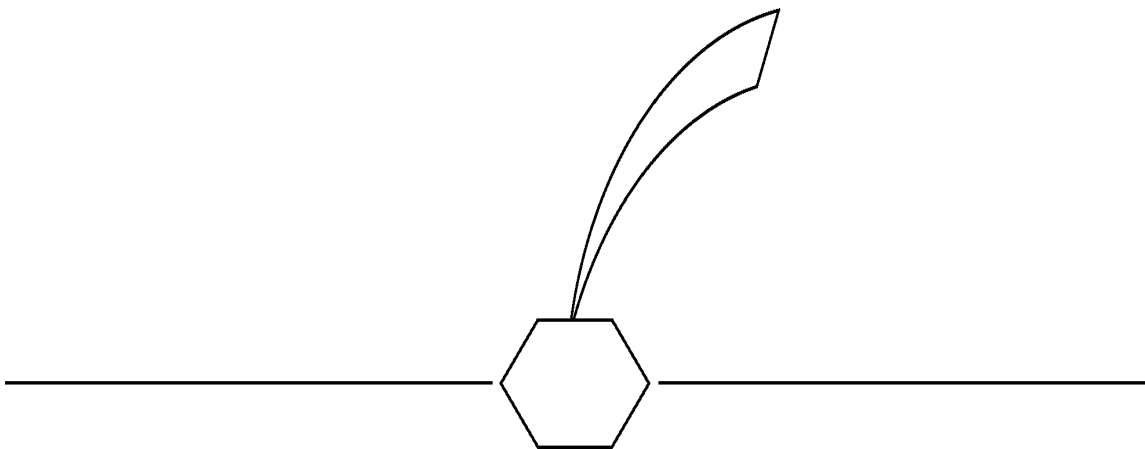


New York Civil Practice

Test Bank

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This Test Bank is designed to provide the instructor with questions and answers that may be used to test students' understanding of the material presented in the textbook. These questions can be used in conjunction with the cases and exercises provided in the main text itself.

Chapter One
OVERVIEW OF CIVIL LITIGATION

Short Answer

1. Briefly discuss the role of the paralegal with respect to civil litigation.
The paralegal is responsible for assisting in document management, information gathering, maintaining the calendar, research, and pretrial, trial and posttrial assistance.
2. Differentiate between civil and criminal law.
In civil law, a private person is the injured party; in criminal law, it is the state that is injured.
3. Differentiate between exclusive and concurrent jurisdiction.
Exclusive jurisdiction means that only one court may hear a case, whereas concurrent jurisdiction means that two or more courts have the legal ability to hear a particular matter.
4. What are the two types of jurisdiction necessary for a court to adjudicate a matter?
Subject matter and jurisdiction over the parties
5. Where are actions against the state of New York brought?
Court of Claims
6. Which is the court that has jurisdiction over divorce in New York?
The Supreme Court
7. What is a long-arm statute?
A law that permits a state to exercise jurisdiction over a nonresident
8. What is the time period of the equity statute of limitations?
Six years
9. How does a plaintiff's infancy affect the Statute of Limitations?
It tolls the statute until the infant's 18th birthday or ten years from the date of the occurrence for medical malpractice.
10. What is a court of original jurisdiction?
A trial court that first hears a lawsuit.

True/False

11. Five statutes create the Unified Court System in New York.
False

12. Out-of-state drivers who use the New York roads are subject to the jurisdiction of the New York court for accidents arising out of their driving.

True

13. The New York court may not adjudicate a matter if it does not have jurisdiction over the defendant.

False

14. The Statute of Limitation for medical malpractice is three years.

False

15. New York has a three-tiered court system.

True

16. Breach of contract cases under the UCC have a four-year Statute of Limitations.

True

17. The state statute governing civil procedure in New York is the CPLR.

True

18. New York has 63 counties.

False

19. Every county in New York has a district court.

False

20. The highest court in New York is the Supreme Court.

False

Define the following:

21. Pleading

Documents filed with the court incident to a lawsuit

22. Accrual

When the Statute of Limitations begins to run

23. Ex parte motion

Request made to the court with only the moving party present

24. Quasi-in-rem jurisdiction

Jurisdiction based on property that is not subject of the lawsuit being within the state

