

SIMULATION EXAM 5 (100 QUESTIONS)

American Legal System & Sources of Law (Questions 1–8)

1. A researcher determines that a constitutional provision, a federal statute, and a federal regulation all address the same subject but reach different conclusions. Which authority controls?
 - A. The federal statute
 - B. The federal regulation
 - C. The constitutional provision
 - D. Whichever authority was enacted most recently

2. The Tenth Amendment reserves powers not delegated to the federal government to:
 - A. The judicial branch
 - B. The states and the people
 - C. Federal administrative agencies
 - D. The executive branch

3. Which of the following best describes a court of general jurisdiction?
 - A. A court limited to hearing only bankruptcy cases
 - B. A court that hears only appeals from lower courts
 - C. A court that hears only small claims under a specific dollar amount

D. A court authorized to hear a broad range of civil and criminal matters

4. The doctrine of federal preemption applies when:

A. A valid federal law conflicts with state law on a matter within federal authority

B. A state court overrules a federal district court decision

C. Two state statutes from different states contradict each other

D. An administrative agency disagrees with a court interpretation

5. A decision from the Third Circuit Court of Appeals is persuasive but not binding on:

A. Federal district courts within the Third Circuit

B. Federal district courts within the Ninth Circuit

C. The parties in the Third Circuit case

D. The Third Circuit itself in future cases involving the same issue

6. Which of the following describes a situation where both federal and state courts have authority to hear a case?

A. Exclusive federal jurisdiction

B. Advisory jurisdiction

C. Appellate jurisdiction

D. Concurrent jurisdiction

7. An administrative agency's authority to conduct hearings and issue decisions resolving disputes under its regulations is called:

A. Legislative authority

- B. Judicial review
- C. Quasi-judicial authority
- D. Constitutional authority

8. The common law system in the United States is primarily based on:

- A. Judge-made law developed through court decisions over time
- B. Comprehensive statutory codes enacted by legislatures
- C. Religious legal traditions
- D. Executive orders issued by the President

Primary Authority Research (Questions 9–23)

9. A paralegal is researching a federal employment discrimination issue. The primary statute to research would most likely be found in which title of the United States Code?

- A. Title 11
- B. Title 42
- C. Title 26
- D. Title 50

10. When a court interprets an ambiguous statute by examining what result would be absurd or unreasonable, the court is applying:

- A. The plain meaning rule
- B. The rule of lenity
- C. Legislative history analysis
- D. The absurdity doctrine

11. A researcher finds a case in the Federal Reporter, Fourth Series. This case was decided by:

- A. A United States District Court
- B. The United States Supreme Court
- C. A United States Court of Appeals
- D. A state supreme court

12. The Code of Federal Regulations is organized into how many titles?

- A. 50
- B. 54
- C. 94
- D. 13

13. A paralegal finds a relevant case and wants to locate the specific portion of the opinion discussing the duty of care. The most efficient way to navigate the opinion is to:

- A. Read the entire opinion from beginning to end
- B. Use the bracketed headnote numbers to locate the relevant discussion
- C. Read only the dissenting opinion
- D. Check only the disposition

14. Which tool would most effectively help a researcher find cases interpreting a specific provision of the Internal Revenue Code?

- A. A legal dictionary
- B. A form book
- C. The Federal Register

D. Annotations in the U.S.C.A. or U.S.C.S. following the specific code section

15. An executive order differs from an administrative regulation in that an executive order:

- A. Goes through the notice-and-comment rulemaking process
- B. Is enacted by Congress
- C. Is issued directly by the President to manage executive branch operations
- D. Is published only in the Code of Federal Regulations

16. The canon of construction *noscitur a sociis* means:

- A. A word is known by the company it keeps and should be interpreted in context with surrounding words
- B. Criminal statutes should be interpreted narrowly
- C. Specific provisions prevail over general ones
- D. Courts should always defer to agency interpretations

17. A researcher needs to trace the complete procedural history of a federal case through the appellate process. Which citator feature provides this information?

- A. Citing References
- B. Table of Authorities
- C. Headnote Analysis
- D. Appellate History

18. The United States Reports is the official reporter for:

- A. Federal district court opinions

- B. United States Supreme Court opinions
- C. State supreme court opinions
- D. Federal administrative agency decisions

19. When a federal statute authorizes an agency to create rules but the agency has not yet done so, the governing authority on the specific subject is:

- A. The statute itself, which remains the controlling authority until regulations are promulgated
- B. The agency's informal guidance only
- C. No legal authority exists on the subject
- D. The legislative history of the statute replaces the need for regulations

20. A paralegal discovers that a state has both an official reporter and an unofficial regional reporter. When citing the case in a document filed in that state's courts, the citation should:

- A. Cite only the regional reporter
- B. Cite only the official reporter
- C. Cite neither reporter and use only an electronic database citation
- D. Follow the state's citation rules, which may require one or both reporters

21. The topic analysis approach to using a digest involves:

- A. Searching for cases by party name
- B. Using keyword searches on electronic databases
- C. Going directly to a known topic and browsing its subtopics and key numbers
- D. Reading secondary sources to find cited cases

22. Which of the following accurately describes the difference between mandatory and persuasive authority?

- A. Mandatory authority is always from a higher court; persuasive authority is always from a lower court
- B. Mandatory authority is law a court must follow; persuasive authority is law a court may consider but is not required to follow
- C. There is no difference; all authority is equally binding
- D. Mandatory authority includes only statutes; persuasive authority includes only cases

23. A researcher wants to find the exact text of a bill as it was originally introduced in Congress before any amendments. This information is available through:

- A. Congressional materials on GovInfo or Congress.gov
- B. The Code of Federal Regulations
- C. The Federal Supplement
- D. A legal encyclopedia

Secondary Authority Research (Questions 24–33)

24. A paralegal needs to compare how all fifty states have addressed the enforceability of prenuptial agreements. The most efficient secondary source is:

- A. A single state's legal encyclopedia
- B. A legal dictionary
- C. A practice guide for one jurisdiction
- D. An ALR annotation surveying the issue across jurisdictions

25. Which edition of the Restatements represents the most current formulation for topics it covers?

- A. The original Restatements from the 1930s
- B. The Restatement (Second) series
- C. The Restatement (Third) series
- D. The Restatement (Draft) series

