

*Test Bank for Forensic Accounting 1st Edition by Rufus Miller
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Chapter 2 The Legal Environment of Forensic Accounting

2.1 True/False Questions

1) In criminal cases, sanctions generally involve compensation for loss or wrongs suffered.

Answer: FALSE

Explanation: In civil cases, sanctions generally involve compensation for loss or wrongs suffered (for example, economic damages).

Diff: 1

LO: 2-1

AACSB: Analytical Thinking

2) Personal justice is justice concerned with the private affairs of citizens and their respective rights.

Answer: FALSE

Explanation: Justice concerned with the private affairs of citizens and their respective rights is known as civil justice.

Diff: 1

LO: 2-1

AACSB: Analytical Thinking

3) Tax evasion, health care frauds, and bank frauds are covered under civil laws. Answer:

FALSE

Explanation: Tax evasion, health care frauds, and bank frauds are covered under criminal laws.

Diff: 1

LO: 2-2

AACSB: Analytical Thinking

4) In the case of a jury trial, the trial stage begins with the selection of a jury.

Answer: TRUE

Explanation: The trial stage begins with the selection of a jury.

Diff: 1

LO: 2-2

AACSB: Analytical Thinking

5) The burden of proof is the obligation of the defendant to prove his or her innocence.

Answer: FALSE

Explanation: The burden of proof is the obligation of the plaintiff or prosecution to prove liability (in a civil case) or guilt (in a criminal case). The defendant is not required to prove his or her innocence-it is presumed.

Diff: 1

LO: 2-3

AACSB: Analytical Thinking

1

Copyright © 2015 Pearson Education, Inc. Mediation is a "mini trial" wherein each party presents its case to one or more mediators, who render a binding decision that generally cannot be appealed.

Answer: FALSE

Explanation: Mediation is a non-binding informal process wherein a mediator (mutually selected by the parties) evaluates the arguments of both sides and helps the parties reach common ground. Diff: 1

LO: 2-3

AACSB: Analytical Thinking

6) An expert's testimony is more credible than that of other witnesses. Answer: TRUE

Explanation: A higher level of credibility is generally attached to an expert's testimony.

Diff: 1

LO: 2-4

AACSB: Analytical Thinking

7) The trial judge is challenged to carefully qualify the expert but not the testimony of the expert.

Answer: FALSE

Explanation: The trial judge is challenged to carefully qualify both the expert and his or her testimony. Diff: 1

LO: 2-4

AACSB: Analytical Thinking

8) A Daubert hearing decides whether the expert is correct.

Answer: FALSE

Explanation: As provided in Daubert, the "court must focus on the methodology, not on the conclusions generated by the methodology." In other words, a Daubert hearing is not to decide whether the expert is correct.

Diff: 1

LO: 2-6

AACSB: Analytical Thinking

9) Rule 705 allows an expert to state an opinion without first testifying to the underlying facts or data.

Answer: TRUE

Explanation: Rule 705 allows an expert to state an opinion without first testifying to the underlying facts or data.

Diff: 1

LO: 2-5

AACSB: Analytical Thinking

2

2.2 Multiple-Choice Questions

1) Which of the following is an example of sanctions in civil cases?

- A) capital punishment
- B) home confinement
- C) probation
- D) compensation for economic damages

Answer: D

Explanation: D) In civil cases, sanctions generally involve compensation for loss or wrongs suffered (for example, economic damages).

Diff: 1

LO: 2-1

AACSB: Analytical Thinking

2) Which of the following best describes civil justice?

- A) justice between parties to a dispute, regardless of any larger principles that might be involved
- B) justice concerned with the private affairs of citizens and their respective rights
- C) justice fairly administered according to the rules of substantive law (such as a fair trial)
- D) justice that conforms to a moral principle

Answer: B

Explanation: B) Justice concerned with the private affairs of citizens and their respective rights, including certain freedoms of speech and action and equal treatment, protection, and opportunities regardless of race, sex, or religion is known as civil justice. Diff: 1

LO: 2-1

AACSB: Analytical Thinking

3) Which of the following forms of justice is fairly administered according to the rules of statutory law? A) social justice

B) civil justice

C) substantial justice

D) criminal justice

Answer: C

Explanation: C) Substantial justice is justice fairly administered according to the rules of substantive law (such as a fair trial).