25. Order of attachment

Court order to seize property

26. In rem jurisdiction

Court's jurisdiction based on the property subject of the litigation being within the state

27. Forum non conveniens

Inconvenient forum

28. Complaint

Document filed with the court indicating the basis of the lawsuit

29. Motion

Request made to the court for court ordered action

30. Statute of Limitations

Legislative enactment indicating the time period in which a lawsuit may be brought

Short Answer

1. How does a civil lawsuit begin?

By purchasing an index number and serving a summons and notice or complaint

2. What is meant by “service of process”?

Notifying the opposing side of the lawsuit

3. List the five methods of service of process permitted under the CPLR.

Personal

Leave and mail

Serving an agent

Nail and mail

Expedited service

4. How does a defendant make an appearance in court?

By motion or answer

5. When must a defendant make an appearance?

20 or 30 days after service, depending upon the manner of service

6. What is the venue for replevin actions?

Local or transitory

7. Indicate some requisites to institute a class action.

Numerous parties

Similarity of actions

Representative protecting all members’ interests

Ease of administration

Cost

8. Who may enter a lawsuit in a permissive joinder?

Anyone who has a common question of law or fact or who has a problem arising out of the same transaction

9. Who may intervene in a lawsuit?

Anyone who will be affected by the outcome

10. How is expedited service effectuated?

By leave of court

True/False

11. A 14-year-old person must be served as well as his or her guardian.
True
12. All civil lawsuits commence with a summons and complaint.
False
13. Parties may contract for a particular venue.
True
14. The corporation must be joined in a shareholder derivative suit.
True
15. A class member may opt out of a class action that seeks equitable relief.
False
16. Interpleading is a device used by a defendant to have a party share liability.
False
17. Courts have discretion to change the venue of a civil lawsuit.
True
18. Paralegals never serve pleadings themselves.
False
19. After an index number is purchased, the plaintiff must serve the defendant within 15 days.
False
20. Service may not be made on a legal holiday.
False

Define the following:

21. Intervention
The process of entering a lawsuit even though the intervenor is not a party
22. Notice
Method of informing a defendant that a lawsuit has been filed against the defendant
23. Summons
Document served on a defendant to commence a lawsuit
24. Mandatory joinder
Inclusion of a necessary party in order to effect a full adjudication
25. Class action
Form of lawsuit involving a huge number of litigants
26. Affidavit of service
Document under oath filed with the court as proof of service of process
27. Implead
Bring in a party as a co-party
28. Venue
Location of the appropriate courthouse

29. Replevin

Action to recover personal property

30. Guardian ad litem

Court appointed representative to protect the interests of a minor or incapacitated person during litigation

Short Answer

1. What is meant by “sufficiency of the pleadings”?

The pleadings on their face must indicate a cause of action

2. What is the “prayer for relief”?

The section of the complaint that indicates what the plaintiff wants the court to do

3. Explain the difference between compulsory and permissive counterclaims.

Compulsory counterclaims are causes of action that arose out of the same occurrence as the main lawsuit and must be included in the answer or are lost; permissive counterclaims are any claims the defendant has against the plaintiff that did not arise out of the cause of action that may be brought at this time but do not have to be.

4. What is the purpose of a Bill of Particulars?

To limit triable issues

5. Explain the difference between courts of law and courts of equity.

Courts of law can grant monetary relief, courts of equity provide nonmonetary relief.

6. Must the court’s jurisdiction be alleged in New York?

No

7. List the sections of a complaint.

Caption

Allegation of jurisdiction

Statement of facts

Cause of action

Prayer

Signature

Verification

8. When is a reply filed?

When a counterclaim is asserted.