26. A researcher is analyzing a landlord-tenant dispute and needs practical guidance including checklists and forms for the relevant jurisdiction. The best source is:

- A. A law review article on property theory
- B. A jurisdiction-specific practice guide
- C. An ALR annotation
- D. The Restatement of Property

27. Law review footnotes are particularly valuable in legal research because they:

- A. Serve as comprehensive bibliographies citing primary and secondary authorities on the topic
- B. Are binding on courts in the jurisdiction where the law review is published
- C. Replace the need for independent primary authority research
- D. Contain the author's personal opinions without citations

28. The reporter's notes in a Restatement section provide:

- A. The black letter rule statement
- B. Hypothetical examples applying the rule
- C. Editorial commentary from the publisher
- D. Citations to cases and authorities supporting the rule

29. A Restatement provision that has been rejected by a majority of jurisdictions:

- A. Is still binding in all jurisdictions
- B. Cannot be cited in any legal document
- C. Still carries persuasive value but is weakened by the widespread rejection
- D. Automatically becomes statutory law

30. Ballentine's Law Dictionary is:

- A. The second most widely used legal dictionary after Black's Law Dictionary
- B. A compilation of model documents
- C. A federal administrative regulation
- D. A citation manual

31. A researcher wants to find secondary source commentary specifically about how courts have applied the parol evidence rule. The most comprehensive and focused source would be:

- A. A legal dictionary entry
- B. An ALR annotation on the parol evidence rule
- C. A state bar newsletter
- D. A general legal encyclopedia index

32. Continuing legal education (CLE) materials are classified as:

- A. Primary authority
- B. Binding secondary sources
- C. Administrative regulations

D. Secondary sources with limited persuasive value

33. Which secondary source would provide the most authoritative analysis of the development of strict liability in tort law?

A. A legal dictionary

B. A form book

C. A leading treatise such as Prosser and Keeton on Torts

D. A state bar journal article

Digital Legal Research & Technology (Questions 34–43)

34. A researcher needs to determine whether a particular legal argument has been successful before a specific judge. Which tool provides this data?

A. Litigation analytics on Westlaw or Lexis+ Context

B. A legal dictionary

C. The Federal Register

D. A print digest

35. Which Boolean connector would a researcher use to find documents containing either "landlord" or "lessor"?

A. AND

B. OR

C. NOT

D. /s

36. A paralegal needs to access oral argument recordings from federal appellate courts at no cost. Which resource provides this?

- A. PACER
- B. GovInfo
- C. Westlaw
- D. CourtListener

37. On Westlaw, filtering search results by jurisdiction, date range, and court level is performed after the initial search to:

- A. Increase the total number of results
- B. Replace the need for search terms
- C. Narrow results to the most relevant authorities
- D. Remove all secondary sources from the results

38. A researcher discovers that Shepard's and KeyCite assign different signals to the same case. The best approach is to:

- A. Ignore both signals and assume the case is good law
- B. Read the citing references on both platforms to understand the nature and scope of the treatment
- C. File a complaint with both platform providers
- D. Use only one platform and disregard the other entirely

39. Which free legal research resource provides the official authenticated version of the Federal Register?

- A. GovInfo at govinfo.gov
- B. Google Scholar

- C. Caselaw Access Project
- D. CourtListener

40. The primary advantage of Boolean searching over natural language searching is:

- A. It requires no knowledge of the legal issue
- B. It always returns fewer results
- C. It is available only on free platforms
- D. It gives the researcher precise control over search terms and their relationships

41. Bloomberg Law's Litigation Analytics tool provides data on:

- A. The text of proposed federal regulations
- B. Historical stock prices
- C. Case outcomes, judge behavior, and damages awarded
- D. Law school admission statistics

42. A researcher using AI-assisted research tools should always:

- A. Accept all AI suggestions without verification
- B. Verify that suggested authorities exist, are accurately described, and are still good law
- C. Avoid using any other research methods
- D. Cite the AI tool as the source of the authority

43. Which platform provides free access to federal court dockets and filings through a browser extension that shares documents obtained from PACER?

- A. The RECAP extension used with CourtListener
- B. Google Scholar
- C. HeinOnline
- D. Westlaw

Legal Citation Form (Questions 44–55)

44. When a case citation includes the notation "aff'd" in the subsequent history, this means:

- A. The case was reversed on appeal
- B. The case was remanded for further proceedings
- C. The case was vacated by the appellate court
- D. The appellate court affirmed the lower court's decision

45. A researcher is citing a provision from the Restatement (Second) of Contracts. The citation must include:

- A. The author's name and the publisher's address
- B. A reference to every case that has cited the provision
- C. The series designation (Second), the section number, and the year of publication
- D. The law review article that first discussed the provision

46. In a Bluebook citation, the abbreviation "cert. denied" in the subsequent history indicates:

- A. The Supreme Court agreed to hear the case
- B. The case was reversed on constitutional grounds
- C. The lower court's decision was vacated

D. The Supreme Court declined to review the case

47. When citing a statute that appears in both the U.S.C. and the U.S.C.A., which version should generally be cited?

A. The U.S.C.A. because it includes annotations

B. The U.S.C. because it is the official code

C. Either version, as there is no preference

D. Neither version; only the Statutes at Large should be cited

48. A Bluebook practitioner citation for a law review article requires which of the following typeface treatments for the article title?

A. Large and small capitals

B. Bold typeface

C. Regular roman type without formatting

D. Italics or underscoring

49. The citation signal "but see" introduces authority that:

A. Directly supports the proposition stated in the text

B. Provides background information on the topic

C. Contradicts or undermines the proposition stated in the text

D. Is identical to the authority cited immediately before

50. When a legal writer has cited a case in full and wants to cite the same case again three citations later, the appropriate short form is:

- A. A shortened case name with the reporter volume and pinpoint page
- B. "Id." with a new pinpoint page
- C. "Supra" with the case name
- D. The full citation repeated in its entirety

51. A citation to a case from the United States Tax Court should include:

- A. A reference to the Federal Supplement
- B. The Tax Court reporter citation and a parenthetical identifying the court
- C. Only the case name and year
- D. A reference to the Code of Federal Regulations

52. The Bluebook requires that introductory signals in a citation sentence be:

- A. In bold typeface
- B. In large and small capitals
- C. Underlined twice
- D. Italicized