Diff: 2

LO: 2-1

AACSB: Analytical Thinking

4) Which of the following scenarios, if identified, can result in a mistrial?

A) Ginny, one of the jury, avidly followed the polls conducted by the media to know the people's opinion on the trial.

B) Derek, the defense attorney, concealed his client's drinking habit as he felt it would be prejudicial to the client in the ongoing case of banking fraud.

C) Silvia, the attorney for the prosecution, raised an objection for every evidence presented by the defense attorney.

D) Rico, an expert witness, stated an opinion on the evidence without first testifying to the underlying facts. Answer: A

Explanation: A) Verdicts are (or are expected to be) decided based on the evidence presented during the trial. Consideration of outside information, which has not been subjected to challenge, violates the rules of evidence. If identified, such violations can result in removal of the juror/s, mistrials, or appeals.

Diff: 2

LO: 2-1

AACSB: Analytical Thinking

5) Igor, a wealthy entrepreneur, was involved in embezzlement of cash from the office and tax evasion. If discovered, which of the following will he be charged under?

A) criminal law

B) constitutional law

C) administrative law

D) civil law

Answer: A

Explanation: A) Embezzlement cases are covered under criminal law.

Diff: 1

LO: 2-2

AACSB: Analytical Thinking

6) Which of the following is true of our justice system? A)

The law is fast; litigation lasts for one or two hours.

B) Trials (aside from the verdict) provide a lot of drama.

C) Closing arguments and cross examination are the most important parts of a trial.

D) The role of the jury is not passive.

Answer: D

Explanation: D) Jury selection and opening statements are the most important parts of a trial. The role of the jury is not passive. Because jurors serve as the trier of fact, they must actively evaluate the evidence and decide who and what to believe.

Diff: 1

LO: 2-2

AACSB: Analytical Thinking

- 7) Which of the following rules of Federal Rules of Civil Procedure limits discovery of an expert's communications with engaging counsel and any report drafts that may be prepared? A) Rule 26(b)(1)
B) Rule 26(b)(4)
C) Rule 26(a)(2)
D) Rule 26(e)(2)

Answer: B

Explanation: B) Rule 26(b)(4) of Federal Rules of Civil Procedure limits discovery of an expert's communications with engaging counsel and any report drafts that may be prepared. It also limits discovery of facts and opinions held by an expert who is engaged to assist counsel in trial preparation (a consulting expert) but not expected to be called as a witness. Diff: 1

LO: 2-2

AACSB: Analytical Thinking

- 8) Which of the following stages applies to a criminal case but not to a civil case?
A) pleading stage
B) discovery stage
C) trial stage
D) sentencing stage

Answer: D

Explanation: D) The basic structure of a criminal case is similar to that of a civil case, with the addition of a fourth stage-sentencing.

Diff: 1

LO: 2-2

AACSB: Analytical Thinking

- 9) Which of the following is a difference between criminal cases and civil cases?
A) A complaint should be accompanied by an investigator's affidavit to initiate a civil case, whereas filing a complaint is sufficient to initiate a criminal case.
B) A defendant has an amount of time (20 days) to respond to the complaint in a civil case, whereas he or she enters a plea to the charge during the first appearance in a criminal case.
C) A defendant can only enter a plea of guilty or not guilty to charges in a civil case, whereas he or she can also claim lack of sufficient knowledge to respond or assert affirmative defenses in a criminal case.
D) Failing to file a timely response can result in a default judgment in a civil case, whereas failing to file a timely response can result in a declaratory judgment in a criminal case.

Answer: B

Explanation: B) In a civil case, once a defendant has been served with the complaint, the individual or entity has a limited amount of time (20 days) to respond by filing an answer. In a criminal case, during the first appearance, the defendant also enters a plea to the charge or charges-guilty or not guilty.

Diff: 3

LO: 2-2

AACSB: Analytical Thinking

10) Which of the following is a difference between civil law and criminal law?

