

Chapter 1: Introduction: Law and the Judicial Function

Test Bank

Multiple Choice

1. Hammurabi's Code governed relationships in society related to what?

- A. sexual behavior, property rights, theft, and acts of violence
- B. sexual behavior
- C. property rights
- D. acts of violence

Ans: A

REF: Cognitive Domain: Comprehension

Answer Location: The Code of Hammurabi

Difficulty Level: Medium

2. What perspective views law as basically a neutral framework for dealing with conflicts between individuals and groups who share the same set of fundamental values?

- A. the precedent perspective
- B. the Packer perspective
- C. the conflict perspective
- D. the consensus perspective

Ans: D

REF: Cognitive Domain: Comprehension

Answer Location: Two Opposing Perspectives: Consensus and Conflict

Difficulty Level: Medium

3. What perspective considers society to be composed of individuals and groups with different interests and characterized by conflict and dissention?

- A. the precedent perspective
- B. the Packer perspective
- C. the conflict perspective
- D. the consensus perspective

Ans: C

REF: Cognitive Domain: Comprehension

Answer Location: Two Opposing Perspectives: Consensus and Conflict

Difficulty Level: Medium

4. According to the conflict perspective, laws work primarily for the benefit of _____.

- A. the rich
- B. the middle class
- C. the poor
- D. all citizens

Ans: A

REF: Cognitive Domain: Knowledge

Answer Location: Two Opposing Perspectives: Consensus and Conflict

Difficulty Level: Easy

5. Conflict perspective on law derives much from which philosopher?

- A. Thomas Aquinas
- B. Socrates
- C. Karl Marx
- D. Niccolò Machiavelli

Ans: C

REF: Cognitive Domain: Knowledge

Answer Location: The Conflict Perspective

Difficulty Level: Easy

6. Which of the following is not one of Reichel's three irreducible elements of law?

- A. supremacy of fundamental values
- B. universal application of the fundamental values
- C. holding government to the fundamental values
- D. the writing down of fundamental values

Ans: B

REF: Cognitive Domain: Knowledge

Answer Location: The Rule of Law

Difficulty Level: Easy

7. Which of the following is a set of instructions for how state agents must act within the criminal justice system?

- A. civil law
- B. criminal law
- C. due process
- D. the Bill of Rights

Ans: D

REF: Cognitive Domain: Knowledge

Answer Location: The Rule of Law

Difficulty Level: Easy

8. Packer's crime control model focuses on which of the following?

- A. legal guilt
- B. factual guilt
- C. societal guilt
- D. individual guilt

Ans: B

REF: Cognitive Domain: Knowledge

Answer Location: Two Models of Criminal Justice

Difficulty Level: Easy

9. Packer's due process model focuses on which of the following?

- A. legal guilt
- B. factual guilt
- C. societal guilt
- D. individual guilt

Ans: A

REF: Cognitive Domain: Knowledge

Answer Location: Two Models of Criminal Justice

Difficulty Level: Easy

10. Which of the following is not an important aspect of the crime control model?

- A. rituals
- B. efficiency
- C. finality
- D. speed

Ans: A

REF: Cognitive Domain: Knowledge

Answer Location: Two Models of Criminal Justice

Difficulty Level: Easy

11. Which metaphor best describes the due process model of the criminal justice process?

- A. horse race
- B. obstacle course
- C. assembly line
- D. funeral procession

Ans: B

REF: Cognitive Domain: Knowledge

Answer Location: Two Models of Criminal Justice

Difficulty Level: Easy

12. According to the due process model, fact-finding procedures should be all but which of the following?

- A. efficient
- B. formal
- C. adversarial
- D. adjudicative

Ans: A

REF: Cognitive Domain: Comprehension

Answer Location: Two Models of Criminal Justice

Difficulty Level: Medium

13. What case gave the Supreme Court the power to examine a law and determine whether it is constitutional?

- A. *Marbury v. Madison*
- B. *Brown v. Board of Education*
- C. *Plessy v. Ferguson*

D. *United States v. Booker*

Ans: A

REF: Cognitive Domain: Knowledge

Answer Location: Judicial Review

Difficulty Level: Easy

14. There are two important and unique roles the courts play in the criminal justice system. The first is adjudication of criminal offenses. What is the second?

