Test Bank for Introduction to Criminal Justice Practice and Process 2nd Peak

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Chapter 02: Foundations of Law and Crime: Nature, Elements, and Defenses

MULTIPLE CHOICE

1. The Code of Hammurabi set out crimes and punishments based on the philosophy of _____.
   a. *mens rea*
   b. *lex talionis*
   c. *stare decisis*
   d. *actus rea*

   ANS: B PTS: 1 DIF: Easy
   REF: under heading: Common Law and its Progeny OBJ: 1
   COG: Knowledge

2. Which of the following is true of common law?
   a. It is based on the French civil code.
   b. It refers to the collections of rules, customs, and traditions of 17th Century France.
   c. It refers to the American tradition of following legal precedent.
   d. It refers to collections of rules, customs, and traditions of medieval England.

   ANS: D PTS: 1 DIF: Medium
   REF: under heading: Common Law and its Progeny OBJ: 1
   COG: Comprehension

3. The doctrine of _____ binds courts of equal or lesser levels within a jurisdiction to the principles established by higher appellate courts within the same jurisdiction.
   a. *mens rea*
   b. *actus rea*
   c. *stare decisis*
   d. *lex talionis*

   ANS: C PTS: 1 DIF: Easy
   REF: under heading: Common Law and its Progeny OBJ: 1
   COG: Knowledge

4. Which of the following is indicative of civil law?
   a. The state or government prosecutes the accused on behalf of the people.
   b. The plaintiff must prove their case by a preponderance of evidence.
   c. The accused can be punished with prison, jail, or a fine.
   d. All of these are true of civil cases.

   ANS: B PTS: 1 DIF: Medium
   REF: under heading: Criminal and Civil Law OBJ: 1
   COG: Comprehension

5. Two primary types of law include criminal and _____.
   a. legal
   b. noncriminal
   c. civil
   d. legislative

   ANS: C PTS: 1 DIF: Easy

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REF: under heading: Modern-Day Sources and Hierarchy of Law
OBJ: 2 COG: Knowledge

6. Sources of federal law include all of the following except _____.
   a. U.S. Constitution
   b. U.S. Supreme Court
   c. state traffic laws
   d. laws enacted by Congress

   ANS: C PTS: 1 DIF: Easy
   REF: under heading: Modern-Day Sources and Hierarchy of Law
   OBJ: 1 COG: Knowledge

7. Which of the following is considered to be the "supreme law of the land?"
   a. U.S. Constitution
   b. Federal statutes
   c. Administrative laws
   d. Federal common law

   ANS: A PTS: 1 DIF: Easy
   REF: under heading: Modern-Day Sources and Hierarchy of Law
   OBJ: 1 COG: Knowledge

8. _____ is the party who is bringing a lawsuit against someone.
   a. Defendant
   b. Eye witness
   c. Clerk of the court
   d. Plaintiff

   ANS: D PTS: 1 DIF: Easy
   REF: under heading: Criminal and Civil Law OBJ: 1
   COG: Knowledge

9. Which of the following is true of establishing guilt in a criminal matter?
   a. The prosecutor must prove the defendant guilty beyond a reasonable doubt.
   b. The defense must prove the defendant innocent beyond a reasonable doubt.
   c. The prosecutor must prove the defendant guilty by a preponderance of evidence.
   d. The defense must prove the defendant innocent by a preponderance of evidence.

   ANS: A PTS: 1 DIF: Medium
   REF: under heading: Criminal and Civil Law OBJ: 1
   COG: Comprehension

10. _____ means that after hearing all the evidence in a trial, the jurors do not possess an overwhelming belief that the charges against the defendant are true.
    a. Preponderance of evidence
    b. Reasonable doubt
    c. A guilty verdict
    d. Affirmative defense

    ANS: B PTS: 1 DIF: Easy
    REF: under heading: Criminal and Civil Law OBJ: 1
    COG: Knowledge

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11. _____ establishes the procedures and mechanisms for processing criminal cases.
    a. Civil law
    b. Criminal law
    c. Procedural law
    d. Substantive law

