

Law Lecture

The American Legion Mountaineer Boys State

June 9 – June 15

2013

The legal system of the United States and the State of West Virginia affect the lives of citizens each day. Likewise, the legal system employed at The American Legion Mountaineer Boys State impacts the Boys State citizens. Citizens are subject to jury service, may be called as witnesses, may be parties in litigation, and/or may serve as officers of the courts. Consequently, it is important that each citizen be familiar with the legal systems that effect his life. This “Law Lecture” has been prepared to provide information on the legal system that exists in the State of West Virginia and the legal system that is employed at The American Legion Mountaineer Boys State.

IMPORTANT! All citizens of The American Legion Mountaineer Boys State are required to take “The American Legion Mountaineer Boys State Bar Examination”. The bar examination consists of fifty questions and is based on information contained in this “Law Lecture”, information contained in the legal sections of The American Legion Mountaineer Boys State Manual, and information presented during a “Law Lecture” class that will be given immediately prior to the administration of the “Bar Examination”. The American Legion Mountaineer Boys State Manual will be provided to each citizen upon his arrival at Boys State on Sunday afternoon.

Those Citizens of The American Legion Mountaineer Boys State who expect to serve in the capacity of any Judge, Attorney General, Prosecuting Attorney, or Attorneys at Law are required to pass the Bar Examination! It is important that each citizen prepare for the bar examination whether he is interested in the above positions or not because the bar examination is used as a factor to decide the recipients of individual and group awards that are presented at the end of The American Legion Mountaineer Boys State program.

A pool of sample questions is located at the end of this “Law Lecture”. These questions are designed to assist Boys State citizens in their efforts to prepare for the Bar Examination. **It is highly recommended that each Citizen read, study, and become thoroughly familiar with the material contained in this “Law Lecture” and the sample questions prior to his arrival at The American Legion Mountaineer Boys State!**



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I. COURTS

The Judicial Department of the State of West Virginia, as in the Federal Government and the governments of all the other states of the United States, is one of the three separate and distinct departments or branches of the government. The three separate departments or branches of government are the Executive Department, Legislative Department, and Judicial Department. In this lecture we are concerned with the Judicial Department.

By the Constitution of West Virginia, Article VIII, Section 1, “The judicial power of the State is vested solely in a Supreme Court of Appeals and in the Circuit Courts, and in such intermediate Appellate Courts and Magistrate Courts as shall be hereafter established by the legislature, and in the justices, judges and magistrates of such courts”.

1. **SUPREME COURT OF APPEALS:** The Supreme Court of Appeals consists of five justices, each elected for a term of twelve years. At the beginning of each calendar year, the judges designate one of their number as Chief Justice of the Court and he or she presides over the sessions of the Court for that year. Usually the designation as Chief Justice follows in the order of the seniority of their commissions and the position of Chief Justice rotates from year to year among all the members of the court in the order of their seniority.

The court appoints its own clerk and also a crier. The Attorney General is the ex-officio reporter to the court.

The Supreme Court of Appeals has two kinds of jurisdiction or two classes of cases in which it can act. In one class, its jurisdiction is original; that is; the cases originate in that court. In the other, its jurisdiction is appellate; that is; the cases originate in a lower court and get to the Supreme Court of Appeals by appeal or writs of error.

Scope of Jurisdiction: West Virginia Constitution, Article III, Section 3 provides that the Supreme Court of Appeals has original jurisdiction in cases of habeas corpus, mandamus, prohibition, and certiorari. It has appellate jurisdiction in civil cases where the matter in controversy, exclusive of costs, is of greater value or amount than \$300.00; in controversies concerning the titles and/or boundaries of land; in civil cases in equity; in proceedings in quo warranto, habeas corpus, mandamus, certiorari, and prohibition; and in cases involving personal freedom or the constitutionality of a law. In criminal cases, the Supreme Court of Appeals has jurisdiction where there has been a conviction for a felony or misdemeanor in a circuit court. It has such other appellate jurisdiction, in both civil and criminal cases, as may be prescribed by law.

The legislature is without power to deprive a constitutional court of the authority bestowed upon it by the Constitution.



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A constitutional court is not subject to legislative control unless specific authority is conferred upon the legislature by the Constitution.

