



SAMPLE EXAM: INTRODUCTION TO PARALEGAL STUDIES

NOTE: The questions here are generally not the same questions that will appear on the exam. They may look the same; but I took out a “not” or put a “not” in the question. These questions are representative of the types of questions that appear on the exam and are simply to help you study and prepare for the exam.

Directions:

1. ***DO NOT PUT YOUR NAME ON FIRST PAGE OF THIS EXAMINATION; PUT IT ON THE SECOND PAGE. PUT YOUR NAME ON THE SCANTRON.***
2. You may use any written material while taking this exam, except another student's answers; **NO TALKING IS ALLOWED.**
3. On multiple choice answers, **there may be more than one correct answer.** You are expected to give *the best* answer.
4. On the multiple choice answers, merely fill in the letter corresponding to your choice. On the two-tier multiple choice questions, chose the letter on the second tier, and fill it in on the scan sheet.
5. On the essays/short answers, make your handwriting legible. What I cannot read, I cannot grade. You will lose points if I cannot read your writing.
6. On the true/false section of the exam, fill in "A" for true and "B" for false on the scan sheet.
7. On the fill-in questions, each blank space represents one word.
8. The symbol "§" refers to "section."
9. Service of process means the service of whatever document needs to be served under a particular civil procedure.
10. "P" and "D" are frequently used as both names to the parties and as their status as plaintiff and defendant.
11. You have the entire class period to complete the test.
12. Unless otherwise stated, New York Law applies.

GOOD LUCK!

Chapter #1

1. Precedent is a legal doctrine stating that a high court should follow its own prior decision in future cases.
2. Giving clients advice as to their rights is not considered the practice of law.
3. In *Cruzan*, the Supreme Court decided that there was no right to die.
4. The basic principle behind utilitarian law is that people have a moral barometer which provides us with a built-in sense of right and wrong.
5. The “Erie” doctrine requires that when federal courts apply “diversity of citizenship” subject matter jurisdiction, the court must apply state common law—not federal.
6. The 14th Amendment of the United States Constitution prevents “individuals” from discriminating against other people on the basis of race or religion.
7. Once students enter the confines of a school, they shed their Constitutional rights.
8. For analytical positivists, they do not focus on “extra legal” considerations and merely ask whether the governmental body is authorized to act and did it act in accordance with established procedures.
9. A statute can pass the “strict scrutiny test” if the government can show there is an important governmental interest to be protected by the law and the means chosen are substantially related to achieving that interest.
10. A statute can pass the “intermediate scrutiny test” if the government can show there is a legitimate governmental interest to be protected by the law and the means chosen are reasonably related to achieving that interest.
11. A statute can pass the “strict scrutiny test” if the government can show there is a compelling governmental interest to be protected by the law and the means chosen are narrowly tailored to safeguard that interest.
12. Procedural Due Process is concerned with a person's core liberty interest, such as marriage, procreation, child rearing, and the like.
13. In its initial interpretation of the “substantive due process clause,” the Supreme Court issued *favorable* rulings upholding state laws regulating working conditions.
14. Initially, the Supreme Court determined that the Bill of Rights applied to the states.
15. The right to have a jury trial in a civil case guaranteed in the Federal Constitution has been “incorporated” into the 14th amendment and is binding upon the states.
16. The “equal protection clause” is applicable to the federal government by the doctrine of “selective incorporation.”

