

**Chapter 2**  
**LAW AND CRIME**

**TEST BANK**

**MULTIPLE CHOICE**

1. The key characteristics of common law include all of the following, *except*:
- a. predominately judge-made
  - b. based on justice
  - c. found in multiple sources
  - d. applies rules of law found in previous cases

ANS: B REF: The Common Law Heritage OBJ: 2 KEY: Bloom's: Remember

2. The burden of proof required for a victory in a civil case is:
- a. preponderance of evidence
  - b. beyond a reasonable doubt
  - c. probable cause
  - d. reasonable suspicion

ANS: A REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

3. Much of the Bill of Rights has been made applicable to the states through the:
- a. Fourth Amendment
  - b. doctrine of precedent
  - c. legislative process
  - d. Fourteenth Amendment

ANS: D REF: The Rights of the Accused OBJ: 3 KEY: Bloom's: Remember

4. The prosecution always bears the burden of persuading the trier-of-fact that the defendant:
- a. is guilty based on clear and convincing evidence.
  - b. committed the majority of the elements of the crime(s) charged
  - c. committed each and every element of the crime(s) charged
  - d. is guilty and deserves to be punished to the fullest extent of the law

ANS: C REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

5. In what type of plea bargain does the defendant plead guilty to a less serious offense than the one charged?
- a. sentence bargaining
  - b. charge bargaining
  - c. defense bargaining
  - d. prosecution bargaining

ANS: B REF: Effects of Criminal Law on the Courts OBJ: 8 KEY: Bloom's: Remember

6. Which of the following is not an element of a crime?
- a. *Mens rea*
  - b. *Actus reus*
  - c. Attendant circumstances
  - d. Guilty conscience

ANS: D REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

7. *Mens rea* refers to the:
- a. guilty act
  - b. body of the crime
  - c. scene of the crime
  - d. guilty mind

ANS: D REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

8. Which Amendment to the U.S. Constitution prohibits unreasonable searches and seizures?
- a. First Amendment
  - b. Fourth Amendment
  - c. Fifth Amendment
  - d. Eighth Amendment

ANS: B REF: The Rights of the Accused OBJ: 4 KEY: Bloom's: Remember

9. Which two Amendments to the U.S. Constitution mention due process?
- a. Fifth and Sixth
  - b. Eighth and Tenth
  - c. Fifth and Fourteenth
  - d. Eighth and Fourteenth

ANS: C REF: The Rights of the Accused OBJ: 4 KEY: Bloom's: Remember

10. Victims of crime are increasingly resorting to:
- a. notifying law enforcement
  - b. criminal prosecution
  - c. vigilantism
  - d. civil litigation

ANS: D REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

11. What is the name of rules and regulations adopted by administrative agencies that have the force of law?
- a. statutory regulations
  - b. constitutional regulations
  - c. administrative regulations
  - d. due process regulations

ANS: C REF: The Common Law Heritage OBJ: 2 KEY: Bloom's: Remember

12. A court order directing a specific action or lack of action is known as an:
- a. interrogatory
  - b. indictment
  - c. injunction
  - d. interdiction

ANS: C REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

13. An example of a legal attendant circumstance would be:
- a. the credibility of eyewitnesses
  - b. the defendant's character
  - c. the defendant's getaway vehicle
  - d. the amount of money or goods stolen

ANS: D REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

14. The primary justification for providing constitutional safeguards in the criminal justice process is to ensure that:
- a. innocent persons are not harassed or wrongly convicted
  - b. the guilty are punished
  - c. society administers justice to the accused
  - d. convictions are not overturned on appeal

ANS: A REF: The Rights of the Accused OBJ: 4 KEY: Bloom's: Remember

15. Which of the following is the highest burden of proof?
- a. Clear and convincing evidence
  - b. Preponderance of evidence
  - c. Probable cause
  - d. Proof beyond a reasonable doubt

ANS: D REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

16. What is the body of rules, other than criminal law, that governs private parties?
- a. inheritance law
  - b. civil law
  - c. production law
  - d. attempt law

ANS: B REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

17. A common civil remedy used in drug cases is:
- a. *writ of habeas corpus*
  - b. mandatory minimum sentences
  - c. asset forfeiture
  - d. declaratory damages