    ANS: C PTS: 1 DIF: Easy
    REF: under heading: Substantive and Procedural Law OBJ: 2
    COG: Knowledge

12. Processes such as obtaining search and arrest warrants, reading the accused his/her *Miranda* warnings, and appointing an attorney for those accused who cannot afford their own are all examples of ____.
    a. procedural law
    b. criminal law
    c. substantive law
    d. civil law

    ANS: A PTS: 1 DIF: Medium
    REF: under heading: Substantive and Procedural Law OBJ: 2
    COG: Comprehension

13. Laws that specify and prohibit certain actions such as theft or arson are examples of _____.
    a. procedural law
    b. criminal law
    c. substantive law
    d. civil law

    ANS: C PTS: 1 DIF: Medium
    REF: under heading: Substantive and Procedural Law OBJ: 2
    COG: Comprehension

14. Which of the following is a correct example of hierarchical prioritization of laws?
    a. State constitutional law, the U.S. Constitution, and municipal codes
    b. State constitutional law, state statutes, and federal statutes
    c. The U.S. Constitution, state constitutional law, and state statutes
    d. The U.S. Constitution, state constitutional law, and federal statutes

    ANS: C PTS: 1 DIF: Medium
    REF: under heading: Modern-Day Sources and Hierarchy of Law
    OBJ: 3 COG: Comprehension

15. Laws enacted by state legislatures or Congress are known as _____.
    a. bills
    b. ordinances
    c. codes
    d. statutes

    ANS: D PTS: 1 DIF: Easy
    REF: under heading: Modern-Day Sources and Hierarchy of Law
    OBJ: 3 COG: Knowledge

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16. Which of the following statements is true regarding hierarchy of law?
    a. State constitutions may give greater protection than the U.S. Constitution but cannot give less.
    b. Federal common law includes civil and criminal laws enacted by Congress.
    c. Municipal ordinances take precedence over state statutes.
    d. Federal statutes establish legal precedent, and lower courts in the federal system must follow these decisions.

    ANS: A PTS: 1 DIF: Medium
    REF: under heading: Modern-Day Sources and Hierarchy of Law
    OBJ: 3 COG: Comprehension

17. The U.S. legal system is designed to punish offenders who possess the intent to commit a crime, a concept known as _____.
    a. *actus reus*
    b. *mens rea*
    c. *habeas corpus*
    d. *stare decisis*

    ANS: B PTS: 1 DIF: Easy
    REF: under heading: Essential Elements: Mens Rea and Actus Reus—Mens Rea: Intent versus Motive to Commit Crime OBJ: 4 COG: Knowledge

18. Which of the following is an example of *actus reus*?
    a. Jenny hires a hit man to kill her husband so she can collect on his $1 million life insurance policy.
    b. Jenny wishes her husband was dead so she could collect on his $1 million life insurance policy.
    c. Jenny talks to her best friend about how unhappy she is in her marriage.
    d. Jenny's husband dies in an automobile accident, and she is the beneficiary of his $1 million life insurance policy.

    ANS: A PTS: 1 DIF: Hard
    REF: under heading: Actus Reus: The Act OBJ: 4
    COG: Application

19. A college student is late for class and going 55 miles per hour in a 25-mile-per-hour zone. He swerves in and out of the lanes in order to get around slower cars. Eventually, the student loses control of his car, crosses the center line, and runs head-on into another car, killing the driver. Under Nebraska Revised Statutes, with what crime is he most likely to be charged?
    a. Reckless driving
    b. Willful reckless driving
    c. Motor vehicle homicide
    d. First-degree murder

    ANS: C PTS: 1 DIF: Medium
    REF: under heading: Actus Reus: The Act OBJ: 4
    COG: Analysis

20. When *mens rea* and *actus reus* are both present, it is known as _____.
    a. causation
    b. concurrence

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c. action
d. fault

ANS: B PTS: 1 DIF: Easy
REF: under heading: Mens Rea and Actus Reus OBJ: 4
COG: Knowledge

21. _____ are offenses punishable by death or that have a possible sentence of more than 1 year of incarceration.
a. Status offenses
b. Felonies
c. Misdemeanors
d. Civil crimes