- A. arrest
- B. oversight
- C. charging
- D. appealing

Ans: B

REF: Cognitive Domain: Knowledge

Answer Location: The Role of Courts in the Criminal Justice System

Difficulty Level: Easy

15. Equity principles are used heavily in what types of law?

- A. criminal and civil
- B. common and criminal
- C. tort and property
- D. family and contract

Ans: D

REF: Cognitive Domain: Knowledge

Answer Location: What Is the Relationship of Law to Justice?

Difficulty Level: Easy

16. Which of Packer's models favors the plea-bargaining process?

- A. crime control
- B. due process
- C. both crime control and due process
- D. neither crime control nor due process

Ans: A

REF: Cognitive Domain: Analysis

Answer Location: Two Models of Criminal Justice

Difficulty Level: Medium

17. What term means "let the decision stand?"

- A. ratio decidendi
- B. obiter dicta
- C. stare decisis
- D. ipso facto

Ans: C

REF: Cognitive Domain: Knowledge

Answer Location: Stare Decisis

Difficulty Level: Easy

18. Which of the following best describes how judges “make law?”

- A. writing legislation
- B. interpreting statutes
- C. issuing executive orders
- D. sentencing offenders

Ans: B

REF: Cognitive Domain: Knowledge

Answer Location: Precedent

Difficulty Level: Easy

19. The common law was created by _____.

- A. judges
- B. parliament
- C. the people
- D. the U.S. Congress

Ans: A

REF: Cognitive Domain: Knowledge

Answer Location: Development of the Common-Law System

Difficulty Level: Easy

20. Which of the following is the most common court function?

- A. adjudication
- B. oversight
- C. precedent
- D. stare decisis

Ans: A

REF: Cognitive Domain: Knowledge

Answer Location: Adjudication

Difficulty Level: Easy

21. The view of human nature that sees human beings as basically exploitive and duplicitous creatures underlies what perspective of the law?

- A. the due process perspective
- B. the crime control perspective
- C. the consensus perspective
- D. the conflict perspective

Ans: D

REF: Cognitive Domain: Analysis

Answer Location: The Conflict Perspective

Difficulty Level: Medium

22. Which is the only court that sets precedent for all U.S. federal courts?

- A. the U.S. Supreme Court
- B. the D.C. Court of Appeals
- C. the International Criminal Court

D. the U.N. Court of Appeals

Ans: A

REF: Cognitive Domain: Application

Answer Location: Precedent

Difficulty Level: Hard

23. What is the principle establishing the value and authority of precedent?

A. ex post facto

B. corpus juris

C. habeas corpus

D. stare decisis

Ans: D

REF: Cognitive Domain: Knowledge

Answer Location: Stare Decisis

Difficulty Level: Easy

24. Which of the following is not a form of judicial oversight?

A. ensuring proper actions of police

B. ensuring proper actions of lower courts

C. ensuring proper actions of the legislature

D. ensuring proper actions of the population at large

Ans: D

REF: Cognitive Domain: Application

Answer Location: Oversight

Difficulty Level: Hard

25. Who is often referred to as the “father of common law?”

A. Henry II

B. Jeremy Bentham

C. Karl Marx

D. Hammurabi

Ans: A

REF: Cognitive Domain: Knowledge

Answer Location: Development of the Common-Law System

Difficulty Level: Easy

True/False

1. The Latin term *lex talionis* was clearly stated in the Code of Hammurabi and means “eye for an eye, tooth for a tooth.”

Ans: T

REF: Cognitive Domain: Knowledge

Answer Location: The Code of Hammurabi

Difficulty Level: Easy

2. Courts are static bodies where decisions do not change.

Ans: F

REF: Cognitive Domain: Knowledge

Answer Location: Why Study Courts?

Difficulty Level: Easy

3. The U.S. court system has a simple set of rules and procedures.

Ans: F

REF: Cognitive Domain: Knowledge

Answer Location: Why Study Courts?

