

Student name: _____

TRUE/FALSE - Write 'T' if the statement is true and 'F' if the statement is false.

The right of self-defense is an example of substantive law.

true

false

Rules as to how a trial is conducted are part of procedural law.

true

false

Substantive law establishes the rules under which the procedural rules of law are enforced.

true

false

Civil law defines breaches of duty to society at large.

true

false

The Commerce Clause of the United States Constitution permits Congress to regulate intrastate commerce.

true

false

Under the notion of federalism, the United States is composed of 51 legal systems.

true

false

When conflict exists between the federal legal system and a state legal system, the federal rules prevail, even if the federal government is not acting under one of the powers granted to it by the United States Constitution.

true

false

A statute is the product of the lawmaking of a legislature.

true

false

The United States Constitution declares that treaties made by the president with foreign governments and ratified by at least one-half of the Senate are "the supreme law of the land."

true

false

Generally, a court's first step in interpreting a statute or other source of law is to look at the plain meaning of the words.

true

false

Judges may look to general concepts of public policy when interpreting legal rules.

true

false

Due to the constitutional prohibition of *ex post facto* laws, a new criminal statute applies only to actions taken after it becomes effective.

true

false

Four schools of jurisprudence that are predominant today include legal utilitarianism, natural law, psychological jurisprudence, and legal idealism.

true

false

Legal positivists are likely to consider public policy and their own sense of morality when interpreting the law.

true

false

The objectives of preventive law are to arrange business plans and methods to increase profits by

1. (a) avoiding losses through fines and damage judgments and
2. (b) reaching business goals through enforceable contracts while avoiding government prohibitions.

true

false

MULTIPLE CHOICE - Choose the one alternative that best completes the statement or answers the question.

Which of the following is not a basic function of law?

keeping the peace

enforcing rules to maintain order

guaranteeing social mobility

promoting social justice

The freedom of speech granted by the United States Constitution is an example of _____ law.

civil

substantive

criminal

procedural

Which of the following is an example of procedural law?

The privilege of receiving food stamps

The rules as to how a court's judgment is to be enforced

The right of self-defense

The freedom of speech granted by the United States Constitution

Which of the following statements is true of criminal law?

It is concerned with private duties owed by one person to another.

It is completely procedural.

It defines breaches of duty to society at large.

It refers to the duty of corporations to exercise reasonable care with regard to other corporations.

If a person carelessly runs a car into yours, that person has committed the_____.

tort of negligence

tort of assault

crime of assault

crime of negligence

A person whose drunken driving causes the death of another may face _____.

criminal prosecution by the survivors of the victim

both a criminal prosecution by the state and a civil suit for damages by the survivors of the victim

a civil suit for damages by the state

either a criminal prosecution by the state or a civil suit for damages by the survivors of the victim, but not both

The _____ is the most widely adopted uniform law.

Uniform Criminal Code

Interstate Commerce Treaty

Uniform Commercial Code

Multistate Criminal Compact

Local legislation regulating zoning and noise levels are examples of _____.

ordinances

treaties

administrative rules

administrative decisions

The first federal regulatory agency was the _____.

Federal Trade Commission

Interstate Commerce Commission

Securities and Exchange Commission

Occupational Safety and Health Administration

Which of the following statements is true of independent agencies?

They are headed by the president.

They are a part of the executive branch of the government.

They are headed by a board or commission.

They are given authority only to enforce rules made by the Congress.

Common law arises when _____.

courts are called upon to resolve disputes for which there is no statute or other source of law establishing a rule

constitutional statutes are found to interfere with the freedom of expression

there are statutes and other sources of law establishing a particular rule and the courts decide to improvise this existing statutory law

the government wishes to encourage certain kinds of investments

Under the power of judicial review, _____.

a judge may render a legal rule unenforceable by declaring it in conflict with a constitution

lower courts may decide that higher court decisions are not valid

private persons are not allowed to create legally binding obligations as they do not have the power to contract

the court may override the acts of the Constitution

According to private law, private persons may _____.

create legally binding agreements through their power to contract

enter contracts, but the contracts will not be upheld in court

create their own rules when there is no prior statute

make their own rules only after studying persuasive precedents

A useful tool for understanding and persuading that combines basic analytical thinking with recognition of the special features of the underlying legal system is _____.

sociological jurisprudence

legal positivism

legal reasoning

analytical reasoning

Which of the following is a correct statement regarding public policy and legal interpretation?

