never implemented due to the public's reaction, but nonetheless, the swing votes on the Supreme Court switched their votes and began upholding New Deal

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legislation. During the public debate over the Supreme Court's decisions on the New Deal, the justices came under constant attack for being politically motivated.

10. Briefly discuss the cases which established the right to privacy act even before the *Roe v. Wade* case.

Hard

Roe did not declare that a right to privacy exists in the Constitution. A string of cases before *Roe* established that right. In 1965 the Supreme Court overturned a Connecticut law prohibiting unmarried couples from purchasing any form of birth control or contraceptive. The Court reasoned that the First Amendment has a "penumbra of privacy" that must include the right for couples to choose if and when they want to have children. Two years later, the Supreme Court found a right to privacy in the due process clause when it declared laws prohibiting mixed-race marriages to be unconstitutional. As a result of these decisions and others like them, the phrase "right to privacy" today is widely accepted as a form of litmus test for whether a judge (or judicial candidate) is a strict constructionist or activist.

11. Briefly explain the concept of federalism with an example.

Moderate

Several state Supreme Courts have interpreted their various state constitutions as prohibiting treating gays and lesbians differently when it comes to marriage under their "equal protection" provisions. Other state supreme courts have interpreted their state constitutions to grant citizens the right to choose the time and manner of their own death. Since these decisions are by state supreme courts interpreting their own state constitutions, they are beyond the reach or review of the federal Congress or federal courts. This dynamic power sharing between state and federal governments is known as federalism and is a key feature of our republican form of government.

12. Briefly discuss diversity jurisdiction.

Easy

Sometimes it is possible for a federal court to hear a case involving a state law. These cases are called diversity jurisdiction cases, and they arise when all plaintiffs in a civil case are from different states than all defendants and the amount claimed by the plaintiffs exceeds seventy-five thousand dollars. Diversity jurisdiction cases allow one party who feels it may not receive a fair trial where its opponent has a "home court" advantage to seek a more neutral forum to hear its case, a process called removal.

13. What are the three categories of cases that Supreme Court justices typically grant?

Easy

Typically, the cases granted by the supreme court fall into one of three categories. The first category is a case of tremendous national importance, such as the *Bush v. Gore* case to decide the outcome of the 2000 presidential election. These cases are rare, but they dominate headlines on the Supreme Court. Second, the justices typically take on a case when they believe that a lower court has misapplied or misinterpreted a prior Supreme Court precedent. This category is also fairly infrequent. By far, the majority of cases granted by the Supreme Court fall into

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the third category, the circuit split. A circuit split arises when the circuit courts of appeals disagree with each other on the meaning of federal law.

14. Briefly explain how a circuit split arises with an example.

Easy

A circuit split arises when the circuit courts of appeals disagree with each other on the meaning of federal law. For example, assume that there are two similar cases that are being decided in federal district court at the same time, in two different states. The cases present similar facts and involve the same federal law passed by Congress. Both cases are appealed to two different circuit courts. On appeal, it's possible that the two appellate courts may come to opposite conclusions on what the law means, especially if Congress has recently passed the law. Since the circuit court of appeal's decision is binding for that circuit, the state and meaning of federal law is different based on where a citizen lives. The Supreme Court is therefore very likely to grant certiorari in this case to resolve the split and decide the meaning of the law for the entire country.

15. Why does the Supreme Court allow amicus briefs to be filed?

Easy

If a petition is granted in the Supreme Court, the parties are then instructed to file written briefs with the Court, laying out arguments of why their side should win. At this point, the Court also allows nonparties to file briefs to inform and persuade the justices. This type of brief, known as an amicus brief, is an important tool for the justices. Many cases before the Supreme Court are of tremendous importance to a broad array of citizens and organizations beyond the petitioner and respondent, and the amicus brief procedure allows all who are interested to have their voice heard.

