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Chapter 02: The Sources of Criminal Procedure
Test Bank

MULTIPLE CHOICE

1. Which of the following is the primary source of criminal procedure?
   A) The U.S. Constitution
   B) Statutes passed by the U.S. Congress
   C) Judicial rulings
   D) Common law

   ANS: A PTS: 1 OBJ: 2.1

2. Which of the following was not addressed in the original U.S. Constitution (excluding the Bill of Rights)?
   A) Protection against *ex post facto* laws
   B) Protection against excessive bail
   C) The right to *habeas corpus*
   D) The right to a trial by jury

   ANS: B PTS: 1 OBJ: 2.1

3. Which of the following is the only crime mentioned by name in the U.S. Constitution?
   A) Espionage
   B) Treason
   C) Sedition
   D) Forgery

   ANS: B PTS: 1 OBJ: 2.1

4. Which of the following states that the U.S. Constitution and laws passed by the U.S. Congress eclipse state constitutions and state laws?
   A) The First Amendment
   B) The Supremacy Clause
   C) The Federalist Article
   D) The Jefferson Addendum

   ANS: B PTS: 1 OBJ: 2.1

5. As a general rule, state constitutions _____.
   A) mirror the U.S. Constitution and grant additional rights
   B) mirror the U.S. Constitution and remove certain rights
   C) mirror the U.S. Constitution almost verbatim
   D) have nothing to do with the U.S. Constitution

   ANS: A PTS: 1 OBJ: 2.1

6. Which of the following is not a set of rules or guidelines for criminal procedure?
   A) The *Model Code of Pre-Arraignment Procedure*
   B) The United States Attorney's *Manual of the Department of Justice*
   C) The *Standards for Criminal Justice*

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D) The Model Penal Code

ANS: D PTS: 1 OBJ: 2.1

7. In which constitutional amendment is the Due Process Clause?
A) First
B) Ninth
C) Fourteenth
D) Seventeenth

ANS: C PTS: 1 OBJ: 2.1

8. Which of the following events in U.S. history served as a major turning point in the application of the Bill of Rights to the states?
A) The Boston Massacre
B) The Civil War
C) The Great Depression
D) The Civil Rights Movement

ANS: B PTS: 1 OBJ: 2.1

9. A person who believes in the federalist notion of states' rights would most likely support which of the following approaches of incorporation?
A) Fundamental fairness
B) Fundamental principles
C) Total incorporation
D) Total incorporation plus

ANS: A PTS: 1 OBJ: 2.7

10. A person who favors a strong central government yet supports only those rights clearly written in the Bill of Rights would most likely support which of the following approaches of incorporation?
A) Fundamental fairness
B) Fundamental principles
C) Total incorporation
D) Total incorporation plus

ANS: C PTS: 1 OBJ: 2.7

11. A person who favors a strong central government and who believes that government must extend as many rights and privileges as possible would most likely support which of the following approaches of incorporation?
A) Fundamental fairness
B) Fundamental principles
C) Total incorporation
D) Total incorporation plus

ANS: D PTS: 1 OBJ: 2.7

12. Which approach to incorporation focuses on the concept of "ordered liberty"?
A) Fundamental fairness
B) Total incorporation

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C) Total incorporation plus
D) Selective incorporation

ANS: A PTS: 1 OBJ: 2.7

13. Which of the approaches of incorporation grants the states the most flexibility?
A) Fundamental fairness
B) Total incorporation
C) Total incorporation plus
D) Selective incorporation

ANS: A PTS: 1 OBJ: 2.7

14. The fundamental fairness approach to incorporation emphasizes that rights must be ensured that _____.
A) provide "equality for all"
B) preserve "liberty and fairness"
C) "level the playing field"
D) support the "infallibility of justice"

ANS: B PTS: 1 OBJ: 2.7

15. According to the ruling in *Twining v. New Jersey*, which reinforced the fundamental fairness approach to incorporation, a right must be _____ to be forced upon the states.
A) "an immutable principle of justice"
B) "a God-given right"
C) "crucial to prevent deadly peril"
D) "a fundamental standard of procedure"

ANS: A PTS: 1 OBJ: 2.7

16. The test established in *Rochin v. California* is known as the _____ test.
A) "constitutional violation"
B) "violation-of-ethics"
C) "shocks-the-conscience"
D) "sum of the parts"

ANS: C PTS: 1 OBJ: 2.7

17. During which decade did the U.S. Supreme Court decidedly shift from the fundamental fairness doctrine to total incorporation?
A) 1860s
B) 1910s
C) 1940s
D) 1960s

ANS: D PTS: 1 OBJ: 2.7

18. Which of the following is most likely to be a criticism leveled at the fundamental fairness doctrine by one who is supportive of total incorporation?
A) Fundamental fairness is unfair to ethnic minorities.
B) Fundamental fairness is unfair to women.
C) Fundamental fairness is too specific.