Judges may look to general concepts of public policy when interpreting legal rules.

There is a precise definition of what constitutes public policy.

In determining what constitutes public policy, a judge may not consider what a majority of the population thinks is best.

In determining what constitutes public policy, judges may not consider their subjective (i.e., personal) views regarding what is best for society.

Since a person cannot adjust their conduct to a statute not yet passed, the constitutional prohibition of _____ is essential to justice.

caveat emptor

stare decisis

ex post factolaws

strict liabilitylaws

Stare decisis _____.

renders law rigid and unchanging.

lends predictability to decisional law by relying on prior decisions

means a new statute applies only to actions taken after it becomes effective

creates harsh results by refusing to recognize equitable exceptions

According to the doctrine of *stare decisis*, _____.

the constitutional prohibition of *ex post facto* laws applies to common or decisional law

a legislature cannot override *stare decisis* and change a common law rule by enacting a statute

the highest appeals court in a jurisdiction cannot overrule a precedent case

a court has considerable freedom in picking precedent cases

Which of the following is a correct statement regarding legal positivism?

Legal positivists are likely to consider public policy when interpreting the law.

Legal positivist judges confine their legal analysis to the plain meaning of the words.

Legal positivists are likely to consider their own sense of morality when interpreting the law.

Legal positivism provides a great sense of flexibility to the enforcement of legal rules.

Natural law thinkers believe that _____.

law and morality are not separate

there is no law superior to that promulgated by political institutions

all laws should have an environmental focus

natural law provides the level of predictability attained by legal positivism

Sociological jurisprudence maintains that _____.

legal decisions should be based on short-term social goals

courts must look beyond the plain meaning of a statute to consider the law's legislative purpose

courts should not consider their perceptions of the prevailing public policies in interpreting statutes

the law is the command of legitimate political institutions

Legal realism stresses that the law must be considered in light of its _____.

day-to-day application

inherent theoretical value

philosophical foundations

promotion of social justice

Stare decisis means to _____.

adhere to decided cases

enforce a standard of strict liability

examine the likely outcome of a particular judicial decision

be both firm and fair in judicial decision-making

In applying *stare decisis*, rulings of prior cases that have similar facts are known as _____.

conditions precedent

precedents

conditions subsequent

ex post factolaw

If a judicial precedent is established by a state court in Arizona _____.

a federal court in New Mexico must adhere to it

a state court in California must adhere to it

a state court in California may follow the precedent, but it is not bound to do so

the same court (or a higher court in Arizona) must revisit the issue within twenty years in order to acknowledge sociocultural change, and to incorporate such change in newly established precedent

Which of the following is true regarding judicial precedent?

The highest appeals court in a jurisdiction can overrule a precedent case, but this does not occur frequently.

The highest appeals court in a jurisdiction can overrule a precedent case, and this occurs frequently.

The highest appeals court in a jurisdiction cannot overrule a precedent case due to *stare decisis*.

The highest appeals court in a jurisdiction cannot overrule a precedent case due to the constitutional prohibition against *ex post facto* laws.

Which of the following is true regarding judicial precedent that a court with appropriate jurisdiction determines to be in error or "out-of-date?"

It may not be overruled without prior notice.

It may be overruled, but the new precedent cannot apply to the current case; in other words, the new precedent will only apply to future cases.

It may be overruled without prior notice, and the new rule may be applied to the current case.

Consistent with *stare decisis*, the court must adhere to the existing judicial precedent, although it can encourage the legislature to enact law (i.e., a statute) to override the existing precedent.

