

**Test Bank for Americas Courts and the Criminal Justice System 11th
Edition Neubauer Fradella 1285061942 9781285061948**

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**Chapter 2
LAW AND CRIME**

TEST BANK

MULTIPLE CHOICE

1. The key characteristics of common law include all of the following, *except*:
- | | |
|-----------------------------|---|
| a. predominately judge-made | c. found in multiple sources |
| b. based on justice | d. applies rules of law found in previous cases |

ANS: B REF: 30 OBJ: 2

2. The burden of proof required for a victory in a civil case is:
- | | |
|------------------------------|-------------------------|
| a. preponderance of evidence | c. probable cause |
| b. beyond a reasonable doubt | d. reasonable suspicion |

ANS: A REF: 34 OBJ: 5

3. Much of the Bill of Rights has been made applicable to the states through the:
- | | |
|--------------------------|-------------------------|
| a. Fourth Amendment | c. legislative process |
| b. doctrine of precedent | d. Fourteenth Amendment |

ANS: D REF: 38-39 OBJ: 4

4. The prosecution always bears the burden of persuading the trier-of-fact that the defendant:

- a. is guilty based on clear and convincing evidence.
- b. committed the majority of the elements of the crime(s) charged
- c. committed each and every element of the crime(s) charged
- d. is guilty and deserves to be punished to the fullest extent of the law

ANS: C REF: 34 OBJ: 3

5. *Corpus delicti* is a Latin phrase meaning:

- a. guilty act
- b. body of the crime
- c. guilty mind
- d. body of the victim

ANS: B REF: 44 OBJ: 6

6. Which of the following is not an element of a crime?

- a. *Mens rea*
- b. *Actus reus*
- c. Attendant circumstances
- d. Guilty conscience

ANS: D REF: 44-46 OBJ: 6

7. *Mens rea* refers to the:

- a. guilty act
- b. body of the crime
- c. scene of the crime
- d. guilty mind

ANS: D REF: 45-46 OBJ: 6

8. Which Amendment to the U.S. Constitution prohibits unreasonable searches and seizures?

- a. First Amendment
- b. Fourth Amendment
- c. Fifth Amendment
- d. Eighth Amendment

ANS: B REF: 39 OBJ: 4

9. Which two Amendments to the U.S. Constitution mention due process?

- a. Fifth and Sixth
- b. Eighth and Tenth
- c. Fifth and Fourteenth
- d. Eighth and Fourteenth

ANS: C REF: 39 OBJ: 4

10. Victims of crime are increasingly resorting to:

- a. notifying law enforcement
- b. criminal prosecution
- c. vigilantism
- d. civil litigation

ANS: D REF: 41 OBJ: 5

11. Unlike all the other states, this state derives its civil law from the Napoleonic Code.

- a. Alabama
- b. Wisconsin
- c. Louisiana
- d. Florida

ANS: C REF: 30 OBJ: 1

12. A court order directing a specific action or lack of action is known as an:

- a. interrogatory
- b. indictment
- c. injunction
- d. interdiction

ANS: C REF: 41-42 OBJ: 5

13. An example of a legal attendant circumstance would be:
- a. the credibility of eyewitnesses
 - b. the defendant's character
 - c. the defendant's getaway vehicle
 - d. the amount of money or goods stolen

ANS: D REF: 46 OBJ: 6

14. The primary justification for providing constitutional safeguards in the criminal justice process is to ensure that:
- a. innocent persons are not harassed or wrongly convicted
 - b. the guilty are punished
 - c. society administers justice to the accused
 - d. convictions are not overturned on appeal

ANS: A REF: 36-37 OBJ: 4

15. Which of the following is the highest burden of proof?
- a. Clear and convincing evidence
 - b. Preponderance of evidence
 - c. Probable cause
 - d. Proof beyond a reasonable doubt

ANS: D REF: 34-35 OBJ: 3

16. Most civil cases involve a request for:
- a. declaratory judgment
 - b. monetary damages
 - c. an injunction
 - d. temporary restraining order

ANS: B REF: 40 OBJ: 5

17. A common civil remedy used in drug cases is:
- a. *writ of habeas corpus*
 - b. mandatory minimum sentences
 - c. asset forfeiture
 - d. declaratory damages

