**Spirit of the Law**

**FINAL EXAM**

**True/False Questions**

1. The philosophy of the law is referred to as jurisprudence. (**T**)

2. Common law was originally developed by the Napoleonic Code. (**F**)

3. *Stare Decisis* forms the basis of codifying the law. (**F**)

4. The U.S. Supreme Court was created by the first U.S. Congress. (**F**)

5. The U.S. Supreme Court takes a significant portion of the petitions for certiorari that are filed each year. (**F**)

6. In order to be able to bring a lawsuit, the plaintiff must have standing to sue. (**T**)

7. A statute of limitations sets a time period in which the plaintiff has to get a suit to trial. (**F**)

8. A motion for judgment on the pleadings is based only on the pleadings. (**T**)

9. The lawyers opening statements are not evidence, but the closing arguments are evidence. (**F**)

10. Misdemeanors are less serious crimes than felonies. (**T**)

11. Most modern forms of burglary include threatening the victim with force, in addition to using force on the victim. (**F**)

12. Money laundering is a crime that involves taking the proceeds of illegal activities and washing it by passing it through a legitimate business. (**T**)

13. The Supremacy Clause establishes that the federal Constitution and corresponding federal laws are the supreme law of the land. (**T**)

14. The Bill of Rights refers to the 26 amendments of the U.S. Constitution. (**F**)

15. Amending the Constitution is an extremely difficult thing to do. (**T**)

16. Assault is the unauthorized and harmful or offensive physical contact with another person. (**F**)

17. Because of the reasonable person standard applied in negligence law, an alcoholic defendant in a negligence case would be held the reasonable alcoholic standard. (**F**)

18. Good Samaritan laws protect ordinary citizens who have CPR training and who render emergency aid. (**T**)

19. A counteroffer is also a rejection. (**T**)

20. An offeror may revoke an offer after it has been made to the offeree. (**T**)

21. Intended third-party beneficiaries have contract rights even though they were not contracting parties. (**T**)

22. Real estate can be either tangible or intangible. (**F**)

23. The owner of a life estate that is measured by the life tenant’s life may pass the life estate on in his or her will. (**F**)

24. A cooperative is a form of co-ownership in a multiple-dwelling building in which a corporation owns the building and the residents own shares in the corporation. (**T**)

25. When a couple has a common law marriage, they must still get a divorce in order to end their relationship. (**T**)

26. Adoption terminates the legal rights of the biological parents. (**T**)

27. If it is in the child’s best interest, a court has the authority to award custody to neither of the divorcing parents. (**T**)

28. A nuncupative will must include the testator’s signature. (**F**)

29. A codicil must be executed in the same manner as a will. (**T**)

30. An inter vivos trust can be changed at the decision of the settlor. (**T**)

31. A sole proprietorship is the simplest form of business organization. (**T**)

32. General partners are personally liable for the debts and obligations of the partnership. (**T**)

33. A limited liability partnership (LLP) can exist without having a general partner. (**T**)

34. Someone who is an employee-at-will cannot sue for wrongful discharge. (**F**)

35. The principal’s action’s, and not the agent’s, are those that bind the principal in an apparent agency. (**T**)

36. In an undisclosed agency, the agent is not liable to the third party with whom the agent has transacted business. (**F**)

37. The advantage of secured credit is the creditor’s right to repossess the collateral. (**T**)

38. Unless the creditor has possession of the collateral, there must be a written security agreement. (**T**)

39. Once filed, a financing statement is effective for the duration of the loan. (**F**)

40. Copyright protection lasts for the life of the author. (**F**)

41. “Cola” is eligible for trademark protection. (**F**)

42. The Anticybersquatting Consumer Protection Act prohibits one from selling an Internet domain name. (**F**)

43. The Food and Drug Administration has authority over products like eye shadow and lipstick. (**T**)

44. To prove a case of false and deceptive advertising, the FTC needs to prove that consumers were deceived by the ad in question. (**F**)

