**Chapter 5: Introduction to the Legal System**

**Review Questions**

**5.1.** Name the three levels of government.

**5.2.** What do we call the division of powers among the federal and state governments?

**5.3.** Name the three branches of government and the function of each.

**5.4.** Define public policy.

**5.5.** Distinguish between primary and secondary authority.

**5.6.** The words *opinion* and *statute* are often used interchangeably. True or False? Explain.

**5.7.** Name two methods by which statutes can be created in many states.

**5.8.** Define:

1. Constitution
2. Administrative Regulation

**5.9.** A(n) \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ is an administrative agency’s resolution of a controversy (following a hearing) involving the application of the regulations, statutes, or executive orders that govern the agency.

**5.10.** A treatise is an international agreement between two or more countries. True or False? Explain.

**5.11.** A city council will pass laws called \_\_\_\_\_\_\_\_\_\_.

**5.12.** Opinions of the attorney general contain \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ given to \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_.

**5.13.** Another name for administrative regulation is \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_.

**5.14.** The document that contains a statute is called a(n) \_\_\_\_\_\_\_\_\_\_.

**5.15.** An executive order is issued by the \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_.

**5.16.** What is the purpose of the checks and balances written into the constitution?

**5.17.** The power of judicial \_\_\_\_\_\_\_\_\_\_ allows the courts to determine whether the legislature has passed statutes that violate the constitution.

**5.18.** Give four meanings of the term *common law*.

**5.19.** What do we call a statute that has changed the common law?

**5.20.** A(n) \_\_\_\_\_\_\_\_\_\_ system is a method of resolving a legal dispute whereby the parties (alone or through their advocates) argue their conflicting positions before a neutral decision maker.

**5.21.** Distinguish between a constitutional court and a legislative court.

**5.22.** What is stare decisis?

**5.23.** Give three meanings of jurisdiction.

**5.24.** Define adjudicate.

**5.25.** The jurisdiction a court needs to resolve a legal dispute over a thing or res located within the territory over which the court has authority is called \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ jurisdiction.

**5.26.** Briefly define the following six kinds of subject-matter jurisdiction.

1. limited jurisdiction
2. general jurisdiction
3. exclusive jurisdiction
4. concurrent jurisdiction
5. original jurisdiction
6. appellate jurisdiction

**5.27.** Define:

(a) A state question

(b) A federal question

**5.28.** Below you will find a list of state courts. Give alternative names by which these courts are sometimes identified:

(a) Supreme Court

(b) Superior Court

(c) Probate Court

**5.29.** Below the trial courts of general jurisdiction there are \_\_\_\_\_\_\_\_\_\_ courts in many states.

**5.30.** Appellate attorneys submit \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ to the appeals court stating their arguments on why the court should affirm (approve), reverse, or otherwise modify what a lower court has done.

**5.31.** What is an appellate panel?

**5.32.** What happens when a case is heard en blanc?

**5.33.** If there is more than one court of appeals, the first appellate level is sometimes called the

\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ court.

**5.34.** What is the name of the basic federal court at the trial level?

**5.35.** What is the name of the main intermediate appellate court in the federal system?

**5.36.** Name the federal court of final appeals.

**5.37.** Define administrative agency.

**5.38.** List the three main kinds of administrative agencies.

**5.39.** What is a government corporation?

**5.40.** Agencies with rule-making functions act like the legislature. The administrative rules and

regulations written by the agencies are referred to as \_\_\_\_\_\_\_\_\_\_.

**5.41.** The term \_\_\_\_\_\_\_\_\_\_ means the process by which agencies act like courts in resolving

 disputes.

**5.42.** Give three titles of individuals who preside over administrative hearings that lead to

administrative decisions.

