

THE MICHELSON INSTITUTE FOR INTELLECTUAL PROPERTY

Assessment Questions

Overview

The Michelson Institute for Intellectual Property has tailored unique assessment questions which can be used for a variety of tests, quizzes, and assignments to evaluate student progress. Below you will find a library of assessment questions based on *The Intangible Advantage: Understanding Intellectual Property in the New Economy*.

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Chapter 1

Section 1.1: The Foundations of Patent Protection

- Which of the following does a patent give an inventor the exclusive right to?
 - a. Profit from his or her invention.
 - b. Prevent others from making, using, offering for sale, or selling the invention.
 - c. Prevent others from learning the secrets of the invention.
 - d. All of the above.

Answer: c

Feedback:

- a. Incorrect. The law does not explicitly give you the right to profit from it.
- b. Correct. A patent prevents others from making, using, offering for sale, or selling an invention for a limited time, after which it's in the public domain.
- c. Incorrect. You must disclose the secrets of your invention to get a patent.
- d. Only c is correct.

- The “bargain” theory is a theoretical justification for patents. What does it argue?

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- a. In exchange for inventing something useful, society gives the inventor the exclusive right to his invention for a limited time.
 - b. The product of mental labor should be the property of its creator.
 - c. Government negotiates with inventors to determine the value of an invention.
 - d. None of the above.

Answer: a

Feedback:

- a. Correct. This is the “bargain” that society makes with the inventor.
 - b. Incorrect. This is called the “natural rights” theory, and while it also justifies the grant of patent rights, it is not the “bargain” theory.
 - c. Incorrect. In the U.S., patent values are determined by the free market.
 - d. Incorrect. The answer is only a.
-
- Which two public policy goals are served by granting patent rights?
 - a. By protecting the property rights of inventors, the wellsprings of creation do not dry up for lack of incentive.
 - b. Patent rights ensure equal treatment for all.
 - c. From each according to his ability, to each according to his need.
 - d. The public interest is served by disclosing the details of the invention and thereby promoting the progress of the nation.

Answer: a and d

Feedback:

- a. Correct. If inventors can't profit from their efforts, most won't invent.
- b. Incorrect. Patent rights have nothing to do with equal treatment for all.
- c. Incorrect. Patent rights are the opposite of the communist ideal.
- d. Correct. Unlike trade secrets, patents disseminate new technical knowledge.

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- Through which of the following means do patents also promote knowledge-sharing?
 - a. To get a patent, inventors must disclose the secrets of his invention.
 - b. Patents represent the world's greatest library of technical knowledge.
 - c. Innovators keep up with technical trends by reading others inventors' patents.
 - d. All of the above.

Answer: d

Feedback:

- a. Patent applicants must disclose exactly how their inventions work.
- b. Up to 80% of all technical knowledge is contained only in patents.
- c. 88% of R&D managers say they rely on patents to keep up with new technical developments in their industries.
- d. Correct. The above all promote knowledge sharing.

Section 1.2: The Weakness of Early Patent Systems

- The Statute of Monopolies in 1624 ended the practice of granting patents for which of the following?
 - a. Inventions that were not truly novel.
 - b. The Crown's favored inventors.
 - c. Trade in staples such as salt or soap rather than for actual inventions.
 - d. Inventions that helped industrialists monopolize whole industries.

Answer: c

Feedback:

- a. Incorrect. The Statute did not end the non-examination of patents for novelty.
 - b. Incorrect. Patents continued to be granted “by favor of the Crown.”
 - c. Correct. The Statute stopped the granting patent monopolies over trade.
 - d. Incorrect. Patent grants still favored large incumbent industries.
- Which of the following practices were common in early patent systems?
 - a. Patent fees were exorbitantly high.
 - b. Limited or no disclosure of the details of the invention.
 - c. No examination for patent validity.
 - d. All of the above.

Answer: d

Feedback:

- a. Correct. Patent fees were 11 times the per capita income of the average citizen.
 - b. Correct. In England and France, there was little or no disclosure of patented inventions.
 - c. Correct. In Europe, patents were not examined for novelty or validity.
 - d. Correct. All the above practices defined Old World patent systems.
- Which of the following effects did early patent systems tend to have on the overall economy?
 - a. They limited innovation to a small sector of the population.
 - b. Biased towards incumbent industries rather than disruptive change.
 - c. Reinforced the wealth of elites not the productive capacity of society.
 - d. All of the above.

Answer: d

Feedback:

- a. Few could afford patent fees, so invention was the province of elites.
- b. Working requirements meant that only manufacturers could get patents.

- c. Broad-based innovation is required to raise society's productive capacity.
- d. Correct. Early patent systems had all the above flaws.

Section 1.3: America's Uniquely-Democratic Patent System

- The Founding Fathers created the U.S. patent system with which overarching goal in mind?
 - a. To defend America's newly-won independence.
 - b. To rapidly stimulate the growth of domestic industry.
 - c. To create advanced new weapons for America's young army.
 - d. None of the above.

Answer: b

Feedback:

- a. Incorrect. Armed forces and citizen militias protect U.S. sovereignty.
 - b. Correct. The only way to rapidly grow America's primitive economy was to incentivize thousands to invent by granting broad-based patent rights.
 - c. Incorrect. Although innovators like Samuel Colt and Richard Gatling did invent new weapons, this was not the primary aim of the patent system.
 - d. Incorrect. b is the correct answer.
- The patent system was designed to tap the creative and productive potential of which of the following?
 - a. Our abundant natural resources.
 - b. Our large stock of imported goods and machinery.
 - c. Rich agricultural lands.
 - d. An enterprising population with a "universal ambition to go forward."

Answer: d

Feedback:

- a. Incorrect. Tapping America's natural resources would come later.
- b. Incorrect. After independence, America no longer had major imports.
- c. Incorrect, although inventions like the cotton gin did boost agricultural output.
- d. Correct. America's principal asset was its literate and entrepreneurial population.

- Which of the following was NOT a unique feature of the U.S. patent system?
 - a. It was affordable by the common man.
 - b. It had an examination system to determine patent validity.
 - c. Patentees were required to make or sell products based on their inventions.
 - d. It had simplified application procedures.
 - e. It required full disclosure of the details of the invention.
 - f. It allowed for the sale and licensing of patent rights.

Answer: c

Feedback:

- a. Incorrect. Patent fees were set at \$30, less than 5% the rate in Britain.
- b. Incorrect. America was the first nation to examine patents for validity.
- c. Correct. Unlike other nations, the U.S. did not require patentees to have the wealth or resources needed to manufacture products based on their inventions.
- d. Incorrect. In Britain, applicants sought approval from 7 offices plus the King, whereas in the U.S. applicants needed the approval of only a single office.
- e. Incorrect. No patent is granted without disclosing an invention's secrets.
- f. Incorrect. Because patent rights could be licensed and sold, America created the world's first market for technology, greatly speeding industrialization.

- Which of the following demonstrate the incentivizing impact of the U.S. patent system?
 - a. The U.S. had 4 times the per capita patenting rate of Britain.
 - b. Americans produced 5 times as many inventions each year as the British did.
 - c. Helped create the strongest economy in the world.
 - d. The U.S. led the industrial revolution.
 - e. All of the above.

Answer: e

Feedback:

- a. America has more independent inventors than any other nation.
- b. U.S. inventors are also the most productive — witness Thomas Edison.
- c. Our democratized patent system was central to U.S. economic success.
- d. The patent system enabled the U.S. to leapfrog Britain in industrial growth.
- e. Correct. Our patent system was so successful the rest of the world copied it.

Section 1.4: The Role of the U.S. Legal System

- Which of the following is NOT true of the U.S. patent system?
 - a. Novelty, non-obviousness, and utility determine patent validity, not the identity or business model of the inventor.
 - b. Patents are freely-transferable and tradable property rights.
 - c. You can't infringe a patent if you honestly don't know that it exists.
 - d. Patent holders are not required to make or sell products based on their inventions.

Answer: c

Feedback:

- a. Incorrect. Novelty, utility and non-obviousness are key to patent validity.

- b. Incorrect. Patents can be licensed or sold just like any other property.
- c. Correct. Infringement does not require prior knowledge of a patent.
- d. Incorrect. Inventors are not required to make products.

- Compared to the Industrial Revolution, the overall patent litigation rate today _____.
 - a. is twice what it used to be
 - b. is about the same as it used to be
 - c. is less than half what it used to be

Answer: c

Feedback:

- a. Incorrect. It's a myth that America has more patent litigation than ever.
- b. Incorrect. The U.S. has fewer patent suits proportionally than in the past.
- c. Correct. The patent litigation rate today is 1.65%. In 1850, it was 3.6%.

- What has also been the most competitive technology innovation sector in the U.S.?
 - a. The most active in new patent applications.
 - b. The most litigious in terms of patent suits.
 - c. The most lucrative in terms of investment.
 - d. All of the above.

Answer: d

Feedback:

- a. Correct. Competition for technology rights drives up patenting rates.
- b. Correct. Competition for the rights to new technology also spurs litigation.
- c. Correct. Investors always flock to new technology opportunities.
- d. Correct. Each of the above is a true statement.

- Historically speaking, patent litigation has served to which of the following?
 - a. Slow innovation and R&D.
 - b. Settle disputed rights to new technology so commercialization can proceed.
 - c. Block others from designing around patents.

Answer: b

Feedback:

- a. Incorrect. Patent litigation rises during periods of rapid innovation.
- b. Correct. Commercialization increases after patent rights are adjudicated.
- c. Incorrect. Research shows that patents actually spur further innovation.

Section 1.5: What the U.S. Patent System Wrought

- How many years after the first patent law was signed in 1790 did it take for the U.S. to surpass Britain in the number of new inventions being patented?
 - a. 75 years.
 - b. 40 years
 - c. 13 years
 - d. 100 years.

Answer: c

Feedback:

- a. Incorrect. 75 years later, the U.S. had 5 times more inventions than Britain.
- b. Incorrect, By then, the U.S. had triple the per capita patent rate as Britain.
- c. Correct. After 13 years, the U.S. surpassed Britain in numbers of inventions, even though Britain still had twice the population of the U.S.

-
- d. Incorrect. After 100 years, most nations had copied the U.S. patent system.
 - Historically, in the U.S., there have been major surges in new patent filings whenever which of the following has occurred?
 - a. There is a sharp increase in patent litigation.
 - b. New technology advances lead to the birth of new industries.
 - c. The Supreme Court decides a major patent case.
 - d. None of the above.

Answer: b

Feedback:

- a. Incorrect. It's the opposite — i.e., more patents leads to more litigation.
- b. Correct. Entrepreneurs and inventors flock to new industrial opportunities.
- c. Incorrect. Some Supreme Court decisions limit patent opportunities.
- d. Incorrect. b is the correct answer.

- What percentage of entrepreneurs say that patents are vital to securing venture funding?
 - a. 20%
 - b. 40%
 - c. 67%

Answer: c

Feedback:

- a. Incorrect. The majority of entrepreneurs say patents are vital to investment.
- b. Incorrect. The figure is too low.
- c. Correct. 67% of entrepreneurs say patents are vital to securing investment.

- The United States was the only nation to define its greatness in its capacity for which of the following?
 - a. Economic growth.
 - b. Military superiority.
 - c. Bringing freedom to oppressed elsewhere in the world.
 - d. Technological progress.

Answer: d

Feedback

- a. Incorrect. Imperial England also took pride in its economic prowess.
- b. Incorrect. Through the ages, many countries have pursued military might.
- c. Incorrect, although Americans do strive to spread freedom in the world.

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- d. Correct. The U.S. saw its greatness in the pursuit of technological progress.

Section 1.6: Patent-Eligible Inventions

- A patentable invention is a new, novel and non-obvious machine, manufacture, process, or composition of matter. Please identify which of the four types of inventions categories these hypothetical mouse trap inventions represent:
 - a. A mouse ray gun.
 - b. Exploding mouse glue.
 - c. A new way to catch mice using sound waves.
 - d. A mouse destroying missile.

Feedback:

- a. A machine — a tool with moving parts and uses energy.
 - b. A composition of matter — a synthesized chemical compound or molecule.
 - c. A process — a way to do something new or a new way to do something old.
 - d. A manufacture — a part or product produced according to design.
- All patentable inventions fall into two broad categories — they are products or processes. Please identify which category the following fall into.
 - a. A machine.
 - b. A means to an end.
 - c. A composition of matter.
 - d. A manufacture.

Feedback:

- a. It's a product — a physical thing.
 - b. A process — a way to do something new or a new way to do something old.
 - c. It's also a product — a physical thing.
 - d. Also a product — a physical thing.

-
- Can you patent an idea for a better mousetrap? (Choose all that apply)
 - a. Yes, so long as you outline the idea in detail.
 - b. No, you can't patent a mere idea.
 - c. Yes, so long as you develop the idea into a new, non-obvious and useful machine, manufacture, process or composition of matter that can actually catch mice.

Answers: b and c

Feedback:

- a. Incorrect. You cannot patent a mere idea, no matter how detailed it is.
- b. Correct. An idea alone is not patentable.
- c. Correct. You can patent the application of an idea in a product or process..

- Which of the following are NOT patentable?
 - a. Electricity.
 - b. $E=MC^2$.
 - c. A random number generator.
 - d. A device that uses electricity to communicate.

