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The goal of the *Introduction to Law* text is to provide a basic understanding of the American legal system from a variety of perspectives, both civil and criminal. Additionally, the preliminary chapters focus on how law is actually created by the various branches of government. It is intended that the course lay a solid foundation for those intending to pursue advanced legal courses and to provide a functional appreciation for students of other disciplines with regard to the impact of the legal system on those disciplines.

The text is arranged in a progressive format beginning with essential history and the working structure of the government. The focus then turns to procedural issues in the courts and specific concepts of basic categories of law, e.g., contract law, property, etc. Chapters 5 and 6 examine the roles of various legal professionals and the effect of legal ethics on the practice of law. Next, attention is given to the distinctive characteristics of criminal law and procedure.

While the *Introduction to Law* text is ambitious with respect to the amount of information presented, the student should keep in mind that the focus is introductory in nature and that frequent use of supplementary materials such as the Study Guide should make the amount and depth of material manageable.
STUDY HINTS

Having taught the course “Introduction to Law” for many years, I have developed certain strategies that have proven to be effective for students. I have included many of these below in the hope that they will assist you as the student in completing this course successfully.

1. Utilize the Study Guide materials for reinforcement of content. Each section has a specific method to assist you as the student in undertaking the objectives of the text. Completion of these sections should be effective tools for study and test preparation.

A. The Concept Summary section for each chapter should enable you to make a complete yet concise outline of the major points addressed. The Relevant Terms section allows you to test your comprehension of the legal terminology that is frequently encountered in the particular subject of law. The Application of Concepts section illustrates realistic examples of the basic principles addressed in each chapter. Finally, the Review Questions, at the back of the Study Guide, test your comprehension and ability to employ the concepts and terms introduced in the text.

Answers to the Relevant Terms section can be located by referring to the Glossary in the main text. Answers to the Review Questions are located in the back of the Study Guide.

2. Tips for effective use of classroom time:

A. Do not try to write down everything you hear. Focus on noting those items that merit much discussion and/or are also mentioned in the text.

B. Pay close attention to the information given by the instructor. If the textual material is read in advance of any lecture or discussion, the amount of notes required can be significantly reduced, thus allowing more concentration on the notes given by the instructor.

C. A particularly effective method of notetaking for some students is the split page. Rather than making notes within the text when reading, keep brief notes of major points, or at least page references to these points, in a column on the left side of your notepaper. Preferably, this is done in advance of the scheduled lecture on the material. During class, use the right side of the page to take notes on materials you may not previously have acknowledged as significant. You can also asterisk or supplement your text notes on topics to which the instructor gives particular attention. By doing this, you are able to combine your notes into a single source, reduce the amount of notes taken in class, identify text items to which the instructor assigns importance, and confine the materials you will need to study prior to testing to your notes and the Study Guide supplemented by the text.

D. Ask questions pertinent to the subject at hand. Discussion of concepts is one of the best methods to establish a clear and lasting understanding of the principles in the text. The old adage that there is no such thing as a stupid question is still true. In all my years of teaching, I can honestly say that a student never asked a stupid question when the question was aimed toward gaining a better understanding of such a complex subject as law. However, keep in mind that while the subjects addressed in the book often have a personal relevance to you, this is true of every student and the purpose of the course and text is not to address personal legal issues, which are all influenced by unique circumstances. Confine your questions to those that promote understanding of the concepts and not application to your individual situation. Remember, neither you nor the other students have paid tuition to have personal cases analyzed. Secondly, the course is introductory in nature and does not generally take into account the application of law to highly specific circumstances.
E. If you are uncomfortable with your level of understanding of the course content, complete the assignments and review questions in the text and the materials in the Study Guide (preferably in advance of the scheduled lecture on the material).

F. Try to arrange to study with at least one other student in the class at least once per week to go over the material and exchange questions and perceptions.

G. Prepare a study plan that realistically allows you regular quality time to go over the materials. Your comprehension and overall performance stand a much better chance than last minute cramming, which is not only difficult but stressful, and can ultimately impair your performance. You will be amazed at what even fifteen minutes each day will yield. But, be sure this time is dedicated to study rather than coupled with driving to work, meal preparation, or as an attempted sleep aid. I remember doing all of these and even recall wondering at the conclusion of law school what it would be like to wake up without the sound of books and papers rustling in the bed. I also recall that my most productive and efficient studying was done at a reasonable hour, in a well-lit room, without distraction.

3. Go over the syllabus in detail and discuss items with the instructor, such as the method of instruction, grading procedures, and any particular expectations the instructor may have regarding the classroom format, assignments, or testing. If you have a clear perception of the direction of the course, completion with success is much more easily attained.
CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. What was the purpose of the first laws in the colonies?

2. What caused the development of colonial governments and civil law?

3. Why did the colonies decide to form a national government?

4. How was the initial form of national government established?

5. Compare the characteristics of the Articles of Confederation and the Constitution.

6. What was the purpose of the Bill of Rights?

7. List and describe the three branches of government under the Constitution.

8. What is the naturalist theory and how is it represented in the American legal system?
9. What is the sociological theory and how is it represented in the American legal system?

10. What is the positivist theory and how is it represented in the American legal system?

11. What is a legal standard?

12. What is precedent?

13. What is the literal and functional meaning of stare decisis?

14. What is the traditional balance in the American legal system?

15. What is the modern balance in the American legal system?

RELEVANT TERMS
Match the proper term to the definition.

- modern balance:
- administrative branch:
- stare decisis:
- cases:
- common law:
- judiciary:
- legislative branch:
- statutory law:
- administrative law:
- naturalist theory:
- precedent:
- sociological theory:
- traditional balance:
- case law:
- positivist theory:
- legal standard:

Administrative agencies created pursuant to legislation, and oversee by the executive branch to administer and define statutes.

Regulations and decisions that explain and detail statutes. Such regulations and decisions are issued by administrative agencies.
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

The Positivist Theory

In 1989, the U.S. Supreme Court held that a statute prohibiting the burning of the national flag violated the right of free speech if the act was done as a form of expression of political beliefs. While many people felt this holding was wrong and that it should be illegal to desecrate the flag, the Constitution gives the Supreme Court the ultimate power to protect what it interprets to be constitutional guarantees. This is an example of the positivist theory of an ultimate authority not generally subject to challenge.

The Sociological Theory

Congress has the authority, with approval of a sufficient number of states, to pass constitutional amendments. Following the flag burning case of 1989, many people called for an amendment that would prohibit desecration of the flag under any circumstances and effectively override the Supreme Court’s interpretation of the Constitution by redefining free speech to exclude such acts. While no amendment was passed, the consideration was the result of the sociological process. There was an attempt to adapt the law to reflect the perceived beliefs of society. In some instances law is enacted or modified. However, in this situation, the end result was that society as a whole (through its representation in Congress) was of the opinion that the amendment was not necessary.
The Naturalist Theory
In the flag burning case, the action arose out of an arrest for violation of a Texas state statute that, among other things, prohibited desecration of the national flag. Such a statute was designed to reflect the belief that all persons should know right from wrong and that most would agree that destruction of a symbol of the unity and freedom of the nation would be wrong. However, the Supreme Court took exception to the broad language of the statute that permitted desecration under no circumstances whatsoever.

Precedent
In the flag burning case, the U.S. Supreme Court looked to other previous cases that involved what some considered outrageous behavior exhibited as political protest. These previous cases are precedents.

Stare Decisis
In the flag burning case, the Supreme Court compared the circumstances of the case to the precedents and found that the present case also had the earmarks of political protest. The defendant was a member of a group of protestors assembled at the Republican National Convention. He burned the flag at the convention site in view of many persons in attendance at this political function. By identifying the many similarities of precedents, the court chose to apply similar principles of law and treat the action of the defendant as an exercise of free speech.

Traditional Balance
While the public outcry in the flag burning case was tremendous, the court needed also to look at the motivation and rights of the defendant as a person. The court held that this person’s constitutional right to state his political beliefs by the symbolic act of burning a flag was superior to the position of many in the public who demanded that the flag be treated respectfully at all times by all persons. However, there have been other occasions in the past when the law has been that the rights of the public were greater than the rights of the individual. One need only to look at the abolishment of slavery. Many individuals were economically ruined and prevented from carrying on a practice that existed for generations. However, it was the opinion of the courts, and ultimately the Congress in the form of a constitutional amendment, that society rightly believed slavery was wrong and that this prevailed over any individual rights.

Modern Balance
In the flag burning case, the Supreme Court referred to a long line of cases in which other than verbal behavior was protected as free speech in appropriate circumstances. It continued this holding and expanded it to include flag burning as a form of political protest. This continuation is illustrative of the consistency standard of the modern balance. Had the Court chosen to declare the flag more or less sacred and exempt from free speech principles, it would have been an example of the flexibility standard in which the court deviated from its previous position in an attempt to keep pace with current societal standards.
CHAPTER 2

The Courts

CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. How is the judicial branch different from the executive and legislative branches?

2. What is the function of the judicial branch?

3. Explain common law and when it is created.

4. How are prior cases used by the judiciary?

5. Distinguish trial courts from appellate courts.

6. Describe the possible results and effects of appellate court decisions.

7. Diagram the structure of the federal courts.

8. Describe the relationship among federal appellate courts, federal trial courts, and between federal appellate and trial courts.

9. What is legal analysis and how is it used?
10. Where are cases published and how are the publications organized?

11. What is case analysis and how is it done?

## RELEVANT TERMS

Match the proper term to the definition.

<table>
<thead>
<tr>
<th>Case Law</th>
<th>Common Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affirm</td>
<td>Judiciary</td>
</tr>
<tr>
<td>Bench Trial</td>
<td>Overrule</td>
</tr>
<tr>
<td>Slip Opinion</td>
<td>Appellate Jurisdiction</td>
</tr>
<tr>
<td>Cases</td>
<td>Reverse</td>
</tr>
<tr>
<td>Federal Court</td>
<td>Discretion</td>
</tr>
<tr>
<td>Judge</td>
<td>Trial Court</td>
</tr>
</tbody>
</table>

**Approve.** When an appellate court affirms the result in the original court, that result is approved and can be enforced.

**Judiciary.** Appointed or elected officials (judges, magistrates, justices of the peace) to preside in the courts over disputes among citizens and the government.

**Authority of one court to review the actions in another court for the purpose of identifying an abuse of discretion.**

**Statement that a position of the Court, which was previously recognized, is no longer effective.**

**A trial in which the judge determines what law will be applicable, and applies the law to the facts of the case.**

**Law that is created judicially when a legal principle of common law is extended to a similar situation.**

**Judicial opinions that are common law and case law, and that interpret statutory and administrative law.**

**A judicial officer who presides over cases in litigation within a court system.**

**Judicially created legal principles or standards. The judiciary has the authority to create law in situations where none currently exists.**

**An individual court opinion that is not yet published with other opinions.**

**Limits of authority. “Abuse of discretion” occurs when one’s authority is exceeded or improperly used, e.g., abuse of discretion by a judge or jury is grounds for appeal.**

**A court that is part of the U.S. Courts.**

**The action of an appellate court used to invalidate a decision by a court of original jurisdiction. The parties to the lawsuit are affected accordingly.**

**A court of original jurisdiction with authority to hear evidence of parties and render a verdict.**
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Purpose of Judicial Law

A large city passes an ordinance (local law) making it illegal to maintain property in a particular area for any nonresidential purpose because the city is trying to develop the area as noncommercial and residential. A group wants to establish a church within the boundaries of the area. The group challenges the law in court. The court must interpret the statute, examine the intent of the governing body who created it, and determine whether the law violates any constitutional rights with regard to freedom of religion and freedom of assembly. If the court determines that the ordinance is not violative of the Constitution, then the court must determine if, as written, the construction of a building to be used as a church (not usually seen as a commercial development) is prohibited by the ordinance.

Common Law

In the technical sense, common law is the creation of law where none previously existed. For example, with the advent of computer technology, an entirely new area of law has been opened up. Assume a city purchases a computer software program that operates the traffic lights for the city and controls the flow of traffic. Because of a flaw in the software system, the traffic lights malfunction and a terrible accident occurs. Victims bring suit against the city. The city in turn brings in the seller of the software program. There is little law in this area. There is also no closely related subject areas that would involve legal principles that would be similar enough to have broad application in the form of stare decisis (technically the latter would be case law). Consequently, in cases of this nature, the courts are faced with the creation of legal standards as precedent where there were none, i.e., common law.

Federal Courts v. State Courts

The federal judicial system and state judicial systems are like siblings in the same household. The brother and sister look somewhat alike, have the same background, function in much the same way in everyday life, even share the same house. However, they are two totally separate people with neither having authority over the other. Ultimately, both are responsible to the parents (the U.S. Supreme Court). Both have different roles and operate independently of the other.

Trial Courts v. Appellate Courts

The distinction between these two types of courts is actually quite simple. Trial courts have the duty to reach a determination of fault or innocence of the parties in suit. Whereas, the appellate court is faced with the task of seeing that the trial courts meet their duty while following the rules of procedure and other laws that are designed to give everyone fair and objective treatment in the courts. A trial court must apply the law fairly and consistently in reaching the verdict. The appellate court reviews the activity of the trial court to determine if the verdict was reached as the result of a fair application of appropriate law. The appellate court is not typically concerned with the fault or innocence of the parties involved.

Appellate Court Results

When an appellate court accepts a case for review, it resolves the issues in one of two ways. If the case is affirmed the court approves the conduct in the trial court. An example might be in a case when the trial court excluded evidence from trial and a party appealed on the basis that the evidence, if it had been admitted, would have caused a different result. If the appellate court found that the trial court was proper in the exclusion of evidence, the case would be affirmed and the verdict left intact.

