

Law test with answers essay sample



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1. Define Law.

“ Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law.”

2. Give 5 functions of the law and examples (different examples than in the book).

- a. Keeping peace (Example : Beating a weaker human for any reasons)
- b. Shaping moral standards (Example : rape)
- c. Promoting social justice (Example : Gender Discrimination in scholarship or Race Discrimination in politics)
- d. Maintaining the status quo (Example : a status quo order may be issued to prevent one parent from removing a child from the residence or out of the area without the other parent’s consent)
- e. Facilitating orderly change (Example : well-designed laws for commerce that allow businesses to plan their daily-activities, provide productive resources, and assess risk-management)
- f. Providing a basis for compromise (Example : mostly the law suites helps getting settled or reduces the charges before trials)

3. Define the 7 schools of jurisprudential thought

The philosophy or science of the law is referred to as jurisprudence.

Traditional jurisprudence can be divided into four basic “ schools of thought” or philosophies of law: a. Natural Law School

The Natural Law School of jurisprudence postulates that the law is based on what is “ correct.”

b. Historical School

The Historical School of jurisprudence believes that the law is an aggregate of social traditions and customs that have developed over the centuries.

c. Analytical School

The Analytical School of jurisprudence maintains that the law is shaped by logic.

d. Sociological School

The Sociological School of jurisprudence asserts that the law is a means of achieving and advancing certain sociological goals.

e. Command School

The philosophers of the Command School of jurisprudence believe that the law is a set of rules developed, communicated, and enforced by the ruling party rather than a reflection of the society’s morality, history, logic, or sociology.

f. Critical Legal Studies School

The Critical Legal Studies School proposes that legal rules are unnecessary and are used as an obstacle by the powerful to maintain the status quo.

g. Law and Economics School

The Law and Economics School believes that promoting market efficiency should be the central goal of legal decision making.

4. Explain in detail the state court system.

Each state and each territory of the United States has its own separate court system (collectively referred: State courts). Most state court systems include: limited-jurisdiction trial courts, general-jurisdiction trial courts, intermediate appellate courts, and a supreme court.

← Limited-Jurisdiction Trial Courts

State limited-jurisdiction trial courts, which are sometimes referred to as inferior trial courts, hear matters of a specialized or limited nature. E. g. Traffic courts, juvenile courts, justice-of-the-peace courts, probate courts, family law courts, and courts that hear misdemeanor criminal law cases are limited-jurisdiction courts in many states. Because limited-jurisdiction courts are trial courts, evidence can be introduced and testimony can be given. Most limited-jurisdiction courts keep records of their proceedings. A decision of such a court can usually be appealed to a general-jurisdiction court or an appellate court.

← General-Jurisdiction Trial Courts

Every state has a general-jurisdiction trial court. These courts are often referred to as courts of record because the testimony and evidence at trial are recorded and stored for future reference. These courts hear cases that are not within the jurisdiction of limited-jurisdiction trial courts, such as felonies, civil cases more than a certain dollar amount, and so on. Some states divide their general-jurisdiction courts into two divisions, one for criminal cases and one for civil cases.

← Intermediate Appellate Courts

In many states, intermediate appellate courts (also called appellate courts or courts of appeal) hear appeals from trial courts. They review the trial court record to determine whether there have been any errors at trial that would require reversal or modification of the trial court's decision. Thus, an appellate court reviews either pertinent parts or the whole trial court record from the lower court. No new evidence or testimony is permitted.

← Highest State Court

There is a highest state court of each state's court system. Many states call this highest court the state supreme court. Some states use other names for their highest courts. The function of a state's highest court is to hear appeals from intermediate appellate state courts and certain trial courts. No new evidence or testimony is heard. The parties usually submit pertinent parts of or the entire lower court record for review. The parties also submit legal briefs to the court and are usually granted a brief oral hearing. Decisions of highest state courts are final unless a question of law is involved that is appealable to the U. S. Supreme Court.

5. Explain in detail the federal court system.

Article III of the U. S. Constitution provides that the federal government's judicial power is vested in one " Supreme Court." This court is the U. S. Supreme Court. Article III also authorizes Congress to establish " inferior" federal courts. Pursuant to its Article III power, Congress has established the U. S. district courts, the U. S. courts of appeals, and the U. S. bankruptcy courts. Pursuant to other authority in the Constitution, the U. S. Congress

has established other federal courts. Federal judges of the U. S. Supreme Court, U. S. courts of appeals, and U. S. district courts are appointed for life by the president, with the advice and consent of the Senate. Judges of other courts are not appointed for life but are appointed for various periods of time (e. g., bankruptcy court judges are appointed for 14-year terms).

← U. S. District Courts

The U. S. district courts are the federal court system's trial courts of general jurisdiction.

