Test Bank for Study of Law - A Critical Thinking Approach 5th Currier

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Test Questions
Chapter 2
Functions and Sources of the Law

1. One definition of law is rules of conduct promulgated and enforced by the government.
*a. True
b. False

2. The study of legal philosophy is known as jurisprudence.
*a. True
b. False

3. Legal realists believe that judges decide cases solely on the basis of logic and preexisting rules.
a. True
*b. False

4. Natural law theorists believe that man-made law should be based on timeless and immutable principles discoverable through humanity's innate sense of right and wrong.
*a. True
b. False

5. The Declaration of Independence is one example of legal positivism.
a. True
*b. False

6. Under legal positivism the validity of a law is determined by the process through which it was made.
*a. True
b. False

7. Formalists believe that the proper role of the judge is to play an active role in creating new law.
a. True
*b. False

8. The view that argues for a strict construction of the Constitution is often referred to as constructivism.
a. True
*b. False

9. The view that when interpreting the Constitution judges should seek to determine the underlying goal or value of the drafters is sometimes referred to as originalism.
a. True
*b. False

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10. The legislative, executive, and judicial branches are all involved in making law.
*a. True
b. False

11. Following the adoption of England's Constitution, our country was the first to adopt a written constitution.
*a. True
b. False

12. The first ten amendments to the United States Constitution were actually passed prior to the Constitution itself.
a. True
*b. False

13. The first ten amendments to the United States Constitution are known as the Bill of Rights.
*a. True
b. False

14. The U.S. Constitution, along with federal statutes enacted pursuant to the Constitution, constitutes the "supreme law of the land."
*a. True
b. False

15. The U.S. Constitution was written so clearly and unambiguously that its terms rarely require court interpretation.
a. True
*b. False

16. Recently we have seen a decline in the amount of litigation based upon state constitutional law.
a. True
*b. False

17. The U.S. Supreme Court is the final arbiter of what the U.S. Constitution means.
*a. True
b. False

18. A statute is a general rule governing future conduct.
*a. True
b. False

19. When disagreements arise as to the meaning of statutory language, the most common recourse is to petition the legislature to amend the statute.
a. True
*b. False

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20. If a court interprets a statute in a way that the legislature did not intend, the legislature can amend the statute to more clearly state its intent.
*a. True
b. False

21. The court, and not the legislature, has the final say on when a statute is unconstitutional.
*a. True
b. False

22. While courts have the power to interpret statutes, they do not have the power to interpret administrative regulations.
a. True
*b. False

23. The wording of statutes is much more specific than that of administrative regulations.
a. True
*b. False

24. In order for a bill to become federal law, there must be a majority vote of either the House or the Senate.
a. True
*b. False

25. The legislature in England existed long before there was a well developed system of courts.
a. True
*b. False

26. Court made law is also sometimes referred to as the common law.
*a. True
b. False

27. Prior to the late 1800's, there was no common law system in England.
a. True
*b. False

28. When the common law is changed through legislation, the statute is said to be in derogation of the common law.
*a. True
b. False

29. A court's equitable powers allow it to award money damages.
a. True
*b. False

30. Today, most courts have not yet merged their law and equity powers.
a. True

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*b. False

31. A declaration is a court order requiring a party to perform a specific act or to cease doing a specific act.
a. True
*b. False

32. Specific performance is a requirement that a party pay damages as a result of losing a personal injury lawsuit.
*a. True
b. False

1. The following theory is based upon the belief that law should be based on timeless and immutable principles.
   *a. Natural law.
   b. Legal Positivism.
   c. Legal Realism.
   d. All of the above.
   e. None of the above.

2. The following theory refers to the view that correct legal decisions are uniquely determined by pre-existing legal rules found in prior court opinions.
   a. Natural law.
   b. Legal Positivism.
   *c. Formalism.
   d. Legal Realism.
   e. All of the above.

3. The following theory asserts that judges should look to the expertise that can be provided by the social science, such as psychology, sociology, and economics.
   a. Natural law.
   b. Legal Positivism.
   c. Formalism
   *d. Legal Realism.
   e. All of the above.

4. The form of government in which independent units form an alliance but retain most of their power delegating only a limited amount of power to a central authority is known as a
   a. federation.
   b. democracy.
   *c. confederation.
   d. oligarchy.

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5. There are two major functions of the U.S. Constitution:
    a. to make sure that the federal government is dominant over the states in all matters and to protect us from state governmental overreaching.
    b. to establish Congress and the federal courts.
    *c. to establish the organization of government and to protect us from federal governmental overreaching.
    d. to establish the prototype for state government and to mandate the establishment of equal rights.

