

Chapter 2 The Canadian Legal System

MULTIPLE CHOICE

1. What is the paramount function of Canadian constitutional law?
- It sets a parliamentary code of ethics.
 - It creates structure for ceremonial policy.
 - It establishes Canada's deference to British Parliament.
 - It establishes Canada's structure of legal authority.

ANS: D PTS: 1 DIF: Medium REF: 25
BLM: Evaluate

2. Why is it important for businesses to monitor government policy?
- Rules and regulations are periodically revised.
 - It is the machinery that regulates government.
 - It provides rulings that resolve existing disputes.
 - It can be overwhelming and very technical.

ANS: A PTS: 1 DIF: Easy REF: 24
BLM: Understand

3. The government enacted new legislation prohibiting retailers from displaying tobacco products except at the moment of sale at the till. Which of the following best describes the legal basis for a business to challenge the new law?
- The new law is a violation of the commercial freedom of businesses and is therefore unconstitutional.
 - The new law interferes with freedom of expression, which is protected under section 2 (b) of the *Canadian Charter of Rights and Freedoms*.
 - The new law is likely to be ineffective in reducing the number of people who smoke or take up smoking.
 - The government has no legal right to control how businesses choose to display a legal product, because such matters are private law, not public law.

ANS: B PTS: 1 DIF: Medium REF: 32
BLM: Analyze

4. Which of the following is a possible legal justification for upholding a provincial law that prohibits the display of tobacco products in retail outlets?
- If the government can show that the law reduces the incidence of smoking, the law may constitute a reasonable limit on freedom of expression.
 - The provincial government has sole jurisdiction over business activity.
 - The provincial governments have delegated jurisdiction.
 - The new tobacco law is constitutional because it protects health, and health concerns always override business concerns.

ANS: A PTS: 1 DIF: Easy REF: 33
BLM: Analyze

5. The Province of Newfoundland and Labrador enacted new regulations to better control hazardous waste disposal throughout the province. What type of law should specialized waste control businesses operating in Newfoundland and Labrador refer to in order to ensure their commercial activities are legally compliant?
- civil law
 - statute law
 - equitable law
 - common law

ANS: B PTS: 1 DIF: Medium REF: 26
BLM: Evaluate

6. Which legislative body in Canada is composed of the House of Commons and the Senate?
- the Parliament of Canada
 - the House of Assembly
 - the Supreme Court of Canada
 - the Legislative Assembly

ANS: A PTS: 1 DIF: Easy REF: 26
BLM: Remember

7. Which legislature is the lower chamber to the Senate?
- the Legislative Assembly of British Columbia
 - the Parliament of Canada
 - the House of Assembly of Nova Scotia
 - the House of Commons

ANS: D PTS: 1 DIF: Challenging REF: 26
BLM: Understand

8. Which of the following outcomes is dictated by the doctrine of paramountcy in circumstances where conflicting federal and provincial laws cannot be reconciled?
- The federal law prevails, except in Quebec.
 - The superior law prevails.
 - Concurrent provincial law prevails.
 - The provincial law prevails.

ANS: B PTS: 1 DIF: Medium REF: 28
BLM: Evaluate

9. In determining a constitutional challenge, the Supreme Court of Canada upheld the federal government's bilingual language rights legislation. Which of the following exemplifies the reason for the Court's decision?
- The Supreme Court's decision follows the doctrine of paramountcy.
 - The Court's decision does not apply in the province of Quebec.
 - Regulating language law falls within federal government jurisdiction.
 - The Supreme Court's decisions must uphold the public interest.

ANS: A PTS: 1 DIF: Medium REF: 28
BLM: Understand

10. Which of the following is a required element in the procedure for passing federal legislation through Parliament?
- a majority vote by Commons committee and approval by Senate
 - a quorum vote in the House of Commons and by the Senate
 - a majority vote of the members in the House of Commons and in the Senate
 - an approval by the House of Commons and by the Senate committee

ANS: C

PTS: 1

DIF: Easy

REF: 27

BLM: Analyze

11. Which governing bodies are the primary regulators of business activities in Canada?
- the federal and municipal governments
 - the Senates of the federal and provincial governments
 - the federal and provincial governments
 - the provincial and municipal governments

ANS: D

PTS: 1

DIF: Medium

REF: 26

BLM: Understand

12. In which areas is the federal government given exclusive jurisdiction to make law by the Canadian Constitution?
- currency, trade, national defence
 - administration of justice, trade, national defence
 - interprovincial trade and commerce, highway regulation, licensing
 - criminal law, administration of justice, hospitals