Difficulty Level: Easy

4. According to the rule of law, the fundamental values of a nation must be committed to writing.

Ans: T

REF: Cognitive Domain: Comprehension

Answer Location: The Rule of Law

Difficulty Level: Medium

5. Judicial review means that a court has the power to determine the constitutionality of a law.

Ans: T

REF: Cognitive Domain: Knowledge

Answer Location: Judicial Review

Difficulty Level: Easy

6. Due process applies to anyone threatened by the state with loss of life, liberty, or property.

Ans: T

REF: Cognitive Domain: Comprehension

Answer Location: The Rule of Law

Difficulty Level: Medium

7. The crime control model is most concerned with ensuring the rights of defendants.

Ans: F

REF: Cognitive Domain: Comprehension

Answer Location: Two Models of Criminal Justice

Difficulty Level: Medium

8. The assembly line is a metaphor for the due process model.

Ans: F

REF: Cognitive Domain: Analysis

Answer Location: Two Models of Criminal Justice

Difficulty Level: Medium

9. The conflict model sees society as an integrated network of institutions held together by a common set of values.

Ans: F

REF: Cognitive Domain: Analysis

Answer Location: Two Opposing Perspectives: Consensus and Conflict

Difficulty Level: Medium

10. The due process and crime control models have zero tolerance for mistakes.

Ans: F

REF: Cognitive Domain: Analysis

Answer Location: Two Models of Criminal Justice

Difficulty Level: Medium

11. Factual guilt and legal guilt are not the same.

Ans: T

REF: Cognitive Domain: Analysis

Answer Location: Two Models of Criminal Justice

Difficulty Level: Medium

12. Turning to the courts to settle disputes is a relatively recent trend in America.

Ans: F

REF: Cognitive Domain: Knowledge

Answer Location: Judicial Functions

Difficulty Level: Easy

13. Court decisions that establish precedent are known as ratio decidendi.

Ans: T

REF: Cognitive Domain: Knowledge

Answer Location: Stare Decisis

Difficulty Level: Easy

14. The idea of a false consciousness was developed by Karl Marx and means that the working classes have accepted an ideological worldview that is contrary to their best interests.

Ans: T

REF: Cognitive Domain: Application

Answer Location: The Conflict Perspective

Difficulty Level: Hard

15. Marx and Engels reference the idea of false consciousness to discuss exploitation.

Ans: T

REF: Cognitive Domain: Knowledge

Answer Location: The Conflict Perspective

Difficulty Level: Easy

Short Answer

1. As discussed in your textbook, what are the three primary judicial functions?

Ans: First, courts settle disputes by providing a forum for obtaining justice and resolving disputes through the application of legal rules and principles. It is in court that injured parties may seek compensation and the state may seek to punish wrongdoers. Second, courts make public policy decisions. Policy-making involves the allocation of limited resources (such as money and property) to competing interests. America has a long tradition of settling difficult policy questions in the courtroom rather than in the legislature. Third, courts serve to clarify the law through interpretation of statutes and the application of general principles to specific fact patterns.

REF: Cognitive Domain: Analysis

Answer Location: Why Study Courts?

Difficulty Level: Medium

2. What are the two ways that judges can address a situation where they decide that precedent is no longer valid and should not be followed?

Ans: Occasionally, judges will decide that the precedent is no longer valid and should not be followed. They can handle this in two ways. They can simply ignore the earlier case and decide the case at hand as if there was no binding precedent, or they can overrule the earlier case. Often, the process of overruling a precedent is gradual. The court finds more and more circumstances that distinguish new cases from the earlier case, until it becomes obvious that the precedent has outlived its usefulness. Former Supreme Court Justice William O. Douglas (1974) argued that this gradual erosion of precedent “breeds uncertainty” since “years of litigation may be needed to rid the law of mischievous decisions which should have fallen with the first of the series to be overruled.”

