

Exam

Name _____

TRUE/FALSE. Write 'T' if the statement is true and 'F' if the statement is false.

- 1) In criminal cases, sanctions generally involve compensation for loss or wrongs suffered. 1) _____
- 2) Personal justice is justice concerned with the private affairs of citizens and their respective rights. 2) _____
- 3) Tax evasion, health care frauds, and bank frauds are covered under civil laws. 3) _____
- 4) In the case of a jury trial, the trial stage begins with the selection of a jury. 4) _____
- 5) The burden of proof is the obligation of the defendant to prove his or her innocence. 5) _____
- 6) Mediation is a "mini trial" wherein each party presents its case to one or more mediators, who render a binding decision that generally cannot be appealed. 6) _____
- 7) An expert's testimony is more credible than that of other witnesses. 7) _____
- 8) The trial judge is challenged to carefully qualify the expert but not the testimony of the expert. 8) _____
- 9) A Daubert hearing decides whether the expert is correct. 9) _____
- 10) Rule 705 allows an expert to state an opinion without first testifying to the underlying facts or data. 10) _____

MULTIPLE CHOICE. Choose the one alternative that best completes the statement or answers the question.

- 11) Which of the following is an example of sanctions in civil cases?
A) compensation for economic damages B) probation
11) _____
C) capital punishment D) home confinement
- 12) Which of the following best describes civil justice?
A) justice that conforms to a moral principle
12) _____
B) justice between parties to a dispute, regardless of any larger principles that might be involved
C) justice concerned with the private affairs of citizens and their respective rights
D) justice fairly administered according to the rules of substantive law (such as a fair trial)
- 13) Which of the following forms of justice is fairly administered according to the rules of statutory law? 13) _____
A) substantial justice B) criminal justice
C) social justice D) civil justice
- 14) Which of the following scenarios, if identified, can result in a mistrial?
A) Rico, an expert witness, stated an opinion on the evidence without first testifying to the underlying facts.

14) _____

- B) Derek, the defense attorney, concealed his client's drinking habit as he felt it would be prejudicial to the client in the ongoing case of banking fraud.
- C) Ginny, one of the jury, avidly followed the polls conducted by the media to know the people's opinion on the trial.
- D) Silvia, the attorney for the prosecution, raised an objection for every evidence presented by the defense attorney.

15) Igor, a wealthy entrepreneur, was involved in embezzlement of cash from the office and tax evasion. If discovered, which of the following will he be charged under? 15) _____

- A) criminal law
- B) administrative law
- C) civil law
- D) constitutional law

16) Which of the following is true of our justice system?

- A) The role of the jury is not passive.

16) _____

- B) Closing arguments and cross examination are the most important parts of a trial.
- C) The law is fast; litigation lasts for one or two hours.
- D) Trials (aside from the verdict) provide a lot of drama.

17) Which of the following rules of Federal Rules of Civil Procedure limits discovery of an expert's communications with engaging counsel and any report drafts that may be prepared? 17) _____

- A) Rule 26(e)(2)
- B) Rule 26(a)(2)
- C) Rule 26(b)(4)
- D) Rule 26(b)(1)

18) Which of the following stages applies to a criminal case but not to a civil case?

- A) pleading stage
- B) trial stage

18) _____

- C) sentencing stage
- D) discovery stage

19) Which of the following is a difference between criminal cases and civil cases?

- A) A complaint should be accompanied by an investigator's affidavit to initiate a civil case, whereas filing a complaint is sufficient to initiate a criminal case.

19) _____

- B) A defendant can only enter a plea of guilty or not guilty to charges in a civil case, whereas he or she can also claim lack of sufficient knowledge to respond or assert affirmative defenses in a criminal case.

- C) A defendant has an amount of time (20 days) to respond to the complaint in a civil case, whereas he or she enters a plea to the charge during the first appearance in a criminal case.

- D) Failing to file a timely response can result in a default judgment in a civil case, whereas failing to file a timely response can result in a declaratory judgment in a criminal case.

20) Which of the following is a difference between civil law and criminal law?

- A) Civil law sanctions may include imprisonments, whereas criminal law sanctions include compensations but not imprisonments.

20) _____

- B) Under civil law, the responding party is the government, whereas under criminal law, the responding party is the defendant.

- C) Under civil law, the burden of proof is on the government, whereas under criminal law, the burden of proof is on the

plaintiff.

D) The purpose of civil law is to resolve disputes between individuals or entities, whereas the purpose of criminal law is to convict and punish offenders.

21) Which of the following is true of a civil proceeding?

A) Failure on the part of the defendant to file a timely response can result in a declaratory judgment.

21) _____

B) The evidence is evaluated by the judge in order to reach a verdict.

C) The discovery process is governed by the Federal Rules of Civil Procedure in federal courts.

