

LAW REVISION PAPER 4 A

1. Only regulated persons are subject to FCPA jurisdiction, and such persons include all of the following:
- I. A domestic concern, which is any citizen, national, or resident of the United States, or any business entity that has its principal place of business in the United States or that is organized under the laws of a state, territory, possession, or commonwealth of the United States
 - II. An issuer, which is a corporation that has issued securities that have been registered in the United States or an entity that is otherwise required to file periodic reports with the Securities and Exchange Committee
 - III. The agents, subsidiaries, or other representatives of domestic concerns and issuers
 - IV. A foreign national or business that takes any act in furtherance of a corrupt payment within U.S. territory

~~A~~ A. I, II B. I, II, III. ~~C~~ C. I, II, III, IV. D. I, IV

2. FCPA prohibits all payments to foreign officials; it contains an explicit exception for certain types of payments, known as facilitating payments or "grease payments," made to expedite or secure performance of a routine governmental action by a foreign official, political party, or party official that relates to the performance of that party's ordinary and routine functions.

~~A~~ A. True B. False

3. For the purposes of tax law, a good faith or legitimate misunderstanding of the law based on the law's complexity typically negates wilfulness (the voluntary, intentional violation of a known legal duty).

~~A~~ A. True B. False

4. Tax shelters might be legal or illegal; they are generally aimed at avoidance, although they might, on occasion, cross the line into evasion if they take abusive forms.

~~A~~ A. True B. False

5. An illegal gratuity charge doesn't require proof that the gratuity was given for the purpose of influencing an official act. That is, an illegal gratuity charge only requires that the gratuity be given for, or because of, an official act.

~~A~~ A. True B. False

6. A false claim is an assertion of a right to government money, property, or services that contains a misrepresentation. A false statement is an oral or written communication, declaration, or assertion that is factually untrue.

~~A~~ A. True B. False

7. To prove a claim for an illegal gratuity, the government must prove that a thing of value was given, offered, or promised to (or demanded, sought, received, or accepted by) a public official for or because of an official act performed or to be performed by such public official.

~~A~~ A. True

B. False

8. Consumption taxes are those collected from the proceeds of the sale of goods or services. Some of the most common taxes include:

A. Sales tax: a tax on goods or services, usually assessed at the consumer level and collected by the retailer or seller at the point of sale

B. Value-added tax (VAT): a system that imposes a tax on a single item at each point of sale along the item's path from manufacture, to wholesale, to retailer, to consumer; the tax is collected by the seller in the transaction, and only the difference between the price paid by the initial purchaser and the price paid by the subsequent purchaser is taxed

- C. Excise tax: a tax on a narrow class of goods or services (such as tobacco or gasoline), usually assessed one time (per jurisdiction) at the manufacturer or wholesaler level
- D. All the above

For an individual to be found guilty of making a false claim or statement, the claim or statement at issue must have been capable of influencing the government entity involved.

A. True B. False

9. The FCPA has two principal components: the anti-bribery provisions and the accounting provisions. In short, the anti-bribery provisions make it unlawful to bribe foreign government officials to obtain or retain business, and the accounting provisions require publicly traded companies subject to the FCPA's jurisdiction to keep accurate books and records and adopt internal controls to prevent improper use of corporate funds.

A. True B. False

10. If there is no deficiency, there is no tax liability.

A. True B. False

11. Several other defences might remove criminal liability, but liability through non-criminal penalties and back taxes might still be owed.

A. True B. False

12. The Recommendation on Combating Bribery in International Business, which was published by the Organisation for Economic Cooperation and Development (OECD) in 1994, urges member states to deter and penalise the bribery of foreign public officials by taking "concrete and meaningful steps" to improve the following areas within their respective infrastructures:

- I. Criminal, civil, commercial, and administrative laws
- II. Tax systems and regulations
- III. Banking and accounting requirements and practices
- IV. Laws and regulations related to public subsidies, licences, and contract procurement

A. I,II,III, B. I,II,III,IV

13. To prove that a defendant committed criminal perjury, the government prosecutor must show that the defendant, while in a court of law, knowingly made a false statement that influenced the jury's decision.

A. True

B. False

14. A perjurious statement includes any court proceeding, depositions in connection with litigation, bail hearings, venue hearings, suppression hearings, and so on. Thus, an individual can commit perjury for false statements made somewhere other than a court of law.

A. True B. False

15. The Recommendation was designed to combat corruption in international business by urging member states to adopt effective measures to detect, prevent, and combat bribery of foreign public officials in international business. Thus, it targets only acts of bribery aimed at public sector officials, and it is silent regarding bribery purely within the private sector.

