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CHAPTER ONE

True-False

Any element of falsity renders the statement false.

1. One definition of law is static, a “snapshot,” emphasizing law’s nature as a set of written rules. A better definition of law is dynamic, emphasizing its changing and evolving nature in responding to new issues and problems.

Answer: T

2. Case law is also often referred to as court law.

Answer: T

3. The new science of biotechnology promises to bring new cures of old diseases without creating serious legal issues and problems.

Answer: F

4. It is generally understood that the phrase common law has one clear meaning.

Answer: F

5. The term judicial activist is used to describe legislators and executives who seek to increase the workload of the courts.

Answer: F

6. For hundreds of years, the common law of England had evolved into a framework of principles found in both customs and statutes that were brought to the New World by early colonial settlers.

Answer: T

1

7. *Stare decisis* is a common-law principle that is fundamental to the U.S. modern system of justice. Answer: Answer: T

8. The part of a court opinion that determines the resolution of the dispute is called the dicta
Answer: F

9. Apostasy, the renunciation of one's religion, is illegal in some countries in which religious law is the law of the country.
Answer: T

10. Federal common law is limited to disputes involving obligations of the United States, interstate and international disputes, and admiralty cases.
Answer: T

11. Utilitarianism is a philosophical theory, first developed by Jeremy Bentham.
Answer: T

12. Syllogisms help to identify incorrect premises and flawed thinking.
Answer: T

13. It is often impossible to tell the plaintiff and the defendant by the title of a reported appellate court decision. You must read the facts of each case carefully to identify each party.
Answer: T

14. A major strength of utilitarian ethics is its flexible application.
Answer: T

15. Under a duty model of ethics, an action is morally correct or right when, among people it affects, it produces the greatest amount of good for the greatest number.
Answer: F

16. A code is a compilation of statutes grouped by topic.
Answer: T

18. The doctrine of supremacy is a court doctrine requiring that trial court decisions comply with appellate court decisions.
Answer: F

19. A doctrine of American law holds that courts may only decide cases to which an actual conflict exists

3 Chapter One

rather than offer advisory opinions.

Answer: T

20. Common law and statutory law are both laws created by the executive branch of government. Answer: Answer: F

21. Procedural law is that law that establishes rights and prohibits wrongs.

Answer: F

Fill-Ins

Complete each sentence or statement.

1. The Food and Drug Administration (FDA) has recently proposed new laws concerning inspection of meat before its sale for human consumption. A new meat inspection requirement would be an example of _____ law.

Answer: administrative

2. Forcible rape is an example of both _____ and _____ law. Thus, the victim can begin legal proceedings against the wrongdoer in two separate courts.

Answer: civil; criminal

3. Some fundamentals of our present constitutional law dates to the year 1215 when King John of England accepted the _____, which established, among other important matters, trial by jury in criminal cases.

Answer: Magna Carta

4. The concept that subsequent courts will adhere to the principles of law espoused in decisions of prior courts is called _____.

Answer: *stare decisis* OR precedent

5. The body of legal rules of today that were derived from fundamental usages and customs of antiquity, particularly as they appeared in medieval England, and from modern judgments of appellate courts that recognize and apply those customs in specific cases, is called the _____.

Answer: common law

6. The common law is sometimes referred to as the _____ law.

Answer: unwritten OR case

7. That state laws must yield to conflicting federal laws is called the doctrine of _____.

Answer: supremacy

Chapter One 4

8. That lawyers may not question prospective jurors about their sexual preference is an example of the application of _____ law.

Answer: procedural

9. A city ordinance that requires all landlords to change locks each time an apartment is rented or face a \$1,000 fine is an example of the _____ law.

Answer: substantive

10. Judges who purposefully expand on the law in their decisions are often referred to as _____ and judges who narrowly interpret the law by relying heavily on precedent are often referred to as _____.

Answer: judicial activists; strict constructionists.

11. _____ is a method of logical reasoning from two or more propositions to a conclusion.

Answer: Deductive logic

12. Statements that reflect what should be or how one should act are called _____.

Answer: normative statements

13. A (n) _____ is a party who appeals a case to another court. A(n) _____ is the party against whom an appeal is made.

Answer: appellant; appellee

14. _____ is the study of the general nature of morals and of the specific moral choices to be made by the individual in his relationship with others; the philosophy of morals.

Answer: Ethics

15. Law that concerns relations among sovereign nations is called _____.

Answer: international law

16. Statements of fact that are neutral as to any expression of values are called _____.

Answer: non normative statements

17. The term _____ is a fanciful reference to a case that is identical or virtually identical to a case previously decided by a high court in the same court system.