17. If a person is found guilty of a misdemeanor, they may spend up to one year in jail.
18. In New York, if a person is faced with a deadly force on the street or in her home, she must retreat prior to responding with deadly force, provided the retreat can be safely made.
19. For an express contract to exist, it must be in writing.
20. It is against public policy to allow sexual services to provide valid consideration in a contract.
21. In a divorce action, a court orders that Jane Smith's status be changed from that of a "married person" to that of a "single person." In that type of situation, the court has exercised *in personam* jurisdiction.
22. The 5th amendment right of a grand jury indictment has not been "incorporated" into the 14th amendment.
23. New York creates a law prohibiting interracial marriages. If the law is challenged, the court will apply
 - A. the Strict Scrutiny test.
 - B. the Rational Relationship test.
 - C. the Intermediate Scrutiny test.
 - D. Any of the above.
 - E. None of the above.
24. Natural law
 - A. preserves the status quo.
 - B. maintains that true right and wrong are naturally discernable.
 - C. supports the concept of the "greatest good for the greatest number."
 - D. All of the above.
 - E. None of the above.
25. The Federal Constitution:
 - A. is the fundamental source of the federal government's power.
 - B. establishes the bounds and limits for the federal government.
 - C. establishes the framework for the exercise of the federal government's power.
 - D. establishes the rights of the people.
 - E. All of the above.

26. If a student is suspended, the student
- A. need not have the opportunity to present her side of the case because such a minor suspension does not implicate the due process clause.
 - B. shall be given notice of the charges against her, an explanation of the evidence by the school if the student denies the charge, and an opportunity to present her side of the story.
 - C. shall be given notice of the charges against her, an explanation of the evidence by the school if the student denies the charge, an opportunity to present her side of the story, and the right to cross-examine the school's witnesses.
 - D. shall be given notice of the charges against her, an explanation of the evidence by the school if the student denies the charge, an opportunity to present her side of the story, and a right to counsel.
 - E. shall be given notice of the charges against her, an explanation of the evidence by the school if the student denies the charge, an opportunity to present her side of the story, the right to cross-examine the school's witnesses, and a right to counsel.
27. _____ refers to the law that creates, defines, and regulates rights.
28. Most courts have held that the right to die exists either under the common law right of _____ or the _____ of _____.
29. The three elements to a contract are _____, _____, and _____.

Chapter #2:

30. There is strong evidence to suggest that the drafters of the Constitution consider the death penalty to constitute "cruel and unusual punishment."
31. According to the Supreme Court, "retribution" is not considered a valid justification for the death penalty.
32. It has been conclusively shown that the death penalty serves as a "general deterrence" in society.
33. Certain justices of the Supreme Court believe that the evolving standards of decency in the society require the Court to rule that the death penalty be held unconstitutional.
34. The Supreme Court has found that the 14th amendment's due process clause is violated when states enact laws prohibiting homosexual sodomy.
35. A lawyer "must" withdraw from representing a client if her client persists in a course of actions involving her services when she reasonably believes the client's actions are criminal or fraudulent.
36. In many situations, moral rules in society and legal rules overlap.
37. _____ occurs when a state's high court decides not to follow a Supreme Court ruling and find that the state's constitution provides more protection than the federal constitution.

Chapter #3: The Judicial System

38. The Supreme Court is New York's court of general, original jurisdiction.
39. A "bench trial" refers a to trial which is held just before a judge.
40. Unlike subject matter jurisdiction, personal jurisdiction can never be waived.
41. If D is flying over New York and is served with a summons and complaint, D must answer the complaint because D is considered "present" in New York.
42. A federal district court has jurisdiction over civil actions where there are citizens from the same state and the amount in controversy exceeds \$50,000.
43. The United States Supreme Court can never issue advisory opinions.
44. If there is a conflict between the Constitution of the United States and the New York State Constitution, the Constitution of the United States will govern.
45. Federal district courts have general, original subject matter jurisdiction.
46. There are 90 federal district courts, with at least one in each state.
47. The Supreme Court has ruled that the doctrine of "hypothetical jurisdiction" violates the constitution.
48. By failing to assert lack of personal jurisdiction as an affirmative defense, a defendant waives his personal jurisdiction objection.
49. Wally is a New Jersey domiciliary. He drives his car into New York and gets into an accident with a New Yorker. If the New Yorker commences an action in New York Supreme Court, Wally will be subject to jurisdiction in New York because he implicitly consented to jurisdiction when he drove his car in New York.
50. Federal subject matter jurisdiction must be stated upon the face of the complaint, unaided by the answer or by the petition for removal.
51. There are 98 federal district courts, with at least one in each state.
52. In long-arm analysis, the "stream of commerce" argument basically holds that a retailer is not subject to personal jurisdiction in every state where the product he sold may travel.
53. The issue of venue is only considered after it is determined that a court has subject matter jurisdiction.
54. When an appellate court hears an appeal, the court sees the record on appeal, briefs of each party, and testimony by witnesses.
55. Federal judges are appointed for 14 year terms.