2. **CIRCUIT COURTS:** There is a circuit court in each county of the state. The counties are arranged in judicial circuits, of which there are thirty-one in the state, and each circuit is presided over by the circuit judges elected by the people of the county or counties composing the circuit for a term of eight years. If a judge for some reason is unable to serve his full term, his vacancy may be filled by a gubernatorial appointment until the next general election. The legislature has power under the constitution to rearrange the circuits at the session next preceding a general election of the circuit judge. Some circuits consist of only one county and some of several counties. For each circuit there is at least one circuit judge, and there may be as many as are needed to transact the business of the Court as authorized by the legislature. If there are two or more judges in a circuit, one judge is selected to be the chief judge of the circuit court.

Scope of Jurisdiction: West Virginia Constitution, Article VIII, Section 6 provides that the Circuit courts are courts of original and general jurisdiction; that is, they hear cases of almost every nature. Except in cases confined exclusively by the constitution to some other tribunal, they have original and general jurisdiction of all civil actions where the amount in controversy, exclusive of interest, exceeds \$100.00, unless such value or amount is increased by the legislature; in all civil cases in equity; of all cases of habeas corpus, mandamus, quo warranto, prohibition, and certiorari, and of all crimes and misdemeanors. The circuit courts have appellate jurisdiction in all cases civil and criminal, where an appeal, writ of error, or supersedeas as may be allowed to the judgment or proceedings of any magistrate court. They also have such other jurisdiction, whether supervisory, original, appellate, or concurrent, as is or may be prescribed by law. WV Code 51-2-2 provides, in part, that Circuit Courts have original and general jurisdiction of all matters at law where the amount in controversy, exclusive of interest, exceeds \$300.00.

3. **FAMILY COURTS:** In 2001, the Legislature established Family Courts to hear domestic matters. They are courts of original jurisdiction and their scope of jurisdiction is limited to all actions for divorce, annulment or separate maintenance; all actions to obtain orders of support; all actions to establish paternity; all actions for grandparent visitation; all actions for the establishment of a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child and the enforcement thereof; and all final hearings in domestic violence proceedings. There are 35 Family Court Judges in 26 family court districts throughout West Virginia. The first Family Judges were appointed by the Governor and had to run for reelection in 2002. The term of an elected Family Court Judge is eight (8) years. The qualifications for Family Court Judges are the same as that for Circuit Judges. Their decisions may be appealed to the Circuit Court in the County in which the action was brought.



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4. **MAGISTRATE COURTS:** The Constitution of the State requires that the Legislature to establish in each county a magistrate court or courts with the right of appeal as prescribed by law. The legislature is given the authority to determine the qualifications and the number of magistrates for each such court which are to be elected by the voters of the County. The normal term of an elected magistrate is four (4) years. There is no requirement that a magistrate be licensed to practice the profession of law, and the Constitution expressly prohibits the legislature, any justice, or any judge of any court from establishing any rules which would dictate or mandate that a magistrate be licensed to practice the profession of law.

The following is required of each magistrate:

- a. Must be twenty-one years of age;
- b. Must have a high school education or its equivalent;
- c. Must not have been convicted of any felony or any misdemeanor involving moral turpitude;
- d. Must reside in the county of his election; and
- e. No person shall assume the duties of magistrate without first having attended and completed a course of instruction in the rudimentary principles of law and procedure.

No magistrate shall be a member of the immediate family of any other magistrate in the county. Each magistrate who serves more than 5,000 in population shall devote himself full-time to his public duties. A magistrate may be removed from office for conviction of a felony, for conviction of a misdemeanor involving moral turpitude, or for conviction of a misdemeanor involving the duties of his office.

West Virginia Code, Chapter 50, Article I, Section 14, makes it the duty of the sheriff of each county to serve all civil and criminal processes from any magistrate court.

Scope of Jurisdiction: The magistrate courts have original jurisdiction in criminal matters except that no person shall be convicted or sentenced for a felony in such courts. Magistrate courts have jurisdiction over all misdemeanor offenses committed in the county in which the court is located, and also have the duty to conduct preliminary examinations of warrants charging felonies committed within the county. Magistrates have the authority to issue arrest warrants in all criminal matters, to issue warrants for search and seizure, and, except in cases involving capital offenses, to set and admit to bail. In criminal cases, it is not necessary to seek an indictment by a grand jury and criminal proceedings may be instituted by information or warrant of arrest.