When an appellate court finds that the lower court improperly applied the law or the jury improperly reached its verdict, the case may be reversed. In the preceding example, if the appellate court found that the trial court should not have excluded the evidence and that the exclusion was so detrimental as to cause an
improper result, a reversal would be issued. Although an appellate court has a wide range of authority, typically, when a reversal occurs in a civil case, it will dictate that the parties return to the trial court level for a new trial on some or part of the issues in the case.

**Reporter**

Briefly stated, the national reporter system is a large group of publications of appellate opinions of the state and federal courts and limited trial opinions of the federal courts. With the exception of federal judicial opinions (which are grouped together as trial or appellate decisions), the opinions of the state appellate courts are published by region. The judicial opinions from a number of states that are in the same geographical region are published in an ongoing series of books. For example, many of the states in the western part of the country are always published in the Pacific Reporter. As opinions from the various states in a region are issued, they are collected and published in a paperback volume known as an advance sheet. When sufficient opinions have accumulated, they are published in bound volumes that are numbered consecutively and in sequence with previously issued volumes. For example, the opinions issued by certain western states over a period of months would first appear in the form of advance sheets. Then, when enough opinions have been presented in this format to justify publication in hardbound volumes, a new issue of the Pacific Reporter Second Series would be issued. The volume number of this book would be the number immediately following the number of the last hardbound volume. By issuing the advance sheets, there is a current temporary publication of the latest opinions. By incorporating these into an ongoing hardbound publication, there is a durable source of all previous opinions. There is also a companion digest which is essentially an exhaustive subject index that enables the researcher to locate the cases in the proper volume of the reporter. (For more information, see the appendix on legal research in the text.)
CHAPTER 3

Legislation

CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. Describe the structure of the Congress and the purpose of the structure.

2. List the requirements for election to each house of the Congress.

3. What is the function of the legislative branch?

4. List and define the purposes of statutory law.

5. Describe the process of legislation.

6. Describe the process of enactment of a Constitutional Amendment.

7. Who are lobbyists and what is their function?

8. How are statutes made public?
9. How are all the statutes officially published and organized?

10. What are annotated statutes and what purpose do they serve?

**RELEVANT TERMS**

Match the proper term to the definition.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>lobbyist</td>
<td>Proposed law presented to legislature for consideration.</td>
</tr>
<tr>
<td>protective law</td>
<td>Process of incorporating newly passed legislation into existing publication of statutes.</td>
</tr>
<tr>
<td>bill</td>
<td>The process of examining precedent in detail in order to predict its effect on future similar circumstances.</td>
</tr>
<tr>
<td>legal analysis</td>
<td>Members of Congress elected by the citizens of a jurisdiction to represent their interests, e.g., senator or representative.</td>
</tr>
<tr>
<td>remedial law</td>
<td>Individual hired to meet with legislators about proposed laws.</td>
</tr>
<tr>
<td>procedural law</td>
<td>Law that is used to guide parties fairly and efficiently through the legal system.</td>
</tr>
<tr>
<td>statutory law</td>
<td>Law that states what conduct will or will not be considered acceptable.</td>
</tr>
<tr>
<td>veto</td>
<td>Law that corrects a grievance or prior law.</td>
</tr>
<tr>
<td>session law</td>
<td>Published statutes that were passed during a specific session of the legislature.</td>
</tr>
<tr>
<td>codification</td>
<td>An individual statute that is not yet published with other statutes.</td>
</tr>
<tr>
<td>codification</td>
<td>A statute. Law that is created by the legislature.</td>
</tr>
<tr>
<td>codification</td>
<td>Presidential power to invalidate law passed by a majority of Congress (two-thirds majority of each house needed to override).</td>
</tr>
</tbody>
</table>

**APPLICATION OF CONCEPTS**

The following applications illustrate some of the major concepts of the chapter.

**Structure of the Congress**

As stated in the text, the Congress is divided into two sections that give equal representation to the states and the citizens. For example, the population of the entire state of Nebraska is slightly less than one-tenth the pop-
ulation of New York City alone, much less the entire state of New York. The Senate is made up of two sena-
tors from every state regardless of size or population. Consequently, Nebraska has every bit as much influ-
ence as New York in votes in the Senate. The House of Representatives, on the other hand, takes into account
the varying conditions within a state. For example, there are large areas in Texas where no more than a few
thousand people live. However, there are also cities of several million people. It would be very easy politically
to represent the concentrated areas of population. But the concerns of the rural population are just as im-
portant. The House of Representatives is comprised of individuals representing relatively equal numbers of
the population throughout the country. This gives all citizens an equal voice in government regardless of
whether they are part of a concentrated population or a rural area.

The Process of Legislation

In recent years, all states have considered laws with regard to child restraints in automobiles. The method in
which such a law might proceed is as follows:

A. A consumer safety group identifies the need for mandatory requirements of child safety restraints.
B. The group prepares a draft of proposed legislation.
C. A lobbyist for the group contacts a member(s) of the legislature to seek support for the bill (proposed
   legislation).
D. A legislator agrees to sponsor the bill and proposes it for legislation.
E. The legislation is registered with the clerk of the legislature.
F. The bill may be assigned to a committee of legislators for discussion, modification, recommendation, etc.
G. Throughout the process, the lobbyist and legislator meet with other members of the legislature to seek
   support for the bill.
H. A vote is taken on the bill.
   I. In a bicameral legislature that functions similarly to the Congress, if the bill passes by a majority in the
      house where it originated, it proceeds to the other house. If it passes in the second house by a majority,
      the bill is presented to the Governor for consideration.
J. The Governor must decide whether to act on the bill. If the Governor signs the bill it becomes law. If
   the Governor vetos the bill, it returns to the legislature. If the Governor does nothing, the bill becomes
   law automatically in a set period of time.
K. If the bill is returned to the legislature, a decision is made by the sponsor whether to present it for a
   second vote. If this occurs, the bill must receive support sufficient to override the veto (at the federal
   level this is a two-third majority).

Statutory Publications

When a statute is codified, it is incorporated into a publication of already existing and effective laws. The ex-
stisting statutes of each jurisdiction is published by a well-organized and relatively easy to use system. Each
jurisdiction has established a set list of topics by which to organize legislation. The topics (and in many cases
subtopics) are arranged in alphabetical order and numbered. For example, if Agriculture was the first in a
series of topics for a jurisdiction, that topic would be known as “1 Agriculture”. The number is often called
a title or chapter. As new laws are enacted, they are assigned to a topic. All the laws within a topic are num-
bered (often a three- or four-digit number is used). If a law is repealed, that number is also repealed and is
not used again. This prevents any confusion by using the same number over and over. Consequently, the
first agriculture law passed in the jurisdiction of Nomadia may be known as 1 No.Rev.Stat. 100. This abbre-
viation would represent the topic, the name of the publication, and specific law. More information regarding
citation format can be found in the appendix on legal research and citations in the text.

Because so many statutes exist in a jurisdiction and the body of law is constantly changing through re-
peals, amendments, and new laws, it would be cost prohibitive and, as a practical matter, virtually impossi-
ble to republish the entire statutory collection with every change. Consequently, the entire compilation of
effective law is published periodically. Between these publications (usually a period of several years), temporary paperbacks are issued which contain the changes. These temporary publications are often called pocket parts or supplements. Pocket parts actually fit into a pocket inside the cover of the hardbound volume. Researchers check the main volume and supplement (pocket part) to locate the most current law. Also, with the advent of computer technology, many researchers locate the statutory materials through a computer database (library), which generally contains the current law.
CHAPTER 4

The Executive Branch and Administrative Authority

CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. Summarize each item addressed in Article II of the Constitution.
2. What are the qualifications to be President and Vice President?
3. Describe the election process for the President and Vice President.
4. List the duties and authority of the President.
5. Explain how the President derives the authority to oversee administrative agencies.
6. What are the basic steps in creating an administrative agency?
7. What are the advantages of administrative agencies?
8. What are the disadvantages of administrative agencies?
9. Explain the delegation doctrine. What is it? Why is it necessary?

10. How does an agency avoid violation of the delegation doctrine?

11. What are the basic requirements of the Administrative Procedure Act?

12. Define the term “exhaustion of remedies.”

**RELEVANT TERMS**

Match the proper term to the definition.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>administrative agency</td>
<td>Government office created by the legislature and overseen by the executive branch. The purpose of such agencies are to apply certain specified laws created by the legislature.</td>
</tr>
<tr>
<td>enabling act</td>
<td>Administrative agencies created pursuant to legislation and overseen by the executive branch to administer and define statutes.</td>
</tr>
<tr>
<td>administrative branch</td>
<td>Regulations and decisions that explain and detail statutes. Such regulations and decisions are issued by administrative agencies.</td>
</tr>
<tr>
<td>administrative law</td>
<td>Judicial officer assigned to preside over cases between individuals/entities and government administrative agencies.</td>
</tr>
<tr>
<td>Code of Federal Regulations</td>
<td>Congressional enactment that is applied to all federal administrative agencies and that requires them to follow certain procedures in the issuance of administrative law.</td>
</tr>
<tr>
<td>Administrative Procedure Act</td>
<td>Publication that contains all current administrative regulations.</td>
</tr>
<tr>
<td>delegation doctrine</td>
<td>Principle that Congress may not assign its authority to create statutory law, nor may any other government entity assume such authority.</td>
</tr>
<tr>
<td>exhaustion of remedies</td>
<td>Congressional enactment that creates the authority in the executive branch to organize and oversee an administrative agency.</td>
</tr>
<tr>
<td>administrative law judge</td>
<td>The requirement that anyone having a dispute with an administrative agency must first follow all available procedures to resolve the dispute within the agency before taking the issue before the judiciary.</td>
</tr>
</tbody>
</table>
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Creation of Administrative Agencies

Over the years, many areas have been identified that warrant extensive government supervision. The difficulty has been that to do so would tie up the Congress from addressing other deserving issues. Administrative agencies fill this gap. Congress identifies the need and states the objective in the form of an enabling act. The agency is then created that will administer the act in much more specific terms.

Examine the following illustration:

It becomes apparent that computer bulletin boards are being used across the country for the exchange of legal and illegal information. There is relatively little law with respect to computer-generated messages. Secondly, with the use of modems (devices that allow communication between computers along phone lines) the messages often traverse state lines. Congress passes an enabling act which states essentially that public inter-computer transmissions should be used only for legal purposes.

Upon passage of the enabling act, the President issues an executive order calling for the creation of the Electronic Communications Organization (ECO “Echo”). The agency is staffed through presidential appointment. Upon commencement, the agency reviews the laws that make up the enabling act (an act is a collection of laws on a related topic) and identifies congressional intent and the goals of the act.

Following the requirements of the Administrative Procedure Act, to which all agencies must adhere when issuing administrative law, the agency begins to issue regulations. These regulations define electronic communications, public interstate transmissions, definitions of what constitutes transmissions that violate federal laws, and penalties.

The agency then has the authority to monitor public transmissions such as computer bulletin boards and to enforce the regulations through the imposition of penalties.

Administrative Agencies and Exhaustion of Remedies

Assume a group of individuals take exception to the administrative regulation that defines unlawful transmissions. The group could challenge the regulation as an infringement on their rights of free speech under the Constitution. After following the appropriate methods set down by the agency for challenges to agency regulations, the group could take the issue before an administrative law judge. The administrative law judge (a.l.j.), employed by the government (not the agency) to review the situation, would issue an opinion on the issue. If the a.l.j. held that the regulation did not interfere with rights of free speech, the group would have exhausted its remedies at the administrative level. The group would then be free to appeal the decision to the U.S. District Court. Ordinarily a trial court, the U.S. District Courts have appellate authority to review the actions of administrative agencies.

Code of Federal Regulations

Much like a statutory publication, the Code of Federal Regulations (CFR) contains all effective administrative law. Volumes of the Code are published periodically to incorporate changes in administrative law. The Code is arranged by title (major subject areas) and title number, much like the statutory publication. The CFR titles and title numbers may or may not correspond to the Code title of the statutory publication that contains the enabling act. There are, however, subject indexes to the CFR that facilitate the location of information. When conducting research in administrative law, keep in mind that the enabling act is statutory and will be published as such; the regulations, however, emanate from the agency.
CHAPTER 5

The Legal Professional

CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. What skills does an attorney possess and use that are distinct from other legal professionals?

2. What are the general requirements in the majority of states to become a licensed attorney?

3. Describe the differences in the functions of trial and appellate judges?

4. How is an administrative law judge different from a trial or appellate judge?

5. How did the paralegal profession come into being?

6. What role does the paralegal play in the modern legal system?

7. Identify several skills that a qualified paralegal should possess.

8. Identify and discuss the duties of the various members of the legal team other than the paralegal and attorney.
9. Explain why some nonlawyers have a limited license to engage in what would otherwise be considered the unauthorized practice of law.

10. What are some of the methods of educating/training paralegals?

RELEVANT TERMS

Match the proper term to the definition.

judges
trial judge
appellate judge
administrative law judge
attorney
paralegal

________________________ One with authority to apply law to evidence of a dispute and render a resolution.

________________________ One with legal training and education to provide advice and represent the interests of another with respect to third parties.

________________________ One with legal training and/or education to provide analysis and perform many duties historically associated with the practice of law.

________________________ Also known as a jurist, this individual has government authority to render decisions in criminal and civil cases.