53. When a researcher cites a federal regulation that was recently amended but the C.F.R. has not yet been updated, the citation should reference:

- A. The amended text as published in the Federal Register
- B. The outdated C.F.R. text without any notation
- C. Only a secondary source discussing the amendment
- D. The Congressional Record

54. A proper citation to a state constitution requires:

- A. A reference to the federal constitution instead
- B. The name of the governor who signed the provision
- C. The correct abbreviation for the specific state's constitution as provided in Table T1
- D. A citation to the state's statutory code

55. The purpose of the date parenthetical in a statutory citation is to:

- A. Indicate the year of the most recent judicial interpretation
- B. Identify which edition of the code is being cited
- C. Show when the researcher accessed the database
- D. Indicate the year the statute will expire

Updating & Validating Research (Questions 56–63)

56. A researcher Shepardizes a case and discovers that it has been "explained" by subsequent courts. This treatment means:

- A. The case has been overruled
- B. The case has been reversed on appeal
- C. The case's holding has been superseded by statute
- D. Subsequent courts have clarified or interpreted the holding without negative treatment

57. The most critical time to perform a final validation check on all cited authorities is:

- A. Immediately before filing or submitting the document

- B. Only when the supervising attorney requests it
- C. During the initial research phase only
- D. After the document has been filed with the court

58. A paralegal discovers that a cited statute has pending legislation that could affect its provisions. The appropriate action is to:

- A. Ignore the pending legislation because it has not yet been enacted
- B. Delete all references to the statute
- C. Note the pending legislation in the memorandum and monitor its progress
- D. Cite the pending bill as current law

59. KeyCite's Table of Authorities feature lists:

- A. All secondary sources on a topic
- B. The authorities cited within the case being checked
- C. Every case in the same reporter volume
- D. The billing records for the research session

60. A case receives positive treatment on Shepard's (green diamond) but the researcher notices that one citing decision distinguished the case on a specific point. The researcher should:

- A. Ignore the distinguishing treatment because the overall signal is positive
- B. Report only the positive treatment in the memorandum
- C. Assume the case has been overruled
- D. Determine whether the distinguished point is the same point being relied upon in the current analysis

61. When validating a federal regulation, a researcher should check for:

- A. Judicial interpretations, the enabling statute, and any proposed amendments in the Federal Register
- B. Only the regulation's original publication date
- C. Only secondary sources discussing the regulation
- D. The personal opinions of the agency head

62. A validation checklist that includes the date each authority was checked is important because:

- A. The Bluebook requires dates on all validation records
- B. Citator signals never change once assigned
- C. It establishes the currency of the validation and identifies when re-validation may be needed
- D. Courts require validation checklists to be filed with every brief

63. A researcher checks a case on BCite and finds that the case's holding on contributory negligence has been overruled but its holding on damages remains good law. The researcher should:

- A. Cite the case without any notation
- B. Avoid citing the case entirely regardless of which holding is relevant
- C. Cite both holdings without distinguishing between them
- D. Cite the case only for the damages holding and note the negative treatment on the contributory negligence holding

Legal Analysis & Reasoning (Questions 64–75)

64. A paralegal identifies a legal issue but cannot find any cases in the controlling jurisdiction that address it. The next best step is to:

- A. Conclude that the client has no legal claim
- B. Report to the supervising attorney that no law exists
- C. Stop researching and draft the memorandum based on personal opinion
- D. Research persuasive authority from other jurisdictions and authoritative secondary sources

65. The difference between a narrow issue statement and a broad issue statement is that a narrow issue statement:

- A. Incorporates specific key facts that focus the analysis precisely
- B. Can be answered without any legal research
- C. Applies to every case involving the same area of law
- D. Does not identify any legal standard

66. In an IREAC analysis, the Explanation section should present case illustrations that:

- A. Are from any jurisdiction regardless of relevance
- B. Include only cases favorable to the client
- C. Show how courts have applied the rule to facts similar to and different from the current situation
- D. Replace the need for an Application section

67. A legal analyst compares the client's facts to a decided case and determines that the key facts are materially different. This analysis supports:

- A. Following the precedent exactly
- B. Distinguishing the precedent
- C. Overruling the precedent
- D. Ignoring the precedent entirely

68. In an objective memorandum, the writer predicts that the client will probably prevail but identifies a significant risk. The appropriate conclusion is:

- A. The client is likely to prevail, but the significant risk should be identified and explained
- B. The risk should be omitted to maintain a positive tone
- C. The conclusion should state that the outcome is certain
- D. The writer should refuse to provide a prediction

69. The IRAC framework is most appropriate for:

- A. Complex analyses requiring extensive case illustrations
- B. Persuasive writing that leads with the conclusion
- C. Statutory interpretation involving legislative history
- D. Straightforward analyses where the issue is simple and the logical progression from question to answer is clear

70. A researcher drafts a rule statement that says: "In Case A, the court held X. In Case B, the court held Y." This is an example of:

- A. Proper rule synthesis
- B. Effective counter-analysis
- C. A case list rather than a synthesized rule
- D. A well-drafted conclusion

71. When multiple decided cases support the same conclusion on a legal point, the analyst should:

- A. Cite only the oldest case
- B. Present the cases as a synthesized body of authority showing a consistent legal trend

- C. Cite only the most recent case and ignore earlier decisions
- D. Present each case in a separate memorandum

72. Counter-analysis in a persuasive brief differs from counter-analysis in an objective memorandum in that the brief's counter-analysis:

- A. Acknowledges opposing arguments but responds with authority and reasoning to demonstrate why the client's position prevails
- B. Presents opposing arguments as equally valid
- C. Omits all unfavorable authority
- D. Is unnecessary in persuasive writing

73. A legal analysis that concludes "the outcome is uncertain" is:

- A. Always unacceptable
- B. A sign of inadequate research in every case
- C. Prohibited by ethical rules
- D. Appropriate when the law is genuinely unsettled and the analysis honestly reflects that uncertainty

74. The purpose of a mini-conclusion at the end of each sub-issue in a Discussion section is to:

- A. Replace the overall conclusion of the memorandum
- B. Introduce new authorities not previously discussed
- C. Summarize the analysis of that specific sub-issue before moving to the next one
- D. Restate the issue statement verbatim