ANS: C REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

18. This Amendment to the U.S. Constitution guarantees the right to counsel.
- a. Fourth
  - b. Fifth
  - c. Sixth
  - d. Eighth

ANS: C REF: Criminal Law Overview OBJ: 4 KEY: Bloom's: Remember

19. The party who initiates a civil suit is known as the:
- a. Appellant
  - b. Victim
  - c. appellee
  - d. plaintiff

ANS: D REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

20. Laws created by federal and state legislatures are known as:
- a. ordinances
  - b. administrative regulations
  - b. statutes
  - c. legislation

ANS: B REF: The Common Law Heritage OBJ: 2 KEY: Bloom's: Remember

21. The guilty act, guilty intent, relationship between guilty act and guilty intent, attendant circumstances, and results combined make up what is known as...
- a. elements of juvenile delinquency
  - b. elements of administrative law
  - c. elements of civil law
  - d. elements of a crime

ANS: D REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

22. Infancy and insanity are known as:
- a. substantive defenses
  - c. justification defenses
  - b. excuse defenses
  - d. mental incapacity defenses

ANS: B REF: Criminal Law Overview OBJ: 7 KEY: Bloom's: Remember

23. When legislatures increase the harshness of criminal penalties, how do courts often respond?
- a. the courts mitigate that harshness
  - b. the courts support that harshness
  - c. the courts implement that harshness
  - d. the courts apply that harshness

ANS: A REF: Effects of Criminal Law on the Courts OBJ: 8 KEY: Bloom's: Remember

24. Which of the following is not one of the five major areas of civil law?
- a. tort
  - c. property
  - b. contract
  - d. all of these area major areas of civil law

ANS: D REF: Overview of Civil Law OBJ: 5 KEY: Bloom's: Remember

25. What is the name of a crime that is generally punishable by a fine or up to a year in jail?
- a. felony crime
  - c. delinquent crime
  - b. misdemeanor crime
  - d. property crime

ANS: B REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

26. The United States operates under the adversary system of law, characterized by which of the following important principles?
- Accusations of criminal conduct would not be raised against a defendant unless there was some certainty of guilt.
  - That two parties approaching the facts from entirely different perspectives offers the best chance at uncovering the truth.
  - Obtaining the truth is paramount regardless of the methods employed in uncovering it.
  - That punishment should be swift and certain.

ANS: B REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

27. Which of the following is one example of a safeguard provided by the adversarial system?
- The presumption of equality
  - Pretrial detention of defendants
  - The right to compensation for losses suffered
  - The right to cross-examination

ANS: D REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

28. From the case citation *Miranda v. Arizona*, 384 U.S. 436 (1966), the reader knows which of the following?
- The decision is in favor of the defendant.
  - The case was a criminal case.
  - The case is in volume 384 of the Supreme Court Reports.
  - The case is found on page 1966.

ANS: C REF: The Common Law Heritage OBJ: 2 KEY: Bloom's: Remember

29. When a defendant bears the burden of persuasion to prove a defense, it is called a(n):
- alibi defense
  - affirmative defense
  - defense rebuttal
  - violation of due process

ANS: B REF: The Adversary System OBJ: 7 KEY: Bloom's: Remember

30. What type of proof is necessary to arrest, conduct a search or seize evidence?
- probable cause
  - reasonable suspicion
  - beyond a reasonable doubt
  - clear and convincing evidence

ANS: A REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

31. Criminal trials start with two presumptions: the presumption of innocence and the presumption of:

- a. sanity
- b. equality
- c. zealous representation
- d. judicial activism

ANS: A REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

32. What type of law in the United States places a heavy emphasis on protecting the rights of individuals?

- a. procedural law
- b. inferential law
- c. substantive law
- d. administrative law

ANS: A REF: The Rights of the Accused OBJ: 4 KEY: Bloom's: Remember

33. Which of the following is not a major area of civil law?

- a. personal injury
- b. inheritance/probate
- c. divorce and child custody
- d. juvenile delinquency

ANS: D REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

34. This doctrine requires a judge to decide a case by applying the rule of law found in previous cases, provided the facts are similar.