________________________ This individual has the authority to render decisions involving governmental agencies.

________________________ One who reviews the application of law to facts and evidence and determines if there was an abuse of discretion.

APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Judges

Mitzi challenges a ruling by the Social Security Administration that declares her not to be totally disabled. She requests a hearing before an administrative law judge (a.l.j.) from the Office of Hearings and Appeals for the Social Security Administration. At the hearing, the a.l.j. reviews the evidence of the agency and Mitzi regarding her disability and issues an opinion as to whether she is entitled to disability payments (the opinion is appealable).
Mitzi’s alleged disability resulted from an auto accident in which her car was struck by the car of a drunk driver. Mitzi also files a case against the drunk driver for her property and personal injuries. The case goes to trial and the trial judge determines what evidence will be admissible and presides over the presentation of evidence to ensure that the parties do not violate rules of procedure or evidence. The trial judge then instructs the jury on the applicable law and how they are to apply the law to the evidence presented to reach their verdict.

While the judgment is for Mitzi, the amount awarded is only for the amount of her special damages (specific bills). She is awarded nothing for pain, suffering, disfigurement, or disability. She appeals the verdict to an appellate court. The appellate judges review the evidence presented and the verdict returned to determine if the jury or judge misused their authority. It is the opinion of the appellate court that the jury misunderstood their duty and improperly calculated an award of damages. The appellate judges award a new trial on damages only, in which a new jury is brought in to consider only the issue of how much damages Mitzi should receive.

Legal Professionals

Mitzi’s case is handled by the team within the office of the attorney she hired. The attorney evaluates the facts of Mitzi’s case and determines what appropriate legal action should be taken. The attorney also advises Mitzi throughout the case regarding its progress, possible settlement, and related matters. Under attorney supervision, the paralegal interviews witnesses, prepares legal documents for the courts, corresponds with persons connected with the case such as Mitzi’s doctors, court reporters, etc. and conducts legal research for the attorney to review and consider. The legal investigator gathers information regarding the identify of witnesses, documentary evidence such as police reports; photographs of the scene, vehicles, and Mitzi’s injuries; and any other necessary or relevant information. The legal secretary makes appointments, types dictated correspondence and documents, and generally maintains the organization of the case. The law office administrator is responsible for seeing that all of the attorneys and legal support staff in the office have coordinating schedules, that the office is properly maintained and supplied, that staff are properly supervised, and that benefits are administered.

REVIEW QUESTIONS

1. What is the difference between an administrative law judge and an appellate judge?
2. What two skills distinguish a licensed attorney?
3. What is the difference between a certified legal assistant and a registered paralegal?
4. When can someone without a license practice law?
5. Identify five distinct types of settings in which paralegals may be found.
6. How is the function of a qualified paralegal different from that of a legal secretary?
7. What is the role of the law office administrator?
8. Identify and describe two other roles in the law practice other than attorney, paralegal, legal secretary, and law office administrator.
CHAPTER 6

The Law of Ethics

CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. Why are legal professionals subject to clearly defined ethical standards?

2. Who establishes the ethical standards by which attorneys are required to abide?

3. What are three formal sources of ethical requirements imposed on paralegals directly and indirectly?

4. List and define three basic ethical requirements imposed on all legal professionals and their support staff.

APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Ethical Responsibility

Suzanne is a college student who hopes to someday go to law school and eventually practice law. She is active in a number of charitable organizations and student government, and maintains a high grade point average. She has never been arrested or even had a speeding ticket. During her senior year, she and several friends go to a party where they consume alcohol. Suzanne drinks approximately three beers. On the way home it begins to rain and the streets become slick. Suzanne swerves to avoid a dog in the street and loses control of the car. The car hits a tree and one of Suzanne’s passengers is killed. Suzanne is charged with motor vehicular homicide as the result of driving under the influence. She knows that a felony conviction could jeopardize her entire future. She hires an attorney known for criminal defense. The attorney is extremely busy and misses a number of court appearances in Suzanne’s case. During the trial, the attorney fails to present any evidence of mitigating factors such as the weather or the inconsistent tests. When questioned, he tells Suzanne he is preparing for a much more important case and was distracted, but that it wouldn’t have made any difference anyway. Suzanne is convicted. She is sentenced to 6 months in jail and a $50,000 fine. Her admission to law school for the upcoming term is also revoked based on the felony conviction. Whether Suzanne’s conduct was ethical is not the issue for the attorney. You cannot be criminally
charged as an individual as unethical. But, once the attorney accepted her case, he had placed himself in a fi-
duciary position to represent Suzanne in an ethical manner. By accepting more cases than he could ade-
quately handle, failing to meet the minimum requirements of representation such as making court
appearances, and neglecting to produce the most basic evidence in support of his client’s defense, the attor-
ney violated ethical standards on a number of levels.

Confidentiality
Anne is a lawyer with a local firm that represents a rather well-known and eccentric client. Over lunch, Anne
is relating an anecdote to another lawyer of the firm about the client’s newest claim. This is done in a public
restaurant where nearby customers hear enough to figure out the gist of the story. One enterprising customer
sells the information to the local society columnist who promptly prints it in the paper. Even though the
lawyer was talking to another lawyer bound by the code of confidentiality, the communication was made un-
der circumstances that disclosed confidential information to nonprivileged persons. Therefore, the duty of
confidentiality was breached.

Competence
Sandy is a struggling young lawyer in solo practice. A client comes to her with a large real estate case. It in-
volves the purchase of industrial property, and there are numerous issues relating to chemicals previously
stored on the property and environmental concerns. So far, Sandy has only handled divorce cases. She got a
D in real property class in law school and has never felt comfortable with the subject. However, this case could
get her out of debt, be a source of referral clients, and even result in some publicity. All of this is weighed
against the ethical duty to act competently in handling client matters. Sandy cannot ethically accept the case
single-handedly under these circumstances. She is ethically obligated to either refer the case, obtain assistance
from a competent attorney, or refuse the case and not accept this type of case until she has achieved a level
of competence. A more easily understood comparison might be if you went to a general practitioner of med-
icine and asked him or her to perform delicate brain surgery. To do so without help or more knowledge ob-
viously would be unethical.

Conflict of Interest
You are a paralegal and work for a busy firm in a relatively small city. A great opportunity has opened up at
another firm and you want the job. However, your current firm and the other firm have a great many cases
in common (one firm represents the plaintiffs and the other the defendants). You apply for the job and are
hired. However, your first duty is to examine all the file names of all the files at the new firm and compare
them to a list you have copiously kept of all the files you ever worked on at the former firm. Any common
files must be identified in a way that will signal you and anyone else in the firm that you cannot have con-
tact with them or the clients. By doing so, you avoid a conflict of interest by involving yourself with a file for
which you may have privileged information from the other side.
CHAPTER 7
Substantive and Procedural Issues

CONCEPT SUMMARY
Prepare a brief response to each of the following questions.

1. Distinguish civil law from criminal law.

2. Distinguish substantive law from procedural law.

3. List the common forms of procedural law.

4. List and describe the stages of litigation.

5. What is a motion?

6. Briefly define the purpose of each of the following motions:
   
   Motion to Dismiss (Demurrer)—

   Motion to Make More Definite and Certain (Bill of Particulars)—

   Motion to Quash Service of Process—

   Motion to Inspect—
Motion for Mental or Physical Exam—

Motion to Compel—

Motion for Sanctions—

Motion for Summary Judgment—

Motion in Limine (Motion to Exclude)—

Motion for Directed Verdict—

Motion for Judgment NOV—

Motion for New Trial—

7. Why are there rules of evidence?

8. Why must all evidence be relevant and material? How are the terms relevant and material distinguished?

9. What is the purpose of the rules of hearsay?

10. Why are there exceptions to hearsay rules?
RELEVANT TERMS

Match the proper term to the definition.

- discovery
- civil law
- material
- damage
- evidence
- complaint
- request for production
- interrogatories
- motion
- deposition
- substantive law
- liability
- defendant
- summary judgment

- **discovery interrogatories** —Law that governs the private rights of individuals, legal entities, and government.
- **civil law** —Financial, physical, or emotional injury.
- **material deposition** —Written or oral questions submitted to a party or witness in a lawsuit, in which the answers are given orally and under oath, then transcribed into writing.
- **defendant** —The party against whom a lawsuit is instituted.
- **summary judgment** —Court supervised exchange of evidence, and other relevant information between parties to a lawsuit.
- **request for production** —Written questions submitted by one party in a lawsuit to the opposing party. Said questions must pertain to the dispute between the parties and must be answered within a specific time and in writing. A method of discovery.
- **substantive law** —Legal responsibility resulting from an act or failure to act when there was a legal obligation to do so.
- **summary judgment** —Determination prior to trial of the rights and obligations of the parties. This is granted only when there is no significant fact left to be decided on the basis of the evidence. The greatest weight of the evidence supports only one result.
- **evidence** —Evidence that is necessary to a fair and informed decision by the trier of fact.
- **complaint** —Also known as “petition.” The document that apprises the court and defendant of the nature of the cause of action by plaintiff.
- **request for production** —A written request from one party in a lawsuit to the opposing party, that seeks to copy and/or inspect documentary evidence that is relevant to the dispute. A method of discovery.
- **substantive law** —The law that creates and resolves the issue between the parties. Legal standards that guide conduct, and that is applied to determine whether or not conduct was legally appropriate.
- **summary judgment** —Formal request by a party to a lawsuit for court ordered action/non-action.
- **evidence** —Testimony, documentation, or tangible items that are admissible in court to support a party’s claims or defenses in a lawsuit.

APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

**The Difference between Civil and Criminal Law**

You are driving on a snowy road and cannot stop your car in time to avoid the car ahead. You are ticketed by a police officer for driving too fast for conditions (criminal law). You are sued by the driver of the other car for damage to his vehicle (civil law).
The Difference between Substantive and Procedural Law

In the civil suit referred to in the preceding example, the plaintiff (injured party) must file a complaint, pay filing fees, and arrange for a summons to be served on the defendant (alleged wrongdoer) to give him notice of the suit (examples of procedural law). The complaint describes the circumstances of the incident in which the plaintiff claims his legal rights were violated by the defendant and the legal principles that dictate that, if proven to be at fault and in violation of the legal principles, the defendant should compensate the plaintiff for injuries caused by the violation (substantive law).

Investigation v. Discovery

Investigation and discovery are the two processes by which evidence is assembled. That which the parties go about collecting independently is the product of investigation. Examples include photographs, witness statements, the party’s own expenses, etc. On the other hand, discovery rules allow each party the opportunity to examine the evidence of the other party. The procedural law does not require each party to turn over their evidence. Rather, it must be requested in very specific terms and only that evidence or information about evidence that is requested needs to be disclosed. An example of discovery is a deposition of the opposing party to determine the extent of their knowledge of the issues and test commitment to the claimed action or defense. A legal professional’s skill at knowing what to look for and what to ask of the other party about their evidence will, on many occasions, direct the outcome of the case.

Motions

As stated in the main text, a motion is a formal request of the court by a party in litigation. What follows are examples of circumstances of several situations in which motions might be filed. Assume in each case that the plaintiff and defendant are actively involved in a legal dispute that has been formally brought in the proper court.

Motion to Inspect

Plaintiff is on defendant’s property when an explosion occurs. Plaintiff is seriously injured. The defendant has denied plaintiff access to the property to investigate the actual cause of the explosion. The plaintiff files a Motion to Inspect, which seeks a court order granting permission to the plaintiff to enter the property for purposes of inspecting, testing, photographing, etc., the site of the explosion.

Motion to Compel

Defendant issued interrogatories to the plaintiff three months ago. The interrogatories were due two months ago. Since that time, the defendant has made two written requests but has still not received the interrogatory answers. Defendant files a Motion to Compel, seeking an order of court that requires the plaintiff to respond within a set period or face penalties. (If the plaintiff still does not respond, the defendant has a strong case for a Motion for Sanctions.)

Motion for Summary Judgment

Plaintiff has brought suit against defendant for medical malpractice. Throughout investigation and discovery, it has become apparent that plaintiff is merely dissatisfied with the result of treatment. There is little or no evidence of wrongdoing by the defendant. The defendant files a Motion for Summary Judgment, claiming that, in light of the evidence, there is only one reasonable outcome to the case—that defendant would prevail. Therefore, the defendant’s motion contends that there is no issue to be decided by the jury as all significant evidence favors defendant. Consequently, there is no need for a trial and the court should go ahead and enter a judgment (verdict) in the defendant’s favor and eliminate further expense of money and time.
Motion for Judgment NOV (notwithstanding the verdict)

Plaintiff has clearly established a prima facie case by a preponderance. The defense presented was minimal. Nevertheless, the verdict was in defendant’s favor. Plaintiff files a Motion for Judgment NOV, on the basis that the jury failed to properly consider the manifest weight of the evidence and that, as a result, the court should enter a different verdict.

Relevant and Material Evidence

All evidence, even though it meets all other technical rules of evidence, must meet requirements of relevance and materiality. These standards ensure that only evidence related to the issues, and that is not duplicitous of other evidence, will be admitted. Assume a passenger falls from a train and is killed. Evidence that the passenger was previously arrested for child abuse is not relevant to whether the passenger in any way contributed to her fall. Therefore, it is irrelevant. However, evidence that the passenger was an alcoholic and had been drinking on the train may be very relevant. However, the testimony of 32 fellow passengers who claim the decedent passenger was drunk is probably immaterial. Certainly, some evidence to this end is quite probably material, as it is necessary to a fair and informed decision by the jury. However, the same testimony over and over is not going to add to the information needed by the jury to fully understand the circumstances. Similarly, photographs that graphically depict the passenger's dismembered body may not facilitate a fair decision. Rather, autopsy reports may better enable the jury to reach a conclusion without the emotional response of such gruesome photographs. However, keep in mind that whether evidence is relevant and material and thereby admissible is ultimately subject to the discretion of the judge.
CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. Explain jurisdiction and why it is necessary to have rules of jurisdiction.