**5.43.** What is meant by exhausting administrative remedies?

**5.44.** What is the APA?

**5.45.** Distinguish between bicameral and unicameral.

**5.46.** Distinguish between initiative and referendum.

**5.47.** List the six main stages of enacting legislation.

**5.48.** What is the legislative history of a statute?

**5.49.** What is the function of the National Conference of Commissioners on Uniform State Laws?

**5.50.** How can a bill the president has vetoed still become law?

**5.51.** What is a pocket veto?

**5.52.** Distinguish between an engrossed bill and an enrolled bill.

**ANSWERS**

**Chapter 5: Introduction to the Legal System**

**5.1.** The three levels of government are (1) federal, (2) state, and (3) local.

**5.2.** The division of powers among the federal and state governments is called *federalism*.

**5.3.** The three branches of government and their functions:

1. legislative: makes the laws
2. executive: carries out the laws
3. judicial: interprets the laws by resolving disputes concerning the laws

**5.4.** Public policy consists of principles inherent in customs and societal values that are embodied in a law.

**5.5.** Definitions:

 (a) Primary authority is any law that a court could rely on in reaching its decision.

(b)Secondary authority is any nonlaw that a court could rely on in reaching its decision.

**5.6.** False. *Opinion* and *case* are often used interchangeably.

**5.7.** The two methods by which statutes can be created in many states are:

(a) the legislature writes the statute

(b) initiative and referendum process

**5.8.** Definitions:

(a) A constitution is the fundamental law that creates the branches of government

allocates power among them, and defines some basic rights of individuals.

(b) An administrative regulation is law written by an administrative agency designed to carry out the statutes and executive orders that govern an agency.

**5.9.** An administrative decision is an administrative agency’s resolution of a controversy (following a hearing) involving the application of the regulations, statutes, or executive orders that govern the agency.

**5.10.** False. A *treaty* is an international agreement between two or more countries. A legal *treatise* is a book on a legal subject written by a private citizen or by a public official acting in a private capacity.

**5.11.** A city council will pass laws called ordinances.

**5.12.** Opinions of the attorney general contain legal advice given to government officials.

**5.13.** Another name for administrative regulation is administrative rule.

**5.14.** The document that contains a statute is called an act.

**5.15.** An executive order is issued by the chief executive.

**5.16.** The purpose of checks and balances is to prevent one branch of government from

becoming too powerful over the other two branches.

**5.17.** The power of judicial review allows the courts to determine whether the legislature

has passed a statute that violates the constitution.

**5.18.** Four meanings of common law:

1. court opinions or all of case law
2. the legal system of England and America
3. all case law and statutory law in England and in the American colonies before the American Revolution
4. judge-made law in the absence of controlling statutory law or other higher law

**5.19.** A statute that has changed the common law is a statute in derogation of the common law.

**5.20.** An adversary system is a method of resolving a legal dispute whereby the parties (alone or through their advocates) argue their conflicting positions before a neutral decision maker.

**5.21.** Definitions:

 (a) A constitutional court is a court created within the constitution. (At the federal level, they are called Article III courts because they are created within Article III of the U.S. Constitution.)

 (b) A legislative court is a court created by the legislature. (At the federal level, they are called Article I courts because Article I of the U.S. Constitution gives Congress the authority to create special courts.)

**5.22.** Stare decisis: Courts should decide similar cases in the same way unless there is

good reason for the court to do otherwise. Courts have a reluctance to reject

 precedent, or a prior opinion covering a similar issue.

**5.23.** Definitions of jurisdiction include:

1. The power of a court to decide a matter in dispute.
2. The geographic area over which a particular court system or other government unit has authority.
3. The scope of power or authority that a person or entity can exercise.

**5.24.** Adjudicate means to hear and resolve a legal matter judicially, or to judge.

**5.25.** The jurisdiction a court needs to resolve a legal dispute over a thing or res located within the territory over which the court has authority is called in rem jurisdiction.

**5.26.** Definitions:

1. Limited jurisdiction: the court’s power to hear only certain kinds of cases.
2. General jurisdiction: the power of a court to hear any kind of civil or criminal case, with certain exceptions.
3. Exclusive jurisdiction: the power of a court to hear a particular kind of case to the exclusion of all other courts.
4. Concurrent jurisdiction: the power of a court to hear a particular kind of

case, along with other courts that could also hear this kind of case.

1. Original jurisdiction**:** the power of a court to be the first to hear a case before

it is reviewed by another court.