ANS: B PTS: 1 DIF: Easy
REF: under heading: Felonies and Misdemeanors OBJ: 4
COG: Knowledge

22. _____ are considered less serious offenses and can be punished by less than 1 year incarceration in jail.
a. Misdemeanors
b. Petty crimes
c. Status offenses
d. Felonies

ANS: A PTS: 1 DIF: Medium
REF: under heading: Felonies and Misdemeanors OBJ: 4
COG: Comprehension

23. Aggravated assault, motor vehicle theft, and burglary are all examples of _____.
a. petty crimes
b. status offenses
c. misdemeanors
d. felonies

ANS: D PTS: 1 DIF: Medium
REF: under heading: Felonies and Misdemeanors OBJ: 4
COG: Comprehension

24. All of the following are included in the FBI's Part I (Index) offenses, EXCEPT _____.
a. murder
b. larceny-theft
c. arson
d. child molestation

ANS: D PTS: 1 DIF: Easy
REF: under heading: Offense Definitions and Categories OBJ: 4
COG: Knowledge

25. Crimes involving force or threat of force are considered _____.
a. violent crimes
b. nuisance crimes
c. control-level crimes

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d. property crimes

ANS: A PTS: 1 DIF: Easy
REF: under heading: Offense Definitions and Categories OBJ: 4
COG: Knowledge

26. _____ is one of the most serious crimes one can perpetrate against another person.
a. Assault
b. Burglary
c. Larceny
d. Homicide

ANS: D PTS: 1 DIF: Easy
REF: under heading: Offense Definitions and Categories—Part I Offenses
OBJ: 4 COG: Knowledge

27. _____ is the unlawful, intentional killing of a human being with premeditation and malice aforethought.
a. Involuntary manslaughter
b. Murder in the first degree
c. Murder in the second degree
d. Voluntary manslaughter

ANS: B PTS: 1 DIF: Easy
REF: under heading: Offense Definitions and Categories—Murder
OBJ: 4 COG: Knowledge

28. It is July in Phoenix, Arizona, and Jeff is running errands with his 6-month-old daughter strapped into her carrier in the back seat. Jeff stops at work to grab some files but gets waylaid by coworkers and ends up spending 3 hours at the office. When Jeff returns to the car, he finds his child unresponsive, apparently overcome with the heat. The child is pronounced dead at the hospital. With what crime is Jeff likely to be charged?
a. Involuntary manslaughter
b. Voluntary manslaughter
c. First-degree murder
d. Second-degree murder

ANS: A PTS: 1 DIF: Hard
REF: under heading: Offense Definitions and Categories OBJ: 4
COG: Application

29. Michael is driving the speed limit and paying full attention but hits a small child who darts into the street from behind a large RV. What might this be classified as?
a. justifiable homicide
b. murder in the first degree
c. excusable homicide
d. aggravated assault

ANS: C PTS: 1 DIF: Hard
REF: under heading: Offense Definitions and Categories OBJ: 4
COG: Application

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30. Jack and Jill plan to shoplift from a convenience store. While Jack walked out with a case of beer he did not pay for, the store clerk confronted Jill, who shot and killed the clerk. Both Jack and Jill are apprehended and charged with first-degree murder. This case best illustrates the _____.
    a. chivalry hypothesis
    b. felony murder rule
    c. fairness doctrine
    d. equality-in-charging rule

    ANS: B PTS: 1 DIF: Hard
    REF: under heading: Offense Definitions and Categories OBJ: 4
    COG: Application

31. College student Lily and her roommate took someone else's coffee and doughnuts from the student union coffee shop. They were chased by a customer from the coffee shop, who was hit by a car as Lily and her roommate raced across the street. With what offense are Lily and her roommate most likely to be charged?
    a. First-degree murder
    b. Second-degree murder
    c. Involuntary manslaughter
    d. Voluntary manslaughter

    ANS: C PTS: 1 DIF: Hard
    REF: under heading: Offense Definitions and Categories OBJ: 4
    COG: Application