9. How are interlocutory papers served?

Personal service

Ordinary mail

Fax

Overnight delivery

10. Why would a summons and notice be used instead of a summons and complaint?

For speed, to annoy the defendant

True/False

11. Specificity in the allegation is necessary for cases involving no fault automobile accidents.
True
12. All complaints must allege the court's jurisdiction.
False
13. Verification of pleadings is necessary for actions against co-obligors.
True
14. Bills of Particular must be verified in negligence actions.
True
15. The opposing party may begin discovery seven days after service of the Bill of Particulars.
True
16. Using fax to serve pleadings requires leave of court.
False
17. Summonses must be typed in ten-point type.
False
18. The defendant must deny all allegations in the complaint.
False
19. A plaintiff may not seek money damages and equitable relief in the same lawsuit.
False
20. A Bill of Particulars is a discovery device.
True

Define the following:

21. Counterclaim
Cause of action asserted by the defendant against the plaintiff
22. General denial
Denying all of the allegations
23. Verification
Statement under oath certifying the truth of the allegations
24. Cross claim
Cause of action asserted by co-litigants against each other
25. Interlocutory papers
All pleadings except for the initial pleadings
26. Permissive counterclaims
Causes of action against opposing party not arising out of the main lawsuit

27. Cause of action
Legal basis of the lawsuit
28. Reply
Plaintiff's answer to a counterclaim
29. Damages
Monetary relief
30. Ad damnum
Recalculating the amount of the relief sought in the prayer

Chapter Four
MOTION PRACTICE

Short Answer

1. What are the three types of ex parte motions?
Expedited service
Service by publication
Injunctions and TROs
2. What are the two methods of bringing a motion?
Ex parte and on notice
3. What are the four categories of motions?
Pleadings, regulatory, amending the pleadings and dispositive
4. List the affirmative defenses.
Arbitration
Collateral estoppel or res judicata
Discharge
Disability
Payment
Release
Statute of Limitations
Statute of Frauds
5. When may a motion for summary judgment be filed?
Anytime after suit is filed and within 120 days of a motion to dismiss
6. What are the provisional remedies?
Attachment
Replevin
Lis pendens
Receivership
Preliminary injunction
7. What is a default judgment?
Court granting relief to the moving party because the opposing party has failed to respond to the litigation

8. Briefly explain the purpose of motions.
To expedite the litigation process
9. How many adjournments may a litigant seek for a motion hearing?
Three
10. Why would an order to show cause be sought?
To expedite matters

True/False

11. Ex parte motions must be heard in the court in which the suit is brought.
False
12. The hearing date for a motion is called the return date.
True
13. A motion to dismiss can be based on a demurrer.
True
14. Replevin is a remedy used to secure real property pending litigation.
False
15. An order of attachment is voided if the defendant is not served within 60 days of the order.
True
16. Motions for default judgment are never handled by the clerk of the court.
False
17. A person may always challenge a default judgment entered against him or her.
True
18. A preliminary injunction may be sought ex parte.
True
19. In deciding a motion for a summary judgment the court views the facts in the light most favorable to the movant.
False
20. A party can always amend a pleading without leave of court.
False

Define the following:

21. Motion practice
The process of filing pretrial motions with the court
22. Motion to strike
Request to the court to delete matters in the pleadings
23. Provisional remedies
Remedies granted by the court before the termination of the litigation

24. TRO
Temporary restraining order
25. Receivership
Provisional remedy in which the court orders an independent person to manage property that is subject to the litigation
26. Motion to sever
Request to the court to separate one lawsuit into several in the interest of justice
27. Order to show cause
Request to the court to expedite matters
28. Demurrer
Failure to state a claim upon which relief can be granted
29. Motion to review
Request to the court to re-examine a ruling
30. Motion
Formal request to the court

Chapter Five
DISCOVERY

Short Answer

1. What is the purpose of discovery?
To limit the issues that must be tried
2. What is your opinion of the concept of privilege?
Opinion question—no definitive answer
3. Why are attorneys' work product accorded an absolute privilege?
Because of client confidentiality
4. What sanctions can a court impose on a party who refuses to comply with discovery orders?
Contempt
Fine against the party
Hold the answers against the party
5. Who is subject to the discovery process?
Parties
Predecessors in interest
Nonparty witnesses
6. What are the discovery devices?
Depositions
Interrogatories
Inspection
Physical and mental exams
Request for admissions and addresses