Answers: a and b

Feedback:

- a. Correct. Electricity is a natural phenomenon and therefore not patentable.
- b. Correct. You cannot patent a mathematical formula.
- c. Incorrect. You can patent a device that uses mathematical formulas.
- d. Incorrect. You can patent a product or process that uses natural phenomenon.

- When might a software be patentable?
 - a. If it contains a new, non-obvious and useful algorithm.
 - b. If it Uses algorithms in a GPS navigation system.
 - c. If it Records the sale of tee-shirts over the Internet.
 - d. None of the above.

Answer: b

Feedback:

- a. Incorrect. Algorithms are mathematical formulas and cannot be patented.
- b. Correct, because it uses algorithms to produce a tangible and inventive result.
- c. Incorrect. Taking a common human activity and merely reproducing it via computer is not truly inventive and therefore not patentable.

d. Incorrect. B is the correct answer.

- Which was NOT one of the Supreme Court's "software-eligibility trilogy" of cases?
 - a. *Gottschalk v. Benson*.
 - b. *Williams & Wilkins v. United States*.
 - c. *Parker v. Flook*.
 - d. *Diamond v. Diehr*.

Answer: b

Feedback:

- a. Incorrect. This 1972 case declared algorithms alone not patentable.
- b. Correct. This was a famous copyright case.
- c. Incorrect. This 1978 case ruled that to be patentable, software algorithms had to produce not only a tangible result but an inventive one as well.
- d. Incorrect. This 1981 case affirmed that a physical machine or process using software may be patentable if it produces a tangible and inventive result.

- Which court case most severely limits software patentability?
 - a. *State Street Bank v. Signature Financial Group*.
 - b. *In re Bilski*.
 - c. *Mayo Collaborative Services v. Prometheus Laboratories*.
 - d. *Alice v. CLS Bank*.

Answer: d

Feedback:

- a. Incorrect. This 1998 case expanded patentability to include business methods.
- b. Incorrect. This 2008 case held that software must be implemented on a specific machine to achieve an inventive purpose to be patentable..

-
- c. Incorrect. This 2012 case was limited to one software-enabled process only.
 - d. Correct. This 2014 case had a major impact on the kinds of software that may be patented, causing the invalidation of many software patents.
- What is the so-called “Alice paradox”?
 - a. The highest-value new software products and services are also hardest to patent.
 - b. You can get software patents but you can’t enforce them.
 - c. You can only patent software that replicates human activity.
 - d. None of the above.

Answer: a

Feedback:

- a. Correct. Cloud computing, Big Data, and other new software technologies are the most valuable but also hardest to patent thanks to *Alice v. CLS Bank*.
 - b. Incorrect, although it’s true that the patent office is still issuing software patents but the courts are increasingly invalidating them.
 - c. Incorrect. *Alice v. CLS Bank* held that replicating ordinary activity via a computer is not inventive enough to be patentable.
 - d. Incorrect. The correct answer is a.
- Opponents of software patenting make which of the following arguments.
 - a. The software industry is too iterative and patents should only be for big advances.
 - b. Software is intangible and abstract, so shouldn’t be patented.
 - c. Patents stifle innovation in the software industry.
 - d. All of the above.

Answer: d

- Patents should only be granted for big revolutionary breakthroughs. True or False?
 - a. True
 - b. False

Answer: False.

Feedback:

- a. Incorrect. The patent system was designed to encourage the sort of modest but practical advances that make the most difference in people's everyday lives.
 - b. Correct. The patent system was designed to encourage the sort of modest but practical advances that make the most difference in people's everyday lives.
- Which Supreme Court case held that a naturally occurring DNA segment cannot be patented?
 - a. *Mayo Collaborative Services v. Prometheus Labs., Inc.*
 - b. *Association for Molecular Pathology v. Myriad Genetics, Inc.*
 - c. *Nautilus, Inc. v. Biosig Instruments, Inc.*

Answer: b

Feedback:

- a. Incorrect. This 2012 case held that a process enabling physicians to correlate blood test results with medication levels was unpatentable.
- b. Correct. This 2013 case held that the naturally-occurring gene segments could not be patented simply because they were isolated.
- c. This 2015 case held that a heart rate monitor patent was valid.

Section 1.7: Criteria for Patenting

- To qualify for a patent, an invention must be which of the following? (Choose all that apply)
 - a. Novel.
 - b. Revolutionary.
 - c. Non-obvious.
 - d. Useful.
 - e. Significant.

Answer: a, c, and d

Feedback:

-
- a. Correct. An invention must be brand new to be patentable.
 - b. Incorrect. A patentable invention need not represent a major breakthrough.
 - c. Correct. A patentable invention may represent only a modest breakthrough, but it cannot be one that would be obvious to anyone skilled in the field.
 - d. Correct. Patents used to be denied to hair-growth products because they didn't work. But once one was invented that did work, it was patentable.
 - e. Incorrect. Many might say hair-growth products are not significant inventions, but if they function as intended, they are patentable.
- For an invention to be considered novel, what must it never have been?
 - a. Patented before.
 - b. Described in a patent application, even if never granted.
 - c. Explained in a printed publication domestic or foreign.
 - d. Offered for sale or publicly known.
 - e. All of the above.

Answer: e

Feedback:

- a. Correct. You can only patent a novel, non-obvious and useful improvement of an existing patented invention.
 - b. Correct. If your invention was disclosed even in an application, it's not novel.
 - c. Correct. Even if it's discovered that your invention was described in a research paper in a small library in Norway or Mongolia, it's not novel.
 - d. Correct. Your invention is not novel if offered for sale for more than 12 months prior to the filing of a patent application.
-
- What does the term "prior art" refer to?
 - a. Any previous private discussions of an invention or its components.
 - b. Any previous patent, publication, or public use of an invention.
 - c. Any previous speculation about an invention.
 - d. None of the above.

Answer: b

Feedback:

- a. Incorrect. Prior art refers only to public knowledge or use of an invention.
 - b. Correct. Anything publicly known about an invention is prior art.
 - c. Incorrect. Speculation without enabling detail does not constitute prior art.
 - d. Incorrect. b is the correct answer
-
- If you invent a starship warp drive, *Star Trek* would be considered prior art and your invention would be ineligible for a patent. True or False?
 - a. True
 - b. False

Answer: b

Feedback:

- a. Incorrect. *Star Trek* did not disclose enough detail to enable someone skilled in the art of space propulsion to build a warp drive and is thus not invalidating prior art.

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- b. Correct. *Star Trek* did not disclose enough detail to enable someone skilled in the art of space propulsion to build a warp drive and is thus not invalidating prior art.
-
- To meet the requirement for utility, which of the following must an invention do?
 - a. Work or function as intended.
 - b. Be of some benefit to society.
 - c. Be a worthwhile product, process, or composition of matter.
 - d. All of the above.

Answer: a

Feedback:

- a. Correct. Snake oil and other fraudulent products do not pass the utility test.
 - b. Incorrect. A bird diaper is hardly beneficial to society, but it is patentable.
 - c. Incorrect. Whether a product is considered “worthwhile” is subjective.
 - d. Incorrect. The correct answer is a.
-
- Why would combining a camera with a cellphone in a smartphone pass the test for non-obviousness, whereas putting wheels from a chair onto an office cart would not?
 - a. The technology in a smartphone is much more complicated.
 - b. Putting wheels from a chair onto a cart is less difficult.
 - c. Combining a camera and a cellphone produced an unexpected result.

Answer: c

Feedback:

- a. Incorrect. The complexity of a technology is irrelevant to non-obviousness.
- b. Incorrect. The degree of difficulty has nothing to do with non-obviousness.

- c. Correct. Even though composed of widely-known elements — a camera, and a cell phone — a smartphone achieved an unexpected result (millions of selfies) and satisfied a previously-unmet need in the market.
- Of the three criteria for patenting, which is the most difficult to surmount?
 - a. Utility.
 - b. Novelty.
 - c. Non-obviousness.

Answer: c

Feedback:

- a. Incorrect. Utility is the easiest hurdle to overcome.
- b. Incorrect. Novelty is more difficult, but can be demonstrated by a rigorous search of patent and non-patent prior art that turns up nothing invalidating.
- c. Correct. The vast majority of patent office application rejections are for failure to pass the test of non-obviousness.

Section 1.8: Other Types of Patents

- For which of the following are plant patents granted?
 - a. Bio-engineered plants.
 - b. Naturally grown plants that are distinctively different.
 - c. Plants that are asexually cultivated, not grown.
 - d. All of the above.

Answer: c

Feedback:

- a. Incorrect. Bio-engineered plants are eligible for regular utility patents.
- b. Incorrect. Naturally-grown plants are ineligible for any kind of patent.
- c. Correct. Plant patents are only granted for plants that have been cultivated by grafting, budding, or cutting rather than grown from seeds.
- d. Incorrect. c is the correct answer.

-
- What are the three patentability criteria for plant patents?
 - a. Novelty, utility, and non-obviousness.
 - b. Novelty, distinctiveness, and non-obviousness.
 - c. Novelty, beauty, and non-obviousness.'

Answer: b

Feedback:

- a. Incorrect. Those are the criteria for regular utility patents.
- b. Correct. In place of utility, *distinctiveness* is required for plant patents.
- c. Incorrect. Beauty is an entirely subjective determination.

- What are design patents granted for?
 - a. Functional designs for manufactured items, like the shape of a chair.
 - b. Ornamental designs for items of manufacture, like the fabric design of a chair.
 - c. Both of the above.

Answer: b

Feedback:

- a. Incorrect. Design patents are granted only for *non-functional* ornamental designs and can be invalidated if the design has practical utility.
- b. Correct. Design patents such as Apple's patents on the look and feel of the iPhone can be extremely valuable.
- c. Incorrect. Only b is correct.

- What are the three patentability criteria for a design patent?
 - a. Novelty, utility, and non-obviousness.
 - b. Novelty, beauty, and non-obviousness.
 - c. Novelty, ornamentality, and non-obviousness.

Answer: c

Feedback:

-
- a. Incorrect. If a design has functional utility, it is ineligible for a design patent.
 - b. Incorrect. Again, beauty is in the eye of the beholder.
 - c. Correct. Ornamentality substitutes for utility in design patents.

Section 1.9: The Patenting Process

- By what percentage are filing fees reduced if the applicant is on of the following:
 - a. Universities, non-profits, and small businesses with fewer than 500 employees.
 - b. Those with gross income less than three times U.S. median household income.

Feedback:

- a. These are called small entities, and receive a 50% discount in application fees.
- b. These are micro-entities, and receive a 75% discount in filing fees.

- What is the advantage of a provisional patent application, which lasts only one year?
 - a. It is less expensive.
 - b. It is not subject to examination.
 - c. Grants an early filing date while the inventor continues working on the invention.
 - d. All of the above.

Answer: d

Feedback:

- a. Correct, although that is not the only advantage of a provisional patent.
- b. Correct. No claims are submitted yet, so no examination is required.
- c. Correct. A provisional patent preserves an early priority date for a non-provisional patent using the same specifications filed within one year.
- d. Correct. All the above are advantages of a provisional patent.

- What is the main disadvantage of a provisional patent application?
 - a. It reserves an early filing date for a later non-provisional application.
 - b. The claims in a later non-provisional application must be completely consistent with the early description contained in the provisional application.
 - c. The provisional patent only contains the specifications, and drawings, if any.
 - d. All of the above.

Answer: b

Feedback:

- a. Incorrect. An early filing date is actually a benefit of provisional patents..
- b. Correct. This can be a challenge because the claims best suited to protect an invention cannot change even if the invention itself evolves over time.
- c. Incorrect, The limited requirements of a provisional are an advantage.
- d. Incorrect. Only b is correct.

-
- What is the most critical part of a patent application that determines both the inventor's rights and an infringer's liability?
 - a. The claims.
 - b. The specification.
 - c. The drawings.
 - d. The abstract.

Answer: a

Feedback:

- a. Correct. Claims determine the legal scope of the inventor's rights.
- b. Incorrect. The specification is the detailed description of the invention and how it works, as well as the existing problems that the invention solves.
- c. Incorrect. The drawings illustrate the invention, how it works, and the ways in which the invention can be implemented.
- d. Incorrect. The abstract is a one paragraph summary of the specification.

- Which of the following is the best strategy in drafting claims in a patent application?
 - a. Draft them as broadly as possible, to cover every possible use of the invention.
 - b. Draft them as narrowly as possible, so the examiner won't reject them.
 - c. Draft them as broadly as the specifications and the prior art allows, then back up those broad claims with successively-narrower claims as backup.
 - d. All of the above.

Answer: c

Feedback:

- a. Incorrect. Examiners will reject claims that they consider too broad or unsupported by the specifications, or that read upon prior art.

- b. Incorrect. Claims that are too narrow — e.g., claiming a tool made of *molded plastic* — are easily designed around using other materials and thus worthless.
 - c. Correct. Claims should be broad enough to be commercially meaningful, yet also narrow enough to avoid prior art or an examiner's rejection.
 - d. Incorrect. Only c is correct.
-
- The main tasks of the patent examiner are to determine if your invention _____. (Choose all that apply)
 - a. meets the statutory requirements for patentable subject matter
 - b. is novel and non-obvious based on a review of all available prior art
 - c. meets the requirement for utility
 - d. is a valuable contribution to science and industry

Answers: a, b and c

Feedback:

- a. Correct. His first task is to determine if your invention involves a patentable machine, manufacture, process or composition of matter.
 - b. Correct. Prior art searching and analysis for novelty and non-obviousness probably takes up most of an examiner's time during the examination process.
 - c. Correct, although this is usually the simplest part of an examiner's job.
 - d. Incorrect. The examiner makes no judgment as to the worthiness of your invention for society.
-
- In a "first office action," the examiner usually does which of the following?
 - a. Allows all the claims in the patent application.
 - b. Rejects some claims and/or requests further information.
 - c. Rejects the entire application.