56. If *in personam* jurisdiction is obtained over a defendant, any judgment issued will be limited to the “thing” which served as a basis of the jurisdiction.
57. Courts with limited jurisdiction have the ability to hear a broad range of cases.
58. The jury’s power consists of
- A. deciding what evidence is admissible.
 - B. deciding questions of law.
 - C. charging the jury with the law.
 - D. All of the above.
 - E. None of the above.
59. In New York State Courts, juries in civil cases must render
- A. unanimous verdicts.
 - B. unanimous verdicts unless the parties stipulate otherwise.
 - C. a 5/6th verdict.
 - D. None of the above.
60. John is sued by Phil in New York. John makes a general appearance answering the complaint and not making a jurisdictional objection. In this situation, John has
- A. implicitly consented to New York personal jurisdiction.
 - B. expressly consented to New York personal jurisdiction.
 - C. implicitly consented to New York personal jurisdiction since he is doing business in New York.
 - D. allowed himself to be subject to personal jurisdiction under the New York long-arm statute.
 - E. None of the above.
61. Paws is a New York corporation. Paws has a website for its pet store. On its website, people are able to find out the prices of Paws’ products. They can also download order forms and mail in orders. Catlady lives in New Jersey. She claims that the cat food she bought from Paws killed one of her numerous cats. She wants to sue Paws from New Jersey.

Under these facts, Paws will

- A. be subject to the New Jersey long-arm statute.
- B. not be subject to the New Jersey long-arm statute because the website was “passive” and doesn’t provide for personal jurisdiction.
- C. not be subject to the New Jersey long-arm statute because Paws did not have minimum contracts.
- D. not be subject to the New Jersey long-arm statute because the traditional notions of fair play and substantial justice will be violated.
- E. None of the above.

62. John—a domiciliary of Ohio—commences a suit against Phil, a New Yorker. In this situation, John has
- A. implicitly consented to New York personal jurisdiction.
 - B. expressly consented to New York personal jurisdiction.
 - C. implicitly consented to New York personal jurisdiction since he is doing business in New York.
 - D. allowed himself to be subject to personal jurisdiction under the New York long-arm statute.
 - E. None of the above.
63. To take an appeal in the federal court system, the appeal must be taken in __ days.
- A. 10
 - B. 20
 - C. 25
 - D. 40
 - E. None of the above.

Firestone Tire company ships its tires throughout the United States. Richmond Tire Company is a regional dealer for Firestone and distributes tires on the east coast. Bob’s Tire warehouse is located in Valhalla, New York. One day Bob sells a set of Firestone tires to Larry. While driving through Virginia on his way to Florida, a defective left front tire blows out on Larry’s car. Larry sues from Virginia and attempts to obtain long-arm jurisdiction over Firestone, Richmond, and Bob.

All three defendants object to jurisdiction claiming that they don’t have minimum contacts. How will the judge rule:

(You should be able to figure out the answer to this by our long-arm discussion and the *Calder v. Jones* case)

Explain and set forth the two-part due process test used to determine whether the assertion of long-arm jurisdiction in a particular case is constitutional.

(Again, you should be able to figure out the answer to this by our long-arm discussion and the *Calder v. Jones* case.)

