

Each item is worth the number of points as indicated. (total = 80 pts)
Write on your exam paper. **Use only blue or black ink.**

Part One: 10 points

Wendy and Lorna are discussing the effects of the traditional common law forms of action on current legal practice. Wendy thinks the forms of action are “alive and well,” that is, these concepts can be (and are) used in modern pleading and practice. Lorna is not so sure. To prove her point, Wendy offers the following explanation of the famous quote from Professor Maitland: “The forms of action we have buried, but they rule us from their graves”:

Part Two: 10 points (5 items, up to 2 points each)

Wendy next argues that the common law forms of action can be applied to any situation, and challenges Lorna to come up with factual scenarios to test this theory. Lorna offers the following scenarios, where P sues D in each one; Wendy fills in the titles of all the forms of action that she believes fit each scenario:

- (1) P lends D an expensive necklace for a week. D accidentally drops the necklace into the kitchen sink, and it is damaged by the garbage disposal. D returns the necklace to P, but refuses to pay for any repair.

(2) P owns Blackacre. D ousts P from Blackacre and moves in, claiming that he (D) owns it.

(3) D agrees to build a house for P, but D fails to do what he promised.

(4) D clears some snow off a public road, and then leaves the snowplow parked at the side of the road overnight. D is anxious to get home, so he does not take time to check the position of the snowplow, and does not realize that part of it is protruding into the roadway. Later that night, when it is dark and very foggy, P drives her automobile into the snowplow and is injured.

(5) D takes some of P’s hand tools without permission. P demands the return of her tools, but D refuses.

Part Three: 20 points (10 items, 2 points each)

Wendy and Lorna’s discussion turns to the role of case law in legal analysis. They agree on the importance of the doctrine of _____, which means “to stand by _____ and not disturb settled points.” But otherwise, their opinions differ. Lorna has an expansive view of the topic:

She thinks that every statement in every judicial decision is vitally important, and can be used as authority in later cases, including cases from other jurisdictions, and involving dissimilar facts. Wendy disagrees.

First, Wendy argues that not every statement in a judicial decision is part of the actual _____ -- that is, not every statement is essential to resolution of the legal _____ in the case. Instead, some statements are mere _____, meaning parts of the opinion unrelated to the resolution of the case. If a litigant wants a court to make a ruling based on such nonessential parts of an earlier decision, the opposing party can argue that the cited portions of the earlier case are not _____ authority for the current case.

Lorna then says that a state trial court must follow an earlier decision if the latter is “on _____,” meaning the _____ of the earlier case are not distinguishable from this case. Wendy agrees, so long as the earlier case was decided by a higher court in the same state, that is, a court in the same _____. But even if the earlier case was decided by an out-of-state court, it might still be _____ authority.

Part Four: 20 points (10 items, 2 points each)

Wendy and Lorna now discuss the structure of the American legal system. They agree that the three branches of government are _____, meaning no branch is superior to any other branch. Each branch has its own sphere of authority, and generally, no branch of government can exercise any function that is within the authority of another branch. This principle is called _____.

For example, the _____ branch has the authority to make new law by means of a formal written pronouncement of a general rule; this type of enacted rule is called a _____. But when such a rule is enacted, it does not become law if the _____ vetoes it;

this illustrates that the boundaries between the functions of the three branches are not always clear.

The _____ branch of government has the power to settle specific disputes; in doing so, a court may also use its power to _____ an enacted rule. But the branch that enacted the rule might disagree with the court's resolution of the dispute. And since _____ is more authoritative than _____ law, an enacted rule generally will _____ any court's prior inconsistent decision.

Part Five: 10 points (5 items, 2 points each)

Wendy and Lorna now discuss the American court system in more detail. They agree that the different naming conventions of the federal courts and various state courts can be confusing, but very important when using the case study method. For example, the highest court in the federal system is called the _____ Court; but this same name is used for a trial court of general jurisdiction in _____ State. The highest court in that State is called the _____. As another example, a trial court in the federal system is called the _____ Court; but this same name is used for the intermediate appellate courts in the State of _____.