32. This crime involves taking or attempting to take anything of value from another person by force or threat of force or violence, during which the victim is in fear of injury or death.
    a. robbery
    b. burglary
    c. aggravated assault
    d. arson

    ANS: A PTS: 1 DIF: Easy
    REF: under heading: Offense Definitions and Categories OBJ: 4
    COG: Knowledge

33. Aaron returns home from school to find his apartment has been ransacked, and his laptop computer is missing. Aaron is the victim of what crime?
    a. Robbery
    b. Burglary
    c. Aggravated assault
    d. Arson

    ANS: B PTS: 1 DIF: Medium
    REF: under heading: Offense Definitions and Categories—Crimes Against Property
    OBJ: 4 COG: Comprehension

34. Michael is charged with battery but claims that he had to commit battery to protect himself from further harm. This type of defense is referred to as _____.
    a. alibi
    b. excuse

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c. affirmative defense
d. rationale

ANS: C PTS: 1 DIF: Medium REF: under heading: Defenses
OBJ: 5 COG: Comprehension

35. Which of the following would best illustrate an affirmative defense?
a. The accused admits shooting his neighbor but says it was self-defense.
b. The accused admits his neighbor was shot but denies he shot him.
c. The accused admits he saw his neighbor shot and acknowledges he did nothing to stop it.
d. The accused admits shooting his neighbor and offers no justification for the act.

ANS: A PTS: 1 DIF: Medium REF: under heading: Defenses
OBJ: 5 COG: Comprehension

36. _____ is the response by the defendant to a criminal charge.
a. Strategy
b. Defense
c. Reaction
d. Rebuttal

ANS: B PTS: 1 DIF: Easy REF: under heading: Defenses
OBJ: 5 COG: Knowledge

37. Laws that allow a homeowner to use deadly force against an intruder are known as _____.
a. justifiable murder laws
b. self-defense laws
c. the castle doctrine
d. stand-your-ground laws

ANS: C PTS: 1 DIF: Easy REF: under heading: Defenses
OBJ: 5 COG: Knowledge

38. Persons under the age of 7 are considered too young to form the requisite _____.
a. *actus reus*
b. justification
c. *mens rea*
d. excuse

ANS: C PTS: 1 DIF: Easy
REF: under heading: Excuse Defenses - Age OBJ: 5
COG: Knowledge

39. Which of the following best illustrates the concept of entrapment?
a. An undercover police officer poses as a prostitute on a corner with several actual prostitutes who are picking up potential customers.
b. An undercover drug agent attempts to purchase marijuana from a known drug house.
c. An undercover police officer persuades a reluctant individual to help him steal a car.
d. A uniformed police officer conducts a pat-down search for weapons on an individual she has just arrested.

ANS: C PTS: 1 DIF: Medium

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REF: under heading: Excuse Defenses - Entrapment OBJ: 5
COG: Comprehension

40. An escaped prison inmate who later told police he had to escape with his cellmate and others who planned an escape from the penitentiary because he was threatened with death if he did not accompany them could use the defense that he was _____.
    a. entrapped
    b. acting under duress
    c. mentally ill
    d. weak

ANS: B PTS: 1 DIF: Medium REF: under heading: Duress
OBJ: 5 COG: Comprehension

41. This test for legal insanity requires the defense to show the defendant did not understand the nature of his/her actions, or if he/she did, that he/she did not understand right from wrong.
    a. Not guilty by reason of insanity
    b. Guilty but insane
    c. Irresistible impulse test
    d. M'Naghten test

ANS: D PTS: 1 DIF: Easy
REF: under heading: Mental Illness/Insanity OBJ: 5
COG: Knowledge

TRUE/FALSE

42. The American legal system is based on the French civil code.

ANS: F PTS: 1 DIF: Easy
REF: under heading: Common Law and its Progeny OBJ: 1
COG: Knowledge

43. The doctrine of *stare decisis* (Latin for "to stand by things settled") states that once a court has established a principle of law, it will apply to all future cases in which the facts are substantially the same.