7. What is a letter rogatory?
Court order to take a deposition in a foreign country
8. What are the discovery motions?
Motion to compel
Motion for a protective order
9. When does the discovery process begin?
After service of the Bill of Particulars
10. What is an evidence privilege?
A privilege based on methods of proof, such as the doctor-patient privilege

True/False

11. Information regarding insurance coverage is always privileged.
False
12. Pre-trial discovery is precluded in matrimonial actions.
True
13. New York City is considered one county for taking oral depositions.
True
14. Written interrogatories may be used without court order.
False
15. A defendant is not subject to a physical examination in a lawsuit.
False
16. The parties' agreement to the truth of a particular matter in a lawsuit is called an admission.
False
17. Discovery in simple cases must be completed within 15 months.
False
18. A paralegal's research performed to assist the attorney in trial preparation is privileged.
True
19. Internal corporate documents may be discovered in a shareholders' derivative action.
True
20. An EBT is a form of an interrogatory.
False

Define the following:

21. Admission
Statement or action of a party opponent agreeing to a particular matter in controversy
22. EBT
Examination before trial

23. Subpoena
Court order compelling attendance or production
24. Qualified privilege
Items that may be privileged upon the court agreeing
25. Motion to compel
Request to the court to order a party to fulfill discovery request
26. Letter rogatory
Court order permitting depositions in foreign countries
27. Stipulation
Agreement of the parties with respect to a particular matter in controversy
28. Cross-notice
Notice of party answering discovery request that he or she wishes to take discovery of the requesting party at the same time
29. Discovery
The process of learning the information and evidence the opposing side has before the trial
30. Attorney's work product
Anything prepared by a lawyer or his or her staff to prepare for a trial is privileged

Short answer

1. Explain the concept of res judicata.
Claim preclusion
2. Explain the concept of collateral estoppel.
Issue preclusion
3. What is the purpose of voir dire?
To interview prospective jurors and to select the jury
4. What is the purpose of a note of issue?
To have the lawsuit placed on the court calendar
5. Who may demand a jury trial?
Any party to a lawsuit
6. How many jurors are needed to compose a jury in a civil action in New York?
Six
7. What are the types of verdicts the jury may enter?
General verdict

Special verdict
General verdict by answer to interrogatories

8. What is the function of an advisory jury?
To assist a judge in a bench trial
9. What are the two main trial motions?
Motion for summary judgment
Motion for a directed verdict
10. What is the purpose of a release?
To relieve the parties of any further obligation

True/False

11. Jury trials are only permitted in suits seeking damages.
False
12. Elderly litigants are afforded a preference on the court calendar.
True
13. Jurors who demonstrate a bias may be excused by a peremptory challenge.
False
14. The decision of a referee is binding on the court.
False
15. A JNOV is used to request a new trial.
False
16. Settlements are generally favored by the court.
True
17. Res judicata is an affirmative defense.
True
18. Pretrial conferences are held when no jury trial is demanded.
False
19. In civil jury trials in New York, the verdict must be unanimous.
False
20. Juries must specify the general and special damages in a tort action.
True

Define the following:

21. Bench trial
Trial by the judge without a jury
22. General verdict
Jury decision just indicating liability or nonliability
23. Evidence log
Book maintained to keep track of all evidence

24. Pretrial conference
Meeting with the judge prior to trial to limit issues
25. Notice of issue
Document filed to place case on the court calendar
26. Voir dire
Process of examining potential jurors
27. Motion JNOV
Request that the court rule opposite to the jury's findings
28. Advisory jury
Panel used by a judge to assist in deliberation that has no binding effect
29. Collateral estoppel
Issue preclusion
30. Jury demand
Request for a jury trial

Chapter Seven
JUDGMENT AND APPEALS

Short Answer

1. What is meant by “full faith and credit”?
Courts enforcing the decisions and laws of sister states
2. When must a notice of appeal be taken?
30 days after order and notice of entry of the judgment
3. How many judges must dissent to appeal an Appellate Division decision?
Two
4. Why does the court impose a bond for a stay of execution?
To make sure the losing party will still have assets to satisfy the judgment after the appeal
5. What is the purpose of an appeal?
To review the application of law to the facts by the lower court
6. What is the legal basis for New York to enforce foreign country judgments?
The Uniform Foreign Money Judgment Recovery Act
7. How are costs awarded?
By motion to the court
8. Who may take an appeal?
Any party who is dissatisfied with the court's decision
9. Are attorney fees readily awarded in a civil suit?