ANS: C REF: 41-42 OBJ: 5

18. This Amendment to the U.S. Constitution guarantees the right to counsel.
- a. Fourth
 - b. Fifth
 - c. Sixth
 - d. Eighth

ANS: C REF: 38-39 OBJ: 4

19. The party who initiates a civil suit is known as the:
- a. Appellant
 - b. Victim
 - c. appellee
 - d. plaintiff

ANS: D REF: 40 OBJ: 5

20. Laws created by federal and state legislatures are known as:
- a. ordinances
 - b. statutes
 - b. administrative regulations
 - c. legislation

ANS: B REF: 32 OBJ: 1

21. Substantive law creates:
- a. only criminal law
 - b. only civil law
 - c. methods of enforcing legal obligations
 - d. legal obligations

ANS: D REF: 33 OBJ: 3

22. Infancy and insanity are known as:
- a. substantive defenses
 - b. excuse defenses
 - c. justification defenses
 - d. mental incapacity defenses

ANS: B REF: 48 & 50 OBJ: 7

23. When a plaintiff files a civil lawsuit they seek to obtain:
- a. a remedy such as monetary damages or an injunction.
 - b. public acknowledgement of some wrong committed against them.
 - c. a conviction against someone who committed a crime against them.
 - d. retribution through the justice criminal justice process.

ANS: A REF: 40 OBJ: 5

24. The two major adversary actors in the criminal justice system are:
- a. police and criminals
 - b. courts and the media
 - c. prosecutors and defense attorneys
 - d. defendants and victims

ANS: C REF: 33-34 OBJ: 3

25. The obligation of a party to produce evidence to put facts in issue is called the burden of:
- a. presumption
 - b. production
 - c. progression
 - d. persuasion

ANS: B REF: 34 OBJ: 1

26. The United States operates under the adversary system of law, characterized by which of the following important principles?
- a. Accusations of criminal conduct would not be raised against a defendant unless there was some certainty of guilt.
 - b. That two parties approaching the facts from entirely different perspectives offers the best chance at uncovering the truth.

- c. Obtaining the truth is paramount regardless of the methods employed in uncovering it.
- d. That punishment should be swift and certain.

ANS: B REF: 33-34 OBJ: 3

27. Which of the following is one example of a safeguard provided by the adversarial system?
- a. The presumption of equality
 - b. Pretrial detention of defendants
 - c. The right to compensation for losses suffered
 - d. The right to cross-examination

ANS: D REF: 33-34 OBJ: 3

28. From the case citation *Miranda v. Arizona*, 384 U.S. 436 (1966), the reader knows which of the following?
- a. The decision is in favor of the defendant.
 - b. The case was a criminal case.
 - c. The case is in volume 384 of the Supreme Court Reports.
 - d. The case is found on page 1966.

ANS: C REF: 31 OBJ: 1

29. When a defendant bears the burden of persuasion to prove a defense, it is called a(n):
- a. alibi defense
 - b. affirmative defense
 - c. defense rebuttal
 - d. violation of due process

ANS: B REF: 34 OBJ: 5

30. When government prosecutors file an *in rem* asset forfeiture proceeding, and the property at issue is seized, what must the owner of the property do to get his property back?
- a. The burden of proof is on the government that the property is subject to forfeiture-- the owner does not need to do anything.
 - b. The owner must show that the property was not used illegally.
 - c. File a countersuit alleging a Fourth Amendment violation of the right against unreasonable seizures
 - d. Nothing. These types of proceedings have been declared unconstitutional by the Supreme Court.

ANS: A REF: 42 OBJ: 5

31. Criminal trials start with two presumptions: the presumption of innocence and the presumption of:
- a. sanity
 - c. zealous representation

- b. equality
- d. judicial activism

ANS: A REF: 34 OBJ: 3

32. In the absence of evidence to the contrary, the law requires the trier of fact to make a conclusion or deduction known as a(n):
- a. presumption
 - b. inference
 - c. judgment
 - d. opinion

ANS: A REF: 34 OBJ: 3

33. Which of the following is not a major area of civil law?
- a. personal injury
 - b. inheritance/probate
 - c. divorce and child custody
 - d. juvenile delinquency

ANS: D REF: 39-40 OBJ: 5

34. This doctrine requires a judge to decide a case by applying the rule of law found in previous cases, provided the facts are similar.
- a. selective incorporation
 - b. judicial restraint
 - c. precedent
 - d. jurisprudence