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D) Fundamental fairness is too general.

ANS: D PTS: 1 OBJ: 2.7

19. Those supporting extending the Bill or Rights to the states with additional rights, such as health care, are supporting which approach to incorporation?
A) Fundamental fairness
B) Total incorporation
C) Total incorporation plus
D) Selective incorporation

ANS: C PTS: 1 OBJ: 2.7

20. Which of the approaches to incorporation is being used in the United States today?
A) Fundamental fairness
B) Total incorporation
C) Total incorporation plus
D) Selective incorporation

ANS: D PTS: 1 OBJ: 2.7

21. Justice Douglas's term "coextensive coverage" means that _____.
A) all of the rights in the Bill of Rights apply to the states
B) incorporated amendments apply equally to the state and federal governments
C) some amendments inherently apply to both state and federal governments
D) incorporated rights apply to all citizens regardless of race, age, or gender

ANS: B PTS: 1 OBJ: 2.7

22. Each of the following amendments have been incorporated at least partially except which?
A) Second
B) Third
C) Sixth
D) Eighth

ANS: B PTS: 1 OBJ: 2.7

23. The assumption on the part of the courts that prosecutors will just good "judgment and common sense" is known as the _____.
A) Equal Protection Clause
B) presumption of regularity
C) right of discretion
D) principle of balance

ANS: B PTS: 1 OBJ: 2.5

24. To settle concerns over how the courts deal with past cases once a new rule has been decided by the U.S. Supreme Court, the courts apply the _____.
A) *ex post facto* rule
B) previous docket rule
C) retroactivity rule
D) former cases doctrine

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ANS: C PTS: 1 OBJ: 2.2

25. Striving for both efficiency and accuracy, which are the two competing models of criminal procedure?
A) Crime control and due process
B) Federalism and Jeffersonianism
C) Criminal courts and civil councils
D) Bill of Rights and states' rights

ANS: A PTS: 1 OBJ: 2.5

26. Which of the following is not a provision addressing criminal procedure that can be found in the constitution?
A) *Habeas corpus*
B) Treason
C) Jury trials
D) Stop and frisk

ANS: D PTS: 1 OBJ: 2.1

27. In which case did a Supreme Court Justice make this famous proclamation: "an act that is repugnant to the Constitution is void" and that "[i]t is emphatically the province and duty of the judicial department to say what the law is"?
A) Marbury v. Madison
B) Madison v. United States
C) Marshall v. Madison
D) Brown v. Board of Education

ANS: A PTS: 1 OBJ: 2.2

28. Why was the Fourteenth Amendment added to the constitution?
A) To establish the separate-but-equal policy in the United States
B) To establish that federal law took precedence over state law
C) To guarantee equal treatment and opportunity for African Americans
D) To guarantee women the right to vote

ANS: C PTS: 1 OBJ: 2.6

29. In order for a defendant to make a successful claim of selective prosecution, what must he demonstrate?
A) Discriminatory intent and actual malice by a preponderance of the evidence
B) Clear and convincing evidence of actual malice
C) Some evidence of discriminatory impact
D) Clear and convincing evidence of a discriminatory impact and discriminatory intent

ANS: D PTS: 1 OBJ: 2.6

30. The belief that the Supreme Court should decide on a case-by-case basis whether rights are fundamental to the concept of ordered liberty and therefore apply to the states is reflected in which of the following approaches to incorporation?
A) Fundamental fairness
B) Total incorporation

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C) Total incorporation plus
D) Selective incorporation

ANS: A PTS: 1 OBJ: 2.7

TRUE/FALSE

31. A law that criminalizes some act that was legal when it was committed is known as a *habeas corpus* law.

ANS: F PTS: 1 OBJ: 2.2

32. The landmark case of *Marbury v. Madison* (1803) established the supremacy of the U.S. Constitution over state constitutions.

ANS: F PTS: 1 OBJ: 2.3

33. About one third of the states have laws giving detailed procedural instructions for essentially every step of the criminal justice process.

ANS: T PTS: 1 OBJ: 2.4

34. The process by which the Due Process Clause extended various constitutional rights to the states is known as federalization.

ANS: F PTS: 1 OBJ: 2.3

35. The Fourteenth Amendment was drafted and passed primarily to grant citizenship and protection to former slaves.

ANS: T PTS: 1 OBJ: 2.6

36. Proponents of total incorporation emphasize the fundamental nature of the rights granted in the U.S. Constitution and the Bill of Rights.

