

# CHAPTER 1

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## TEST BANK

### MULTIPLE CHOICE

1. The theory of incorporation finally adopted by the Supreme Court was \_\_\_\_\_ incorporation.
- total
  - selective
  - case-by-case
  - categorical

ANS: B            LO: 8            REF: p. 29

2. The U.S. Supreme Court case that established the principle of judicial review was
- Mapp v. Ohio*
  - Marbury v. Madison*
  - Maryland v. Garrison*
  - Tennessee v. Garner*

ANS: B            LO: 5            REF: p. 23

3. The doctrine of \_\_\_\_\_ allows two jurisdictions to try an individual for the same offense without violating double jeopardy.
- tandem courts
  - double court jurisdiction
  - duality of venue
  - dual sovereignty

ANS: D            LO: 1|3            REF: p. 13

4. Which of the following rights has not been incorporated?
- the Fifth Amendment right to grand jury review
  - the Fourth Amendment right to protection against unreasonable search and seizure
  - the Sixth Amendment right to an attorney
  - the First Amendment right to freedom of speech

ANS: B            LO: 8            REF: p. 28

5. An example of selective incorporation can be found in the case of
- Palko v. Connecticut*
  - Miranda v. Arizona*
  - Duncan v. Louisiana*
  - Frisbie v. Collins*

ANS: C            LO: 8            REF: p. 28

6. The judicial power of the federal government is created in Article \_\_\_\_\_ of the U.S. Constitution.
- I
  - II
  - III
  - IV

ANS: C      LO: 1      REF: p. 3

7. What clause of the Fourteenth Amendment was the vehicle for incorporation of rights against the states?
- due process
  - equal protection
  - privileges and immunities
  - citizenship

ANS: A      LO: 8      REF: p. 25

8. If a court has the legal authority to hear a case, this means that the court has:
- precedent
  - equal protection
  - due process
  - jurisdiction

ANS: D      LO: 4      REF: p. 13

9. U.S. magistrate courts are part of the:
- State Court System
  - Federal District Court System
  - County Court System
  - None of these

ANS: B      LO: 1      REF: p. 2

10. The only court established by the U.S. Constitution was the:
- U.S. Court of Appeal
  - U.S. Supreme Court
  - U.S. Court of Claims
  - U.S. Court of Last Resort

ANS: B      LO: 1      REF: p. 3

11. The ban on cruel and unusual punishment and excessive fines and bail is found in the \_\_\_\_\_ Amendment.
- First
  - Fourth
  - Eighth
  - Ninth

ANS: C      LO: 7      REF: p. 20

12. The trial court in the federal system is the \_\_\_\_\_ court.
- a. common pleas
  - b. criminal
  - c. quarter Sessions
  - d. district

ANS: D      LO: 1      REF: p. 7

13. The rights to speedy, public and jury trials, and to confront adverse witnesses are found in the \_\_\_\_\_ Amendment.
- a. Sixth
  - b. Seventh
  - c. Eighth
  - d. Ninth

ANS: A      LO: 7      REF: p. 20

14. Courts do not ignore decisions from other jurisdictions because:
- a. there may be no settled law on an issue in a given area
  - b. decisions in other jurisdictions may enable lawyers to detect a trend and anticipate what local courts might do in the future
  - c. both of these
  - d. none of these

ANS: C      LO: 2      REF: p. 10

15. An easily accessible source of court decisions is the:
- a. internet
  - b. local library
  - c. book store
  - d. all of these

ANS: A      LO: 7      REF: p. 15

16. The incorporation controversy involves:
- a. the Constitution
  - b. the Declaration of Independence
  - c. the Bill of Rights
  - d. none of these

ANS: C      LO: 8      REF: p. 25

17. To find the case law, one would consult:
- a. statutes
  - b. constitutions
  - c. judicial opinions
  - d. administrative regulations

ANS: C      LO: 7      REF: p. 22

Test Bank

18. U.S. District Court opinions are published in the:
- a. *Federal Supplement*
  - b. *Federal Reports*
  - c. *U.S. Reporter*
  - d. *U.S. Cases Review*