6. Which of the following statements is false?
    a. The major concern of the drafters of the Bill of Rights was overreaching by the federal government.
    *b. All of the provisions of the Bill of Rights apply to the states.
    c. Many of the provisions of the Bill of Rights apply to the states.
    d. The First Amendment states: “Congress shall make no law . . . abridging the freedom of speech.”

7. In which of the following situations would the U.S. Constitution apply?
    a. A neighbor trespasses on Mr. Baker’s land, and Mr. Baker wants to sue the neighbor for infringing on his right to be left alone.
    b. A dean of students searches a student’s dorm rooming looking for illegal drugs.
    *c. A police officer stops a car and with no probable cause proceeds to open and search the trunk for illegal drugs.
    d. Jane is fired from her job based on a complaint filed by a co-worker. Jane would like to sue the co-worker for interfering with her right to gainful employment.

8. The United States Supreme Court has the power of judicial review because
    a. it was granted this power under Article III of the Constitution.
    b. only United States Supreme court decisions are the "supreme law of the land."
    c. in 1791, just one year after the Constitution was ratified, an amendment was added giving the court this power.
    *d. in the case *Marbury v. Madison* the Court declared that it had this power.

9. The power of judicial review means that
    a. Congress cannot enact a statute without prior court approval.
    b. appellate courts may review the decisions of trial courts.
    *c. the courts have the power to review the constitutionality of statutes.
    d. the federal courts may overturn state court decisions.

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10. After the U.S. Supreme Court interprets a federal statute in a certain way,
    a. the executive branch can no longer enforce the law.
    b. the executive branch must enforce the law as it interpreted by the Court.
    c. Congress can amend the law if it does not like the way it has been interpreted by the Supreme Court.
    d. a and c.
    *e. b and c.

11. After the U.S. Supreme Court rules that a statute is unconstitutional,
    a. the executive branch can go ahead and continue to enforce the law as it was written because the United States Supreme Court only has the power of interpreting statutes. It cannot declare them unconstitutional.
    *b. the executive branch can no longer enforce the law because the U.S. Supreme Court has the final say on whether a statute is constitutional.
    c. Congress can amend the constitution.
    d. a and c.
    e. b and c.

12. Assume Congress enacted a statute making it a federal crime for "anyone" to kidnap children and take them across state lines. Assume further that the U.S. Supreme Court decided that the words "anyone" did not include a parent.
    *a. If it wanted to do so, Congress could amend the statute to say that the word "anyone" does include parents. The United States Supreme Court only has the power of interpreting constitutional statutes. If it guesses wrong, Congress can amend the statute.
    b. If it wanted to do so, Congress could amend the statute to say that the word "anyone" does include parents. Under the Constitution, Congress has the final say on the constitutionality of a law.
    c. If it wanted to do so, Congress could not amend the statute to say that the word "anyone" includes parents. Under the Constitution, the U.S. Supreme Court has the final say on the meaning of the law.
    d. If it wanted to do so, Congress could not amend the statute to say that the word "anyone" includes parents. Once the U.S. Supreme Court has interpreted a statute, that interpretation is final.

13. Assume Congress enacted a statute making it a crime to possess a firearm on school property. Assume further that the Supreme Court declared the statute to be unconstitutional as not within Congress's power to legislate.
    a. If it wanted to do so, Congress could ignore the Supreme Court ruling and enact a new statute prohibiting firearms on school property. The United States Supreme Court only has the power of interpreting statutes. It cannot declare them unconstitutional.
    b. If it wanted to do so, Congress could ignore the Supreme Court ruling and enact a new statute prohibiting firearms on school property. Under the Constitution, Congress has the final say on the constitutionality of a law.

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*c. Even if it wanted to do so, Congress cannot ignore the Supreme Court ruling. The statute making it a crime to possess a firearm on school property is now invalid. Under the Constitution, the U.S. Supreme Court has the final say on whether a statute is constitutional.

d. Even if it wanted to do so, Congress cannot ignore the Supreme Court ruling. The statute making it a crime to possess a firearm on school property is now invalid. Under the Constitution, the U.S. Supreme Court always has the final say on what a statute means.

14. For a bill to become law, there must be a
    *a. majority vote in both the Senate and House of Representatives.
    b. two-thirds vote in both the Senate and House of Representatives.
    c. majority vote in the House of Representatives and a two-thirds vote in the Senate.
    d. majority vote in both the Senate and the House of Representatives unless the bill involves money matters, in which case there must be a two-thirds vote in both the Senate and House of Representatives.