The magistrate courts have original jurisdiction in all civil cases at law wherein the value or amount in controversy exclusive of interests and costs shall not exceed \$5,000; and in proceedings involving real estate when the title thereto is not in controversy. In a trial by jury in a magistrate's court, the jury shall consist of six jurors.



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In criminal cases, they have such jurisdiction and powers as may be prescribed by law. Magistrate courts DO NOT have jurisdiction over the following:

- a. Any criminal charge for which the penalty constitutes a felony;
 - b. Matters involving eminent domain;
 - c. Matters in which the title to real estate is an issue;
 - d. Proceedings seeking satisfaction of liens through the sale of real estate;
 - e. Actions for false imprisonment;
 - f. Actions for malicious prosecution;
 - g. Actions for libel and slander; or
 - h. Actions for extraordinary remedies; i.e., injunctions, habeas corpus, mandamus, and writs of quo warranto.
5. **COUNTY COMMISSION:** There is in each county a county commission, except in a few counties where, under authority of a provision of the constitution, a tribunal in lieu of the county commission has been organized to handle the fiscal affairs of the county. The county commissions have jurisdiction in all matters of probate, the appointment and qualification of personal representatives, guardians, committees, curator and the settlement of their accounts.
- Officers of Circuit Courts and County Commissions:** A circuit court is composed of a judge, a clerk, a sheriff or his deputy or bailiff, a reporter, and a jury. A county commission is composed of three commissioners, a clerk, and a sheriff or his deputy when his services are needed.
6. **MUNICIPAL COURTS:** The Constitution of the State authorizes the Legislature to establish municipal, police, or mayor's court in incorporated cities, towns, or villages, and the Legislature is also authorized to provide for the selection of the judges of such courts.

II. **LAWYERS**

In some of your courses in high school you may have been told about different courts in the State of West Virginia as well as about their functions and jurisdiction. You have also been told about the several officials of which a court is composed, namely, the judge or judges, the clerk, the sheriff, the reporter and the jury. These are required to organize a court and to make it ready to do business. To conduct business through the courts, other officials have become necessary. These are the lawyers, whose function it is to present business to the courts and to bring the business to a conclusion.



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A lawyer is as much a part of the court as the judge or the clerk. He takes an oath to support the Constitution of the United States and of the State of West Virginia even as the judge does. Like the judge, the lawyer is a part of the machinery for the administration of justice, which he performs by seeing that those for whom he works get what the law entitles them to have or has imposed on them; only the penalties and liabilities that the law authorizes. This public duty is superior to his private duty, mentioned hereafter, and the latter must yield to the former if the two come into conflict.

One who has business to present to the court, or who is called into court by another person, is a litigant. The average person does not know the rights and privileges granted to him by the law or the obligations and liabilities imposed on him by law; at least he knows but few of them. He does not know how to obtain his rights if he has been deprived of them. He does not know how to protect and maintain his rights if they are interfered with by some other person. Sometimes too, liabilities and obligations that have no sanction or authority in law are sought to be imposed on someone. To assist the litigant, a profession has grown up, composed of men and women who know to what rights a person is entitled and how to obtain, protect, and maintain these rights because they are versed and learned in law. Those practicing the profession are called lawyers.

It is no doubt evident to you that there are in most instances at least two litigants in every case: one who sues, called the plaintiff, and one who is sued, called the defendant.

Each litigant, in order that he may feel perfectly satisfied and have no grounds for complaints on what is done or not done in his behalf, whatever the outcome of his case, may choose his own lawyer either to present his case to the court or to defend his case when he is brought into court by another person. When a litigant selects his lawyer and the lawyer agrees to take the case, the litigant becomes the client of the lawyer. The lawyer owes a duty to the client to give entire devotion to the interest of his client, to maintain and defend faithfully and zealously his right, and to exert to the utmost all his learning and ability to the end that nothing be taken or withheld from his client save by the rules of law, legally applied. The client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and the lawyer is expected to make sure of every such remedy or defense in behalf of his client. This is the private duty of the lawyer. This duty, however, is to be performed entirely within, **and not in the slightest without**, the bounds of law. Great as this private duty of the lawyer is, nothing whatsoever requires or warrants a lawyer to go outside the law to perform this duty. If he does so, he is violating his public duty.

