

Chapter 1: The Rule of Law

1. An unsigned opinion of the court is called a
 - *A. per curiam opinion
 - B. memorandum opinion
 - C. en banc opinion
 - D. majority opinion
 - E. none of the above

2. Courts of appeal
 - A. find facts
 - *B. establish precedent
 - C. are called district courts in the federal court system
 - D. are generally the first courts to hear a dispute
 - E. none of the above

3. Select the proper legal citation for a case decided on May 22, 2009, by the District of Columbia Circuit of the U.S. Court of Appeals and published starting on page 1,095 of volume 566 of the Third Series of the official Federal reporter.
 - A. 566 F.3d 1095 (2009).
 - B. 1095 F.3d 566 (2009).
 - C. 566 F.3d 1095 (9th 2009).
 - *D. 566 F.3d 1095 (D.C. Cir. 2009)
 - E. none of the above

4. Aristotle's concept of a just balance between personal interests and communal concerns is called the
 - A. tipping point
 - B. equitable equilibrium
 - *C. golden mean
 - D. just solution
 - E. cost/benefit solution

5. Laws are well tailored when they
 - *A. are not vague or overbroad
 - B. do not limit the discretion of government officials
 - C. are imprecise
 - D. use legal jargon
 - E. infringe unduly on the rights of the people

6. Statutes may be enacted by legislatures
 - A. at the federal level only
 - *B. at the federal, state, or local level
 - C. at the federal and state levels only
 - D. only by executive order
 - E. only in times of war

7. Common law

- A. is a form of black-letter law
- B. is unconstitutional
- C. does not apply to government officials
- *D. is judge-made law
- E. all of the above

8. Among the three branches of government, the executive branch is

- A. supreme
- B. primarily symbolic
- *C. co-equal
- D. empowered to enact laws
- E. delegated authority to adjudicate disputes

9. Of the amendments proposed to the U.S. Constitution,

- *A. few have been approved or ratified
- B. most have been approved and ratified
- C. most have been approved but few have been ratified
- D. only the 10 amendments contained in the Bill of Rights have been approved and ratified
- E. none have been ratified

10. Stare decisis means

- A. let the statute stand
- *B. let the decision stand
- C. decisions should be based on facial readings of laws
- D. look at ten choices before deciding
- E. none of the above

11.

12. An overbroad law

[Intro] Conceptual

- A. is presumptively constitutional
- *B. is imprecise and punishes more protected activity than necessary
- C. is imprecise and targets specific content
- D. is an effective remedy to specified harms

13. The U.S. Supreme Court established the power of courts to interpret laws in its decision in

[Intro] Factual

- *A. Marbury v. Madison
- B. Powell v. McCormack
- C. Miami Herald v. Tornillo
- D. Texas v. Johnson

14. Executive orders represent

[Sources of the Law] Conceptual

- A. a clear violation of the separation of powers
- B. a legitimate but rarely used power of the executive branch
- *C. a power of the executive branch often targeted by political opponents
- D. none of the above

15. Forum shopping allows plaintiffs to

[Jurisdiction] Conceptual

- A. pay jurors to rule in their favor
- *B. choose the court in which their case will be heard
- C. pay for the best legal advice available
- D. have their cases decided online

16. Federal trial courts

[The Court System] Factual

- A. never use juries
- B. provide only advisory rulings
- C. determine the meaning of the Constitution
- *D. are called district courts

17. En banc decisions of federal appeals courts

[Courts of Appeal] Factual

- *A. are unusual
- B. hold the same weight as decisions of the U.S. Supreme Court
- C. are unsigned, speedy decisions with limited legal explanation
- D. return a case to the lower court

18. En banc decisions of federal appeals courts

[Courts of Appeal] Factual

- A. must be unanimous to establish precedent
- B. must follow the decision of the majority of federal appeals courts hearing the same question
- *C. generally rehear decisions made by a three-member panel of the same court
- D. establish binding precedent for all federal appeals courts

19. The political ideology of a president who nominates a Supreme Court justice

[The Court's Makeup] Conceptual

- A. is never part of the non-partisan nomination process
- B. clearly predicts the voting pattern of the justice once seated on the Court
- *C. relates loosely to the voting pattern of the justice once seated on the Court
- D. is completely counterbalanced by the Senate confirmation process

20. The U.S. Constitution is

[Constitutions] Conceptual

- *A. the supreme law of the United States that establishes the basic contract between government and the people
- B. the supreme law of the United States and easy to modify
- C. co-equal to the state constitutions to empower the states
- D. the law that governs Washington, DC, and the U.S. territories

21. The term jurisprudence best describes

[realWorld Law Box in Judicial Review section] Vocabulary

- A. the extreme modesty and privacy seeking of Supreme Court justices
- B. the focus of U.S. law on issues of profanity, obscenity, and sex
- C. the idea that the law is blind
- *D. the theory or logic of legal decision-making