ANS: A

PTS: 1

DIF: Medium

REF: 26

BLM: Analyze

13. What level of government possesses the required constitutional jurisdiction to change laws that affect property?
- federal; paramount jurisdiction
 - provincial; exclusive jurisdiction
 - municipal; concurrent jurisdiction
 - provincial; delegated jurisdiction

ANS: B

PTS: 1

DIF: Challenging

REF: 26

BLM: Remember

14. Which of the following exemplifies the powers granted to a government with jurisdictional authority to regulate crime?
- regulate criminal justice in the provinces
 - define crimes, establish precedents, and set penalties
 - define crimes, establish laws, and set penalties
 - regulate criminal sanctions in the Civil Code of Quebec

ANS: C

PTS: 1

DIF: Medium

REF: 27

BLM: Understand

15. What classification of law would a provincial statute restricting the display of tobacco products in retail outlets fall under?

- a. private law
- b. public and domestic law
- c. common law and private law
- d. procedural law

ANS: B PTS: 1 DIF: Challenging REF: 42
BLM: Analyze

16. What is the source of the law that governs lawmaking authority within the Canadian legal system?
- a. parliamentary bills
 - b. constitutional law
 - c. the *Civil Code*
 - d. constitutional conventions

ANS: B PTS: 1 DIF: Easy REF: 26
BLM: Remember

17. To which level of government would a business make an application for a property zoning variance, and why?
- a. municipal government; direct constitutional jurisdiction
 - b. municipal government; concurrent constitutional jurisdiction
 - c. municipal government; provincial constitutional delegation of authority
 - d. federal government; exclusive jurisdiction to regulate zoning

ANS: C PTS: 1 DIF: Medium REF: 26
BLM: Evaluate

18. What is the legal status of the office of prime minister in Canada?
- a. The office of prime minister is an example of a constitutional convention.
 - b. The office of prime minister does not really exist.
 - c. The office of prime minister is set out in the *Constitution Act, 1867*.
 - d. The office of prime minister is set out in the *Canadian Charter of Rights and Freedoms*.

ANS: A PTS: 1 DIF: Easy REF: 25
BLM: Evaluate

19. Of the following statements, which is most accurate regarding the executive branch of government?
- a. The executive branch of government consists of the prime minister and the premiers of the provinces and territories.
 - b. The executive branch of government provides rulings to resolve existing legal conflicts.
 - c. The executive branch of government passes laws that impact business operations.
 - d. The executive branch of government includes the formal executive and the political executive.

ANS: D PTS: 1 DIF: Challenging REF: 29
BLM: Remember

20. Who holds the office of chief executive of the federal government?
- the appointed governor general
 - Elizabeth II, as reigning Queen of England
 - the duly elected prime minister of Canada
 - the appointed chief senatorial officer

ANS: C PTS: 1 DIF: Easy REF: 30
BLM: Remember

21. What is the judicial branch of government in Canada composed of?
- the system of various levels of courts in Canada
 - the judiciary and the system of various levels of courts
 - a judiciary appointed by the governor general
 - the judiciary and federal and provincial prosecutors

ANS: B PTS: 1 DIF: Medium REF: 30
BLM: Evaluate

22. The decisions of the Supreme Court of Canada are best described as:
- binding on all other courts in all Canadian jurisdictions
 - limited to constitutional matters
 - binding only on the government
 - always appeals from the Federal Court of Canada

ANS: A PTS: 1 DIF: Medium REF: 31
BLM: Remember

23. An accomplished lawyer accepts an appointment by the justice minister to the position of judge in the Provincial Court of Manitoba. What gives the minister authority to appoint this court's judges?
- Provinces have jurisdiction to appoint judges to superior courts.
 - The province can use parliamentary prerogative to appoint judges.
 - Provinces have jurisdiction to appoint judges to inferior courts.
 - Canada's governments share concurrent jurisdiction to appoint judges.

