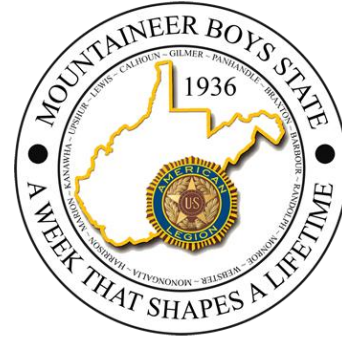


ALMBS LAW LECTURE

THE AMERICAN LEGION MOUNTAINEER BOYS STATE

WEST VIRGINIA'S PREMIER LEADERSHIP ACADEMY



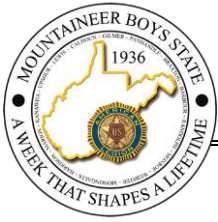
The legal system of the United States and the State of West Virginia affect the lives of citizens each day. Likewise, the legal system employed at The American Legion Mountaineer Boys State impacts the Boys State citizens. Citizens are subject to jury service, may be called as witnesses, may be parties 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 affect 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 twenty-five 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" 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.

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!**

A PROGRAM OF
THE AMERICAN LEGION
DEPARTMENT OF WEST VIRGINIA



THE AMERICAN LEGION MOUNTAINEER BOYS STATE WEST VIRGINIA'S PREMIERE LEADERSHIP ACADEMY

LAW LECTURE

COURTS

West Virginia's government as well as the federal government and the other 49 states' governments have three distinct branches of government. The three branches of government are the Executive, Legislative, and Judicial Branches. In this lecture we are concerned with the Judicial Branch.

According to the West Virginia Constitution, 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."

SUPREME COURT OF APPEALS: The Supreme Court of Appeals consists of five justices, each elected for a term of twelve years in a statewide non-partisan election. To be eligible to run for Supreme Court Justice a person must be a resident, who has practiced law in West Virginia for at least 10 years. The Chief Justice is chosen by members of the court and to serve a one-year term.

Jurisdiction: The Supreme Court of Appeals has two kinds of jurisdiction, original jurisdiction and appellate jurisdiction. Original jurisdiction includes cases that originate in the Supreme Court of Appeals and are enumerated by the West Virginia State Constitution. Appellate jurisdiction arises when cases that originate in a lower court get to the Supreme Court of Appeals through appeal or writs of error.

West Virginia Constitution, Article III, Section 3 provides that the Supreme Court of Appeals has original jurisdiction in cases involving extraordinary writ proceedings involving habeas corpus, mandamus, quo warranto, prohibition, and certiorari.

The appellate jurisdiction includes appeals of decision over all matters decided in the Intermediate Court of Appeals, appeals from circuit courts in criminal matters, juvenile proceedings, child abuse and neglect cases, extraordinary writs involving habeas corpus and domestic violence, and cases requiring interpretation of the laws and Constitutions of WV and the United States.

Decisions of the West Virginia Supreme Court of Appeals can only be appealed to the Supreme Court of the United States. The legislature is without power to deprive a constitutional court of the authority bestowed upon it by the Constitution. A constitutional court is not subject to legislative control unless specific authority is conferred upon the legislature by the Constitution.

Additionally, the WV Supreme Court of Appeals has constitutional authority to create rules governing court procedures and practices. The Court has adopted a code of judicial conduct, rules for the admission to the practice of law, rules of professional conduct, rules of judicial disciplinary procedure, and rules of lawyer disciplinary procedure. The Court also appoints its own clerk and crier, while the Attorney General is the ex-officio reporter to the Court.



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INTERMEDIATE COURT OF APPEALS: The Intermediate Court of Appeals (ICA) was signed into law on April 9, 2021, and opened on July 1, 2022. The judges of the Intermediate Court are elected to 10-year terms in a non-partisan statewide election. To be eligible for office, the individual must have practiced law for 10 years. The Chief Judge is elected by the judges of the court and serves a 1-year term.

Jurisdiction: Pursuant to Chapter 51, Article 11, Section 4 of the West Virginia Code, the ICA's jurisdiction includes appeals of the final orders or judgments in the following areas: civil matters from circuit courts, family law matters, Worker's Compensation Board of Review, Administrative, and guardianship/conservatorship.