Answer: goose case or case on all fours

18. There must be a _____ properly presented to a court before judicial action will be taken.

Answer: case or controversy

19. Any part of a court opinion that is unnecessary to the resolution of a dispute before the court is

5 **Chapter One**

called_____.

Answer: dicta

20. A set of rules for appropriate professional behavior is often called a_____..

Answer: Code of Ethics

Multiple Choice

Select the one best answer.

1. Common law refers to
a . statutory law . b .
criminal law.
c . court - made law . d
. ordinary law .

Answer: c

2. Fact finding processes are not static and they have evolved over the years. A process sometimes used in 11th century in England was
a . truthing .
b . Saxon- hunting.
c . beaver tale .
d . orde al .

Answer: d

3. Wrongful conduct by one person that causes harm to another person
a. is a crime.
b. is a tort .
c. can be both a tort and a crime.
d. is neither a tort or a crime.

Answer: c

4. A process begun by citizens to change a state statute or constitution by popular election was the
a. initiative.
b. legislative ballot.
c. referendum.
d. signature measure.

Answer: a

5. The doctrine of *stare decisis*
a. is expressed in statutes.
b. promotes predictability of the law.
c. promotes judicial activism.

d. is product of Roman civil law.

Answer: b

6. The common law has been called each of the following *except*
- a. . the unwritten law.
 - b. case law .
 - c. decisional law .
 - d. administrative law.

Answer: d

7. The written law includes all of the following *except*
- a . constitutions .
 - b . statutes .
 - c . case law of appellate courts. d . ordinances.

Answer: c

8. For purposes of determining the value of an appellate case as precedent, the strongest precedent would occur from a
- a. concurring opinion.
 - b. dissenting opinion.
 - c. majority opinion.
 - d. unanimous opinion.

Answer: d

9. Which of the following is *not* an example of lawmaking by the executive branch of government?
- a. a directive by the governor of a state
 - b. a directive by the president
 - c. adoption of a rule by an administrative agency
 - d. adoption of the RICO statute

Answer: d

10. Assume that Michael brought home his new girlfriend, Marsha, and her six -year-old daughter, Fiona, to meet his parents. The relationship between the two continued, and Marsha and Fiona were guests several times in Michael's parent's home. During these visits Michael sexually molested Fiona unbeknownst to Marsha. Michael was a convicted child molester and his parents were aware of his propensity to molest children. No one including Michael's parents said anything to Marsha to give her any warning of Michael's past.
- a. Michael's parents have a legal duty, in most states, to tell Marsha about their son's past.
 - b. Michaels's parents do not have a legal duty, in most states, to tell Marsha about their son's past.
 - c. If Marsha were to sue Michael's parents for their failure to disclose, it would be a criminal action.
 - d. Any lawsuit brought by Marsha would most likely be a federal lawsuit.

Answer: b

7 Chapter One

11. Administrative agencies do all of the following *except*
- conduct hearings, often calling witnesses.
 - enact rules that have the force and effect of law.
 - impose financial penalties upon violators of rules.
 - review judicial opinions and judgments.

Answer: d

12. Large administrative agencies possess functions suggesting each of the different branches of government. However, they are usually classified as being part of the
- Executive Branch.
 - Judicial Branch.
 - Legislative Branch.
 - Security Council.

Answer: a

13. A compilation of statutes grouped to gather is called a(n) a
- code.
 - constitution.
 - treaty.
 - unwritten law.

Answer: a

14. Penal codes and civil codes are examples of a
- statutory law.
 - common law.
 - administrative law.
 - procedural law.

Answer: a

15. The strength of Kant's theory of duty lies in its
- simplicity.
 - complexity.
 - expressed basis in religious thought.
 - ability to balance action against the greater good.

Answer: a

16. A reasonable definition of utilitarianism would be:
- An action is morally correct if it creates the greatest amount of good for the greatest amount of people.
 - One is obligated to treat every individual as an end and never exclusively as a means.
 - One must act as though they are a person who both makes the law and is bound it.
 - Individuals look for a central authority or set of rules to guide them in ethical decision-making.

Answer: a

17. A syllogism is
- a misleading statement causing difficulty in problem analysis.
 - a form of situational ethics.

Chapter One

- c. unrelated to moral reasoning.
- d. a pattern of deductive logic that contains a major or general premise, a minor or specific premise, and a conclusion, always in that order.