ANS: T PTS: 1 DIF: Easy
REF: under heading: Common Law and its Progeny OBJ: 1
COG: Knowledge

44. The major difference between civil and criminal matters is the penalty.

ANS: T PTS: 1 DIF: Easy
REF: under heading: Criminal and Civil Law OBJ: 1
COG: Knowledge

45. The defendant is the party who is initiating a legal action against someone else.

ANS: F PTS: 1 DIF: Easy
REF: under heading: Criminal and Civil Law OBJ: 1
COG: Knowledge

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46. Substantive law establishes the definition of criminal acts, such as burglary and theft, and also describes the punishment for those who violate the law.

ANS: F PTS: 1 DIF: Easy
REF: under heading: Substantive and Procedural Law OBJ: 2
COG: Knowledge

47. Procedural law outlines the rules for that jurisdiction regarding selection of juries, appellate processes, evidence presented to a jury, and representation of counsel.

ANS: T PTS: 1 DIF: Easy
REF: under heading: Substantive and Procedural Law OBJ: 2
COG: Knowledge

48. The United States Constitution is the supreme law of the land and takes precedence over state constitutions and law.

ANS: T PTS: 1 DIF: Easy
REF: under heading: Modern-Day Sources and Hierarchy of Law
OBJ: 1 COG: Knowledge

49. State constitutions may give less protection and rights than the federal constitution, but they cannot give more.

ANS: F PTS: 1 DIF: Easy REF: under heading: State Law
OBJ: 1 COG: Knowledge

50. One's intent while committing a crime is usually easy to establish.

ANS: F PTS: 1 DIF: Easy
REF: under heading: Mens Rea: Intent versus Motive to Commit Crime
OBJ: 3 COG: Knowledge

51. In a typical criminal case, the prosecutor must establish that (a) the accused committed the illegal act and (b) the accused had the necessary mental state.

ANS: T PTS: 1 DIF: Easy
REF: under heading: Essential Elements: Mens Rea and Actus Reus
OBJ: 3 COG: Knowledge

52. Steve's 97-year-old mother-in-law fell down the stairs at his house, and she said she could not get up. She also complained of chest pains and shortness of breath and asked Steve to call an ambulance because she thought she was having a heart attack. Steve assumed his mother-in-law was being overly dramatic and ignored her. When he went to check on her several hours later, she was dead. Steve could conceivably be prosecuted for his failure to act.

ANS: T PTS: 1 DIF: Hard
REF: under heading: Mens Rea: Intent versus Motive to Commit Crime
OBJ: 3 COG: Application

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53. Barbie and Ken took a pack of M&Ms from a convenience store without paying, and as the clerk followed them out to confront them, he slipped, fell, hit his head on the sidewalk, and later died. Barbie and Ken can be charged with first-degree murder under the felony murder rule.

ANS: F PTS: 1 DIF: Medium REF: under heading: Murder
OBJ: 4 COG: Comprehension

54. Paul accidentally backs into his neighbor Edward's new car. Edward confronts Paul and threatens to beat Paul with a baseball bat for damaging his new car. Paul is the victim of an aggravated assault.

ANS: F PTS: 1 DIF: Medium
REF: under heading: Offense Definitions and Categories OBJ: 4
COG: Comprehension

55. Burglary is considered a violent crime.

ANS: F PTS: 1 DIF: Easy
REF: under heading: Crimes Against Property OBJ: 4
COG: Knowledge

56. Carolyn returns to her apartment and finds a stranger sitting in her kitchen eating her potato chips. Carolyn is a victim of a burglary.

ANS: T PTS: 1 DIF: Medium
REF: under heading: Crimes Against Property OBJ: 4
COG: Comprehension

57. An alibi is considered an affirmative defense.

ANS: F PTS: 1 DIF: Easy REF: under heading: Defenses
OBJ: 5 COG: Knowledge

58. If the police induce a person to commit a crime that he/she would otherwise not have attempted, the defendant can claim the defense of entrapment.

ANS: T PTS: 1 DIF: Easy
REF: under heading: Excuse Defenses - Entrapment OBJ: 5
COG: Knowledge

59. Other than some specific exceptions, the government has only one attempt to obtain a conviction; if the defendant is acquitted, he/she may not be retried.