← U. S. Courts of Appeals

The U. S. courts of appeals are the federal court system's intermediate appellate courts. There are 13 circuits in the federal court system. The first 12 are geo-graphical. Eleven are designated by numbers, such as the " First Circuit," " Second Circuit," and so on. The geographical area served by each court is referred to as a circuit. The 12th circuit court, located in Washington, DC, is called the District of Columbia Circuit.

6. Define the following:

a. standing to sue

To bring a lawsuit, a plaintiff must have standing to sue. This means the plaintiff must have some stake in the outcome of the lawsuit.

Definition from USLEGAL. com ...

Standing to sue doctrine refers to a legal principle where a party is entitled to have a court decide his/her merits of the case. Under this doctrine, a party is entitled to obtain judicial resolution. In the U. S., there are many

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requirements that a party must establish to have standing before a federal court. The following are some of the requirements recognized under the doctrine: 1. Injury; 2. Causation; 3. Redressability.

The standing to sue doctrine is a jurisdictional issue which concerns power of federal courts to hear and decide cases. The doctrine is not concerned with ultimate merits of a case.

b. subject matter jurisdiction

Subject matter jurisdiction is the authority of a court to hear the type of case brought before it. It is jurisdiction over the type of claim brought by the plaintiff. (USLEGAL. com)

c. in rem jurisdiction

A court may have jurisdiction to hear and decide a case because it has jurisdiction over the property of the lawsuit. This is called in rem jurisdiction (“ jurisdiction over the thing”).

d. quasi in rem jurisdiction

Sometimes a plaintiff who obtains a judgment against a defendant in one state will try to collect the judgment by attaching property of the defendant that is located in another state. This is permitted under quasi in rem jurisdiction, or attachment jurisdiction.

e. venue

Venue requires lawsuits to be heard by the court of the court system that has jurisdiction to hear the case that is located nearest to where the incident

occurred, where witnesses and evidence are available, and such other relevant factors.

7. List and define the parts of a “ pleading”.

The paperwork that is filed with the court to initiate and respond to a lawsuit is referred to as the pleadings. The major pleadings are the complaint, the answer, the cross-complaint, and the reply.

Complaint and Summons:

To initiate a lawsuit, the party who is suing (the plaintiff) must file a complaint in the proper court. The complaint names the parties to the lawsuit, alleges the ultimate facts and law violated, and contains a “ prayer for relief” for a remedy to be awarded by the court. The complaint can be as long as necessary, depending on the case’s complexity.

In other words, a document filed by a plaintiff with a court and served with a summons on the defendant. It sets forth the basis of the lawsuit.

Cross-Complaint and Reply:

A defendant who believes that he or she has been injured by the plaintiff can file a cross-complaint against the plaintiff in addition to an answer. In the cross- complaint, the defendant (now the cross-complainant) sues the plaintiff (now the cross-defendant) for damages or some other remedy. The original plaintiff must file a reply (answer) to the cross-complaint. The reply, which can include affirmative defenses, must be filed with the court and served on the original defendant.

Alternatively, a document filed and served by a defendant if he or she countersues the plaintiff. The defendant is the cross-complainant, and the plaintiff is the cross-defendant. The cross-defendant must file and serve a reply (answer).

Answer:

The defendant, the party who is being sued, must file an answer to the plaintiff's complaint. The defendant's answer is filed with the court and served on the plaintiff. In the answer, the defendant admits or denies the allegations contained in the plaintiff's complaint. A judgment is entered against a defendant who admits all of the allegations in the complaint. The case proceeds if the defendant denies all or some of the allegations. In short, a document filed by a defendant with a court and served on the plaintiff. It usually denies most allegations of the complaint.

8. List and define the 4 parts of "discovery".

The legal process provides for a detailed pretrial procedure called discovery. During discovery, each party engages in various activities to discover facts of the case from the other party and witnesses prior to trial. Discovery serves several functions, including preventing surprises, allowing parties to thoroughly prepare for trial, preserving evidence, saving court time, and promoting the settlement of cases.

Deposition

A deposition is oral testimony given by a party or witness prior to trial. The person giving a deposition is called the deponent.

Interrogatories

Interrogatories are written questions submitted by one party to a lawsuit to another party.

Production of Documents

Often, particularly in complex business cases, a substantial portion of a lawsuit may be based on information contained in documents (e. g., memorandums, correspondence, company records). One party to a lawsuit may request that the other party produce all documents that are relevant to the case prior to trial. This is called production of documents.

Physical or Mental Examination

In cases that concern the physical or mental condition of a party, a court can order the party to submit to certain physical or mental examinations to determine the extent of the alleged injuries.