Part of a lawyer's work is to conduct his client's case through the court and to see that the client receives the benefit of every remedy or defense to which he is entitled under the law and which is warranted by the facts of his case. To perform such work fully and well, the lawyer must first be able to recognize from the story told him by his client that the client is entitled to a right or to have relief from some wrong that has been done him or to the recovery of something he has lost or to something of which he has been deprived through some other person's act, neglect, or failure. Equally as important, the lawyer must be able to recognize from his client's story the legal obligations and liabilities as acquired through an intensive study of the law. Centuries ago these rights and liabilities were not so numerous, but as the activities of people increased, so have rights and liabilities increased. Consequently, today more study and greater time are required to gain the knowledge of law that is now necessary to the legal profession.



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No doubt at this point you are just about to inquire as to what a right or a liability is. A right is that which a person is entitled to have, to do, or to receive from others within the limits prescribed by law. A liability is an obligation, a responsibility, or a duty which is imposed by law and which may be enforced by an action or suit in the courts.

When a lawyer decides what rights his client has or to what legal liabilities he is subject, then he must determine how to get relief for his client or how to get the liability adjusted to the client's best advantage. It may be that to get the benefit of the right, the recovery of specific property is necessary; it may be that an adjustment in money, that is, an award of damages, will be the only thing that will afford relief; it may be that it will require some act on the part of some other person to furnish the desired relief; or it may be that some act being done at the time by the wrong-doer must be stopped. If the client is subject to a legal liability, then the problem for the lawyer is to keep that liability within the bounds of law or within limits that are justified by the facts and circumstances of the cases. What steps the lawyer must take to accomplish the desired result for his client is called the remedy if the client is the plaintiff, and is called the defense if the client is the defendant.

When the remedy or defense is chosen, the lawyer starts the kind of action or asserts the kind of defense that is necessary to accomplish the purpose he has in mind. In order to bring the action or to enter the defense, the lawyer must present or state his client's case to the court. He does this by filing pleadings, which are written documents which tell the court just what the controversy is about. All pleadings in a court of record must be in writing, unless made in open court while the other side is present. Those on behalf of a plaintiff are called complaints and they state what is called to be the matter, how the plaintiff has been wronged, who has done or caused the wrong, what the effect of the wrong is, what damage the plaintiff has suffered, and what is desired in order to make things right. Those on behalf of the defendant are called answers, and they state whether any of the claims made by the plaintiff are true and give facts and legal reasons which show why the plaintiff is not entitled to have the relief that he desires. The lawyer must know what pleadings to prepare, whether he is the lawyer for the plaintiff or the defendant, and how to prepare them; for pleadings generally limit the proof that may be offered or the relief that may be had.

It is important at this point that every citizen be aware of and understand that there may be a limitation within which he must bring a suit, lodge a criminal complaint, or answer complaints which are lodged by other persons against him. The legislature passes laws covering these matters, and those laws are called statutes of limitation. Generally speaking, there is a statute of limitation for all civil actions; there is a statute of limitation for or all misdemeanors; but there is not a statute of limitation for all felonies. Every case may or may not have a statute of limitation and you should be certain in every instance that your suit, complaint, or pleadings are timely filed.



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The lawyer must also know how to prove his case. Sometimes the pleadings are enough without further proof, but more often the other party to the case, that is, the person complained against or defendant, will dispute the story as set up in the pleadings of the complaining party or plaintiff and will file counter pleadings, raising a question(s) of law or denying the facts alleged by the plaintiff or giving the courts additional facts, or even an entirely different set of facts. In this way the issues are made. They may be of law, or of fact, or of both. The issues are points arising in a case which the court must decide. If the issue is one fact, then in certain kinds of cases, the matter must be submitted to a jury to decide. In certain other kinds of cases the judge may decide issues of fact. If the issue is one of law, and such an issue arises when there is not controversy of fact or after the issue of fact has been decided by a jury, then the court decides the issue of law. As a general rule, juries decide issues of fact and courts decide issues of law.