- a. selective incorporation
- b. judicial restraint
- c. precedent
- d. jurisprudence

ANS: C REF: The Common Law Heritage OBJ: 2 KEY: Bloom's: Remember

35. The adversary system incorporates a series of checks and balances aimed at curbing political misuse of the criminal courts through:

- a. incorporation of rights
- b. diffusion of powers
- c. prosecutorial discretion
- d. judicial activism

ANS: B REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

36. The mental state, or criminal intent, required for a crime to have been committed is referred to as...

- a. *actus reus*
- b. *mens rea*
- c. *corpus delicti*
- d. result

ANS: C REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

37. What is the legal doctrine whereby the Supreme Court ruled that the due process clause of the Fourteenth Amendment made some provisions of the Bill of Rights applicable to the states?

- a. selective incorporation
- b. *stare decisis*
- c. precedent
- d. remedy

ANS: A      REF: The Rights of the Accused      OBJ: 4      KEY: Bloom's: Remember

38. The level of proof for an officer to conduct a brief, limited, investigative detention (“stop and frisk”) is:

- a. probable cause
- b. mere suspicion
- c. clear and convincing evidence
- d. reasonable suspicion

ANS: D      REF: The Adversary System      OBJ: 3      KEY: Bloom's: Remember

### **CRITICAL THINKING SCENARIOS**

#### CASE 2.1

After confessing to racketeering, Nicky Cheeks’ (through his high-priced mob attorney) is now saying that his confession was coerced and that his waiver of *Miranda* rights was not valid, therefore his confession should not be admissible in court.

39. By what standard of proof is the prosecution now required to prove the validity of Nicky’s waiver of rights?

- a. No standard, it is the responsibility of the defense to prove the waiver was not valid.
- b. Probable cause
- c. Preponderance of the evidence
- d. Proof beyond a reasonable doubt

ANS: C      REF: The Adversary System      OBJ: 3      KEY: Bloom's: Apply

40. Under the adversary system, it is the responsibility of the defense attorney to:

- a. prove the defendant not guilty by a preponderance of the evidence.
- b. argue for the client’s innocence and assert legal protections.
- c. dispute all evidence presented by the prosecution.
- d. present a defense that counters all claims made by the prosecution.

ANS: B      REF: The Adversary System      OBJ: 3      KEY: Bloom's: Apply

#### CASE 2.2

Joe Smith suffers from paranoid schizophrenia. He has been under a doctor’s care for ten years, but often stops taking his medication because he thinks he’s cured. While off his medication, Joe steals a car to “escape from a CIA hit man,” accidentally running over and seriously injuring a pedestrian in the process. Joe is arrested and charged with several felonies. His public defender believes he is not guilty by reason of insanity.

41. Which of the following is true regarding the use of the insanity defense in this case?
- a. In addition to the burden of proving the elements of the offense, the prosecution bears the additional burden of proving the defendant is not insane.
  - b. With increasing public awareness regarding mental illnesses, the insanity defense has become more commonly presented and is often successful.
  - c. The defense bears the burden of proving the defendant's insanity, often an expensive proposition.
  - d. If acquitted, Joe will likely spend less time in a mental facility than in jail or prison.

ANS: C      REF: Criminal Law Overview      OBJ: 7      KEY: Bloom's: Apply

### CASE 2.3

Roberta picks her toddler up at the daycare after she gets off work. The child is asleep in her car seat and Roberta decides to stop off at the local pool hall for a beer and to talk to some friends for a little while. She leaves the child in the car while she goes inside. She winds up staying for a second beer and a couple of line dances. The temperature in the car reaches 120 degrees and the child dies of hyperthermia. Roberta, though not very bright, would never intentionally harm her child.

42. Which of the following elements is *apparently* lacking in this scenario?
- a. actus reus
  - b. omission
  - c. mens rea
  - d. criminal result

ANS: C      REF: Criminal Law Overview      OBJ: 6      KEY: Bloom's: Apply

43. Which of the following statements regarding Roberta's criminal liability is true?
- a. Roberta is not guilty because this tragedy was an accident.
  - b. Roberta is not guilty because although she was negligent, she had no criminal intent to harm her child.
  - c. Roberta is guilty because she intentionally left her child in the car and the same intent applies to any harm that results.
  - d. Roberta is guilty because she had a legal duty to keep her child safe—her negligent omission resulted in the child's death.