ANS: C REF: 30-31 OBJ: 2

35. The adversary system incorporates a series of checks and balances aimed at curbing political misuse of the criminal courts through:
- a. incorporation of rights
 - b. diffusion of powers
 - c. prosecutorial discretion
 - d. judicial activism

ANS: B REF: 33-34 OBJ: 3

36. Which of the following does not meet the requirement of actus reus?
- a. voluntary acts
 - b. omission
 - c. contemplation
 - d. possession

ANS: C REF: 45 OBJ:

37. Prisoner lawsuits claiming conditions of confinement constitute cruel and unusual punishment are alleging their rights under this Amendment are being violated.
- a. Eighth
 - b. Fourteenth
 - c. Tenth
 - d. Sixth

ANS: A REF: 43 OBJ:

38. The level of proof for an officer to conduct a brief, limited, investigative detention (“stop

and frisk”) is:

- a. probable cause
- b. mere suspicion
- c. clear and convincing evidence
- d. reasonable suspicion

ANS: D REF: 34 OBJ:

39. After confessing to racketeering, Nicky Cheeks’ (through his high-priced mob attorney) is now saying that his confession was coerced and that his waiver of *Miranda* rights was not valid, therefore his confession should not be admissible in court. By what standard of proof is the prosecution now required to prove the validity of Nicky’s waiver of rights?

- a. No standard, it is the responsibility of the defense to prove the waiver was not valid.
- b. Probable cause
- c. Preponderance of the evidence
- d. Proof beyond a reasonable doubt

ANS: C REF: 35 OBJ:

40. Under the adversary system, it is the responsibility of the defense attorney to:

- a. prove the defendant not guilty by a preponderance of the evidence.
- b. argue for the client’s innocence and assert legal protections.
- c. dispute all evidence presented by the prosecution.
- d. present a defense that counters all claims made by the prosecution.

ANS: B REF: 33 OBJ: 3

41. Joe Smith suffers from paranoid schizophrenia. He has been under a doctor’s care for ten years, but often stops taking his medication because he thinks he’s cured. While off his medication, Joe steals a car to “escape from a CIA hit man,” accidentally running over and seriously injuring a pedestrian in the process. Joe is arrested and charged with several felonies. His public defender believes he is not guilty by reason of insanity. Which of the following is true regarding the use of the insanity defense in this case?

- a. In addition to the burden of proving the elements of the offense, the prosecution bears the additional burden of proving the defendant is not insane.
- b. With increasing public awareness regarding mental illnesses, the insanity defense has become more commonly presented and is often successful.
- c. The defense bears the burden of proving the defendant’s insanity, often an expensive proposition.
- d. If acquitted, Joe will likely spend less time in a mental facility than in jail or prison.

ANS: C REF: 48 OBJ:

CRITICAL THINKING SCENARIOS

CASE 2.1

Roberta picks her toddler up at the daycare after she gets off work. The child is asleep in her car seat and Roberta decides to stop off at the local pool hall for a beer and to talk to some friends for a little while. She leaves the child in the car while she goes inside. She winds up staying for a second beer and a couple of line dances. The temperature in the car reaches 120 degrees and the child dies of hyperthermia. Roberta, though not very bright, would never intentionally harm her child.

42. Which of the following elements is *apparently* lacking in this scenario?

- a. actus reus
- b. omission
- c. mens rea
- d. criminal result

ANS: C REF: 45-46 OBJ: 6

43. Which of the followings statements regarding Roberta's criminal liability is true?

- a. Roberta is not guilty because this tragedy was an accident.
- b. Roberta is not guilty because although she was negligent, she had no criminal intent to harm her child.
- c. Roberta is guilty because she intentionally left her child in the car and the same intent applies to any harm that results.
- d. Roberta is guilty because she had a legal duty to keep her child safe—her negligent omission resulted in the child's death.

ANS: D REF: 45-46 OBJ: 6

CASE 2.2

Uniformed officers are driving a marked car into an area known for heavy drug trafficking, intending to investigate drug activity and anticipating encountering drug customers and lookouts. One officer sees the suspect standing next to a building and holding an opaque bag. The suspect looks in the direction of the officers and flees. The officers turn their car, watch the suspect run through an alley, and eventually corner him on the street. One officer leaves the car, stops the defendant, and conducts a frisk of the defendant, discovering a concealed handgun.