Which of the following is true regarding precedent cases?

To promote the notion that "justice is blind," a plaintiff's lawyer cannot choose as precedent those cases in which the decision favors the plaintiff's position.

A court has considerable freedom in selecting existing precedent cases.

Consistent with longstanding constitutional principles favoring due process for the defendant, a court must follow as precedent those cases in which the decision favors the defendant's position.

Due to stare decisis, courts have no freedom to select existing precedent cases.

In the business world, one of the goals of preventive law is to increase profits by _____.

imposing higher inheritance and income taxes on wealthy people

avoiding losses through fines and damage judgments

involving the client in the business planning process

creating unenforceable contracts

One objective of preventive law is to arrange business plans and methods to increase profits by _____.

honoring legal obligations while avoiding ethical obligations

reaching business goals through enforceable contracts while avoiding government prohibitions

strictly adhering to the socioeconomic view of the social responsibility of business

prioritizing the interests of corporate stockholders over the interests of other stakeholders

If the behavior of someone who commits a tort is outrageous, that person can be made to pay _____ damages.

compensatory

punitive

consequential

liquidated

Which of the following is true regarding the federal and state constitutions?

Every other form of law must be consistent with the United States Constitution or it will be struck down by the courts.

Compared to the U.S. Constitution, state constitutions are much more adaptable to changing conditions.

The U.S. Constitution is much more specific and detailed than the various state constitutions.

The U.S. Constitution has had only 21 additional amendments in the more than 200 years since the adoption of the Bill of Rights.

Which of the following is true regarding the judicial process of legal interpretation?

Most statutes are written in very specific and exacting language.

Where a statute has been interpreted by a government agency, the courts traditionally defer to that interpretation if it seems reasonable.

A court's power to interpret is largely inconsequential.

Courts are generally prohibited from broadening or narrowing the reach of a law.

Which of the following is true regarding *stare decisis*?

It lends uncertainty to decisional law by disregarding prior judicial decisions.

State court decisions are binding only within the same state.

The common law is precisely the same from state to state.

A court in New Mexico must follow a precedent established by a court in Arizona.

Which of the following is true regarding judicial precedent and the constitutional prohibition of *ex post facto* laws?

The constitutional prohibition of *ex post facto* laws applies to common law.

The constitutional prohibition of *ex post facto* laws applies to decisional law.

Stare decisis lends uncertainty to decisional law.

Precedent determined to be in error or out-of-date may be overruled without prior notice.

Which of the following is true regarding preventive law?

In earlier times, business managers generally employed lawyers only in non-emergency situations.

In earlier times, a business manager might hire a lawyer if a supplier's goods were defective and no settlement could be reached.

The use of lawyers by individuals for personal, non-business matters is called preventive law.

In the past quarter century, there has been a qualitative but not a quantitative change in the concern of business managers with law.

SHORT ANSWER. Write the word or phrase that best completes each statement or answers the question.

List the four basic functions of law.

Describe the difference between criminal and civil law. What are the penalties that accompany violations of each?

List the primary sources of law.

Describe the four steps in the process of legal interpretation.

Define the three steps involved in applying *stare decisis*.

Answer Key

Test name: Ch1_Law for Business_15e

TRUE

TRUE

FALSE

FALSE

FALSE

TRUE

FALSE

TRUE

FALSE

TRUE

TRUE

TRUE

FALSE

FALSE

TRUE

C

The basic functions of law are:

1. keeping the peace;
2. enforcing rules to maintain order;
3. facilitating planning; and
4. promoting social justice.

B

Substantive law sets out the rights and duties governing people as they act in society. Substantive law establishes rights and privileges. An example is the freedom of speech granted by the U.S. Constitution.

B

Procedural law establishes the rules under which the substantive rules of law are enforced. Rules as to what cases a court can decide, how a trial is conducted, and how a judgment by a court is to be enforced are all part of procedural law.