- A) The purpose of civil law is to resolve disputes between individuals or entities, whereas the purpose of criminal law is to convict and punish offenders.
- B) Under civil law, the burden of proof is on the government, whereas under criminal law, the burden of proof is on the plaintiff.
- C) Under civil law, the responding party is the government, whereas under criminal law, the responding party is the defendant.
- D) Civil law sanctions may include imprisonments, whereas criminal law sanctions include compensations but not imprisonments.

Answer: A

Explanation: A) The purpose of civil law is to resolve disputes between individuals or entities, whereas the purpose of criminal law is to convict and punish offenders.

Diff: 2

LO: 2-2

AACSB: Analytical Thinking

11) Which of the following is true of a civil proceeding? A)

- The pleading stage is followed by the trial stage.
- B) The evidence is evaluated by the judge in order to reach a verdict.
- C) Failure on the part of the defendant to file a timely response can result in a declaratory judgment.
- D) The discovery process is governed by the Federal Rules of Civil Procedure in federal courts.

Answer: D

Explanation: D) In federal courts, the discovery process is governed by the Federal Rules of Civil Procedure (FRCP). Although states may determine their own rules, most have adopted rules that are modelled after the FRCP.

Diff: 1

LO: 2-2

AACSB: Analytical Thinking

12) Andre LeFevre, a testifying expert, failed to include changes to the case. These were not been previously presented in his report. He is expecting that this information will be offered at the trial. Which of the following rules of the Federal Rules of Civil Procedure has been violated by Andre? A) Rule 26(b)(1)

- B) Rule 26(b)(4)
- C) Rule 26(e)(2)
- D) Rule 26(a)(2)

Answer: C

Explanation: C) Rule 26(e)(1) requires a testifying expert to supplement his or her report to include any changes or additional information that has not been previously presented but is expected to be offered at trial.

Diff: 3

LO: 2-2

AACSB: Reflective Thinking

13) The trial stage of a legal proceeding involves the *voir dire* process. What does this process involve?

- A) It is a process wherein residents from the local county are randomly selected and summoned to the court to serve as prospective jurors.
- B) It is a process wherein the jurors collectively evaluate the evidence to render a verdict.
- C) It is a process wherein all evidence is presented to the jury through witnesses (such as a forensic accountant).
- D) It is a process wherein the judge and the attorneys question prospective jurors about their backgrounds and beliefs.

Answer: D

Explanation: D) The jury is selected through a process known as *voir dire*, wherein the judge and the attorneys question prospective jurors about their backgrounds and beliefs. Diff: 2

LO: 2-2

AACSB: Analytical Thinking

14) Which of the following best describes the meaning of burden of proof in a trial? A)

It is the obligation of the plaintiff or prosecution to prove liability or guilt.

B) It is the obligation of the jury to prove guilty and reach a verdict after a trial.

C) It is the obligation of the defendant to prove his or her innocence.

D) It is the obligation of the expert witness to prove his or her reliability in the court. Answer: A

Explanation: A) The burden of proof is the obligation of the plaintiff or prosecution to prove liability (in a civil case) or guilt (in a criminal case). The defendant is not required to prove his or her innocence-it is presumed.

Diff: 2

LO: 2-3

AACSB: Analytical Thinking

15) Which of the following statements is true of standards of proof?

A) Preponderance of evidence is a higher standard of proof than clear and convincing evidence.

B) In a civil case, the requisite standard is a preponderance of the evidence.

C) Clear and convincing evidence is evidence that is probably true.

D) Preponderance of evidence is evidence that can be proved beyond a reasonable doubt.

Answer: B

Explanation: B) In a civil case, the requisite standard is a preponderance of the evidence-more likely than not (>50% probability).

Diff: 2

LO: 2-3

AACSB: Analytical Thinking

16) Which of the following statements is true of the two means of settling disputes between parties?

- A) Alternative dispute resolution is less expensive than litigation.
- B) Litigation is faster than alternative dispute resolution.
- C) Litigation allows for greater privacy than alternative dispute resolution.
- D) Alternative dispute resolution allows for more transparency than litigation.

Answer: A

Explanation: A) Alternative dispute resolution may be preferred over litigation because it is less expensive, is generally faster, and allows for greater privacy.