ANS: A      LO: 7      REF: p. 15

19. Jurisdiction refers to:
- a. the power of a court to try a case
  - b. the location of a crime
  - c. the Courts power to determine constitutionality
  - d. none of these

ANS: A      LO: 4      REF: p. 13

20. The protection against double jeopardy is found in the \_\_\_\_\_ Amendment.
- a. First
  - b. Fourth
  - c. Fifth
  - d. Sixth

ANS: C      LO: 7      REF: p. 19

21. The most important rights available to an accused in a criminal prosecution come from:
- a. the state constitutions
  - b. the federal statutes
  - c. the federal court rules
  - d. the U.S. Constitution

ANS: D      LO: 7      REF: p. 18

22. The concept of venue refers to:
- a. which court has jurisdiction
  - b. the place where the case will be tried
  - c. which judge will try the case
  - d. the decision as to whether there will be a bench or jury trial

ANS: B      LO: 4      REF: p. 14

23. The court of last resort in most states for both civil and criminal cases is called the:
- a. court of criminal appeals
  - b. Supreme Court
  - c. district court
  - d. court of appeals

ANS: B      LO: 1      REF: p. 8

24. Federal felony criminal cases are tried in U.S. \_\_\_\_\_ Courts.
- district
  - magistrate
  - commissioners
  - common plea

ANS: A      LO: 1      REF: p. 7

25. Stare decisis is the principle that:
- a case should be tried where the crime was committed
  - a case can be tried in a state and a federal court
  - new cases should be decided in a fashion consistent with the law established in prior cases
  - a court must have jurisdiction to try a case

ANS: C      LO: 2      REF: p. 11

26. The U.S. Supreme Court has \_\_\_\_\_ members.
- five
  - seven
  - nine
  - eleven

ANS: C      LO: 1      REF: p. 3

27. The Supreme Court has ruled that trustworthy statements obtained in violation of the *Miranda* rule may be used:
- against a defendant in court
  - in place of testimony
  - to impeach the credibility of a defendant who takes the witness stand
  - to shame a defendant in the newspaper

ANS: C      LO: 7      REF: p. 21

28. The U.S. Supreme Court hears all its cases:
- en banc
  - in panels of three
  - in panels of five
  - in divisions of three

ANS: A      LO: 1      REF: p. 3

29. Prosecutions in which a crime is prosecuted in both federal and state courts are known as:
- horizontal prosecutions
  - vertical prosecutions
  - multiple prosecutions
  - sideways prosecutions

ANS: B      LO: 1|3      REF: p. 13

30. The number of justices that must agree in order for a case to be heard on its merits by the U.S. Supreme Court is:
- a. four
  - b. five
  - c. six
  - d. seven

ANS: A      LO: 1      REF: p. 4

31. Under the rule of law:
- a. no person is above the law
  - b. cruel and unusual punishments are outlawed
  - c. everyone is entitled to a jury trial
  - d. precedents must be followed

ANS: A      LO: 6      REF: p. 24

32. Judicial review is the power of a court to:
- a. follow precedents
  - b. overrule the U.S. Constitution
  - c. void laws or official acts which are inconsistent with the U.S. Constitution
  - d. order that courts be closed in times of martial law or war

ANS: C      LO: 5      REF: p. 23

33. In a case citation, the name of the parties is called:
- a. the case title
  - b. the abstract
  - c. the summary
  - d. the synopsis

ANS: A      LO: 5      REF: p. 16

34. A case citation indicates:
- a. whether or not stare decisis was followed
  - b. where an opinion may be found
  - c. whether the defendant was convicted or acquitted
  - d. where the court sat when it decided the case

ANS: B      LO: 5      REF: p. 14

35. Which of the following rights has not been incorporated?
- a. the First Amendment right to freedom of speech
  - b. the Fourth Amendment protection from unreasonable searches and seizures
  - c. the Sixth Amendment right to an attorney
  - d. the Eighth Amendment right to freedom from excessive bail

ANS: D      LO: 7      REF: p. 28

36. The number of U.S. Supreme Court Justice votes required to win a case in the U.S. Supreme Court when all nine justices are voting is:
- six
  - four
  - five
  - nine