Oral arguments are granted at the judges' discretion, but all properly filed appeals within the court's jurisdiction will receive a written decision on their merits. All ICA opinions, orders, or decisions are binding precedent for the decisions of all circuit courts, family courts, magistrate courts, and state administrative agencies unless overruled or modified by the Supreme Court of Appeals.

CIRCUIT COURTS: West Virginia's 55 counties are divided into 31 judicial circuits with 75 circuit judges. Circuit judges are elected in non-partisan elections to eight-year terms by citizens within the circuit they will represent. Each county has a courthouse where the circuit judge presides over cases. To be eligible to run for circuit judge a person must have practiced law for at least 5 years.

The legislature has power under the constitution to rearrange the circuits or add judges to circuits. Some circuits consist of only one county and some up to 4 counties. If there are two or more judges in a circuit, one judge is selected to be the chief judge of the circuit court.

Jurisdiction: Circuit Courts are the only general jurisdiction trial courts of record in West Virginia under Article VIII, Section 6 of the State Constitution. This means the circuit courts hear a variety of cases. They have jurisdiction of all civil cases at law over \$7,500, civil cases in equity, proceedings in habeas corpus, mandamus, quo warranto, prohibition, and certiorari. Additionally, circuit courts have jurisdiction over all felonies and certain misdemeanors.

Circuit Courts also have an appellate jurisdiction. Circuit Court Judges hear appeals from magistrate courts, municipal courts, and administrative agencies excluding workers' compensation appeals.

Circuit courts also receive recommended orders from judicial officers who hear mental hygiene and juvenile matters.

Appeals from circuit court regarding criminal matters, juvenile, abuse and neglect proceedings and domestic violence go to the Supreme Court of Appeals while appealed civil matters go to the Intermediate Court of Appeals.

FAMILY COURTS: In 2001, the Legislature established Family Courts to hear domestic matters. Family court judges only hear cases involving divorce, annulment, separate maintenance, paternity, grandparent visitation, name change, infant guardianship, child custody, and issues involving allocation of parental responsibility and family support proceedings, except those involving abuse and neglect. There are 47 Family Court Judges in 27 family court districts throughout West Virginia. Family court judges are elected in non-partisan elections for a term of 8 years. To be eligible to run for family court judge, a person must have practiced law for at least 5 years.



THE AMERICAN LEGION MOUNTAINEER BOYS STATE WEST VIRGINIA'S PREMIERE LEADERSHIP ACADEMY

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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. In WV there are 159 magistrates statewide. As of 2023, each county has at least two while the largest county, Kanawha, has ten magistrates. The legislature has the authority to adjust the number of magistrates in a jurisdiction, as necessary.

Magistrates are elected in non-partisan elections for a term of 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. To be eligible to be magistrate the following must be met:

- Must be twenty-one years of age;
- Must have a high school education or its equivalent;
- Must not have been convicted of any felony or any misdemeanor involving moral turpitude;
- Must reside in the county of his election;
- 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; and
- No Magistrate shall be a member of the immediate family of any other magistrate in the county.

Magistrates who serve more than 5,000 in population shall devote themselves full-time to their 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 their 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.

Jurisdiction: The magistrates preside over trial courts of limited jurisdiction. Magistrates issue arrest and search warrants, hear misdemeanor criminal cases, conduct preliminary hearings in felony cases, hear civil cases with less than \$10,000 in dispute, they hear emergency protective orders for domestic violence, and issue other protective orders. Magistrates have the authority to set and admit to bail for all criminal cases except capital offenses. In a trial by jury in a magistrate's court, the jury shall consist of six jurors.

Magistrate courts DO NOT have jurisdiction over the following:

- Any criminal trial or plea for which the penalty constitutes a felony;
- Matters involving eminent domain;
- Matters in which the title to real estate is an issue;
- Proceedings seeking satisfaction of liens through the sale of real estate;
- Actions for false imprisonment;
- Actions for malicious prosecution;
- Actions for libel and slander; or
- Actions for extraordinary remedies (e.g., injunctions, habeas corpus, mandamus, and writs of quo warranto).



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LAW LECTURE

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 for example Berkeley County has a County Council. 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.

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.