ANS: D      REF: Criminal Law Overview      OBJ: 6      KEY: Bloom's: Apply

## CASE 2.4

Uniformed officers are driving a marked car into an area known for heavy drug trafficking, intending to investigate drug activity and anticipating encountering drug customers and lookouts. One officer sees the suspect standing next to a building and holding an opaque bag. The suspect looks in the direction of the officers and flees. The officers turn their car, watch the suspect run through an alley, and eventually corner him on the street. One officer leaves the car, stops the defendant, and conducts a frisk of the defendant, discovering a concealed handgun.

44. Which of the following statements is true regarding the legality of the “stop and frisk”?
- The stop was illegal. The officers did not have specific, articulable facts to justify the stop.
  - The stop was legal. A brief investigative stop can be justified by the circumstances.
  - The stop was legal. The gun provided probable cause to justify the stop, a standard of proof higher than reasonable suspicion.
  - The stop was illegal. The officers didn’t find any drugs on the suspect.

ANS: B      REF: The Adversary System      OBJ: 3      KEY: Bloom’s: Apply

45. Which of the following facts cannot be used to provide justification for the stop?
- It was an area known for heavy drug trafficking.
  - The suspect was standing next to a building holding an opaque bag.
  - The suspect’s unprovoked flight upon seeing the officers.
  - Discovery of the concealed handgun.

ANS: D      REF: The Adversary System      OBJ: 3      KEY: Bloom’s: Apply

### **TRUE/FALSE**

1. The use of precedent promotes fairness and consistency.

ANS: T      REF: The Common Law Heritage      OBJ: 2      KEY: Bloom’s: Remember

2. “Beyond a reasonable doubt” means over 95% certainty of guilt.

ANS: F      REF: The Adversary System      OBJ: 3      KEY: Bloom’s: Remember

3. Legislatures did not become a principal source of law in the U.S. until the 20<sup>th</sup> century.

ANS: T      REF: The Common Law Heritage      OBJ: 2      KEY: Bloom’s: Remember

4. Tort law includes any wrong, hurt, or damage done to a person’s rights, body, reputation, or property.

ANS: T REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

5. The most obvious way criminal law affects the operation of the criminal courts is in sentencing.

ANS: T REF: Effects of Criminal Law on the Courts OBJ: 8 KEY: Bloom's: Remember

6. Variations in the definitions of crimes make the criminal courts fertile ground for plea bargaining.

ANS: F REF: Effects of Criminal Law on the Courts OBJ: 8 KEY: Bloom's: Remember

7. Selective incorporation refers to the application of certain provisions of the Bill of Rights to the states through the Fourteenth Amendment.

ANS: T REF: The Rights of the Accused OBJ: 4 KEY: Bloom's: Remember

8. Democratic governments derive their powers from the law.

ANS: F REF: The Rights of the Accused OBJ: 4 KEY: Bloom's: Remember

9. The most controversial defense of justification is insanity.

ANS: F REF: Criminal Law Overview OBJ: 7 KEY: Bloom's: Remember

10. Necessity is not a defense recognized by law.

ANS: F REF: Criminal Law Overview OBJ: 7 KEY: Bloom's: Remember

11. The mental state required for a crime to have been committed is referred to as the *actus reus*.

ANS: F REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

12. To be criminal, an act must be voluntary.

ANS: T REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

13. One of the five major areas of civil law is domestic relations law.

ANS: T REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

14. The standard of proof for the government prosecutor under the adversary system is beyond a reasonable doubt.

ANS: T REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

15. An example of a procedural safeguard in the trial process is contained in the Sixth Amendment's right to confront witnesses.

ANS: T REF: The Adversary System OBJ: 4 KEY: Bloom's: Remember

16. The Fourth Amendment guarantees freedom from search and seizure.

ANS: F REF: The Rights of the Accused OBJ: 4 KEY: Bloom's: Remember

17. A failure to act when there is a legal duty to act can also qualify as "*actus reus*."

ANS: T REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

18. Punitive damages in a tort case represent the actual losses suffered by the plaintiff and are frequently awarded by juries.