Answer: b

Feedback:

- a. Incorrect. Approval; of all claims in a first office action are rare.
 - b. Correct. The applicant's task is to address the examiners concerns and either rebut them or amend the application by revising some or all of the claims.
 - c. Incorrect. No final rejection can be made during a first office action.
-
- In a second or subsequent examination, if the examiner finally rejects some or all of the claims, what can the applicant do at that point? (Choose all that apply)
 - a. Cancel the rejected claims, leaving only allowed claims.
 - b. Continue to argue his or her case to the examiner.
 - c. File what's called a "continuation application."
 - d. Appeal to the Patent Trial and Appeal Board.

Answers: a, c, and d

Feedback:

- a. Correct. This is the most common course of action.
- b. Incorrect. The applicant cannot continue arguing with the examiner.
- c. Correct. This requires drafting new claims.
- d. Correct. The applicant can appeal within 6 months of final rejection.

Chapter 2: Patent Enforcement

Section 2.1: The Right to Enforce Patents

- Responsibility for legally enforcing patents rests with which of the following bodies?
 - a. The U.S. Patent and Trademark Office (USPTO)
 - b. The state court in the state in which you reside.
 - c. U.S. federal courts.

Answer: c

Feedback:

-
- a. Incorrect. The USPTO is responsible only for examining and issuing patents, as well as hearing post-grant validity challenges. They do not enforce patents.
 - b. Incorrect, although state courts do handle patent malpractice cases.
 - c. Correct. Federal district courts adjudicated patent infringement cases.
- Patent owners have what rights under the law?
 - a. The exclusive right to “practice” the patent — meaning the exclusive right to make or sell products based on the patent.
 - b. The right to exclude others from making, using, offering for sale, selling, or importing the invention covered by the patent throughout the United States.
 - c. Both a and b

Answer: b

Feedback:

- a. Incorrect. Your product in some cases might infringe another’s patent.
- b. Correct. A patent is a right of exclusion only.
- c. Incorrect. Only b is correct.

- What does it mean to say that infringement is a “strict liability tort” or violation?
 - a. If you do not know that a patent exists, you cannot be held liable for infringement.
 - b. Lack of intent to infringe absolves you of some liability.
 - c. Even if you don’t know you are infringing, you are still liable.

Answer: c

Feedback:

- a. Incorrect. Ignorance of infringement is no defense against liability.
- b. Incorrect. Lack of intent is no defense against infringement.
- c. Correct. You are still 100 % liable for any infringement.

- Which of the following is the legal definition of patent infringement?

-
- a. If one or more of the patent's claims match (or "read on") the features and functions of a device or process, that device or process is infringing.
 - b. If a device or process performs a "substantially similar" function to that described in your patent claims, then it is infringing.
 - c. Both a and b are correct.

Answer: a

Feedback:

- a. Correct. In fact, products can infringe one or more of the claims in a patent and not infringe the others. It is still infringing.
 - b. Incorrect. Two vacuum cleaners may perform a substantially similar function, but do so through entirely different methods, resulting in no infringement.
 - c. Incorrect. Only a is correct.
-
- Which of the following illustrates the "doctrine of equivalents"?
 - a. If a device performs substantially the same function in substantially the same way as your patent claim, infringement exists if any differences are insignificant.
 - b. A patent calling for an "adhesive" connection (describing glue as the preferred adhesive) may be infringed by a device using a Velcro® fastener.
 - c. Both a and b are correct.

Answer: c

Feedback:

- a. Correct. This is the legal definition of the “doctrine of equivalents.”
- b. Correct. Both do substantially the same thing in substantially the same way.
- c. Correct. Both a and b are correct.

Section 2.2: Deciding Whether and How to Enforce a Patent

- If you believe your patent is being infringed, you have how many options for recourse?
 - a. Two. You can sue the infringer in federal court, or ignore the infringement.
 - b. Three. Besides the two above, you can simply demand he stop infringing.
 - c. Four. You can sue the infringer, demand he stop infringing and pay monetary damages, offer the infringer a license in return for royalties, or ignore it.

Answer: c

Feedback:

- a. Incorrect. You have additional options as well.
 - b. Incorrect. You have still more options.
 - c. Correct. There are four basic options.
-
- Patent infringement suits can take years and cost millions of dollars. Which of the following is another option patent owners have in seeking redress for infringement?
 - a. Seek out of court license and royalty settlements.
 - b. Seek contingency lawyers to take their case for a share of any damages.
 - c. Seek litigation financing in exchange for a share of any damages.
 - d. All of the above.

Answer: d

Feedback:

- a. Correct. About 95% of infringement suits settle before trial.
- b. Correct. Contingency lawyers can take 30%-40% or more of damages won.
- c. Correct. Litigation finance is a fast-growing business in the U.S.

-
- d. Correct. All the above are correct.

Section 2.3: Patent Litigation

- If you think multiple parties are infringing, the best strategy is usually to do what?
 - a. Sue them one at a time, so they don't gang up on you.
 - b. Pick the one with the biggest pockets, as the settlement will likely be larger.
 - c. Sue them all simultaneously, and let them sort out their differences.

Answer: c

Feedback:

- a. Incorrect. A series of successive suits puts more pressure on you.
 - b. Incorrect. The biggest defendant also has the most resources to fight you.
 - c. Correct. Suing multiple defendants can lead to a “falling out of thieves” that pushes one or more to make a separate peace (and settlement) with you.
- Should you alert an infringer beforehand that you intend to file suit?
 - a. Yes. This gives him the opportunity to settle prior to you filing a costly suit.
 - b. Never. He can then sue you preemptively, giving him the vital initiative in seeking a venue of his choice and a declaratory judgement of non-infringement.
 - c. Yes, but only if you file suit simultaneously or shortly afterwards.

Answer: c

Feedback:

- a. Incorrect. Infringers rarely respond favorably to your polite notice.

-
- b. Incorrect. There are situations in which the benefits outweigh the dangers.
 - c. Correct. This enables you to negotiate from a position of strength without giving the strategic initiative to the accused infringer.
 - How often do plaintiffs win at trial?
 - a. 60%-75% of the time.
 - b. 80%-90% of the time.
 - c. 40%-50% of the time.

Answer: a

Feedback:

- a. Correct, although the win percentage appears to be declining somewhat.
- b. Incorrect. Many large corporate defendants have vastly greater resources and can delay or bleed plaintiffs for years.
- c. Incorrect. Plaintiffs, after all, get to pick the case and the venue.

Section 2.4: Getting Started

- Which of the following is a reason the defendant may file a Motion to Dismiss once a suit is filed with the Clerk in the federal court you select? (Choose all that apply)
 - a. Improper jurisdiction.
 - b. Improper venue.
 - c. Improper (or invalid) patent.
 - d. Failure to state a proper claim.

Answers: a, b, and d

Feedback:

- a. Correct. This is filed if the defendant does not reside or do business within the geographic jurisdiction of the court.
 - b. Correct. This is filed if the defendant does not reside or commit an act of infringement in the jurisdiction of the court.
 - c. Incorrect. No substantive matters concerning infringement or patent validity are addressed in Motions to Dismiss.
 - d. Correct. The plaintiff has not adequately stated a cause of action.
- Which of the following are possible defenses in a defendant's Answer to a Claim? (Choose all that apply)
 - a. The patent is invalid.
 - b. The patent is not infringed.
 - c. The patent covers a non-essential part of the allegedly-infringing product.
 - d. The plaintiff waited too long to file suit.

Answer: a, b, and d

Feedback:

- a. Correct. This is an increasingly-common defense post *Alice v CLS Bank*.
 - b. Correct. This was the (failed) defense Samsung used against Apple's suit.
 - c. Incorrect. The importance (or not) of any part of a product is irrelevant. What matters is whether or not the patent is valid and is being infringed.
 - d. Correct. This is referred to as laches, a French term for lack of diligence.
-
- Why have defendants increasingly turned to post-grant review proceedings at the PTO such as *inter partes review* since the America Invents Act was passed in 2011? (Choose all that apply)
 - a. The PTO is less likely to judge that a patent has been infringed.
 - b. It's quicker than waiting for a trial.
 - c. The suit may be stayed while the PTO rules if the patent's claims should be cancelled.
 - d. The PTO has shown a strong likelihood of finding challenged patents invalid.

Answer: c and d

Feedback:

- a. Incorrect. The PTO does not decide whether or not a patent is infringed, only if its claims are valid or not.
- b. Incorrect. While post-grant reviews are quicker, that's not why defendants choose post-grant review. If anything, defendants want delays, not speed.
- c. Correct. The lawsuit is stayed during which there is a significant possibility that some or all of the patents claims will be invalidated upon review.
- d. Correct. In 2015, the percentage of challenged claims that were cancelled was near 70%, although the cancellation rate appeared to slow in 2016.



Section 2.5: Pretrial Procedures

- What role does discovery play in an infringement case?
 - a. Through production of documents and interrogatories, either side may discover information that may be decisive in confirming or rebutting infringement claims.
 - b. Discovery is often an endless fishing expedition that escalates the costs to both parties exponentially.
 - c. Both a and b are true.

Answer: c

Feedback:

- a. Correct. In the *Apple vs. Samsung* case, discovery produced emails from Samsung suggesting that the company knew it was infringing.
- b. Correct, although because of this, courts are increasingly turning to more limited discovery to shorten the time to trial and reduce costs.
- c. Correct. Both a and b are correct.

- What is the most critical pre-trial phase of every patent infringement case?
 - a. Discovery.
 - b. Summary Judgment.
 - c. Claims construction (or Markman) hearings.
 - d. The Verdict.

Answer: c

Feedback:

- a. Incorrect. While important (and costly) discovery is not decisive.
- b. Incorrect. Summary judgment often depends upon the results of the claim construction hearing.
- c. Correct. This determines the precise meaning and scope of a patent's claims, determining whether they read on the allegedly-infringing product.
- d. Incorrect. The verdict comes during the trial itself, not pre-trial.

Section 2.6: Trial

- Why do courts usually seat 7-9 jurors rather than six or 12 in most patent cases?
 - a. You need an odd number of jurors to break a tie vote on the verdict.
 - b. Six jurors won't be enough for a legal verdict if one is excused during trial, and 12 jurors will likely take too long to decide the case.

Answer: b

Feedback:

- a. Incorrect. All federal court jury verdicts must be unanimous so there can never be a split decision.
 - b. Correct. Seven to nine jurors is the optimal number in patent trials.
- Why are patent trials often thought of as morality plays?
 - a. The facts of the case, not each party's moral views, are all that matters to a jury.
 - b. It is immoral to spend \$3 million to \$10 million on a patent suit.
 - c. Each party casts itself as in the right and its opponent as doing them wrong.

Answer: c

Feedback:

- a. Incorrect. While facts are obviously important, oftentimes a jury's sense of each party's motivations and behavior is just as critical in reaching a verdict.
- b. Incorrect. Cost has nothing to do with why they're called morality plays.
- c. Correct. Plaintiffs portray defendants as thieving freeloaders profiting from the inventiveness of others, and defendants portray patentees as greedy monopolists stifling competition and denying consumers cheaper products.

Section 2.7: Post-Trial Procedures

- Which of the following is the definition of inequitable conduct?
 - a. Deceiving or misleading the Patent Office to grant a patent.

- b. Deceiving or misleading a jury during opening arguments.
- c. Deceiving or misleading the opposing party during the discovery phase.

Answer: a

Feedback:

- a. Correct. A judge's ruling of inequitable conduct by the patentee renders the patent unenforceable, even if the jury determined it was valid and infringed.
 - b. Incorrect. Giving false testimony would be perjury.
 - c. Incorrect. Inequitable conduct only applies to the patentee's dealings with the patent office and its examiners.
- What's the standard for proving willful infringement, leading to enhanced damages?
 - a. Selling a product despite knowing that a patent exists that the product might be infringing.
 - b. Selling a product despite an objectively-high likelihood that it infringed a valid patent and that this risk was known or should have been known to the infringer.”
 - c. Deliberately not conducting a prior art search to determine if a patent exists that your product might be infringing.

Answer: b

Feedback:

- a. Incorrect. Knowing that a patent covering similar technology exists is not enough to prove willful infringement.
 - b. Correct. An infringer had to have known (or should have known) that there was an objectively-high risk his product was infringing a patent.
 - c. Incorrect. One is not required by law to diligently search for prior art before clearing a product for sale.
- What is the standard for imposing attorneys' fees on the losing party to a patent suit?
 - a. Convincing evidence of bad faith or gross negligence by the losing party.
 - b. A case that “stands out from others” in the weakness of the plaintiff's case or the unreasonable or abusive manner in which it was litigated.

Answer: b

Feedback:

- a. Incorrect. That was the pre-2014 standard, and it was applied only rarely.
- b. Correct. This more liberal standard is being applied more often nowadays in an attempt to rein in so-called “patent trolls.”

