Chapter 1

*Student: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

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| 1. | The Civil Rights Act of 1964 is an example of substantive law.  True    False |

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| 2. | Procedural law establishes rights and privileges.  True    False |

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| 3. | Substantive law comprises rules as to what cases a court can decide, how a trial is conducted, and how a judgment by a court is to be enforced.  True    False |

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| 4. | The Constitution's Commerce Clause allows the president to regulate interstate and foreign commerce.  True    False |

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| 5. | Where there is a conflict between state laws and federal laws, state laws will prevail since they understand the immediate needs of their citizens better.  True    False |

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| 6. | In the United States, all states follow the same legal system.  True    False |

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| 7. | Each state has a constitution that is similar to the U.S. Constitution in the design of the government it provides.  True    False |

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| 8. | Statutory law varies from state to state.  True    False |

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| 9. | Civil law arises when courts are called upon to resolve disputes for which there is no statute or other source of law to establish rules.  True    False |

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| --- | --- |
| 10. | Most courts refer to a statute's legislative history when the language is unclear.  True    False |

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| 11. | Laws must be predictable and adapt to changing conditions.  True    False |

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| 12. | The highest appeals court in a jurisdiction cannot overrule a precedent case.  True    False |

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| 13. | Unlike legal positivists, legal sociologists stress the need for law to change and keep pace with the evolution of society.  True    False |

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| 14. | Legal realism focuses on the theoretical rules of law rather than law in action.  True    False |

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| 15. | By involving a lawyer in the business-planning process, a desired business objective can be reached with less legal risk.  True    False |

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| 16. | Laws that seek to prevent certain practices that might reduce competition and thus increase prices are called \_\_\_\_\_.

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| --- | --- |
| A.  | tax laws |

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| --- | --- |
| B.  | consumer laws |

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| --- | --- |
| C.  | antitrust laws |

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| --- | --- |
| D.  | contract laws |

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| 17. | The freedom of speech granted by the U.S. Constitution is an example of \_\_\_\_\_.

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| A.  | civil law |

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| --- | --- |
| B.  | substantive law |

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| --- | --- |
| C.  | criminal law |

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| --- | --- |
| D.  | procedural law |

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| 18. | Which of the following is an example of procedural law?

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| A.  | The privilege of receiving food stamps |

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| --- | --- |
| B.  | The rules as to how a court's decision is to be enforced |

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| --- | --- |
| C.  | The right of self-defense |

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| --- | --- |
| D.  | The freedom of speech granted by the U.S. Constitution |

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| 19. | Which of the following statements is true of criminal law?

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

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| --- | --- |
| B.  | It is completely procedural. |

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| C.  | It defines breaches of duty to society at large. |

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

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| 20. | If a person carelessly runs a car into yours, that person has committed the:

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| --- | --- |
| A.  | civil tort of negligence. |

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| --- | --- |
| B.  | substantive tort of negligence. |

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| --- | --- |
| C.  | criminal tort of negligence. |

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| --- | --- |
| D.  | procedural tort of negligence. |

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| 21. | If the behavior of someone who commits a tort is outrageous, that person can be made to pay compensatory and \_\_\_\_\_.

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| --- | --- |
| A.  | special damages |

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| --- | --- |
| B.  | punitive damages |

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| --- | --- |
| C.  | liquidated damages |

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| --- | --- |
| D.  | nominal damages |

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| 22. | Legislation enacted by governmental units within the states (cities and counties) is called a(n) \_\_\_\_\_.

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| --- | --- |
| A.  | common law |

|  |  |
| --- | --- |
| B.  | administrative regulation |

|  |  |
| --- | --- |
| C.  | ordinance |

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| --- | --- |
| D.  | treaty |

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| 23. | Local legislation regulating zoning and noise levels are examples of \_\_\_\_\_.

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| --- | --- |
| A.  | ordinances |

|  |  |
| --- | --- |
| B.  | treaties |

|  |  |
| --- | --- |
| C.  | administrative rules |

|  |  |
| --- | --- |
| D.  | administrative decisions |

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| 24. | A treaty becomes "the supreme law of the land" when:

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| --- | --- |
| A.  | it lends predictability to decisional law by relying on prior decisions. |

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| --- | --- |
| B.  | it is made by the president with a foreign government and ratified by at least two-thirds of the Senate. |

|  |  |
| --- | --- |
| C.  | it is established with rules that govern certain kinds of activities, such as the use of automobiles on highways. |

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| D.  | it adds details to the government framework by establishing a regulatory agency. |

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| 25. | Which of the following statements is true of independent agencies?

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| A.  | They are headed by the president. |

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| --- | --- |
| B.  | They are a part of the executive branch of the government. |

|  |  |
| --- | --- |
| C.  | They are headed by a board or commission. |

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

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| 26. | Common law arises when:

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

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| --- | --- |
| B.  | constitutional statutes are found to interfere with the freedom of expression. |

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

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| D.  | the government wishes to encourage certain kinds of investments. |

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| 27. | Under the power of judicial review, \_\_\_\_\_.