To maintain or dispute an issue of fact, each side must offer evidence to support his side of the issue. The lawyer must know what is necessary to prove or to disprove any fact asserted. He must know what his witnesses will say and how to get them to say it. He must know what documents exist, what those documents contain, and how to get them into evidence for the consideration of the judge and jury.

Over the course of the centuries, as case after case arose and was decided, certain principles or rules became established, and those principles or rules have become what we know as common law. Some principles have also, from time to time, been declared by acts of legislatures. These are called statutory law. Still others have been ordained by charters and constitutions, which we call constitutional law. All are law. When any of them declare what are rights and liabilities, those declarations constitute substantive law. When they declare what must be done to establish rights or to defend against liabilities, those declarations constitute procedural law. It is quite necessary that the lawyer know both the substantive and procedural law, for the lawyer must not only know what rights the law gives and what liabilities it imposes, but also how to obtain and protect those rights given by law and how to defend against the liabilities imposed by law.

To have such knowledge, one must have acquired a great amount of learning. Hence, everyone cannot be a lawyer. Also, those with an insufficient amount of learning should be kept from holding themselves out as lawyers for the protection of the public. Before a person can understand law, he must have a certain amount of general knowledge and education. Formerly, men possessing very little general education – having only the skills to just barely read and write – became lawyers. But as law deals with all the complex phases of life it has come to be generally recognized that the more education a person can obtain, the better he is fitted to be a lawyer. Gradually a minimum preliminary educational requirement came to be fixed. At first the requirement was only a common school education; later a four year high school education; still later, one year of college work; and now, in West Virginia, four years of college work. This is the preliminary requirement before the study of law may begin.



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After having acquired this amount of general education, the prospective lawyer begins the study of law itself. In West Virginia, the study must be taken as a student in a recognized law school; not in a lawyer's office, which once could be done and formerly was the only method of studying law. This study may not be taken in just any law school. There are some schools whose teaching and training are not recognized as good enough. The recognized schools are those that have been approved by the Council of Legal Education and Admissions to the Bar of the American Bar Association or its equivalent. Three years must be spent in the study of law. When this amount of time has been spent; the student is prepared to apply for admission to the bar, that is, the right to be recognized by the courts as a lawyer, and to hold oneself out to the public as able to advise on matters of law and to conduct and defend law suits for clients.

At one time in West Virginia, a student who had acquired his legal education at the College of Law of West Virginia University, and had been awarded his diploma of graduation from there, could be admitted to the bar without taking the State Bar Examination. An individual who had not studied law at West Virginia University and had not been graduated from its law school, was required to take the bar examination. However, the diploma privilege was abolished effective July 1, 1988. Any individual awarded a diploma of graduation from the College of Law of West Virginia University on or after July 1, 1988 is required to pass the State Bar Examination in order to be admitted into the State Bar of West Virginia.

Before taking the bar examination, one desiring to be admitted to the bar must make application to the Board of Bar Examiners by filing a completed character questionnaire with the board which is then sent to the District Character Committee composed of three lawyers practicing in the bar district in which the applicant resides. The Character Committee reviews the questionnaire and then returns it along with its finding to the State Board. The rules currently require that the applicant have completed a full course of study in a law school approved by the American Bar Association or its equivalent, have been granted an A.B. or B.S. or higher degree and LL.B. or J.D. or their equivalents from an accredited college or university or its equivalent. Upon satisfying all these requirements and upon certification of approved moral character and mental and emotional stability, the applicant may then be admitted to the examination.

The Supreme Court of Appeals of West Virginia has charge of the admission of persons to practice law. To determine the fitness of persons to practice law, the court has a board of seven practicing lawyers, appointed by the court, to perform that duty for it. These seven lawyers come from different sections of the state. They have adopted certain rules with respect to their work, and these rules have been printed and published in a pamphlet, which may be obtained from the Secretary of the Board, at the State Capitol in Charleston.