- What is often the most serious damage that a court can impose upon an infringer?
 - a. A very large award for monetary damages.
 - b. Pre- and post-judgment interest payments on the damage award.
 - c. Injunctive relief barring further sales of the infringer’s products.

Answer: c

Feedback:

- a. Incorrect, although in some cases, large damage awards can hurt an infringer’s bottom line and stock price.
- b. Incorrect, although interest can be significant in some cases.
- c. Correct. Although Kodak paid Polaroid \$909 million in 1990, even worse it was forced to withdraw all its instant cameras and film from the market.

Section 2.8: Appeals

- Why are patent infringement verdicts almost always appealed?
 - a. The cost of an appeal is orders of magnitude less than the cost of the trial itself.
 - b. Legal issues such as claim construction are reviewed *de novo* — meaning, without regard to the previous trial’s rulings.
 - c. The U.S. Court for the Federal; Circuit, the appeals court, affirms in full less than 60% of the patent cases it decides on the merits.
 - d. All of the above.

Answer: d

Feedback:

- a.
- b.
- c.
- d. Correct. All of the above are correct answers. The chances of reversal of at least some trial results are pretty good.

Section 2.9: Litigation Alternatives

- As an alternative to litigation, mediation is different from arbitration in what way?
 - a. Mediations result in settlements only if both parties agree.
 - b. In arbitrations, the parties are bound by the decision of the arbitrator.
 - c. Both a and b are correct.

Answer: c

Feedback:

- a. Correct. Surprisingly, mediations often succeed despite their non-binding character.
- b. Correct. Most arbitrations are decided by a panel of three arbitrators.
- c. Correct. Given the enormous costs of trials, parties are increasingly turning to alternative forms of dispute resolution.

Section 2.10: Patent Trolls and Efforts to Thwart Them

- Which of the following is the definition of a “patent troll”?
 - a. A patent owner who licenses his patents rather than makes or sells products.
 - b. A patent owner whose main source of revenue is patent litigation.
 - c. A patent owner whose main source of revenue are “nuisance settlements” for less than the cost of litigation.

Answer: c

Feedback:

- a. Incorrect. Thomas Edison licensed many of his patents, and he was anything but an extortionist patent troll.
- b. Incorrect. Many patent holding firms make money by licensing patents either through negotiated agreements or via litigation.
- c. Correct. Patent trolls engage in the extortionist pursuit of nuisance settlements from companies for whom it would cost more to fight the troll in court.



Chapter 3: Copyright Basics

Section 3.1: Core Concepts

- A copyright gives authors, artists, dramatists, architects, and other artistic creators the exclusive right to control what?
 - a. How their work is published, reproduced, performed, or displayed.
 - b. The price at which their work is sold, performed, or displayed.
 - c. Whether or not the work becomes a classic on art, theater, or literature.

Answer: a

Feedback:

- a. Correct. It also gives them the right to control whether or not derivative works (e.g., a movie based on a book) may be produced.
 - b. Incorrect. Market forces govern the profits that creators earn.
 - c. Incorrect. Public opinion (and the critics) govern a work's reputation.
-
- Copyright is made possible by Article 1, Section 8, Clause 8 of the U.S. Constitution, which also gives Congress the authority to do what?
 - a. Declare war.
 - b. Grant patents.
 - c. To make all laws necessary and proper to enforce copyrights.

Answer: b

Feedback:

- a. Incorrect. That power is granted by Article 1, Section 8, Clause 11.
- b. Correct. This grants Congress the power “to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”
- c. Incorrect. That power is granted by Article 1, Section 8, Clause 18.

-
- Congress and the courts have interpreted the terms “authors” and “writings” very broadly to include which of the following as eligible for copyright? (Choose all that apply)
 - a. Graphic works.
 - b. Novel, non-obvious and useful inventions.
 - c. Architectural works.

Answer: a and c

Feedback:

- a. Correct. These can also be copyrighted.
 - b. Incorrect. Inventions may be patented.
 - c. Correct. These can also be copyrighted.
- When is a work considered copyrighted?
 - a. Once it is officially registered with the U.S. Copyright Office.
 - b. Once the U.S. Copyright Office grants an official copyright.
 - c. Once it is expressed in a tangible form that allows it to be seen or copied.
- There is an extensive examination system for getting a patent approved. Why is there not a similar system in place for copyrights?
 - a. The merit of an artistic or literary work is a wholly subjective determination.
 - b. Merit has nothing to do with whether or not a creative work is copyrightable.
 - c. Patent examiners can all agree that an invention is novel, non-obvious and useful, but art critics can never all agree that any one painting is beautiful.
 - d. All of the above

Answer: d

Feedback:

- a. Correct. The merit of any work is too subjective.
- b. Correct. There are no standards of quality in copyright, only originality.
- c. Correct. This reinforces the other two points.

d. Correct. Each of the above are true statements

- Which two public policy goals are served by granting copyrights? (Choose all that apply)
 - a. By protecting the property rights of artists to their creations, the wellsprings of creation do not dry up for lack of incentive.
 - b. Copyrights ensure that artists and writers won't be taken advantage of.
 - c. Cultural creativity serves the public good and promotes literacy and learning.

Answer: a and c

Feedback:

- a. Correct. If writers can't make a living at writing, we won't have many writers.
- b. Incorrect. Writers and artists are taken advantage of every day, but with copyrights at least they own the rights to their own work.
- c. Correct.

- How were copyrights viewed very differently from patent rights in terms of the interests of the general public?
 - a. Copyrights were thought to be in less conflict with the public interest.
 - b. Copyrights were enforced with the same diligence as patent rights.
 - c. Patent rights were seen as more beneficial to the public than copyrights.

Answer: c

Feedback:

- a. Incorrect. Congress and the courts placed more emphasis on the public's access to learning and literacy.
- b. Incorrect. The courts viewed patents and copyrights very differently.

-
- c. Correct. As the Supreme Court held in 1831, maximizing inventors' rights leads to maximum social welfare.”
- The policy of strong patent rights and weaker copyrights also reflected what differences in the motivations of inventors compared to authors?
 - a. Authors were not generally interested in economic gain.
 - b. Authors were motivated only by the prospect of economic gain.
 - c. Both artists and inventors sought economic gain, but authors also tended to be rewarded by celebrity and reputational gain as well.

Answer: c

Feedback:

- a. Incorrect. Absent economic gain, there will be far fewer authors.
- b. Incorrect. Authors also sought celebrity and recognition.
- c. Correct. The differences in motivation between authors and inventors tend to be ones of degree and emphasis, not of absolutes.

Section 3.2: Early Copyright Systems

- Copyrights began to be formally issued in what part of Europe?
 - a. France in the 16th century.
 - b. England under Queen Anne.
 - c. The Republic of Venice in the 15th Century.

Answer: c

Feedback:

- a. Incorrect. France's copyright system was introduced in 1498.
 - b. Incorrect. England's copyright began in the 16th Century.
 - c. Correct. This was also the place where the first patents were issued.
- Initially, to whom were copyrights given:
 - a. Authors.
 - b. Artists.

c. Printers and publishers.

Answer: c

Feedback:

- a. Incorrect. In most early copyright systems, authors had few or no rights.
 - b. Incorrect. Like authors,. Artists were largely ignored.
 - c. Correct. Copyrights were initially trade monopolies granted to publishers, printers, and theater owners — not artistic rights to creators.
- The copyright granted in 1669 to Jean-Baptiste Lully, director of the Paris Opera, gave him exclusive rights to? (Choose all that apply)
 - a. All operatic performances.
 - b. The publication of operatic librettos.
 - c. The number of musicians who could perform outside the Paris Opera.
 - d. Bequeath his copyright monopoly to his heirs.

Answer: a, b, c, and d

Feedback:

- a. All four answers are correct. King Louis the XIV granted Lully a hereditary monopoly over all operatic performances and publishing in Paris.
- How did early copyrights evolve from business monopolies into instruments of censorship and surveillance?
 - a. Bookstores sent the authorities records of who purchased what books.
 - b. Books had to be read and approved by a censor before a permit was granted to print the book.

Answer: b

Feedback:

- a. Incorrect, although this may have happened in some countries.
- b. Correct. Permits could also be revoked if influential citizens objected to their content.

-
- What did the 1709 Statute of Anne do to copyright practices?
 - a. It required that copyrights be given to multiple printers, not just one monopoly.
 - b. It enabled copyrights to last as long as 150 years.
 - c. It enabled anyone to get a copyright lasting 14 years with the right to renew.

Answer: c

Feedback:

- a. Incorrect.
 - b. Incorrect. In fact it ended the 150-year-long copyright monopoly of the Worshipful Company of Stationers.
 - c. Correct. This was one of the first modern copyright laws.
- In general, early European copyright systems achieved what results?
 - a. Created monopolies, high prices, censorship, and wealth for the Crown.
 - b. Guaranteed authors' rights.
 - c. Prevented publishers and printers from exploiting authors and artists.

Answer: a

Feedback:

- a. Correct. Although copyrights would eventually evolve and have beneficial effects, at first they were anything but helpful to authors and artists.
 - b. Incorrect. Authors' rights would not be guaranteed in England until 1774.
 - c. Incorrect. In fact, even today, such exploitation exists.
- What was the significance of the landmark *Donaldson v. Beckett* case in England.
 - a. Established that copyright was the common law right of publishers.
 - b. Treated copyright as a limited right of authors for the first time anywhere.
 - c. Gave Thomas Beckett the right to his own work in perpetuity.

Answer: b

Feedback:

- a. Incorrect. The case in fact overturned that rule.
 - b. Correct. It affirmed authors' rights for the first time anywhere.
 - c. Incorrect. Authors' rights were held only until publication, after which the Statute of Anne still gave the rights back to publishers.
- After *Donaldson v. Beckett*, copyrights were expanded to include which of the following? (Choose all that apply)
 - a. Sheet music, maps, design and sculpture.
 - b. Lectures.
 - c. Inventions.

Answers: a and b

Feedback:

- a. Correct.
- b. Correct.
- c. Incorrect. Inventions were covered by patent laws of the time.

Section 3.3: The Copyright Bargain in America

-
- At the time of America's first copyright laws, publications in America were mostly focused on which of the following?
 - a. Literary works.
 - b. Practical guides, newspapers and almanacs.
 - c. Poetry.

Answer: b

Feedback:

- a. Incorrect. Literary works were generally imported from Britain and France.
 - b. Correct. American publishing was focused almost entirely on more practical works of information rather than literary works.
 - c. Incorrect. Poetry, like most other fiction, came from Europe.
- Given America's more utilitarian focus in publishing, what was the emphasis placed in the drafting of our first copyright laws?
 - a. To guarantee the rights of authors.
 - b. To guarantee the rights of publishers and printers.
 - c. To ensure widespread public access to knowledge and information.

Answer: c

Feedback:

- a. Incorrect, although authors' rights were protected to some extent.
 - b. Incorrect. In fact, although publishers' rights were protected somewhat, they were forced to keep prices low so that citizens could have access to books.
 - c. Correct. This was the market-oriented aim of early copyright in the U.S.
- Copyrights for U.S. citizens last for what term?
 - a. 28 years.
 - b. 14 years, with a right of renewal.
 - c. Life-plus 70 years.

Answer: b

Feedback:

- a. Incorrect.
- b. Correct.
- c. Incorrect. This is the current — and controversial — term of copyright.

-
- The first United States copyright law was signed by George Washington when?
 - a. 1776.
 - b. 1783.
 - c. 1790.

Answer: c

Feedback:

- a. Incorrect.
- b. Incorrect. This was the date of colonial Connecticut's copyright law.
- c. Correct. The first copyright law was enacted 7 weeks after the first patent law.

- How did America's first copyright law treat the infringement of foreign cultural works?
 - a. It strongly prohibited copyright infringement whether domestic and foreign.
 - b. It explicitly allowed, even encouraged the piracy of foreign works.

Answer: b

Feedback:

- a. Incorrect. Infringement was prohibited only for domestic work.
- b. Correct. The piracy of foreign works was authorized in order to promote widespread citizen access to the benefits of learning and literacy.

- America would resist all efforts to outlaw the piracy of foreign works for how long?
 - a. Until 1810.
 - b. Until the end of the Civil War in 1865.
 - c. Until 1891.

Answer: c

Feedback:

- a. Incorrect. Piracy was still rampant in the first half of the 19th Century.

- b. Incorrect. Not only did the U.S. still print pirate works of foreign offers, legitimate copyrighted versions of foreign works were hit with a 25% tariff.
 - c. Correct. The Chase Act finally granted copyright protection to foreign authors — but only if their work was published or printed here first.
- John Barry was the first American to receive a copyright. For which type of work was this for?
 - a. A novel.
 - b. An almanac.
 - c. A spelling book.
 - d. A book of poems.

Answer: c

Feedback:

- a. Incorrect. There were very few American novelists at that time.
 - b. Incorrect, although almanacs were enormously popular at the time.
 - c. Correct. This reflected America's taste for practical learning at the time.
 - d. Incorrect, although the first American woman to receive a copyright was granted one for her work, "*poems Dramatic and Miscellaneous.*".
- A half century after independence, what proportion of literary works published in America were written by Americans?
 - a. One third.
 - b. 65%.
 - c. 92%.