A. True B. False

16. The OCDE Recommendation avoids complicated jurisdictional issues and interference with the sovereignty of non-member countries.

A. True B. False

17. Taxes on periodic income or wealth (e.g., real property taxes) are a source of revenue for many governments, but fraudsters often commit tax evasion by falsifying or omitting material information. Common forms of criminal income and wealth tax evasion include:

- I. Failing to submit a report of one's taxable income, if such a report is required
- II. Intentionally misrepresenting one's income or wealth
- III. Pretending to transfer assets to another person or entity to lower tax liability
- IV. Intentionally failing to withhold the taxable portion of an employee's income, if required
- V. Failing to report foreign bank accounts or other taxable assets, if required
- VI. Falsely claiming income was earned in another jurisdiction to lower tax liability

A. I,II, B. III, IV, ~~C. I,II,III,IV,V,VI~~ D. V,VI

18. Thus, an agreement to defraud the government, without further qualification about the nature of the fraud, is not sufficient to support a conviction under this statute.

~~A.~~ True B. False

19. The government must also establish that the defendant knew of the conspiracy's existence and its objective.

~~A.~~ True. B. False

20. The purpose of the conspiracy need be accomplished for a violation to occur, but at least one of the co-conspirators must have carried out at least one overt act in furtherance of the conspiracy. The overt act need not be criminal and could be as innocuous as making a phone call or writing a letter.

~~A.~~ True B. False

21. Taxes owed as a result of tax evasion typically does not survive the death of the taxpayer, meaning the deceased's estate will not be liable

~~A.~~ True ~~B.~~ False

22. To qualify as tax evasion, most jurisdictions require a wilful attempt to evade or defeat the tax in an unlawful manner. Wilfulness can be inferred from conduct such as:

Keeping a double set of books (not to be confused with standard accounting and tax records, which might require different recording techniques) and Avoiding making records that are typical in transactions of the kind

~~A.~~ True B. False

23. Consequently, even if an organisation's anti-corruption programme is sufficiently robust for the purpose of complying with the FCPA, it might not be sufficient for the purpose of complying with the UK Bribery Act.

~~A.~~ True B. False

24. More specifically, foreign companies that have offices in the UK, employ UK citizens, or provide any services to a UK organisation will be responsible for complying with the UK Bribery Act. A listing on the London Stock Exchange will not, in itself, subject a company to the Act.

~~A.~~ True B. False

25. Which of the following statements about the United Nations Convention Against Corruption (UN Convention) is correct?

- A. Member states must implement the necessary mechanisms to detect and prevent the transfer of assets obtained through illicit activities
- B. Member states must ensure the existence of independent anti-corruption bodies that oversee the implementation of the UN Convention policies
- C. Member states must exercise jurisdiction over acts of corruption committed within their territories or by their nationals
- D. All of the above

26. The UN Convention devotes its first chapter to preventive measures aimed at both the public and private sectors. Member states must ensure the existence of independent anti-corruption bodies that oversee implementation of the UN Convention policies and disseminate relevant information.
- A. True B. False
27. The UN Convention lists specific acts of corruption, but it does not require member states to criminalise every one of the listed acts. Instead, it requires member states to criminalise only certain acts of corruption, and it requires them to merely consider criminalising others.
- A. True B. False
28. Which of the following statements is TRUE?
- A. The UN Convention requires member states to establish liability for legal persons and to exercise jurisdiction over acts of corruption committed within their territories or by their nationals.
- B. In addition, any legislation criminalising an act of corruption must include knowledge or specific intent as an element of the offence.
- C. Member states must implement the necessary mechanisms to detect and prevent the transfer of assets obtained through illicit activities.
- D. All the above
29. To be guilty of larceny in a jurisdiction in which larceny is an offence, the perpetrator must have lawful possession of the cash or property that he steals.
- A. True
- B. False
30. The OECD Recommendation on Combating Bribery in International Business (Recommendation) was designed to combat corruption in international business by urging member states to adopt effective measures to detect, prevent, and combat bribery of foreign public officials in international business.
- A. True
- B. False
31. The essential elements that must be shown to prove a conspiracy are as follows:
- A. The defendant entered an agreement with at least one other person to commit an illegal act.
- B. The defendant knew the purpose of the agreement and intentionally joined in the agreement.
- C. At least one of the conspirators knowingly committed at least one overt act in furtherance of the conspiracy.
- D. All the Above
32. The conspirators must agree about the precise illegal act. Thus, an agreement to defraud the government, without further qualification about the nature of the fraud, is sufficient to support a conviction
- A. True B. False
33. The government must also establish that the defendant knew of the conspiracy's existence and its objective. The government, however, does not have to establish that the defendant knew all the details or objectives of the conspiracy, and it does not have to prove that the defendant knew the identity of all the participants in the conspiracy. **A TRUE B FALSE**
34. The purpose of the conspiracy need not be accomplished for a violation to occur, but at least one of the co-conspirators must have carried out at least one overt act in furtherance of the conspiracy. The overt act need be criminal and could be as innocuous as making a phone call or writing a letter.
- A. True B. False
35. An action for fraud may be based on the concealment of material facts, but only if the defendant had a duty in the circumstances to disclose. The essential elements of fraud based on failure to disclose material facts are:
- The defendant had knowledge of a material fact.