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| --- | --- |
| A.  | a judge may render a legal rule unenforceable by declaring it in conflict with a constitution |

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| --- | --- |
| B.  | lower courts may decide that higher court decisions are not valid |

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

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| D.  | the court may override the acts of the Constitution |

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| 28. | According to private law, private persons may:

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| --- | --- |
| A.  | create legally-binding agreements through their power to contract. |

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| B.  | enter into contracts, but the contracts will not be upheld in court. |

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| C.  | create their own rules when there is no prior statute. |

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| D.  | make their own rules only after studying practice of similar precedents. |

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| 29. | A useful tool for understanding and persuading that combines basic analytical thinking with recognition of the special features of the underlying legal system is \_\_\_\_\_.

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| A.  | sociological jurisprudence |

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| --- | --- |
| B.  | legal positivism |

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| --- | --- |
| C.  | legal reasoning |

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| --- | --- |
| D.  | analytical reasoning |

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| 30. | The constitutional prohibition of *ex post facto* laws:

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| --- | --- |
| A.  | applies to statutory law. |

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| B.  | aims to minimize the possibility of failure if the business has to go to court to enforce its rights. |

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| C.  | applies to common law. |

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| D.  | gives lawyers a great deal of discretion in selecting an appropriate strategy for handling a legal dispute. |

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| 31. | The feature of decisional law in common law systems which says that a court, in making a decision, should follow the rulings of prior cases that have similar facts is \_\_\_\_\_.

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| A.  | *caveat emptor* |

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| --- | --- |
| B.  | *ex post facto laws* |

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| --- | --- |
| C.  | *stare decisis* |

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| --- | --- |
| D.  | *contra proferentem* |

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| 32. | *Stare decisis*:

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| --- | --- |
| A.  | renders law rigid and unchanging. |

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| B.  | lends predictability to decisional law by relying on prior decisions. |

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

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| D.  | creates harsh results by refusing to recognize equitable exceptions. |

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| 33. | According to the doctrine of *stare decisis*, \_\_\_\_\_.

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| --- | --- |
| A.  | the constitutional prohibition of *ex post facto* laws applies to common or decisional law |

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

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| C.  | the highest appeals court in a jurisdiction cannot overrule a precedent case |

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| D.  | a court has considerable freedom in picking precedent cases |

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| 34. | Legal positivist judges:

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| A.  | consider public policy and their own sense of morality when interpreting the law. |

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| B.  | confine their legal analysis to the plain meaning of the words. |

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| --- | --- |
| C.  | believe that law must always look to equitable exceptions to statutes and other legal rules. |

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| D.  | recognize a higher set of rules that override the legitimacy of laws promulgated by political institutions. |

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| 35. | Natural law thinkers believe that:

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| A.  | law and morality are not separate. |

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| B.  | there is no law superior to that promulgated by political institutions. |

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| C.  | all laws should have an environmental focus. |

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| D.  | natural law provides the level of predictability attained by legal positivism. |

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| 36. | Sociological jurisprudence maintains that:

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| A.  | legal decisions should be based on short-term social goals. |

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

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| --- | --- |
| C.  | courts should not consider their perceptions of the prevailing public policies in interpreting statutes. |

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| D.  | the law is the command of legitimate political institutions. |

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| 37. | \_\_\_\_\_ believe that decisions are often more attributable to the biases and moods of decision makers than they are to the formal legal rules that are supposed to determine the outcome.

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| --- | --- |
| A.  | Legal realists |

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| --- | --- |
| B.  | Legal positivists |

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| --- | --- |
| C.  | Legal sociologists |

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| --- | --- |
| D.  | Natural law thinkers |

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| 38. | The adversary system is characterized by:

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| A.  | the idea that ultimate truth and justice will prevail if each party to a dispute is represented by competent attorneys providing the strongest possible representation. |

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| --- | --- |
| B.  | the view that attorneys can be given free reign if they do not violate legal and ethical rules designed to ensure the fair operation of the judicial process. |

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| --- | --- |
| C.  | the unconditional free reign granted to judges. |

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| D.  | the notion that the effective functioning of the judicial system will be undermined if a client does not feel free to speak with his or her attorney. |

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| 39. | Lee was arrested for public intoxication. Shortly after being charged with this offense, he wrote a letter to his attorney explaining the circumstances surrounding his arrest. The letter is considered:

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| A.  | privileged communication under the work product privilege. |

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| B.  | privileged communication under the attorney-client privilege. |

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| C.  | privileged communication under legal positivism. |

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| D.  | privileged communication under legal realism. |

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| 40. | Which of the following is true of the attorney-client privilege?