ANS: F REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

19. The burden of persuasion is the obligation of a party to prove a fact to a certain level.

ANS: T REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

20. The Constitutional right to counsel applies at both criminal and civil proceedings.

ANS: F REF: Criminal Law Overview OBJ: 4 KEY: Bloom's: Remember

21. Law is a body of rules enacted by public officials in a legitimate manner and back by the force of the state.

ANS: F REF: The Basis of Law OBJ: 1 KEY: Bloom's: Remember

22. Administrative regulations are the newest, fastest growing, and least understood source of law.

ANS: T REF: The Common Law Heritage OBJ: 2 KEY: Bloom's: Remember

23. Due process requires that no law or government procedure should be arbitrary or capricious.

ANS: T REF: The Rights of the Accused OBJ: 4 KEY: Bloom's: Remember

24. The doctrine of stare decisis ("let the decision stand") precludes judges from overturning previous decisions.

ANS: F REF: The Common Law Heritage OBJ: 2 KEY: Bloom's: Remember

25. The right to cross-examination is guaranteed by the Sixth Amendment.

ANS: T REF: The Adversary System OBJ: 4 KEY: Bloom's: Remember

### **COMPLETION**

1. The basis of law can be summarized in two words: \_\_\_\_\_ conflict.

ANS: human

REF: The Basis of Law OBJ: 1 KEY: Bloom's: Remember

2. A ruling in a previous case that serves as a guide in deciding subsequent cases with similar circumstances is known as a \_\_\_\_\_.

ANS: precedent

REF: The Common Law Heritage OBJ: 2 KEY: Bloom's: Remember

3. In every criminal case the prosecution must prove what is known as \_\_\_\_\_, a Latin phrase meaning "body of the crime."

ANS: *corpus delicti*

REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

4. The \_\_\_\_\_ is the name for the first ten Amendments of the U. S. Constitution.

ANS: Bill of Rights

REF: The Common Law Heritage OBJ: 1 KEY: Bloom's: Remember

5. Law is both substantive and \_\_\_\_\_.

ANS: procedural

REF: The Adversary System      OBJ: 3      KEY: Bloom's: Remember

6. \_\_\_\_\_ are conclusions or deductions that can be made based on the facts that have been established by the evidence.

ANS: Inferences

REF: The Adversary System      OBJ: 3      KEY: Bloom's: Remember

7. \_\_\_\_\_ is independently verifiable factual information that supports the conclusion that there is a "fair probability" that a crime occurred or that a particular person was involved in a crime.

ANS: Probable cause

REF: The Adversary System      OBJ: 3      KEY: Bloom's: Remember

8. One of the most fundamental protections recognized in the American criminal justice process is the presumption of \_\_\_\_\_.

ANS: innocence

REF: The Adversary System      OBJ: 3      KEY: Bloom's: Remember

9. The doctrine of applying the Bill of Rights to the states through the Fourteenth Amendment is known as \_\_\_\_\_.

ANS: selective incorporation

REF: The Rights of the Accused      OBJ: 4      KEY: Bloom's: Remember

10. The \_\_\_\_\_ of a crime provide the technical definition of a crime.

ANS: elements

REF: Criminal Law Overview      OBJ: 6      KEY: Bloom's: Remember

11. Family disputes fall into the \_\_\_\_\_ category of civil law.

ANS: domestic relations

REF: Civil Law Overview      OBJ: 5      KEY: Bloom's: Remember

12. In a limited number of criminal offenses, the \_\_\_\_\_ of the illegal act plays a critical part in defining the crime.

ANS: result

REF: Criminal Law Overview OBJ: 6 KEY: Bloom's: Remember

13. A successful mistake of fact defense negates the \_\_\_\_\_ of the crime with which the defendant is charged.

ANS: *mens rea*

REF: Criminal Law Overview OBJ: 7 KEY: Bloom's: Remember

14. \_\_\_\_\_ are the best known aspects of procedural law.

ANS: Trials

REF: The Adversary System OBJ: 3 KEY: Bloom's: Remember

15. \_\_\_\_\_ law involves a type of lawsuit filed by a person when they are injured by another person.

ANS: Tort

REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

16. \_\_\_\_\_ are agreements between two or more persons involving a promise supported by mutual obligation.