ANS: C PTS: 1 DIF: Medium REF: 31
BLM: Understand

24. What are the basic levels of courts that make up the Canadian court system?
- trial, informal appeal, and final appeal courts
 - trial, intermediate appeal, and final court of appeal
 - informal trial, formal trial, and final appeal courts
 - pre-trial, trial, and appeal courts

ANS: B PTS: 1 DIF: Challenging REF: 31
BLM: Analyze

25. Canadian environmental activists are sometimes charged with offences for actions taken during their protests. Which of the following might constitute a basis for activists to challenge convictions arising out of their protest activities?
- the *Charter* rights of freedom of peaceful assembly and freedom of association

- b. the doctrine of paramountcy
- c. the common law right to freedom of expression
- d. the notwithstanding clause

ANS: A PTS: 1 DIF: Medium REF: 32|33
BLM: Evaluate

26. What is the least likely source of law in Canada?

- a. common law
- b. public opinion
- c. *Civil Code*
- d. royal prerogative

ANS: B PTS: 1 DIF: Easy REF: All
BLM: Remember

27. Which of the following actions does royal prerogative give the Crown an exclusive right to perform in Canada?

- a. give politicians immunity
- b. overrule laws enacted by Parliament
- c. overturn decisions of the Supreme Court
- d. declare war on enemies of the state

ANS: D PTS: 1 DIF: Medium REF: 38
BLM: Analyze

28. What is a distinguishing characteristic of the principle of precedent law?

- a. It is based on a Civil Code.
- b. It applies only in Quebec courts.
- c. Individual freedoms are valued.
- d. Like cases should be treated alike.

ANS: D PTS: 1 DIF: Easy REF: 39
BLM: Remember

29. A recent decision of the Supreme Court of Canada established a new ground of entitlement to spousal support under the federal *Divorce Act*. Which of the following describes the effect the decision will have on provincial family law courts determining spousal support cases?

- a. Provincial courts will seek exemption under the “notwithstanding clause.”
- b. The decision applies only to support cases outside of the province of Quebec.
- c. Superior court decisions must be followed and applied by all inferior courts.
- d. Courts apply the new law if it complies with the parties’ religious convictions.

ANS: C PTS: 1 DIF: Challenging REF: 39
BLM: Evaluate

30. Rules of equity focus on what would be fair given the specific circumstances of the case, as opposed to which of the following?

- a. what the strict rules of common law might dictate
- b. law that governs relations between states
- c. the internal set of laws of a given country

d. law governing agreements between states

ANS: A PTS: 1 DIF: Medium REF: 39
BLM: Understand

31. What is a distinguishing characteristic of a treaty?
- a. A treaty is the sole law governing relations between nations.
 - b. A treaty is a set of coded laws to regulate relations.
 - c. A treaty governs relationships between Canada's provinces.
 - d. A treaty can exist between nations governed by international law.

ANS: D PTS: 1 DIF: Medium REF: 29
BLM: Remember

32. What attribute distinguishes substantive law from other forms of law?
- a. It defines rights, duties, and liabilities.
 - b. It defines international legal status.
 - c. It defines the relationship between governments.
 - d. It defines procedures under the *Charter*.

ANS: A PTS: 1 DIF: Medium REF: 40
BLM: Analyze

33. What is the defining characteristic of procedural law?
- a. It is a set of laws defining individual rights, duties, and liabilities.
 - b. It regulates the relationship between persons and governments.
 - c. It governs procedure for the enforcement of rights, duties, and liabilities.
 - d. It governs procedure for the enforcement of the *Civil Code*.

ANS: C PTS: 1 DIF: Easy REF: 40
BLM: Remember

34. Which of the following best describes the defining characteristics of public law?
- a. It regulates relationships between governments and individuals.
 - b. It provides rules concerning rights and obligations of business.
 - c. It focuses on fairness according to strict rules of common law.
 - d. It contains the rules of law in the *Civil Code of Quebec*.

ANS: A PTS: 1 DIF: Medium REF: 40
BLM: Analyze

35. Quest Electrical Engineers Inc. contractually committed to provide specialized services to a construction project with specified deadlines for completion. Quest has to meet deadlines or face penalties. What type of law governs the relationship and conduct of the parties to this contract?
- a. common law
 - b. corporate law
 - c. public law
 - d. private law

ANS: D PTS: 1 DIF: Challenging REF: 40

BLM: Analyze

36. What form of private law is applied in Quebec courts?
- the *Civic Code of Quebec*
 - the *Civil Code of Quebec*
 - the *Quebec Civil Law Code*
 - the *Civil Law Code*

ANS: B PTS: 1 DIF: Easy REF: 41
BLM: Remember

37. What characteristic distinguishes Quebec's civil law from Canada's common law?
- Civil law courts are not bound by earlier interpretations of the *Code*.
 - Civil law courts hear only matters of public law disputes.
 - Civil law judges are provincially elected for one five-year term.
 - Civil law courts do not have to consider legislation.