75. A researcher spots an issue in a fact pattern but determines after research that the issue is clearly resolved in the client's favor with no contrary authority. The appropriate treatment in the memorandum is:

- A. Omit the issue entirely since it is not contested
- B. Address the issue briefly, noting that the law clearly favors the client, without extensive analysis
- C. Devote the same amount of analysis to this issue as to contested issues
- D. Present the issue as uncertain to make the memorandum appear more thorough

Legal Writing Fundamentals & Style (Questions 76–83)

76. The phrase "prior to" can almost always be replaced with the simpler word:

- A. "Before"
- B. "After"
- C. "During"
- D. "Throughout"

77. Which of the following demonstrates the most effective use of transitions between paragraphs?

- A. Beginning each paragraph with "Furthermore" regardless of the relationship to the prior paragraph
- B. Using no transitional language between any paragraphs
- C. Beginning every paragraph with "In conclusion"
- D. Using transitional words that accurately reflect the logical relationship between paragraphs

78. A legal writer drafts a sentence reading: "The court held that the defendant was liable, finding that he breached his duty, and the damages were significant." This sentence is problematic because:

- A. It is too short

- B. It contains no legal terminology
- C. It shifts from active to passive voice and lacks parallel construction
- D. It uses too many commas

79. The most effective way to ensure clarity when a pronoun could refer to more than one antecedent is to:

- A. Use a different pronoun
- B. Repeat the specific noun instead of using the pronoun
- C. Add additional pronouns for emphasis
- D. Place the pronoun in italics

80. Which of the following is the clearest and most direct sentence?

- A. The jury returned a verdict in favor of the plaintiff.
- B. A verdict was returned by the jury, and it was in favor of the plaintiff.
- C. It was the case that the jury returned a verdict, and the verdict was one that favored the plaintiff.
- D. The returning of a verdict by the jury was in the plaintiff's favor.

81. A legal document that uses bold, italics, underlining, and all capitals extensively throughout the text demonstrates:

- A. Professional formatting that enhances readability
- B. Compliance with court formatting rules
- C. Proper emphasis technique
- D. Over-formatting that reduces readability and undermines professional appearance

82. When a legal writer uses the phrase "in the event that" instead of "if," this is an example of:

- A. Proper legal formality
- B. Required Bluebook style
- C. Wordiness that should be eliminated
- D. Effective persuasive technique

83. A legal memorandum that is five pages long but could convey the same analysis in three pages demonstrates:

- A. Thoroughness that the supervising attorney will appreciate
- B. The writer's expertise and attention to detail
- C. Compliance with minimum page requirements
- D. A need for more concise writing

Legal Correspondence & E-Memos (Questions 84–88)

84. A client letter explaining an unfavorable court ruling should:

- A. Use highly technical legal language to demonstrate expertise
- B. Explain the ruling in plain language, its impact on the client's case, and the available options going forward
- C. Blame the judge for the unfavorable outcome
- D. Recommend that the client find a new attorney

85. An opinion letter that fails to include a limitations paragraph creates risk because:

- A. The letter will be too short

- B. The court will reject the letter
- C. The client may question the attorney's credentials
- D. The scope and conditions of the legal opinion are undefined, potentially expanding the attorney's liability

86. The most appropriate tone for a demand letter is:

- A. Hostile and threatening
- B. Casual and conversational
- C. Firm, professional, and supported by identified legal authority
- D. Apologetic and uncertain

87. A paralegal receives an email from opposing counsel containing settlement terms. Before forwarding the email to the client, the paralegal should:

- A. Forward the email immediately without review
- B. Post the settlement terms on social media
- C. Delete the email to avoid complications
- D. Consult with the supervising attorney about how to handle the communication

88. When drafting an e-memo, the paralegal should:

- A. Omit all citations because the format is informal
- B. Include proper citations and maintain the same analytical standards as a formal memorandum
- C. Provide only personal opinions without legal authority
- D. Copy the text directly from a secondary source without attribution

Legal Memoranda (Questions 89–93)

89. A supervising attorney asks for a memorandum analyzing whether a client's non-compete agreement is enforceable. The Statement of Facts should include:

- A. Only facts about the client's current employment
- B. The legal standard for enforceability
- C. The attorney's opinion on the merits
- D. All facts relevant to enforceability, including the agreement's terms, scope, duration, geographic restrictions, and the circumstances of the client's departure

90. The Discussion section of a memorandum should begin each sub-issue analysis with:

- A. The conclusion for that sub-issue
- B. A personal anecdote
- C. A statement identifying the specific sub-issue being analyzed
- D. A string citation of all relevant authorities

91. A memorandum that addresses three legal issues should have:

- A. Three separate sub-sections in the Discussion, each with its own complete analysis
- B. A single paragraph covering all three issues together
- C. Three separate memoranda, one for each issue
- D. Only the most favorable issue analyzed in full

92. When the Brief Answer and the Conclusion of a memorandum reach different results, this indicates:

- A. Proper legal analysis showing different perspectives

- B. An inconsistency that must be resolved before the memorandum is finalized
- C. That the memorandum covers multiple unrelated topics
- D. Compliance with the requirement to present both sides

93. A well-drafted RE line in a memorandum heading reads:

- A. "Legal Research"
- B. "Client Matter"
- C. "Memorandum of Law"
- D. "Martinez v. Global Industries — Whether Employee Non-Solicitation Clause Is Enforceable Under California Business and Professions Code § 16600"

Legal Briefs & Persuasive Writing (Questions 94–98)

94. An appellate brief that raises twelve issues on appeal is likely to be:

- A. The most persuasive approach because it covers every possible argument
- B. Required by appellate court rules
- C. Less persuasive than a brief focusing on the two or three strongest issues
- D. Preferred by most appellate judges

95. The Statement of Facts in a persuasive brief should:

- A. Present facts in the light most favorable to the client while remaining truthful and accurate
- B. Omit all facts unfavorable to the client
- C. Include the writer's legal conclusions about each fact
- D. Be identical to the Statement of Facts in the office memorandum

96. When organizing the argument section of a brief, placing the strongest argument first is effective because:

- A. Court rules require arguments to be presented in order of strength
- B. It establishes credibility and creates persuasive momentum early in the brief
- C. Weaker arguments are prohibited in legal briefs
- D. Courts only read the first argument in every brief