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| --- | --- |
| A.  | The privilege does not apply until the attorney is actually retained by a client. |

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| --- | --- |
| B.  | An attorney is allowed to divulge confidential information communicated by a client in the course of seeking legal advice. |

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| C.  | A client must feel free to speak fully and honestly with his attorney if the judicial system is to function effectively. |

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| D.  | The privilege covers statements made in the presence of people other than the attorney or the attorney's subordinates. |

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| 41. | In addition to statements made to an attorney, the attorney-client privilege covers:

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| --- | --- |
| A.  | information divulged to an attorney's subordinates, such as secretaries or paralegals. |

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| --- | --- |
| B.  | statements made in the presence of people other than the lawyer or the lawyer's subordinates. |

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| --- | --- |
| C.  | statements made to a law-enforcement officer. |

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| D.  | statements made only after the attorney is actually retained by a client. |

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| 42. | The work product privilege:

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| --- | --- |
| A.  | prevents an attorney from divulging confidential information communicated to the lawyer by a client or potential client in the course of seeking to retain the attorney or otherwise seeking legal advice. |

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| --- | --- |
| B.  | covers information divulged to an attorney's subordinates, such as secretaries or paralegals. |

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| --- | --- |
| C.  | considers a lawyer to be an officer of the court who is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients. |

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| --- | --- |
| D.  | is derived from the notion that the effective functioning of the judicial system will be undermined if a client does not feel free to speak fully and honestly with his or her attorney. |

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| 43. | When a lawyer agrees to represent a client, the lawyer agrees to:

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| --- | --- |
| A.  | the reality that he will be liable for malpractice if he loses the case. |

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| --- | --- |
| B.  | exercise the skill, prudence, and diligence expected of lawyers of ordinary skill and competence in the community. |

|  |  |
| --- | --- |
| C.  | the probability that a court will likely second-guess the legal strategy he chooses to use in representing his client. |

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| --- | --- |
| D.  | the reality that the courts are likely to second-guess his professional judgment. |

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| 44. | In the business world, the goal of preventive law is to increase profits by:

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| --- | --- |
| A.  | imposing higher inheritance and income taxes on wealthy people. |

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| --- | --- |
| B.  | avoiding losses through fines and damage judgments. |

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| --- | --- |
| C.  | involving the client in the business-planning process. |

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| D.  | creating unenforceable contracts. |

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| 45. | The use of lawyers by business managers to help them plan avoidance of business emergencies and to comply with the rapidly growing mass of legal rules imposed on business operations by government bodies is called \_\_\_\_\_.

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| --- | --- |
| A.  | common law |

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| --- | --- |
| B.  | preventive law |

|  |  |
| --- | --- |
| C.  | criminal law |

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| --- | --- |
| D.  | substantive law |

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| 46. | List the four basic functions of law.      |

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| 47. | Describe the difference between criminal and civil law. What are the penalties that accompany violations of each?      |

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| 48. | List the three ways in which courts make law.      |

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| 49. | Describe the four steps in the process of legal interpretation.      |

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| 50. | Define the three steps involved in applying *stare decisis*.      |

Chapter 1 Key

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| --- | --- |
| 1.*(p. 6)* | The Civil Rights Act of 1964 is an example of substantive law.  **TRUE** |

|  |
| --- |
| *AACSB: AnalyticBarnes - Chapter 01 #1Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: Classifications of Law* |

|  |  |
| --- | --- |
| 2.*(p. 6)* | Procedural law establishes rights and privileges.  **FALSE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #2Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: Classifications of Law* |

|  |  |
| --- | --- |
| 3.*(p. 6)* | Substantive law comprises rules as to what cases a court can decide, how a trial is conducted, and how a judgment by a court is to be enforced.  **FALSE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #3Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: Classifications of Law* |

|  |  |
| --- | --- |
| 4.*(p. 8)* | The Constitution's Commerce Clause allows the president to regulate interstate and foreign commerce.  **FALSE** |

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| --- |
| *AACSB: AnalyticBarnes - Chapter 01 #4Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: Constitutional Foundations* |

|  |  |
| --- | --- |
| 5.*(p. 9)* | Where there is a conflict between state laws and federal laws, state laws will prevail since they understand the immediate needs of their citizens better.  **FALSE** |

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| --- |
| *AACSB: AnalyticBarnes - Chapter 01 #5Blooms: UnderstandDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: Constitutional Foundations* |

|  |  |
| --- | --- |
| 6.*(p. 9)* | In the United States, all states follow the same legal system.  **FALSE** |

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| --- |
| *AACSB: AnalyticBarnes - Chapter 01 #6Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-01 Identify the basic functions of law.Topic: Constitutional Foundations* |

|  |  |
| --- | --- |
| 7.*(p. 9)* | Each state has a constitution that is similar to the U.S. Constitution in the design of the government it provides.  **TRUE** |

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| --- |
| *AACSB: AnalyticBarnes - Chapter 01 #7Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| --- | --- |
| 8.*(p. 10)* | Statutory law varies from state to state.  **TRUE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #8Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

|  |  |
| --- | --- |
| 9.*(p. 12)* | Civil law arises when courts are called upon to resolve disputes for which there is no statute or other source of law to establish rules.  **FALSE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #9Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| --- | --- |
| 10.*(p. 14)* | Most courts refer to a statute's legislative history when the language is unclear.  **TRUE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #10Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-03 Analyze a case using the four steps in the process of legal interpretation.Topic: Legal Reasoning* |