C

Criminal law defines breaches of duty to society at large. It is society, through government employees called prosecutors (such as district attorneys), that brings court action against violators.

A

If someone carelessly runs a car into yours, that person has committed the civil wrong (tort) of negligence.

B

Sometimes, the same behavior can violate both the civil law and the criminal law. For instance, a person whose drunken driving causes the death of another may face both a criminal prosecution by the state and a civil suit for damages by the survivors of the victim. If both suits are successful, the driver would pay back society for the harm done with a criminal fine and/or be incarcerated and compensate the survivors with the payment of money damages.

C

The Uniform Commercial Code (UCC), which regulates a variety of commercial transactions, is the most widely adopted uniform law. The legislatures of all 50 states have enacted the UCC in some form.

A

Governmental units within the states, such as cities and counties, also have the power to legislate. Their enactments are called ordinances. Local legislation regulating zoning and noise levels are examples of ordinances.

B

The first federal regulatory agency was the Interstate Commerce Commission (ICC), which was organized by a statute passed in 1887.

C

Independent agencies are agencies that are not really part of the executive branch of the government under the control of the president. Rather, they are headed by a board or commission.

A

Court-created law is called common law. It arises when courts are called upon to resolve disputes for which there is no statute or other source of law establishing a rule.

A

Courts make law through their authority to interpret the meaning of the other sources of law (constitutions, statutes, etc.). Under the power of judicial review, a judge may render a legal rule unenforceable by declaring it in conflict with a constitution.

A

Private persons may create legally binding obligations on one another through their power to contract. When people enter into contractual agreements, the courts generally enforce their terms.

C

Legal reasoning is a useful tool for understanding and persuading. It combines basic analytical thinking with recognition of the special features of the underlying legal system. Legal reasoning is a type of critical thinking that proves useful in both legal and nonlegal situations.

A

Judges may look to general concepts of public policy when interpreting legal rules. However, there is no firm and fast definition of what constitutes public policy.

C

The United States Constitution prohibits *ex post facto* laws. This means a new criminal statute applies only to actions taken after it becomes effective. Because one cannot adjust one's conduct to a statute not yet passed, this requirement is essential to justice.

B

Stare decisis lends predictability to decisional law by relying on prior decisions. This promotes a degree of consistency among judicial decisions.

D

Stare decisis does not render law rigid and unchanging. A court has considerable freedom in picking precedent cases. Seldom are all of the facts in a case exactly the same as in an earlier case. Therefore, the judge or lawyer can choose, within limits, which facts to emphasize and which to disregard in seeking precedent cases.

B

Legal positivists are unlikely to consider public policy and their own sense of morality when interpreting the law.

A

Natural law thinkers recognize a higher set of rules that override the legitimacy of laws promulgated by political institutions. They disagree with the idea that law and morality are separate. Thus, natural law judges consider their own sense of morality and may refuse to enforce statutes they believe are unjust.

B

Legal sociologists have a vision for where society is going or should be going and make decisions that promote this social agenda. When interpreting statutes they look beyond the plain meaning of the words and fully consider the legislative purpose as well as their perceptions of the prevailing public policies.

A

Legal realism focuses on law in action rather than on the theoretical rules themselves. It stresses that law must be considered in light of its day-to-day application. Legal realists believe that decisions are often more attributable to the biases and moods of decision makers than they are to the formal legal rules that are supposed to determine the outcome.

A

Stare decisis is the feature of decisional law in common-law systems that is most important in permitting orderly change. The Latin phrase *stare decisis* means "to adhere to decided cases."

B

The doctrine of *stare decisis* says that a court, in making a decision, should follow the rulings of prior cases that have similar facts. Such cases are referred to as precedents.

C

Stare decisis lends predictability to decisional law by relying on prior decisions. This promotes a degree of consistency among judicial decisions. However, there are some limits to this certainty. State court decisions are binding only within the same state. Hence, the common law differs from state to state. A court in California may follow a precedent established by a court in Arizona, although it is not bound to do so.