Only if granted by contract or statute

10. Which cases may be appealed directly to the Court of Appeals?
Those in which the decision is based on the Constitution

True/False

11. The attorney's disability will sometimes permit an extension of the time in which to note an appeal.
True
12. A notice of cross-appeal must be filed within 20 days after service of the notice of appeal.
True
13. Stays of execution remain in effect for five days after the appeal is concluded.
True
14. Witnesses may be called to testify at the appeal.
False
15. Decisions of the New York Supreme Court are final.
False
16. Small Claims courts may award treble damages.
True
17. Lack of subject matter jurisdiction cannot be raised on appeal.
False
18. Pre-verdict interest is permitted for wrongful death actions.
False
19. Costs incurred to post a bond pending appeal may be recoverable.
True
20. It is never frivolous to note an appeal.
False

Define the following:

21. Appellant
The party who brings the appeal
22. Stay of execution
Court order permitting the losing side to withhold the court's award pending the appeal
23. Cross-appeal
The appellee appealing as well as the appellant
24. Reverse
Changing the decision of the lower court
25. Appellee
Party who defends in the appeal
26. Uniform Foreign Money Judgment Recovery Act

Statute permitting the New York court to enforce a foreign country award

27. Remand

Appellate court sending the case back to the lower court

28. Bond

Surety to assure performance

29. Appeal

Process of challenging a court's decision by seeking review to a higher court

30. Modify

Make changes to the lower court's findings

Chapter Eight
OTHER PROCEDURES

Short Answer

1. What is the jurisdiction of the federal court?

Federal question or diversity of citizenship

2. How many federal district courts sit in New York?

Four

3. What are “special proceedings”?

All Surrogate's Court cases and Article 78 proceedings

4. What is the purpose of arbitration?

To provide a quick and inexpensive alternative to litigation

5. Which law does the federal court follow in adjudicating cases?

Federal procedural law and the substantive law of the state in which the court sits

6. What is the purpose of certiorari?

To review decisions of quasi-judicial bodies

7. What is the purpose of mandamus?

To compel a government official to perform his or her official acts

8. What is the purpose of prohibition?

To stop a government official from doing a specific act

9. What are the grounds to challenge an arbitration decision?

Failure to follow Article 75 procedures

Partiality

Corruption

Arbitrator exceeding authority

10. What is a Notice of Dispute Resolution Alternatives?
The document lawyers must give to clients to alert them to alternatives to litigation

True/False

11. Certiorari is used to review decisions of government agencies.
True

12. To obtain federal diversity jurisdiction the amount in controversy must be \$75,000.
False

13. Arbitration awards can not be challenged.
False

14. Federal courts use federal common law to render its decisions.
False

15. Mandamus is not available if the matter is subject to civil action.
True

16. Laches is the equitable Statute of Limitations.
True

17. New York is in the third federal circuit.
False

18. Internal Revenue matters are exclusively within the jurisdiction of the federal courts.
True

19. Arbitration proceedings are governed by Article 78 of the CPLR.
False

20. Arbitration is precluded if the Statute of Limitations has expired.
True

Define the following:

21. Prohibition
Article 78 proceeding to have an official stop doing some act

22. Article 78 proceeding
Certiorari, Mandamus, and prohibition

23. Certiorari
Proceeding to review actions of a quasi-judicial body

24. Laches
Equitable doctrine concerning the time period in which to bring equitable actions

25. Mandamus
Special proceeding to compel a government official to take some action

26. Notice of Dispute Resolution Alternatives
Documents informing litigants of alternatives to litigation

27. Arbitration
Fast and inexpensive alternative to litigation to resolve disputes
28. Diversity jurisdiction
Subject matter jurisdiction for federal courts
29. Federal Rules of Civil Procedure
Statute governing procedure in federal courts
30. Federal question
Cause of action based on the US Constitution, a treaty or a federal statute