97. A certificate of service filed with a brief certifies that:

- A. All cited authorities have been validated
- B. The brief has been reviewed by a judge
- C. The brief meets the court's word count limits
- D. The brief has been delivered to opposing counsel as required by court rules

98. An effective brief addresses the opposing party's strongest argument by:

- A. Ignoring it to avoid drawing attention
- B. Mischaracterizing it to make it easier to refute
- C. Acknowledging it, then distinguishing or rebutting it with authority and reasoning
- D. Conceding that the opposing party is correct

Ethics in Legal Research & Writing (Questions 99–100)

99. A paralegal who bills a client for eight hours of research when only four hours were actually spent has violated:

- A. The ethical duty of honest and reasonable billing

- B. The duty of candor to the tribunal
- C. The attorney-client privilege
- D. The rules of citation form

100. The ethical obligation to disclose adverse authority applies:

- A. Only when the opposing party has already cited the authority
- B. Only in the controlling jurisdiction when opposing counsel has not cited it
- C. Only in settlement negotiations
- D. Only in advisory letters to clients

Simulation Exam 5: Answer Key With Explanations

American Legal System & Sources of Law (Questions 1–8)

1. **C. The constitutional provision** — In the hierarchy of legal authority, the Constitution is the supreme law of the land. When a constitutional provision conflicts with a federal statute or regulation, the Constitution controls. Statutes must conform to the Constitution, and regulations must conform to both.
2. **B. The states and the people** — The Tenth Amendment provides that powers not delegated to the federal government by the Constitution, nor prohibited to the states, are reserved to the states respectively, or to the people. This is a foundational principle of federalism.
3. **D. A court authorized to hear a broad range of civil and criminal matters** — Courts of general jurisdiction have authority to hear most types of cases, including civil, criminal, family, and probate matters. Courts of limited jurisdiction, by contrast, are restricted to specific categories of cases.
4. **A. A valid federal law conflicts with state law on a matter within federal authority** — Federal preemption occurs when a valid federal law displaces state law on the same subject. This can happen expressly (when Congress states its intent to preempt) or impliedly (when federal law occupies the entire field or directly conflicts with state law).
5. **B. Federal district courts within the Ninth Circuit** — A Third Circuit decision is binding only on district courts within the Third Circuit. District courts in the Ninth Circuit are bound by Ninth

Circuit precedent, not Third Circuit precedent. They may find Third Circuit decisions persuasive but are not required to follow them.

6. **D. Concurrent jurisdiction** — Concurrent jurisdiction exists when both federal and state courts have authority to hear the same type of case. Many federal question cases and diversity cases can be filed in either federal or state court at the plaintiff's choice.
7. **C. Quasi-judicial authority** — When administrative agencies conduct hearings and issue decisions resolving disputes under their regulations, they exercise quasi-judicial authority. This function is distinct from their quasi-legislative authority to create regulations through rulemaking.
8. **A. Judge-made law developed through court decisions over time** — The common law system is built on judicial decisions that establish precedent through the doctrine of stare decisis. Unlike civil law systems based on comprehensive statutory codes, the common law evolves incrementally through case-by-case adjudication.

Primary Authority Research (Questions 9–23)

9. **B. Title 42** — Title 42 of the United States Code covers Public Health and Welfare and includes major federal employment discrimination statutes such as Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e) and the Americans with Disabilities Act.
10. **D. The absurdity doctrine** — The absurdity doctrine allows courts to deviate from the literal text of a statute when applying it literally would produce an outcome that is absurd, unreasonable, or clearly contrary to legislative intent. It is a narrow exception to the plain meaning rule.
11. **C. A United States Court of Appeals** — The Federal Reporter (now in its fourth series, F.4th) publishes opinions from the United States Courts of Appeals. District court opinions appear in the Federal Supplement, and Supreme Court opinions appear in the United States Reports.
12. **A. 50** — The Code of Federal Regulations is organized into 50 titles covering broad areas of federal regulation. These titles roughly parallel the structure of the United States Code but are not identical to it.
13. **B. Use the bracketed headnote numbers to locate the relevant discussion** — Each headnote in a West-published case corresponds to a bracketed number in the body of the opinion, directing the reader to the exact location where that legal point is discussed. This allows efficient navigation of lengthy opinions.
14. **D. Annotations in the U.S.C.A. or U.S.C.S. following the specific code section** — The annotations following each section of the annotated code compile references to every case that has interpreted that provision, making them the most efficient tool for finding judicial interpretations of a specific statutory section.
15. **C. Is issued directly by the President to manage executive branch operations** — Executive orders are presidential directives that manage the operations of the federal government. Unlike

administrative regulations, they do not go through notice-and-comment rulemaking and are issued under the President's constitutional or statutory authority.

16. **A. A word is known by the company it keeps and should be interpreted in context with surrounding words** — Noscitur a sociis is a canon of construction directing courts to interpret an ambiguous word by considering the context in which it appears, including the words and phrases surrounding it in the statute.
17. **D. Appellate History** — The Appellate History feature in citator tools tracks a case's procedural journey through the appellate process, showing whether the case was affirmed, reversed, remanded, or modified on appeal. This is distinct from Citing References, which shows subsequent cases that cited the authority.
18. **B. United States Supreme Court opinions** — The United States Reports (abbreviated U.S.) is the official reporter of the United States Supreme Court. It is the preferred citation source for Supreme Court opinions and is published by the Government Publishing Office.
19. **A. The statute itself, which remains the controlling authority until regulations are promulgated** — When an enabling statute exists but the agency has not yet created implementing regulations, the statute itself governs the subject. The absence of regulations does not create a legal vacuum — the statutory requirements remain in effect.
20. **D. Follow the state's citation rules, which may require one or both reporters** — Different states have different citation requirements. Some require citation to the official reporter only, some require parallel citations to both reporters, and some have adopted public domain citation formats. The applicable state rules control.
21. **C. Going directly to a known topic and browsing its subtopics and key numbers** — The topic analysis approach is used when the researcher already knows the broad legal topic and can navigate directly to it in the digest, browsing the detailed outline of subtopics and key numbers to find the most relevant classification.
22. **B. Mandatory authority is law a court must follow; persuasive authority is law a court may consider but is not required to follow** — Mandatory authority comes from a higher court within the same jurisdiction or from a controlling legislative or constitutional source. Persuasive authority includes decisions from other jurisdictions, lower courts, and secondary sources.
23. **A. Congressional materials on GovInfo or Congress.gov** — The full text of bills as introduced, along with amendments, committee reports, and other legislative materials, is available through GovInfo and Congress.gov. These are the primary sources for federal legislative history research.