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| --- | --- |
| 11.*(p. 15)* | Laws must be predictable and adapt to changing conditions.  **TRUE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #11Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-03 Analyze a case using the four steps in the process of legal interpretation.Topic: Law and Orderly Change* |

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| 12.*(p. 17)* | The highest appeals court in a jurisdiction cannot overrule a precedent case.  **FALSE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #12Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-05 Explain how law is able to change despite stare decisis.Topic: Law and Orderly Change* |

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| 13.*(p. 19)* | Unlike legal positivists, legal sociologists stress the need for law to change and keep pace with the evolution of society.  **TRUE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #13Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-06 Read a judicial decision and identify which school of legal jurisprudence the judge has followed.Topic: Jurisprudence* |

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| 14.*(p. 19)* | Legal realism focuses on the theoretical rules of law rather than law in action.  **FALSE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #14Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-06 Read a judicial decision and identify which school of legal jurisprudence the judge has followed.Topic: Jurisprudence* |

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| 15.*(p. 23)* | By involving a lawyer in the business-planning process, a desired business objective can be reached with less legal risk.  **TRUE** |

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| *AACSB: AnalyticBarnes - Chapter 01 #15Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-07 Explain when the attorney-client privilege and work product privilege arise and when they are lost.Topic: Preventive Law* |

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| 16.*(p. 5)* | Laws that seek to prevent certain practices that might reduce competition and thus increase prices are called \_\_\_\_\_.

|  |  |
| --- | --- |
| A.  | tax laws |

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| --- | --- |
| B.  | consumer laws |

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| --- | --- |
| **C.**  | antitrust laws |

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| --- | --- |
| D.  | contract laws |

The U.S. legal system involves processes for social control. It consists of institutions such as legislatures and government agencies for the creation of rules of behavior. The antitrust laws seek to prevent certain practices that might reduce competition and thus increase prices. |

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| *AACSB: AnalyticBarnes - Chapter 01 #16Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: The Nature of Law* |

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| 17.*(p. 6)* | The freedom of speech granted by the U.S. Constitution is an example of \_\_\_\_\_.

|  |  |
| --- | --- |
| A.  | civil law |

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| --- | --- |
| **B.**  | substantive law |

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| --- | --- |
| C.  | criminal law |

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| --- | --- |
| D.  | procedural law |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #17Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: Classifications of Law* |

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| 18.*(p. 6)* | Which of the following is an example of procedural law?

|  |  |
| --- | --- |
| A.  | The privilege of receiving food stamps |

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| --- | --- |
| **B.**  | The rules as to how a court's decision is to be enforced |

|  |  |
| --- | --- |
| C.  | The right of self-defense |

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| --- | --- |
| D.  | The freedom of speech granted by the U.S. Constitution |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #18Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: Classifications of Law* |

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| 19.*(p. 6)* | Which of the following statements is true of criminal law?

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

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| --- | --- |
| B.  | It is completely procedural. |

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| --- | --- |
| **C.**  | It defines breaches of duty to society at large. |

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

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

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| *AACSB: AnalyticBarnes - Chapter 01 #19Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-01 Identify the basic functions of law.Topic: Classifications of Law* |

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| 20.*(p. 7)* | If a person carelessly runs a car into yours, that person has committed the:

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| --- | --- |
| **A.**  | civil tort of negligence. |

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| --- | --- |
| B.  | substantive tort of negligence. |

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| --- | --- |
| C.  | criminal tort of negligence. |

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| --- | --- |
| D.  | procedural tort of negligence. |

If someone carelessly runs a car into yours, that person has committed the civil wrong (tort) of negligence. Suit for the breach of a civil duty must be brought by the person wronged. Generally, the court does not seek to punish the wrongdoer but rather to make the wronged party whole through a money award called damages. |

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| *AACSB: AnalyticBarnes - Chapter 01 #20Blooms: UnderstandDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: Classifications of Law* |

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| 21.*(p. 7)* | If the behavior of someone who commits a tort is outrageous, that person can be made to pay compensatory and \_\_\_\_\_.