ANS: T PTS: 1 DIF: Easy
REF: under heading: Excuse Defenses - Double Jeopardy OBJ: 5
COG: Knowledge

60. Although the insanity defense is raised in a small fraction of cases, it is successful in most of them.

ANS: F PTS: 1 DIF: Easy
REF: under heading: Mental Illness/Insanity OBJ: 5

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COG: Knowledge

61. A defense is generally not available in cases of voluntary intoxication.

ANS: T PTS: 1 DIF: Easy REF: under heading: Intoxication
OBJ: 5 COG: Knowledge

SHORT ANSWER

62. How was the Mosaic Code of the Israelites one of the first sources of law?

ANS:
According to tradition, Moses, acting as an intermediary for God, passed on the law to the tribes of Israel.

PTS: 1 DIF: Medium REF: under heading: Common Law and its Progeny
OBJ: 1 COG: Comprehension

63. Describe the early circuit courts.

ANS:
During the reign of Henry II, professional judges traveled a circuit and sat as tribunals in towns and shires throughout the Crown's realm. Eventually, the judges gave the Crown jurisdiction over major crimes and initiated the beginnings of trial by jury and the doctrine of *stare decisis*.

PTS: 1 DIF: Medium REF: under heading: Common Law and its Progeny
OBJ: 1 COG: Comprehension

64. Explain the difference in punishments that can be ordered by civil courts versus criminal courts.

ANS:
Criminal courts can impose a punishment of incarceration in jail or prison, a monetary fine, or both. In a civil case, however, courts cannot impose incarceration. Civil courts can impose monetary damages or a legal remedy.

PTS: 1 DIF: Medium REF: under heading: Criminal Law and Civil Law
OBJ: 1 COG: Comprehension

65. Explain the difference between substantive and procedural law.

ANS:
Substantive law is the written law that defines criminal acts. Procedural law, though, establishes the procedures and mechanisms for processing criminal cases, such as outlining the rules regarding search and seizure in that jurisdiction, selection of a jury, and the representation of counsel.

PTS: 1 DIF: Medium REF: under heading: Substantive and Procedural Law
OBJ: 2 COG: Comprehension

66. Distinguish between statutes and ordinances.

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ANS:
Statutes are laws enacted by Congress (in the case of federal laws) or by a state legislature (in the case of state laws). Ordinances, however, typically refer to laws enacted by local lawmaking bodies, such as county boards or city councils.

PTS: 1 DIF: Medium REF: under heading: State Law; City/County Law
OBJ: 4 COG: Comprehension

67. What two elements must a prosecutor prove beyond a reasonable doubt in a criminal trial?

ANS:
The prosecutor must prove both the *mens rea* (guilty mind) as well as *actus reus* (the criminal act) beyond a reasonable doubt in a criminal trial.

PTS: 1 DIF: Easy
REF: under heading: Essential Elements: Mens Rea and Actus Reus
OBJ: 3 COG: Knowledge

68. Describe an example of when the taking of a human life would not be considered murder.

ANS:
Justifiable homicide—acts of war, self-defense, legal state or federal executions, and when a police officer uses lawful lethal force. Or excusable homicide—killings that are accidental, such as a person who runs over an unseen toddler in the driveway behind his car.

PTS: 1 DIF: Medium
REF: under heading: Offense Definitions and Categories—Crimes Against Persons
OBJ: 4 COG: Comprehension

69. Describe how the felony murder rule operates.

ANS:
The felony murder rule states that if a death occurs during the commission of a felony, those involved in the crime may be prosecuted for first-degree murder, regardless of their intent.

PTS: 1 DIF: Medium REF: under heading: Murder
OBJ: 4 COG: Comprehension

70. How can one committing a misdemeanor offense be charged with involuntary manslaughter?

ANS:
This falls under the misdemeanor manslaughter rule: if a death occurs during the commission of a misdemeanor, the defendant may be charged with involuntary manslaughter because his/her actions caused the death of another.