ANS: Contracts

REF: Civil Law Overview OBJ: 5 KEY: Bloom's: Remember

17. The three key characteristics of common law are: judge-made law, precedent, and \_\_\_\_\_ sources of law.

ANS: multiple

REF: The Common Law Heritage OBJ: 2 KEY: Bloom's: Remember

18. Brief, limited investigative detentions ("stop and frisk") are also known as \_\_\_\_\_ stops as a result of the landmark Supreme Court decision authorizing them.

ANS: Terry

REF: The Adversary System      OBJ: 3      KEY: Bloom's: Remember

19. Civil asset forfeiture is termed a(n) \_\_\_\_\_ proceeding because the action is against the thing, not the person who owns the thing.

ANS: *in rem*

REF: Civil Law Overview    OBJ: 5      KEY: Bloom's: Remember

20. \_\_\_\_\_ is the most obvious way criminal law affects the operations of the criminal courts.

ANS: Sentencing

REF: Effects of Criminal Law on Courts    OBJ: 8      KEY: Bloom's: Remember

### **ESSAY**

1. Contrast civil and criminal law proceedings.

ANS:

A crime is public wrong, codified in law, prosecuted by the state, must be proven beyond a reasonable doubt, and consequences can range from fines or imprisonment to the death penalty. A tort is a civil wrong against an individual and it is up to the individual to bring legal action. Torts only require a showing of a preponderance of the evidence and the consequences are not considered to be as severe, usually limited to injunctions or financial awards to compensate the victim. An act can be both a tort and a crime, and failure to prove guilt in a criminal case does not preclude a victory in civil court, an example being the O.J. Simpson case.

REF: Civil Law Overview, Criminal Law Overview      OBJ: 5, 6      KEY: Bloom's: Understand

2. Which amendments from the Bill of Rights are pertinent to criminal procedure? Describe what rights they affect or provide for defendants.

ANS:

The Fourth Amendment provides protection against unreasonable searches and seizures and outlines warrant requirements. The Fifth Amendment provides the right against self-incrimination and against double jeopardy. The Sixth Amendment provides the right to counsel, a speedy and public trial by jury, the right to confront and cross-examine witnesses, and the right to compel witnesses to appear and testify. The Eighth Amendment prohibits cruel and unusual punishments and excessive bail and fines. These rights are the basis for the protection of defendants' due process rights in criminal procedure. All of these Amendments in the Bill of Rights (the first ten Amendments to the Constitution) have been incorporated to apply to state criminal proceedings through the Fourteenth Amendment.

REF: The Rights of the Accused                      OBJ: 4                      KEY: Bloom's: Understand

3. Identify and explain the importance of the three key characteristics of the common law.

ANS:

The three key characteristics of common law are: judge-made law, precedent, and multiple sources of law. Until the late 19<sup>th</sup> century, no important body of statutory law existed in either England or the United States. Rather, judges organized social relationships through law. Although legislation bodies, not the courts, now define crimes, contemporary statutory definitions often reflect their common law heritage. The doctrine of precedent requires a judge to decide a case by applying the rule of law found in previous cases, provided the facts in the current case are similar to the facts in the previous cases. By following previous court decisions, the legal system promotes the twin goals of fairness and consistency. Multiple sources of law means that it is not sufficient to look only at the legislative act when defining a crime. It is also necessary to know how the courts have interpreted the statute. Depending on the issue, the applicable rules of law may be found in constitutions, statutes, state administrative regulations, or court decisions.

REF: The Common Law Heritage                      OBJ: 2                      KEY: Bloom's: Understand

4. Discuss why legislatures have become the principal source of law beginning in the early 20<sup>th</sup> century to the present.

ANS:

In the early 20<sup>th</sup> century, the rapidly industrializing society was faced with new types of problems, such as how to protect the interests of workers and consumers. The cautious approach to problem solving of the common law courts would not work when dealing with questions of such a broad scope. The increasing complexity of society required legislators to enact broad rules of law with the precision and detail needed to address immediate problems.

The large number of governmental bureaucracies that exist today are authorized by federal, state, and local governments to issue rules and regulations consistent with principles specified in a statute or municipal ordinance. Administrative regulations are the newest, fastest-growing, and least understood source of law. The federal government alone issues thousands of pages of new

rules and policies each year.