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| --- | --- |
| A.  | special damages |

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| --- | --- |
| **B.**  | punitive damages |

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| --- | --- |
| C.  | liquidated damages |

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| --- | --- |
| D.  | nominal damages |

Although the civil law generally does not aim to punish, there is an exception. If the behavior of someone who commits a tort is outrageous, that person can be made to pay punitive damages (also called exemplary damages). Unlike a fine paid in a criminal case, punitive damages go to the injured party. |

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| *AACSB: AnalyticBarnes - Chapter 01 #21Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: Classifications of Law* |

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| 22.*(p. 10)* | Legislation enacted by governmental units within the states (cities and counties) is called a(n) \_\_\_\_\_.

|  |  |
| --- | --- |
| A.  | common law |

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| --- | --- |
| B.  | administrative regulation |

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| --- | --- |
| **C.**  | ordinance |

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| D.  | treaty |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #22Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| 23.*(p. 10)* | Local legislation regulating zoning and noise levels are examples of \_\_\_\_\_.

|  |  |
| --- | --- |
| **A.**  | ordinances |

|  |  |
| --- | --- |
| B.  | treaties |

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| --- | --- |
| C.  | administrative rules |

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| --- | --- |
| D.  | administrative decisions |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #23Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| 24.*(p. 10)* | A treaty becomes "the supreme law of the land" when:

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| A.  | it lends predictability to decisional law by relying on prior decisions. |

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| **B.**  | it is made by the president with a foreign government and ratified by at least two-thirds of the Senate. |

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| C.  | it is established with rules that govern certain kinds of activities, such as the use of automobiles on highways. |

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| D.  | it adds details to the government framework by establishing a regulatory agency. |

The U.S. Constitution declares that treaties made by the president with foreign governments and ratified by at least two-thirds of the Senate are "the supreme law of the land." They therefore may override acts of Congress or state legislatures and other laws that are inconsistent. However, conflicts of this sort seldom arise since the states may not make treaties with foreign countries. |

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| *AACSB: AnalyticBarnes - Chapter 01 #24Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| 25.*(p. 10-11)* | Which of the following statements is true of independent agencies?

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| A.  | They are headed by the president. |

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

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| **C.**  | They are headed by a board or commission. |

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

Independent agencies are agencies that are not really part of the executive branch of the government under the control of the president. Rather, they are headed by a board or commission. Although the members are nominated by the president, approximately half of them must be from each major political party, and their appointment is confirmed by the Senate for fixed terms. |

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| *AACSB: AnalyticBarnes - Chapter 01 #25Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| 26.*(p. 12)* | Common law arises when:

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

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| B.  | constitutional statutes are found to interfere with the freedom of expression. |

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

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| D.  | the government wishes to encourage certain kinds of investments. |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #26Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| 27.*(p. 12)* | Under the power of judicial review, \_\_\_\_\_.

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| --- | --- |
| **A.**  | a judge may render a legal rule unenforceable by declaring it in conflict with a constitution |

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| B.  | lower courts may decide that higher court decisions are not valid |

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

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| D.  | the court may override the acts of the Constitution |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #27Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| 28.*(p. 12)* | According to private law, private persons may:

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| **A.**  | create legally-binding agreements through their power to contract. |

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| B.  | enter into contracts, but the contracts will not be upheld in court. |

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| C.  | create their own rules when there is no prior statute. |

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| D.  | make their own rules only after studying practice of similar precedents. |

Private persons may create legally binding obligations on one another through their power to contract. When people enter into contractual agreements, the courts generally enforce their terms. But private law is subordinate to the other sources of law. As such, contracts are unenforceable when they conflict with the other sources of law or public policy. |

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| *AACSB: AnalyticBarnes - Chapter 01 #28Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| 29.*(p. 13)* | A useful tool for understanding and persuading that combines basic analytical thinking with recognition of the special features of the underlying legal system is \_\_\_\_\_.

|  |  |
| --- | --- |
| A.  | sociological jurisprudence |

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| --- | --- |
| B.  | legal positivism |

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| --- | --- |
| **C.**  | legal reasoning |

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| D.  | analytical reasoning |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #29Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-03 Analyze a case using the four steps in the process of legal interpretation.Topic: Legal Reasoning* |

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| 30.*(p. 16)* | The constitutional prohibition of *ex post facto* laws:

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| --- | --- |
| **A.**  | applies to statutory law. |

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| B.  | aims to minimize the possibility of failure if the business has to go to court to enforce its rights. |

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| C.  | applies to common law. |

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| D.  | gives lawyers a great deal of discretion in selecting an appropriate strategy for handling a legal dispute. |

The constitutional prohibition of *ex post facto* laws applies to statutory law. This means a new statute applies only to actions taken after it becomes effective. Since one cannot adjust one's conduct to a statute not yet passed, this requirement is essential to justice. The constitutional prohibition of *ex post facto* laws does not apply to common or decisional law. |

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| *AACSB: AnalyticBarnes - Chapter 01 #30Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-03 Analyze a case using the four steps in the process of legal interpretation.Topic: Law and Orderly Change* |

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| 31.*(p. 16)* | The feature of decisional law in common law systems which says that a court, in making a decision, should follow the rulings of prior cases that have similar facts is \_\_\_\_\_.

|  |  |
| --- | --- |
| A.  | *caveat emptor* |

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| --- | --- |
| B.  | *ex post facto laws* |

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| --- | --- |
| **C.**  | *stare decisis* |

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| D.  | *contra proferentem* |

*Stare decisis* is the feature of decisional law in common law systems that is most important in permitting orderly change. The Latin phrase *stare decisis* means "to adhere to decided cases." This doctrine says that a court, in making a decision, should follow the rulings of prior cases that have similar facts (precedents). |