44. Which of the following statements is true regarding the legality of the “stop and frisk”?
- The stop was illegal. The officers did not have specific, articulable facts to justify the stop.
 - The stop was legal. A brief investigative stop can be justified by the circumstances.
 - The stop was legal. The gun provided probable cause to justify the stop, a standard of proof higher than reasonable suspicion.
 - The stop was illegal. The officers didn’t find any drugs on the suspect.

ANS: B REF: 34-35 OBJ:

45. Which of the following facts cannot be used to provide justification for the stop?
- It was an area known for heavy drug trafficking.
 - The suspect was standing next to a building holding an opaque bag.
 - The suspect’s unprovoked flight upon seeing the officers.
 - Discovery of the concealed handgun.

ANS: D REF: 34-35 OBJ:

TRUE/FALSE

1. The use of precedent promotes fairness and consistency.

ANS: T REF: 30-31 OBJ: 2

2. “Beyond a reasonable doubt” means over 95% certainty of guilt.

ANS: F REF: 34-35 OBJ:

3. Legislatures did not become a principal source of law in the U.S. until the 20th century.

ANS: T REF: 32 OBJ: 2

4. Tort law includes any wrong, hurt, or damage done to a person’s rights, body, reputation, or property.

ANS: T REF: 40 OBJ: 5

5. Due process of law is not actually mentioned in the U.S. Constitution.

ANS: F REF: 37-38 OBJ: 4

6. Civil suits may only be filed by individual citizens.

ANS: F REF: 39-40 OBJ: 5

7. Selective incorporation refers to the application of certain provisions of the Bill of Rights to the states through the Fourteenth Amendment.

ANS: T REF: 38-39 OBJ: 4

8. Democratic governments derive their powers from the law.

ANS: F REF: 37 OBJ: 5

9. If a person is found not guilty in a criminal case, they may not be sued in civil court.

ANS: F REF: 34-35 OBJ: 5

10. Necessity is not a defense recognized by law.

ANS: F REF: 48 OBJ: 7

11. All crimes require the same level of intent.

ANS: F REF: 45-46 OBJ: 6

12. To be criminal, an act must be voluntary.

ANS: T REF: 45 OBJ: 6

13. Defendants in a criminal case are never required to bear the burden of persuasion.

ANS: F REF: 48 OBJ: 3

14. The standard of proof for the government prosecutor under the adversary system is beyond a reasonable doubt.

ANS: T REF: 34-35 OBJ: 3

15. An example of a procedural safeguard in the trial process is contained in the Sixth Amendment's right to confront witnesses.

ANS: T REF: 36-39 OBJ: 3

16. A prison guard may not be sued by a prison inmate.

ANS: F REF: 43 OBJ: 5

17. A failure to act when there is a legal duty to act can also qualify as "actus reus."

ANS: T REF: 45 OBJ: 6

18. Punitive damages in a tort case represent the actual losses suffered by the plaintiff and are frequently awarded by juries.

ANS: F REF: 40 OBJ: 5

19. Law is enacted by public officials in a legitimate manner.

ANS: T REF: 29 OBJ: 1

20. The Constitutional right to counsel applies at both criminal and civil proceedings.

ANS: F REF: 38-39 OBJ: 4

21. The legal defense of insanity has its roots in 20th century jurisprudence.

ANS: F REF: 48 OBJ: 7

22. Administrative regulations are the newest, fastest growing, and least understood source of law.

ANS: T REF: 32 OBJ: 1

23. Due process requires that no law or government procedure should be arbitrary or capricious.

ANS: T REF: 38-39 OBJ: 4

24. The doctrine of stare decisis ("let the decision stand") precludes judges from overturning previous decisions.

ANS: F REF: 30 OBJ: 1

25. The right to cross-examination is guaranteed by the Sixth Amendment.

ANS: T REF: 33-34 OBJ: 3

COMPLETION

1. Common law developed into a system of law made primarily by _____.

ANS: judges

REF: 30 OBJ: 2

2. A ruling in a previous case that serves as a guide in deciding subsequent cases with similar circumstances is known as a _____.