22. Out-of-court settlements in civil suits and plea bargains in criminal proceedings

[The Case Process] Factual

- A. require lengthy trials to determine the proper punishment
- B. increase the public transparency of court processes
- *C. resolve the vast majority of U.S. trials
- D. determine the outcome of very rare, clear-cut cases

23. The legal citation, *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), refers to

[Finding the Law] Factual

- A. a federal appeals court decision ruling against the Federal Election Commission
- B. a federal appeals court decision ruling against McConnell
- *C. a Supreme Court decision in an appeal brought by McConnell
- D. a Supreme Court decision in an appeal brought by the Federal Election Commission

24. FIRAC stands for

[Briefing Cases] Factual/Vocabulary

- *A. Facts, Issues, Rule of Law, Analysis, and Conclusion
- B. Findings, Interpretation, Right Answer, Application, and Conclusion
- C. Findings, Instructions, Rule of Law, Authority, and Conclusion
- D. Find Issue Right Away Correctly

25. In *Citizens United v. Federal Elections Commission*

[Intro and Judicial Review] Factual

- A. a unanimous Supreme Court affirmed restrictions on campaign financing and reinforced the power of precedent
- B. a divided Supreme Court voted according to different understandings of the original intent of the First Amendment to affirm restrictions on campaign finance
- *C. a divided Supreme Court struck down some restrictions on campaign finance in an ideological decision that raised questions about the power of precedent
- D. a divided Supreme Court affirmed restrictions on campaign finance without comment

26. Journalists cited with contempt of court need not obey the court order because such orders violate the First Amendment.

a. True

*b. False

27. Aristotle said laws are a human invention intended to curb human shortcomings and increase universal well-being.

*a. True

b. False

28. The common law is judge-made law guided by the principles established in precedent cases.

*a. True

b. False

29. All U.S. law is black-letter law to assure that citizens will know their rights and responsibilities.

a. True

*b. False

30. The principle of federalism places sovereignty in the federal government.

a. True

*b. False

31. There are three methods to amend the U.S. Constitution.

a. True

*b. False

32. Statutory construction is the term used to describe how legislatures draft and adopt laws.

a. True

*b. False

33. Equity law empowers judges to provide fair remedies and relief to a variety of harms.

*a. True

b. False

34. Stare decisis describes the doctrine that courts should follow precedents established by higher courts.

*a. True

b. False

35. Courts show deference to administrative agency rulings because the agencies are vested with expertise in their areas of jurisdiction.

*a. True

b. False

36. Judicial review is often criticized as a primary source of judicial activism.

*a. True

b. False

37. Historical documents make clear the Framers' original intent for the Constitution.

a. True

*b. False

38. Every court has a specific geographic or topical area of jurisdiction.

*a. True

b. False

39. Forum shopping reflects litigants' understanding that, given the same set of facts, different courts may reach different results.

*a. True

b. False

40. Courts of appeal are fact-finding courts.

a. True

*b. False

41. A dissenting opinion is written by the majority of the court and overturns a lower court ruling.

a. True

*b. False

42. In order for a case to be heard by the U.S. Supreme Court, a majority of the justices must vote to grant a writ of certiorari.

a. True

*b. False

43. By denying a writ of certiorari, the U.S. Supreme Court is sending the message that it disagrees with the lower court's decision in the case.

a. True

*b. False

44. Grand juries sometimes are called to review evidence and decide whether criminal charges should be filed against a suspect.

*a. True

b. False

45. Voir dire is one of the several methods trial courts use in attempting to seat an unbiased jury.

*a. True

b. False

46. Journalists cited with contempt cannot be jailed.

Conceptual The Case Process

a. True

*b. False

47. The common law is recorded in the Common Register of the Law.

Conceptual Sources of the Law

a. True

*b. False

48. All federal law is subject to review by the U.S. Supreme Court.

Factual Sources of the Law

*a. True

b. False

49. Federalism is the legal principle that gives sovereignty to the states.

Conceptual Sources of the Law

a. True

*b. False

50. There are three methods to amend the U.S. Constitution.

Factual Sources of the Law

a. True

*b. False

51. The doctrine of stare decisis means lower courts should follow the precedents established by higher courts.

Vocabulary Sources of the Law

*a. True

b. False

52. A per curiam opinion of the U.S. Supreme Court is decided by only one justice but is the binding opinion of the entire court.