9. List and define the phases of a trial.

| Jury Selection | The pool of potential jurors is usually selected from voter or automobile registration | | lists. Individuals are selected to hear specific cases through a process called voir dire | | (“ to speak the truth”). Lawyers for each party and the judge can ask prospective jurors | | questions to determine whether they would be biased in their decisions. | | Opening Statements | Each party’s attorney is allowed to make an opening statement to the jury at the beginning | | of a trial. During an opening statement, an attorney usually summarizes the main factual and | | legal issues of the case and describes why he or she believes the client’s position is | | valid. The information given in this statement is not considered as evidence. | | The <https://assignbuster.com/law-test-with-answers-essay-sample/>

Plaintiff's Case | A plaintiff bears the burden of proof to persuade the trier of fact of the merits of his or her case. This is called the plaintiff's case. The Defendant's Case | The defendant's case proceeds after the plaintiff has concluded his or her case. The defendant's case must (1) rebut the plaintiff's evidence, (2) prove any affirmative defenses asserted by the defendant, and (3) prove any allegations contained in the defendant's cross-complaint.

The defendant's witnesses are examined on direct examination by the defendant's attorney. Rebuttal and Rejoinder | After the defendant's attorney has finished calling witnesses, the plaintiff's attorney can call witnesses and put forth evidence to rebut the defendant's case. This is called a rebuttal. Closing Arguments | At the conclusion of the presentation of the evidence, each party's attorney is allowed to make a closing argument to the jury. Jury Instructions, Deliberation, and Verdict | Once the closing arguments are completed, the judge reads jury instructions (or charges) to the jury. These instructions inform the jury about what law to apply when they decide the case. Entry of Judgment | After the jury has returned its verdict, in most cases the judge will enter a judgment to the successful party, based on the verdict. This is the official decision of the court.

10. List and define the types of Alternative Dispute Resolution.

Negotiation:

The simplest form of alternative dispute resolution is engaging in negotiations between the parties to try to settle a dispute. Negotiation is a

procedure whereby the parties to a legal dispute engage in discussions to try to reach a voluntary settlement of their dispute. Negotiation may take place either before a lawsuit is filed, after a lawsuit is filed, or before other forms of alternative dispute resolution are used.

Arbitration:

A common form of ADR is arbitration. In arbitration, the parties choose an impartial third party to hear and decide the dispute. This neutral party is called the arbitrator.

Mediation:

Mediation is a form of negotiation in which a neutral third party assists the disputing parties in reaching a settlement of their dispute. The neutral third party is called a mediator.

Mini-Trial:

A mini-trial is a voluntary private proceeding in which lawyers for each side present a shortened version of their case to the representatives of both sides. The representatives of each side who attend the mini-trial have the authority to settle the dispute. In many cases, the parties also hire a neutral third party— often someone who is an expert in the field concerning the disputed matter or a legal expert—who presides over the mini-trial. After hearing the case, the neutral third party often is called upon to render an opinion as to how the court would most likely decide the case.

Fact-Finding:

In some situations, called fact-finding, the parties to a dispute employ a neutral third party to act as a fact-finder to investigate the dispute.

Judicial Referee:

If the parties agree, the court may appoint a judicial referee to conduct a private trial and render a judgment. Referees, who are often retired judges, have most of the same powers as trial judges, and their decisions stand as judgments of the court. The parties usually reserve their right to appeal.

11. Define e-dispute resolution.

The use of online alternative dispute resolution services to resolve a dispute.

12. Describe the English Common Law system.

English Common Law:

Law developed by judges who issued their opinions when deciding a case.

The principles announced in these cases became precedent for later judges deciding similar cases.

The English common law can be divided into cases decided by the law courts, equity courts, and merchant courts.

Law Courts

Prior to the Norman Conquest of England in 1066, each locality in England was subject to local laws, as established by the lord or chieftain in control of the local area. There was no countrywide system of law.

Chancery (Equity) Courts

Because of some unfair results and limited remedies available in the law courts, a second set of courts—the Court of Chancery (or equity court)—was established. These courts were under the authority of the Lord Chancellor.

Persons who believed that the decision of a law court was unfair or believed that the law court could not grant an appropriate remedy could seek relief in the Court of Chancery.

Merchant Courts

As trade developed during the middle Ages, the merchants who traveled about England and Europe developed certain rules to solve their commercial disputes. These rules, known as the “ law of merchants,” or the Law Merchant, were based on common trade practices and usage. Eventually, a separate set of courts was established to administer these rules. This court was called the Merchant Court.

13. What are the sources of law in the US.

Sources of Law

1. Constitutions (state and federal)
2. Statutes (state and federal)
3. Ordinances
4. Treaties
5. Cases (state and federal)
6. Administrative Agency Rules and Adjudications (state and federal)
7. Procedural rules of the courts (state and federal)
8. Voter Initiatives (state only)

14. define the following:

a. codified law

Federal statutes are organized by topic into code books. This is often referred to as codified law

b. presidential executive orders

The executive branch of government, which includes the president of the United States and state governors, is empowered to issue executive orders.

c. administrative agency regulations and orders

Agencies (such as the Securities and Exchange Commission and the Federal Trade Commission) that the legislative and executive branches of federal and state governments are empowered to establish.

d. judicial decisions

When deciding individual lawsuits, federal and state courts issue judicial decisions. In these written opinions, a judge or justice usually explains the legal reasoning used to decide the case.