2. Prepare a brief example for each of the following types of jurisdiction:
   - Ancillary—
   - Appellate—
   - Concurrent—
   - Exclusive—
   - Federal—
   - In personam (personal)—
   - In rem—
   - Long-arm—
   - Original—
3. What are the three circumstances when a case can be filed in federal court?

4. When can a case be removed?

5. How is a case removed?

6. When can a case be remanded?

7. What is the procedure to have a case remanded?

8. Explain the term venue and distinguish it from the concept of jurisdiction.

9. What is domicile?

10. Where is a corporation domiciled?
11. What is a forum non conveniens?

12. How does a court determine whether to apply forum non conveniens?

**RELEVANT TERMS**

Match the proper term to the definition.

- remand
- ancillary jurisdiction
- pendent jurisdiction
- concurrent jurisdiction
- exclusive jurisdiction
- forum non conveniens
- in personam jurisdiction
- venue
- jurisdiction
- diversity of citizenship
- original jurisdiction
- in rem jurisdiction
- quasi in rem jurisdiction
- federal question
- long-arm jurisdiction
- removal
- subject matter jurisdiction
- appellate jurisdiction

_______ —(1) The authority of a court over parties and subject of a dispute. (2) Geographical boundaries of the area and citizens over which a court has authority.

_______ —Authority of the government of one jurisdiction to reach into another jurisdiction for the purpose of exercising control over a particular citizen.

_______ —The authority of a court to rule in a lawsuit from commencement through the conclusion of trial.

_______ —Occurs when a case involves multiple issues and the court in which the case is filed has actual authority over some but not all of the issues.

_______ —Court has the option to exercise authority over those issues it could not ordinarily decide, thus exercising pendent jurisdiction.

_______ —Authority of one court to review the actions in another court for the purpose of identifying the abuse of discretion.

_______ —A method of achieving federal jurisdiction over a matter. It is necessary that all parties be diverse, i.e., no plaintiff and defendant can be domiciled in the same state. The second requirement of diversity of citizenship is that the amount in dispute between the parties be in excess of the minimum amount stated by federal statute.

_______ —Authority of a court to hear a case, which authority is superior to all other courts.

_______ —A method of achieving jurisdiction of the federal courts over a dispute between parties. It is necessary that a significant part of the dispute arise from the Constitution or a federal law.

_______ —Upon petition of defendant, the court with jurisdiction over a matter determines that another court, which also has jurisdiction, would be the more appropriate forum.

_______ —Transfer of a case to federal court that was originally filed in state court.

_______ —Authority of a court over an individual and all of his/her assets.
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Subject Matter Jurisdiction

Two parties are involved in a fistfight, which ultimately results in a lawsuit. Plaintiff is domiciled in Texas and defendant is domiciled in Oklahoma. During the fight, the plaintiff received injuries that rendered him blind in the left eye and deaf in his left ear. Subject matter jurisdiction is the authority of a court to verify these injuries and determine whether the defendant is the cause and liable for compensation to plaintiff.

In Personam Jurisdiction

In the preceding example, the suit most likely would need to be brought in the jurisdiction where the incident occurred or where the defendant is domiciled. In so doing, the court would have authority to render and enforce any judgment against the defendant or her assets in the event she was found liable.

Long-Arm Jurisdiction

In the preceding example, if the incident occurred in a jurisdiction where the defendant was not domiciled, the court where the incident took place would still have jurisdiction over the defendant by virtue of her acts. As noted in the text, each jurisdiction has statutory law indicating when non-domiciled persons can be drawn back into the jurisdiction by reason of their activities. Typically included in the specified circumstances is tortious conduct.

Removal and Remand

Michael Johnson filed suit against Mary Doe at the trial court level in the state of Ohio seeking to avoid a property contract. Michael claims the property was misrepresented and therefore he should be allowed out of the contract. Michael lives in Ohio. The property is located in Wisconsin. Mary also lives in Ohio and this is where the contract was entered into by the parties. Six months after suit is initiated, Michael rents an apartment in a city in Wisconsin, and begins to work for a local company. Mary files a timely petition to remove the case to federal court in Wisconsin on the basis of diversity of citizenship. Her petition alleges that her domicile of Ohio is now diverse from Michael’s domicile of Wisconsin.

Within the appropriate time, Michael files a petition to remand with the federal court claiming lack of diversity. At the hearing, Michael presents evidence that his relocation is temporary for purposes of completing a subcontracting job, and that his intended permanent residence is still Ohio, where his family resides and all permanent ties have been maintained. The court must examine all pertinent factors surrounding Michael’s domicile and determine whether diversity truly exists.
**Corporation Domicile Test**

Acme Widget Corporation is incorporated in the state of Texas. The company has corporate offices in Oklahoma. The main manufacturing plant is in Illinois. However, most distribution of product occurs in a chain of company-owned stores in California. In determining the proper domicile of the corporation, two locations are possible: the site of incorporation (Texas) and the nerve center of the corporation. In this example, while corporate activity is widely spread, it appears that the direction of the corporation emanates from Oklahoma. Consequently, this would be the other likely alternative for suit involving the corporation.
CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. Identify the elements of a contract.

2. Explain contractual capacity and its purpose.

3. Define consideration.

4. What does “legally enforceable promises” mean?

5. What is an objective standard?

6. What is necessary to create an offer and how is it distinguished from negotiation?

7. When and how may an offer be ended?

8. What is the effect of an acceptance and when does it take effect?
9. Distinguish bilateral from unilateral contracts.

10. What are the three types of third-party contracts? How are they distinguished? What are the enforcement rights of the respective third parties?

11. What is the purpose of the statute of frauds?

12. Identify and define common defenses to alleged breach of contract.

13. Identify and define common remedies for breach of contract.

**RELEVANT TERMS**

Match the proper term to the definition.

- **acceptance** — The final step necessary to form a legal contract. A demonstration of agreement to all of the terms of the contract that has been offered.
- **equity** — Court-ordered completion performance as stated in contract. Allowed in certain cases of equity where the performance is unique and cannot be substituted or compensated by the payment of money.
- **third-party beneficiary** — One who, as the result of gift or collateral agreement, is entitled to the contractual performance owed another.
- **offer** — A contractual agreement between two or more persons in which each party promises to deliver performance in exchange for the performance of the other.
- **specific performance** — A legally binding agreement that obligates two or more parties to do something they were not already obligated to do, or refrain from doing something to which the parties were legally entitled.
- **contract** — A legally binding agreement that obligates two or more parties to do something they were not already obligated to do, or refrain from doing something to which the parties were legally entitled.
- **recision** — The ability to enter into, and be bound by, a legal contract; which ability has not been diminished by age of minority or adjudicated incompetence.
- **assignment** — The final step necessary to form a legal contract. A demonstration of agreement to all of the terms of the contract that has been offered.
- **consideration** — One who, as the result of gift or collateral agreement, is entitled to the contractual performance owed another.
- **unilateral contract** — A contractual agreement between two or more persons in which each party promises to deliver performance in exchange for the performance of the other.
- **statute of frauds** — A legally binding agreement that obligates two or more parties to do something they were not already obligated to do, or refrain from doing something to which the parties were legally entitled.
- **contractual capacity** — The ability to enter into, and be bound by, a legal contract; which ability has not been diminished by age of minority or adjudicated incompetence.
- **offer** — A legally binding agreement that obligates two or more parties to do something they were not already obligated to do, or refrain from doing something to which the parties were legally entitled.
- **consideration** — One who, as the result of gift or collateral agreement, is entitled to the contractual performance owed another.
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Capacity
Sonya is somewhat developmentally disabled. She is twenty-three years old, but functions at about a 12-year-old age level. Sonya reads an advertisement for a record club contract in a magazine. She reads the section which states that you must be eighteen to enter the agreement. Being well over that age, she decides to sign up. She agrees to get three free record albums in exchange for a 10-year contract to purchase twelve records per year at a cost of $35.00 per record. Sonya’s parents do not want to abide by the contract since they totally support Sonya financially. However, Sonya has never been declared legally incompetent and she is of proper legal age. Therefore, she is bound by the terms of the contract. The option left to Sonya’s parents is to refuse to give her the money for the contract and allow the other party to seek collection.

Bilateral v. Unilateral Contract
Barbara sees a house being painted across the street from her home. She is so impressed with the job that she asks the painters for a bid on her own home. The painters give a bid of $1,100. However, because it is so late in the fall, they will not be able to begin until next summer. Barbara thinks it over and mails a note to the painters stating that she will pay $1,100, and would like the house to be painted in June of the following year. If the painters respond that they accept her offer of payment and promise to paint the house, a bilateral contract is created. If the painters do not respond verbally or in writing, but arrive on the first day of June and begin painting, a unilateral contract is created.

Specific Performance
Aldea Spelunker, a famous Russian dancer who has become a U.S. citizen, is booked by a private tour company to dance in 30 cities across America. Aldea dances the first 12 cities to record crowds. However, she decides that the performances are too close together and too demanding and refuses to continue the contract. The tour company files suit requesting specific performance. Because the breach was in no way caused by the company, and the performance of a dancer is unique, two of the requirements for specific performance have been met. However, the company’s loss is financial and thus can be compensated by monetary damages.
Therefore, it is not likely that the court would grant specific performance in this situation. Rather, if the company prevailed, monetary damages would be assessed against Aldea.

**Assignment and Delegation**

Mark leases an apartment from Donald for a term of two years. However, Mark receives an offer of employment in another state. Mark assigns his right to possession of the apartment and delegates his duties with respect to the lease to Ronald. Because the lease does not prohibit such an assignment, and delegation and the circumstances would not substantially alter the performance originally due from Mark, the acceptance of the rights and obligations by Ronald is acceptable.
CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. Define the term “property.”

2. Distinguish real property from personal property.

3. Explain the concept of fee simple.

4. What is a life estate and how is it distinguished from fee simple? When does it begin and when does it end?

5. How is a right of reversion different from a remainder interest?

6. Identify, define, and distinguish the types of multiple tenancies.

7. What are the unique characteristics of ownership of a condominium?

8. What is an easement?
9. What are the types of easements?

10. Who are the parties involved in a transfer of property and what is their role?

11. What is adverse possession and what is required to establish it?

12. What is a nonfreehold estate?

13. What are the respective obligations of the landlord and tenant?

14. Define the warranty of habitability.

15. What is mitigation and when is it used in nonfreehold estate property law?

16. What is constructive eviction?

17. Define and distinguish fixtures from trade fixtures.

18. Define bailment and distinguish the subtypes.

19. What are the duties of bailor and bailee?
20. Identify and distinguish the methods of involuntary separation between an owner and personal property.

21. What are the actions to recover personal property?

**RELEVANT TERMS**

Match the proper term to the definition.

- **lost property**
- **abandoned property**
- **real property**
- **adverse possession**
- **bailment**
- **fee simple**
- **life estate**

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<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tr>
<td>lost property</td>
<td>— Personal property that has been deliberately left in a location without the intention to retrieve it.</td>
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<tr>
<td>abandoned property</td>
<td>— When title to real property is acquired without purchase or voluntary transfer of title. Ordinarily, one who obtains title by this method must openly and continuously exercise possession and control over the entire property against the interest of the current owner, and all others who claim rights to the property for a period of time, which is specified by statute.</td>
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<tr>
<td>real property</td>
<td>— Temporary relinquishment of control over one’s personal property to a third party.</td>
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<tr>
<td>adverse possession</td>
<td>— Absolute ownership of property in American law.</td>
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<td>bailment</td>
<td>— Personal property that has been so affixed to real property, that the item cannot be removed without damage to at least part of the real property.</td>
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<td>fee simple</td>
<td>— A periodic possessory interest in real property that does not include ownership.</td>
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<tr>
<td>life estate</td>
<td>— A form of multiple property ownership in which the property owners have fee simple and share four unities. Each owner shares in the right of ownership.</td>
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<td>— The right to possess and use real property for the duration of one’s life, with limited ownership rights.</td>
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<td>— Property that has been unintentionally left by the owner in a place no longer known to the owner.</td>
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<td></td>
<td>— Property that was intentionally placed by the owner and later forgotten.</td>
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<tr>
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<td>— An interest in real property that involves the rights of possession and ownership.</td>
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<tr>
<td></td>
<td>— Movable items that are not land or permanently affixed to land.</td>
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</tbody>
</table>

Personal property includes tangible (physical) and intangible items such as rights of ownership in property held by others such as bank accounts, or rights of ownership in legal entities, e.g., stock. It does not include rights to bring legal action against others commonly known as a chose in action.
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

**Personal Property, Real Property, and Fixtures**

Margaret sells her cafe to Marvin. The cafe sits on a busy commercial street. Inside the cafe are antique espresso and cappuccino machines built into custom cabinetry. On the outside is a large patio area with custom-made patio furniture and portable flower boxes designed for this particular patio. When the property is conveyed, the store is permanently incorporated into the land and is therefore real property. The machines are trade fixtures and typically would not be included in the sale (unless otherwise stated in the contract), and the patio furniture and flower boxes are quite movable and thus personal property not associated with the real property. It should be noted that when a fixture is not included with a conveyance, the owner of the fixture does have an obligation to restore the integrity of the real property if it is damaged by the removal of the fixture.