45. The Superfund legislation provides that the owner of property that contains hazardous waste can be liable for the costs of clean up, even if the owner wasn’t at fault in disposing of the waste. (**T**)

46. Common stock qualifies as a security under the SEC’s definition, but preferred stock does not. (**F**)

47. Insider trading occurs when anyone buys or sells stock based nonpublic information. (**F**)

48. States don’t have any securities laws. (**F**)

49. The Consumer Product Safety Commission is private, nonprofit organization.(**F**)

50. Federal environmental protection law prohibits businesses from polluting the air and water. (**F**)

**Multiple Choice Questions**

1. Common law owes its origination to:

A) America.

B)\* England.

C) France.

D) Germany.

2. The U.S. Constitution created how many branches of government?

A) One

B) Two

C)\* Three

D) Four

3. Adhering to judicial precedent is known as:

A) *Res ipsa loquitur.*

B) *Caveat emptor.*

C)\* *Stare decisis.*

D) *Quid pro quo.*

4. An appellate court does not:

A) Review the record.

B) Let the lawyers speak.

C)\* Hear the evidence.

D) Make legal decisions.

5. U.S. district courts are courts of:

A) Limited jurisdiction.

B) State jurisdiction.

C) Exclusive jurisdiction.

D)\* General jurisdiction.

6. A long-arm statute is about:

A) Subject-matter jurisdiction.

B)\* In personam jurisdiction.

C) Venue jurisdiction.

D) Concurrent jurisdiction.

7. The document that directs the defendant to appear in court and answer the complaint is the:

A) Complaint.

B)\* Summons.

C) Answer.

D) Cross-claim.

8. A statute of limitations begins to “run” when:

A)\* The plaintiff has the right to sue the defendant.

B) The defendant has the right to respond to the plaintiff.

C) The plaintiff has the right to collect a judgment.

D) The defendant has the right to appeal.

9. The type of pre-trial motion that must be supported by specific evidence is a motion for:

A) Judgment on the pleadings.

B) Judgment notwithstanding the verdict.

C)\* Summary judgment.

D) Appeal.

10. The most common form of alternative dispute resolution in commercial disputes is:

A)\* Arbitration.

B) Conciliation.

C) Mediation.

D) Private judging.

11. Arbitration occurs due to:

A) Arbitration clauses that precede any conflict.

B) Submission agreements that follow the conflict.

C)\* Both of the above.

D) None of the above.

12. A pattern of racketeering activity involves committing how many acts within a ten-year period?

A) One

B)\* Two

C) Three

D) Five

13. The Constitutional Amendment that protects against self-incrimination is the:

A)\* Fifth.

B) Fourth.

C) Second.

D) First.

14. The Federal Antiterrorism Act of 2001:

A)\* Allows the federal government to detain noncitizens for a limited period of time without charging them.

B) Allows the federal government to detain noncitizens for an unlimited period of time without charging them

C) Prohibits the CIA from having access to specific geographical search warrants.

D) Prohibits the CIA from having access to information that is in possession of the FBI.

15. The following is an example of fully protected speech:

A) Commercial speech.

B)\* Political speech.

C) Defamatory speech.

D) Offensive speech.

16. The following type of speech is unprotected by the First Amendment:

A) Fighting words.

B) Obscene speech.

C) None of the above.

D)\* Both of the above.

17. Federal administrative agencies have all of the following types of powers except:

A) Legislative powers

B) Executive powers.

C)\* Independent powers.

D) Judicial powers.

18. If a defendant attempts intends to injure A but misses and injures B, the defendant is liable because of:

A) *Respondeat Superior.*

B) Actual malice.

C) Last clear chance.

D)\* Transferred intent.

19. The following is not an element to a negligence action:

A) A duty of care.

B) Negligent conduct

C)\* Intent.

D) Causation.

20. If someone waiting for a taxi after being in an accident caused by the defendant’s negligence is then hit on the head by something falling off of an airplane, the defendant’s defense would be:

A)\* Superseding cause.