Chapter #4: Civil Procedure

64. Prior to using "nail and mail" service, a party must demonstrate that it is "impracticable" to serve process by any other method.
65. The client can only discharge her attorney for cause.
66. When a person is charged with a class "A" felony, the attorneys are permitted to make three [3] peremptory challenges during *voir dire*.
67. In a civil action, the attorneys are permitted to make five peremptory challenges during *voir dire*.
68. Since the time *Batson v. Kentucky* was decided, the Supreme Court has expanded its rules to incorporate peremptory strikes based on gender and religion.
69. Sara comes home and tells her husband that she just robbed the "Quicky Mark." Her husband will not be able to repeat that statement in court because of the husband/wife privilege.
70. Legal relevancy means that the evidence tends to prove or disprove a fact of consequence in issue.
71. During direct examination, the attorney is allowed to ask only open-ended questions.
72. The judge should grant a new trial when the jury's verdict fails to administer substantial justice to the parties and the judge has broad discretion on this ruling.
73. Evidence which may be logically relevant may still be excluded from trial if the objecting party can demonstrate the evidence is more _____ and _____.
74. A _____ challenge to a juror can be exercised at the will of the attorney.
75. Additur occurs when a court lowers the amount awarded by a jury.
76. When counsels select a jury, they perform a _____ _____ of the jury.

77. Lilly wants to sue Pete for breach of contract. The process server attempts to serve Pete on July 1st at 8:00 in the morning, but no one is home. The process server attempts service at Pete's home again that day at noon, at 7:00pm, and at 8:00pm. At that point, the process server completes nail and mail service by affixing a copy of the summons and complaint on the door and mailing a copy to Pete in a properly prepared envelope.

Pete claims that he was improperly served and moves to dismiss. The judge will

- A. grant the motion because "nail and mail" service requires a court order.
- B. grant the motion because the process server did not exercise due diligence to serve Pete.
- C. deny the motion because the process server did exercise due diligence.
- D. deny the motion because it was impractical to serve Pete in any other way.
- E. None of the above.

Criminal Law:

78. If no specific mental state is set forth in a criminal statute, then the mental state imposed by the statute is "general intent."

79. To make a "Terry Stop," the officer must have probable cause.

80. If a person is predisposed to committing a crime, and the person commits the crime at the suggestion of an undercover police officer, the entrapment defense will succeed.

81. Under the Model Penal Code, a person acts "negligently" when he consciously disregards the welfare of others and creates a significant and unjustifiable risk of harm.

82. Jennia is driving down the road. She decides that she wants to listen to a CD. She opens her glove box and starts looking in it to find a CD she feels like listening to. While she is doing this, she runs down a pedestrian.

Under the Model Penal Code, Jennia has _____ run down the pedestrian.

- A. purposely
- B. knowingly
- C. recklessly
- D. negligently
- E. None of the above.

83. Fred is a bartender at "Shots." JoJo is 19 years old. He walks into Shots and orders a beer. Fred does not ask for identification and serves JoJo a beer. As it turns out, JoJo was working for the police. The police come in and arrest Fred and the bar owner Sally.

Under these facts, Sally is

- A. vicariously liable for Fred's actions.
- B. not vicariously liable for Fred's action because of the "entrapment" defense.
- C. not vicariously liable for Fred's action because he was acting outside the scope of his employment.
- D. not vicariously liable for Fred's action because Fred is strictly liable for his own actions.

84. New York follows the *Irresistible Impulse Test* for the affirmative defense of insanity.
85. An arrest warrant is issued when the judge receives a written complaint containing the name or description of the accused, which complaint must be supported by affidavit(s) containing a description of the offense and surrounding circumstances.
86. An “arrest” is considered a “seizure” of a person.
87. A “custodial investigation” occurs only when a suspect is in the police station being questioned.
88. A complaint supporting an arrest warrant can contain information which the complainant knows by first-hand knowledge and hearsay information.
89. Officer Malfoy beats Hargid with a rubber hose until he confesses to opening the secret chamber. Hargid's confession cannot be used against him pursuant to the Exclusionary Rule.
90. Officer Choplick walks up to several youths on the street who are standing around a duffle bag. The officer asks who the bag belongs to. All of the kids say that the bag doesn't belong to them. The officer looks in the bag and finds five ounces of marihuana.

At the trial of the kids for possession of pot, the prosecution wants to introduce the duffle bag and the pot into evidence. The defense objects. The judge will

- A. order the bag excluded from evidence.
- B. allow the bag in because of the “plain view” exception.
- C. allow the bag in because of the “abandoned property” exception.
- D. allow the bag in because of the “hot pursuit” exception.
- E. allow the bag in because defendants consented.

