

TEST BANK

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Law for
BUSINESS

Barnes
Dworkin
Richards

Chapter 02 Dispute Settlement

True / False Questions

1. (p. 28) Mediators make decisions based on the merits of a dispute.

FALSE

Difficulty: Medium

2. (p. 29) The U.S. Supreme Court generally disfavors arbitration as a way to settle disputes.

FALSE

Difficulty: Medium

3. (p. 29) The losing party in arbitration cannot appeal the arbitrator's decision to a regular court on the basis that the decision was unwise.

TRUE

Difficulty: Hard

4. (p. 29) The parties to an arbitration proceeding can select an arbitrator in any way they desire.

TRUE

Difficulty: Easy

5. (p. 30) In a minitrial, a circuit court judge hears a shortened presentation of the case by the lawyers for each side.

FALSE

Difficulty: Easy

6. (p. 30) International trade arbitration agreements are enforced through multilateral treaties.

TRUE

Difficulty: Medium

7. (p. 32) When the issue in a case no longer exists or has become pointless, that issue is considered moot.

TRUE

Difficulty: Hard

8. (p. 32) Sally files a lawsuit against Jim in a Tennessee court. Jim does not live in Tennessee nor has he ever visited the state. The Tennessee court will not have personal jurisdiction over Jim unless it can demonstrate that Jim somehow has a close connection with the state.

TRUE

Difficulty: Medium

9. (p. 34) Venue is the authority of a court to hear and determine disputes.

FALSE

Difficulty: Easy

10. (p. 35) The U.S. Supreme Court does not have any discretion to decide whether it hears a case or not.

FALSE

Difficulty: Medium

11. (p. 36) In diversity cases, a defendant may petition to remove the dispute to federal court.

TRUE

Difficulty: Easy

12. (p. 37) A party who is dissatisfied with the decision of a lower court can always take the case all the way to the U.S. Supreme Court.

FALSE

Difficulty: Medium

13. (p. 38) The adversarial system is based on the idea that truth will emerge through a courtroom "battle of words" between two lawyers.

TRUE

Difficulty: Medium

14. (p. 46) Even if a jury unanimously finds a defendant guilty, the judge can find in the defendant's favor by granting a motion for a judgment notwithstanding the verdict.

TRUE

Difficulty: Hard

15. (p. 46) In a criminal trial, the judge is never allowed to alter or overrule the jury's verdict.

FALSE

Difficulty: Medium

Multiple Choice Questions

16. (p. 29) Under the Uniform Arbitration Act, a court:

- A. Cannot hold that the dispute was not arbitrable under the agreement of the parties
- B. Will not review the wisdom or decision of the arbitrator**
- C. Makes only the arbitration award enforceable
- D. Can publish its arbitration awards

Difficulty: Hard

17. (p. 30) Identify the statement which is true of a minitrial.

- A. In a minitrial, a six-member mock jury empaneled by the court hears a shortened presentation of the case by the lawyers for each side and renders an advisory verdict
- B. If a settlement is not reached in a minitrial, neutral third-party advisor will render a nonbinding opinion regarding how the dispute is likely to be resolved if it goes to trial**
- C. The minitrial is conducted under court guidance, while the summary jury trial is voluntarily conducted by the parties themselves
- D. The minitrial differs from mediation in that the third party to whom the dispute is submitted decides the outcome

Difficulty: Easy

18. (p. 31) In the "private judging" form of dispute resolution:

- A. A hired judge renders a binding opinion after hearing the evidence and arguments of the parties**
- B. Executives of the disputing companies, who have settlement authority, hear a shortened presentation of the case by the lawyers for each side
- C. A six-member mock jury empaneled by the court hears a shortened presentation of the case by the lawyers for each side
- D. Executives of the disputing companies meet with lawyers to negotiate a settlement

Difficulty: Medium

19. (p. 31) An employee hired or appointed within an organization to settle disputes is called a(n):

- A. Mediator
- B. Arbitrator
- C. Ombudsperson**
- D. Private judge

Difficulty: Medium

20. (p. 32) A case is "moot" when:

- A. A lawsuit is filed against a nonresident who is not physically present in the territory served by the court
- B. A judge seals or in any way restricts the information presented in a case
- C. A judge rules certain information beyond the scope of pre-trial discovery
- D. Events occurring after the filing of the lawsuit have made a decision beside the point**

Difficulty: Medium

21. (p. 32) Jurisdiction is defined as:

- A. The authority of a court to hear a case and render a binding decision on it**
- B. The geographic site where a case must be heard
- C. The process by which cases are decided
- D. The power of an individual appointed within an organization to settle disputes to private panels

Difficulty: Medium

22. (p. 35) Trial courts differ from inferior courts in that trial courts:

- A. Are courts of limited jurisdiction
- B. Are limited by the amount of civil damages that can be awarded
- C. Are courts of record from which an appeal can be taken**
- D. Are called municipal courts in urban areas