ANS: C      LO: 1      REF: p. 3

37. A majority of cases get to the Supreme Court from the lower courts on a:
- habeas corpus appeal
  - certification
  - writ of error
  - writ of certiorari

ANS: D      LO: 1      REF: p. 4

38. U.S. Magistrates in the federal system are empowered to do all of the following, except:
- hold bail hearings
  - try felony cases
  - issue warrants
  - hold pretrial hearings

ANS: B      LO: 1      REF: p. 8

39. Police \_ in the United States is closely tied to the concept of the rule of law.
- jurisdiction
  - handbooks
  - behavior
  - accountability

ANS: D      LO: 6      REF: p. 24

40. The protection against self-incrimination is found in the \_\_\_\_ Amendment.
- First
  - Fourth
  - Fifth
  - Sixth

ANS: C      LO: 7      REF: p. 19

## CRITICAL THINKING

### Case 1.1

Fred has been convicted in a state trial court of first degree murder for the premeditated killing of two people in a drive by shooting. After a full jury trial, the jury convicted him of first degree murder. The judge at sentencing ordered that he be executed for his crime. With his attorney, he is beginning work on his appeal.

Test Bank

41. What is the name of the state court which will make the final decision on his appeal?
- district court
  - magistrate court
  - supreme court
  - circuit court

ANS: C      LO: 3      REF: p. 8

42. If the state court makes a final decision to uphold his conviction and sentence, what process must he follow to request the U.S. Supreme Court to consider his case?
- writ of certiorari
  - writ of mandamus
  - writ of prohibition
  - direct appeal

ANS: A      LO: 1      REF: p. 4

43. How many justices of the U.S. Supreme Court must agree to hear his case?
- nine
  - seven
  - four
  - five

ANS: C      LO: 1      REF: p. 4

44. If the U.S. Supreme Court hears his appeal, and all nine justices vote, how many justices must vote to overturn the state court decision?
- nine
  - five
  - four
  - seven

ANS: B      LO: 1      REF: p. 3

Case 1.2

Barney has been arrested for the robbery of the Miami National Bank, in Miami, Florida. He has been accused of entering the bank with an automatic weapon, pointing it at the bank manager, and demanding money. A teller pushed the silent alarm button, and officers of the Miami-Dade County, Florida police department arrived and stopped him as he exited the bank with the money. The FBI was notified and special agents arrived at the scene.

45. In which court can he be tried?
- federal court only
  - state court only
  - both federal and state courts
  - neither court

ANS: C      LO: 3      REF: p. 12

46. What is the concept that allows this prosecution?
- dual sovereignty
  - rule of law
  - jurisdiction
  - venue

ANS: A      LO: 3      REF: p. 12

Case 1.3

Frank has been arrested for sexual assault on a twelve-year-old girl. A neighbor saw him committing the act in the back of his car. The neighbor called police, who arrived promptly, to find him still in the back of the car with the girl. The police apprehended him and took him to the city police station, where detectives are now gathering all the information to prepare to take to the local prosecutor for charges to be filed.

47. Which amendment to the U.S. Constitution applies to any interrogation by detectives that may occur?
- First
  - Second
  - Third
  - Fifth

ANS: D      LO: 7      REF: pp. 19-20

48. The police want to search his home for any evidence that may aid in his prosecution. Which amendment to the U.S. Constitution applies to any search?
- First
  - Fourth
  - Fifth
  - Sixth

ANS: B      LO: 7      REF: p. 19

49. Frank wants his attorney present before he will answer any questions the detectives want to ask him. Which amendment to the U.S. Constitution applies?
- First
  - Fourth
  - Sixth
  - Seventh

ANS: C      LO: 7      REF: p. 20

50. If the state statute authorizes the death penalty for conviction of this crime, which amendment to the U.S. Constitution would apply?
- First
  - Fourth
  - Fifth
  - Eighth