REF: The Common Law heritage                      OBJ: 2                      KEY: Bloom's: Understand

5. In order for a defendant to be convicted of a crime the prosecution must successfully offer proof beyond a reasonable doubt of each element of the crime charged. List the five elements of crime. Do you believe it is fair that a person might not be held responsible for a crime if there is an element missing? For example, a person who does the *actus reus* (sells drugs to a neighbor) but who lacks the *mens rea* (sold the drugs because of death threats from their roommate if they didn't complete the drug deal).

ANS:

Five elements of crime (*corpus delicti* = body of the crime) include: the guilty act (*actus reus*), guilty intent (*mens rea*), relationship between (fusion of) the guilty act and intent, attendant circumstances, and result. Students should wrestle with the question of various defenses like duress, insanity, and self defense acknowledging that the law protects people whose *actions* are unlawful, but whose *intentions* provide a justification or excuse.

REF: Criminal Law Overview                      OBJ: 6, 7                      KEY: Bloom's: Understand

6. Although law is used in everyday language, the definition used by scholars is important. Neubauer and Meinhold (2013) define law as a body of rule enacted by public officials, in a legitimate manner and backed by the force of the state. Break down this definition into its four elements and explain the importance of each element.

ANS: The first element – law is a body of rules – is self-evident. What is not obvious, but is important, is the variety of sources of law including statutes, constitutions, court decisions, and administrative regulations. The second element – law is enacted by public officials – is of critical importance. Rules and regulations are only law under our definition if they are recognized by public officials. The third element – law is enacted in a legitimate manner – means that it must be agreed upon ahead of time how the rules will be changed including methods for passing, applying, and interpreting new laws. The fourth and final element – law is backed by the force of the state – says that these rule and regulations would be largely meaningless without sanctions. The consequences are what set law apart from other social rules.

REF: The Basis of Law                      OBJ: 1                      KEY: Bloom's: Understand

7. Criminal law affects the courts in many ways, one of which revolves around sentencing of offenders. Describe the connection between the public, legislature and courts relating to criminal sentences.

ANS: The most obvious way criminal law affects the operations of the criminal courts is in sentencing. The legislature establishes sentencing options from which judges must choose. Because of the public's concern about crime, pressures are strong to increase penalties. As a

result, legislatures increase the harshness of sentencing, and the courts mitigate that harshness. Legislative action and courthouse reactions follow a predictable pattern:

- Step I. Laws calling for severe punishments are passed by legislatures on the assumption that fear of great pain will terrorize the citizenry into conformity.
- Step II. Criminal justice personnel soften these severe penalties for most offenders (a) in the interests of justice, (b) in the interests of bureaucracy, and (c) in the interests of gaining acquiescence.
- Step III. The few defendants who then insist on a trial and are found guilty, or who in other ways refuse to cooperate, are punished more severely than those who acquiesce.
- Step IV. Legislatures, noting that most criminals by acquiescing avoid “the punishment prescribed by law,” (a) increase the prescribed punishments and (b) try to limit the range of discretionary decision making used to soften the harsh penalties.
- Step V. The more severe punishments introduced in the preceding step are again softened for most offenders, as in Step II, with the result that the defendants who do not acquiesce are punished even more severely than they were at Step III.

REF: Effects of Criminal Law on the Courts  
Understand

OBJ: 8      KEY: Bloom’s:

8. Describe the five major areas of civil law.

ANS: The five major areas of civil law are tort, contract, property, domestic relations, and inheritance/probate. *Tort law* involves the legal wrong done to another person. Tort injuries include any wrong, hurt, or damage done to a person’s rights, body, reputation, or property. *Contracts* are agreements between two or more persons involving a promise supported by mutual obligations. *Property law* regulates three types of property: real, personal and intellectual. *Domestic relations law* involves divorce and related issues such as child custody, child support, and alimony. Property received from a person who has died is governed by laws on *inheritance*. When someone dies without a will, the civil law of *intestacy* determines how possessions should be distributed by a court in *probate proceedings*.

REF: Civil Law Overview

OBJ: 5

KEY: Bloom’s: Understand