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| *AACSB: AnalyticBarnes - Chapter 01 #31Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-04 Make a legal decision by applying the three-step; stare decisis process.Topic: Law and Orderly Change* |

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| 32.*(p. 16)* | *Stare decisis*:

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| --- | --- |
| A.  | renders law rigid and unchanging. |

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| --- | --- |
| **B.**  | lends predictability to decisional law by relying on prior decisions. |

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| --- | --- |
| C.  | means a new statute applies only to actions taken after it becomes effective. |

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| D.  | creates harsh results by refusing to recognize equitable exceptions. |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #32Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-04 Make a legal decision by applying the three-step; stare decisis process.Topic: Law and Orderly Change* |

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| 33.*(p. 16-17)* | According to the doctrine of *stare decisis*, \_\_\_\_\_.

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| --- | --- |
| A.  | the constitutional prohibition of *ex post facto* laws applies to common or decisional law |

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| --- | --- |
| B.  | a legislature cannot override *stare decisis* and change a common law rule by enacting a statute |

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| --- | --- |
| C.  | the highest appeals court in a jurisdiction cannot overrule a precedent case |

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| --- | --- |
| **D.**  | a court has considerable freedom in picking precedent cases |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #33Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-05 Explain how law is able to change despite stare decisis.Topic: Law and Orderly Change* |

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| 34.*(p. 17-18)* | Legal positivist judges:

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| --- | --- |
| A.  | consider public policy and their own sense of morality when interpreting the law. |

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| --- | --- |
| **B.**  | confine their legal analysis to the plain meaning of the words. |

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| --- | --- |
| C.  | believe that law must always look to equitable exceptions to statutes and other legal rules. |

|  |  |
| --- | --- |
| D.  | recognize a higher set of rules that override the legitimacy of laws promulgated by political institutions. |

Legal positivist judges confine their analysis to the plain meaning of the words and, when necessary, to the legislative history in order to strictly follow the will of the lawmakers. Legal positivists are unlikely to consider public policy and their own sense of morality when interpreting the law. |

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| *AACSB: AnalyticBarnes - Chapter 01 #34Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-06 Read a judicial decision and identify which school of legal jurisprudence the judge has followed.Topic: Jurisprudence* |

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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 35.*(p. 18)* | Natural law thinkers believe that:

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| --- | --- |
| **A.**  | law and morality are not separate. |

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| --- | --- |
| B.  | there is no law superior to that promulgated by political institutions. |

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| --- | --- |
| C.  | all laws should have an environmental focus. |

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| --- | --- |
| D.  | natural law provides the level of predictability attained by legal positivism. |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #35Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-06 Read a judicial decision and identify which school of legal jurisprudence the judge has followed.Topic: Jurisprudence* |

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| 36.*(p. 18-19)* | Sociological jurisprudence maintains that:

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| A.  | legal decisions should be based on short-term social goals. |

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| --- | --- |
| **B.**  | courts must look beyond the plain meaning of a statute to consider the law's legislative purpose. |

|  |  |
| --- | --- |
| C.  | courts should not consider their perceptions of the prevailing public policies in interpreting statutes. |

|  |  |
| --- | --- |
| D.  | the law is the command of legitimate political institutions. |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #36Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-06 Read a judicial decision and identify which school of legal jurisprudence the judge has followed.Topic: Jurisprudence* |

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| 37.*(p. 19-20)* | \_\_\_\_\_ believe that decisions are often more attributable to the biases and moods of decision makers than they are to the formal legal rules that are supposed to determine the outcome.

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| **A.**  | Legal realists |

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| --- | --- |
| B.  | Legal positivists |

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| --- | --- |
| C.  | Legal sociologists |

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| --- | --- |
| D.  | Natural law thinkers |

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

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| *AACSB: AnalyticBarnes - Chapter 01 #37Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-06 Read a judicial decision and identify which school of legal jurisprudence the judge has followed.Topic: Jurisprudence* |

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| 38.*(p. 20)* | The adversary system is characterized by:

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| **A.**  | the idea that ultimate truth and justice will prevail if each party to a dispute is represented by competent attorneys providing the strongest possible representation. |

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| --- | --- |
| B.  | the view that attorneys can be given free reign if they do not violate legal and ethical rules designed to ensure the fair operation of the judicial process. |

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| C.  | the unconditional free reign granted to judges. |

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| D.  | the notion that the effective functioning of the judicial system will be undermined if a client does not feel free to speak with his or her attorney. |

The adversary system is premised on the notion that the ultimate truth and, consequently, justice will prevail if each party to a legal dispute is represented by competent legal counsel. Each attorney is then expected to provide the strongest legal representation for her client. |

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| *AACSB: AnalyticBarnes - Chapter 01 #38Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-06 Read a judicial decision and identify which school of legal jurisprudence the judge has followed.Topic: The Legal Profession* |