ANS: D      LO: 7      REF: p. 20





23. \_\_\_\_\_ indicates where a case may be found in legal publications.  
ANS: Case citation LO: 4 REF: p. 14
24. Freedom of religion is protected by the \_\_\_\_\_ Amendment to the U.S. Constitution.  
ANS: First or 1st LO: 7 REF: p. 19
25. Freedom from unreasonable \_\_\_\_\_ is protected by the Fourth Amendment to the U.S. Constitution.  
ANS: searches and seizures LO: 7 REF: p.19
26. The right to confront witnesses is protected by the \_\_\_\_\_ Amendment to the U.S. Constitution.  
ANS: Sixth LO: 7 REF: p. 20
27. Many state \_\_\_\_\_ have their own bills of rights.  
ANS: constitutions LO: 7 REF: p. 21
28. The rules promulgated by supervisory agencies (such as some states' supreme courts) have the force and effect of \_\_\_\_\_ and therefore must be followed.  
ANS: law LO: 7 REF: p. 23
29. In *Marbury v. Madison* the U.S. Supreme Court first enunciated the doctrine of \_\_\_\_\_.  
ANS: judicial review LO: 5 REF: p. 23
30. The concept of incorporation of the Bill of Rights to apply to the states is based on the \_\_\_\_\_ Amendment to the U.S. Constitution.  
ANS: Fourteenth LO: 8 REF: p. 25

### TRUE/FALSE

1. T F Defendants can be tried in two different states for essentially the same crime, if the crime or an element thereof was committed in those states.  
ANS: T LO: 3 REF: p. 12
2. T F The U.S. Supreme Court has adopted the theory of total incorporation.  
ANS: F LO: 8 REF: p. 22

3. T F Some portions of the Fifth Amendment have been incorporated into the Fourteenth Amendment's Due Process Clause.  
ANS: T LO: 8 REF: p. 28
4. T F All portions of the First, Fourth, and Sixth Amendments have been incorporated.  
ANS: T LO: 8 REF: p. 28
5. T F The rights of free speech, press, and religion are found in the First Amendment.  
ANS: T LO: 7 REF: p. 19
6. T F The protections against unreasonable search and seizure are found in the Fourth Amendment.  
ANS: T LO: 7 REF: p. 19
7. T F The number of U.S. Supreme Court Justices was set at nine in the U.S. Constitution.  
ANS: F LO: 1 REF: p. 3
8. T F Statutory law is law based on the customs of the people and is found in court opinions.  
ANS: F LO: 7 REF: p. 21
9. T F Any provision of state or federal law or action of state or federal officials which is contradictory to the U.S. Constitution is void and invalid.  
ANS: T LO: 5 REF: p. 23
10. T F A case citation includes how many pages are included in the brief.  
ANS: F LO: 4 REF: p. 16-17
11. T F The court of last resort for federal cases and cases involving federal law and the U.S. Constitution is the U.S. Supreme Court.  
ANS: T LO: 1 REF: p. 4
12. T F The ban on cruel and unusual punishment and excessive bail and fines is found in the Seventh Amendment.  
ANS: F LO: 7 REF: p. 20
13. T F The Fourteenth Amendment contains an equal protection clause.  
ANS: T LO: 7 REF: p. 21

Test Bank

14. T F Only Congress has the power of judicial review.  
ANS: F LO: 5 REF: p. 23
15. T F All of the Sixth Amendment has been incorporated.  
ANS: T LO: 8 REF: p. 28
16. T F The Fourteenth Amendment contains a due process clause.  
ANS: T LO: 7 REF: p. 21
17. T F The term stare decisis refers to a higher courts reversal of a lower court's decision.  
ANS: F LO: 5 REF: p. 11
18. T F All state courts follow the federal pattern.  
ANS: F LO: 1 REF: p. 8
19. T F Not accepting a case means the Supreme Court agrees with the lower court.  
ANS: F LO: 1 REF: p. 5
20. T F The term venue refers to the location where a crime was committed.  
ANS: T LO: 4 REF: p. 14
21. T F The United States has a unitary court system.  
ANS: F LO: 1 REF: p. 2
22. T F The U.S. Supreme Court always decides cases en banc.  
ANS: T LO: 1 REF: p. 3
23. T F The U.S. Supreme Court does not have original jurisdiction in any cases.  
ANS: F LO: 1 REF: p. 4
24. T F Decisions by the U.S. Supreme Court are binding on questions of federal law.  
ANS: T LO: 2 REF: p. 10
25. T F A court's jurisdiction is determined by that court.  
ANS: F LO: 4 REF: p. 15