ANS: T PTS: 1 OBJ: 2.7

37. According to the fundamental fairness approach to incorporation, the Due Process Clause protects certain rights of citizens because they are in the Bill of Rights.

ANS: F PTS: 1 OBJ: 2.7

38. *Powell v. Alabama*, also known as the Scottsboro Boys case, was a major turning point in the change of focus from fundamental fairness to total incorporation.

ANS: F PTS: 1 OBJ: 2.7

39. The U.S. Supreme Court traditionally acted in a very narrow, limited capacity so as to prevent itself from becoming or being seen as a "super legislator."

ANS: T PTS: 1 OBJ: 2.2

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40. Those supportive of total incorporation plus want the entire Bill of Rights applied to the states in addition to other rights not mentioned in the Constitution or the amendments.

ANS: T PTS: 1 OBJ: 2.7

41. The U.S. currently operates under the incorporation doctrine of total incorporation plus.

ANS: F PTS: 1 OBJ: 2.7

42. The Fifth Amendment has been only partially incorporated to the states.

ANS: T PTS: 1 OBJ: 2.7

43. A claim of discriminatory prosecution is known as "selective prosecution."

ANS: T PTS: 1 OBJ: 2.3

44. For the courts to classify individuals based on religion, they must apply the concept of "absolute scrutiny."

ANS: F PTS: 1 OBJ: 2.1

45. As a general rule, a new U.S. Supreme Court decision applies only to those individuals whose cases are initiated after the rule has been passed.

ANS: F PTS: 1 OBJ: 2.2

COMPLETION

46. The first 10 amendments to the U.S. Constitution are known as the _____.

ANS: Bill of Rights

PTS: 1 OBJ: 2.1

47. "Freestanding due process" is another term for which approach to incorporation?

ANS: fundamental fairness

PTS: 1 OBJ: 2.7

48. Those who emphasize those rights that are "essential to liberty" are typically supportive of which approach to incorporation?

ANS: selective incorporation

PTS: 1 OBJ: 2.7

49. Equal protection under the law is not found in the original U.S. Constitution due in large part to what common feature of life at the time?

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ANS: slavery

PTS: 1 OBJ: 2.1

50. Courts assume prosecutors use good "judgment and common sense," following the presumption of _____.

ANS: regularity

PTS: 1 OBJ: 2.5

ESSAY

51. Explain the basic arguments for those on both sides of debate over the nationalization/constitutionalization of criminal procedure. Then pick one side of the argument and support it.

ANS:
Students should mention some advantages and disadvantages to having a uniform system.

PTS: 1 OBJ: 2.5

52. Explain the primary differences between the concepts of fundamental fairness and total incorporation. Give some of the pros and cons of each system.

ANS:
The fundamental fairness approach contends that the Due Process Clause left states free to conduct criminal trials so long as the procedures are consistent with fundamental fairness. Selective incorporation argues that only those provisions of the Bill of Rights that are essential to liberty are incorporated into the Fourteenth Amendment.

PTS: 1 OBJ: 2.7

53. Explain the concern of retroactivity as it applies to Supreme Court rulings. What is the rule for retroactivity and why is it so important to the functioning of the court system?

ANS:
The new rule applies to those in the trial and appeals stages of their case but not to those that have had a final judgment.

PTS: 1 OBJ: 2.2

54. How can the crime control model of criminal procedure be summarized?

ANS:
Purpose, informal procedures, determination of guilt.

PTS: 1 OBJ: 2.5

55. How can the due process model of criminal procedure be summarized?

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ANS:
Purpose, formal procedures, determination of guilt.

PTS: 1 OBJ: 2.5

56. Name the four factors Tyler identifies that are crucial in determining whether people perceive that fair procedures are being employed in the criminal justice system.

ANS:
Voice, neutrality, respect, and trust.

PTS: 1 OBJ: 2.5

57. Why is equal protection of the law important?

ANS:
It is a fundamental principle that all people should be treated equally, regardless of race, religion, or ethnicity.

PTS: 1 OBJ: 2.7

58. What is the presumption of regularity?

ANS:
Prosecutors are expected to use "judgment and common sense" in filing criminal charges, and courts will not second-guess a prosecutor's decision.

PTS: 1 OBJ: 2.5

59. Explain the three approaches to incorporation of the Bill of Rights.

ANS:
Students should mention selective incorporation, total incorporation, total incorporation plus, and fundamental fairness.

PTS: 1 OBJ: 2.7

60. What is meant by the constitutionalization of criminal procedure?

ANS:
The development of a single standard that applies to the federal government as well as to the states.

PTS: 1 OBJ: 2.1

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