Diff: 1

LO: 2-3

AACSB: Analytical Thinking

17) Which of the following statements is true of rules of evidence?

- A) The rules of evidence allow expert witnesses greater latitude than other witnesses to testify based on evidence that would not otherwise be admissible.
- B) The rules of evidence allow other witnesses greater latitude than expert witnesses to testify based on evidence that would not otherwise be admissible.
- C) The rules of evidence do not allow both expert witnesses and other witnesses to testify based on evidence that is not admissible.
- D) The rules of evidence allow expert witnesses and other witnesses great latitude to testify based on evidence that would not otherwise be admissible.

Answer: A

Explanation: A) The rules of evidence allow expert witnesses greater latitude than other witnesses to testify based on evidence (such as hearsay evidence) that would not otherwise be admissible. Diff: 1

LO: 2-4

AACSB: Analytical Thinking

18) Which of the following is the purpose of the Federal Rules of Evidence?

- A) to set standards for evidence to be admissible in court
- B) to dictate the manner in which evidence is to be presented to the jury
- C) to seek justice and truth in a fair and reasonable manner
- D) to reduce the delay in trial due to unavailability of evidence

Answer: C

Explanation: C) The purpose of the Federal Rules of Evidence is to seek justice and truth in a fair and reasonable manner.

Diff: 1

LO: 2-5

AACSB: Analytical Thinking

19) Which of the following is a criterion under Rule 702 of the Federal Rules of Evidence for an expert testimony to be admissible?

- A) The testimony can be accepted within the professional community.
- B) The testimony is based on reliable assumptions.
- C) The testimony is given in relation to scientific, technical, or other specialized knowledge.
- D) The testimony is the product of reliable principles and methods.

Answer: D

Explanation: D) Under Rule 702, expert testimony is admissible only if it meets three specific criteria:

1. The testimony is based on sufficient facts or data.
2. The testimony is the product of reliable principles and methods.
3. The principles and methods have been applied reliably to the facts of the case. Diff: 1

LO: 2-5

AACSB: Analytical Thinking

20) Which of the following scenarios indicates the application of Rule 702 of the Federal Rules of Evidence?

- A) The plaintiff engages Ali, an attorney, to represent them in court.
- B) The attorney calls upon Riya, a construction engineer, to provide evidence on the structural sufficiency of a building.
- C) Pete, a store-owner, appears as a witness to give testimony on a robbery committed outside his store.
- D) The court calls on Fiona, a forensic accountant, to give a statement on the accident that caused damage to her car.

Answer: B

Explanation: B) Rule 702 allows the testimony of an expert witness if it will assist the trier of fact (judge or jury) through the maze of "scientific, technical, or other specialized knowledge." In this scenario, Riya, a construction engineer, can give the trier of fact a technical perspective on the structure of a building, thus enabling better understanding of the case. Diff: 2

LO: 2-5

AACSB: Analytical Thinking

21) Which of the following is a difference between Rule 704 and Rule 705 of the Federal Rules of Evidence?

- A) Rule 704 allows an expert to state an opinion without first testifying to the underlying facts or data, whereas Rule 705 allows an expert to testify to the underlying facts or data.
- B) Rule 704 allows an expert to testify on areas that embrace an ultimate issue to be decided by the fact finder, whereas Rule 705 allows an expert witness a considerable degree of latitude regarding the facts or data upon which his or her opinions are based.
- C) Rule 704 allows an expert to testify on areas that embrace an ultimate issue to be decided by the fact finder, whereas Rule 705 allows an expert to state an opinion without first testifying to the underlying facts or data.

D) Rule 704 allows an expert witness a considerable degree of latitude regarding the facts or data upon which his or her opinions are based, whereas Rule 705 allows an expert to testify on areas that embrace an ultimate issue to be decided by the fact finder.

Answer: C

Explanation: C) Rule 704 allows an expert to testify on areas that embrace an ultimate issue to be decided by the fact finder. Rule 705 allows an expert to state an opinion without first testifying to the underlying facts or data, with the understanding that the opinion is subject to cross-examination.

Diff: 3

LO: 2-5

AACSB: Analytical Thinking

22) Which of the following does Rule 705 of the Federal Rules of Evidence allow?