- The defendant had a duty to disclose the material fact.
- The defendant failed to disclose the material fact.
- The defendant suffered loss

A. True B. False

36. Craig and Donna each own 40 percent of the shares of Indiwealth and serve on its board of directors. George is also a shareholder, but he is not a member of the board of directors. Donna dies, and her son, Steven, inherits her shares of Indiwealth and replaces her on the board. Steven, however, is inattentive to Indiwealth's corporate affairs. During this time, Craig diverts corporate funds for personal use, and consequently, Indiwealth becomes insolvent. If George decides to sue Steven for violating his fiduciary duties, under what theory is he likely to file the suit?

- A. Violating the duty of care
 B. Violating the duty of reasonableness
 C. Violating the duty of loyalty
 D. Violating the duty of responsibility

37. When an investment professional excessively trades an account for the purpose of increasing his commissions instead of furthering the customer's investment goals, churning is said to have occurred.

A. True B. False

38. The International Councils of Securities Association is recognised as the international standard setter for securities markets.

A. True B. False

39. A securities exchange is a market that provides location and services for brokers and traders to trade securities.

A. True B. False

40. Making misrepresentations to the investor or failing to inform the investor of certain facts (omissions) is a violation of law ONLY if the misrepresentation or omission is material.

A. True B. False

41. Interests in limited partnerships are generally held to be securities because this type of structure conforms closely to the definition of an investment contract.

A. True B. False

42. Which of the following types of investments frequently qualify as investment contracts and can, therefore, be considered securities.

- A. Ponzi schemes
 B. Illegal pyramid schemes
 C. Investment schemes involving precious metals or stones
 D. Any of the above

43. The primary purpose of securities regulation is to balance the legitimate needs of businesses to raise capital against the need to protect investors.

A. True B. False

44. The IOSCO Objectives and Principles of Securities Regulation are based on which of the following objectives:

- A. The protection of investors
 B. Ensuring that markets are fair, efficient, and transparent
 C. The reduction of systemic risk
 D. Any of the above

45. Securities regulation refers to laws, rules, and procedures enacted by a legislative body and administered by dedicated agencies that govern the way in which companies, consumers, and financial professionals behave when trading securities.

A. True

B. False

46. Which of the following investments are commonly recognised as securities?

A. Bonds

B. Fixed insurance policies

C. Retirement plans

D. All of the above

47. A futures contract is a contract that is not a legally binding commitment to sell or buy a given quantity and quality of a commodity at a specified price and on a specified future date.

A. True

B. False

48. Front running involves the use of the privileged knowledge of a customer's order to buy or sell a large amount of a commodity, option, or security that, because of its size, is likely to move the market.

A. True

B. False

49. The power to prescribe and enforce securities laws and regulations is territorial, and most securities markets, are regulated on a national basis.

A. True

B. False

50. The International Organisation of Securities Commissions (IOSCO) is an international organisation comprised of elected commissioners and administrators responsible for setting securities regulations and administration of securities laws.

A. True

B. False

51. IOSCO's documents are binding and it's work shapes securities regulation worldwide.

A. True

B. False

52. When an any person who possesses material, nonpublic information about a corporation buys or sells securities on the basis of material information about the security insider trading is said to have occurred.

A. True

B. False

53. Which of the following is NOT a function of a securities exchange?

A. Provide a mechanism for private enterprises to raise investment funds

B. Serve as indicators of economic trends

C. Buy and sell stocks

D. Supply investors with a forum to liquidate their holdings

54. The "know your customer" rule provides that securities broker-dealers must know their customer financially to effectively service the customer's account and minimise the risk of recommending an inappropriate investment.

~~A.~~ True

B. False

55. There is a violation of suitability when a broker recommends an investment or an investment strategy to a client without having conducted due diligence to ascertain relevant personal and financial information about the client.

~~A.~~ True

B. False

56. Suitability rules allows broker-dealers to make recommendations to clients if they do not have reasonable grounds for believing that the recommendations are suitable for the respective clients.

~~A.~~ True

B. False