**Joint Tenancy**

Nancy, Steve, and Bob all enter into a joint tenancy in property. They acquire the property on the same date from the same source and agree that the property will be held in joint tenancy. Subsequently, Nancy issues a will dictating that her interest in the property should be inherited by Jason. Nancy dies while the joint tenancy is still in effect. Steve and Bob receive Nancy’s interest by right of survivorship in the joint tenancy. Because the right of survivorship takes effect at the moment of death, the property interest no longer even exists as part of Nancy’s estate at the time of probate.

**Easement**

Charlene owns a 120-acre ranch. She also owns an oil well on the ranch that produces about a $1,200-year profit. Charlene decides to sell part of the ranch. However, the oil deposits extend under the portion of the ranch for sale. When the property is conveyed to the new owner, Charlene retains an easement on the property conveyed that allows her to continue drawing oil from the property and that prohibits the new owners from doing anything to the property that would interfere with Charlene’s oil production or the deposit. Charlene has the dominant tenement and the new owner has otherwise fee simple ownership; the property is subject to the conditions established by Charlene. These conditions on use of the property constitute the easement.

**Constructive Eviction and Mitigation**

Caroline has rented an apartment from Mr. Summers. Unknown to Caroline at the time of the lease, is that Mr. Summers has a polka band that rehearses in the adjoining apartment. The band is trying to break into the big time and practices six nights per week from 8 P.M. to 12 midnight. Caroline is at her wits’ end with the noise. She has demanded that the noise stop or that she be released from her agreement and given back her
deposit. Mr. Summers completely refuses the latter and claims since he owns the property he can use it any-
way he wants. Caroline could quite possibly have a claim for constructive eviction since her right of quiet en-
joyment is interfered with on a regular and ongoing basis. If she were to abandon the lease agreement, she
could claim constructive eviction and also seek damages for the cost incurred in ending the agreement pre-
maturely such as moving fees. Likewise, Mr. Summers could counter with a claim of breach of contract and
seek the remainder due under the lease. However, he would have a duty of mitigation and would have to
make reasonable attempts to rent the apartment and thereby reduce the amount due from Caroline.

**Actions for Replevin, Trespass, and Conversion**

Barb and Greg are divorced. As part of the settlement, Barb receives the van. Six months after the divorce,
Barb comes home from jogging to find the van missing. Greg left a note saying that he borrowed the van and
will return it the next day. However, Greg ultimately refuses to return the van. Because Greg’s name was
never taken off the title of the vehicle, the police will not become involved. Barb also discovers that Greg
backed the van into a pole and caused several hundred dollars damage. Barb brings an action against Greg for
replevin (return of the property) and trespass (damage to the property).

In the above example, add to the facts the following information: Greg sells the van by forging Barb’s
signature on the title. Barb would have an action for conversion (fair market value of the van at the time it
was taken).
CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. Define tort and give an example of a cause of action that is a tort and one that is not.

2. What are the three basic categories of tort?

3. Identify and define the elements of negligence.

4. Explain the reasonable man concept.

5. What is res ipsa loquitur and when does it apply?

6. What is the purpose of strict liability and in what types of situations does it apply?

7. Identify the elements of the following intentional torts:
   - Assault—
   - Battery—
False Imprisonment—

Fraud—

Defamation—

8. How are products liability actions distinct from other types of tort actions?

9. What is the purpose of workers’ compensation laws?

10. How has the advent of discrimination suits by employees affected employer liability?

11. Identify and define the common defenses to tort.

12. Distinguish the types of damages recoverable in tort actions.

RELEVANT TERMS

Match the proper term to the definition.

reasonable conduct—An act or failure to act toward another when (1) a duty was owed to the other person; (2) the act or failure to act was less than a reasonable person would have done under the circumstances; (3) the act or failure to act was the direct cause of injury to the other person; and (4) the injury caused measurable financial, physical, or emotional damage to the other person.

contributory negligence
intentional tort
proximate cause
assumption of risk
reasonable man
comparative negligence
damage
respondent superior
strict liability
tort
res ipsa loquitur
negligence
hostile environment
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Reasonable Man

Brandon is at work when it begins to snow. He realizes the weather and road conditions are deteriorating but decides that his boss would not understand if he were to leave work early. His car has worn tires and after work he proceeds on the drive home. He drives as carefully as he can but nevertheless loses control of the car on a steep hill and crashes into three cars at an intersection below. The occupants of the cars bring an action for negligence. While under the everyday definition Brandon’s action was reasonable (fair or average), the legal interpretation would require that Brandon evaluate the circumstances and choose the safest course of conduct. In this case, the reasonable man would have acknowledged the significance of driving in bad conditions in a hilly area with worn tires. It is very likely that legally, Brandon’s conduct would not be seen as reasonable.

Res Ipsa Loquitur

The Abernathys live in a rented house that sits on a large property owned by the Dockers where the home of the Dockers is also located. There are no other residences nearby and the surrounding area consists of a pond and farm fields owned by the Dockers. The Abernathys return home from vacation to find their two prizewinning goats dead. Autopsies reveal that the goats died from poison by a contaminated drinking supply. The Abernathys
have no means of proving that the Dockers are responsible for the deaths. However, only the Dockers have access to the pond where the goats drank. Because the deaths would not have occurred had the pond not been contaminated with toxic substances, and because such an occurrence does not generally take place naturally, and the fact that the Abernathys were in no way responsible for the deaths, an action for negligence under the doctrine of res ipsa loquitur could be brought against the Dockers by the Abernathys by establishing the foregoing facts. They would not be required to prove the exact method of breach of the standard of care by the Dockers.

Contributory Negligence v. Comparative Negligence

Flora and Fauna were involved in a two-car accident. Flora was driving while intoxicated, driving too fast for conditions (it was raining and she was 30 miles over the speed limit), failed to keep a proper lookout, and failed to yield the right of way to Fauna’s vehicle. Fauna was also driving too fast for conditions (driving 5 miles over the speed limit). In a state following contributory negligence, Fauna’s infraction would prevent her from successfully bringing any action against Flora. In a comparative negligence state, Fauna could bring suit against Flora. However, any judgment in Fauna’s favor would be reduced by the percentage of fault in producing the accident caused by Fauna’s driving 5 miles over the speed limit in rainy weather.

Strict Liability

Jill owns a gas and service station and body shop. She frequently uses equipment, such as blowtorches, that emit flame in her work on vehicles. She also dispenses flammable fuels in the service station. Jill generally takes extreme caution in keeping the flammable fuels and fumes separate from any equipment with sparks or flames. However, one day when she is attempting to remove oil stains from the garage floor, a flammable cleaning solvent is used and ignites with the pilot light on the water heater. The fire quickly spreads and when it reaches the fumes near the gasoline pumps, a tremendous explosion occurs. Many people are killed and much property is destroyed. Actions are brought against Jill (actually against Jill’s estate, since only her left shoe was recovered from the accident site) under the theory of strict liability. Jill was involved in a business that was extremely dangerous and was something from which the surrounding public could not protect itself. As a consequence, regardless of Jill’s precautions, the danger escaped and injured an innocent public. The ultrahazardous activity, combined with the danger that the public could not avoid, creates a circumstance in which Jill’s benefits from the activity are balanced by responsibility for injuries caused by the activity regardless of whether her conduct was reasonable.

Assumption of Risk

Lauren went to a dude ranch for a relaxing vacation. She requested a gentle horse for riding and was quite satisfied with the horse assigned to her. After nearly a week of riding, Lauren was feeling quite comfortable on the horse and decided to test her equestrian ability. She began galloping through the woods and in a matter of minutes the horse bucked and threw Lauren. In the fall she received a broken shoulder. Lauren sued the ranch for her injuries. The ranch raised the defense of assumption of risk on the basis that Lauren knew of her own limited ability, understood that attempting to exceed the ability could result in injury (all evidenced by her request for a gentle horse), and voluntarily encountered the danger.

Last Clear Chance

Gary decides he wants to learn to roller blade. He buys a pair of roller blades and practices on a nearby school playground for a couple of hours. He decides to venture out into the streets of the city. While Gary is skating he loses control and careens into the path of a crosstown bus. The bus driver expects Gary to pass in front of and to the left of the bus and does not slow down. Instead, Gary falls and is run over. Gary’s survivors bring an action against the bus company. The defendant raises the defenses of comparative negligence and assumption of risk. The plaintiffs counter with last clear chance. This defense of plaintiff to defense of defendant holds that, under these circumstances, although Gary’s own action may have placed him in peril, the bus driver had the last clear chance to avoid the injury by applying his brakes.
CHAPTER 12

The Law of Business

CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. When does an agency exist?

2. What are the roles and duties of agent and principal?

3. Identify and define each of the types of agency.

4. What is respondeat superior and when does it apply?

5. Describe and distinguish the characteristics of a sole proprietorship, general partnership, limited partnership, and corporation. Give an example of each.

6. What information is used to determine the existence of a partnership?

7. What is a promoter and what are the duties or obligations of a promoter?

8. What is the purpose of the Model Business Corporation Act?
9. Identify and distinguish the types of corporate status.

10. Under what type of circumstances may the corporate veil be pierced and why is it permitted at all?

11. Distinguish common stock from preferred stock.

12. Explain cumulative voting.

13. What are preemptive rights and what is their purpose?

14. Distinguish between voting pools and voting trusts.

15. What occurs in the dissolution of a corporation?

16. What are the types of bankruptcy?

**RELEVANT TERMS**

Match the proper term to the definition.

- agency
- respondeat superior
- articles of incorporation
- sole proprietorship
- corporation
- shareholder
- limited partnership
- partnership
- promoter
- bylaws
- par value
- involuntary bankruptcy
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Apparent Authority v. Actual Authority

Barry is employed by Bob to sell brackets. Bob’s biggest customers are the managers of hotels in the Beauty Rest Motel Chain nationwide. If Bob tells Barry to visit every hotel in the chain and accept orders for brackets, Barry has actual authority to bind Bob contractually. This authority stems from the direct communication between Bob and Barry. If, however, Bob sends letters to the Beauty Rest bosses at each hotel telling of Barry’s impending bombardment of sales campaign, then Barry has apparent authority based on Bob’s broadcast to third parties.

Respondeat Superior

In the preceding example, if Barry is barreling down the road and butts up against an embankment as the result of negligent driving, and injures passenger Bill whom Bob asked Barry to give a ride to the next town, then Bob is responsible for Barry’s acts in the course of his employment, which injured Bill.
General Partnership v. Limited Partnership

Paul and Jeff are involved in a general partnership. The two have agreed that Paul will invest financially and Jeff will invest his time and that any profits from the business of the partnership will be shared equally. As general partners, Paul and Jeff must agree on the best way to manage the business. However, if the partnership were limited, and Paul was the limited partner, all management decisions would be entirely up to Jeff. Paul's involvement would be confined to investment and receipt of his share of profits. However, Paul's personal liability for debts of the partnership (including judgments against it) would also be limited to the extent of his actual or committed investment.

Corporate Veil

Lynda opened her own ice cream shop. She incorporated the business and operated it quite well for more than two years. Then, one summer day when the shop was very busy, the lead cone girl was severely injured in a freak ice cream accident. The girl brought an action against Lynda’s corporation for workers’ compensation. Lynda, who had not paid the premium for her workers’ compensation insurance, was ultimately ordered to pay $100,000 to the girl. The corporation declared bankruptcy and sold all assets for $3,000. This was turned over to the girl as total payment. The girl sought to have the corporate veil pierced on the basis that Lynda depleted the assets of the corporation, leaving it insufficient funds to operate normal business, including maintaining current workers’ compensation coverage. In such a case, when an owner raids a business and leaves it merely as a front against personal liability, the courts will sometimes pierce the corporate veil and impose personal liability on the owner.

Preemptive Rights

Alex owns 20 percent of a business that manufactures hail damage shields. In recent years, the business has boomed and plans for expansion are on the horizon. The company decides to issue one thousand new shares of stock (doubling the current amount of stock in existence). Alex’s stock has preemptive rights that would allow him the first opportunity to purchase 20 percent of the new stock issuance before it is offered to public sale. This would enable Alex to maintain his current percentage of ownership in the business.

Dissolution of a Corporation

In the preceding example, assume that, due to changes in the atmosphere caused by pollution, weather involving hail is eliminated. The stock plunges and the business is devastated. A decision is made to dissolve immediately. On the date of dissolution proceedings, the company can no longer accept orders for hail damage shields (some people believe the changes in weather patterns are temporary) even though continuing to fill these new orders would provide additional income. Rather, the company must begin to liquidate all assets, pay creditors, and distribute any remaining funds to the stockholders in exchange for their stock.
CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. Distinguish testate from intestate.

2. Explain the concept of per stirpes distribution.

3. Define per capita distribution.

4. Who is an heir?

5. Who can inherit in an intestate distribution?

6. What are the requirements of a valid will?

7. When is an oral will permitted?

8. What is an amendment to a will called and what effect does it have on the existing will?
9. Explain “incorporation by reference.”

10. What is necessary to revoke a will?

11. How is undue influence established?

12. What are the basic steps of probate?

**RELEVANT TERMS**

Match the proper term to the definition.