15. If the President vetoes a bill, then
    a. Congress can override the veto by a second majority vote.
    *b. Congress can override the veto by a two-thirds vote.
    c. Congress must convene a special committee to draft recommendations for amending the bill.
    d. the bill cannot become law.

16. The statute that creates an administrative agency is known as
    *a. an enabling act.
    b. an empowering act.
    c. a creation act.
    d. a legitimating act.

17. Which of the following is <u>not</u> true?
    a. Administrative agencies promulgate regulations.
    b. Legislatures enact statutes.
    *c. Legislatures enact statutes and regulations.
    d. Courts write opinions.
    e. City governments enact ordinances.

18. Because administrative agencies combine legislative, executive, and judicial functions, they are sometimes referred to as
    a. ultra vires.
    *b. the fourth branch of government.
    c. authorized agencies.
    d. the other branch of government.

19. It is the function of administrative agencies to
    a. promulgate regulations.

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b. investigate.
c. adjudicate disputes.
*d. all of the above.
e. both a and b.

20. The common law consists of
a. the most basic form of law.
b. the law created by local governments.
c. the uniform laws that have been adopted by all states.
*d. legal principles derived from specific court decisions.

21. Stare decisis means
a. that judges must always follow prior court opinions.
b. that judges must follow prior court opinions, unless those decisions are over ten years old.
*c. that judges must follow prior court opinions, unless the court thinks there is a good reason to change the law.
d. that judges may follow prior court opinions, but there is no necessity to do so.

22. When the common law is enacted into statutory form that is known as
a. the derogation of the common law
b. distillation of the common law.
*c. the codification of the common law.
d. the refinement of the common law.

23 Examples of a court's equitable powers include, the power to

a. issue an injunction.
b. order specific performance.
c. award damages.
d. all of the above.
*e. a and b only.

24. Courts have the power
a. to rely on the common law when no constitutional, statutory, or administrative regulations apply.
b. to interpret statutes.
c. to interpret regulations.
*d. all of the above.
e. a and b only.

Type: F
1. _____ are rules of conduct promulgated and enforced by the government.
a. Laws

Type: F

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2. _____ is the study of law and legal philosophy.
a. Jurisprudence

Type: F
3. The legal philosophy whose proponents think there are ideal laws that can be discovered through careful thought and humanity's innate sense of right and wrong is known as _____ law.
a. natural

Type: F
4. The legal philosophy whose proponents think that the validity of a law is determined by the process through which it was made rather than by the degree to which it reflects natural law is known as legal _____.
a. positivism

Type: F
5. The legal philosophy whose proponents view the law as a complete and autonomous system of logically consistent principles within which judges find the correct result by simply making logical deductions is known as legal _____.
a. formalism

Type: F
6. The legal philosophy whose proponents think that judges decide cases based on factors other than logic and preexisting rules, such as economic and sociological factors is known as legal _____.
a. realism

Type: F
7. _____ is an approach to constitutional interpretation that narrowly interprets the text of the Constitution in a manner that is consistent with what most people understood those words to mean at the time that they were written.
a. Originalism

Type: F
8. _____ is an approach to constitutional interpretation in which judges seek to determine the underlying purpose that the drafters had in mind at the time they wrote the law and the modern-day option that best advances that purpose.
a. Evolutionary or "living law"

Type: F
9. _____ law is the body of principles and rules either explicitly state in, or inferred from, the U.S. Constitution.
a. Constitutional

Type: F

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10. A _____ is a form of government in which independent units form an alliance but retain most of their power delegating only a limited amount of power to a central authority.
a. confederation

Type: F
11. The _____ powers of a government allow it to do the things that are traditionally considered necessary to govern, such as making and executing laws, collecting taxes, signing treaties, and making war.
a. sovereign

Type: F
12. The division of governmental power among the legislative, executive, and judicial branches is known as _____.
a. separation of powers

Type: F
13. _____ means that there is a division among governmental branches so that each branch acts as a check on the power of the other two.
a. Checks and balances

Type: F
14. A court's power to review statutes to decide if they conform to the federal or a state constitution is known as the _____ .
a. power of judicial review

Type: F
15. A system of government in which the authority to govern is split between a single, nationwide central government and several regional governments is known is one based on the principle of _____.
a. federalism