ANS: precedent

REF: 30 OBJ: 2

3. The _____ is the supreme and fundamental law of the land.

ANS: U.S. Constitution

REF: 32 OBJ: 1

4. The _____ is the name for the first ten Amendments of the U. S. Constitution.

ANS: Bill of Rights

REF: 38-39 OBJ: 1

5. The protection of Fifth, Sixth, and Fourteenth Amendment rights during a legal proceeding is commonly referred to as _____.

ANS: due process

REF: 38-39 OBJ: 4

6. _____ are conclusions or deductions that can be made based on the facts that have been established by the evidence.

ANS: Inferences

REF: 34 OBJ: 2

7. _____ is independently verifiable factual information that supports the conclusion that there is a “fair probability” that a crime occurred or that a particular person was involved in a crime.

ANS: Probable cause

REF: 34-35 OBJ:

8. One of the most fundamental protections recognized in the American criminal justice process is the presumption of _____.

ANS: innocence

REF: 34-35 OBJ: 1

9. The doctrine of applying the Bill of Rights to the states through the Fourteenth Amendment is known as _____.

ANS: selective incorporation

REF: 38-39 OBJ: 4

10. The _____ of a crime provide the technical definition of a crime.

ANS: elements

REF: 46 OBJ: 6

11. A key characteristic of the common law is the use of _____, often referred to as *stare decisis*.

ANS: precedent

REF: 30 OBJ: 2

12. The conditions surrounding a criminal act are known as _____.

ANS: attendant circumstances

REF: 46 OBJ: 6

13. Courts are required to utilize a set of rules during the processing of both civil and criminal cases, referred to as _____ law.

ANS: procedural

REF: 33 OBJ: 8

14. _____ are the best known aspects of procedural law.

ANS: Trials

REF: 33 OBJ: 3

15. _____ law involves a type of lawsuit filed by a person when they are injured by another person.

ANS: Tort

REF: 40 OBJ: 5

16. _____ are agreements between two or more persons involving a promise supported by mutual obligation.

ANS : Contracts

REF: 40 OBJ:

17. Guilty intent or guilty mind is also known as _____.

ANS: *mens rea*

REF: 45-46 OBJ: 6

18. Brief, limited investigative detentions (“stop and frisk”) are also known as _____ stops as a result of the landmark Supreme Court decision authorizing them.

ANS: Terry

REF: 34 OBJ: 4

19. Civil asset forfeiture is termed a(n) _____ proceeding because the action is against the thing, not the person who owns the thing.

ANS: *in rem*

REF: 42 OBJ: 5

20. _____ is the most obvious way criminal law affects the operations of the criminal courts.

ANS: Sentencing

REF: 50-51 OBJ: 8

ESSAY

1. Contrast civil and criminal law proceedings.

ANS:

A crime is public wrong, codified in law, prosecuted by the state, must be proven beyond a reasonable doubt, and consequences can range from fines or imprisonment to the death penalty. A tort is a civil wrong against an individual and it is up to the individual to bring legal action. Torts only require a showing of a preponderance of the evidence and the consequences are not considered to be as severe, usually limited to injunctions or financial awards to compensate the victim. An act can be both a tort and a crime, and failure to prove guilt in a criminal case does not preclude a victory in civil court, an example being the O.J. Simpson case.

REF: 39-46 OBJ: 5, 6

2. Which amendments from the Bill of Rights are pertinent to criminal procedure? Describe what rights they affect or provide for defendants.

ANS:

The Fourth Amendment provides protection against unreasonable searches and seizures and outlines warrant requirements. The Fifth Amendment provides the right against self-incrimination and against double jeopardy. The Sixth Amendment provides the right to counsel, a speedy and public trial by jury, the right to confront and cross-examine witnesses, and the right to compel witnesses to appear and testify. The Eighth Amendment prohibits cruel and unusual punishments and excessive bail and fines. These rights are the basis for the protection of defendants' due process rights in criminal procedure. All of these Amendments in the Bill of Rights (the first ten Amendments to the Constitution) have been incorporated to apply to state criminal proceedings through the Fourteenth Amendment.

REF: 38 OBJ: 4

3. A man whose gas tank exploded without any warning and severely burned him filed a complaint against the car manufacturer. Explain what the civil remedies are in the examples above, including why civil remedies may be used to combat criminal acts.