Secondary Authority Research (Questions 24–33)

24. **D. An ALR annotation surveying the issue across jurisdictions** — ALR annotations provide comprehensive, nationwide surveys of case law on specific legal issues, organized by jurisdiction.

This makes them the most efficient tool for comparing how all fifty states have addressed the same legal question.

25. **C. The Restatement (Third) series** — The Restatement (Third) represents the most current revision of the topics it covers, updating and refining the positions taken in the original and Second series. However, not all topics have been published in a Third edition yet.
26. **B. A jurisdiction-specific practice guide** — Practice guides combine legal analysis with practical tools including checklists, forms, step-by-step procedures, and strategic advice tailored to a specific jurisdiction. They are ideal for practitioners handling routine matters in a specific state.
27. **A. Serve as comprehensive bibliographies citing primary and secondary authorities on the topic** — Law review footnotes cite the cases, statutes, regulations, and secondary sources that support the article's analysis, effectively creating a curated research bibliography that saves the researcher significant time in locating relevant authorities.
28. **D. Citations to cases and authorities supporting the rule** — The reporter's notes in a Restatement section cite the judicial decisions and other authorities that support the black letter rule and comments. They provide the evidentiary basis for the ALI's formulation of the legal principle.
29. **C. Still carries persuasive value but is weakened by the widespread rejection** — A Restatement provision rejected by most jurisdictions retains some persuasive value as a scholarly articulation of an alternative legal approach, but its practical usefulness is significantly diminished by the widespread rejection.
30. **A. The second most widely used legal dictionary after Black's Law Dictionary** — Ballentine's Law Dictionary is a recognized legal reference work, though Black's Law Dictionary is far more widely used and more frequently cited by courts.
31. **B. An ALR annotation on the parol evidence rule** — An ALR annotation on the parol evidence rule would provide focused, comprehensive analysis of that specific legal issue, collecting and discussing cases from across the country. This targeted approach is more efficient than general encyclopedias or dictionaries.
32. **D. Secondary sources with limited persuasive value** — CLE materials are educational presentations and written materials prepared for practicing attorneys. They are secondary sources that may be informative but carry limited persuasive weight with courts compared to treatises or Restatements.
33. **C. A leading treatise such as Prosser and Keeton on Torts** — Leading treatises provide the most authoritative and comprehensive secondary analysis of legal topics. Prosser and Keeton on Torts is one of the most widely cited and respected treatises in American law.

Digital Legal Research & Technology (Questions 34–43)

34. **A. Litigation analytics on Westlaw or Lexis+ Context** — Litigation analytics tools analyze judicial decision-making patterns, providing data on how specific judges have ruled on specific types of motions and legal arguments. This information supports strategic litigation decisions.
35. **B. OR** — The OR connector retrieves documents containing either of the connected terms, expanding the search to capture different terminology that may be used for the same concept. Searching "landlord OR lessor" finds documents using either term.
36. **D. CourtListener** — CourtListener, operated by the Free Law Project, provides free access to oral argument recordings from federal appellate courts. This resource allows researchers and the public to listen to appellate arguments at no cost.
37. **C. Narrow results to the most relevant authorities** — Post-search filtering tools allow the researcher to refine a large result set by limiting it to specific jurisdictions, date ranges, court levels, and document types, eliminating irrelevant results without requiring a new search.
38. **B. Read the citing references on both platforms to understand the nature and scope of the treatment** — When citator tools disagree, the researcher should examine the actual citing references on both platforms to understand why the signals differ and to make an independent assessment of the authority's current status.
39. **A. GovInfo at govinfo.gov** — GovInfo provides official, authenticated versions of the Federal Register in PDF format, maintained by the Government Publishing Office. It is the authoritative free source for federal government publications.
40. **D. It gives the researcher precise control over search terms and their relationships** — Boolean searching uses logical operators (AND, OR, NOT) and proximity connectors (/s, /p, /n) to specify exactly which terms must appear, how they relate to each other, and how close they must be within the document.
41. **C. Case outcomes, judge behavior, and damages awarded** — Bloomberg Law's Litigation Analytics provides empirical data on litigation patterns including case outcomes, individual judge ruling patterns, damages awarded, and case duration, supporting evidence-based litigation strategy.
42. **B. Verify that suggested authorities exist, are accurately described, and are still good law** — AI tools can produce inaccurate results including fabricated citations. Every AI-suggested authority must be independently located, read in full, and validated with a citator before it can be relied upon in legal analysis.
43. **A. The RECAP extension used with CourtListener** — The RECAP browser extension, developed by the Free Law Project, automatically uploads federal court documents obtained through PACER to CourtListener's public archive, making them freely available to other researchers.

Legal Citation Form (Questions 44–55)

44. **D. The appellate court affirmed the lower court's decision** — The notation "aff'd" in subsequent history indicates that a higher court upheld the lower court's decision. This is favorable subsequent history that strengthens the cited authority.
45. **C. The series designation (Second), the section number, and the year of publication** — A complete Restatement citation identifies the specific Restatement title, the series (Second or Third), the section number, and the year of publication, enabling the reader to locate the exact provision.
46. **A. The Supreme Court declined to review the case** — "Cert. denied" means the United States Supreme Court declined to grant the petition for a writ of certiorari, leaving the lower court's decision in effect. Denial of certiorari is not a ruling on the merits and does not constitute approval of the lower court's reasoning.
47. **B. The U.S.C. because it is the official code** — The preferred citation for a federal statute is to the official United States Code (U.S.C.). The annotated versions (U.S.C.A. and U.S.C.S.) are cited when the official code is unavailable or when the annotations are specifically relevant to the discussion.
48. **D. Italics or underscoring** — In Bluebook practitioner format, law review article titles are presented in italics or with underscoring. Academic format uses different typeface conventions, but practitioner documents consistently use italics for article titles.
49. **C. Contradicts or undermines the proposition stated in the text** — The signal "but see" introduces authority that directly contradicts or is contrary to the proposition the writer has asserted. It alerts the reader to opposing authority that must be considered.
50. **A. A shortened case name with the reporter volume and pinpoint page** — When other citations have intervened since the full citation, "Id." cannot be used. Instead, the writer uses a shortened case name (typically one party's name) with the volume, reporter, and pinpoint page to identify the specific location.
51. **B. The Tax Court reporter citation and a parenthetical identifying the court** — Tax Court cases are published in the Tax Court Reports (T.C.) or Tax Court Memorandum Decisions (T.C.M.). The citation must include the appropriate reporter and a parenthetical identifying the court and year.
52. **D. Italicized** — Under Bluebook rules, introductory signals such as "see," "see also," "cf.," "but see," and "contra" are italicized in citation sentences. This distinguishes the signal from the citation itself and draws the reader's attention to the relationship being indicated.
53. **A. The amended text as published in the Federal Register** — When a regulation has been amended but the C.F.R. has not yet been updated to reflect the change, the citation should reference