A

The highest appeals court in a jurisdiction can overrule a precedent case. This does not occur frequently; more commonly, a court will distinguish the case before it from the precedent by finding differences in facts between the current case and the precedent cases.

C

The constitutional prohibition of *ex post facto* laws does not apply to common or decisional law. Therefore, precedent determined to be in error or out-of-date may be overruled without prior notice, and the new rule may be applied to the current case.

B

A court has considerable freedom in picking precedent cases. Seldom are the facts in a case exactly the same as in an earlier case.

B

The objectives of preventive law are to arrange business plans and methods to increase profits by

1. avoiding losses through fines and damage judgments and
2. reaching business goals through enforceable contracts while avoiding government prohibitions.

B

The objectives of preventive law are to arrange business plans and methods to increase profits by

1. avoiding losses through fines and damage judgments and
2. reaching business goals through enforceable contracts while avoiding government prohibitions.

B

Although the civil law generally does not aim to punish, there is an exception. If the behavior of someone who commits a tort is outrageous, that person can be made to pay punitive damages (also called exemplary damages).

A

The U.S. Constitution is the highest source of law in the United States. Every other form of law must be consistent with the Constitution or it will be struck down by the courts.

B

Courts determine law through a process of legal interpretation. Many words are ambiguous by nature. Further, most statutes are written in very broad and general language. Thus, the court's power to interpret is an important one. It is especially important when a case involves a situation the legislature did not foresee when it passed the law. Through such interpretation, judges can broaden or narrow the reach of a law. Where a statute has been interpreted by a government agency, the courts traditionally defer to that interpretation if it seems reasonable.

B

Stare decisis lends predictability to decisional law by relying on prior judicial decisions. This promotes a degree of consistency among judicial decisions. However, there are some limits to this certainty. State court decisions are binding only within the same state. Hence, the common law differs from state to state. A court in New Mexico may follow a precedent established by a court in Arizona, although it is not bound to do so.

C

Stare decisis lends predictability to decisional law by relying on prior decisions. This promotes a degree of consistency among judicial decisions. However, there are some limitations to this certainty. The highest appeals court in a jurisdiction can overrule a precedent case. This does not occur frequently; more commonly, a court will distinguish the case before it from the precedent by finding differences in facts between the current case and the precedent cases. The constitutional prohibition of *ex post facto* laws does not apply to common or decisional law. Therefore, precedent determined to be in error or out-of-date may be overruled without prior notice, and the new rule may be applied to the current case.

B

In the past quarter century, there has been a qualitative as well as a quantitative change in the concern of business managers with law. In earlier times, business managers generally employed lawyers only in emergencies. A lawyer might be hired if a business was sued, if a debt could not be collected, or if a supplier's goods were defective and no settlement could be reached. Today, business managers also retain lawyers to help them plan to avoid such emergencies and to comply with the rapidly growing mass of legal rules imposed on business operations by government bodies. This use of lawyers by business people is called preventive law.

Short Answer

The basic functions of law are

1. keeping the peace
2. enforcing rules to maintain order
3. facilitating planning
4. promoting social justice.

Short Answer

Criminal law defines breaches of duty to society at large, while civil law defines breaches of private duties owed by one person (including corporations) to another. Violations of criminal law are punishable by fine or imprisonment. In a civil action, the court does not seek to punish the wrongdoer but to make the wronged party whole through a money award called damages.

Short Answer

There are numerous sources of law within each of the 51 legal systems in the United States. The primary sources are:

1. constitutions
2. treaties
3. statutes
4. administrative rules and decisions
5. executive orders
6. judicial decisions
7. private law.

Short Answer

The four steps in the process of legal interpretation are:

1. look to the plain meaning of the language
2. examine the legislative history of the rule
3. consider the purpose to be achieved by the rule
4. try to accommodate public policy.

Short Answer

Three steps are involved in applying *stare decisis*:

1. finding an earlier case or cases with similar facts
2. deriving a rule of law
3. applying that rule to the case at hand.