ANS:

The injured man may file a complaint for both compensatory and punitive damages against the car company. Civil cases go after a defendant's money and the reduced standard of proof is easier to meet. Civil asset forfeiture is a potent remedy for obtaining the goods used or obtained as a result of the illegal action.

REF: 40-41 OBJ: 5

4. Discuss why legislatures have become the principal source of law beginning in the early 20th century to the present.

ANS:

In the early 20th century, the rapidly industrializing society was faced with new types of problems, such as how to protect the interests of workers and consumers. The cautious approach to problem solving of the common law courts would not work when dealing with questions of such a broad scope. The increasing complexity of society required legislators to enact broad rules of law with the precision and detail needed to address immediate problems.

The large number of governmental bureaucracies that exist today are authorized by federal, state, and local governments to issue rules and regulations consistent with principles specified in a statute or municipal ordinance. Administrative regulations are the newest, fastest-growing, and least understood source of law. The federal government alone issues thousands of pages of new rules and policies each year.

REF: 32 OBJ: 1

5. In order for a defendant to be convicted of a crime the prosecution must successfully offer proof beyond a reasonable doubt of each element of the crime charged. List the five elements of crime. Do you believe it is fair that a person might not be held responsible for a crime if there is an element missing? For example, a person who does the actus reus (sells drugs to a neighbor) but who lacks the mens rea (sold the drugs because of death threats from their roommate if they didn't complete the drug deal).

ANS:

Five elements of crime (corpus delicti = body of the crime) include: the guilty act (actus reus), guilty intent (mens rea), relationship between (fusion of) the guilty act and intent, attendant circumstances, and result. Students should wrestle with the question of various defenses like duress, insanity, and self defense acknowledging that the law protects people whose *actions* are unlawful, but whose *intentions* provide a justification or excuse.

REF: 44-46 OBJ: 6, 7

6. As civil law is set up to settle disputes between individuals, is it proper for the government to use civil law to deter violations of criminal law, like drug dealing (e.g., using public nuisance laws to condemn abandoned houses used by drug dealers)?

ANS: Students answers will vary, but should include a discussion of the different levels of proof necessary for civil as opposed to criminal actions and whether or not it is appropriate for the government to use non-law enforcement tools to address crime problems.

REF: 39-43 OBJ: 5

7. Criminal law affects the courts in many ways, one of which revolves around sentencing of offenders. Describe the connection between the public, legislature and courts relating to criminal sentences.

ANS: The most obvious way criminal law affects the operations of the criminal courts is in sentencing. The legislature establishes sentencing options from which judges must choose. Because of the public's concern about crime, pressures are strong to increase penalties. As a result, legislatures increase the harshness of sentencing, and the courts mitigate that harshness. Legislative action and courthouse reactions follow a predictable pattern:

- Step I. Laws calling for severe punishments are passed by legislatures on the assumption that fear of great pain will terrorize the citizenry into conformity.
- Step II. Criminal justice personnel soften these severe penalties for most offenders (a) in the interests of justice, (b) in the interests of bureaucracy, and (c) in the interests of gaining acquiescence.
- Step III. The few defendants who then insist on a trial and are found guilty, or who in other ways refuse to cooperate, are punished more severely than those who acquiesce.
- Step IV. Legislatures, noting that most criminals by acquiescing avoid "the punishment prescribed by law," (a) increase the prescribed punishments and (b) try to limit the range of discretionary decision making used to soften the harsh penalties.
- Step V. The more severe punishments introduced in the preceding step are again softened for most offenders, as in Step II, with the result that the defendants who do not acquiesce are punished even more severely than they were at Step III.

REF: 50-51 OBJ: LO 7

8. Describe the five major areas of civil law.

ANS: The five major areas of civil law are tort, contract, property, domestic relations, and inheritance/probate. *Tort law* involves the legal wrong done to another person. Tort injuries include any wrong, hurt, or damage done to a person's rights, body, reputation, or property. *Contracts* are agreements between two or more persons involving a promise supported by mutual obligations. *Property law* regulates three types of property: real, personal and intellectual. *Domestic relations law* involves divorce and related issues such as child custody, child support,

and alimony. Property received from a person who has died is governed by laws on *inheritance*. When someone dies without a will, the civil law of *intestacy* determines how possessions should be distributed by a court in *probate proceedings*.

REF: 39-41

OBJ: 5