1. Appellate jurisdiction: the power of an appellate court to review and correct

 the decisions of a lower tribunal.

**5.27.** Definitions:

 (a) A state question is an issue or question that arises from or that is based on the

 state constitution, state statutes, state administrative regulations, state common

 law, or other state law.

1. A federal question is an issue or question that arises from or that is based on the federal constitution, federal statutes, federal administrative regulations, or other federal law.

**5.28.** Alternative names of various courts:

(a) Supreme Court: Supreme Judicial Court, Supreme Court of Appeals, Court of Appeals

(b) Superior Court: Circuit Court, District Court, Court of Common Pleas,

 Supreme Court (in New York only)

1. Probate Court: Surrogate Court

**5.29.** Below the trial courts of general jurisdiction there are inferior courts in many states.

**5.30.** Appellate attorneys submit appellate briefs to the appeals court stating their

arguments on why the court should affirm (approve), reverse, or otherwise modify

 what a lower court has done.

**5.31.** An appellate panel is a group of judges, usually three, who decide a case on a court

with a larger number of judges.

**5.32.** When a case is heard en banc, all of the appellate judges on the court (not just an

appellate panel) decide a case.

**5.33.** If there is more than one court of appeals, the first appellate level is sometimes

called the intermediate appellate court.

**5.34.** The basic federal trial court is the U.S. District Court.

**5.35.** The main intermediate appellate court in the federal system is the U.S. Court of Appeals.

**5.36.** The federal court of final appeals is the U.S. Supreme Court.

**5.37.** An administrative agency is a governmental body, other than a court or legislature, that carries out (i.e., administers or executes) the statutes of the legislature, the executive orders of the chief executive, and its own regulations.

**5.38.** The three main kinds of administrative agencies:

1. executive department agency
2. independent regulatory agency
3. quasi-independent regulatory agency

**5.39.** A government corporation is a government-owned entity that is a mixture of a business corporation and a government agency created to serve a predominantly business function in the public interest.

**5.40.** Agencies with rule-making functions act like the legislature. The administrative

rules and regulations written by the agencies are referred to as quasi-legislation.

**5.41.** The term quasi-adjudication means the process by which agencies act like

courts in resolving disputes.

**5.42.** Persons who preside over administrative hearings that lead to administrative decisions:

1. hearing examiner
2. trial examiner
3. administrative law judge (ALJ)

**5.43.** Exhausting administrative remedies means to go through all the dispute-solving

avenues that are available in an administrative agency before asking a court to

 review what the agency did.

**5.44.** The APA (Administrative Procedure Act) is a statute that governs procedures

before federal administrative agencies. Many states have their own APA for

 procedures before state administrative agencies.

**5.45.** Definitions:

 (a) Bicameral: consisting of two houses or chambers in the legislature

1. Unicameral: consisting of one house or chamber in the legislature

**5.46.** Definitions:

 (a) Initiative: The electorate’s power to propose and directly enact a statute or change in the constitution or to force the legislature to vote on the proposal.

(b) Referendum: The electorate’s power to give final approval to an existing provision of the constitution or statute of the legislature.

**5.47.** The six main stages of enacting legislation:

1. proposal
2. initial committee consideration
3. floor debate
4. conference committee consideration
5. floor debate
6. response of the chief executive

**5.48.** The legislative history of a statute is everything that occurred from the time the

statute was proposed to the time it was acted upon by the chief executive.

**5.49.** The function of the National Conference of Commissioners on Uniform State Laws is to prepare the adoption of statutes by the state legislatures where it deems uniformity to be desirable.

**5.50.** A bill the president has vetoed can still become law if both houses of the legislature

vote to override the veto by a two-thirds vote.

**5.51.** A pocket veto is the chief executive’s “silent” rejection of a bill by not acting on it

within 10 weekdays of receiving it if the legislature adjourns during this period.

**5.52.** Definitions:

 (a) Engrossed bill: The version of a bill passed by one of the chambers of the legislature after incorporating amendments or other changes.

(b) Enrolled bill: A bill that is ready to be sent to the chief executive after both chambers of the legislature have passed it.