Answer: d

18. Normative judgments are value statements about things we believe or observe. Which of the statements below is *not* a normative judgment?
- a. Fees at the University are so expensive they are the equivalent of tuition.
 - b. The rainfall in New York City is less than the average for this year.
 - c. The President's health plan is a fair way to provide medical services.
 - d. This test is hard.
 - e. The Congressional Social Security Plan is more prudent than the President's.

Answer: b

19. You are given the title of an appellate court case, and it is *Herbert v. Singh*.
- a. Herbert is the plaintiff and Singh is the defendant.
 - b. Singh won the trial court decision.
 - c. You cannot determine with absolute certainty which party is the plaintiff, because when a defendant loses a trial and files an appeal, some courts (but not all) reverse the names of the parties.
 - d. The trial judge was Herbert and the appellate judge is Singh.

Answer: a

20. Federalism is:
- a. A union of states under a central government.
 - b. The preclusion of a government undertaking significant international affairs.
 - c. *a government made up of royal or imperial leadership.*
 - d. Leadership selected on the basis of intellectual criteria

Answer: a

21. There are several definitions of common law which among the below is the best offered.
- a. Uniform codes passed by elected authorities.
 - b. Judge-made law reflecting the customs and usages of the people.
 - c. Statements that reflect what should and should not be or how one should act
 - d. The law of France evolved into a framework of principles, found in both customs and statutes that were brought to the New World by the early colonial settlers.

Answer: b

22. Which situation is an appropriate application of the doctrine of *stare decisis*?
- a. A reference to a dissenting opinion in the highest court in the same state with the same or similar facts.
 - b. A reference to a majority opinion in the highest court in the same state with the same or similar facts.
 - c. A reference to a statute in an appropriate state covering the same or similar facts.
 - d. A reference to a majority opinion in the highest court in a neighboring state with the same or similar facts.

9 Chapter One

Answer: b

23. A dissenting opinion
- An appeal by a losing defendant.
 - A judicial ruling that conflicts with stare decisis.
 - A judicial opinion where a judge states a different result should have been reached by the court.
 - A written opinion where a judge agrees with the result reached by another judge, but for different reasons.

Answer: c

24. The Code of Hammurabi is:
- the basis of Saxon common law before the Norman invasion.
 - the more common reference for Roman Civil Law.
 - A common reference for common law civil codes.
 - A code prepared by a Babylonian King in what is now modern Iraq.

Answer: d

25. A court held that a landlord, who placed television transmitters and microphones in a tenant's apartment for security purposes, wrongfully invaded the tenant's privacy. The court noted, however, that cameras in the common hallways may not violate the tenants' privacy rights. This last statement would be considered:
- Stare decisis
 - Res judicata
 - Precedent
 - Dictum

Answer: d

Short Answer Essays

1. Take the pro or the con side of the following proposition: Persons in elective political offices who commit crimes involving moral turpitude (e.g., tax evasion, theft, rape, or fraud) should be sentenced more harshly, because of their positions of public trust, than should other nonpolitical persons who commit similar crimes. Both pro and con writers should state whether or not they think penalties do, in fact, differ for such persons.

Answer:

Students may identify a special element of evil or criminality when a public trust is violated. Traditionally a person, a fiduciary, in a highly trusted position, is held to a higher standard of duty than are other persons. Presumably persons in such positions should know better and a mere lapse of good judgment are less understandable than when committed by, say, a blue collar worker. Students should recognize that public persons may suffer more through embarrassment and loss of position for wrongful behavior than might other offenders.

Superior students will realize that in some instances when public persons commit certain offenses, such as severe sexual harassment, the result may be that substantial public monies are paid to the victim for damages. Why should the public be made to pay for offenses by its trusted

Chapter One

officials? Should public officials contribute to a fund to compensate victims of wrongdoing by officials?

Some students may bring the actions of President William J. Clinton into the discussion inasmuch as he has been held in contempt of court for lying while under oath. However, this question is limited to criminal offenses, not mere violations of the public's trust or civil contempt. If the President had been convicted of perjury that would, of course, have been a crime involving moral turpitude.

An argument can be made that public officials are less powerful than corporate management and, therefore, should not be held to any different standard in a world short on ethics and long on offenses involving moral turpitude.

Finally, some better read students may observe that public officials who commit offenses involving moral turpitude often receive lesser penalties than others, such as community service instead of time in jail. How can this result be justified?

2. An important benefit of the doctrine of *stare decisis* is the stability and predictability that the doctrine brings to the law. How do the courts deal with legal disputes when new scientific information or methods and/or changes in societal values render certain existing legal rules obsolete, or even absurd, if applied to these new legal disputes?