A) It allows an expert to state an opinion without first testifying to the underlying facts or data, with the understanding that the opinion is subject to cross-examination.

B) It allows an expert to testify on areas that embrace an ultimate issue to be decided by the fact finder.

C) It allows an expert witness a considerable degree of latitude regarding the facts or data upon which his or her opinions are based.

D) It allows the testimony of an expert witness if it will assist the trier of fact (judge or jury) through the maze of "scientific, technical, or other specialized knowledge."

Answer: A

Explanation: A) Rule 705 allows an expert to state an opinion without first testifying to the underlying facts or data, with the understanding that the opinion is subject to cross-examination. This cross-examination is important because an expert's opinion is only as good as the facts, assumptions, data, and methodology upon which it is based.

Diff: 2

LO: 2-5

AACSB: Analytical Thinking

23) Fingerprints and DNA samples are examples of A) direct evidence.

B) documentary evidence.

C) character evidence.

D) circumstantial evidence.

Answer: D

Explanation: D) Circumstantial evidence is evidence based on inference and not on personal knowledge or observation; also known as indirect evidence. Examples include fingerprints and DNA samples or, in a financial crime, evidence of the defendant's lifestyle. Diff: 1

LO: 2-5

AACSB: Analytical Thinking

24) Which of the following is an example of hearsay evidence?

- A) The attorney called on Anna to present her version of the events that took place during her class.
- B) The police recorded a statement from Tina, which claims that she often heard the neighbors complain about the suspect's behavior.
- C) The detective testified that the fingerprints lifted from the scene of crime had been identified as those of the suspect.
- D) The prosecution presented a copy of the legal will of the deceased that had been altered by the defendant. Answer: B

Explanation: B) Hearsay evidence is testimony given by a witness who relates not what he/she knows personally, but rather what others have said. It depends on the credibility of someone other than the witness.

Diff: 2

LO: 2-5

AACSB: Analytical Thinking

25) Which of the following best describes a Daubert challenge?

- A) It is a challenge faced by the judge when the jury is equally divided over a verdict.
- B) It is a method used by the jury to evaluate the testimony given during a trial.
- C) It is a special hearing conducted before the trial judge to determine the relevance and reliability of an expert's opinion.
- D) It is a process by which the defendant challenges the prosecution's evidence. Answer: C

Explanation: C) A Daubert challenge is a special hearing conducted before the trial judge to determine the relevance and reliability of an expert's opinion-that is, to rule on its admissibility.

Diff: 2

LO: 2-6

AACSB: Analytical Thinking

26) Which of the following is a factor to be considered when evaluating expert testimony under the Daubert challenge?

- A) how well accepted the methodology is within the professional community
- B) what the known or potential success rate of the method is
- C) whether the theory can be backed by evidence
- D) whether the theory can be comprehended by the community

Answer: A

Explanation: A) Daubert set forth several factors that should be considered when evaluating expert testimony. One of these factors is how well accepted the methodology is within the professional community.

Diff: 2

LO: 2-6

AACSB: Analytical Thinking

27) Which of the following are the three cases that make up the Daubert trilogy?

- A) *Daubert v. Merrell Dow Pharmaceuticals*, *G.E. v. Joiner*, and *Upjohn Co. v. United States*.

- B) *Daubert v. Merrell Dow Pharmaceuticals, Kumho Tire v. Carmichael, and Hickman v. Taylor.*
C) *Daubert v. Merrell Dow Pharmaceuticals, G.E. v. Joiner, and Kumho Tire v. Carmichael.*
D) *Daubert v. Merrell Dow Pharmaceuticals, Hickman v. Taylor, and Upjohn Co. v. United States.*

Answer: C

Explanation: C) *Daubert v. Merrell Dow Pharmaceuticals, G.E. v. Joiner, and Kumho Tire v. Carmichael* are the three cases that make up the Daubert trilogy. Diff: 2

LO: 2-6

AACSB: Analytical Thinking

28) Which rule does the Daubert trilogy serve to interpret?