PTS: 1 DIF: Easy REF: under heading: Murder
OBJ: 4 COG: Knowledge

71. Distinguish among the crimes of assault, assault and battery, and aggravated assault.

ANS:

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An assault involves placing another in fear for their safety. This could be a verbal threat to harm another. Escalating the situation to physical contact intended to cause harm brings the crime to the level of assault and battery, such as slapping or hitting another. It becomes aggravated assault, however, when one unlawfully attacks another for the purpose of inflicting severe bodily injury, such as using a baseball bat to severely beat another.

PTS: 1 DIF: Medium
REF: under heading: Crimes Against Persons/Aggravated Assault
OBJ: 4 COG: Comprehension

72. Explain the difference in using excuses versus justifications in criminal defense cases.

ANS:
Excuses allow the defendant to admit the criminal act but claim he/she is not legally responsible (e.g., too young, insane). Justifications allow the defendant to admit the criminal act but claim their actions are justified (e.g., defending themselves or others).

PTS: 1 DIF: Medium REF: under heading: Defenses
OBJ: 5 COG: Comprehension

73. Discuss how Dan White used the so-called Twinkie Defense in his 1978 murder trial.

ANS:
Dan White was accused of killing San Francisco gay rights activist and politician Harvey Milk. During the trial, White never blamed his actions on Twinkies. Instead, his defense described White's depression and how it led to his consumption of junk food and sugar-laden soft drinks. The media coined the term "Twinkie defense" after psychiatric testimony of the case described White's depression and sugar consumption.

PTS: 1 DIF: Medium REF: under heading: Defenses/Mental Illness
OBJ: 5 COG: Comprehension

ESSAY

74. Discuss three areas in which criminal law and civil law differ from each other.

ANS:

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The first difference between civil and criminal law is the parties involved. In a criminal case, the state or government (in the form of the prosecutor) brings the case forward on behalf of the people, with the accused referred to as the defendant. However, in a civil case, two individual parties, such as individuals, corporations, groups, etc., are on opposite sides. The party initiating the case is the plaintiff, while the responding party is the respondent. A second difference between civil and criminal law is the burden of proof. In a criminal case, the state must prove its case beyond a reasonable doubt. Reasonable doubt means that after hearing the evidence, the jury does not have a compelling belief that the charges against the accused have been proven. In contrast, the burden of proof in a civil case is a preponderance of evidence, a much lower standard. Preponderance of evidence can be considered 50% plus a feather—the jury has found in favor of the prevailing side by as little as 1% over the losing side. A third difference between civil and criminal cases is in the penalty imposed by the court. Following a conviction in a criminal case, the defendant may be sentenced to incarceration in jail or prison, probation, or financial sanctions such as fines or restitution. In contrast, the initiating party in a civil case is seeking "damages" in the form of money or some legal remedy.

PTS: 1 DIF: Medium REF: under heading: Criminal and Civil Law
OBJ: 1 COG: Comprehension

75. Describe the difference between the standards of "beyond a reasonable doubt" and "preponderance of evidence."

ANS:
Beyond a reasonable doubt is the burden of proof in a criminal case. It means that, after hearing all of the evidence, jurors do not possess an abiding conviction—to a moral certainty—that they believe the charges brought against the defendant are true. In civil cases, the burden of proof is preponderance of evidence, where jurors are asked to weigh the evidence and decide which evidence causes the scales of justice to tip (even very slightly) to one side or the other. It is often referred to as the "50% plus a feather" test.

PTS: 1 DIF: Medium REF: under heading: Criminal and Civil Law
OBJ: 1 COG: Comprehension

76. What is the difference between felonies and misdemeanors?

ANS:
Felonies are offenses punishable by death or that have a possible sentence of more than one year incarceration in prison. They are generally divided into categories of severity, with offenses such as murder as the most severe and property offenses among the least severe. In contrast, misdemeanors are less serious offenses typically punishable by incarceration of less than 1 year in a local jail.

PTS: 1 DIF: Medium REF: under heading: Felonies and Misdemeanors
OBJ: 4 COG: Comprehension

77. Differentiate among the following crimes: first-degree murder, second-degree murder, voluntary manslaughter, and involuntary manslaughter.