REF: Cognitive Domain: Knowledge

Answer Location: Precedent

Difficulty Level: Easy

3. Discuss the role of ratio decidendi and obiter dicta in establishing legal principle.

Ans: Precedent establishes a legal principle, but not every pronouncement that a court makes in a ruling establishes precedent. Pronouncements that do are known as ratio decidendi (“the reason for the decision”), which is the legal principle or rationale used by the courts to arrive at their decisions. Additional supporting statements are called obiter dicta (“things said by the way”) or simply dicta. These statements are other legal or nonlegal arguments used to support the ratio decidendi and do not constitute precedent.

REF: Cognitive Domain: Knowledge

Answer Location: Stare Decisis

Difficulty Level: Easy

4. What are the two primary roles played by the courts in the criminal justice system? Which of the two roles do you believe is the most important?

Ans: The primary role played by the courts is to adjudicate criminal offenses--to process defendants who have been arrested by the police and formally charged with criminal offenses. Prosecutors decide who should be charged and then, provided a plea agreement does not circumvent trial, the defendant is brought to court. Courts, particularly the appellate courts, provide oversight, not just over the lower courts but

over the criminal justice system in general. First, when cases are appealed to a higher level, the appellate court decides whether proper procedure was followed at the lower level. The appellate court may be asked to decide whether the procedures used to select the jury were appropriate, whether the defendant was denied effective assistance of counsel, or whether the trial court judge should have moved the case to another jurisdiction because of prejudicial pretrial publicity. The appellate decision may come months or even years after the trial that led to the appeal, but the very ability of the appellate court to influence what can happen or should have happened at the lower level is the essence of oversight.

REF: Cognitive Domain: Analysis

Answer Location: Oversight

Difficulty Level: Medium

5. Explain and contrast the consensus and conflict perspective. Which perspective do you most agree with and why?

Ans: The consensus perspective asserts that social stability is achieved through cooperation, shared values, and the cohesion and solidarity that people feel by being part of a shared culture? Consensus theorists emphasize how society is structured to maintain its stability and view it as an integrated network of institutions (the family, church, school, economy, government) that function to maintain social order and the system as a whole. Conflict theorists consider society to be composed of individuals and groups with sharply different interests and to be characterized by conflict and dissension. People and groups everywhere, they maintain, seek to maximize their interests.

REF: Cognitive Domain: Analysis

Answer Location: Two Opposing Perspectives: Consensus and Conflict

Difficulty Level: Medium

6. What are the three irreducible elements of the rule of law according to Reichel? Which do you believe is the most important and why?

Ans: The rule of law requires a nation to recognize the supremacy of certain fundamental values and principles, these values and principles must be committed to writing, and a system of procedures that holds the government to these principles and values must be in place. The first element is relatively unproblematic; it is difficult to imagine a modern organized society not recognizing a set of fundamental values that they hold supreme. These ultimate principles may be secular or religious. The second element is also relatively unproblematic. Any culture possessing a written language would be expected to put such important guiding principles into writing so that all may refer to them. Documents containing these principles may be the culture's holy books or a nation's constitution. The third element is much more problematic because it determines whether a country honors its fundamental values in practice as well as in theory.

REF: Cognitive Domain: Knowledge

Answer Location: What Is the Relationship of Law to Justice?

Difficulty Level: Easy

7. What is, perhaps, the most significant difference between the courts and other branches of government?

Ans: Courts are different from the other branches of government in many ways, but perhaps the most significant difference is that courts are reactive--courts do not initiate cases but rather serve to settle controversies brought to them by others--plaintiffs and defendants, in legal parlance. This frequently involves the interpretation of statutes written by the legislature.

REF: Cognitive Domain: Knowledge

Answer Location: Judicial Functions

Difficulty Level: Easy

8. How do the due process model and crime control model differ in terms of their goals? Which goal do you most agree with and why?