- A) Rule 705
B) Rule 704
C) Rule 703
D) Rule 702

Answer: D

Explanation: D) Together, the three cases, known as the "Daubert trilogy," serve to interpret Rule 702. Diff: 1

LO: 2-6

AACSB: Analytical Thinking

29) Which of the following is a drawback of the Frye test?

- A) It is not flexible enough to address new scientific issues where general acceptance has not yet been established.
B) It does not allow room for additional evidence to be considered when the initial evidence is insufficient.
C) It does not admit evidence given by an expert if the evidence is not based on a well-known method.
D) It is not extensive enough to address the latest developments in civil and criminal law.

Answer: A

Explanation: A) Critics of the Frye test argue that it is not flexible enough to address new scientific issues where general acceptance has not yet been established.

Diff: 2

LO: 2-6

AACSB: Analytical Thinking

30) Which of the following is a legal principle that protects communications taking place within a protected relationship? A) protected communication

- B) privileged communication
C) guarded communication
D) secured communication

Answer: B

Explanation: B) Privileged communication is a legal principle that protects communications taking place within a protected relationship.

Diff: 1

LO: 2-7

AACSB: Analytical Thinking

31) What is the underlying theory of privileged communication?

- A) The parties in a protected relationship are liable to disclose details of the communication taking place between them.
- B) The society has a right to be aware of the communication within a protected relationship.
- C) The privacy and confidentiality of a communication within a protected relationship has to be maintained.
- D) In certain instances, society is best served by the suppression (protection from disclosure) of information. Answer: D

Explanation: D) The underlying theory of privileged communication, articulated by the U.S. Supreme Court in *Upjohn Co. v. United States* (1981), is that in certain instances, society is best served by the suppression (protection from disclosure) of information.

Diff: 1

LO: 2-7

AACSB: Analytical Thinking

32) A requisite element for establishing privilege in an attorney-client privilege includes a communication that

- A) is made to a person the client reasonably believed was an attorney.
- B) relates to rendering personal services.
- C) is irrelevant for the jury to reach a verdict.
- D) contains detail that can harm the client.

Answer: A

Explanation: A) The requisite elements for establishing privilege include a communication that relates to the rendering of legal services, is made in confidence, and is made to a person the client reasonably believed was an attorney.

Diff: 2

LO: 2-7

AACSB: Analytical Thinking

33) Which of the following best defines the term attorney-client privilege?

- A) It is the client's right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney.
- B) It is the attorney's right to refuse to disclose and to prevent the testifying expert from disclosing confidential communications between the client and the attorney.

C) It is the client's obligation to disclose confidential communications between the client and the attorney.

D) It is the attorney's right to refuse to disclose and to prevent any other person from disclosing confidential communications between the attorney and the testifying expert.

Answer: A

Explanation: A) Attorney-client privilege is defined as the "client's right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney."

Diff: 2

LO: 2-7

AACSB: Analytical Thinking

34) Which of the following is a similarity between attorney-client privilege and work product doctrine?

A) Both allow lawyers to prepare for litigation but with the risk that their work will be revealed to court adversaries.

B) Both are intended to encourage individuals involved in legal disputes to be candid with their attorneys, thus enabling the attorneys to give sound legal advice.

C) Both can be extended to non-attorneys who assist attorneys in rendering legal advice or services.

D) Both provide protection from discovery of documents and other items prepared by an attorney in anticipation of a trial.

Answer: C

Explanation: C) Consistent with the rules governing attorney-client privilege, the work product doctrine can be extended to items prepared by non-attorneys who assist in rendering legal services. Diff: 2

LO: 2-7

AACSB: Analytical Thinking

35) What was the result of amending FRCP 26(b)(4) to allow the extension of work product protection to most attorney-expert communications and to all draft expert reports? A) It reduced the cost of litigation, but made the process more complex.

B) It increased the cost of litigation and made the process more complex.

C) It reduced the cost of litigation and made the process more efficient.

D) It increased the cost of litigation and simplified the process.