Vocabulary Sources of the Law

a. True

*b. False

53. City and county councils have the power to enact statutes.

Conceptual Sources of the Law

*a. True

b. False

54. When federal administrative agencies give meaning to laws, they engage in statutory construction.

Conceptual Sources of the Law

- a. True
- *b. False

55. Equity law interprets and applies the U.S. Constitution.

Vocabulary Sources of the law

- a. True
- *b. False

Type: E

56. Name three sources of U.S. law and explain briefly how they are created.

*a. Varies. A correct answer would describe at least three of the six sources of the law. They are constitutions, statutes, equity law, common law, administrative rules, and executive orders. (a) The U.S. Constitution is a written contract between the people of the United States and their government. It was framed in 1787 by the founders of the country and ratified by a vote of the states in 1789 to establish the supreme law of the nation. Legislatures exist at all levels of government and are delegated the power to enact statutes, which then are written down and codified. Statutes may be very fact-specific and respond to changing and emerging social concerns. At the federal level, bills introduced into either house of Congress are debated and modified and become law after they are passed by a majority of both houses and signed by the president. (b) Judges are empowered to enact equity law, which is created when judges craft remedies to problems or allocate compensation for harms. Unwritten equity law is intended to achieve fair results and is guided by social values and ethical considerations. (c) A large proportion of communication law is in the form of judge-made common law. The common law resides in the decisions of the courts. A fundamental principle of the common law is that prior court decisions, precedents, dealing with analogous facts should guide future decisions. However, courts are free to diverge from precedent when they can distinguish case facts or if other factors indicate that the prior decision is no longer correct. Stare decisis limits court flexibility, though, and courts prefer to modify rather than overturn precedent. (d) Administrative rules are a vast and rapidly proliferating form of law adopted by the plethora of administrative agencies established within the executive branch to interpret and implement statutory laws within a given area of expertise. The Federal Communication Commission, for example, has the power to adopt rules, to adjudicate disputes, and to render judgments within its jurisdiction. Federal courts hear appeals to FCC judgments but often show deference to the expert judgment of the agency. (e) The chief executives (president, governors, and mayors) of government have power to issue orders, called *executive orders*, that have the force of law. This power is limited in scope. For example, the president's executive power increases during times of war.

57. Describe two things that occur in the process of a trial before the trial starts.

*a. A lengthy process of fact-finding by both sides, called *discovery*, is used to build the competing arguments. During discovery, either or both sides may issue subpoenas to force individuals to disclose information relevant to the case. (b) Pretrial motions to the court may seek to suppress certain evidence, to exclude certain witnesses or to alter the trial in other ways. (c) The formal process to select jurors is designed to reduce the potential for bias. Rules determine the venue of the trial, the venire from which potential

jurors are drawn and the questioning of jurors, or voir dire. Lawyers may challenge potential jurors peremptorily or for cause. (d) A motion for summary judgment asks the judge to dismiss the case before a trial because the facts in the case are uncontested.

58. Define concurring and dissenting U.S. Supreme Court opinions and describe their role.

*a. Justices of the Court generally have four options when deciding a case. They may join the majority opinion, dissent due to disagreement with the judgment, concur in support of the outcome, or recuse themselves due to some conflict of interest. A majority of the Court must agree on the judgment for a decision to establish binding precedent. If only a plurality of justices signs the opinion of the Court, a concurring opinion written by one or more justices may provide the needed votes to render a binding precedent. This happens when justices agree with the decision of the majority but wish to set out differences in reasoning or application of doctrine, or want to raise issues not treated in the majority opinion. In such instances, the concurring opinion may shape the rule established by the Court. Dissenting opinions can be extremely sharp and critical of the majority's decision. They may argue strongly in favor of a very different strategy for resolving the case, or they may even assert that the case should never have been heard for any of a wide number of reasons. The history of the Court shows that these pointed dissents sometimes are persuasive and later are adopted by a majority. Dissents may signal areas of deep division within the Court and may suggest the direction of future Court analyses.

59. Controversy has surrounded the courts' power of judicial review since its formal establishment in 1803 in *Marbury v. Madison*. Briefly discuss three reasons why critics believe judicial review is a problem.

[Judicial Review] Conceptual

#1. Because most judges (including those in the U.S. Supreme Court) are not elected and the citizens do not have direct oversight of their decisions, judicial review is inherently nondemocratic.

#2. The U.S. Constitution clearly establishes the three independent branches of government (administrative, executive, and judicial) and does not expressly establish the authority of the courts to review or oversee the decisions of the other two branches. Therefore judicial review violates the separation of powers expressly established in the Constitution.

#3. The U.S. Constitution clearly delegates the power to establish laws to the legislative branch. By reviewing and interpreting those laws, the courts usurp this delegated power, again violating the U.S. Constitution.

60. Explain *stare decisis* and clearly describe its role in the U.S. judicial system.

[Common Law] Conceptual

*a. *Stare decisis* is the Latin legal term that means stand by the previous decision. *Stare decisis* embodies the legal principle that precedent is established by superior courts to guide subsequent court rulings of lower courts on a given question. Reliance on precedent is the core of the common law that seeks to maintain consistency in both the reasoning and the outcome reached by multiple courts hearing the same (or very similar) questions. Precedent provides strong guidance, but it is not binding. Especially with questions

related to core constitutional values, courts will diverge from the principle of stare decisis to achieve the correct outcome. This means the law is flexible but theoretically evolves slowly, not through erratic decision-making by different courts.