B) Assumption of risk.

C) Last clear chance.

D) Comparative negligence.

21. Contracts to engage in illegal activity are.

A)\* Void.

B) Voidable.

C) Executory.

D) Executed.

22. The following is not one of the requirements of an effective offer:

A)\* The offer must be accepted according to the mirror-image rule.

B) The offer must be seriously intended.

C) The terms must be definite or reasonably certain.

D) The offer must be made to the offeree.

23. Article 2 of the UCC applies to:

A) Sales of at least $500.

B)\* All sales of goods.

C) All sales of services.

D) All leases.

24. A woman whose engagement is ended takes off her engagement ring and throws it in the trashcan in her office, whereupon the custodian finds it that night while cleaning the empty office building. The diamond ring is:

A) Mislaid.

B) Lost.

C)\* Abandoned.

D) Fake.

25. The document used to convey real property by sale or gift is a:

A) Warranty.

B)\* Deed.

C) Title.

D) Contract.

26. The type of landlord-tenant relationship that occurs when a tenant stays beyond that which is allowed according to the parties’ agreement is a:

A) Tenancy for years.

B) Periodic tenancy.

C) Tenancy at will.

D)\* Tenancy at sufferance.

27. Which of the following couples would be allowed to marry?

A) Two siblings.

B)\* Two people under the age of 18.

C) Two people who are legally separated from their present spouses.

D) Three people.

28. The following type of property is considered separate property for divorce purposes:

A) The house owned by the spouses.

B) The pension plan of the spouse with the higher income.

C) Income earned by each spouse during the marriage.

D)\* Inheritances received by each spouse.

29. The claim a partner in a heterosexual, unmarried cohabitating couple might make in the financial interests of the other partner has come to be called:

A) Alimony.

B)\* Palimony.

C) Baloney.

D) Cohabitation agreement.

30. The following methods can revoke at least part of a will:

A) A subsequent will.

B) A divorce.

C) None of the above.

D)\* Both of the above.

31. “To my beloved husband, I give you what you’re worth: $100” is what type of gift?

A) Residuary.

B) Specific.

C) Ironic.

D)\* General.

32. The type of trust that is designed to prevent the beneficiary’s creditors from getting the trust assets is a:

A) Charitable trust.

B) Totten trust.

C)\* Spendthrift trust.

D) Termination trust.

33. The owners of a corporation are the:

A) Board of Directors

B)\* Shareholders.

C) Executive Officers.

D) Members.

34. A corporation incorporated in Delaware but doing business in Alaska is a:

A)\* Foreign corporation.

B) Alien corporation.

C) Domestic corporation.

D) Cold corporation.

35. What type of corporation can avoid double taxation?

A) C corporation.

B) L corporation.

C) Both of the above.

D)\* None of the above.

36. The FedEx delivery person decides to punch out a customer who is wearing a “What Would Jesus Do?” t-shirt because the delivery person secretly hates Christians. Who is liable?

A)\* The delivery person.

B) FedEx.

C) Both of the above.

D) None of the above.

37. The following type of job is likely to be performed by an independent contractor except:

A) A lawyer.

B)\* A district manager.

C) A plumber.

D) A doctor.

38. Which of the following is not an example of sexual harassment?

A)\* Refusing to hire a woman because she is unqualified.

B) Refusing to hire a man because he doesn’t respond favorable to dirty jokes.

C) Refusing to promote a woman because she won’t agree to sexual favors.

D) Putting up a sexually suggestive calendar in the office.

39. The type of bankruptcy that concerns business reorganization is Chapter:

A) 7.

B) 9.

C)\* 11.

D) 13.

40. In order to file a Chapter 13 bankruptcy petition, the debtor must have:

A)\* Regular income.

B) No secured debt.

C) Be prepared to pay off all their debts.

D) Be prepared to lose their assets.

