

Answers to Assignment 1 Questions

NOTE: These answers are provided to give students a basic understanding of acceptable types of responses. They often are not the only valid answers and are not intended to provide an exhaustive response to the questions.

Educational Objective 1

- 1-1. A civil-law system has a comprehensive code of written laws or statutes. A common-law system is a body of law derived from court decisions as opposed to statutes or constitutions.
- 1-2. Common law changes through court examination of precedent. A court may apply a precedent to new cases or discard it if it has lost its usefulness, or it may make landmark decisions that depart from precedent.
- 1-3. Criminal law applies to acts society deems so harmful to the public welfare that government is responsible for prosecuting and punishing the perpetrators. Civil law applies to legal matters that are not governed by criminal law, protecting rights and providing remedies for breaches of duties owed to others.
- 1-4. The original court case in 1852 was the law in Midvale Township and provided that a dog owner must pay damages for any bite. The 1875 statutory law added to the case law by providing that, in addition to damages for bites, a dog owner must pay for any damage caused by a dog running free. The 1952 court case eliminated damages for first bites of dogs owned by green-eyed people only. In summary, each of these laws supplemented the others and did not overrule them. The township also could have legally passed statutory law changing case law.

Educational Objective 2

- 2-1. The Constitution delegates powers to Congress to regulate commerce, levy and collect taxes, borrow money, and establish uniform laws on bankruptcy. Congress thus has implied powers to pass laws necessary to implement the powers expressly delegated. The Constitution's Commerce Clause gives Congress the power to regulate commerce with foreign nations and among the states, including insurance. The Fifth Amendment's Due Process Clause guarantees notice and a hearing before the federal government can deprive any person of life, liberty, or property. The Fourteenth Amendment extends the same protection in state government actions, which can give rise to a complaint by an insurer if the state changes a premium rate without giving sufficient notice to the insurer. The Fourteenth Amendment's Equal Protection Clause also prohibits state laws that discriminate unfairly and protects both individuals and corporations.
- 2-2. The NAIC pools information to help regulators coordinate responses to changing conditions in the insurance marketplace. The NAIC also develops model laws, regulations, and guidelines.
- 2-3. Agency rules, regulations, and rulings have the full force of law and constitute the body of administrative law. The legislative delegation of rulemaking power to an administrative agency is constitutional as long as the legislation carefully defines the scope of the delegated power, the agency exercises its rulemaking power within the defined scope, and the rules are subject to judicial review.



Educational Objective 3

- 3-1. The party who files the complaint is the plaintiff. The complaint is the first pleading filed with the court. The complaint sets out the plaintiff's allegations, explains why the plaintiff has a cause of action, and states what remedy the plaintiff requests. The complaint also tells the court why it has jurisdiction over the matter.

The defendant must file the answer to the complaint within the length of time specified in the summons that accompanies the complaint. The answer responds to the plaintiff's complaint and explains why the plaintiff should not win the case. The answer may include counterclaims. It can also include only an entry of appearance, which neither admits nor denies any allegations in the complaint, and states only that the defendant will appear in court.

- 3-2. The purpose of discovery is for lawyers on both sides to gather as much information as possible about all allegations and evidence the parties might present. Discovered information enables the parties to know as much as possible before trial and prevents surprises. If testimony at trial contradicts information obtained during discovery, lawyers can use the pretrial evidence to challenge the evidence presented at trial. Discovery can sometimes lead to settlement once the parties know all the evidence. Some discovery tools include depositions, interrogatories, and subpoenas.
- 3-3. Evidence must have relevance to the case. For example, evidence regarding an insurance policy is not relevant to determining whether the insured was negligent in an accident. Evidence must also be material. A fact can be relevant but not material. For example, the make and model of a car in an accident is immaterial unless there was a physical defect in that model that caused or contributed to the accident. The evidence must have competence. For example, hearsay or expert witness evidence may not be competent.
- 3-4. If an appellate court finds that the trial court improperly admitted evidence that was prejudicial, or harmful, to the appellant's case, the court can send the case back to the lower court for a new trial. However, an appellate court might determine that the evidence, although improperly admitted at trial, did not prejudice the appellant.

Educational Objective 4

- 4-1. ADR can be binding on parties when they have agreed in advance that it will be binding.
- 4-2. The mediator is a neutral third party who acts as a catalyst to help parties analyze their dispute, consider possible solutions, and devise a compromise formula.
- 4-3. In a mini-trial, lawyers or others familiar with the dispute present evidence and arguments to a panel that may include business executives or other professionals. A neutral party, such as a retired judge or another expert, can act as mediator or issue an advisory opinion after the presentation of evidence and arguments. Because the mini-trial presents the issues to both parties in a dispute, it can encourage negotiation and settlement. Summary jury trials are brief mock trials before juries. The parties can accept the jury's advisory verdict, or the verdict can provide the basis for further negotiations toward settlement.



Educational Objective 5

5-1. The three types of administrative agency rules are these:

- Legislative rules
- Interpretative rules
- Procedural rules

5-2. After reviewing comments about a proposed rule, an agency can take one of these actions:

- Adopt the originally proposed rule
- Make minimal or extensive changes to the rule
- Nullify the proposed rule

5-3. These items must be included in an appropriate notice for an administrative agency adjudicatory proceeding:

- A statement of the hearing time, place, and nature
- A statement of the hearing's legal authority and jurisdiction
- Reference to the statute or rule involved
- A short, clear statement of the matters at issue

5-4. The U.S. Constitution places these limitations on agency investigations:

- Fourth Amendment protection against unreasonable searches and seizures
- Fifth Amendment protection against self-incrimination

5-5. To take an administrative action to a court for judicial review, these must have occurred:

- The plaintiff must have standing to sue.
- The agency must have issued a final order in the case.
- The plaintiff must have exhausted all administrative remedies.

5-6. These answers apply to the Board of Health ruling questions:

- a. The complainants first should exhaust all administrative remedies. No court will hear the case without the complainants' first having challenged the rule before the Board of Health, under administrative procedures.
- b. Because the new rule applies directly to and adversely affects unlicensed persons who operate tattoo parlors, and because these complainants are unlicensed persons who operate tattoo parlors, they have standing to sue.
- c. The tattoo-parlor operators can allege that their property (earnings, shops) was taken away without due process of law.