Answer: a

Feedback:

- a. Correct. Americans were still not confident in their own literary talents.
- b. Incorrect. This was the percentage of science books penned by Americans.
- c. Incorrect. This was the percentage of business texts written by Americans.

-
- What were some of the costs of America's rampant piracy of foreign books?
 - a. The U.S. was regarded as an publishing outlaw by other countries.
 - b. American works cost a lot more than pirated foreign works.
 - c. Domestic American authorship was stunted and delayed as a result.
 - d. All of the above.

Answer: d

Feedback:

- a. Correct.
 - b. Correct. Pirated foreign works cost less because no royalties had to be paid.
 - c. Correct. Only in the mid-1800s did American novelists like James Fenimore Cooper, Nathaniel Hawthorne, and Henry Wadsworth Longfellow, emerge.
 - d. Correct. All of the above are true.
- When was Harriet Beacher Stowe's *Uncle Tom's Cabin* copyrighted?
 - a. 1837.
 - b. 1851.
 - c. 1861.

Answer: b

Feedback:

- a. Incorrect.
 - b. Correct.
 - c. Incorrect. By 1861, the Civil War had begun.
- When did U.S. authors finally become the majority of best-selling authors in the U.S.?
 - a. The mid-19th Century.
 - b. The early 20th century.

Answer: b

Feedback.

- a. Incorrect. American authors were only then emerging in force.
 - b. Correct. Until then, Europeans were regarded as the fount of culture.
- Research and historical experience both at home and abroad repeatedly demonstrate that in the absence of intellectual property rights, nations have:
 - a. An excessive incentive to copy others.
 - b. An insufficient incentive to invent or create for themselves.

Answer: a and b

Feedback:

- a. Both are correct — in fact, each answer is the mirror reflection of the other.

Section 3.4: Role of the Legal System

- How was America’s emphasis on widespread public access to learning evident in the concept of “Fair Use” developed by Supreme Court Justice Joseph Story?
 - a. It nullified copyright in educational institutions.
 - b. It gave teachers immunity from copyright infringement suits.
 - c. It allowed others to use a limited portion of a copyrighted work so long as it served the public interest.

Answer: c

Feedback:

- a. Incorrect. Copyright is never nullified. It is partially held in abeyance under certain conditions.
 - b. Incorrect. No one has immunity from copyright law.
 - c. Correct. It reflects the uniquely-American preference for promoting knowledge access in cultural and educational matters.
- Why was the right to privacy, as argued most notably by later Supreme Court Justice Louis Brandeis in 1890, considered an “allied right” of copyright?
 - a. Each individual is considered to have a “copyright” over his or her own person.
 - b. Both privacy and copyright are essentially about access control.

Answer: b

Feedback:

- a. Incorrect. You cannot copyright a human being.
- b. Correct. The right to control who can use your creative work and how is similar to the right to control who can use your image or likeness, and how.

- Give examples of 19th century technological changes that eventually forced copyright law to adapt.
 - a. It took Congress 32 years after Edison's invention of the phonograph in 1877 to amend copyright law and grant composers first mechanical reproduction rights.
 - b. Even 38 years after photography could be copyrighted, a lower court invalidated Edison's copyright of a motion picture (although that decision was later reversed).

Answer: a and b

Feedback:

- a. Both are correct. There is usually a lag after major technological changes before copyright laws are amended in response.

Section 3.5: Eligible Works

- Which of the following is not one of the eight broad categories of copyrightable work?
 - a. Literary works
 - b. Musical works, including any accompanying words
 - c. Dramatic works, including any accompanying music
 - d. Pantomimes and choreographic works
 - e. Creative Ideas
 - f. Pictorial, graphic, and sculptural works
 - g. Motion pictures and other audiovisual works
 - h. Sound recordings
 - i. Architectural works

Answer: e

Feedback:

- a. Correct. Creative ideas alone are not copyrightable because they are not expressed. All the other kinds of work are copyrightable.

- Why is computer software eligible for copyright?
 - a. It cannot be patented.
 - b. It is considered to be a literary work, which the courts define as a work expressed in words, numbers or other symbols that is creatively compiled.
 - c. It is able to display artistic nor literary work on a TV or in an ebook.

Answer: b

Feedback:

- a. Incorrect. In fact, some elements of a software program may potentially be patentable processes, and these are not eligible for copyright.
- b. Correct. The key thing here is that they are creatively compiled.
- c. Incorrect. Even software that does not display artistic or literary work — the software in your car, for example — is copyrightable.

- Explain the difference between ideas and their expression under copyright law.
 - a. You can't copyright an idea for a movie, but you can patent it.
 - b. Ideas are just thoughts, not matter how creative. You can't copyright thoughts.
 - c. You cannot copyright an idea for a space opera, but you can copyright *Star Wars* — the original expression of a space opera idea put to paper or film.

Answer: c

Feedback:

- a. Incorrect. You can neither copyright nor patent a mere idea.
- b. Incorrect. The problem is not that they are thoughts, but that they need to be expressed in a tangible medium which can be seen or copied.
- c. Correct. Note the emphasis on *original* and *expression*.

- Which of the following may be copyrightable:
 - a. A mathematical formula.
 - b. Facts that you have discovered through research.

-
- c. A compiled Chinese-American phone book that uses facts.

Answer: c

Feedback:

- a. Incorrect. Abstract ideas are not copyrightable.
 - b. Incorrect, although the book you write that uses those facts is copyrightable.
 - c. Correct. This is creatively compiled.
- Other than being one of the eight broad categories of creative content, which is NOT one of the other four things a copyrighted work must be.
 - a. Original.
 - b. Expressed or fixed on a tangible medium that can be seen or copied.
 - c. Authored or creatively compiled.
 - d. Not a fact or abstract idea.
 - e. Culturally worthwhile.

Answer: e

Feedback:

- a. Correct. Again, copyrightable works don't have to be what the critics would call "worthwhile." They just have to be original, etc.

Section 3.6: Rights and Term:

- How many exclusive rights does a copyright owner have?
 - a. 5.
 - b. 6
 - c. 8

Answer: b

Feedback:

- a. Incorrect.
 - b. Correct.
 - c. Incorrect.
-
- If the copyright lasts for 95 years from first publication, that copyright is for:
 - a. An individual.
 - b. A work of two or more authors.
 - c. A work for hire.

Answer: c

Feedback:

- a. Incorrect. The term of copyright for an individual lasts for the life of the author plus 70 years.
 - b. Incorrect. For works of two or more authors, the copyright lasts for 70 years after the death of the last author.
 - c. Correct.
-
- How long will Michael Jackson's copyrights last?
 - a. 2025.
 - b. 2079
 - c. 2110.

Answer: b

Feedback.

- a. Incorrect.
 - b. Correct. This will be 70 years after his death in 2009.
 - c. Incorrect.
- What is the “first-sale” doctrine?
 - a. It states that copyright begins with the first sale of your manuscript to a publisher.
 - b. It gives you the right to protect the integrity of your work after publication.
 - c. It terminates your distribution rights after you (or your publisher) sells your work to a bookstore, art gallery, etc.

Answer: c

Feedback:

- a. Incorrect. Copyright begins the moment your creative work is expressed in a tangible medium that can be seen or copied.
 - b. Incorrect. This refers to an author’s moral rights in certain visual arts.
 - c. Correct. The bookstore can throw your books in the dumpster if it wants. The first-sale doctrine limits only your distribution rights, not your other 5 rights.
- Registration used to be required for a copyright. When did that requirement end?
 - a. 1976, with the passage of the Copyright Act.
 - b. 1989, after the U.S. joined the international Berne Convention.

Answer: b

Feedback:

- a. Incorrect. The 1976 Copyright Act did not end registration requirements.
- b. Correct. Registration is now required only if you wish to initiate a copyright infringement suit in federal court.

Section 3.7: Infringement and Remedies:

-
- If attorneys could demonstrate in court that Kanye West “sampled” or used pieces of Sly Johnson’s son “Different Strokes in a song called “The Joy,” this would be evidence of what kind of copyright infringement?
 - a. Comprehensive non-literal similarity.
 - b. Fragmented literal similarity.

Answer: b

Feedback:

- a. Incorrect. Comprehensive non-literal similarity means copying the “look or feel” of a copyrighted work, not its exact words, melodies, or imagery.
 - b. Correct. This refers to copying one or more of the exact words, phrases, melodies, beats, or imagery of a copyrighted work.
- In 2015, a federal jury found Robin Thicke and Pharrell Williams guilty of copyright infringement of soul singer Marvin Gaye’s “Got to Give it Up.” They found that their song “Blurred Lines” demonstrated what form of copyright infringement?
 - a. Comprehensive non-literal similarity.
 - b. Fragmented literal; similarity.

Answer: b

Feedback:

- a. Correct. The jury found they copied the “look and feel” — i.e., the signature phrase, vocal hook, and keyboard and bass lines of the Marvin Gaye classic.
 - b. Incorrect. Thicke and Williams did not copy Gaye’s exact words or melodies.
- In addition to the \$7.3 million jury award, why was the Thicke and Williams copyright infringement case considered to be so significant within the music industry?
 - a. It shows that you can’t get away with stealing other people’s work.
 - b. The verdict seemed ironic in light of Williams’s smash hit “Happy.”
 - c. It challenged the growing practice in music of incorporating elements, features, themes, and even the “feel” and “mood” of the work of other artists and genres.
 - The jury’s decision also drew criticism from many copyright and music experts. Why?
 - a. The \$7.3 million award was thought to be outrageously large.

- b. Critics said that although Marvin Gaye may have been the Prince of Soul, he didn't own a copyright to the whole genre.
- c. Not a single word, melody or beat from Gaye's song was actually copied.

Answer: b

Feedback:

- a. Incorrect. While large, the damage award represented royalties on the actual profits earned by Thicke and Williams, who can therefore afford it.
 - b. Correct. Critics say just as no one can copyright an idea — only the original expression of an idea — no one can own exclusive rights to a genre.
 - c. Incorrect. Literal copying was never alleged, only “look and feel” copying.
- The Marvin Gaye case has already made musicians and producers more cautious. In what way?
 - a. Singers are more willing to license the work of previous artists from whom they gain “look and feel” ideas and inspiration.
 - b. Sam Smith granted Tom Petty songwriting credit and royalties to Smith's song “Stay With Me,” which bore a resemblance to Petty's hit “I Won't Back Down.”

Answer: a and b

Feedback:

- a. Both are correct. In fact, Sam Smith (b) is an example of the point made in a.
- Which of the following are NOT one of the types of damages that copyright owners may receive if their work is infringed?
 - a. Actual.
 - b. Compensatory.
 - c. Statutory.

Answer: b

Feedback:

- a. Incorrect. These are the actual losses to the copyright owner from infringement. calculated by multiplying the number of acts of infringement with the per-unit profits lost from the work not being purchased legally.
 - b. Correct. There are no compensatory damages in copyright infringement.
 - c. Incorrect. Statutory damages are set to between \$750 to \$30,000 per act of infringement, and can be increased if the infringement is willful.
- If someone willingly infringes your copyrighted work, what may he or she also face?
 - a. Treble damages.
 - b. Criminal penalties of up to five years in prison for a first offense, 10 years for a second.
 - c. Loss of all profits from the infringing work.

Answer: b

Feedback:

- a. Incorrect. There are no treble damages in willful copyright infringement as there is in willful patent infringement.
 - b. Correct. Unlike willful patent infringement, there are criminal penalties for willful copyright infringement.
 - c. Incorrect. There is no requirement to forfeit all profits in infringement cases.
- Sometimes the copyright owner's most important remedy for infringement will be an injunction. Why?
 - a. It immediately stops the infringer from continuing to make money from work that infringes your copyright.
 - b. It puts the infringer in jail where he cannot commit more infringement.

Answer: a

Feedback:

- a. Correct. But standards have tightened. Nowadays the copyright owner must demonstrate a likelihood of irreparable harm in order to get injunctive relief.
- b. Incorrect. Injunctions stop infringing activity, they do not put anyone in jail.

Section 3.8: The Fair Use Defense

- Fair use allows for the copying and use of copyrighted material for which specific purposes? (Choose all that Apply)
 - a. Criticism and comment.
 - b. News reporting.
 - c. Teaching or research.
 - d. Political organizing.

Answer: a, b, and c

Feedback:

- a. Correct. A book review that quotes from a copyrighted book is a perfect example.
- b. Correct. A news report on the value of a copyrighted painting that shows a photo of the painting is considered Fair Use.
- c. Correct. Teachers may copy selected portions of a copyrighted textbook as a handout to students.
- d. Incorrect. There is no Fair Use provision allowing political parties to copy or use copyrighted work.

- One of the four factors considered in whether the copying or use of a copyrighted work is considered to be Fair Use is “the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.” Which of the following would likely be considered fair use?
 - a. A profit-making magazine like *Vanity Fair* publishes a book review that quotes several thousand words of the copyrighted book being reviewed.
 - b. A non-profit university distributes copies of two chapters of a copyrighted textbook to its students so they don't have to buy the textbook itself.

Answer: a

Feedback:

- a. Correct. Profit-making is only one factor in Fair Use. It does not limit the right to quote from a copyrighted work for purposes of a book review, and there is no specific limitation on the amount of copying allowed in a review.
- b. Incorrect. By agreement, educational institutions are only allowed to copy one chapter of a copyrighted text — and never as a substitute for buying texts.