Answer: C

Explanation: C) FRCP 26(b)(4) was amended to allow the extension of work product protection to most attorney-expert communications and to all draft expert reports. This was a highly practical change, which served to reduce the cost of litigation and make the process more efficient. Diff: 2

LO: 2-7

AACSB: Analytical Thinking

2.3 Short-Answer Questions

1) Rule 26(a)(2) of the Federal Rules of Civil Procedure requires the disclosure of all experts (such as forensic accountants) expected to testify at trial. The disclosure is generally accompanied by the expert's written report. List the elements that should be contained in the expert's written report.

Answer: The expert's written report must contain the following elements:

1. A complete statement of all opinions the witness will express, along with the basis and reasons for them.
2. The facts or data considered by the witness in forming the opinions.
3. Any exhibits that will be used to summarize or support the opinions.
4. The witness's qualifications, including a list of all publications authored in the preceding ten years.
5. A list of all other cases in which the witness has testified as an expert (either at trial or by deposition) during the preceding four years.
6. A statement of the compensation to be paid for the study and testimony in the case. Diff: 2

LO: 2-2

AACSB: Analytical Thinking

2) Explain the structure of a criminal case.

Answer: The basic structure of a criminal case is similar to that of a civil case, with the addition of a fourth stage-sentencing. However, the pleading stage of a criminal case is very different. Criminal cases are initiated with a criminal complaint accompanied by an investigator's affidavit that summarizes the evidence against the defendant. During the first appearance (arraignment), the defendant is informed of the charges and advised of his or her rights. At this time, the defendant also enters a plea to the charge or charges-guilty or not guilty. This is followed by the discovery stage and the trial stage, as discussed previously. If the defendant is found not guilty, the case is over; if found guilty, the case then moves to the sentencing stage. The verdict in a criminal case (guilty or not guilty) differs from the verdict in a civil case, wherein the defendant is found either liable or not liable (for damages). Prior to sentencing by the court, the case is evaluated by the probation department, which prepares a pre-sentence report (PSR). The PSR summarizes the case (including the crime, the case facts, and the offender's profile) and offers a recommendation for sentencing.

Diff: 2

LO: 2-2

AACSB: Analytical Thinking

3) Write a brief note on standard of proof.

Answer: The presumption of innocence must be overcome by a certain standard of proof, which describes the amount of evidence the plaintiff must present to prove its case. In a civil case, the requisite standard is a preponderance of the evidence-more likely than not (>50% probability). Some civil cases (such as civil fraud) must be proven by clear and convincing evidence. Clear and convincing is greater than preponderance, but no specific percentage can be assigned. In a

criminal case, the prosecution has a legal obligation to prove all elements of an alleged offense (such as fraud, tax evasion, or murder) beyond a reasonable doubt. Again, no percentage can be assigned. The applicable burden and standard of proof are explained to the jury by the judge and included in the jury instructions. The forensic accountant must understand the requisite standard of proof for any litigation engagement and articulate his or her opinion accordingly. Diff: 2

LO: 2-3

AACSB: Analytical Thinking

4) What are the two most common forms of alternate dispute resolution?

Answer: The most common forms of alternative dispute resolution are mediation and arbitration. Mediation is a non-binding informal process wherein a mediator evaluates the arguments of both sides and helps the parties reach common ground. If mediation fails, the parties may proceed with litigation. Arbitration, on the other hand, is a "mini trial" wherein each party presents its case to one or more arbitrators, who render a binding decision that generally cannot be appealed. Arbitration is often voluntary but can also be mandatory.

Diff: 2

LO: 2-3

AACSB: Analytical Thinking

5) What is relevant evidence as defined by FRE 401?

Answer: According to FRE 401, relevant evidence must have the "tendency to make a fact more or less probable than it would be without the evidence," and the fact must be "of consequence in determining the action." As a general principle, all relevant evidence is admissible unless it is inadmissible due to another rule of evidence or law. FRE 403 allows relevant evidence to be excluded if its probative value is substantially outweighed by danger of unfair prejudice, of confusing or misleading the jury, or of wasting the court's time. The presentation of evidence is subject to objection by the opposing party. The basis of an objection must be stated (for example, prejudice or hearsay) and will be ruled on by the court—overruled or sustained. In addition to probative value exclusions, many social policies operate to exclude relevant evidence. Diff: 2

LO: 2-5

AACSB: Analytical Thinking