D) The pleading stage is followed by the trial stage.

22) Andre LeFevre, a testifying expert, failed to include changes to the case. These were not been previously presented in his report. He is expecting that this information will be offered at the trial. Which of the following rules of the Federal Rules of Civil Procedure has been violated by Andre? 22) _____

A) Rule 26(a)(2) B) Rule 26(e)(2) C) Rule 26(b)(4) D) Rule 26(b)(1)

23) The trial stage of a legal proceeding involves the *voir dire* process. What does this process involve?

A) It is a process wherein all evidence is presented to the jury through witnesses (such as a forensic accountant).

23) _____

B) It is a process wherein residents from the local county are randomly selected and summoned to the court to serve as prospective jurors.

C) It is a process wherein the jurors collectively evaluate the evidence to render a verdict.

D) It is a process wherein the judge and the attorneys question prospective jurors about their backgrounds and beliefs.

24) Which of the following best describes the meaning of burden of proof in a trial?

A) It is the obligation of the jury to prove guilty and reach a verdict after a trial.

24) _____

B) It is the obligation of the defendant to prove his or her innocence.

C) It is the obligation of the plaintiff or prosecution to prove liability or guilt.

D) It is the obligation of the expert witness to prove his or her reliability in the court.

25) Which of the following statements is true of standards of proof?

A) In a civil case, the requisite standard is a preponderance of the evidence.

25) _____

B) Preponderance of evidence is a higher standard of proof than clear and convincing evidence.

C) Preponderance of evidence is evidence that can be proved beyond a reasonable doubt.

D) Clear and convincing evidence is evidence that is probably true.

26) Which of the following statements is true of the two means of settling disputes between parties?

A) Alternative dispute resolution allows for more transparency than litigation.

26) _____

B) Litigation allows for greater privacy than alternative dispute resolution.

C) Alternative dispute resolution is less expensive than litigation.

D) Litigation is faster than alternative dispute resolution.

27) Which of the following statements is true of rules of evidence?

A) The rules of evidence allow other witnesses greater latitude than expert witnesses to testify based on evidence that would not otherwise be admissible.

27) _____

B) The rules of evidence allow expert witnesses greater latitude than other witnesses to testify based on evidence that would not otherwise be admissible.

C) The rules of evidence allow expert witnesses and other witnesses great latitude to testify based on evidence that would not otherwise be admissible.

D) The rules of evidence do not allow both expert witnesses and other witnesses to testify based on evidence that is not admissible.

28) Which of the following is the purpose of the Federal Rules of Evidence?

A) to reduce the delay in trial due to unavailability of evidence

28) _____

B) to dictate the manner in which evidence is to be presented to the jury

C) to seek justice and truth in a fair and reasonable manner

D) to set standards for evidence to be admissible in court

29) Which of the following is a criterion under Rule 702 of the Federal Rules of Evidence for an expert testimony to be admissible? 29) _____

A) The testimony is given in relation to scientific, technical, or other specialized knowledge.

B) The testimony can be accepted within the professional community.

C) The testimony is based on reliable assumptions.

D) The testimony is the product of reliable principles and methods.

30) Which of the following scenarios indicates the application of Rule 702 of the Federal Rules of Evidence? 30) _____

A) The plaintiff engages Ali, an attorney, to represent them in court.

B) The court calls on Fiona, a forensic accountant, to give a statement on the accident that caused damage to her car.

C) Pete, a store-owner, appears as a witness to give testimony on a robbery committed outside his store.

D) The attorney calls upon Riya, a construction engineer, to provide evidence on the structural sufficiency of a building.

31) Which of the following is a difference between Rule 704 and Rule 705 of the Federal Rules of Evidence? 31) _____

A) Rule 704 allows an expert to testify on areas that embrace an ultimate issue to be decided by the fact finder, whereas Rule 705 allows an expert witness a considerable degree of latitude regarding the facts or data upon which his or her opinions are based.

B) Rule 704 allows an expert witness a considerable degree of latitude regarding the facts or data upon which his or her opinions are based, whereas Rule 705 allows an expert to testify on areas that embrace an ultimate issue to be decided by the fact finder.

C) Rule 704 allows an expert to testify on areas that embrace an ultimate issue to be decided by the fact finder, whereas Rule 705 allows an expert to state an opinion without first testifying to the underlying facts or data.

D) Rule 704 allows an expert to state an opinion without first testifying to the underlying facts or data, whereas Rule 705 allows an expert to testify to the underlying facts or data.

32) Which of the following does Rule 705 of the Federal Rules of Evidence allow?

A) It allows the testimony of an expert witness if it will assist the trier of fact (judge or jury) through the maze of

"scientific, technical, or other specialized knowledge."