41. A Chapter 11 bankruptcy is filed most often by:

A)\* Corporations.

B) Partnerships.

C) Individuals.

D) Sole Proprietorships.

42. Patents are valid for the following number of years:

A) 10.

B) 15.

C) 17.

D)\* 20.

43. Copyright protection for a movie script begins when:

A) The writer thinks of the idea for the movie.

B) The writer tells the producer about the idea.

C)\* The writer puts pen to paper.

D) The script is sold to a movie studio.

44. The following suffix is used for the domain names of nonprofit companies:

A) .com.

B) .net.

C)\* .org.

D) .edu.

45. A bait and switch is:

A) A method of deceiving lenders.

B) A method for fly fishing.

C) Both of the above.

D)\* None of the above.

46. The agency that regulates pollution is the:

A) FDA.

B) FTC.

C)\* EPA.

D) DEA.

47. The Superfund Act concerns:

A)\* Hazardous wastes.

B) Toxic air.

C) Thermal pollution.

D) Water pollution.

48. A prospectus is designed for:

A)\* Possible investors.

B) Lawyers.

C) Accountants.

D) Judges.

49. A gives material nonpublic information to B, who then passes it along to C. B is a:

A) Tipper.

B) Tippee.

C) None of the above.

D)\* Both of the above.

50. The following type of asset is a commodity:

A)\* Cocoa.

B) Debentures.

C) Preferred stock.

D) Oil rights.

**Essay Questions**

**1. Explain some of the functions of the law.**

The concept of law is quite broad. Although a precise definition is difficult, it is generally agreed that law is that which must be obeyed and followed, and the disobedience of which is subject to sanction. The law is often described by the function it serves within a society. The primary functions served by the law in this country are: 1) to keep the peace, which includes making certain activities crimes; 2) to shape moral standards, which includes prohibiting certain activities that society considers inappropriate or wrong; 3) to promote social justice, such as enacting laws that prohibit wrongful discrimination; 4) to maintain the status quo, which includes passing laws preventing the forceful overthrow of the government; 5) to facilitate orderly change, such as passing statutes only after considerable public debate and input; 6) to facilitate planning, such as creating commercial laws that allow businesses to plan their activities and allocate their productive resources; 7) to provide a basis for compromise, since over 90 percent of lawsuits are settled prior to trial; and 8) to maximize individual freedom, which is evidenced by the Bill of Rights.

**2. Explain strict liability for product liability.**

The California Supreme Court first adopted the doctrine of strict liability in a tort case in 1963. The doctrine of strict liability removes many of the difficulties for the plaintiff associated with other theories of product liability. Strict liability can be traced to the Restatement (Second) of Torts, which provides that one who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm caused to the user or consumer. Strict liability is applied even though the defendant has exercised all possible care in the preparation and sale of the product, and even though the user or consumer has not bought the product from the seller. Strict liability applies only to products and not services, and applies to those who are in the business of selling or leasing products. All parties in the “chain of distribution” of a defective product are strictly liable for the injuries caused by that product. Thus, all manufacturers, distributors, wholesalers, retailers, lessors, and subcomponent manufacturers may be sued under this doctrine. A defendant who has not been negligent but who is made to pay a strict liability judgment can then bring a separate action against the negligent party in the chain of distribution to recover its losses. Those parties who can recover under strict liability include the purchaser or lessee, family members, guests, employees, customers, and persons who passively enjoy the benefits of the product (for example, passengers in automobiles). The damages recoverable in a strict liability action vary by jurisdiction, but personal injury damages are recoverable everywhere. Property damage is recoverable in most jurisdictions, and economic loss is recoverable in just a few jurisdictions. Punitive damages can also be recovered in a strict liability action.