Type: F
16. The first ten amendments to the U.S. Constitution are known as the _____.
a. Bill of Rights

Type: F
17. Using the Fourteenth Amendment's due process protections to make the provisions of the Bill of Rights applicable to the states is known as .the doctrine of _____.
a. incorporation

Type: F
18. The _____ requirement means that a defendant cannot be charged with violating a constitutional right unless acting as a government agent.
a. state action

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Type: F
19. A _____ is a law enacted by a state legislature or by Congress.
a. statute

Type: F
20. An _____ is a law enacted by a local government.
a. ordinance

Type: F
21. The rules and regulations created by administrative agencies create _____ law.
a. administrative

Type: F
22. Rules promulgated by an administrative agency are also known as _____ .
a. regulations

Type: F
23. A statute that establishes and sets out the powers of an administrative agency is known as an _____ .
a. enabling act

Type: F
24. Administrative agencies are also known as the _____ branch of government.
a. fourth

Type: F
25. An executive _____ or _____ is an official policy directive issued by the President or a state governor.
a. order/memorandum

Type: F
26. The law that is created by the courts is known as the _____ law.
a. common

Type: F
27. Normally courts will decide the same as prior courts facing a similar issue because of the doctrine known as _____.
a. stare decisis

Type: F
28. The process of legislative enactment of areas of the law previously governed solely by the common law is known as the _____ of the common law .
a. codification

Type: F

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29. When legislation changes the common law, it is said to be in _____ of the common law.
a. derogation

Type: F
30. When a judge issues an injunction or orders specific performance, this is an example of the judge's _____ power.
a. equity

Type: F
31. A court order requiring a party to perform a specific act or to cease doing a specific act is known as an _____ .
a. injunction

Type: F
32. A requirement that a party fulfill his or her contractual obligations is known as _____ .
a. specific performance

Type: E
1. What is the generally accepted definition of "law"?

Type: E
2. What are the two primary functions of the U.S. Constitution?

Type: E
3. Read the U.S. Constitution and the Bill of Rights located in Appendix A. Then answer the following questions:
- Which article deals specifically with the legislature? With the executive? With the judiciary?
- Which amendment states that the powers not specifically delegated to the federal government are reserved to the states?
- Make a list of the rights protected by the first ten amendments.

Type: E
4. What is the doctrine of incorporation and why is it important for understanding our rights under the U.S. Constitution?

Type: E
5. John is upset with his neighbor because on weekends the neighbor plays loud music, disturbing John's sleep. John is so angry that he wants to sue his neighbor for violating his U.S. Constitutional right to privacy. Why will John not be able to win his lawsuit?

Type: E
6. What is the power of judicial review, and why is it so important to our legal system?

Type: E

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7. Are the protections provided by state constitutions the same as those given by the U.S. Constitution? Why might that matter?

Type: E
8. Why do constitutions and statutes frequently include ambiguous language?

Type: E
9. How do courts become involved in the legislative process?

Type: E
10. How are statutes and administrative regulations similar? How do they differ?

Type: E
11. Why are administrative agencies referred to as the fourth branch of government?

Type: E
12. What impact did the Norman Conquest have on the American legal system?

Type: E
13. What is the common law?

Type: E
14. What does it mean to say the common law has been codified? That a statute is in derogation of the common law?

Type: E
15. Why were equity courts created, and what special powers were they given?

Type: E
16. Who has the final say as to what a statute means, the legislature or the courts?

Type: E
17. Who has the final say as to the constitutionality of a statute, the legislature or the courts?

Type: E
18. Would you expect to hear a follower of natural law, legal positivism, or legal realism making the following statements?

- The killing of another human is wrong.
- The penalty for first degree murder is life imprisonment or death.
- Studies have shown that a disproportionate number of minority men are sentenced to the death penalty.

Type: E
19. For each of the following, which source of law - a constitution, a statute, an administrative regulation, or a court opinion - would be best able to handle the problem and why?

- A requirement that all motorcycle riders wear helmets.

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- A rule making a bar owner liable for any injuries caused by a patron to whom the bar sold drinks.
- A rule that all semi-trailers traveling on interstate highways use concave mud flaps.
- A requirement that employers not discriminate on the basis of religion or sexual orientation.
- A requirement that no more than a certain percentage of a known pollutant be released by factory smokestacks.
- A question as to whether a person not wearing a seat-belt should be able to recover for injuries that person sustained in an automobile accident that was not his fault.
- A law prohibiting government from interfering with an individual's right to freedom of speech.

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