OFFICERS OF THE COURTS: To effectively and efficiently run a court of law several people are needed beyond the Judicial Officers or judges. Depending on the court and the business of the court for that day or matter, some or all the officials need to be present and do their specific job. As previously discussed, the WV Supreme Court of Appeals has a crier and a clerk.

Officers of Circuit Courts: A circuit court requires not only the circuit judge to conduct the business of the court. The court will have a clerk, who typically handles paperwork, scheduling, and administering oaths. A sheriff, or his deputy or bailiff is necessary to provide security. There will be a court reporter who either types or dictates the official record of all activities within a court session. Finally, when the court's business is conducting a trial, there will be a jury present. It is the jury's responsibility to determine the factual outcome of a case based upon what evidence is presented during the trial.

Officers of Magistrate Court: A magistrate court has similar officers of the court to a circuit court. There will be a clerk and a sheriff or deputy or bailiff. Since magistrate courts are not courts of record, they do not have a reporter. They do instead record via audio equipment for a record, when necessary. Additionally, magistrate courts can have a jury, but in practice it is not a common occurrence.

Officers of County Commissions: A county commission is composed of three commissioners, a clerk, and a sheriff or his deputy when his services are needed.



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LAW LECTURE

LAWYERS

The average person does not know all the rights and privileges granted to him by the law. He does not know the obligations and liabilities that can be imposed on him by law. 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. Maybe someone knows they need to sue someone or worse they have been arrested and have no idea how to navigate the court system. All the above call for a lawyer, a professional who practices law.

BECOMING A LAWYER: To become a lawyer there are certain requirements. First are the educational requirements. Currently, before a person can enter law school, they must obtain a bachelor's degree. It does not matter if it is a Bachelor of the Arts (BA) or a Bachelor of Science (BS) and it does not matter the field of study. Anyone with an undergraduate degree may apply to a law school whether it is an English Major or Music Major. Next, a person must go to an ABA Accredited law school. These law schools maintain the standards of legal education as set forth by the American Bar Association, or its equivalent. Please take note, not all law schools have ABA accreditation. A person cannot sit for the WV State Bar Exam if they are a graduate of a non-ABA accredited school except under extremely rare circumstances. Law School is three years of specialized study which promotes the general education of both common and statutory law in various fields. The ABA requires all first-year law students to take specific course work such as contracts, property, constitutional law, torts, criminal law, and an element of legal research and writing. After the first year, most schools allow students to pick through certain courses letting the student find what area of law they prefer. Additionally, in the third year of law school in WV students can obtain a provisional student license and work directly under the supervision of a licensed attorney in a Law Clinic. This allows students a chance to practice in a limited and supervised environment, so they are more prepared to practice after graduation. Simply graduating from law school is not enough to practice law in WV. One must be licensed to practice law, commonly referred to as being admitted to the bar.

At one time in West Virginia, a student who had graduated and was awarded their diploma from West Virginia University College of Law could be admitted to the bar without taking the State Bar Examination. However, the diploma privilege was abolished effective July 1, 1988. From that date all law school graduates from any ABA approved law school including West Virginia University must sit for and pass the WV State Bar examination.

Administering the Bar Examination is the responsibility of the State Board of Law Examiners. During the last year of law school, students will decide which state they wish to be licensed in initially. To acquire this license in WV, a student or recent graduate will apply to be admitted to the State Bar of WV by completing the Bar Application. This application is extensive and includes sections on past residences, schooling, credit and debt, criminal law issues including traffic tickets, work history, and more. The Board uses this extensive information to evaluate educational background, credentials, character and fitness, and competence of each applicant for admission to the Practice of Law in WV Under Supreme Court Rules for Admission. The Bar Examination itself consists of two days of examination held in July and February of each year in Charleston.



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The Bar Examination is not the only exam lawyers must pass. Additionally, a person must take and pass the Multistate Professional Responsibility Examination (MPRE). This examination can be taken during law school or after but must be taken within 25 months of passing the bar and you cannot be admitted to practice without it. The MPRE covers legal ethics and rules regarding behavior as well as general responsibility lawyers have regarding those they represent and the courts they practice before.