ANS: A PTS: 1 DIF: Medium REF: 41
BLM: Remember

38. A hospital board of directors granted absolute authority to physicians to arbitrarily withdraw life support from patients. The board's authority to grant such power was quickly challenged and overturned in the courts. What type of law had to be applied to constrain the hospital board's authority?
- criminal law
 - constitutional law
 - administrative law
 - equity law

ANS: C PTS: 1 DIF: Challenging REF: 43|44
BLM: Understand

39. Which of the following is an example of a federal administrative body that plays a role in regulating activity?
- the Securities Commission
 - the Board of Health
 - the Canadian Radio-television and Telecommunications Commission (CRTC)
 - the Liquor Control Board

ANS: C PTS: 1 DIF: Medium REF: 43
BLM: Understand

40. Which of the following is an example of a provincially appointed administrative body?
- the Radio-television and Telecommunications Commission (CRTC)
 - the Securities Commission
 - the Food and Drug Agency
 - the Atomic Energy Commission

ANS: B PTS: 1 DIF: Medium REF: 43
BLM: Understand

41. Which of the following best reflects the high value Canadians place on the political philosophy of liberalism?
- a. Canada regulates privacy with laws restricting government access to persons and property.
 - b. Canadians have elected more majority Liberal governments than NDP or Conservative.
 - c. Public outcry forced the Green Party leader's acceptance in federal election debates.
 - d. Governments willingly and promptly comply with access to information requests.

ANS: A PTS: 1 DIF: Medium REF: 23
BLM: Analyze

42. Which level of government should Nantucket Sleigh Rides, Inc., lobby for regulated roadway access to sell horse-drawn sleigh rides to patrons of downtown business establishments from December through February?
- a. provincial government
 - b. federal government
 - c. municipal government
 - d. federal and provincial governments

ANS: C PTS: 1 DIF: Medium REF: 26
BLM: Analyze

43. A province wants to challenge an appeal court's decision regarding the prevention of continued ground water contamination now posing a significant health risk to people, wildlife, and plants living in the ecosystem to the Supreme Court. Which of the following would immediately signify the Supreme Court's agreement to hear the challenge, and why it would consider this appeal?
- a. leave to appeal; significant or national concern
 - b. consent to appeal; provincial challenges
 - c. consent to appeal; jurisdiction
 - d. permission to appeal; national public concern

ANS: A PTS: 1 DIF: Challenging REF: 31
BLM: Evaluate

44. What are the rules of equity?
- a. rules that set out the correct procedures to follow in court
 - b. rules that require wrongdoers to compensate their victims for losses
 - c. rules that focus on what would be fair given the specific circumstances of the case
 - d. strict rules that dictate the outcome of particular disputes

ANS: C PTS: 1 DIF: Medium REF: 39
BLM: Remember

45. What are the three branches of government provided for by the Canadian Constitution?
- a. legislative, executive, judicial
 - b. federal, provincial, municipal
 - c. legislative, executive, representative

d. legislative, representative, judicial

ANS: A PTS: 1 DIF: Medium REF: 38
BLM: Analyze

TRUE/FALSE

1. The rights and authority of municipal governments are protected by the *Constitution Act*.

ANS: F PTS: 1 DIF: Easy REF: 26
BLM: Remember

2. The *Constitution Act* makes the provincial governments subordinate to the federal government in cases of overlapping jurisdiction.

ANS: T PTS: 1 DIF: Medium REF: 28
BLM: Evaluate

3. The legislative branch of government is the source of statute law.

ANS: T PTS: 1 DIF: Medium REF: 24
BLM: Evaluate

4. Canada's federal Parliament is composed of the House of Commons and the Senate.

ANS: T PTS: 1 DIF: Medium REF: 26
BLM: Remember

5. All municipalities in Canada are created by provincial legislation.

ANS: T PTS: 1 DIF: Medium REF: 26
BLM: Remember

6. The judicial branch of government includes the courts and the legislatures.

ANS: F PTS: 1 DIF: Medium REF: 30/31
BLM: Remember

7. The judges in Canada's higher courts are appointed, and those in the lower courts are elected.

ANS: F PTS: 1 DIF: Medium REF: 30
BLM: Remember

8. There are no limits on the guarantees of rights and freedoms established by the *Charter of Rights and Freedoms*.

ANS: F PTS: 1 DIF: Easy REF: 33
BLM: Remember

9. Public law deals with the regulation of relationships between individuals and government.

ANS: T PTS: 1 DIF: Medium REF: 40|41
BLM: Remember

10. Federal and provincial legislatures are constitutionally provided with the authority to appoint judges within specified judicial jurisdictions.