Section 3.9: Changes in Copyright Law

- What major changes in copyright law were made in the Copyright Act of 1976? (Choose all that apply)
 - a. It extended copyright to performances via cable television and digital audio transmission.
 - b. It prohibited the unauthorized rental or lease of computer software programs
 - c. It codified Fair Use into the statutes.

Answer: a and c

Feedback:

- a. Correct. Copyright law always adjusts to technological change — eventually.
 - b. Incorrect. The Computer Software Rental Act of 1990 did that.
 - c. Correct. Previously Fair Use had been a matter of common law.
-
- The Digital Millennium Copyright Act of 1998 made it a crime to circumvent digital rights management (DRM) measures that control access to digital music and ebooks as a means of preventing piracy. So why are so many listeners, readers and book and music publishers voluntarily abandoning DRM measures?
 - a. It prevents people from sharing their digital music and ebooks with friends and family, like they can with regular music CDs and printed books.

- b. DRM measures alienate consumers and limit their choices.
- c. The elimination of DRM measures will grow the market for digital books and music much more rapidly.

Answer: a, b, and c

Feedback:

- a. All the above are true. After Steve Jobs asked music publishers to let iTunes sell music DRM-free. iTunes use exploded.

- Why was the Sonny Bono Copyright Term Extension Act of 1998 so controversial.
 - a. It put all of Sonny and Cher’s formerly-copyrighted music into the public domain.
 - b. It reduced the copyright term to that favored by the Founding Fathers — 28 years.
 - c. It extended copyright an additional 20 years to the life of the author plus 70 years.

Answer: c

Feedback:

- a. Incorrect. No act of Congress could violate another law — in this case the Copyright Act of 1976.
- b. Incorrect, although there are some who wish this was in fact the case.
- c. Correct. Critics called this the “Mickey Mouse Protection Act” because it extended the Walt Disney Company’s lucrative copyrights over its characters, movies, and merchandising.

Section 3.10: New Technology Challenges to Copyright

- On December 16, 2015, the Copyright Royalty Board changed the royalty rates paid by music services like Pandora. What change was made?
 - a. The board reduced the rate from 14 cents per 100 songs played to 11 cents.
 - b. The board left the rate unchanged at 14 cents per 100 songs played.
 - c. The board raised the rate to 17 cents per 100 songs played.

Answer: c

Feedback:

- a. Incorrect. This was the rate requested by Pandora but not granted.
- b. Incorrect. The board did not leave the rate unchanged.
- c. Correct. This will be the new rate through the year 2020.

Section 3.11: Alternative Forms of Copyright

- Which of the following alternative forms of copyright never allow users to change, modify or re-use original content?
 - a. Open source.
 - b. Open access.
 - c. Creative commons.

Answer: b

Feedback:

- a. Incorrect. Open source allows software source code to be used, modified and/or shared under defined terms set by the Open Source Initiative.
 - b. Correct. Open Access simply allows scholars to [post the fruits of their research online without expectation of payment.
 - c. Incorrect. Some creative commons licenses allow modification of the original work. Others specify that the work may be shared but not changed.
-
- Changes to copyright law in the future are likely to focus on which issues?
 - a. Shortening copyright term.
 - b. Reducing or eliminating DRM.
 - c. Adjusting to new advances in digital technology.
 - d. Enabling and regulating a secondary market for digital content.

Answers: a, b, c, and d

Feedback:

-
- a. All four of the above issues are at the top of the agenda as copyright continues to adapt to a changing world.

Chapter 4: Trademark Basics

Section 4.1: Core Concepts

- What is the purpose of the intellectual property right we call a trademark.
 - a. To protect businesses from unfair competition.
 - b. To indicate the origin of goods or services.
 - c. To reward businesses for their creative endeavors.

Answer: b

Feedback:

- a. Incorrect. Although trademarks do protect businesses from those who would unfairly use their good name, that is not their purpose.
 - b. Correct. Trademarks show consumers who provide a product or service.
 - c. Incorrect, although good trademarks do require creative distinguishing of a company's products, services, and reputation from those of other businesses.
- Which of the following is true of trademarks?
 - a. They protect the public by preventing confusion or deception about the source of goods and services.
 - b. They protect the market reputation and good will of the producers of goods.
 - c. They protect consumers from poor-quality products and services.
 - d. They are excellent marketing and advertising tools.

Answer: a, b, and d

Feedback:

- a. Correct. This is their primary purpose.
- b. Correct. Trademarks protect a company's brand and reputation .

- c. Incorrect. All the trademarks in the world can't protect the public from shoddy workmanship or service.
 - d. Correct. Just ask Nike what its swoosh logo means for their brand.
- How much did Nike pay a graphic designer in 1971 to produce its swoosh logo now estimated to be worth \$20 billion by itself?
 - a. \$750,000 in stock.
 - b. \$25,000.
 - c. \$35.

Answer: c

Feedback:

- a. Incorrect. That's what Nike gave the designer years later
 - b. Incorrect.
 - c. Correct. Carolyn Davidson was initially paid only \$35 for her work.
- What do trademarks share with other intellectual; property rights?
 - a. They encourage and reward creative enterprise.
 - b. The marshal the benefits of this creativity to the public good.
 - c. They protect the consumer from deception.
 - d. All of the above.

Answer: d

Feedback:

- a. Correct. It takes creativity to distinguish one's brand indelibly from the brands of other companies..
 - b. Correct. The public benefits from quality products whose origins can be reliably ascertained.
 - c. Correct. They prevent disreputable sellers from palming off their shoddy goods as those from a quality producer.
- What is the legal foundation for federal trademark law?
 - a. The Commerce Clause of the U.S. Constitution
 - b. Article 1, Section 8 of the U.S. Constitution.

c. State laws.

Answer: a

Feedback:

- a. Correct.
- b. Incorrect. This is the legal foundation for patent and copyright law.
- c. Incorrect, although state laws also help to enforce trademark rights.

- How are trademarks different from patents and copyrights?
 - a. They are not limited in duration.
 - b. They do not hinder the sale of similar products and services.
 - c. They cannot be obtained by mere adoption. But only through commercial use.

Answer: a, b, and c

Feedback:

- a. Correct. Patents and copyrights are limited in term, but trademarks are not.
- b. Correct. Samsung makes smartphones just as Apple does — only under a different brand and different trademarks.
- c. Correct. You don't have to publish your novel or manufacture your invention to receive a patent or copyright, but you do need to use your trademark in business for it to remain legal.

Section 4.2: Early Trademark Systems

- Why did trademarks not emerge until the start of widespread trade in the Bronze Age?
 - a. There was no government agency to register trademarks before that time.
 - b. That was when written records of trademarks could be printed.
 - c. Widespread trade requires a certain level of public trust in the provenance and quality of goods, which trademarks helped to build.

Answer: c

Feedback:

- a. Incorrect. Trademarks did not require government enforcement.
 - b. Incorrect. At the time, trademarks were recorded in documents.
 - c. Correct. When trade became robust, trademarks emerged to indicate the origin of goods and services.
- Besides indicating the source of a good or service, how did trademarks change with the emergence of guilds in the middle ages?
 - a. The guilds issued trademarks only to their own members.
 - b. They became a means by which guilds could ensure the quality of work done by guild members.
 - c. The guilds started charging money to issue a trademark.

Answer: b

Feedback:

- a. Incorrect. Each guild had its own trademarks.
 - b. Correct. This helped guilds that produced higher-quality goods gain a real competitive advantage.
 - c. Incorrect. Trademarks were not a source of income for the guilds.
- What is one of the oldest trademarks still in existence?
 - a. The Royal Dutch Tulip Company.
 - b. Wedgewood china.
 - c. Löwenbräu Brewery.

Answer: c

Feedback:

- a. Incorrect. There is no such company.
 - b. Incorrect. Wedgewood has made china only since the mid-1700s.
 - c. Correct. The Löwenbräu brand has existed since 1383.
- What is the significance of an old lawsuit known as Sanforth's Case?

-
- a. It proves that 250 years before the Industrial Revolution, trademark infringement was viewed as deceit and a violation of laws against unfair competition.
 - b. It was the first trademark infringement case ever recorded.
 - c. It serves as the foundation for all modern trademark laws and policies.

Answer: a, b, and c

Feedback:

- a. Correct. The suit was filed in 1584.
- b. Correct. When it was discovered Sanforth's Case replaced *Southern v. How* in 1618 as the earliest trademark action ever recorded.
- c. Correct. It is the wellspring of modern trademark law.

Section 4.3: U.S. Trademark Law

- What caused U.S. trademark laws to evolve from a patchwork of state laws into a unitary federal trademark system?
 - a. The Industrial Revolution transformed America's many local and regional markets into a unified national economy.
 - b. Producers of goods and services began to grow into national entities.
 - c. State laws often conflicted with each other.
 - d. All of the above.

Answer: d

Feedback:

- a. Correct. America's largely-agrarian regional economy grew into a nationwide industrial economy by the mid-to-late 1800s.
 - b. Correct. Businesses increasingly took on a national rather than local character as well.
 - c. Correct. Businesses operating nationwide could only enforce their trademark rights haphazardly, depending on each state's laws.
-
- Why were the first two national trademark laws ruled unconstitutional by the Supreme Court?
 - a. The court ruled that they infringed on non-trademark owners' first amendment rights to free speech.
 - b. The court ruled in 1879 that the patent and copyright clauses of the Constitution gave Congress no explicit authority to regulate trademarks.
 - c. The court ruled that they were too vaguely written.

Answer: b

Feedback:

- a. Incorrect. The right of free speech does not give a producer the right to infringe another's trademarks.
- b. Correct. The court could find no authority for Congress to regulate trademarks in Article 1, Section 8 of the U.S. Constitution.

-
- c. Incorrect. The first trademark laws of 1870 and 1876 were properly written, but relied on an improper constitutional foundation.
-
- What was the chief weakness of the Trade Mark Act of 1881?
 - a. It only regulated the trademarks used in commerce with other nations and with Indian tribes.
 - b. It only allowed for the registration but not the enforcement of trademarks.
 - c. It derived its authority from the Commerce Clause of the U.S. Constitution.

Answer: a

Feedback:

- a. Correct. It wasn't until 1905 that trademark law finally regulated the use of marks throughout the United States.
 - b. Incorrect. The law did enforce trademark rights between the U.S. and other nations.
 - c. Incorrect. This, in fact, was the constitutional strength of that law.
-
- The Lanham Act is the principal U.S. law on trademarks. Which of the following was not a new feature of trademark law enacted by the Act?
 - a. It mandated a national system of trademark registration.
 - b. It prohibited the infringement of trademarks.
 - c. It gave trademark owners access to the federal courts for redress.
 - d. It barred the importation and sale of infringing products.

Answer: b

Feedback:

- a. Correct. Prior to the Act, there was no national registry of trademarks.
- b. Incorrect. Trademark infringement was already illegal under the 1905 law.

- c. Correct. Trademark owners could now seek redress in federal court.
 - d. Correct. The Lanham Act banned the importing of infringing products.
- When is trademark abandonment said to occur?
 - a. When its owner ceases to use it in commerce.
 - b. When its owner ceases to employ it throughout the national territory of the United States.
 - c. When its owner ceases to use the trademark in commerce for three or more years.

Answer: c

Feedback:

- a. Incorrect. The owner must not have used the mark in commerce for three or more years.
- b. Incorrect. There is no territorial requirement for an active trademark.
- c. Correct. The famous Woolworth's chain lost its trademark after 119 years in business when it went bankrupt in 1977.

Section 4.4: The Four Types of Trademarks

- Of the four individual types of marks, what does a trademark identify?
 - a. Services provided to either consumers or other businesses.
 - b. Physical goods or commodities that are manufactured, produced, grown, or that exist naturally.
 - c. Both of the above.

Answer: b

Feedback:

- a. Incorrect. Services are identified by the type of mark called a "service mark."
- b. Correct. This type of mark is called a "trademark."
- c. Incorrect. Only b is correct.

- A collective mark identifies what?
 - a. A trademark owned by a cooperative, association, or organization.
 - b. A service mark owned by a member of a certain organization.

Answer: a

Feedback:

- a. Correct. The United Auto Workers Union logo is an example of a collective mark.
- b. Incorrect. This would be a membership mark, as in the designation “CPA” for Certified Public Accountant.

- A certification mark indicates what?
 - a. The certified or verified origin of a product or service.
 - b. A product or service that meets certain standards or requirements.

Answer: a

Feedback:

- a. Incorrect. One doesn’t need to verify the origin of a product or service.
- b. Correct. A product with a mark indicating that it meets the “Good Housekeeping Seal of Approval” is an example of a certification mark.

- Which of the four types of mark goes with each of the goods or services below.
 - a. McDonald’s hamburger.
 - b. Spotify music
 - c. MGM motion pictures.
 - d. Washington State apples.
 - e. Girl Scout cookies.

Answer: various (drag and drop)

Feedback:

- a. Trademark.
- b. Service mark.
- c. Trademark.
- d. Certification mark.
- e. Collective mark.

Section 4.5: The Subject Matter of Trademarks

- A trademark may be a word (or phrase), name, symbol, or device. Please identify which of these the following trademarks represent:
 - a. Chanel handbags.
 - b. The MGM lion's roar.
 - c. Tiffany's blue color.
 - d. The power-on chime in Apple's Mac computers.