After all this, there is one final step, being sworn before the bar. In WV, there is a swearing in ceremony held for those individuals who have accomplished all this in Charleston at the WV Supreme Court of Appeals. Those who have been found to be of good and moral character, completed educational requirements and passed both the Bar and MPRE, now stand before the WV Supreme Court Justices and swear to uphold the Constitutions and laws of both the United States and the State of WV. This is the shining moment after years of education and study, now the individual is a licensed attorney allowed to practice law in the State of WV.

One small note, if someone is licensed in another state that has reciprocity with West Virginia and has met certain requirements such as length of time practiced then that out of state attorney may apply to be admitted to the bar without an examination.

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 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.

A LAWYER'S RESPONSIBILITIES: As the ABA Preamble to the model rules of professional responsibility, succinctly states:

“A Lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”

This is paramount. Lawyers first have a duty to their clients. Almost everyone will need to hire an attorney at some point in their life. Whether they need a will drafted or are purchasing a home, they need a lawyer to draft those legal documents. If a person is injured severely by another person or their negligence, they need someone who will sue another party in a civil filing. Those people who need attorneys can consult with an attorney to determine if they can help them, what their fees will be, and together will determine if they are hiring that attorney. If the attorney is hired, they now have the attorney-client relationship which triggers certain responsibilities for the lawyer.

Now, the lawyer must wear several hats. As an advisor to his client, the attorney needs to advise the client of his legal rights and obligations and explain the practical implications of those. As an advocate, the lawyer must zealously assert the client's position within our adversarial legal system. As a negotiator, the lawyer advocates for the client's best result while remaining within the bounds of honest dealing. As the evaluator, the lawyer analyzes the situation and reports honestly back. The lawyer must work to his full potential in each situation while staying within the bounds of the law and the rules of ethics. Attorneys who violate either can and will be punished by the criminal justice system for breaking the law or by lawyer disciplinary procedures for violating the rules of ethics which can and does lead to being disbarred.



THE AMERICAN LEGION MOUNTAINEER BOYS STATE WEST VIRGINIA'S PREMIERE LEADERSHIP ACADEMY

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Lawyers represent and advocate for all legal rights of their client and provide all legal defenses on every claim of every case. The legal rights and some of the defenses vary based on the specific area of law for which the client is involved. It would be impossible for any single attorney to know all the specifics of all the various areas of law, so attorneys now specialize and focus on certain areas. For example, an attorney may focus on criminal law, medical malpractice, intellectual property, contracts, or even veteran's disability law. This allows for better advising of clients of legal rights or obligations, better advocacy, and a better result often. This also allows the attorney to focus more on keeping their knowledge as current as possible and honing their skills at practice.

PRACTICING LAW:

The Basics: The attorney has been hired, the responsibilities are in full effect, but now what? First, let us define rights and liabilities. A right is that which a person is entitled to have, to do, or to receive from others as prescribed by law. A liability is an obligation, a responsibility, or a duty which is imposed by law and is enforceable by an action or suit in a court of law.

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. A lawyer could ask for property, an award for damages (MONEY!!), or attempt to assert rights such as visitation and custody in family law. A lawyer looking to limit his client's liability may be more in an advisory role to prevent such liability coming to pass by adding warnings to products, or negotiating better terms for money his client owes. Unfortunately, sometimes the only action that is available is to sue another party in court to ask a court of law to address the infringement of the right of a client or keep a client's legal liabilities within the prescribed measure allowable by law. In the event of a suit, the party bringing the action is the plaintiff and the party the action is against is the defendant.

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. All initial pleadings in a court of record must be in writing. Those on behalf of a plaintiff are called complaints. They state 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 to make things right. Those on behalf of the defendant are called answers because they are answering the complaint. Answers 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, how to prepare them. Additional pleadings are typically handled in written form as well but maybe made when both parties are in court.

The legislature passes laws called statutes of limitation, these are laws limiting the timeframe that a lawsuit or criminal charge may be filed. There is a statute of limitation for all civil actions. There is a statute of limitation for 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 lawyers should be certain in every instance that their suit, complaint, or pleadings are timely filed.