Answer:

Changes in knowledge, circumstances, or social values can justify overturning a prior case decision. Generally changes must be significant before a court will move away from settled law. One example is the DNA breakthrough that is now routinely accepted in direct contradiction to eye witness testimony. The legalization of abortion by a single vote on the Supreme Court, in a 5-4 majority decision, exemplifies a shift in societal values. If the next U.S. Supreme Court Justice opposes abortion it could again become illegal by one vote.

In addition, factual differences, if important, often are used to distinguish or limit the use of an earlier case as precedent.

3. Is it appropriate for courts to change well settled law, or should that be the sole province of legislatures? For example, assuming it is desirable, should Courts or the legislature now make a law that two-stroke outboard engines violate the public's right to pollution free waterways?

Answer:

If the new interpretation involves a court's rejecting of its own decisional law, the court is acting outside the historical province of the courts and of common-law doctrine. Within the law, the debate over the legitimacy of overturning precedents is usually confined to whether or not circumstances have changed, or changed sufficiently, to justify a new judicial doctrine. Certainty and stability is a compelling force, and in the opinion of many, it is not to be overcome lightly. Thus, if two-stroke engines have been used for a long-time, that would be an important factor to be considered. Equally, or more importantly, new scientific evidence of the damage that such engines cause to the environment would be a factor.

Note that legislation is prospective, and judicial decisions, at least as to the parties involved, relate back to the event or to particular facts in dispute. This difference in the nature of the two types of law suggests to many that overturning settled law is usually best left to the legislature.

Much settled law cannot be changed by legislatures. For example, a state legislature (or Congress for that matter) would have a difficult time legalizing prayer in public schools or in criminalizing abortion.

11 Chapter One

4. Remember the Kitty Genovese story from this article: “Are There No Good People in This Neighborhood?”

Friday 13 March

A young woman returns from work just after 3:00 a.m. on a typical street in Queens, New York. She parks her car and begins a 100-foot walk to her apartment building. Concerned about a man standing between her path and the apartment building she changes course and heads in the opposite direction. She was right to be concerned, as he follows and grabs her. She screams. No less than 38 neighbors turn on their lights and open their windows. Again she screams, “He stabbed me!” and “Help!” An observer shouts, “Leave the girl alone” and the attacker walks away. Then, the lights all go out, and windows are slammed shut. While the victim staggers to reach the nearest apartment building the attacker returns and stabs her again. The victim yells, “I’m dying!” The commotion again gets the attention of the apartment dwellers and again the attacker leaves. So the lights go out and windows close. The victim crawls toward the apartment house, but the attacker returns again one last time to stab and kill the young woman.

Consider the behavior of the observer who shouted “Leave the girl alone.” Has the observer behaved ethically? Choose an ethical approach, analyze the behavior, and make a moral judgment based on your analysis.

Answer:

Unless your course coverage differed from the text, the student should select either a duty based or a utilitarian approach to analyze ethical behavior.

When an action affects the majority adversely, it is morally wrong. Applying the utilitarian theory thus requires: (1) a determination of the alternate actions available in a given situation, (2) a determination of who will be affected by these actions, (3) an assessment, or cost-benefit analysis, of the negative and positive effects of each alternative actions on these individuals, and (4) a choice among the alternatives that the action will produce the maximum societal utility.

Kantian ethical reasoning gives philosophical weight to the *Golden Rule*. But the *Golden Rule* merely urges us to “do unto to others as we would have them do unto us.” Kant’s approach forces us to look at the larger picture and asks that everyone to treat others as a free individual equal to everyone else. Thus, we have the duty to treat everyone with dignity and the right to expect such treatment from others. What would society be like if everybody acted as we did? Would it be positive or negative? Kant’s theory forces us to look at and evaluate, from an objective point of view, social goals as well as our personal desires and welfare when considering our behavior.

The central premise in Kantian ethics is that the morality of conduct depends on the guiding principle not, on the result or consequences of the conduct.

5. Define the following terms and provide examples of each?
Criminal and Civil law
Substantive and procedural law

Answer:

Criminal Law has to do with a wrong committed against the public as a whole. A wrong against the state or government for which there is a penalty. Theft although a wrong against and individual would be such example because it is prohibited and punishable conduct.

Chapter One

Civil law identifies the duties that exist between persons or between citizens and their governments, excluding the duty not to commit crimes. Contract and tort law, for example, is part of civil law. The theft crime against the public would also be a tort against the victim from which he or she could sue and recover.

Substantive law includes general principles and detailed rules that define legal rights and duties. A substantive rule would define most crimes such a robbery or murder.

Procedural law is the principles and detailed rules that define the methods of administering substantive law. Such rules include rules of evidence and rules regarding filing lawsuits.