26. T F Both the federal and state constitutions are sources of rules that protect the rights of individuals.  
ANS: T LO: 7 REF: p. 18
27. T F The concept of judicial review is described in the U.S. Constitution.  
ANS: F LO: 5 REF: p. 23
28. T F The rule of law is an ancient concept.  
ANS: T LO: 6 REF: p. 23
29. T F The total incorporation approach provides that all the provisions of the Bill of Rights should apply to the states.  
ANS: T LO: 8 REF: p. 27
30. T F The case-by-case incorporation approach provides that extending the Bill of Rights applies only to that case.  
ANS: T LO: 8 REF: p. 27

## ESSAY

1. Explain the concept of dual sovereignty. How is the Oklahoma City bombing an example of that concept?

ANS: The concept of dual sovereignty is that federal and state governments are each considered sovereign in their own right. The Oklahoma City bombing One of the defendants was convicted in federal court and later also convicted in state court.

LO: 3 REF: p. 12

2. What is meant by selective incorporation? Give an example.

ANS: Selective incorporation is based on the concept that only fundamental rights in the Bill of Rights should be applied to the states. An example of that is the right to an attorney, which is one of the rights contained in the Bill of Rights, that was selected by the U.S. Supreme Court, to apply to the states through the Fourteenth Amendment due process clause..

LO: 8 REF: pp. 25-29

3. Define the concept of judicial review and give an example. Do you agree or disagree that the courts should have the final say on what the Constitution means?

ANS: Judicial review is the power of courts to declare law or acts unconstitutional. *Marbury v. Madison* was the first example, where the U.S. Supreme Court found an act of Congress unconstitutional. I agree that the courts should have the final say on what the Constitution means because the courts are often less influenced by the heat of the moment partisanship.

LO: 5 REF: p. 23

4. Define the doctrine of stare decisis and how it works. How does it relate to judicial precedent?

ANS: Stare decisis means to abide by or adhere to, decided cases. The judicial practice of stare decisis leads to judicial precedent, meaning that decisions of courts have value as precedent for future cases similarly circumstanced. These terms are often used interchangeably because they vary only slightly in meaning. The principle of stare decisis ensures predictability of court decisions, whereas judicial precedent is a process courts follow as a result of stare decisis. Judicial precedent is made possible by stare decisis.

LO: 2 REF: pp. 11-12

5. In explaining the rule of law, David Hume said that it means “a government of laws and not of men.” Explain what he meant.

ANS: No person is above the law; every person, from the most powerful public official down to the least powerful individual, is subject to the law and can be held accountable in court for his or her actions.

LO: 6 REF: pp. 23-24

6. Explain the process of briefing a legal case. Why is case briefing helpful in understanding a case?

ANS: In case briefs, students read a case, break it into segments, and then reassemble it in a more concise and organized form to facilitate learning. Case briefs help readers understand court cases better and are used extensively as a learning tool in law schools and in the practice of law.

LO: 4 REF: pp. 16-18

7. What does it mean that court decisions are binding only in that court’s territorial jurisdiction?

ANS: Court decisions are binding only in that court’s territorial jurisdiction means that judicial decision is authoritative and has value as precedent for future cases only within the geographic limits of the area in which the deciding court has jurisdiction.

LO: 2 REF: p. 10

8. Jurisdiction is the power of a court to try a case. What determines a court's jurisdiction over a case?

ANS: A court's jurisdiction over a case is determined by the law that created the court and defined its powers.

LO: 4 REF: pp. 13-14

9. Venue is place oriented, meaning that a criminal case must be tried where the crime was committed. How and why can the venue be changed in criminal cases?

ANS: The motion for a change of venue is usually filed by the defendant. The decision of a trial judge to grant or deny the motion is seldom reversed on appeal.

LO: 4 REF: pp. 13-14

10. What are limitations on provisions of state constitutions that apply to criminal cases?

ANS: Provisions of state constitutions as they apply to criminal cases must be consistent with the provisions of the federal Constitution or they may be declared unconstitutional if challenged in court.

LO: 7 REF: p. 21