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“The board conducts two examinations a year, at such time and at such place as the board in its discretion may determine. Those desiring to take the examination make written application to the board in such form and at such time as the board shall prescribe and such application shall be accompanied by a character questionnaire and proof of education qualifications. Receipt of the character questionnaire by the board is currently required at least 4 months prior to the bar examination. The applicant must appear in person to be examined. The examination is wholly written, and lasts two days. It is divided into two groups: one group embracing subjects of substantive law, such as contracts, property, tort, agency, corporations, etc.; and the other group embracing the adjective law, such as pleadings evidence, practice and procedure, preparation of legal papers, such as contracts, wills, deeds, organization of corporations, etc. The student must pass both groups. If he passes both, he is awarded a certificate, which will entitle him to admission upon his presentation in court by an attorney admitted before such court. When he is presented to a circuit court or to the Supreme Court of Appeals, he must then take, in open court, the oath of an attorney, which is as follows:”

“I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia; that I will honestly demean myself in the practice of the law, and to the best of my ability execute the office of attorney at law. So help me God.”

When a person has taken the oath in open court, he has been admitted to the bar and is privileged to advise clients on the law and to represent them in court.

No matter how learned a person may be and no matter how much legal study he has pursued, if he has not been admitted to the bar in one of the modes outlined, it is unlawful for him to practice or appear as an attorney at law for another in a court of record in West Virginia, to render legal services to another, to hold himself out to the public in any manner as being entitled to practice law or to render legal services. This is so declared by statute. To disobey the statute makes one guilty of a misdemeanor and subject to a fine of not more than \$1,000.00. The purpose of this statute is not to make the profession of law a closed profession, but to protect the public against persons who are not prepared to render competent service.

Attorneys must properly and honestly demean themselves in the practice of law. The courts have the power to punish them, for their failure to do so. For improper or unethical conduct, an attorney may be deemed guilty of contempt of court and punished by fine or imprisonment or he may be suspended or disbarred, that is, deprived of his privilege of practicing law either temporarily or permanently. The practice of law is an ancient and honorable profession, and the courts and the lawyers try to keep the profession on a high plane so that it may be without reproach and command from the public the greatest respect. The legal profession is a part of the system for establishing and dispensing justice, and the courts and lawyers recognize that this system must be developed to a high point of efficiency and be so maintained that the public shall have absolute confidence in the integrity and impartiality of the administration of justice; also that justice be maintained pure and unsullied. The conduct and the motives of lawyers must be such as to merit the approval of all just men. This is the standard which the legal profession strives to attain. Those who enter this profession must be imbued with the purpose of striving for that standard and must be determined to live up to it. The courts and the profession expect it and endeavor, though sometimes feebly, to compel all members of the profession to measure up to that standard.

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May you, if you become lawyers at The American Legion Mountaineer Boys State, emulate, in every particular, the conduct of the true and faithful lawyers of the real profession of law and of those who have made that profession the greatest and most respected of all.

III. APPENDIX – DEFINITIONS:

WRIT OF ERROR lies in a common law action or criminal case. It is awarded by a superior to an inferior court of record and operates to transfer the record of the case, but nothing else, to the superior court. In writs of error, generally, only questions of law are reviewed.

WRIT OF CERTIORARI is a common law writ issued from a superior court and directed to an inferior court commanding the latter to certify and return to the former the record in a particular case. The difference between appeals and writs of error (certiorari) is that the granting of an appeal is discretionary while the granting of a writ of error is mandatory or is an appeal as a matter of right.

HABEAS CORPUS is a writ generally directed to a jailer requiring the body of the prisoner to be brought before the court.

MANDAMUS is a writ directed to a public officer or public body requiring him or it to perform an official duty.

PROHIBITION is a writ directed to a public officer or public body requiring him or it from doing an act which is not within the scope of his or its duties.

QUO WARRANTO is a writ directed to a public officer requiring him to show by what authority he claims his office or title.

TORTS are any injuries to a person or property by another person; generally a civil wrong as opposed to a criminal act.

COURTS OF RECORD are courts where a record is required to be kept. Circuit courts are courts of records; magistrate courts are not.

PROBATE ordinarily includes all steps necessary for the administration of a deceased's estate. Formerly the work related solely to the proof of a will; for instance, "offering a will for probate".

FELONY is a crime of a graver or more serious nature than those designated as misdemeanors. Usually an offense punishable by death or imprisonment for a term exceeding one year.

MISDEMEANOR is a crime lower than felonies and generally punishable by fine or imprisonment for a term not exceeding one year.

EVIDENCE is any species of proof, or probative matter, legally presented at the trial of an issue, by an act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.