the amended text as published in the Federal Register, with the volume, Fed. Reg., page number, and date.

54. **C. The correct abbreviation for the specific state's constitution as provided in Table T1** — State constitutional citations use the abbreviation format specified in Bluebook Table T1 for each jurisdiction, followed by the article, section, or amendment number being cited.
55. **B. Identify which edition of the code is being cited** — The date parenthetical in a statutory citation tells the reader which edition of the code the writer is citing. This is important because statutes can be amended between code editions, and the reader needs to know which version of the text is being referenced.

Updating & Validating Research (Questions 56–63)

56. **D. Subsequent courts have clarified or interpreted the holding without negative treatment** — The treatment code "explained" indicates that subsequent courts have discussed the case to clarify or interpret its holding, but without expressing disapproval or criticism. This is generally neutral treatment.
57. **A. Immediately before filing or submitting the document** — The law can change at any time. Re-validating all key authorities immediately before filing ensures that every cited authority reflects the current state of the law and that no developments have occurred since the initial research was completed.
58. **C. Note the pending legislation in the memorandum and monitor its progress** — Pending legislation is not yet law, but it may affect the analysis if enacted. The researcher should note its existence, explain its potential impact, and recommend monitoring it for developments.
59. **B. The authorities cited within the case being checked** — KeyCite's Table of Authorities lists the sources the court relied upon in the opinion being checked, showing the legal foundations of the decision. This feature is useful for expanding research by identifying additional relevant authorities.
60. **D. Determine whether the distinguished point is the same point being relied upon in the current analysis** — A single case may be treated positively overall but distinguished on a specific legal point. The researcher must determine whether the distinguishing treatment affects the particular proposition for which the case is being cited.
61. **A. Judicial interpretations, the enabling statute, and any proposed amendments in the Federal Register** — Comprehensive validation of a regulation includes checking for court opinions interpreting it, reviewing the enabling statute for amendments, and searching the Federal Register for any proposed changes.
62. **C. It establishes the currency of the validation and identifies when re-validation may be needed** — Recording the date of each validation check creates a timeline that shows how current

the verification is. If significant time has passed since the last check, the researcher knows re-validation is needed before relying on the results.

63. **D. Cite the case only for the damages holding and note the negative treatment on the contributory negligence holding** — When a case has one valid and one overruled holding, the researcher may still cite the case for the proposition that remains good law. The citation should note the negative treatment on the other holding to maintain transparency and comply with the duty of candor.

Legal Analysis & Reasoning (Questions 64–75)

64. **D. Research persuasive authority from other jurisdictions and authoritative secondary sources** — When facing a question of first impression, the researcher should examine how other jurisdictions have addressed the issue and consult authoritative secondary sources such as Restatements and treatises for guidance on the likely approach.
65. **A. Incorporates specific key facts that focus the analysis precisely** — A narrow issue statement combines the legal standard with specific key facts from the client's situation, creating a focused question that guides the entire analysis. A broad issue statement lacks this factual specificity and produces unfocused analysis.
66. **C. Show how courts have applied the rule to facts similar to and different from the current situation** — Effective case illustrations include both favorable and unfavorable precedent, showing the reader how courts have applied the rule across a range of factual scenarios. This provides the context needed for the Application section.
67. **B. Distinguishing the precedent** — When the key facts of the current situation differ materially from those of a decided case, the analyst distinguishes the precedent by demonstrating that these differences justify a different outcome. Distinguishing limits the precedent's scope without rejecting it.
68. **A. The client is likely to prevail, but the significant risk should be identified and explained** — An objective memorandum must be honest about both the predicted outcome and the risks. Identifying significant risks allows the supervising attorney to make informed strategic decisions about how to handle the matter.
69. **D. Straightforward analyses where the issue is simple and the logical progression from question to answer is clear** — IRAC is the most basic analytical framework and works best for simple, direct analyses. Complex analyses benefit from the additional Explanation step provided by IREAC.
70. **C. A case list rather than a synthesized rule** — Simply stating what each case held individually, without integrating the principles into a unified rule, is a case list. True rule synthesis combines the holdings into a single, coherent statement that represents the current state of the law.

71. **B. Present the cases as a synthesized body of authority showing a consistent legal trend** — When multiple cases reach the same conclusion, the analyst should synthesize them into a unified body of authority that demonstrates a consistent trend rather than discussing each case in isolation.
72. **A. Acknowledges opposing arguments but responds with authority and reasoning to demonstrate why the client's position prevails** — In persuasive writing, counter-analysis addresses opposing arguments but does so from an advocacy perspective, explaining why the client's position is stronger rather than presenting both sides as equally valid.
73. **D. Appropriate when the law is genuinely unsettled and the analysis honestly reflects that uncertainty** — An honest conclusion of uncertainty is preferable to a false prediction of certainty. When the law is genuinely unsettled, the memorandum serves its purpose by identifying the uncertainty and explaining the competing considerations.
74. **C. Summarize the analysis of that specific sub-issue before moving to the next one** — Mini-conclusions at the end of each sub-issue help the reader track the running analysis across multiple issues, providing clear resolution of each point before the memorandum moves to the next.
75. **B. Address the issue briefly, noting that the law clearly favors the client, without extensive analysis** — Even clearly resolved issues should be addressed in the memorandum to demonstrate thoroughness, but they do not require the same depth of analysis as contested issues. A brief treatment is sufficient.