Difficulty: Medium

23. (p. 35) A federal question:

- A. Is a type of jurisdiction possessed by state trial courts
- B. Is the most common form of U.S. Supreme Court jurisdiction
- C. Requires that the amount in controversy be at least \$10,000
- D.** Is jurisdiction over questions arising under federal laws, treaties and the U.S. Constitution

Difficulty: Hard

24. (p. 35) Generally, the role of appellate courts is to:

- A.** Review the proceeding in the trial court and correct legal errors made by the trial judge
- B. Accept the findings of the trial court with minor changes even if it goes against all the evidence
- C. Hear witnesses and establish new facts
- D. Reach a decision in settlement of the dispute

Difficulty: Medium

25. (p. 35) Federal courts:

- A.** Have exclusive jurisdiction over patents, copyrights, bankruptcy and crimes defined by federal statutes
- B. Review the proceedings in the trial court and correct legal errors made by the trial judge
- C. Is the highest court of the land which has final responsibility for interpretation of the Constitution and federal statutes
- D. Give advisory opinions and also make rulings on hypothetical cases

Difficulty: Medium

26. (p. 36) District courts:

- A. Review the legal conclusions reached by lower federal courts
- B. Are the intermediate courts of the federal court system
- C.** Have both fact-finding (by the judge or jury) and law-finding (by the judge) functions
- D. Operates under discretionary review

Difficulty: Medium

27. (p. 37) A U.S. Court of appeals is empowered to:

- A. Make findings of fact
- B.** Review legal conclusions reached by lower federal courts and administrative agencies
- C. Hear only patent, copyright and trademark appeals
- D. Hear witnesses and determine facts

Difficulty: Medium

28. (p. 37) The primary way a case can be appealed to the Supreme Court is through a:

- A. Writ of habeas corpus
- B. Writ of quo warranto
- C.** Writ of certiorari
- D. Writ of mandamus

Difficulty: Medium

29. (p. 38) Which of the following statements is true of the adversary system?

- A.** The adversary system represents the idea that truth is best discovered through the presentation of competing ideas
- B. The judge, in an adversarial system, is actively involved in determining the facts of a case
- C. In an adversary system the cases are heard by a panel of three judges
- D. The judges have a duty to direct the search for truth rather than expecting it to emerge from the efforts of the lawyers for the parties

Difficulty: Medium

30. (p. 38) In the U.S., the role of judges is:

- A. To actively search for truth by questioning witnesses, directing proceedings and requesting certain evidence
- B.** Unbiased and essentially passive
- C. Similar to the role of European judges
- D. To direct the search for truth rather than expecting it to emerge from the efforts of the lawyers

Difficulty: Easy

31. (p. 39) The following is true of pleadings.

- A. The first step in starting a lawsuit is the serving of a summons on the defendant
- B. The case is set for trial on the court calendar once the pleadings have been commenced
- C. The service of summons by mail or by leaving it at the defendant's residence or place of business is never allowed
- D.** The complaint, answer and reply inform the parties of each other's claims and forms the basis for a trial

Difficulty: Medium

32. (p. 39) A complaint:

- A.** Must contain sufficient facts to show that the plaintiff is entitled to some legal relief
- B. Is a rule of law enabling the defendant to win even if all of the plaintiff's allegations are true
- C. Was created to help deal with the increasing congestion of cases in most civil courts
- D. Is a procedural device that is designed to narrow down issues to be proved at trial

Difficulty: Medium

33. (p. 41) A rule of law enabling the defendant to win even if all of plaintiff's allegations are true is a(n):

- A. Counterclaim
- B.** Affirmative defense
- C. Deposition
- D. Judgment n.o.v

Difficulty: Medium

34. (p. 41) An answer generally:

- A.** Admits or denies each allegation of the complaint, paragraph by paragraph
- B. States an affirmative defense, if applicable
- C. States a counterclaim for damages, if applicable
- D. Gives notice to the defendant about a particular suit

Difficulty: Medium

35. (p. 44) A new claim stating that plaintiff owes defendant damages because of harm resulting from the incident alleged in the complaint is a(n):

- A.** Counterclaim
- B. Affirmative defense
- C. Cross-claim
- D. Dissenting opinion

Difficulty: Medium

36. (p. 44) A defendant may make a motion to dismiss the case when:

- A. The defendant does not have a very strong case and he/she would lose money by continuing
- B.** It is clear that the plaintiff does not have a case and it would be wasteful to continue
- C. Either party feels that the judge is not able to remain impartial
- D. People or groups other than the parties involved are interested in the outcome of a certain appeal

Difficulty: Hard

37. (p. 44) In the discovery phase of a lawsuit:

- A. The complaint, answer and reply documents are filed with the court which defines the lawsuit
- B.** An attorney can request a copy of almost any relevant piece of evidence that the opposite party might rely on
- C. Information about the claim of the plaintiff and the remedy is requested for
- D. The defendant cannot counterclaim for damages

Difficulty: Hard

38. (p. 45) The following is the order in which testimony is presented at trial.