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The paperwork is filed, now the lawyer must prove his case. Sometimes the pleadings are enough without further proof but often defendants will dispute facts of the complaint will file counter pleadings, will raise a question(s) of law, deny the facts alleged by the plaintiff, give 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. Generally, judges decide issues of law and juries decide issues of fact. Issues of law that may be brought up are improper pleadings or filings, causes for dismissal or mistrial, or on appeal if the lower court erred on an issue of law such as allowing or over-ruling an objection. Issues of fact are left to the jury, the jury can weigh all the witness testimony, evidence, and determine which party wins, if both are fault, or in criminal cases if a defendant is guilty. If a defendant waives their right to a jury trial, then and only then, a judge will also decide the issue of fact.

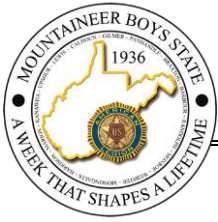
To maintain or dispute an issue of fact, each side must offer evidence to support his side of the issue. The lawyer must know what is necessary to prove or to disprove any fact asserted. He must know what his witnesses will say and how to get them to say it. He must know what documents exist, what those documents contain, and how to get them into evidence for the consideration of the judge and jury. He must also know what not to ask. Sometimes this is a skill often forgot.

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 laws. 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 knows both the substantive and procedural law. The lawyer must both know the rights or responsibility of his client but also how to protect or defend those rights and responsibilities.

Final Note on Ethics: 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. As mentioned before, the attorney may be brought before the board for disciplinary proceedings which include being suspended or disbarred.

The practice of law is an honorable profession. 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. That justice be maintained pure and unsullied. The conduct and the motives of lawyers must be such as to merit the approval of all. 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.

May you, if you become lawyers at The American Legion Mountaineer Boys State, emulate, in every way, the conduct of the true and faithful lawyers of the profession of law.



THE AMERICAN LEGION MOUNTAINEER BOYS STATE WEST VIRGINIA'S PREMIERE LEADERSHIP ACADEMY

LAW LECTURE

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 by 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 at 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.

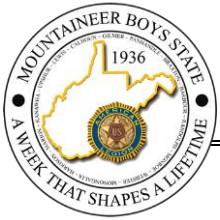
PROBATE ordinarily includes all steps necessary for the administration of a deceased's estate. Formerly the work related solely to the proof of a will; for instance, "offering a will for probate."

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 each 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.



THE AMERICAN LEGION MOUNTAINEER BOYS STATE
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LAW LECTURE

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

Note: These questions are designed solely to assist ALMBS 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.

True	False	Question
		The Judicial Department of the State of West Virginia is one of three separate and distinct departments of the government.
		One of the four separate and distinct departments of the government is the Judicial Department.
		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.
		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.
		The West Virginia Supreme Court of Appeals consists of five justices appointed for a term of twelve years.
		The West Virginia Supreme Court of Appeals consists of nine justices elected for a term of twelve years.
		The ex-officio reporter of the West Virginia Supreme Court of Appeals is the State Attorney General.
		The two types of jurisdictions that the West Virginia Supreme Court of Appeals has is original and appellate.
		The West Virginia Supreme Court of Appeals is an appellate court and the sole jurisdiction that it enjoys is appellate.



THE AMERICAN LEGION MOUNTAINEER BOYS STATE WEST VIRGINIA'S PREMIERE LEADERSHIP ACADEMY

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True	False	Question
		The Constitution of West Virginia provides, in part, that the legislature may establish intermediate appellate courts.
		Intermediate appellate courts, although provided for in the West Virginia Constitution, have not been established by the West Virginia Legislature.
		The Circuit Courts are courts of original and general jurisdiction and have Constitutional authority to handle matters in controversy in excess of \$100.00.
		The Circuit Courts are courts of original and general jurisdiction and have statutory authority to handle matters in controversy in excess of \$300.00.
		A Circuit Court exists in each county of the state of West Virginia with at least one judge for each circuit.
		There are thirty-three judicial circuits in the state of West Virginia with at least one judge for each circuit.
		Each judicial circuit contains at least one Magistrate Court.
		A Magistrate Court exists in each county in the State of West Virginia.
		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.
		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.
		A magistrate who serves a population of 10,000 is required, by law, to devote himself full-time to his public duties.
		A magistrate who serves a population of 25,000 is required, by law, to devote himself full-time to his public duties.
		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.
		A magistrate may be removed from office for conviction of a felony, for conviction of a misdemeanor involving moral turpitude.