Ans: The goal of the crime control model is controlling crime, while the goal of the due process model is protecting rights of the defendant. As this suggests, the goal is to move cases through the justice process as swiftly as possible. Suspects who are "probably innocent" are screened out early in the process by police and prosecutors; those who are "probably guilty" are moved quickly and perfunctorily through the remaining stages in the process and are convicted, usually by a plea of guilty, as expeditiously as possible. Thus, the system achieves the goal of controlling crime by separating the innocent from the guilty early in the process, by extracting early guilty pleas from those who are not screened out by police and prosecutors, and by avoiding trials. The crime control model is willing to sacrifice some reliability in pursuit of efficiency. It tolerates mistakes up to the level at which they interfere with the goal of preventing crime; if too many guilty people go free or if there is a general view that the system is not reliable, crime might increase rather than decrease.

REF: Cognitive Domain: Analysis

Answer Location: Two Models of Criminal Justice

Difficulty Level: Medium

9. Briefly explain Marx's concept of false consciousness. Do you agree? Why or why not?

Ans: The working class has accepted an ideological worldview that is contrary to their best interests. Workers have been duped into accepting the legitimacy of the law by the ruling classes and are not aware that the law does not serve them.

REF: Cognitive Domain: Knowledge

Answer Location: The Conflict Perspective

Difficulty Level: Easy

10. Briefly explain the two important and unique roles the courts play in the criminal justice system.

Ans: One important and unique role the courts play in the criminal justice system is by adjudication. This is the processing of defendants who have been arrested by the police and formally charged with criminal offenses. This is most prevalent in limited and general jurisdiction courts at the state level and in U.S. district courts at the federal level. The second role of the court is oversight. This is done by appellate courts having

the ability to oversee the lower courts and the criminal justice system in general. The very ability of the appellate courts to influence what can happen or should have happened at the lower level is the essence of oversight. Appellate courts also provide oversight over the actions of other criminal justice officials (e.g., *Tennessee v. Garner*--the police).

REF: Cognitive Domain: Comprehension

Answer Location: The Role of Courts in the Criminal Justice System

Difficulty Level: Medium

Essay

1. Explain the concept of judicial review. Why is judicial review important?

Ans: Judicial review means the court has the power to examine a law and determine if it is constitutional. In order to determine if a law is constitutional, courts must examine the law and compare it to the Constitution. In doing so, the court must interpret both the language of the statute and the Constitution. Judicial review is important because it assigns the duty of interpreting the Constitution and applying it to particular fact situations to the judiciary. The courts must then decide if a law is in violation of the Constitution and, if so, to declare it null and void. Judicial review was established in the case of *Marbury v. Madison* (1863).

REF: Cognitive Domain: Analysis

Answer Location: Judicial Review

Difficulty Level: Medium

2. What are precedent and stare decisis? How do they work together? Which do you think is the most important?

Ans: Every final decision by a court creates precedent. Precedent governs the court issuing the decision and any lower or inferior courts in that jurisdiction. Stare decisis means "let the decision stand." Under the principle of stare decisis, if there is a prior decision on a legal issue that applies to a current case, the court will be guided by that prior decision and apply the same legal principles in the current case. In situations in which the law is ambiguous and the same issue has come up before, it makes sense to look to past decisions--that is, to precedent--to see how the matter has been resolved previously. Stare decisis is the principle behind establishing the value of prior decisions or precedent.

REF: Cognitive Domain: Analysis

Answer Location: Development of the Common-Law System

Difficulty Level: Medium

3. Compare and contrast the due process model and crime control model of criminal justice. Which one do you find most beneficial for the criminal justice system? Which do you believe we currently use in the criminal justice system.

Ans: The due process and crime control models are both ideals of the criminal justice process created by Packer. The crime control model views criminal justice system as an assembly line, while the due process model views it as an obstacle course. While the goal of the criminal justice system for the crime control model is controlling crime,

protecting rights of defendants is the goal of the due process model. The crime control model emphasizes values such as efficiency, speed, and finality, while the due process model emphasizes reliability. The crime control model relies on an informal process of adjudication by screening cases through police and prosecutors. The due process model has a more formal adjudication process and focuses on the issues surrounding the adversarial procedures of a case. Finally, the crime control model is more concerned with factual guilt, while the due process model is more concerned with legal guilt.