**3. Describe the types of monetary damages one can recover in a breach of contract action.**

Monetary damages are of three types: compensatory, consequential, and liquidated. Compensatory damages are intended to compensate a nonbreaching party for the loss of the bargain. They place the nonbreaching party in the same position as if the contract has been fully performed by restoring the “benefit of the bargain.” Additionally, a nonbreaching party sometimes can recover consequential, or special, damages from the breaching party. Consequential damages are foreseeable damages that arise from circumstances outside the contract. To be liable for consequential damages, the breaching party must know or have reason to know that the breach will cause special damages to the other party. And, under certain circumstances, the parties to a contract may agree in advance to the amount of damages payable upon a breach of contract. These are called liquidated damages. To be lawful, the actual damages must be difficult or impracticable to determine, and the liquidated amount must be reasonable in the circumstances. An enforceable liquidated damage clause is an exclusive remedy even if actual damages are later determined to be different. A liquidated damages clause is considered a penalty if actual damages are clearly determinable in advance or the liquidated damages are excessive or unconscionable, in which case the liquidated damages clause is unenforceable and the nonbreaching party may then seek actual damages.

**4. Explain what community property is.**

Nine states—Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin—recognize a form of co-ownership known as community property. This method of co-ownership applies only to married couples and is based on the notion that a husband and wife should share equally in the fruits of the marital partnership. Under these laws, each spouse owns an equal one-half share of the income of both spouses and the assets acquired during the marriage regardless of who earns the income. Property that is acquired through gift or inheritance either before or during marriage remains separate property. When a spouse dies, the surviving spouse automatically receives one-half the community property. The other half passes to the heirs of the deceased spouse as directed by the will or by state intestate statute if there is no will. During the marriage, neither spouse can sell, transfer, or gift community property without the consent of the other spouse. Upon a divorce, each spouse has a right to one-half of the community property. The location of the real property determines whether community property law applies. For example, if a married couple who lives in a noncommunity property state purchases real property located in a community property state, community property laws apply to that property.

**5. Explain some of the basic features of child support.**

As a result of a divorce, one of the spouses will receive custody of the child or children, and the other spouse—the noncustodial parent—will receive visitation rights, as well as the obligation to pay child support. The noncustodial parent is obligated to contribute to the expenses of paying for the financial support of his or her natural and adopted children. This includes the child’s costs for food, shelter, clothing, medical expenses, and other necessities of life. This payment is called child support. The custodial and noncustodial parents may agree to the amount of child support. If they do not, the court will determine the amount of child support to be paid. In awarding child support, the court may consider several factors, including the number of children, the needs of the children, the net income of the parents, the standard of living of the child prior to the termination of the marriage, any special medical or other needs of the children, and other factors the court deems relevant. The duty to pay child support usually continues until a child reaches the age of majority or graduates from high school or is emancipated. To help in determining the amount of child support, many states have adopted a formula for computing the amount of child support. These formulas are usually based on a percentage of the noncustodial parent’s income. An award of child support may be modified if conditions change. For example, an award of child support may be decreased if the noncustodial parent loses his or her job. Child support modifications require court approval.

**6. Explain the attributes of a business corporation.**

Corporations are the most dominant form of business organization in the United States, generating more than 85 percent of the country’s gross business receipts. Corporations range in size from one owner to thousands of owners. Owners of corporations are called shareholders. A corporation is a separate legal entity for most purposes. Corporations are treated, in effect, as artificial persons created by the state and can sue or be sued in their own names, enter into and enforce contracts, hold title to and transfer property, and be found civilly and criminally liable for violations of law. Corporations cannot be put in prison, so the normal criminal penalty is the assessment of a fine, loss of a license, or other sanction. Corporations have the following unique characteristics:

* Limited liability of shareholders. As separate legal entities, corporations are liable for their own debts. The shareholders have liability that only extends to their investments.
* Free transferability of shares. Corporate shares are freely transferable by the shareholder, by sale, assignment, pledge, or gift, unless they are issued pursuant to certain exemptions from securities registration.
* Perpetual existence. Corporations exist in perpetuity unless a specific duration is stated in the corporation’s articles of incorporation. The existence of a corporation can be voluntarily terminated by the shareholders. Corporations may be involuntarily terminated by creditors if an involuntary petition for bankruptcy is granted. But, the death, insanity, or bankruptcy of a shareholder, director, or officer doesn’t affect its existence.
* Centralized management. The board of directors makes policy decisions concerning the operation of the corporation. Members of the board of directors are elected by the shareholders. The directors then appoint corporate officers to run the day-to-day operations. Together, the directors and officers form the corporate “management.”