15. Define the following:

a. ethical fundamentalism

Under ethical fundamentalism, a person looks to an outside source for ethical rules or commands. This may be a book (e. g., the Bible, the Koran) or a person (e. g., Karl Marx). Critics argue that ethical fundamentalism does not permit people to determine right and wrong for themselves. Taken to an extreme, the result could be considered unethical under most other moral theories.

b. utilitarianism

Utilitarianism is a moral theory with origins in the works of Jeremy Bentham (1748–1832) and John Stuart (1806–1873). This moral theory dictates that people must choose the action or follow the rule that provides the greatest good to society. This does not mean the greatest good for the greatest number of people.

c. Kantian ethics

Kant believed that people owe moral duties that are based on universal rules. Kant's philosophy is based on the premise that people can use reasoning to reach ethical decisions. His ethical theory would have people behave according to the categorical imperative "Do unto others as you would have them do unto you."

Kantian ethics is a deontological ethical theory first proposed by the German philosopher Immanuel Kant based on the idea of moral duty. It asserts that a good will is the only intrinsically good thing and that an action is only good if performed out of duty, rather than out of practical need or desire. This was based on Kant's emphasis on reason for developing moral laws and his belief in the need to be able to universalize moral decisions, which led to the principle of the categorical imperative. (http://en.wikipedia.org/wiki/Kantian_ethics)

d. social justice theory

John Locke (1632–1704) and Jean-Jacques Rousseau (1712–1778) proposed a social contract theory of morality. Under this theory, each person is presumed to have entered into a social contract with all others in society to

obey moral rules that are necessary for people to live in peace and harmony. This implied contract states, “ I will keep the rules if everyone else does.” These moral rules are then used to solve conflicting interests in society.

e. ethical relativism

Ethical relativism holds that individuals must decide what is ethical based on their own feelings about what is right and wrong. Under this moral theory, if a person meets his or her own moral standard in making a decision, no one can criticize him or her for it.

16. List and define the social responsibilities of business.

Maximize Profits

The traditional view of the social responsibility of business is that business should maximize profits for shareholders. This view, which dominated business and the law during the 19th century, holds that the interests of other constituencies are not important in and of themselves.

Moral Minimum

Some proponents of corporate social responsibility argue that a corporation's duty is to make a profit while avoiding causing harm to others. This theory of social responsibility is called the moral minimum.

Stakeholder Interest

Businesses have relationships with all sorts of people besides their shareholders, including employees, suppliers, customers, creditors, and the local community. Under the stakeholder interest theory of social responsibility, a

corporation must consider the effects its actions have on these other stakeholders.

Corporate Citizenship

The corporate citizenship theory of social responsibility argues that business has a responsibility to do well. That is, business is responsible for helping to solve social problems that it did little, if anything, to cause.

17. Answer the 3 questions after 1. 3 Business Ethics case

← “ The Court today places its imprimatur on one of the most potent remaining public expressions of “ ancient canards about the proper role of women.” It upholds a statute that requires males but not females to register for the draft, and which thereby categorically excludes women from a fundamental civil obligation. I dissent.” ← I believe so.

← No, I should not.

18. Answer the three questions after 2. 3 Business Ethics case

← Yes defiantly, if so is proven scientifically. This company should have been given the worst possible punishment in the capacity of federal law, in my opinion. As it is not only false marketing but also misleading people for their health, totally unethical & impermissible act. ← No, and Warner-Lambert was ordered to stop making such claims. ← Definitely not, I believe.

19. Answer the three questions after 3. 4 Business Ethics case

Cannot find this questionnaire, please clearly specify page #

20. Answer the three questions after 4. 5 Business ethics case

← Yes I believe so; iff (stands for if and only if) as father and as a husband he has fulfilled all his duties. But thing would have been better if the mother was informed about this (I think that part has not been made clear while describing the plot).

← May he do not want to disrespect the court orders, I see nothing wrong if as a father he visits his children and want to see them or to spend some time with them, but he should at least have informed her ex-wife so that she do not worry about him, but after all it all depends on the strength of mutual-trust at the time of separating.

← for genuine reasons like wicked, drunk/drug addict or rude parent this service of process plays +ve part. But if the parent has had been a good mother/father I think it would be not fair to restrict them from meeting, such a law is not law which is for humans. In the later case, arrangement must have been made by court that the parent who is not leaving w/ their children can see at least once a while.