7. A fashion model was arrested outside a singles' bar on suspicion of solicitation for prostitution. She also had in her purse a taser. A state statute prohibits the carrying on ones person of "any handgun, knife, switchblade, blackjack, brass knuckles, or other concealed weapon or implement of violence." The solicitation charge was dropped, but she was convicted under the concealed weapons statute. She appeals the lower court's decision, arguing that the statute does not prohibit the carrying of a taser. How would you decide, and why? What if instead she had a can of mace? Should she be convicted under the statute? Why or why not? Apply your precedent—stand by your decision and decide again!

Answer: (answers and reasoning will vary)

All of the specifically enumerated items in the statute, i.e., handgun, knife, switchblade, blackjack, brass knuckles, are offensive weapons. Is a taser an offensive weapon? A would-be bank robber might carry a gun or a knife to the scene of the robbery, but it's unlikely s/he would attempt to rob a bank with a taser. On the other hand, certainly the weapon is used offensively by police in certain situations. Nevertheless, a taser is generally the type of weapon used in self defense. As such, a taser should not be interpreted as an "other concealed weapon or implement of violence" because unlike the other enumerated items, it is primarily used in self-defense. If that is the holding/precedent, then as applied to mace, mace should not be considered an "other weapon or implement of violence" because mace too primarily is used in self-defense.

8. This is a case of first impression in the State of Louisiana. The defendant has been convicted of operating a vehicle while intoxicated in that he rode a horse on Louisiana Highway #100 while under the influence of alcoholic beverages. The defendant was riding a horse on La. Hwy. #100, one and one-tenth mile west of Crowley on the evening of March 29, 1983 when he was involved in an accident with an automobile. After investigating the accident, police officers administered a P.E.I. test to the defendant and determined that he had a blood alcohol concentration of .12 percent. Defendant was convicted of the offense of O.W.I. in violation of LSA-R.S. 14:98. LSA-R.S. 14:98 provides in pertinent part:

"The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, vessel or other means of conveyance while under the influence of alcoholic beverages, narcotic drugs, central nervous system stimulants, hallucinogenic drugs or barbiturates....."
State v. Williams, 449 So.2d 744 (La. App. 1984).

Appeals courts review for errors of law. Was the state statute correctly interpreted by the lower court? Should his conviction be overturned? Is a horse an "other means of

13 Chapter One

conveyance” under the statute? Use the following guiding principles and precedent to write an appellate court decision that interprets Louisiana statute based on the facts that were found by the trial court, i.e., that the defendant was drunk when he rode his horse on highway 100.

Criminal statutes are to be strictly construed in favor of the accused. In other words, defendants should not be convicted of conduct that is only “arguably” a crime.

Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language.

Where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated.

When a statute is ambiguous or subject to two reasonable interpretations, the court can inquire into legislative aim and design for the purpose of determining legislative intent.

This precedent also exists under Louisiana law:

State v. Hightower, 238 La. 876, 116 So.2d 699 (1959).

“. . . a person is intoxicated within the provisions of the statute [R.S. 14:98] when he does not have the normal use of his physical and mental faculties by reason of the use of alcoholic beverages (or narcotics), thus rendering such person incapable of operating an automobile in a manner in which an ordinarily prudent and cautious man in full possession of his faculties, using reasonable care, would operate a motor vehicle under like conditions."

Answer: (answers and reasoning will vary)

Certainly a horse can convey someone from one place to another so it is a means of conveyance. DUI statutes exist in part to keep the roadways safe, and clearly, given the incident that occurred, a drunk on a horse can cause accidents and injury just as someone riding a motorcycle can cause accidents and injury. However, the specifically enumerated items must be operated to “go.” A motor vehicle, aircraft, vessel will not move until the driver initiates an action. A horse, on the other hand, has a will of its own. Inanimate objects must be operated and animate objects are less subject to the direction of the operator. The precedent discusses “operating an automobile in a manner in which an ordinarily prudent and cautious man in full possession of his faculties, using reasonable care, would operate a motor vehicle under like conditions." So operate seems to be key to the statute’s prohibition. Could someone be arrested for riding a bicycle drunk? Even though the bicycle does not have an engine, it must be operated to go anywhere, so a bicycle would be more like a motor vehicle, aircraft or vessel under the statute, but still very different from a horse. It would seem that the trial court incorrectly interpreted the statute and Mr. Williams’s conviction should be overturned. Certainly if the legislature wished to outlaw riding horses drunk, it has the power to do so, but it would not seem that this statute embraced that scenario.