THE AMERICAN LEGION MOUNTAINEER BOYS STATE WEST VIRGINIA'S PREMIERE LEADERSHIP ACADEMY

LAW LECTURE

True	False	Question
		It is the statutory duty of the Sheriff of each county to serve all civil and criminal processes that originate from any Magistrate Court.
		Hearsay evidence is one type of evidence that is always admissible in a court of law.
		Magistrate Courts have original jurisdiction in all criminal matters except capital offenses.
		Magistrate courts have original jurisdiction in criminal matters except capital offenses.
		Statutory law is the type of law that is enacted by the legislature.
		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.
		Magistrate courts do not have jurisdiction over actions for libel and slander, malicious prosecution, and false imprisonment.
		Magistrate courts do not have jurisdiction over matters involving eminent domain.
		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.
		Each county in West Virginia has a County Commission or a tribunal that acts in lieu of the County Commission.
		A County Commission is composed of three commissioners, a clerk, and a Sheriff or his deputy when his services are needed.
		A Circuit Court is composed of a judge, a clerk, a Sheriff or his deputy or bailiff, a reporter, and a jury if needed.
		Municipal Courts have jurisdiction to enforce municipal ordinances with the right of appeal to the Circuit Courts.
		The Constitution of West Virginia authorizes the legislature to establish municipal, police, or mayor's court in incorporated cities, towns, or villages.
		Municipal courts usually have a clerk, sergeant or chief of police or policy officer to execute the judgments and orders of the court.



THE AMERICAN LEGION MOUNTAINEER BOYS STATE WEST VIRGINIA'S PREMIERE LEADERSHIP ACADEMY

LAW LECTURE

True	False	Question
		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.
		A litigant is one who has business to present to a court.
		The individual who initiates a civil lawsuit is called the defendant.
		The individual who initiates a civil lawsuit is called the plaintiff.
		An individual who is on trial for a criminal offense is called the defendant.
		Under most circumstances, a litigant is permitted to choose his own lawyer.
		Constitutional law provides that a defendant in a criminal proceeding 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.
		A person who hires a lawyer becomes that lawyer's client.
		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.
		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.
		Every legal action has a statute of limitation.
		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.
		Generally, juries decide issues of fact and courts (judges) decide issues of law.
		Generally, juries decide issues of law and courts (judges) decide issues of fact.
		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.
		There are at least two sides to every controversy in court.
		An individual who has been sued in a court of original jurisdiction is not the plaintiff.
		An individual who has been sued in a court of original jurisdiction is usually the defendant.



THE AMERICAN LEGION MOUNTAINEER BOYS STATE WEST VIRGINIA'S PREMIERE LEADERSHIP ACADEMY

LAW LECTURE

True	False	Question
		Lawyers prove their cases by introducing evidence.
		It is not permissible for a lawyer to discuss facts of a case with a witness prior to trial.
		A good attorney will discuss facts of a case with witnesses prior to trial.
		The West Virginia Bar Association has charge of the admission of persons to practice law in the State of West Virginia.
		An individual, to be eligible to practice law in West Virginia, must possess a BA or BS or higher degree and LLB or JD or their equivalents from an accredited college or university or its equivalent.
		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.
		The West Virginia Bar Examination consists of a written and oral section and is conducted by a board of seven bar examiners.
		An individual may practice law as soon as he receives a certificate that he has passed the bar examination.
		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.
		A felony is a crime punishable by more than one year in an institution of confinement.
		A tort is an injury to a person or property by another person.
		Circuit Courts and Magistrate Courts are courts of record. Municipal Courts are not courts of records.
		A Writ of Prohibition is a writ directed to a public officer or public body requiring him or it to perform an official duty.
		The person injured by a criminal is the plaintiff in a criminal case.
		The legislature is without power to deprive a constitutional court of the authority bestowed upon it by the Constitution.



THE AMERICAN LEGION MOUNTAINEER BOYS STATE WEST VIRGINIA'S PREMIERE LEADERSHIP ACADEMY

LAW LECTURE

True	False	Question
		A writ of Mandamus is a writ directed to a public officer or public body requiring him or it to perform an official duty.
		The jury in a Magistrate Court is usually made up of six individuals.
		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.
		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.