REF: Cognitive Domain: Analysis

Answer Location: Two Models of Criminal Justice

Difficulty Level: Medium

4. Give your own brief definition of a “law” and describe some of the differences between civil law and common law.

Ans: Law is a written body of rules of conduct applicable to all members of a defined community, society, or culture that emanate from a governing authority and are enforced by its agents by the imposition of penalties for their violation. Civil law is written rather than unwritten: As opposed to the common law’s slow accumulation of case law derived from decisions based on local customs, the Napoleonic Code and its successors are all codes of conduct (statutes) written from above and imposed on citizens and subjects below.

In civil law, precedent is not officially recognized. The codes laid down in civil law are complete the day they are enacted and are not subject to judicial review. As such, there is no need to refer to past cases for guidance. In practice, however, no code is so complete as to provide unambiguous guidance in all matters coming before the courts, and civil law judges often refer to case law and thus to precedent. The main difference between the common and civil law approaches is that in civil law, precedent is not binding.

Civil law is also inquisitorial rather than adversarial: This is the primary distinguishing feature of civil law vis-à-vis common law. The inquisitorial system is a system of extensive investigation and interrogations carried out to ensure that an innocent person is not subjected to trial. The term *inquisition* should be thought of as denoting “inquiry” as the term *adversarial* denotes “contest.” The inquisitorial focus is on truth and not so much on procedure, so many of the procedural protections afforded suspects in common-law countries either do not exist or exist in modified form.

Civil law has traditionally made little use of juries: There is some use of juries in civil law countries in very serious criminal cases, but they don’t have the same role that they have in common-law countries. Juries consist of three professional judges and nine laypersons. In a jury trial, all jurors and judges are allowed to question witnesses and the accused. Jury deliberations are doubtless dominated by the professional judges on whom the laypersons must rely for explanations of law, but guilt or innocence is determined by a secret ballot in which each of the 12 votes are of equal importance. A verdict requires agreement of at least 8 of the 12 jurors rather than unanimity.

Judicial review is used sparingly in civil law: The French equivalent of the American Supreme Court in terms of dealing with constitutional issues is the Conseil Constitutionnel (Constitutional Council). This entity is unique among national supreme

courts in that it lies outside the judicial system (it is a council, not a court hearing cases forwarded to it from lower courts). The council's main function is to rule on the constitutionality of proposed legislation, not legislation already in effect, when requested to do so by leaders of the various political parties. Some civil law countries tend to view the practice of judicial review of legislation as inherently antidemocratic and a violation of the separation of powers principle. The reason that the American model of judicial review is rejected in France is that the French believe that important decisions affecting large numbers of people should be made by legislators elected by and accountable to the voters, not by appointees with lifetime tenure.

REF: Cognitive Domain: Analysis

Answer Location: Comparative Courts

Difficulty Level: Medium

5. Compare and contrast consensus and conflict theories of law. Which do you believe is the most important and why?

Ans: Conflict and consensus theories are both perspectives on society and how laws interact with society. More specifically, the consensus theory emphasizes how society is structured to maintain stability and view it as an integrated network of institutions that function to maintain social order and the system as a whole. Stability is achieved through cooperation and shared values. Conflicts are temporary. Law is a just and necessary mechanism for controlling behavior. Law is seen as reflecting the community's deeply held values and is a legitimate expression of morality and custom. If coercion is needed, it is because the individual, not the law, is flawed. The law is followed out of respect and is willingly supported by all good people. The belief is that society is basically good. The conflict theory differs from the consensus in that it considers society to be composed of individuals and groups with sharply different interests and is characterized by conflict and dissension. People and groups seek to maximize their interests, and since resources are limited, conflict is inevitable and continuous. Social institutions function to maintain the privilege of the few and to keep the many subservient to them. The theory sees human nature as exploitive and asserts that the law functions to preserve the power and privilege of the most exploitive individuals. The law exists to settle conflicts and restore social peace, but conflicts are always settled in favor of the ruling class over the ruled. The working class accept a false consciousness (ideological worldview that is contrary to their best interests) that is generated by the ruling class.

REF: Cognitive Domain: Analysis

Answer Location: Two Opposing Perspectives: Consensus and Conflict

Difficulty Level: Medium