91. Detective Pierce suspects that Tony (“the Dog”) Soprano is involved in selling stolen televisions. The detective pulls Tony's car over. The detective walks over to the car, and Tony rolls down the window. Immediately, the detective smells marihuana and sees several, empty beer cans on the floor. The detective asks Tony to step out of the car and arrests him.

The detective searches the passenger compartment of the car and finds an ounce of marihuana. The car is then towed to the station. At the station, an inventory of the car is done. When the trunk is opened, the police discover several stolen television sets.

At the trial, the prosecution wants to introduce both the marihuana and the television sets into evidence. The defense objects. The judge will

- A. order the evidence excluded from trial.
- B. allow the evidence in because of the “plain view” exception.
- C. allow the marihuana in because the officer can search the entire passenger compartment of the car as an incident to the lawful arrest.
- D. allow the marihuana in because the officer can search the entire passenger compartment of the car as an incident to the lawful arrest, but will exclude the televisions.

E. allow the marihuana in because the officer can search the entire passenger compartment of the car as an incident to the lawful arrest, and allow the television in pursuant to an inventory search.

92. For a school principal to search a student, he must demonstrate probable cause to believe the student violated a school rule.

93. In *N.J. v. T.L.O.*, the Supreme Court balanced the need to conduct a search of a student against the student's right of privacy.

94. The evidentiary standard of “proof beyond a reasonable doubt” means that there must be 100% certainty in the defendant's guilt.

95. A defense attorney need not be present at a post-indictment line-up.

96. If a defendant charged with a felony, then for speedy trial concerns, the People must be ready for trial in six (6) months.

Contracts:

97. In a unilateral contract, the offer calls for acceptance by way of return promise.

98. A bilateral contract consists of a:

- A. promise for an act.
- B. promise for refraining from acting.
- C. promise for a promise.
- D. promise to contract.

99. An illegal contract is voidable.

100. A unilateral contract is a contract you have with yourself.

101. Pete says to Jack, “I’ll sell you my watch for \$150.” Jack says, “I’ll give you \$100 for it.” Pete's offer was

- A. still valid since it was never revoked.
- B. revoked as a matter of law.
- C. revoked due to lapse of time.
- D. revoked due to rejection.
- E. revoked due to counteroffer.

102. A quasi contract is one which is implied in fact.

103. The offer empowers the offeree to accept the offer and create a contract.

104. Wally says to Tim, “Would you consider buying my car for \$10,000.” Wally has made a valid offer.

105. Alex says to Sharon, "I'll sell you my car for \$1,000." Jim hears the offer and says, "I accept." A valid contract has been formed.
106. If a person is under undue influence when a contract is made, the presumption of assent may be overcome.
107. To prove "duress," a party must demonstrate a confidential relationship that is used to create an unfair bargain.
108. Today when courts are faced with a question of whether a contract is unilateral or bilateral, the presumption is towards a unilateral contract.
109. In most states, a mistake of law may be raised as an affirmative defense to rescind a contract.
110. A contract made by a minor is void.
111. A counteroffer has the effect of terminating the original offer.
112. The offeree generally has the privilege of rejecting or simply not responding to the offer.
113. Acceptance is one way to terminate an offer.

Answers:

1. F– That’s “*Stare decisis*”
2. F–sure it is.
3. F–The court held that the right to die was implicit from it’s prior decisions.
4. F–that is more the definition of “natural law.”
5. T
6. F–The 14th Amendment prohibits “state governments” from acting. The Federal Constitution prohibits the Federal government from acting in certain ways.
7. F
8. T
9. F–This is the “intermediate scrutiny” standard.
10. F–This is the “rational relationship” standard.
11. T–That’s the standard.
12. F–That’s not procedural due process. What is it?
13. F–In the initial rulings, the Court struck down many state laws.
14. F–Initially, the high Court held the Bill of Rights didn’t apply to the states. It was through the process of “selective incorporation” that the court started incorporating the Bill of Rights.
15. F–Think back to the slide we saw on this. It was one of the few rights not incorporated.
16. F–It’s not selective incorporation. It’s?
17. T
18. F
19. F–An express contract can be oral or in writing.
20. T
21. F
22. T–The operative word here is “not.”
23. A– Strict scrutiny applies if you are regulating race.
24. B
25. E
26. B
27. Substantive law
28. Informed consent or the right of privacy.
29. Offer, acceptance & consideration
30. F–The evidence is the exact opposite. As pointed out in the *Gregg* case, both the 8th and 14th amendments speak in terms of depriving a person of “life.” Yet when both these amendments were drafted, the death penalty was in effect in all the states.
31. F–Even though the dissenters in *Gregg* didn’t like this idea, the majority of the court sanctioned this idea.
32. F–The Supreme Court tells us that the evidence here is inconclusive.
33. T
34. F
35. F–The standard is “may,” not must.
36. T
37. state constitutionalism
38. T
39. T–There is no jury in a bench trial.
40. F–It is the other way around. Subject matter jurisdiction can *never* be waived. Personal jurisdiction can be waived. *See In Matter of Rice*
41. T

42. F–It’s \$75,000.
43. T
44. T–That is what the “supremacy clause” does.
45. F–The subject matter jurisdiction of the federal courts is original, limited jurisdiction.
46. F
47. T
48. T–Sure, this is one of the ways of “implicitly” consenting to personal jurisdiction.
49. T–Right, this is another form of implicit consent.
50. T–Right, the answer and petition for removal will not help. Jurisdiction has to be on the face of the complaint.
51. F–How many district courts are there?
52. F–That is the “stream of consumption” argument.
53. T–The court must have the power to hear the case prior to determining any geographic considerations of venue.
54. F–There is no witness testimony in an appeal.
55. F–How long are they appointed for?
56. F–That is the effect of an *in rem* judgment.
57. F–That would be a “general jurisdiction” court, not *limited*.
58. E–That’s the judge’s power.
59. C–What is the Federal rule?
60. A–This is a form of implied consent.
61. B–That is the result of the *Zippo* holding.
62. A–This is a form of implied consent.
63. E–How many days?
64. F–The standard for nail & mail service is due diligence.
65. F
66. F
67. F
68. T
69. T
70. F–That is logical relevancy.
71. T
72. T
73. prejudicial/probative
74. peremptory
75. F
76. voir dire
77. B–Going there all on the same day is not going to demonstrate due diligence.
78. F
79. F–What do you need?
80. F–The defense will not work if you are predisposed.
81. F–That is “recklessly” under the Code.
82. C–The evidence here shows that Jennia has “consciously,” rather than “unconsciously,” taken here eyes off the road. Under the Code, that is reckless.
83. A–This falls into a standard vicarious liability fact pattern. Nothing here demonstrates that Fred was acting outside the scope of his authority. F–We follow the Model Penal Code.
84. T
85. T
86. T

87. F—A custodial investigation can happen as soon a “reasonable person” would believe that they are no longer free to leave from a police stop.
88. T—We saw over the course of several cases that police can relay on hearsay information, especially when it is independently verified by the officer.
89. T
90. C—Sure, this is one of the exceptions talked about.
91. E—Sure, these are two of the exceptions talked about.
92. F—*See NJ v. T.L.O.*
93. T
94. F—Go back and look at the standard given to you in the slide.
95. F
96. T
97. F—That would be a bilateral contract.
98. C
99. F—Like heck: it’s void.
100. F
101. E—That's one of the ways to revoke.
102. F—That is an implied contract.
103. T
104. F—The offer here would not be definite enough.
105. F—The privilege to accept only belongs to the offeree, Sharon.
106. T
107. F—Those aren't the elements to duress. What defense is this?
108. F—What is the presumption to?
109. F—The majority view does not allow this. What about New York?
110. F—What is it?
111. T
112. T
113. T
114. T