CIRCUMSTANTIAL EVIDENCE is the proof of certain facts and circumstances in a given case, from which the court or jury may infer other connected facts which usually and reasonably follow according to the common experience of mankind.



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HEARSAY EVIDENCE is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated. The very nature of this type of evidence shows its weakness, and it is admitted only in specified cases from necessity.

IV. **THE AMERICAN LEGION MOUNTAINEER BOYS STATE BAR EXAMINATION (SAMPLE QUESTIONS)**

Note: These questions are designed solely to assist Boys State citizens in their efforts to prepare for “THE AMERICAN LEGION MOUNTAINEER BOYS STATE BAR EXAMINATION”. The actual examination may or may not contain questions similar in format and content to those questions that appear below.

INSTRUCTIONS: The applicant will determine if the statement is true or false.

1. The Judicial Department of the State of West Virginia is one of three separate and distinct departments of the government.
2. One of the four separate and distinct departments of the government is the Judicial Department.
3. The Constitution of West Virginia provides, in part, that the judicial power of that state is vested solely in a Supreme Court, Circuit Courts, and in such intermediate Appellate Courts and Magistrate Courts as shall be hereafter established by the legislature.
4. The Constitution of West Virginia provides, in part, that the judicial power of the state is vested solely in a Supreme Court, Circuit Courts, and in such intermediate Appellate Courts, Magistrate Courts, and Justice of the Peace Courts as shall be hereafter established by the legislature.
5. The West Virginia Supreme Court of Appeals consists of five justices appointed for a term of twelve years.
6. The West Virginia Supreme Court of Appeals consists of nine justices elected for a term of twelve years.
7. The ex-officio reporter of the West Virginia Supreme Court of Appeals is the State Attorney General.
8. The two types of jurisdiction that the West Virginia Supreme Court of Appeals has is original and appellate.
9. The West Virginia Supreme Court of Appeals is an appellate court and the sole jurisdiction that it enjoys is appellate.
10. The Constitution of West Virginia provides, in part, that the legislature may establish intermediate appellate courts.
11. Intermediate appellate courts, although provided for in the West Virginia Constitution, have not been established by the West Virginia Legislature.



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12. The Circuit Courts are courts of original and general jurisdiction and have Constitutional authority to handle matters in controversy in excess of \$100.00.
13. The Circuit Courts are courts of original and general jurisdiction and have statutory authority to handle matters in controversy in excess of \$300.00.
14. A Circuit Court exists in each county of the state of West Virginia with at least one judge for each circuit.
15. There are thirty-three judicial circuits in the state of West Virginia with at least one judge for each circuit.
16. Each judicial circuit contains at least one Magistrate Court.
17. A Magistrate Court exists in each county in the State of West Virginia.
18. A magistrate must be twenty-one years of age, must have a high school education or its equivalent, must not have been convicted of a felony or any misdemeanor involving moral turpitude and must reside in the county of his election.
19. The West Virginia Constitution expressly provides that the legislature and/or any justice can establish rule(s) which could dictate or mandate that a magistrate be licensed to practice the profession of law.
20. A magistrate who serves a population of 10,000 is required, by law, to devote himself full-time to his public duties.
21. A magistrate who serves a population of 25,000 is required, by law, to devote himself full-time to his public duties.
22. A duly elected and sworn magistrate enjoys limited immunity while performing his official duties and he can only be removed from his office if he is convicted of a felony.
23. A magistrate may be removed from office for conviction of a felony, for conviction of a misdemeanor involving moral turpitude.
24. It is the statutory duty of the Sheriff of each county to serve all civil and criminal processes that originate from any Magistrate Court.
25. Hearsay evidence is one type of evidence that is always admissible in a court of law.
26. Magistrate Courts have original jurisdiction in all criminal matters except capital offenses.
27. Magistrate courts have original jurisdiction in criminal matters except capital offenses.
28. Statutory law is the type of law that is enacted by the legislature.
29. Any Magistrate Court has jurisdiction in a matter involving the title to real estate, providing the real estate in question, exclusive of interest and costs, does not exceed \$3,000.00.