ANS:

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First-degree murder is the unlawful, intentional killing of another with premeditation/deliberation (the accused thought about the crime prior to its commission) and malice aforethought (acting with "a depraved heart"). Individuals can also be charged with first-degree murder if the commission of a crime causes the death of another. Although second-degree murder involves the unlawful, intentional killing of another, it lacks the element of premeditation/deliberation. However, persons acting with gross recklessness or a high disregard for human life and causing an extreme risk of death, may also be charged with second-degree murder. Voluntary manslaughter is the unlawful killing of another, but it lacks malice. These can be heat of passion cases, where the accused acted without planning or deliberation. The passion that caused the individual to kill must have arisen immediately in time and continued until the time of the criminal act. Finally, involuntary manslaughter involves the death of another as a result of negligence or when someone is killed during the commission of a misdemeanor offense.

PTS: 1 DIF: Medium REF: under heading: Offense Definitions and Categories
OBJ: 4 COG: Comprehension

78. People often use the terms *theft*, *burglary*, and *robbery* interchangeably. Describe what distinguishes these offenses from one another.

ANS:
Theft is the unlawful taking, carrying, leading, or riding away of property from the possession of another. This can include the theft of bicycles or auto parts, shoplifting, or stealing anything that is not taken by force and violence or fraud. Burglary is the unlawful entry of a structure to commit a felony or theft. It does not involve force to enter the structure, nor does it require anything of value to have been stolen. It can include taking someone's television from their unlocked apartment. Robbery, however, is the taking or attempt to take anything of value from the care, custody, or control of another by force or threat of force of violence and by putting the victim in fear. This could include threatening to shoot someone if they don't hand over their wallet. Robbery requires a face-to-face taking (or attempt to take); it is a combination of assault and theft.

PTS: 1 DIF: Medium
REF: under heading: Offense Definitions and Categories—Offenses Against Property
OBJ: 4 COG: Comprehension

COMPLETION

79. _____ is the body of law that defines criminal offenses and prescribes punishments for their infractions.

ANS: Criminal law

PTS: 1 DIF: Easy REF: under heading: Criminal and Civil Law
OBJ: 1 COG: Knowledge

80. The _____ is the person against whom a criminal charge is pending.

ANS: defendant

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PTS: 1 DIF: Easy REF: under heading: Criminal and Civil Law
OBJ: 1 COG: Knowledge

81. The standard use by jurors to arrive at a verdict is _____.

ANS: reasonable doubt

PTS: 1 DIF: Easy REF: under heading: Criminal and Civil Law
OBJ: 1 COG: Knowledge

82. The Latin term for criminal intent or guilty mind is _____.

ANS: *mens rea*

PTS: 1 DIF: Easy
REF: under heading: Essential Elements: Mens Rea and Actus Reus
OBJ: 4 COG: Knowledge

83. Murder falls into two categories: murder and _____.

ANS: manslaughter

PTS: 1 DIF: Easy REF: under heading: Murder
OBJ: 4 COG: Knowledge

84. _____ provides that if a death occurs during the commission of a felony, the defendant will be charged with murder in the first degree.

ANS: Felony murder rule

PTS: 1 DIF: Easy REF: under heading: Murder
OBJ: 4 COG: Knowledge

85. An _____ defenses is one in which the defendant admits to the criminal activity but offers reasons for acting.

ANS: affirmative

PTS: 1 DIF: Easy REF: under heading: Defenses
OBJ: 5 COG: Knowledge

86. Police officers posing as homeless persons with cash sticking out of their pockets in an attempt to catch potential offenders is _____.

ANS: entrapment

PTS: 1 DIF: Medium REF: under heading: Entrapment
OBJ: 5 COG: Comprehension

87. The _____ defense is an excuse in which defendants claim they committed the act only because they were not acting of their own free will.

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ANS: duress

PTS: 1 DIF: Easy REF: under heading: Duress
OBJ: 5 COG: Knowledge

88. The _____ test is the test of legal insanity, asking whether the defendant understood the nature and quality of his or her act and, of so, if he or she understood it was wrong.

ANS: right-wrong

PTS: 1 DIF: Easy REF: under heading: Mental Illness/Insanity
OBJ: 5 COG: Knowledge

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