
TEST BANK

CHAPTER 1

DEFINE

1. proximate cause
2. common law
3. subpoena
4. tortfeasor
5. overrule
6. counterclaim

SHORT ANSWER

7. A court's jurisdiction comes from _____.
8. If a court fails to obtain jurisdiction over a party, the court's judgment is _____.
9. If a court discovers that it lacks jurisdiction in a case, the case must be _____.
10. A cross-claim has the effect of establishing _____ between defendants.

TRUE OR FALSE

11. A defendant cannot avoid personal jurisdiction once the defendant submits to the court's jurisdiction either voluntarily or inadvertently.
12. A judgment obtained in one jurisdiction cannot be enforced in another jurisdiction.
13. To make sure that defendants do not escape responsibility for injury caused to others, courts allow plaintiffs to sue the defendant in two or more courts on the same claim.

14. If a plaintiff inadvertently omits a claim of, for example, negligence from a complaint (and the action is tried to a conclusion), the plaintiff may file another suit so that he or she can rightfully assert that claim.
15. Insofar as a statute is inconsistent with a common law rule, the common law rule is abrogated.
16. Since criminal penalties seem to be inadequate to deter crime, civil litigation is now principally concerned with penalizing the wrongdoer.
17. Lower courts may not ignore the rule of stare decisis even if they find the result to be terribly unfair to the injured party.

MULTIPLE CHOICE

18. Courts do not have the power to do which of the following?
 - a. Require witnesses to appear in court to testify and produce tangible evidence in their possession through its subpoena power.
 - b. Compel parties to comply with court orders and procedures through the imposition of sanctions and penalties.
 - c. Enforce court orders against persons who are not parties to a pending action.
 - d. Litigate controversies between individuals, corporations, governmental agencies, states, the Federal government, and other legal entities.
19. Federal and state statutes prescribe the jurisdiction of their own courts in terms of:
 - a. the kinds of cases the courts may handle.
 - b. whose cases they may decide.
 - c. the geographical areas in which the courts may operate.
 - d. types and amounts of awards they may make.
 - e. all of the above.
20. A court cannot enter a binding judgment against the parties unless it has jurisdiction in three areas:
 - a. the damages, the cause of action, and the geographical territory.
 - b. the parties, the geographical territory, and the subject matter.
 - c. the geographical territory, the cause of action, and the remedy.
 - d. the cause of action, the subject matter, and the parties.
21. An example of a wrongful act that will not give rise to a cause of action:
 - a. the breach of a contractual duty.
 - b. the breach of a statutory duty.
 - c. the breach of a duty established by common law.
 - d. the breach of an ethical duty.
 - e. (c) and (d).
22. Factors the courts will consider in determining whether a claim amounts to a cause of action include:
 - a. whether the court can subpoena the necessary witnesses.
 - b. whether the plaintiff should be protected.
 - c. whether the defendant's conduct should be prohibited.
 - d. whether the courts can provide a remedy for the harm.
 - e. (a), (b), (c), and (d).
 - f. all but (a).

SHORT ANSWER

23. Why should paralegals understand the Lawyers' Code of Professional Conduct?
24. How does an "action" differ from a "cause of action"?
25. How does a court obtain personal jurisdiction over the plaintiff in a civil lawsuit?
26. How does a court obtain personal jurisdiction over the defendant in a civil lawsuit?
27. What essential factors must the plaintiff show in any civil action to recover money damages?
28. What functions do appellate courts serve?
29. Why do courts have a rule against splitting a cause of action?

CHAPTER 2

DEFINE

1. mediation
2. conflict of interest
3. maintenance
4. malpractice
5. attorney pro se

TRUE OR FALSE

6. A lawyer owes his or her highest duty to the client.
7. A lawyer may be disbarred for committing an act involving moral turpitude.
8. When handling civil litigation for a client, a lawyer is under the client's ultimate control.
9. To be admitted to practice law in the federal courts, a lawyer must pass an examination which specifically tests the lawyer's knowledge of federal law, both substantive and procedural.
10. Paralegals may draft documents for a lawyer's use in representing a client.
11. A lawyer must disclose a potential conflict of interest to the client where the opposing party is a former client.
12. A lawyer may not withdraw from a pending case if the withdrawal would prejudice the client's legal interests and burden the court.
13. There is no distinction between an "agency" relationship and a "fiduciary" relationship.
14. A lawyer has implicit authority to do whatever is reasonably necessary to prepare and conduct the client's trial.
15. A lawyer must obtain a former client's informed consent to be able to represent a new client against the former client.

MULTIPLE CHOICE

16. A paralegal is entitled to do all those things a lawyer may do as long as:
 - a. the paralegal is working under the supervision of a lawyer.
 - b. the paralegal takes full responsibility for his or her actions.
 - c. the paralegal is certified.
 - d. (a) and (c) together.
 - e. none of the above.

17. A lawyer need not comply with a client's request that the lawyer:
 - a. commence a groundless lawsuit.
 - b. not assert a claim.
 - c. settle a lawsuit.
 - d. dismiss a lawsuit.
18. Who does not have to provide a reason for terminating the lawyer-client relationship?
 - a. the lawyer
 - b. the client
 - c. the judge
 - d. none of the above
19. Which of the following acts would cause a waiver of a privileged communication between a lawyer and client?
 - a. The client relates the privileged communication to his best friend.
 - b. In a pretrial conference, the lawyer relates the privileged communication to the judge.
 - c. The client discusses the lawsuit with the paralegal working with the client's lawyer on this case.
 - d. The client tells a member of the press that he is involved in a civil lawsuit with the plaintiff.
 - e. All of the above.
 - f. (a) and (b) only.
20. If a lawyer discovers that his or her client has attempted to bribe a witness, the lawyer must:
 - a. inform the court about the situation.
 - b. inform the client that he or she must inform the court.
 - c. keep the client's confidence by telling no one.
 - d. file a criminal complaint against the client.
 - e. (a) and (b).

SHORT ANSWER

21. Why is the arbitration of a fact dispute, technically, not the practice of law?
22. Who may act as an attorney pro se?
23. On what grounds may a client discharge his or her lawyer who is handling a civil litigation for the client?
24. Why are communications between a lawyer and a client privileged?
25. What is the rationale for permitting lawyers to advertise their services?
26. Generally speaking, what constitutes the practice of law?
27. If a lawyer has taken possession of the client's valuable antique because it is relevant to the lawsuit the lawyer is then handling for the client, what is the relationship that controls the lawyer's responsibility for protecting the property from damage or loss?
28. Is a paralegal subject to the direct control of the court system?
29. What implied authority does a lawyer have from the client when handling the client's civil litigation?
30. Are certified paralegals subject to disciplinary action for any act that violates the lawyers' Code of Professional Responsibility?