Answer: Various

Feedback:

- a. Name (Chanel)
 - b. Device (a sound).
 - c. Device (the distinctive blue color).
 - d. Device (sound).
- Why has no company been able to trademark "87 Octane" gasoline?
 - a. It's a number.
 - b. It's not displayed in a distinctive-enough font or logo style.
 - c. It doesn't indicate the origin of the gas — whether Exxon, Shell, or whomever.

Answer: c

Feedback:

- a. Incorrect. Numbers that do distinctively indicate the origin of goods, like Chanel No. 5, or Baskin-Robbins 31 Flavors, can be trademarked.

- b. Incorrect. Even with a fanciful logo, “87 Octane” would not tell the consumer which company produces or sells the gasoline.
 - c. Correct. See above.
- What’s the difference between a trademarked design and trade dress?
 - a. A trademarked design usually consists of a distinctive design or symbol on the product or service, whereas trade dress is its overall “look and feel.”
 - b. A trademarked trade dress covers a product or service’s overall features like its size, shape, and color combinations rather than a particular symbol or design.

Answer: a and b

Feedback:

- a. Both answers are correct. Nike’s curved swoosh symbol is a trademarked design, whereas the look and feel of an Apple retail store is an example of a trademarked trade dress.
- In what way are trademarked designs and trade dress similar to design patents?
 - a. All three protect the unique look of a company’s products from being infringed.
 - b. All three protect only the non-functional elements of the product’s appearance.

Answer: a and b

Feedback:

- a. Both answers are correct. The three forms of protection simply cover different non-functional elements of a product’s appearance.

Section 4.6: The Spectrum of Distinctiveness

- What is the trademark world’s corollary to novelty in patents?
 - a. Non-obviousness.
 - b. Distinctiveness
 - c. Ornamentality.

Answer: b

Feedback:

- a. Incorrect. Non-obvious is not a requirement for a trademark.
 - b. Correct. The absolutely essential requirement for getting a trademark is distinctiveness.
 - c. Incorrect. Trademarks may but do not always involve a distinctive ornamentality. Sometimes their distinctiveness can lie in a word or sound.
-
- Of the following five kinds of marks — fanciful, arbitrary, suggestive, descriptive, and generic — which one of them is never trademarkable.
 - a. Descriptive.
 - b. Generic.
 - c. Fanciful.

Answer: b

Feedback:

- a. Incorrect. Although usually not trademarked, a descriptive word like “Sharp” can become trademarkable when it becomes indelibly associated with a certain brand manufacturer of televisions.
- b. Correct. A generic mark like “baskets” for a basket store can never be trademarked because it doesn’t indicate whose basket store it is.
- c. Incorrect. In fact, fanciful marks like “Google” are the most easily trademarked of all.

- Identify which kind of mark is owned by the following companies.
 - a. Apple.
 - b. Xerox.
 - c. iPad.
 - d. Coppertone.
 - e. Windows.

Answer: Various

Feedback:

- a. Arbitrary. “Apple” is an example of a real word in common usage that has absolutely no relationship to the product or service being sold.
 - b. Fanciful. “Xerox” is a completely invented word that has no meaning except to indicate the source of a copier manufacturer. Fanciful marks are the strongest type of mark you can have.
 - c. Suggestive. The word “iPad” suggests or implies a quality or characteristic of the good being sold and is distinctive to its manufacturer (Apple).
 - d. Suggestive. Again, “Coppertone” suggests the quality or color of the tan you’ll get, while indicating which company is selling it.
 - e. Descriptive. “Windows” is one of the rare marks that describe the nature of a distinctive product (computer software) from a unique manufacturer.
-
- Why was the store ToysRUs able to trademark its name, even though “toys” is a generic word used by thousands of toy stores nationwide?
 - a. Because ToyRUs was the first to use the name “toys” and thus has priority.
 - b. Because ToysRUs was the first to use the name nationwide.
 - c. Because of the fanciful spelling and distinctive colors of its name.

Answer: c

Feedback:

- a. Incorrect. Prior use had nothing to do with it in this case.
- b. Incorrect. Geographic range of use had nothing to do with it.

-
- c. Correct. The spelling and colorful design are distinctive to this particular toy store chain.

- Why did “Cellophane” and “Aspirin” lose their trademarks?
 - a. The original companies making these products went out of business.
 - b. The public came to associate the name with an entire category of similar products.

Answer: b

Feedback:

- a. Incorrect. Glad (P&G) and Bayer are still very much in business.
- b. Correct. These marks originally stood for Bayer’s aspirin and Glad’s cellophane, but now they refer to all aspirin and all cellophane.

- Which of these companies goes to great lengths to stop consumers from using its marks to indicate a generic action or product.
 - a. Best Buy
 - b. Kleenex.
 - c. Xerox.
 - d. Google.

Answer: b, c, and d

Feedback:

- a. Incorrect. Nobody refers to all electronics stores as “Best Buy.”
- b. Correct. Kleenex asks customers to buy only “Kleenex-brand tissues.”
- c. Correct. As Xerox reminds consumers, “You cannot Xerox a document, but you can copy it on a Xerox brand copying machine.”
- d. Correct. Google asks users of its search engine to always say “I used Google search” rather than “I googled it.”

Section 4.7: Bars to Trademark

- What are some of the bars to getting a trademark?
 - a. The prior use bar.
 - b. The functionality bar.
 - c. Subject matter bars.

d. All of the above.
Answer: d

Feedback:

- a. Correct. You can't get a trademark if it's been used by another before, unless it was in a different market or field of business.
 - b. Correct. To be trademarked, a word, symbol, design, device, scent, or sound may not purely or even primarily serve a functional purpose.
 - c. Correct. Generally speaking, you cannot trademark for surnames, geographic marks, or immoral or offensive marks.
-
- If geographic marks are ineligible for trademarks, then why was Amazon able to trademark its name, which refers to a geographic area of South America?
 - a. The name "Amazon" is not indicative of the source of goods, nor do consumers think the retailer's goods come from the Amazonian region.
 - b. The name "Amazon" is not a factor in whether or not consumers decide to purchase books, clothing, electronics or anything else from the company.
 - c. Amazon's brand stands for low prices and great customer service, not for anything of a geographic nature.
 - d. All of the above.

Answer: d

Feedback:

- a. The name "Amazon" no more represents a geographic source of goods than the name "Apple" refers to the products the computer company sells.

Section 4.8: Establishing Trademark Protection

- As with copyrights, trademarks do not have to be registered with the federal government, but doing so gives their owners which of the following additional rights:
 - a. The exclusive right to use the mark in their geographic area of business.
 - b. The right to bring civil action against infringers.
 - c. The right to bar the importation of infringing foreign goods.
 - d. The exclusive right to use the mark nationwide.
 - e. The right to use the federal registration symbol ® instead of the ™ symbol.

-
- f. The right to seek redress for infringement in federal court.
 - g. The legal presumption of ownership of the mark.

Answer: c, d, e, and f

Feedback:

- a. Incorrect. Even without registration, trademark owners have the exclusive right to use the mark in their geographic area of business.
 - b. Incorrect. Even without registration, trademark owners can bring action in state courts to stop infringers.
 - c. Correct. In today's world, markets are global, and you may well need protection against imported knock-offs from overseas.
 - d. This is a big deal for any business that hopes to expand.
 - e. Correct. This simply adds more legitimacy to your brand.
 - f. Correct. The federal courts offer greater protection than state courts.
 - g. Correct. And if you ever have a dispute with partners, investors, or even competitors, you will be very glad that you have a legal presumption that you are the sole owner of the mark.
- True or False: You can't get a trademark unless you are currently engaged in business.
 - a. True.
 - b. False.

Answer: b

Feedback:

- a. Incorrect. If you file an "intent-to-use" application, you can still get a trademark if you put it to use in business within six months.
 - b. Correct. You can still get a trademark if you have a business plan and file an "intent-to-use" trademark registration application.
- What is "incontestability"?
 - a. Once registered federally, your trademark can never be challenged by another.
 - b. If your trademark is recognized by consumers in every U.S. state, then you have the right to forever use it.
 - c. If your mark has been continually used in commerce for at least five years, no one can contest the validity, ownership, or the owner's exclusive right to use the mark.



-
- Which of the following are reasons why a trademark owner may assign it to another:
 - a. A business name change.
 - b. A bankruptcy proceeding.
 - c. As collateral for a loan.
 - d. All of the above.

Answer: d

Feedback:

- a. All of the above are legitimate reasons to assign your trademark to another party, even if only temporarily as in the case of a loan.

Section 4.9: Trademark Infringement

- How does trademark infringement harm consumers?
 - a. By confusing consumers about the source of goods or services.
 - b. By allowing others to “pass off” lower-quality knock-offs in place of the high-quality goods they are seeking to buy.
 - c. By damaging trust between consumers and providers of goods and services.

Answer: a, b, and c

Feedback:

- a. All the above are correct. Remember that trademarks protect not only the good name of a business, but the interests of consumers as well.

- How is the “similarity” between two marks in trademark infringement cases determined?
 - a. By examining each individual component of a mark and seeing if another mark uses individual components that are similar.
 - b. By examining the totality of the two marks as seen and experienced by the consumer and seeing if they are similar enough to cause confusion or deception.

Answer: b

Feedback:

- a. Incorrect. There are only a limited number of parts of a trademark — words, names, shapes, symbols, or devices — and these are often insufficient by themselves to determine similarity.
 - b. Correct. If another mark resembles a valid trademark in its totality — in its overall look and feel — then it may be said to infringe if it is likely to cause confusion or deception in the minds of consumers.
- What is trademark dilution as opposed to trademark infringement?
 - a. Dilution occurs when someone palms off inferior goods as being those of the trademark owner, thereby weakening the trademark owner’s ability to distinguish itself for quality craftsmanship and design.
 - b. Dilution occurs when a trademark grows weaker in the minds of consumers as a result of its owner not advertising or featuring it prominently enough on products.

Answer: a

Feedback:

- a. Correct. Nike faces this problem when overseas producers try to import inferior Nike knock-offs into the U.S.
- b. Incorrect. Trademark dilution or tarnishment is not about the failure to advertise or feature the mark prominently enough.

Section 4.10: Trademark Remedies

- How are remedies for trademark infringement similar to those for patent and copyright infringement?
 - a. As with other forms of intellectual property infringement, owners of infringed trademarks can receive monetary damages for lost profits.

-
- b. As with patent and copyright infringement, damages can be significantly increased if the infringement is deemed willful.
 - c. As with patent and copyright infringement, injunctions are also frequently granted to stop the sale of infringing products.
 - d. As with patent and copyright infringement, criminal penalties may apply if the trademark infringement is willful.

Answer: a and b

Feedback:

- a. Correct. All forms of IP infringement can incur monetary damage awards.
- b. Correct. Willful infringement can lead to increased monetary damages.
- c. Incorrect. Although injunctive relief is frequently granted to prevent further damage to the trademark owner's brand, they are granted far less frequently in patent and copyright cases.
- d. Incorrect. Criminal penalties may only be applied in copyright cases when the infringement is deemed willful. They don't exist in patent or trademark infringement cases.

Section 4.11: Fair Use of Trademarks

- A party may be permitted the fair use of another's trademark under two conditions, known as **nominative fair use** and **classic fair use**. What is nominative fair use?
 - a. When a business compares its products to those of a competitor, with no intent to confuse customers as to the source of the competitor's goods.
 - b. When a trademark of another is used to identify one's own products or services.
 - c. When a trademark is used in a journalistic article or research about the trademark owner's business.

Answer: b

Feedback:

- a. Incorrect. This would be considered classic fair use, and while permitted, it is not an example of nominative fair use.
- b. Correct. An example of nominative fair use is when an auto repair shop uses the BMW and Honda marks to indicate that it services those vehicles.
- c. Incorrect. Although this is a perfectly legitimate use under trademark fair use rules, it is not called nominative fair use.

Chapter 5: Trade Secret Basics

Section 5.1: Trade Secret Protection

- How are patent and trademark law different from trade secret law when it comes to the question of disclosure?
 - a. To protect a patented invention, it must never be disclosed to others.
 - b. Trademarks are obtained only through their actual use in business.
 - c. Unlike patents and trademarks, the law requires that intellectual property consisting of trade secrets not be publicly disclosed.

Answer: c

Feedback:

- a. Incorrect. In fact it's just the opposite. To receive a patent from the Patent and Trademark Office, you must disclose all the details of the invention.
 - b. Correct. If you use a trademark in business, it's obviously been disclosed.
 - c. Correct. Patent and trademark law require that the intellectual property to be protected be publicly disclosed. With trade secrets, it's just the opposite.
-
- What is the subject matter of a trade secret?
 - a. Information not widely known about how a product like a smartphone is made.
 - b. Virtually any information that is of value as a result of not being generally known.
 - c. Any information relating to the finances of a publicly-held company.

Answer: b

Feedback:

- a. Incorrect. Just because many in the public do not know how a smartphone or other product is made, this does not make it a trade secret.
- b. Correct. The information derives its value from not being known.

-
- c. Incorrect. A publicly-held company is required by law to disclose its finances.
-
- Trade secret theft or misappropriation costs the world's richest 40 nations approximately how much of their gross domestic product, or GDP, each year?
 - a. 1-3%.
 - b. 4-6%
 - c. 7-10%.