*testamentary capacity*

*estate*

*intestate succession*

*per capita*

*forced share*

*probate*

*testate succession*

*per stirpes*

____________________________________ —The method of distributing an estate of one who died without a valid will.

____________________________________ —The legal right of a surviving spouse to receive a certain percentage of the estate of the deceased spouse, superior to the terms of a will or other rights of inheritance by heirs.

____________________________________ —All material assets of an individual or legal entity, including liquid assets (cash or items that can readily be converted to cash) and non-liquid assets.

____________________________________ —Distribution in equal shares to one level or class of persons; if a member of this level or class is deceased, then his or her heirs divide the shares.

____________________________________ —The process of paying creditors and distributing the estate of one who is deceased. Probate courts also often administer the estate of living persons who are incapable of managing their own affairs.

____________________________________ —A method of distributing the estate of a deceased person in accordance with the terms of a valid will.

____________________________________ —Knowledge of one’s estate and appreciation of the nature of the act of execution of a testamentary document.

____________________________________ —Distribution in equal shares with each person representing one share.
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Testamentary Capacity

Margaret executes her final will prior to her death. During probate, a will contest is filed claiming Margaret did not have testamentary capacity. In the language of the will Margaret stated, “I want to provide equally for my two daughters. Therefore, I am leaving my property in Florida to my daughter Mabel and my home in Connecticut to my daughter Maxine.” In reality, the property in Florida had been for sale for eighteen years at the price of $350.00, and had not received a single offer. However, the Connecticut property was valued at $1.8 million. The statement of intent to distribute the estate equally is clearly not represented by the actual distribution. Therefore, a claim may be made that Margaret did not understand the nature of her estate.

The Process and Effects of Probate

Nathan died with an estate of $80,000 in cash. His will made bequests of the entire estate in equal shares of cash to ten nephews and nieces. During probate, after the will is accepted, claims of creditors are accepted and evaluated and ultimately paid. These creditor’s claims total $70,000. The final estate remaining for distribution consists of $10,000. Although the will declares a gift of $8,000 to each beneficiary, that amount is not in the estate. Therefore, the remainder of the estate is used to satisfy the bequests at the close of probate in the amount of $1,000 per beneficiary.

The Forced (Right of Election) Share

William and Candice are married but have always maintained separate financial status. In his will, William leaves the entire estate to charity and does not even mention Candice who is independently wealthy. Upon William’s death, Candice claims her right of election (forced share) to receive the statutory percentage of William’s estate guaranteed to the spouse by statute. It does not matter what William wished or the amount of money Candice already had. By law, one cannot disinherit a spouse either directly or by implication. The exception is when the spouse has given up the forced share right in a valid contract such as an antenuptial agreement. Also, in some states, when a divorce is pending and a property agreement has been executed, the forced share right is terminated.

Alter the facts above as follows: William leaves five percent of his estate to Candice. Candice still has the right to the statutory percentage. When a spouse is provided for by will, the surviving spouse has the right to elect between the bequest and the statutory percentage.

Incorporation by Reference

Sam executed his will leaving his estate primarily to his brother. However, the will incorporated by reference, thereby including in its entirety a trust document Sam had previously executed. In the trust document, Sam set aside $100,000 of his $101,000 estate to be used for the rearing and education of his son Benjamin. By incorporating the language of the trust into the will by reference, the effect is to include the terms of the trust in the will as if they physically appeared in the content of the will.
CHAPTER 14

Criminal Law

CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. Define criminal law.

2. Explain the concept of no ex post facto laws.

3. Distinguish the Model Penal Code from the common law approach to criminal law.

4. Distinguish felony from misdemeanor.

5. What are the two elements present in all statutory crimes (with the exception of strict liability crimes)?

6. What are strict liability crimes and why is there no requirement of mens rea?

7. Identify and give an example of the parties to crime under the Model Penal Code, the common law approach, and the modern common law approach.

8. Define the term “inchoate crime.”
9. Identify and define three types of inchoate crimes.

10. Define the following crimes:

   Assault/Battery—

   Theft—

   Robbery—

   Homicide—
   Manslaughter—
   Murder—

   Rape/Sexual Assault—

   Embezzlement—

   Fraud—

11. Identify and define five common defenses to criminal conduct.

**RELEVANT TERMS**

Match the proper term to the definition.

- misdemeanor
- actus reus
- criminal law
- justification
- felony
- mens rea
- excuse
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Ex Post Facto Laws

A bill is pending in the legislature that would make it a crime to carry a child weighing less than sixty pounds on a motorcycle. However, until the bill is passed and made law, the police may not arrest or ticket individuals who do this, regardless of the support the bill has in the legislature.

Principals and Accessories

Jack and Wally are planning a robbery. Jack is going to actually commit the robbery. Wally, on the other hand, plans to help Jack escape the jurisdiction a few days later in a hidden compartment in Wally’s car trunk. In this situation, if the crime is committed, Jack and Wally could be convicted of conspiracy (an inchoate crime) and Jack would be charged as a principal, while Wally would be charged as an accessory (in a Model Penal Code state Wally would be charged with obstruction of justice).

Felony v. Misdemeanor

Chuck is charged with speeding and third offense driving while intoxicated. The speeding is a misdemeanor criminal offense. The penalty is a monetary fine (no jail time involved). However, the third offense DWI is classified as a felony with a possible penalty of two years in jail.

Inchoate Crimes

In the example above involving Jack and Wally, the planning aspect of their conduct constitutes conspiracy; this is, if evidence can be presented to establish the actual intent to commit further crime and that the necessary steps were taken in preparation of the crime. Examples of such evidence might include maps of the getaway, a floor plan of the site of the robbery, construction of the secret compartment in the car, purchase of guns, etc.

Theft v. Robbery

In the example above regarding Jack and Wally, if Jack planned to enter the scene of the crime and take the property without knowledge of the owner it would be a theft. However, if Jack planned to use the gun to coerce the owner of the property to give it up, robbery has been committed because force or the threat of force was incorporated into the crime.
Murder v. Manslaughter

Jimmy entered his apartment to find his wife dancing with another man. During a fight, Jimmy pushed the other man against the fireplace. The man struck his head and died instantly. Because the crime was the result of sudden and emotional impulse, there was no real opportunity to form the actual intent to kill or inflict deadly force. However, if Jimmy suspected his wife and came to the apartment with a loaded gun, safety off, and a silencer attached, the conduct is evidence of the premeditated intent or at least knowledge that he had the capability to kill the other man.
CHAPTER 15
Criminal Procedure

CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. What is the primary purpose of the rules of criminal procedure?

2. Why has the Supreme Court imposed certain mandates on the states with respect to specific rights or privileges that must be afforded to those accused of criminal conduct?

3. Define due process.

4. Explain the doctrine of selective incorporation.

5. What rights have been selectively incorporated into the definition of due process? (Also identify the constitutional amendments in which these rights are located.)

6. What specific requirements have been imposed on the states to ensure that the above-mentioned rights are protected?

RELEVANT TERMS

Match the proper term to the definition.
criminal procedure
double jeopardy
grand jury
due process
arrangement
probable cause
critical stage

Stage of a criminal proceeding in which the accused is formally charged.

Stage of a criminal proceeding in which the accused is entitled to representation of counsel.

What is necessary to fundamental fairness in the American system of justice.

Law that is created to assist in the fair and efficient enforcement of criminal law.

A number of individuals (usually more than 20) who review the evidence to determine if defendant could be convicted of the crime if charged and tried.

The legal concept of suspicion supported by facts, which is necessary before a search or arrest can be conducted by law enforcement officers.

APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Selective Incorporation

The Supreme Court has examined those situations common in criminal prosecutions such as arrest, and specified certain parameters of conduct of the police that will protect the constitutional rights of the accused. The court has done this because every accused has the right to due process (fairness in the prosecution). By including these specific circumstances as part of the definition of due process, the Court has attempted to ensure that convictions will be based on actual evidence rather than by coercion by the police, mistreatment of prisoners, or theatrical presentations by the prosecution.

Critical Stage

Homer is arrested and charged with a violent crime. Homer is of Chinese descent, approximately 5′8″, 160 pounds, with dark hair. The perpetrator of the crime was white, under 6′, between 150 and 200 pounds. Homer is placed in a lineup with three black men over 6′2″, a white man who weighs 110 pounds, and a woman. The victim is told that the man the police suspect is in the lineup. Because Homer most closely matches the description, the victim identifies Homer as the perpetrator and he is ultimately convicted on the basis of the victim's testimony. Because of situations like this, staged identification procedures have been classified as a critical stage in prosecution. By doing so, the accused is guaranteed the right to counsel. The presence of counsel at these stages permits the defendant to establish any unfair circumstances, such as the extremely suggestive lineup described above.

Probable Cause

As stated in the text, probable cause requires more than mere suspicion. Assume Sylvester is a disabled individual whose sole income is through state and federal aid of approximately $775 per month. However, over a period of five years, Sylvester buys a house for $89,000 and drives a new luxury automobile. The police believe that Sylvester is buying and selling stolen property. However, before a warrant will be issued to search Sylvester's property, the police must obtain at least some evidence of criminal activity. After surveillance of Sylvester's movements, he is identified as frequently being in the company of known criminals. He also rents large utility vans on a monthly basis and backs the van into his garage. The next day, the van is returned to the rental agency. Although Sylvester picks up the van and drives it to and from his home, the van is rented un-
der an assumed name. The police present this information to a judge who will determine if there is more than mere suspicion of criminal activity sufficient to warrant a finding of probable cause to issue a search warrant.

**Plain View Rule**

If the police are issued a warrant and search the property, they have the legal right to be present on Sylvester’s property. If, during the investigation, the police unexpectedly discover a large cache of drugs on the kitchen table, it may be seized as criminal evidence even though unrelated to the reason for police presence.

**Expectation of Privacy**

In the preceding example, assume that on one occasion the garage door is left up when a truck arrives driven by a known burglar. The police who are watching the house witness the individual unloading several televisions and stereos into Sylvester’s garage. Following this, Sylvester pays the individual and the truck is driven away. Sylvester appears to inventory the property. While one generally has a reasonable expectation of privacy in their own home, there is no such expectation for conduct exhibited in public view.

**Exclusionary Rule**

If, in the above situation, it was found that the police did not properly have a warrant, or that the warrant was issued on the basis of fabricated information, the evidence of crime seized cannot be admitted at trial. Without evidence of crime, it would be virtually impossible to convict the defendant.
CHAPTER 16

Family Law

CONCEPT SUMMARY

Prepare a brief response to each of the following questions.

1. What is the purpose of an antenuptial agreement?

2. What is required for a valid antenuptial agreement?

3. What is typically covered in an antenuptial agreement?

4. Why are antenuptial agreements growing in popularity?

5. What are the requirements for a valid marriage?

6. What is the effect of a legal annulment and under what circumstances is one granted?

7. When is an annulment not in order to dissolve a marriage-type relationship?

8. How is a legal annulment different from a religious annulment?

9. How is common law marriage established?
10. What is the position of most states on creation and recognition of common law marriages?

11. What is the current trend toward the position of the courts on intra-family lawsuits?

12. What changes have occurred in the recent past with respect to the laws of domestic violence and why have these occurred?

13. What is the total effect of a dissolution of marriage?

14. Explain the concept and purpose of no-fault statutes.

15. Distinguish legal separation from dissolution of marriage.

16. What is injunctive relief and what forms does it take?

17. What is the current trend among courts with regard to custody and how has this changed from the historical approach?

18. Define the terms “custody” and “joint custody.”

19. What is the purpose or goal of child support?
20. What is the purpose or goal of visitation by the non-custodial parent and how are visitation rights distinguished from custodial rights?

21. How is property divided in a legal separation or dissolution action and what is the effect on third parties of any orders or agreements with respect to property?

22. How has the law of maintenance (formerly alimony) changed in recent years?

23. What are the rights of parties who cohabitate in states that do not permit creation of common law marriage or situations in which the parties do not intend a marital relationship yet acquire joint property and debt?

**RELEVANT TERMS**

Match the proper term to the definition.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>permanent injunction</td>
<td>A court order that orders a party to act, or refrain from acting, in a particular manner for a short time until the court has the opportunity to consider a more permanent ruling.</td>
</tr>
<tr>
<td>annulment</td>
<td>A legal relationship is declared invalid. The parties to the relationship are treated as if it never existed, e.g., marriage.</td>
</tr>
<tr>
<td>antenuptial agreement</td>
<td>A legal document that establishes the property rights of the parties without effecting a dissolution of the actual marriage relationship.</td>
</tr>
<tr>
<td>maintenance</td>
<td>Financial assistance from a divorced spouse to the other divorced spouse, to be used for necessary living expenses and income.</td>
</tr>
<tr>
<td>joint custody</td>
<td>Sharing of responsibility for upbringing of children of the two parties. In some cases, this also involves shared physical custody of the children.</td>
</tr>
<tr>
<td>preliminary injunction</td>
<td>An agreement as to the property rights and obligations of co-owners/co-debtors, such as parties to a marriage.</td>
</tr>
<tr>
<td>property settlement agreement</td>
<td>An agreement between parties prior to a marriage, which states the terms for distribution of assets and liabilities in the event the marriage relationship ends.</td>
</tr>
<tr>
<td>legal separation</td>
<td>The end of the marriage relationship.</td>
</tr>
<tr>
<td>dissolution of marriage</td>
<td>A court order that permanently orders a party to act, or refrain from acting, in a particular manner.</td>
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</tbody>
</table>
APPLICATION OF CONCEPTS

The following applications illustrate some of the major concepts of the chapter.