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| 39.*(p. 21)* | Lee was arrested for public intoxication. Shortly after being charged with this offense, he wrote a letter to his attorney explaining the circumstances surrounding his arrest. The letter is considered:

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| A.  | privileged communication under the work product privilege. |

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| --- | --- |
| **B.**  | privileged communication under the attorney-client privilege. |

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| --- | --- |
| C.  | privileged communication under legal positivism. |

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| D.  | privileged communication under legal realism. |

The letter written by Lee to his attorney explaining the circumstances surrounding his arrest is considered to be privileged communication under the attorney-client privilege. The privilege is derived from the notion that the effective functioning of the judicial system will be undermined if a client does not feel free to speak fully and honestly with his attorney. The existence of the privilege is not dependent upon the attorney actually being retained since it may be necessary to disclose confidential information in the course of persuading a lawyer to take a case. |

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| *AACSB: Reflective ThinkingBarnes - Chapter 01 #39Blooms: ApplyDifficulty: 3 HardLearning Objective: 01-07 Explain when the attorney-client privilege and work product privilege arise and when they are lost.Topic: The Legal Profession* |

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| 40.*(p. 21)* | Which of the following is true of the attorney-client privilege?

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| A.  | The privilege does not apply until the attorney is actually retained by a client. |

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| B.  | An attorney is allowed to divulge confidential information communicated by a client in the course of seeking legal advice. |

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| **C.**  | A client must feel free to speak fully and honestly with his attorney if the judicial system is to function effectively. |

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| D.  | The privilege covers statements made in the presence of people other than the attorney or the attorney's subordinates. |

The attorney-client privilege is an important feature of the U.S. legal profession. This rule prevents an attorney from divulging confidential information communicated to the lawyer by a client or potential client in the course of seeking to retain the attorney or otherwise seeking legal advice. The privilege is derived from the notion that the effective functioning of the judicial system will be undermined if a client does not feel free to speak fully and honestly with his attorney. Further, the attorney-client privilege generally does not cover statements made in the presence of people other than the lawyer or her subordinates. |

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| *AACSB: AnalyticBarnes - Chapter 01 #40Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-07 Explain when the attorney-client privilege and work product privilege arise and when they are lost.Topic: The Legal Profession* |

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| 41.*(p. 21)* | In addition to statements made to an attorney, the attorney-client privilege covers:

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| **A.**  | information divulged to an attorney's subordinates, such as secretaries or paralegals. |

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| B.  | statements made in the presence of people other than the lawyer or the lawyer's subordinates. |

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| C.  | statements made to a law-enforcement officer. |

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| D.  | statements made only after the attorney is actually retained by a client. |

The attorney-client privilege is an important feature of the U.S. legal profession. This rule prevents an attorney from divulging confidential information communicated to the lawyer by a client or potential client in the course of seeking to retain the attorney or otherwise seeking legal advice. The privilege covers information divulged to an attorney's subordinates (secretaries or paralegals). |

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| *AACSB: AnalyticBarnes - Chapter 01 #41Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-07 Explain when the attorney-client privilege and work product privilege arise and when they are lost.Topic: The Legal Profession* |

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| 42.*(p. 22)* | The work product privilege:

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| A.  | prevents an attorney from divulging confidential information communicated to the lawyer by a client or potential client in the course of seeking to retain the attorney or otherwise seeking legal advice. |

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| B.  | covers information divulged to an attorney's subordinates, such as secretaries or paralegals. |

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| **C.**  | considers a lawyer to be an officer of the court who is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients. |

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| D.  | is derived from the notion that the effective functioning of the judicial system will be undermined if a client does not feel free to speak fully and honestly with his or her attorney. |

The work product privilege considers a lawyer to be an officer of the court who is bound to work for the advancement of justice while faithfully protecting the rightful interests of his clients. In performing his various duties, however, it is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. |

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| *AACSB: AnalyticBarnes - Chapter 01 #42Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-07 Explain when the attorney-client privilege and work product privilege arise and when they are lost.Topic: The Legal Profession* |

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| 43.*(p. 23)* | When a lawyer agrees to represent a client, the lawyer agrees to:

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| A.  | the reality that he will be liable for malpractice if he loses the case. |

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| **B.**  | exercise the skill, prudence, and diligence expected of lawyers of ordinary skill and competence in the community. |

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| C.  | the probability that a court will likely second-guess the legal strategy he chooses to use in representing his client. |

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| D.  | the reality that the courts are likely to second-guess his professional judgment. |

By accepting employment as the client's lawyer, an attorney agrees to exercise the skill, prudence, and diligence expected of lawyers of ordinary skill and competence in the community. The lawyer does not guarantee that the client will win a lawsuit. Thus, he is not necessarily liable for malpractice when the client loses. |

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| *AACSB: AnalyticBarnes - Chapter 01 #43Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-07 Explain when the attorney-client privilege and work product privilege arise and when they are lost.Topic: The Legal Profession* |