Answer: a

Feedback:

- a. Correct. 3% of the top 40 countries' GDP is about \$1.5 **trillion** annually.
 - b. Incorrect. That would represent more than \$3 trillion a year.
 - c. Incorrect. That would be more than \$5 trillion a year in trade secret losses.
-
- What are the two main requirements for information to be protectable as a trade secret?
 - a. It must be novel and non-obvious.
 - b. It must be original and expressed in a tangible form that can be seen or copied.
 - c. It must be not generally known by others, and it must have been subject to reasonable efforts to avoid public disclosure.

Answer: c

Feedback:

- a. Incorrect. Those are two of the three criteria for a patent.
- b. Incorrect. Those are two criteria for a copyright.
- c. Correct. The information must be unknown by the public, and you must take active steps to try to keep it that way.

-
- What is one key advantage of trade secret protection versus patent protection?
 - a. It protects the information to be kept secret indefinitely.
 - b. It prevents others from ever independently deriving the same information.
 - c. Both a and b are correct.

Answer: a

Feedback:

- a. Correct. There is no time limit on the protection, like the 20 year term of exclusive rights for a patent or the lifetime plus 70 years term of a copyright.
 - b. Incorrect. This is a disadvantage of a trade secret compared to a patent.
 - c. Incorrect. Only a is correct.
- If you invent faster-than-light travel but believe someone will be able to reverse engineer it by examining your starship, should you patent it or keep it as a trade secret?
 - a. Keep it as a trade secret.
 - b. Patent it.

Answer: b

Feedback:

- a. Incorrect. Trade secret protection does not prevent someone else from using the same information if it is derived independently.
 - b. Correct. That way even if they independently figure out how to build their own starship, it will be illegal for them to build, use or sell it.
- What did the Supreme Court trade secret case *Bonito Boats v. Thunder Craft Boats* decide?
 - a. One cannot legally misappropriate trade secrets.
 - b. Nobody is above the law, not even a trade secret owner.
 - c. The holder of trade secrets does not have protection against reverse engineering.

Answer: c

Feedback:

- a. Incorrect. Misappropriation of trade secrets was already illegal.
- b. Incorrect. That no one is above the law was already settled law.
- c. Correct. This seminal case set an important limit on trade secret protection, differentiating it from strict liability protection offered by patents.

-
- True or false: Trade secret protection offers an affirmative assertion of one's intellectual property rights.
 - a. True.
 - b. False.

Answer: b

Feedback:

- a. Incorrect. Only patent, copyright, and trademark protection offer an affirmative assertion of an intellectual property right.
- b. Correct. Trade secret protections come into play only after a misappropriation or threatened misappropriation of a trade secret has occurred.

Section 5.2: The Foundations of Trade Secrets Law

- True or false: Trade secret protection is guaranteed by the federal government.
 - a. False
 - b. True.

Answer: a

Feedback:

- a. Correct. At this time, trade secrets are protected by state laws.
 - b. Incorrect, although Congress is currently considering passing the first national trade secret law.
-
- In which country did trade secret law first originate in the early 1800s.
 - a. France.
 - b. The United States.

c. England.

Answer: c

Feedback:

- a. Incorrect. Today's France does protect trade secrets, however. A trade secret is called a "secret industriel."
 - b. Incorrect. The first trade secret case in the U.S. was *Vickery v. Welch* in 1837, although the modern trade secrets case was *Peabody v. Norfolk* in 1868.
 - c. Correct. The first trade secret case in England was *Newbery v James* in 1817.
- What impact did the Uniform Trade Secrets Act (UTSA) of 1979 have on trade secret protection in the United States?
 - a. It was the first trade secret law binding on every state.
 - b. It served as a model that was adopted by 48 of the 50 U.S. states.
 - c. It served as a model that was adopted by every state.

Answer: b

Feedback:

- a. Incorrect. There is still no binding federal law on trade secrets.
 - b. Correct. Every state adopts but New York and Massachusetts has adopted the UTSA.
 - c. Incorrect.
- What is the problem with the current lack of uniform federal protection of state secrets.
 - a. There is no real protection against misappropriation of trade secrets.
 - b. The protections against trade secret theft are very uneven.
 - c. A federal trade secret law would merely replicate state protections.

Answer: b

Feedback:

- a. Incorrect. State versions of the UTSA do offer many protections.
- b. Correct. State versions of the UTSA are an uneven patchwork of legislation.

-
- c. Incorrect. The Defend Trade Secrets Act of 2016 would offer uniform trade secret protections and also provide civil remedies at the federal level.

Section 5.3: Elements of a Trade Secret

- Which of the following could be considered a trade secret so long as reasonable steps had been taken to prevent its disclosure.
 - a. Sales information.
 - b. Customer lists.
 - c. Manufacturing techniques.
 - d. Copyrighted computer software.

Answer: a, b, and c

Feedback:

- a. Correct. Sales information not subject to the disclosure requirements of publicly-held companies could be considered trade secrets.
- b. Correct. Customer lists are often very proprietary to a company.
- c. Correct. The formula for Coca Cola is a highly-prized trade secret.
- d. Incorrect. Computer software that is copyrighted means that it is expressed in a form that can be seen or copied.

- Is information not known to the public considered to be a trade secret?
 - a. Yes.
 - b. No.
 - c. It depends.

Answer: c

Feedback:

- a. Incorrect. Lots of information that is known to manufacturers and government officials is not considered to be a trade secret.
- b. Incorrect. Sometimes the information is considered to be a trade secret.
- c. Correct. To be considered a trade secret, the information must a) derive economic value from not being known, and b) must have been subject to reasonable efforts to keep it secret.

- Would a customer list always be considered a trade secret?
 - a. It depends on whether the customers wish to be identified or not.
 - b. To be considered a trade secret, the names of customers must not be available or discernable through public sources.

Answer: b

Feedback:

- a. Incorrect. Customer wishes have nothing to do with it.
- b. Correct. If one can discover the identity of customers through public sources — e.g. checking Facebook.com to see if someone has a

Facebook account — then a customer list is not considered to be a trade secret.

- Can a mere idea be considered a trade secret?
 - a. No. Just as you cannot patent or copyright a mere idea, you cannot protect a mere idea with a trade secret.
 - b. Yes. Even an idea can sometimes be considered a trade secret.

Answer: b

Feedback:

- a. Incorrect. Trade secret law does protect mere ideas under certain conditions.
 - b. Correct. An idea can be a trade secret if it is a) novel, b) reduced to concrete form, c) disclosed in confidence, and d) used without permission by another.
- If submitting an idea for a new business to a potential funder or partner, what would be the benefit of a signed confidentiality contract?
 - a. It protects the party submitting the idea by demonstrating that the recipient has agreed to keep the idea or information secret.
 - b. It protects the recipient of the idea from later accusations of trade secret theft by showing that the submitting party agreed to the disclosure in confidence.
 - c. Both of the above.

Answer: c

Feedback:

- a. A confidentiality agreement protects both parties to a disclosure.

Section 5.4: The Secrecy Requirement

- To gain trade secret protection, what must the owner do with confidential information?
 - a. Publicize it as widely as possible.
 - b. Not disclose it.
 - c. Take active steps to keep the information secret.

Answer: c

Feedback:

- a. Incorrect. Publicizing the information vacates trade secret protection.
- b. Incorrect. Not disclosing the information is not enough to guarantee trade secret protection.
- c. Correct. One must be able to prove that you took definite steps to keep the information secret from others.

- What are the benefits of developing a written trade secret plan?
 - a. It serves as a policy manual that prevents situations in which unwritten rules are followed and security procedures are ignored.
 - b. In the event of litigation, it can serve as proof that you took active steps to keep the information secret.
 - c. Both of the above.

Answer: c

Feedback:

- a. Correct. It educates employees on the proper security measures for keeping trade secrets and also is written evidence that you took security seriously.

- In addition to having a written trade secret plan, what else should companies do to protect confidential information?
 - a. Implement a program for ensuring that employees are made aware of the trade secret status of certain information.
 - b. Periodically remind employees of their confidentiality obligations.
 - c. Have employees sign confidentiality agreements.
 - d. Write an annual conflict of interest letter to remind management of their responsibility to keep confidential information secret.
 - e. Conduct “exit interviews” for employees leaving the company to remind them of their legal obligation not to disclose or misuse trade secret information.
 - f. All of the above.

Answer: f



Feedback:

a. All the above are necessary to [protect trade secret information.

- What steps must companies legally take to physically restrict access to confidential information?
 - a. Separate confidential from non-confidential information, whether in a separate filing cabinet or a separate facility entirely.
 - b. Install locks on doors, gates, or cabinets containing trade secrets.
 - c. Restrict visitor access to sales and administrative headquarters.
 - d. Search all visitors and employees entering or leaving facilities.

Answer: a, b, and c

Feedback:

- a. Correct.
- b. Correct.
- c. Correct.
- d. Incorrect. In most cases, this is unnecessary and intrusive.

- How should companies handle written trade secrets?
 - a. Shred them.
 - b. Mark them “secret” or “confidential,” among other measures taken.
 - c. Never store them on a computer.

Answer: b

Feedback:

- a. Incorrect. Shredding the information may destroy its value.
- b. Correct. This is one of several you should adopt for written trade secrets.
- c. Incorrect. Instead, restrict access to trade secrets stored on a computer.

- How does “active disclosure” of trade secrets occur?
 - a. Leaving confidential documents lying around for anyone to see.

- b. Inadvertently disseminating information at trade shows or conferences.
- c. Disclosing confidential information in press releases, newspaper articles, or in marketing collateral.
- d. All of the above.

Answer: d

Feedback:

- a. These are all ways that trade secrets are revealed.

- What is one way to guard against the active disclosure of trade secret information.
 - a. Limit employee attendance at trade shows and seminars.
 - b. Appoint a trade secret committee to approve publications, speeches, and marketing collateral prior to disclosure.
 - c. Avoid meeting with prospective buyers, customers, or licensees.

Answer: b

Feedback:

- a. Incorrect. Your business needs to promote itself.
- b. Correct. Have a person or committee approve all disclosures.
- c. Incorrect. You might as well go out of business if that's your plan.

Section 5.5: Misappropriation of Trade Secrets

- How is misappropriation defined?
 - a. Acquisition of a trade secret through improper means.
 - b. Deliberate disclosure of a trade secret by the trade secret owner.
 - c. Disclosure of a trade secret without consent.

Answer: a and c

Feedback:

- a. Correct. "Improper means" includes bribery, theft, misrepresentation, breach or the inducement of a breach of security, or espionage through electronic or other means.

-
- b. Incorrect. The owner of a trade secret may disclose it if he wishes.
 - c. Correct. Disclosure or use of a trade secret without consent is illegal.

-
- The UTSA not only prohibits the actual disclosure or use of a trade secret, it also protects against the “threatened” disclosure of trade secrets. When might a court intervene to stop a “threatened” disclosure before the actual disclosure takes place?
 - a. An employee goes to work for another company in a different industry.
 - b. An employee embezzling is fired, and the employer believes the same lack of morals will lead to the fired employee disclosing trade secrets.
 - c. An employee goes to work for an arch competitor in a comparable job position.

Answer: c

Feedback:

- a. Incorrect. The court will likely not intervene in this case.
- b. Incorrect.
- c. Correct. Here the likelihood of disclosing valuable secrets is higher.

- The burden of proof in a threatened trade secret misappropriation case lies with whom?
 - a. The trade secret owner.
 - b. The former employee who leaves to go work for a competitor.
 - c. The competitor must prove he did no wrong by hiring the ex-employee.

Answer: a

Feedback:

- a. Correct. The trade secret owner must present direct or circumstantial evidence that there is an imminent threat of trade secret misappropriation.
- b. Incorrect. Mere suspicion on the part of his former employer is not enough.
- c. Incorrect, although if a competitor makes statements that the reason he hired the new employee was because of unique knowledge, that may be enough to get an injunction prospectively barring any disclosure of secret information.

- What circumstantial evidence might a former employer offer a court to preemptively enjoin a former employee from disclosing information to a new employer?
 - a. That the new employer has only solicited the hiring of employees of the trade secret owner rather than of any other employers in the industry.
 - b. That the new employer has previously attempted to acquire the trade secret owner's confidential information by reverse engineering his products.
 - c. That the new employer has access to a common supplier or consultant.

Answer: a, b, and c

Feedback:

- a. All could be sufficient evidence of threatened trade secret misappropriation.

Section 5.6: Remedies Available for the Misappropriation of Trade Secrets

- What remedies does the UTSA provide for the misappropriation of trade secrets?
 - a. Criminal penalties of up to 5 years for a first offense.
 - b. Statutory damages.
 - c. Injunctive relief.
 - d. Exemplary damages.
 - e. Attorney's fees.

Answer: b, c, d, and e.

Feedback:

- a. All are remedies for trade secret misappropriation except for criminal penalties.

-
- What remedies were imposed in the case of *Seagate Tech., LLC v. Western Digital Corp* in 2013?
 - a. An injunction barring a new employer from hiring the former employee of the trade secret owner.
 - b. \$630 million in statutory damages awarded to the trade secret owner.

Answer: b

Feedback:

- a. Incorrect. Even if an injunction had been issued, it would only bar hiring an ex-employee to work on a particular product line, not employment per se.
- b. Correct. This represented actual damages plus the amount by which the trade secret misappropriation had unjustly enriched the recipient.