Antenuptial Agreements

Al, age 56, and Melissa, age 22, are planning to marry. It is Al’s second marriage and Melissa’s first. Al has three children by his first marriage. The children are now adults. Al and Melissa agree that the substantial assets belonging to Al should ultimately be inherited by his children. They agree that at the time the marriage ends by death or divorce, Melissa will make no claim against any real property held by Al prior to the marriage. Any after-acquired property will be distributed equitably between Al and Melissa or Melissa and Al’s children (in the event of Al’s death during the marriage). At the time of the marriage, Melissa has no significant assets. She is, however, the named beneficiary of a $3 million life insurance policy on her father. Melissa does not disclose this to Al. In this example, the antenuptial agreement would still probably be enforceable. Although Melissa has a possible future interest in a sizeable estate, it is not guaranteed nor does she have any current interest in the asset at the time of the marriage. At any time the policy could lapse for non-payment of premium, her father could change beneficiaries, the policy may not be paid based on the circumstances of her father’s death, etc. Consequently, there is adequate disclosure of the existing and actual financial status of the parties. The agreement does not promote divorce. If it is in writing and reflects any other statutory or common law requirements on such agreements, it would likely be held valid.

Best Interest v. Tender Years

Susan and Maurice are in the midst of a divorce. The children are Lynn, age two, and David, age four. Susan is employed full-time and travels out of town an average of two nights per week and she plans to hire a sitter for the children on these days. Maurice is an elementary school teacher two blocks from his home. He does not work in the summer and is usually at work from 7:45 A.M. until 3:30 P.M. It has been his practice to do any work at home after the children have gone to bed. Under the tender years doctrine, the presumption would be that Susan is the best parent and, unless proven to be unfit as a mother in some way, she would almost automatically get custody because of the children’s young age. Under the best interest doctrine, the circumstances of each party would be examined including the information above, but also matters such as religion, proximity and involvement of extended family, ability to provide a suitable home environment, lifestyle, etc. After all of these are weighed, the home that would be in the best interest of the child would dictate the parent who received custody.

Cohabitation

Scott and Cheryl live together in New York. Cheryl, a struggling artist, has an agreement with Scott: She will attempt to bear him three children, if he will be responsible for her’s and the children’s financial support. This would enable Cheryl to pursue her career and offer her children the home environment she feels is best. Scott, on the other hand, will have three children and a loving atmosphere in which to raise them. At the time the parties reach this understanding they are very much in love. Over the years, the parties have three children together. However, the economy is such that the financial situation is very strained. Cheryl’s career has gone nowhere and Scott wants her to go to work, now that the children are all in school. Cheryl refuses. The relationship deteriorates and the parties split. Scott agrees to pay child support but refuses to give Cheryl any type of cash settlement. Cheryl files suit claiming that they had a valid contractual agreement and she gave her consideration. She claims that, in return, Scott now has the obligation to support her during the children’s minority. The trial court determines that no valid and enforceable contract exists because the subject of the contract was for an illegal purpose. Specifically, the consideration from Cheryl required sexual services (necessary to conceive the children) in exchange for monetary consideration. Sex for money is illegal and therefore any contract involving sex for money is unenforceable. Caveat: This example closely patterns a precedent in California. However, with the increasingly available technology in fertility and conception, it is possible that in today’s and tomorrow’s society, an agreement such as Scott and Cheryl’s would not necessarily require sexual services and would thereby be enforceable.
Maintenance

Gloria and Eric have been married for thirteen years. Gloria is a physician and Eric was an office nurse. Eight years ago, Eric quit working in Gloria’s office to stay at home and manage the couple’s home and financial affairs. Gloria and Eric have decided to divorce. Eric no longer wants to resume nursing but rather, wants to pursue an education in finance. In the past, Eric might have been entitled to take maintenance for life because he gave up his career to take care of Gloria’s interests. Today, however, the courts encourage financial independence of divorced parties. Because Eric does have skills with which to support himself, the court may not award any maintenance. However, because he wants to retrain in another field, and because he has been out of his former profession for so long, it is possible that the court would award temporary maintenance while he retrained.
Review Questions

CHAPTER 1: THE HISTORICAL BASIS AND CURRENT STRUCTURE OF THE AMERICAN LEGAL SYSTEM

Answer each of the following statements as true (T) or false (F).

1. The naturalist theory is no longer influential in the current American legal system.
   - F

2. The positivist theory is represented in the American legal system by the Supreme Court of the United States.
   - T

3. The sociological theory is employed every time the laws are changed or repealed, or new ones are added to reflect current societal standards.
   - F

4. The executive branch authority is superior to the other branches.
   - F

5. The judicial branch influences the legislative branch.
   - T

6. The authority of the legislative branch is generally superior to the other branches.
   - F

7. Statutory law consists of legal standards from any of the three branches of government.
   - F

8. Judicial law emanates only from the courts.
   - T

9. Administrative law emanates from the exercise of authority of the executive branch.
   - T

10. Legal principle and legal standard are essentially synonymous terms.
    - T

11. Precedent is an established legal standard.
    - T

12. Stare decisis means essentially the same as precedent.
    - T

13. The traditional balance has been the continuing effort of the courts to offer stable legal standards measured against the need for an adaptive government.
    - T

14. The modern balance has been the continuing effort of the courts to offer stable legal standards measured against the need for an adaptive government.
    - T

15. Stare decisis means “let the decision stand.”
    - T

16. The Bill of Rights was designed to prevent unnecessary government interference in private lives.
    - T

17. The Declaration of Independence was the initial formal document used to notify other countries of a new national government.
    - F

18. The Articles of Confederation were used to establish the framework of the new national government.
    - F

19. Ultimately, the Declaration of Independence and Articles of Confederation were replaced by the Constitution.
    - T

20. Prior to the Constitution, there was a movement to abolish independent states (colonies) in favor of a single unified government to oversee the rights of all of the citizens.
    - T
CHAPTER 2: THE COURTS

Answer each of the following statements as true (T) or false (F).

_____ 1. The only purpose of judicial law is to protect the Constitution.
_____ 2. Common law is statutory law created for the common man.
_____ 3. Case law occurs when the court interprets and applies an existing precedent.
_____ 4. The U.S. Supreme Court is an appellate court for all cases filed in the United States.
_____ 5. No U.S. Circuit Court has authority superior to any other U.S. Circuit Court.
_____ 6. A U.S. Circuit Court has authority to rule on cases from any U.S. District Court.
_____ 7. U.S. District Courts are generally trial courts.
_____ 8. Trial courts review actions occurring in previous trials.
_____ 9. Appellate courts generally use their authority to determine if the defendant is guilty or innocent.
_____10. In a bench trial, the judge applies the law to the facts.
_____11. In a jury trial, the jury applies the law to the facts.
_____12. The information found in all judicial opinions and necessary for an adequate case brief consists of
the occurrence facts, legal facts, issue, and law.
_____13. All cases in the state supreme courts are appealable to the U.S. District Courts.
_____14. Discretion describes the extent of authority of the court in the determination and application of law.
_____15. The term “reversal” is synonymous with the term “overrule.”
_____16. Judicial opinions and statutes are published in reporters.
_____17. Judicial opinions are published in reporters chronologically.
_____18. Judicial law serves a purpose of clarification.
_____19. Federal district courts and state district courts are all part of the same court system.
_____20. U.S. Circuit Courts are generally trial courts.
CHAPTER 3: LEGISLATION

Answer each of the following statements as true (T) or false (F).

1. All bills are laws.
2. Legal analysis of a statute is performed in the same way as case analysis.
3. Annotated statutes are the same as reporters.
4. Veto is an example of the influence of the executive branch over the legislative branch.
5. Codified law is a collection of all currently effective law in a jurisdiction.
6. Session law is a collection of all currently effective law in a jurisdiction.
7. Codified law is organized by subject.
8. Constitutional amendments require a simple majority (greater than 50 percent) in each house of Congress to pass.
9. Bills require a two-thirds majority in Congress to pass.
10. The legislative branch creates law for every specific and individual situation.
11. Lobbyists are hired by legislators.
12. Session laws are published in chronological order.
13. Remedial law can be a totally new law or a statutory amendment.
14. Protective law is always criminal.
15. All law can be clearly categorized as procedural or substantive.
16. Both the executive and judicial branch have influence on the legislative branch.
17. The House of Representatives ensures that each state has an equal voice in government.
18. The Senate ensures that all citizens have an equal voice in government.
19. Slip laws are individual publications of newly passed legislation.
20. There has always been a required number of years as a U.S. citizen to be elected to Congress.
CHAPTER 4: THE EXECUTIVE BRANCH AND ADMINISTRATIVE AUTHORITY

Answer each of the following statements as true (T) or false (F).

_____ 1. One need not be born in the United States to become President.

_____ 2. In the event of a failure of an appropriate electoral majority, the President is elected by the House of Representatives and it is then the President’s authority to name the Vice President.

_____ 3. The President can only grant pardons with the advice and consent of the Senate.

_____ 4. The President can only negotiate treaties with the advice and consent of the Senate.

_____ 5. Exhaustion of remedies applies to Congress.

_____ 6. The delegation doctrine states that Congress cannot give away its lawmaking authority.

_____ 7. The delegation doctrine states that an administrative agency cannot exercise statutory lawmaking authority.

_____ 8. The Administrative Procedure Act applies to all agencies.

_____ 9. A federal agency administrative law judge sits in a U.S. District Court.

_____ 10. The Code of Federal Regulations is the publication for all federal regulations.

_____ 11. A regulation has the effect of law.

_____ 12. Administrative law is the same thing as legislative law.

_____ 13. An enabling act is administrative law.

_____ 14. The administrative branch is part of the executive branch.

_____ 15. An administrative agency is overseen by Congress.

_____ 16. The creation of each administrative agency is preceded by an enabling act.

_____ 17. Congress has the duty to faithfully execute laws.

_____ 18. The Vice President has the responsibility to staff and supervise administrative agencies.

_____ 19. Administrative regulations must be approved by Congress before they are effective.

_____ 20. Administrative regulations must be approved by the President before they are effective.
CHAPTER 5: THE LEGAL PROFESSIONAL

Answer each of the following statements as (T) true or (F) false.

_____ 1. The duties of a paralegal are interchangeable with an attorney.

_____ 2. Some individuals can engage in the limited practice of law without a license to do so.

_____ 3. Before one can qualify as a paralegal, one must be licensed.

_____ 4. Advocacy and advice are the cornerstones of the practice of law to the extent they require licensure.

_____ 5. A paralegal is actually the same as an experienced legal secretary.

_____ 6. The primary responsibilities of a law office administrator usually include being a paralegal.

_____ 7. The potential consequences for an employee paralegal who engages in the unauthorized practice of law can include civil and criminal charges.

_____ 8. It is just as advantageous to employ another attorney as a paralegal.

_____ 9. Paralegals are regulated through educational institutions.

_____ 10. Benefits of formal paralegal organizations include continuing education, job referrals, and advancement of the public image of the profession.
CHAPTER 6: THE LAW OF ETHICS

Answer each of the following statements as (T) true or (F) false.

_____ 1. Attorney-client communication confidentiality applies to the obligation only on the attorney and not the client.

_____ 2. An ethical wall states that attorneys should not act incompetently.

_____ 3. A conflict of interest occurs when an attorney does not believe his/her client’s story.

_____ 4. The general ethical responsibilities of a paralegal are the same as those of the attorney by whom he or she is employed.

_____ 5. Everyone in the law office is bound to keep attorney-client communications privileged.

_____ 6. Confidentiality applies to all documents in a client’s case including court pleadings.

_____ 7. Rules of competence do not apply to one who has received a license to practice law because competence has been established.

_____ 8. The practice of law or unauthorized practice of law is defined by statute.

_____ 9. Confidentiality is the duty of the entire legal staff toward the client.

_____10. An attorney may represent both parties as the only counsel in an uncontested case such as a dissolution of marriage.
CHAPTER 7: SUBSTANTIVE AND PROCEDURAL ISSUES

Answer each of the following statements as true (T) or false (F).

1. A parking ticket is an example of criminal law.  
2. A breach of contract action by the government for failure to complete a construction contract is an example of civil law.
3. The statute that states grounds (reasons) for divorce is substantive law.
4. The statute that states that no hearing is required for an uncontested divorce is procedural law.
5. Procedural law includes a listing of the elements of criminal offenses.
6. A motion is a formal request for court action.
7. Voir dire is a court-supervised exchange of evidence between parties.
8. To win in a civil case, a plaintiff must present enough evidence to establish a prima facie case.
9. To win in a civil case, a plaintiff must present enough evidence to convince the jury by a preponderance.
10. Relevant evidence tends to prove a necessary fact.
11. Material evidence is necessary to a fair and informed decision.
12. Actual hearsay is never admissible in court.
13. Discovery is the independent collection of evidence by each party.
14. The burden of proof is on the defendant to prove innocence or lack of liability.
15. A Motion to Inspect is the same thing as a Motion to Examine.
16. A Motion to Quash claims a lack of jurisdiction.
17. A Motion in Limine is the same thing as a Motion to Exclude.
18. A Motion for Sanctions seeks a punitive order against the opposing party.
19. A Motion to Compel seeks a punitive order against the opposing party.
20. A Motion for Judgment NOV and a Motion for Direct Verdict are both filed post-trial.
CHAPTER 8: JURISDICTION

Answer each of the following statements as true (T) or false (F).

_____ 1. Subject matter jurisdiction is the authority of parties in the suit.

_____ 2. Ancillary jurisdiction results when a court where the case is originally filed declines to exercise its authority.


