

Keir Digest

with

Assessment Questions for

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of Life Insurance, 9th Ed.

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Chapter 1

Fundamental Legal Concepts

Learning Objectives

1. Legislative law consists of the general rules enacted by an authorized body for a nation or state. The following forms of legislative law are listed in descending order of their political authority:

- The Constitution of the U.S. is the highest law of the land, and all other laws are subordinated to it.
- Treaties, created by the authority of the Constitution, take precedence over any other laws that conflict with them.
- Federal statutes, created by the authority of the Constitution, take precedence over any other laws that may conflict with them.

The legal powers of the federal government are those specifically delegated to it under the Constitution. Federal laws are valid only if they are authorized by the Constitution.

- Federal executive orders and administrative regulations that are within their proper Constitutional scope take precedence over all state laws.
- A state constitution is the highest law of the state, subject to the Supremacy Clause of the U.S. Constitution, which makes state law subordinate to federal laws on the same matter within the proper scope of federal laws.

State statutes may cover any matters not delegated by the states to the federal government under the U.S. Constitution, as long as they are not forbidden by the state constitution.

- All powers not delegated to the federal government are retained by the states. (The Tenth Amendment reserves these powers to the states or the people.) Theoretically, this means that the states are sovereign in any matter upon which the U.S. Constitution is silent. State laws, therefore, should be valid if they cover matters not mentioned in the Constitution, or if they are not in conflict with the Constitution, as long as the state is not limited in making such laws by its own constitution.
- State administrative regulations are empowered by state statutes and subordinate to them. They are limited by the scope of the administrative body's statutory responsibilities.
- Local ordinances are empowered by delegation from the state to local governments. They are limited in scope by the jurisdiction of the local authority.

State administrative agencies have some of the characteristics of all three branches of government – the judicial, the executive, and the legislative:

- Administrative agencies exercise judicial power when they decide disputes, and the decisions they render when performing this function form the basis for administrative case law.
- Administrative agencies exercise executive powers when they enforce the regulations they have promulgated and when they prosecute persons or companies that are in violation of administrative regulations.

- Administrative agencies exercise legislative power when they issue rules and regulations that have the force of law for the persons or companies subject to them.

The courts and the legislative branch:

- Courts are created by legislatures, and their jurisdiction is limited to the geographical area that the legislature covers. Courts are created to deal with specific subjects, and they have no power outside of those subjects. If one or more parties to a suit is not subject to the laws of the jurisdiction, the court could lack power to enforce a decision on that party.
- A court is created by the legislature either as a court of original jurisdiction, which hears cases the first time they are tried, or as an appellate court, which has jurisdiction only in cases that have been tried by a lower court.
- Statutory construction refers to the duty of the court to apply the law as written by the legislature. If the law itself is not clear, or its application to the case at hand is not obvious, the court must determine what the intent of the legislature was in passing the law and how the law applies to the case before the court.

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1. In a general sense, law can be defined as: (GC 1.2)
 - (A) The uniform rules and regulations common to all states
 - (B) The enactment of statutes by legislators
 - (C) The rules and regulations that have survived since the earliest of times
 - (D) The collection of enforceable rules recognized by a community as binding

2. All of the following statements concerning legislative law are correct, EXCEPT: (GC 1.2)
 - (A) Legislative law is made by the legal authority of the jurisdiction, such as the U.S. Congress or a city council.
 - (B) Legislative law is generally quite certain and dependable.
 - (C) Legislative law is found in the reports of judicial and administrative decisions.
 - (D) Legislative law consists of rules applicable to citizens of the relevant jurisdiction.

3. All of the following are sources of law in the U.S., EXCEPT: (GC 1.2-1.3)
 - (A) The Constitutions of the U.S. and of the states
 - (B) The rules and regulations of administrative agencies
 - (C) The Justinian Code, as amended
 - (D) Common law

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4. All of the following are functions of the U.S. Constitution, EXCEPT:

(GC 1.3-1.4)

- (A) To declare independence from England
- (B) To divide the structure of the federal government into three branches
- (C) To describe the powers of each branch of the federal government
- (D) To set forth basic human rights and to safeguard and guarantee these rights

5. Any treaty entered into between the federal government and a foreign government:

(GC 1.5)

- (A) Is subject to ratification by a majority of the states
- (B) Supersedes state constitutions and statutes if it conflicts with them
- (C) Takes precedence over state statutes but cannot be enforceable if it is in conflict with state constitutions
- (D) Eliminates all actionable disputes between the citizens of that government and U.S. citizens

6. All of the following statements concerning the authority of legislative laws are correct, EXCEPT:

(GC 1.5-1.6)

- (A) The U.S. Constitution is the highest law of the land, and all other laws are subordinated to it.
- (B) Federal statutes, created by the authority of the U.S. Constitution, take precedence over any other laws that may conflict with them.
- (C) Federal administrative regulations are subject to the supremacy clause and are subordinate to state Supreme Court rulings.
- (D) State statutes may cover matters not delegated by the states to the federal government under the U.S. Constitution as long as they are not forbidden by the state constitution.

1. D is the answer. Laws can be binding and enforceable even though they may differ in different states. Law includes more than statutes; case law is binding as well. Not only old rules are binding and enforceable; legislators and judges continually make new laws.

2. C is the answer. Legislative law is found in statute books or codes.

3. C is the answer. In the U.S., the sources of law include the U.S. Constitution, state constitutions, statutory law, common law, and rules and regulations of administrative agencies. The Justinian Code is the code of laws from ancient Rome, not a source of law in the U.S.

4. A is the answer. The U.S. Constitution established a federal government divided into three branches; it described the powers of the government and its branches; and it reserved certain powers to the states and to the people. The Constitution also contains a Bill of Rights that safeguards certain basic human rights. The Constitution did not declare independence from England; this was accomplished in the Declaration of Independence.

5. B is the answer. Treaties rank just after the U.S. Constitution in authority. They are not subject to ratification by the states since the U.S. Constitution gives the power to make treaties to the federal government. Treaties can control a state's recognition of an alien's rights, but they cannot prevent an alien from becoming involved in a dispute with a citizen.

6. C is the answer. Federal executive orders and administrative regulations that are within their proper Constitutional scope take precedence over all state laws.