32) _____

- B) It allows an expert to state an opinion without first testifying to the underlying facts or data, with the understanding that the opinion is subject to cross-examination.
- C) It allows an expert to testify on areas that embrace an ultimate issue to be decided by the fact finder.
- D) It allows an expert witness a considerable degree of latitude regarding the facts or data upon which his or her opinions are based.

33) Fingerprints and DNA samples are examples of

- A) direct evidence.
- B) circumstantial evidence.

33) _____

- C) character evidence.
- D) documentary evidence.

34) Which of the following is an example of hearsay evidence?

- A) The prosecution presented a copy of the legal will of the deceased that had been altered by the defendant.

34) _____

- B) The attorney called on Anna to present her version of the events that took place during her class.
- C) The detective testified that the fingerprints lifted from the scene of crime had been identified as those of the suspect.
- D) The police recorded a statement from Tina, which claims that she often heard the neighbors complain about the suspect's behavior.

35) Which of the following best describes a Daubert challenge?

- A) It is a special hearing conducted before the trial judge to determine the relevance and reliability of an expert's opinion.

35) _____

- B) It is a challenge faced by the judge when the jury is equally divided over a verdict.
- C) It is a method used by the jury to evaluate the testimony given during a trial.
- D) It is a process by which the defendant challenges the prosecution's evidence.

36) Which of the following is a factor to be considered when evaluating expert testimony under the Daubert challenge?

36) _____

- A) what the known or potential success rate of the method is
- B) whether the theory can be backed by evidence
- C) how well accepted the methodology is within the professional community
- D) whether the theory can be comprehended by the community

37) Which of the following are the three cases that make up the Daubert trilogy?

- A) *Daubert v. Merrell Dow Pharmaceuticals*, *Kumho Tire v. Carmichael*, and *Hickman v. Taylor*.

37) _____

- B) *Daubert v. Merrell Dow Pharmaceuticals*, *G.E. v. Joiner*, and *Upjohn Co. v. United States*.
- C) *Daubert v. Merrell Dow Pharmaceuticals*, *Hickman v. Taylor*, and *Upjohn Co. v. United States*.
- D) *Daubert v. Merrell Dow Pharmaceuticals*, *G.E. v. Joiner*, and *Kumho Tire v. Carmichael*.

38) Which rule does the Daubert trilogy serve to interpret?

- A) Rule 702
- B) Rule 704
- C) Rule 705
- D) Rule 703

38) _____

39) Which of the following is a drawback of the Frye test?

A) It is not extensive enough to address the latest developments in civil and criminal law.

39) _____

B) It does not admit evidence given by an expert if the evidence is not based on a well-known method.

C) It is not flexible enough to address new scientific issues where general acceptance has not yet been established.

D) It does not allow room for additional evidence to be considered when the initial evidence is insufficient.

40) Which of the following is a legal principle that protects communications taking place within a protected relationship?

40) _____

A) secured communication B) guarded communication

C) privileged communication D) protected communication

41) What is the underlying theory of privileged communication?

A) The society has a right to be aware of the communication within a protected relationship.

41) _____

B) In certain instances, society is best served by the suppression (protection from disclosure) of information.

C) The privacy and confidentiality of a communication within a protected relationship has to be maintained.

D) The parties in a protected relationship are liable to disclose details of the communication taking place between them.

42) A requisite element for establishing privilege in an attorney-client privilege includes a communication that 42)

A) is irrelevant for the jury to reach a verdict.

B) is made to a person the client reasonably believed was an attorney.

C) relates to rendering personal services.

D) contains detail that can harm the client.

43) Which of the following best defines the term attorney-client privilege?

A) It is the attorney's right to refuse to disclose and to prevent any other person from disclosing confidential communications between the attorney and the testifying expert.

43) _____

B) It is the client's obligation to disclose confidential communications between the client and the attorney.

C) It is the client's right to refuse to disclose and to prevent any other person from disclosing confidential communications between the client and the attorney.

D) It is the attorney's right to refuse to disclose and to prevent the testifying expert from disclosing confidential communications between the client and the attorney.

44) Which of the following is a similarity between attorney-client privilege and work product doctrine? 44) _____

A) Both allow lawyers to prepare for litigation but with the risk that their work will be revealed to court adversaries.

B) Both provide protection from discovery of documents and other items prepared by an attorney in anticipation of a trial.

C) Both can be extended to non-attorneys who assist attorneys in rendering legal advice or services.

D) Both are intended to encourage individuals involved in legal disputes to be candid with their attorneys, thus enabling the attorneys to give sound legal advice.

45) What was the result of amending FRCP 26(b)(4) to allow the extension of work product protection to most

attorney-expert communications and to all draft expert reports? 45) _____

- A) It increased the cost of litigation and made the process more complex.
- B) It reduced the cost of litigation, but made the process more complex.
- C) It reduced the cost of litigation and made the process more efficient.
- D) It increased the cost of litigation and simplified the process.