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| 44.*(p. 23)* | In the business world, the goal of preventive law is to increase profits by:

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| A.  | imposing higher inheritance and income taxes on wealthy people. |

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| **B.**  | avoiding losses through fines and damage judgments. |

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| C.  | involving the client in the business-planning process. |

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| D.  | creating unenforceable contracts. |

The objectives of preventive law are to arrange business plans and methods to increase profits by (1) avoiding losses through fines and damage judgments and (2) reaching business goals through enforceable contracts while avoiding government prohibitions. |

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| *AACSB: AnalyticBarnes - Chapter 01 #44Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-07 Explain when the attorney-client privilege and work product privilege arise and when they are lost.Topic: Preventive Law* |

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| 45.*(p. 23)* | The use of lawyers by business managers to help them plan avoidance of business emergencies and to comply with the rapidly growing mass of legal rules imposed on business operations by government bodies is called \_\_\_\_\_.

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| A.  | common law |

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| **B.**  | preventive law |

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| C.  | criminal law |

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| D.  | substantive law |

Today, business managers also retain lawyers to help them plan to avoid such emergencies and to comply with the rapidly growing mass of legal rules imposed on business operations by government bodies. This use of lawyers by businesspeople is called preventive law. |

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| *AACSB: AnalyticBarnes - Chapter 01 #45Blooms: RememberDifficulty: 2 MediumLearning Objective: 01-07 Explain when the attorney-client privilege and work product privilege arise and when they are lost.Topic: Preventive Law* |

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| 46.*(p. 5)* | List the four basic functions of law.  The basic functions of law are 1. keeping the peace; 2. enforcing standards of conduct to maintain order; 3. facilitating planning; and 4. promoting social justice. |

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| *AACSB: AnalyticBarnes - Chapter 01 #46Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-01 Identify the basic functions of law.Topic: The Nature of Law* |

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| 47.*(p. 6-7)* | Describe the difference between criminal and civil law. What are the penalties that accompany violations of each?  Criminal law defines breaches of duty to society at large, while civil law defines breaches of private duties owed by one person (including corporations) to another.Violations of criminal law are punishable by fine or imprisonment. In a civil action, the court does not seek to punish the wrongdoer but to make the wronged party whole through a money award called damages. |

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| *AACSB: AnalyticBarnes - Chapter 01 #47Blooms: UnderstandDifficulty: 2 MediumLearning Objective: 01-01 Identify the basic functions of law.Topic: Classifications of Law* |

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| 48.*(p. 12)* | List the three ways in which courts make law.  Courts make laws in three ways: 1) through interpretation they give meaning and effect to the other sources of law, 2) through the common law they find law when no other source offers a solution to a legal dispute, and 3) through judicial review they determine the legitimacy of the actions of other branches of government. |

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| *AACSB: AnalyticBarnes - Chapter 01 #48Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-02 List the various sources of law.Topic: Sources of Law* |

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| 49.*(p. 13-14)* | Describe the four steps in the process of legal interpretation.  The four steps in the process of legal interpretation are: 1) look to the plain meaning of the language, 2) examine the legislative history of the rule, 3) consider the purpose to be achieved by the rule, and 4) try to accommodate public policy. |

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| *AACSB: AnalyticBarnes - Chapter 01 #49Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-03 Analyze a case using the four steps in the process of legal interpretation.Topic: Legal Reasoning* |

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| 50.*(p. 16)* | Define the three steps involved in applying *stare decisis*.  Three steps are involved in applying *stare decisis*: 1) finding an earlier case or cases with similar facts; 2) deriving a rule of law; and 3) applying that rule to the case at hand. |

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| *AACSB: AnalyticBarnes - Chapter 01 #50Blooms: RememberDifficulty: 1 EasyLearning Objective: 01-04 Make a legal decision by applying the three-step; stare decisis process.Topic: Law and Orderly Change* |

Chapter 1 Summary

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| *Category* | *# of Questions* |
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| Barnes - Chapter 01 | 50 |
| Blooms: Apply | 1 |
| Blooms: Remember | 27 |
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| Difficulty: 1 Easy | 28 |
| Difficulty: 2 Medium | 21 |
| Difficulty: 3 Hard | 1 |
| Learning Objective: 01-01 Identify the basic functions of law. | 14 |
| Learning Objective: 01-02 List the various sources of law. | 11 |
| Learning Objective: 01-03 Analyze a case using the four steps in the process of legal interpretation. | 5 |
| Learning Objective: 01-04 Make a legal decision by applying the three-step; stare decisis process. | 3 |
| Learning Objective: 01-05 Explain how law is able to change despite stare decisis. | 2 |
| Learning Objective: 01-06 Read a judicial decision and identify which school of legal jurisprudence the judge has followed. | 7 |
| Learning Objective: 01-07 Explain when the attorney-client privilege and work product privilege arise and when they are lost. | 8 |
| Topic: Classifications of Law | 9 |
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| Topic: Law and Orderly Change | 7 |
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