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30. Magistrate courts do not have jurisdiction over actions for libel and slander, malicious prosecution and false imprisonment.
31. Magistrate courts do not have jurisdiction over matters involving eminent domain.
32. The County Commission of any county in West Virginia, has jurisdiction in all matters of probate, the appointment and qualification of personal representatives, guardians, committees, curator and the settlement of their accounts.
33. Each county in West Virginia has a County Commission or a tribunal that acts in lieu of the County Commission.
34. A County Commission is composed of three commissioners, a clerk, and a Sheriff or his deputy when his services are needed.
35. A Circuit Court is composed of a judge, a clerk, a Sheriff or his deputy or bailiff, a reporter, and a jury if needed.
36. Municipal Courts have jurisdiction to enforce municipal ordinances with the right of appeal to the Circuit Courts.
37. The Constitution of West Virginia authorizes the legislature to establish municipal, police, or mayor's court in incorporated cities, towns or villages.
38. Municipal courts usually have a clerk, sergeant or chief of police or policy officer to execute the judgments and orders of the court.
39. A lawyer, like a judge, is an officer of the court and he takes an oath to support the Constitution of the United States and the Constitution of West Virginia.
40. A litigant is one who has business to present to a court.
41. The individual who initiates a civil law suit is called the defendant.
42. The individual who initiates a civil law suit is called the plaintiff.
43. An individual who is on trial for a criminal offense is called the defendant.
44. Under most circumstances, a litigant is permitted to choose his own lawyer.
45. Constitutional law provides that a defendant in a criminal proceedings has an absolute right to be represented by an attorney at his trial and the court will appoint one to represent him if he cannot afford one.
46. A person who hires a lawyer becomes that lawyer's client.
47. A lawyer owes a duty to give entire devotion to the interests of his client and the lawyer must do everything within his power to further those interests.



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48. A lawyer, in order to initiate an action or enter a defense on behalf of his client, files oral pleadings that tell the court what the controversy is about.
49. Every legal action has a statute of limitation.
50. A lawyer owes a great private duty to his client that must be performed entirely within, and not in the slightest without, the bounds of the law.
51. As a general rule, juries decide issues of fact and courts (judges) decide issues of law.
52. As a general rule, juries decide issues of law and courts (judges) decide issues of fact.
53. A Magistrate Court would have jurisdiction in a civil case at law wherein the amount of controversy, exclusive of interest and cost is \$2,500.00.
54. There are at least two sides to every controversy in court.
55. An individual who has been sued in a court of original jurisdiction is not the plaintiff.
56. An individual who has been sued in a court of original jurisdiction is usually the defendant.
57. Lawyers prove their cases by introducing evidence.
58. It is not permissible for a lawyer to discuss facts of a case with a witness prior to trial.
59. A good attorney will discuss facts of a case with witnesses prior to trial.
60. The West Virginia Bar Association has charge of the admission of persons to practice law in the State of West Virginia.
61. An individual, in order to be eligible to practice law in West Virginia, must possess an A.B. or B.S. or higher degree and LL.B. or J.D. or their equivalents from an accredited college or university or its equivalent.
62. All graduates of the West Virginia University College of Law are eligible for the receipt of a “diploma privilege” which allows them to be admitted to the State Bar Association of West Virginia without taking the State Bar Examination.
63. The West Virginia Bar Examination consists of a written and oral section and is conducted by a board of seven bar examiners.
64. An individual may practice law as soon as he receives a certificate that he has passed the bar examination.
65. It is a misdemeanor for an individual to practice law in West Virginia if he has not been admitted to the West Virginia State Bar.
66. A felony is a crime punishable by more than one year in an institution of confinement.
67. A tort is an injury to a person or property by another person.



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68. Circuit Courts and Magistrate Courts are courts of record. Municipal Courts are not courts of records.
69. A Writ of Prohibition is a writ directed to a public officer or public body requiring him or it to perform an official duty.
70. The person injured by a criminal is the plaintiff in a criminal case.
71. The legislature is without power to deprive a constitutional court of the authority bestowed upon it by the Constitution.
72. A writ of Mandamus is a writ directed to a public officer or public body requiring him or it to perform an official duty.
73. The jury in a Magistrate Court is usually made up of six individuals.
74. It is not permissible for a lawyer to defend an individual if the lawyer believes that individual to be guilty of the crime or offense charged.
75. A defendant, who is found guilty of a criminal offense in a Magistrate Court, has a right to a trial de novo in the appropriate Circuit Court.