**7. Briefly explain the process of a Chapter 7 bankruptcy.**

The primary purpose of federal bankruptcy law is to discharge the debtor from burdensome debts, known as a “fresh start.” Chapter 7 liquidation bankruptcy (also called straight bankruptcy) is the most familiar form of bankruptcy. In this type of proceeding, the debtor’s nonexempt property is sold for cash, the cash is distributed to the creditors, and any unpaid debts are discharged. Any person, including individuals, partnerships, and corporations, may be a debtor in a Chapter 7 proceeding. A Chapter 7 bankruptcy is commenced when a petition is filed with the bankruptcy court. The petition may be filed by either the debtor (voluntary) or one or more creditors (involuntary). Voluntary petitions only have to state that the debtor has debts; insolvency need not be declared. The petition must be signed and sworn to under oath. Married couples may file a joint petition. An involuntary petition must allege that the debtor is not paying his or her debts as they become due. The filing of the petition automatically stays—to wit, suspends—certain action by creditors against the debtor or the debtor’s property. This is called an automatic stay. The stay, which applies to secured and unsecured creditors, is designed to prevent a scramble of the debtor’s assets in a variety of court proceedings. The bankruptcy estate includes all the debtor’s legal and equitable interests in all types of property, wherever located, existing when the petition is filed. Because the Bankruptcy Code is not designed to make the debtor a pauper, certain property is exempt from the bankruptcy estate. The debtor may retain exempt property, either through the operation of the federal exemption or state exemption scheme. Under Chapter 7, the nonexempt property of the bankruptcy estate must be distributed to the debtor’s secured and unsecured creditors. Secured creditors have priority over unsecured creditors. If the value of the collateral exceeds the secured interest, the excess becomes available to satisfy the claims of the debtor’s unsecured creditors. After the property is distributed to satisfy the allowed claims, the remaining unpaid claims are discharged, which means the debtor is no longer legally responsible for them. Only individuals may be granted a discharge. Discharge is not available to partnerships and corporations. These entities must liquidate under state law before or upon completion of the Chapter 7 proceedings. A debtor can be granted a discharge in a Chapter 7 proceeding only once every six years.

**8. Explain how the Superfund apportions liability for hazardous waste sites.**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is commonly known as “Superfund,” and gives the federal government a mandate to deal with hazardous wastes that have been spilled, stored, or abandoned. The Superfund requires the EPA to (1) identify sites in the U.S. where hazardous wastes had been disposed, stored, abandoned, or spilled and (2) rank these sites regarding the severity of the risk. The EPA has the authority to clean up hazardous priority or non-priority sites quickly to prevent fire, explosion, contamination of drinking water, or other imminent danger. The Superfund provides for the creation of a fund to finance the cleanup of hazardous waste sites (hence the name Superfund). The fund is financed through taxes on chemicals, feedstocks, motor fuels, and other products that contain hazardous substances. The EPA can order a responsible party to clean up a hazardous waste site. If that party fails to do so, the EPA can clean up the site and recover the cost of the cleanup. The Superfund imposes strict liability, which means liability without fault. The EPA can recover the cost of the cleanup from (1) the generator who deposited the wastes, (2) the transporter of the wastes to the site, (3) the owner of the site at the time of the disposal, and (4) the current owner and operator of the site. Liability is joint and several; that is, a person who is responsible for only a fraction of the hazardous waste may be liable for all the cleanup costs. The Superfund permits states and private parties who clean up hazardous waste sites to seek reimbursement from the fund.