- A. Direct examination by the defendant's attorney, then redirect examination by the plaintiff's attorney
- B. Direct examination by the defendant's attorney, redirect examination by the plaintiff's attorney, then cross-examination by the defendant's attorney
- C.** Direct examination by the plaintiff's attorney, cross-examination by the defendant's attorney, then redirect examination by the defendant's attorney
- D. Direct examination by the defendant's attorney, cross-examination by the plaintiff's attorney, then reexamination by the defendant's attorney

Difficulty: Medium

39. (p. 45) A procedural device that is designed to narrow issues to be proved at trial or to facilitate a settlement is the

- A. ADR
- B. Mediation agreement
- C. Judgment n.o.v
- D.** Pretrial conference

Difficulty: Medium

40. (p. 46) In order to enforce a judgment against an unwilling defendant, a court can issue:

- A. A writ of quo warranto
- B.** A writ of garnishment
- C. A writ of certiorari
- D. A writ of mandamus

Difficulty: Medium

41. (p. 46) A formal written order issued by a body with administrative or judicial jurisdiction designed to reach things belonging to the debtor that are in the hands of third parties, such as wages, bank accounts and accounts receivable is:

- A. A writ of quo warranto
- B. A writ of garnishment**
- C. A writ of certiorari
- D. A writ of mandamus

Difficulty: Medium

42. (p. 46) The following is true of a criminal trial.

- A. The defendant bears the burden of proof
- B. The burden of proof is "a preponderance of the evidence"
- C. The burden of proof is "beyond a reasonable doubt"**
- D. The burden of proof for a criminal case is the same as that for a civil case

Difficulty: Medium

43. (p. 47) The term "amicus curiae" means:

- A. "Friendly cure," or the amicable resolution to a mediated dispute
- B. "Friend of the court," or a third party allowed to file briefs**
- C. "Small courier," or the briefs, originally foot messengers, which are used to communicate between lawyers and the courts
- D. "Impartial curate," or the name for the conductor of an arbitration, a position originally filled by the medieval clergy

Difficulty: Medium

44. (p. 47) In order to appeal a decision:

- A. A party must claim that the court made an error of law or that the evidence in the trial did not support the trial court's decision**
- B. A party need not have objected to a judge's action at the time the alleged error was made
- C. A party must prepare for a new fact-finding process
- D. The party must show that the errors that were made were not material

Difficulty: Medium

45. (p. 47) A written record of the entire trial proceedings including the testimony of all the witnesses and any discussions between the judge and the attorneys is called a:

- A. Treatise
- B. Citation
- C. Transcript**
- D. Brief

Difficulty: Medium

Short Answer Questions

46. (p. 35) Explain why an appeal can only be taken from a court of record?

An appeal can only be taken from a court of record because such a court has a transcript or record of what went on at the trial. This transcript can be reviewed by the appellate court to see if the errors that are claimed have occurred and are sufficiently important to justify a reversal.

Difficulty: Medium

47. (p. 35-36) Explain diversity jurisdiction?

Diversity jurisdiction involves those cases in which the parties to the dispute are citizens of different states. If the parties are from different states and the amount involved in the dispute is \$75,000 or more, the plaintiff may choose to bring suit in either state or federal court. If the plaintiff chooses to bring suit in state court, the defendant may petition to remove the case to federal court.

Difficulty: Medium

48. (p. 44) What is discovery and when does it occur in the litigation process?

Discovery is the phase of a lawsuit during which the parties gather evidence. It occurs after the complaint, summons and answer (the pleadings) have been filed and before the trial.

Difficulty: Medium

49. (p. 44) What is the legal standard for granting a motion to dismiss? What purpose does this motion serve?

The legal standard for granting a motion to dismiss is that the facts stated in the plaintiff's complaint are not legally sufficient to state a cause of action; that is, even if the facts alleged can be proved, there is no legal remedy for the type of injury alleged.

Difficulty: Medium

50. (p. 47) List the various grounds on which a case can be appealed?

Being dissatisfied with the judgment of the court is not a sufficient ground for an appeal. To be able to appeal, a party must claim that the court made an error of law or that the evidence in the trial did not support the trial court's decision. For example, if an attorney objects to a question asked of a witness by the other attorney, the judge must rule on it. This ruling can serve as a basis for appeal by the party against whom the ruling was made. Or the losing party might claim the judge misstated the law in the instructions to the jury. In order to serve as a basis for appeal, the attorney must have objected to the judge's action at the time the alleged error was made. This is to give the trial judge a chance to correct the error and avoid the possible expense of a new trial.

Difficulty: Medium