16. Describe why the early Supreme Court was not the important institution it is today.

Moderate

The Supreme Court's early malaise can partially be attributed to the problem that no one really had a good idea of what the Supreme Court was supposed to do. There were few cases of tremendous national importance in the newly founded United States. A tradition known as the "riding circuit" meant that the Supreme Court justices at the time also acted as lower appellate court judges, thus making their work at the Supreme Court somewhat duplicative. The Constitution also doesn't provide many details about what the Supreme Court's function is, simply stating that the judicial power of the United States is vested in the Supreme Court, without expounding on what that means.

17. Describe why Supreme Court judges exercise impartiality in the cases before them.

Hard

When Thomas Jefferson was elected President, it was at a time when not a single federal judge in the country came from his political party. He was thus extremely wary of judges and when *Marbury v. Madison* in 1803 declared the Supreme Court to be the ultimate interpreter of the Constitution's meaning, Jefferson wrote that "to consider the judges as being the ultimate

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arbiters of all constitutional questions is a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy." A few years after that, justice Samuel Chase was impeached for being overly political. Despite his acquittal, a trend started toward nonpartisanship and political impartiality among judges. Judges should thus exercise impartiality in their cases, but charges of political bias continue to be levied against judges at all levels.

18. What are the three types of opinions the Supreme Court justices write after deciding on the outcome of a case?

    Easy

    The majority opinion is the opinion of the winning side, or the majority, within the Supreme Court. If the chief justice is with the winning side, he or she usually writes the majority opinion or decides who will write it. If the chief justice is in the minority, then the most senior of the justices in the majority decides who writes the majority opinion. The chief justice or senior justice can assign the opinion to a swing or wavering member of the Court to ensure that justice's vote doesn't change. A dissenting opinion is written by a judge who disagrees with the outcome and reasoning employed by the court majority. A concurring opinion is written by a judge who agrees with the majority's outcome but disagrees with their reasoning.

Fill in the Blanks

1. Under the Constitution, there are two requirements to becoming a federal judge: nomination by the president and confirmation by the _____.
   Senate; Easy

2. The _____ is the smallest branch of government with the shortest founding text in the U.S. Constitution.
   Judiciary or U.S. Judiciary; Easy

3. _____ is an old practice where Supreme Court judges served as lower appellate judges within their assigned judicial districts.
   Riding circuit; Easy

4. While all three branches of the government are bound to uphold the Constitution, on all matters relating to the meaning of the Constitution, the _____ has the final say.
   Supreme Court; Easy

5. _____ means that any federal court can hold any act of the president or Congress to be unconstitutional.
   Judicial review; Easy

6. _____ is the view that the Constitution should be interpreted in the context of what the Founding Fathers meant when they wrote the document.
   Original meaning; Easy

7. Judges who follow the _____ philosophy believe in a broad reading of the Constitution, preferring to look at the motivation, intent, and implications of the Constitution's safeguards rather than merely its words.
   judicial activist or judicial liberal; Easy

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8. Jurists who follow the _____ philosophy decry *Roe v. Wade* as an extremely activist decision.
strict constructionist or originalist or judicial conservative; Easy

9. The Supreme Court found a right to privacy in the _____ clause when it declared laws prohibiting mixed-race marriages to be unconstitutional.
due process; Moderate

10. The rules of _____ dictate whether a case is heard in federal or state court.
subject matter jurisdiction; Easy

11. In _____ jurisdiction cases, lawsuits between states can be filed directly with the U.S. Supreme Court.
original; Easy

12. A(n) _____ is a transcript of what was said in the courtroom along with supporting documentation.
trial record; Easy

13. Small claims court is an example of a(n) _____ jurisdiction court.
limited; Moderate

14. Decisions by the _____ on patent law are binding on all district courts throughout the country, unless overruled by the Supreme Court.
U.S. Court of Appeals for the Federal Circuit; Moderate

15. The arrangement in which many justices rely on their clerks to read filed petitions and to make recommendations on whether or not to grant a petition for certiorari is known as _____.
cert pool; Easy

16. The rules governing the procedures used in courts are known as _____ or criminal procedure.
civil procedure; Easy

17. In addition to confirmation, _____ also controls the judiciary through its annual budgetary process.
Congress; Easy

18. The _____ gives Congress the authority to determine the courts' jurisdictions.
Constitution; Easy

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