Legal Writing Fundamentals & Style (Questions 76–83)

76. **A. "Before"** — "Prior to" is a formal, wordy phrase that can almost always be replaced with the simpler, clearer word "before" without any loss of meaning. This substitution is a common recommendation in plain language legal writing.
77. **D. Using transitional words that accurately reflect the logical relationship between paragraphs** — Effective transitions use words and phrases that signal the actual relationship between ideas — contrast ("however"), addition ("moreover"), causation ("therefore"), or comparison ("similarly") — rather than using the same transition indiscriminately.
78. **C. It shifts from active to passive voice and lacks parallel construction** — The sentence begins in active voice ("the court held") but shifts to passive voice ("the damages were significant"), creating an inconsistent and awkward construction that also breaks parallel structure.
79. **B. Repeat the specific noun instead of using the pronoun** — When a pronoun could refer to more than one antecedent, the clearest solution is to replace the ambiguous pronoun with the specific noun it refers to. This eliminates all doubt about the writer's intended meaning.
80. **A. The jury returned a verdict in favor of the plaintiff.** — This sentence uses active voice, is concise, and communicates the information directly without unnecessary words or convoluted structure. The other options use passive voice, nominalizations, or excessive verbiage.

81. **D. Over-formatting that reduces readability and undermines professional appearance** — Excessive formatting elements compete for the reader's attention and make the document appear cluttered rather than professional. Effective legal writing uses formatting sparingly and strategically.
82. **C. Wordiness that should be eliminated** — "In the event that" is a wordy phrase that means simply "if." Replacing it with "if" makes the sentence shorter and clearer without any loss of meaning. Eliminating such phrases is a fundamental plain language technique.
83. **D. A need for more concise writing** — A memorandum that takes five pages to convey what could be said in three wastes the reader's time and suggests the writer has not refined the analysis. Concise writing communicates the same substance in fewer words.

Legal Correspondence & E-Memos (Questions 84–88)

84. **B. Explain the ruling in plain language, its impact on the client's case, and the available options going forward** — Client letters about unfavorable developments should translate the legal ruling into accessible language, explain its practical impact, and identify the options available to the client so they can make informed decisions.
85. **D. The scope and conditions of the legal opinion are undefined, potentially expanding the attorney's liability** — Without a limitations paragraph, the opinion letter does not specify its scope, assumptions, or conditions. This can lead to unintended reliance by the client or third parties on advice that was not meant to cover certain situations.
86. **C. Firm, professional, and supported by identified legal authority** — A demand letter should convey confidence in the client's position through professional tone and specific legal authority. Hostility, uncertainty, and informality all undermine the letter's effectiveness and credibility.
87. **D. Consult with the supervising attorney about how to handle the communication** — Settlement communications require attorney judgment regarding strategy, authority, and client interests. The paralegal should consult with the supervising attorney before forwarding or responding to any settlement-related communications.
88. **B. Include proper citations and maintain the same analytical standards as a formal memorandum** — An e-memo's email format does not reduce the requirement for thorough analysis, proper citation, and sound reasoning. The delivery method is informal; the analytical standard is not.

Legal Memoranda (Questions 89–93)

89. **D. All facts relevant to enforceability, including the agreement's terms, scope, duration, geographic restrictions, and the circumstances of the client's departure** — The Statement of Facts must include every fact that could affect the legal analysis. For a non-compete enforceability

question, this includes the agreement's specific terms and the circumstances surrounding its execution and the client's departure.

- 90. **C. A statement identifying the specific sub-issue being analyzed** — Each sub-issue analysis should begin by clearly stating the specific question being addressed, orienting the reader before the rule, explanation, and application that follow.
- 91. **A. Three separate sub-sections in the Discussion, each with its own complete analysis** — Each legal issue requires its own subsection with a complete analytical treatment. This allows the reader to follow and evaluate each analysis independently and ensures thorough coverage of every issue.
- 92. **B. An inconsistency that must be resolved before the memorandum is finalized** — The Brief Answer and Conclusion should reach the same result because they are both answering the same Issue Statement based on the same analysis. A discrepancy indicates an error that must be identified and corrected.
- 93. **D. "Martinez v. Global Industries — Whether Employee Non-Solicitation Clause Is Enforceable Under California Business and Professions Code § 16600"** — This RE line specifically identifies the case, the legal question, and the governing statute, allowing the memorandum to be filed, retrieved, and understood in context. Generic labels provide no useful information.

Legal Briefs & Persuasive Writing (Questions 94–98)

- 94. **C. Less persuasive than a brief focusing on the two or three strongest issues** — Appellate courts and experienced advocates consistently emphasize that fewer, stronger arguments are more persuasive than many weak ones. Raising twelve issues dilutes the impact of the strongest arguments and suggests the advocate lacks confidence in any single issue.
- 95. **A. Present facts in the light most favorable to the client while remaining truthful and accurate** — A brief's Statement of Facts is persuasive in its emphasis and organization, highlighting favorable facts and contextualizing unfavorable ones. However, all facts must be accurate and supported by the record.
- 96. **B. It establishes credibility and creates persuasive momentum early in the brief** — Leading with the strongest argument captures the reader's attention, establishes the writer's credibility, and creates forward momentum that carries through the remainder of the brief.
- 97. **D. The brief has been delivered to opposing counsel as required by court rules** — The certificate of service certifies that the brief has been properly served on all parties as required by the applicable rules. It is a procedural requirement separate from the certificate of compliance (which addresses word count).
- 98. **C. Acknowledging it, then distinguishing or rebutting it with authority and reasoning** — Effective advocacy addresses opposing arguments directly rather than ignoring them.

Acknowledging and then systematically rebutting the opposing party's strongest points demonstrates confidence and thoroughness.

Ethics in Legal Research & Writing (Questions 99–100)

99. **A. The ethical duty of honest and reasonable billing** — Billing for eight hours of research when only four were performed is billing fraud. It violates the ethical obligation to charge fees that are reasonable and to bill honestly for work actually performed, and can result in disciplinary action and client claims.
100. **B. Only in the controlling jurisdiction when opposing counsel has not cited it** — The duty of candor to the tribunal requires disclosure of directly adverse authority in the controlling jurisdiction that opposing counsel has not cited. The obligation does not extend to every jurisdiction or to authority the opposing party has already brought to the court's attention.