SHORT ANSWER. Write the word or phrase that best completes each statement or answers the question.

46) Rule 26(a)(2) of the Federal Rules of Civil Procedure requires the disclosure of all experts (such as forensic accountants) expected to testify at trial. The disclosure is generally accompanied by the expert's written report. List the elements that should be contained in the expert's written report. 46) _____

47) Explain the structure of a criminal case. 47) _____

48) Write a brief note on standard of proof. 48) _____

49) What are the two most common forms of alternate dispute resolution? 49) _____

50) What is relevant evidence as defined by FRE 401? 50) _____

- 1) FALSE
- 2) FALSE
- 3) FALSE
- 4) TRUE
- 5) FALSE
- 6) FALSE
- 7) TRUE
- 8) FALSE
- 9) FALSE
- 10) TRUE
- 11) A
- 12) C
- 13) A
- 14) C
- 15) A
- 16) A
- 17) C
- 18) C
- 19) C
- 20) D
- 21) C
- 22) B
- 23) D
- 24) C
- 25) A
- 26) C
- 27) B
- 28) C
- 29) D
- 30) D
- 31) C
- 32) B
- 33) B
- 34) D
- 35) A
- 36) C
- 37) D
- 38) A
- 39) C
- 40) C
- 41) B
- 42) B
- 43) C
- 44) C
- 45) C

46) The expert's written report must contain the following elements:

1. A complete statement of all opinions the witness will express, along with the basis and reasons for them.
2. The facts or data considered by the witness in forming the opinions.
3. Any exhibits that will be used to summarize or support the opinions.
4. The witness's qualifications, including a list of all publications authored in the preceding ten years.

5. A list of all other cases in which the witness has testified as an expert (either at trial or by deposition) during the preceding four years.
6. A statement of the compensation to be paid for the study and testimony in the case.
- 47) The basic structure of a criminal case is similar to that of a civil case, with the addition of a fourth stage-sentencing. However, the pleading stage of a criminal case is very different. Criminal cases are initiated with a criminal complaint accompanied by an investigator's affidavit that summarizes the evidence against the defendant. During the first appearance (arraignment), the defendant is informed of the charges and advised of his or her rights. At this time, the defendant also enters a plea to the charge or charges-guilty or not guilty. This is followed by the discovery stage and the trial stage, as discussed previously. If the defendant is found not guilty, the case is over; if found guilty, the case then moves to the sentencing stage. The verdict in a criminal case (guilty or not guilty) differs from the verdict in a civil case, wherein the defendant is found either liable or not liable (for damages). Prior to sentencing by the court, the case is evaluated by the probation department, which prepares a pre-sentence report (PSR). The PSR summarizes the case (including the crime, the case facts, and the offender's profile) and offers a recommendation for sentencing.
- 48) The presumption of innocence must be overcome by a certain standard of proof, which describes the amount of evidence the plaintiff must present to prove its case. In a civil case, the requisite standard is a preponderance of the evidence-more likely than not (>50% probability). Some civil cases (such as civil fraud) must be proven by clear and convincing evidence. Clear and convincing is greater than preponderance, but no specific percentage can be assigned. In a criminal case, the prosecution has a legal obligation to prove all elements of an alleged offense (such as fraud, tax evasion, or murder) beyond a reasonable doubt. Again, no percentage can be assigned. The applicable burden and standard of proof are explained to the jury by the judge and included in the jury instructions. The forensic accountant must understand the requisite standard of proof for any litigation engagement and articulate his or her opinion accordingly.
- 49) The most common forms of alternative dispute resolution are mediation and arbitration. Mediation is a non-binding informal process wherein a mediator evaluates the arguments of both sides and helps the parties reach common ground. If mediation fails, the parties may proceed with litigation. Arbitration, on the other hand, is a "mini trial" wherein each party presents its case to one or more arbitrators, who render a binding decision that generally cannot be appealed. Arbitration is often voluntary but can also be mandatory.
- 50) According to FRE 401, relevant evidence must have the "tendency to make a fact more or less probable than it would be without the evidence," and the fact must be "of consequence in determining the action." As a general principle, all relevant evidence is admissible unless it is inadmissible due to another rule of evidence or law. FRE 403 allows relevant evidence to be excluded if its probative value is substantially outweighed by danger of unfair prejudice, of confusing or misleading the jury, or of wasting the court's time. The presentation of evidence is subject to objection by the opposing party. The basis of an objection must be stated (for example, prejudice or hearsay) and will be ruled on by the court-overruled or sustained. In addition to probative value exclusions, many social policies operate to exclude relevant evidence.