_____ 4. Concurrent jurisdiction is the authority of the appellate court over a case that comes from the trial court.

_____ 5. Exclusive jurisdiction is authority of a court superior to all other courts.

_____ 6. Federal jurisdiction can occur by any one of three methods.

_____ 7. In personam jurisdiction is court authority to put a person in jail.

_____ 8. Pendent jurisdiction is court authority over a case that is currently pending in another court.

_____ 9. Whether long-arm jurisdiction exists is determined by common law.


_____11. In rem is court authority over property within its geographical boundaries.

_____12. Quasi in rem jurisdiction is court authority over property outside its jurisdictional boundaries.

_____13. Summary judgment can only be filed by the plaintiff.

_____14. If federal jurisdiction occurs, a petition for removal can be filed anytime prior to trial.

_____15. Remand is the return of a case to state court based on a lack of federal jurisdiction.

_____16. Plaintiff or defendant can seek remand.

_____17. Domicile is the intended permanent place of residence.

_____18. A corporation nerve center is the largest location of a business, e.g., the largest of a chain of department stores.

_____19. Forum non conveniens is filed by the plaintiff seeking a change of venue.

_____20. Two plaintiffs from Illinois and one defendant from Indiana in a controversy valued at $50,000.01 is sufficient grounds for federal jurisdiction.
CHAPTER 9: THE LAW OF CONTRACTS

Answer each of the following statements as true (T) or false (F).

1. Contractual capacity refers only to the mental capacity of the parties.  
   **False**

2. Consideration includes the obligation of each party to treat the other party fairly.  
   **True**

3. Consideration need not be equal on each side for a contract to be enforceable.  
   **True**

4. A contract for a purpose that is illegal can be enforced if the purpose was legal at the time the contract was created.  
   **False**

5. A bilateral contract is one that involves no more than two parties.  
   **True**

6. All third-party beneficiaries to the contract have enforcement rights.  
   **False**

7. A third-party creditor is an original party to the contract.  
   **False**

8. Assignment occurs in a donee beneficiary contract.  
   **False**

9. The subjective standard is based on the premise that an outsider would perceive the actions of the parties as the intent to create a contract.  
   **False**

10. A unilateral contract involves exchange of a promise of consideration for performance of consideration.  
    **False**

11. A third-party donee beneficiary receives consideration as a gift from one of the parties to a contract.  
    **True**

12. The plaintiff who wins a breach of contract action can elect whether to receive damages or specific performance.  
    **True**

13. An incidental beneficiary receives the consideration due one of the parties to the contract.  
    **False**

14. The objective standard examines whether the object of the contract involves a legally enforceable promise.  
    **True**

15. An offer contains elements that clearly distinguish it from negotiation.  
    **True**

16. Common newspaper advertisements are generally not offers.  
    **True**

17. An acceptance to an offer to contract is effective at the time tendered by the most reasonable method.  
    **True**

18. The statute of frauds describes situations when the defense of fraud is appropriate.  
    **False**

19. Mistake is a valid defense to a claim of breach of contract.  
    **False**

20. Oral contracts are enforceable in some situations.  
    **True**
CHAPTER 10: PROPERTY LAW

Answer each of the following statements as true (T) or false (F).

1. Personal property consists of all movable objects.  
   - True (T)

2. Real property consists of land or that which is permanently affixed to land.  
   - True (T)

3. Single or multiple owners generally have fee simple ownership of their interest in the property.  
   - True (T)

4. A life estate includes fee simple ownership and possession.  
   - False (F)

5. Reversion interest is the same as remainder interest.  
   - False (F)

6. Tenancy in common and tenancy by entireties are the same with the exception of the requirement of marriage.  
   - True (T)

7. Joint tenancy can exist between some and not all multiple owners of a parcel of property.  
   - False (F)

8. Condominium ownership is the same as any other type of freehold ownership interest.  
   - False (F)

9. A holder of an easement has rights superior to the landowner.  
   - False (F)

10. A title policy is a form of insurance.  
    - True (T)

11. An act for conversion occurs when a remainder interest holder attempts to terminate a life estate.  
    - False (F)

12. Habitability includes the obligation to provide light bulbs.  
    - True (T)

13. The elements of adverse possession can be exercised against anyone, including the true owner of the property.  
    - True (T)

14. All bailments must involve performance (consideration) by each party involved.  
    - True (T)

15. One can bring an action for trespass and replevin simultaneously.  
    - True (T)

16. Constructive eviction only occurs when the construction of a dwelling is irreparably damaged.  
    - False (F)

17. Only the tenant has the duty of mitigation in a case of constructive eviction.  
    - False (F)

18. Fixtures generally remain with real property when it is conveyed.  
    - True (T)

19. Trade fixtures generally do not remain when real property is conveyed.  
    - False (F)

20. One who has abandoned property has no rights over the subsequent finder of the property.  
    - True (T)
CHAPTER 11: TORTS

Answer each of the following statements as true (T) or false (F).

1. A tort can include an action for breach of contract. (T)
2. In negligence, the defendant knows with substantial certainty that the action will produce injury. (F)
3. An intentional tort requires the intent to injure. (T)
4. Strict liability eliminates the requirement of proof of fault such as in negligence. (T)
5. The reasonable person acts as the ordinary person would in similar circumstances. (T)
6. Defendant must have been actually aware of the foreseeable results of the action. (F)
7. Proximate cause must be proven in an action for negligence. (T)
8. Res ipsa loquitur can be used in an intentional tort action. (F)
9. Assault requires the threat and existence of opportunity for actual harm. (T)
10. Battery involves any unpermitted physical contact. (T)
11. False imprisonment must be brought as a tortious criminal action. (F)
12. Fraud is a form of tort negligence. (F)
13. Defamation can occur in two ways. (T)
14. Last clear chance is a defense of plaintiff. (F)
15. Assumption of risk is a defense of plaintiff. (F)
16. Comparative negligence involves the apportionment of damages based on the degree of fault. (T)
17. Contributory negligence, if proven, has the same effect as comparative negligence. (T)
18. General damages are amounts that must be estimated. (T)
19. Special damages are considered to be damages for unusual injuries. (T)
20. Punitive is another term for exemplary damages. (T)
21. The employer is not responsible if it does not actually cause the hostile environment to exist. (T)
CHAPTER 12: THE LAW OF BUSINESS

Answer each of the following statements as true (T) or false (F).

_____ 1. Agency can exist in contract or tort law.
_____ 2. A partner is a fiduciary of the partnership.
_____ 3. An agent has a duty of obedience.
_____ 4. A principal has a fiduciary duty to the agent.
_____ 5. Actual agency is created through a principal and third party communication.
_____ 6. Inherent authority exists as part of apparent and actual authority agencies.
_____ 7. Agency by ratification can be declined by the principal and the agent is left contractually bound to the third party.
_____ 8. Respondeat superior binds the principal for the negligent torts of the agent.
_____ 9. A general partnership has an indefinite lifespan.
_____10. Both sole proprietorships and partnerships involve personal liability of the owners.
_____11. A limited partnership limits involvement of some owners in the business.
_____12. It is possible for an owner of a significant amount of stock in a corporation to have no influence in the daily operations of the corporate business.
_____14. Par value is the current market value of stock.
_____15. The corporate veil is the shield against personal liability of the owners.
_____16. Cumulative voting occurs when a voting pool votes together.
_____17. Preemptive rights can be used to protect a stockholder’s percentage of ownership.
_____18. A corporation can be dissolved against the will of the stockholders.
_____19. Articles of incorporation must be filed with the state of incorporation.
_____20. A shareholder is the same thing as a stockholder.
_____21. One can declare bankruptcy and still keep their assets.
CHAPTER 13: ESTATES AND PROBATE

Answer each of the following statements as true (T) or false (F).

_____ 1. A will is always probated testate if the testator had testamentary capacity.
_____ 2. Intestate succession occurs when the will is declared invalid.
_____ 3. Per stirpes gives rights of inheritance to all heirs with greater amounts to the more closely related.
_____ 4. Pure per capita distribution gives a spouse and second cousin equal rights of inheritance.
_____ 5. Heirs have rights superior to creditors.
_____ 6. The method of intestate distribution is determined by statute.
_____ 7. Creditors are paid prior to heirs.
_____ 8. A will contest generally attacks the validity of the will presented for probate.
_____ 9. Personal representative is a term for executor or administrator.
_____10. A valid will is only enforceable with regard to gifts that exist in an estate at the conclusion of probate.
_____11. Incorporation by reference only occurs in codicils.
_____12. Undue influence is a basis for will contest.
_____13. Probate applies only to testate estates.
_____14. The forced share is received by the minor children of the decedent in an intestate distribution.
_____15. The estate consists of the assets at the time of death of the decedent.
_____16. A testator can disinherit anyone.
_____17. One who dies intestate cannot disinherit anyone.
_____18. Testamentary capacity is the same as contractual capacity.
_____19. The personal representative can decline to pay a creditor’s claim.
_____20. Oral wills have the same requirements as written wills.
CHAPTER 14: CRIMINAL LAW

Answer each of the following statements as true (T) or false (F).

____ 1. An officer who kills in the line of duty is not guilty of homicide because of the defense of justification.

____ 2. The ex post facto doctrine states that one cannot be convicted of a crime if there is proof that the defendant was unaware that the act was a crime.

____ 3. The principal is the actual perpetrator of the crime under the common law or Model Penal Code approach.

____ 4. Manslaughter is not homicide.

____ 5. A defendant can be charged simultaneously with conspiracy to commit crime and the actual crime.

____ 6. Conspiracy requires three or more actors.

____ 7. Embezzlement has the same elements as theft.

____ 8. Robbery requires the actual use of force.

____ 9. Theft and robbery both involve the unlawful taking of property.

____10. Mens rea is the object of the crime, e.g., the item stolen.

____11. Murder in common law requires specific intent.

____12. Solicitation is the encouragement of criminal activity.

____13. An accessory is defined differently under common law and modern common law principles.

____14. Misdemeanors include only traffic violations.

____15. Felonies involve only violent crimes.

____16. Actus reus is the physical act of a crime.

____17. You can be charged with a strict liability crime even if you had no intent to commit crime.

____18. As a preparatory crime, you can only be charged with an inchoate crime if you also committed an additional criminal act.

____19. Obstruction of justice is a crime under the common law approach.

____20. Fraud can be a tort and a crime.
CHAPTER 15: CRIMINAL PROCEDURE

Answer each of the following statements as true (T) or false (F).

_____ 1. Selective incorporation refers to the choice by states of which constitutional rights to include in state law.

_____ 2. Due process is based on principles of fundamental fairness.

_____ 3. Double jeopardy holds that under no circumstances can someone go to trial more than once for a crime.

_____ 4. Bail is based in part on the likelihood of flight from the jurisdiction.

_____ 5. Counsel must be available to the accused at all times between arrest and trial.

_____ 6. The right against forced self-incrimination is part of the Fifth Amendment.

_____ 7. “Critical stage” refers to times when a warrant is required.

_____ 8. Cruel and unusual punishment may not be inflicted without due process.

_____ 9. Probable cause is not necessary when police have a warrant.

_____ 10. The exclusionary rule applies to all evidence seized without a warrant.

_____ 11. The plain view rule allows the seizure of evidence of criminal activity from any location where police are lawfully present.

_____ 12. An arrest and search warrant both require probable cause.

_____ 13. A grand jury serves the same function as a preliminary hearing.

_____ 14. Arraignment occurs only after a plea of guilty.

_____ 15. Generally, a search warrant is required for any thing or place about which there is a reasonable expectation of privacy.

_____ 16. Under principles of double jeopardy, if someone is charged and tried for robbery, they cannot later be charged with other crimes arising out of the same incident, such as felony murder.

_____ 17. Bail is intended, in part, to discourage the defendant from committing further criminal acts.

_____ 18. A preliminary hearing is conducted by a grand jury.

_____ 19. There are exceptions to the times when the police must obtain a search warrant before entering a private premise.

_____ 20. The exclusionary rule is designed to require law enforcement personnel to honor due process as defined by the U.S. Supreme Court.
CHAPTER 16: FAMILY LAW

Answer each of the following statements as true (T) or false (F).

_____ 1. Antenuptial agreements require the parties to disclose all assets but not liabilities.
_____ 2. Antenuptial agreements are increasingly rare occurrences.
_____ 3. Antenuptial agreements are designed to eliminate fights over property and custody (of children the parties intend to have) in a future divorce.
_____ 4. A valid marriage requires only appropriate age and consent.
_____ 5. A valid marriage cannot be annulled.
_____ 6. A marriage between brother and sister cannot be annulled if both parties consent to the marriage.
_____ 7. A common law marriage is the same as cohabitation.
_____ 8. Today, intra-family tort actions are generally not permitted because they disrupt marital harmony.
_____ 9. Domestic violence laws address situations involving intra-family torts.
_____10. Dissolution of marriage is different from divorce.
_____11. Legal separation, once entered, automatically results in dissolution of marriage after a period of time.
_____12. No fault divorce has only occurred in legislation in recent years.
_____13. The best interest doctrine applies to determinations of child support.
_____14. The visiting parent has rights of child-rearing responsibility during periods of visitation.
_____15. Joint custody involves equally shared physical custody.
_____16. The custodial parent generally does not pay child support.
_____17. A temporary restraining order is a form of injunctive relief.
_____18. Maintenance is generally no longer granted on an indefinite basis.
_____19. Parties who cohabitate may have contractual rights against one another.
_____20. The tender years doctrine is frequently employed in custody battles.
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