ANS: T PTS: 1 DIF: Medium REF: 30
BLM: Remember

11. A federal bill must be approved by a vote in the House of Commons in order to pass the first reading.

ANS: T PTS: 1 DIF: Easy REF: 36
BLM: Remember

12. The new *Criminal Code of Newfoundland* would be enforced by the courts because it would not be contrary to the Canadian Constitution to do so.

ANS: F PTS: 1 DIF: Easy REF: 27
BLM: Remember

13. A provincial government cannot enact environmental legislation that would conflict with federal environmental legislation because it is an area of exclusive federal jurisdiction.

ANS: F PTS: 1 DIF: Medium REF: 28
BLM: Remember

14. Public health and the environment are constitutionally undefined as areas of concurrent jurisdiction shared between the federal and provincial governments.

ANS: F PTS: 1 DIF: Medium REF: 28
BLM: Remember

15. In circumstances of alleged conflict between federal and provincial legislation, the doctrine of paramountcy generally would not be applicable where an individual or business is able to simply obey the stricter law and thereby comply with both pieces of legislation.

ANS: T PTS: 1 DIF: Challenging REF: 28
BLM: Remember

16. Municipal legislation compelling the annual payment of a fee pertaining to the licensing of dog ownership requires the enactment of a bylaw.

ANS: T PTS: 1 DIF: Easy REF: 29
BLM: Remember

17. A bill put before a legislative body represents a proposed piece of legislation that a political party wants to make into law.

ANS: T PTS: 1 DIF: Easy REF: 36
BLM: Remember

18. The principle of precedent holds that all precedents are not of equal value, meaning the higher the level of court that created the precedent, the less weight it brings to bear on the common law system.

ANS: F PTS: 1 DIF: Medium REF: 39
BLM: Remember

19. The early English court of equity established rules that focus on what would be fair given the specific circumstances of a case, as opposed to what the a strict application of the common law might dictate.

ANS: T PTS: 1 DIF: Medium REF: 39
BLM: Remember

20. Substantive law is the internal law of a given country, which includes both statute and case law.

ANS: F PTS: 1 DIF: Easy REF: 40
BLM: Remember

SHORT ANSWER

1. Briefly describe the circumstances under which the guarantee of Canadians' rights and freedoms provided under the *Canadian Charter of Rights and Freedoms* is permitted to be limited.

ANS:

Limitation of the guarantee of Canada's *Charter* rights and freedoms is allowed when the limitation is demonstrated to be justified under section 1 and by the use of the notwithstanding clause contained in section 33 of the *Charter*.

PTS: 1 DIF: Easy REF: 33 BLM: Remember

2. Briefly describe the benefits to be derived by businesses being aware of government policy and the status of regulations affecting their operations, as well as the consequences of being unaware of the same.

ANS:

Businesses need to actively monitor government policy and regulations that affect how businesses are permitted to operate because either may be changed periodically. Awareness allows business to comply with laws and to attempt to influence development of policies and regulations to favour and further business interests. Being unaware of changes would result in noncompliance with regulations, levy of fines, or even closure of a business. Lack of awareness of government policy may also result in a missed opportunity to lobby government to change law or to take advantage of favourable change in law.

PTS: 1 DIF: Medium REF: 24 BLM: Remember

3. Briefly describe what is meant by the statement “Canada has a federal form of government.”

ANS:

It means that governmental power is split between the central, national authority and regional authorities. In Canada, the national authority is the federal government and the regional authorities are the provinces. Territories are provided with a form of limited self-government. Each authority is empowered to legislate within constitutionally defined jurisdictions and matters.

PTS: 1 DIF: Easy REF: 26 BLM: Remember

4. Name the branches that make up the Canadian government, describe their function, and specifically identify the body that represents each branch and carries out its function.

ANS:

The Canadian government consists of three branches: legislative, executive, and judicial. The executive branch formulates and implements government policy, the legislative branch creates law in the form of statutes and regulations, and the judicial branch provides rulings to resolve existing legal conflicts. The legislative branch of the Canadian government is the Canadian Parliament, the executive branch is the federal cabinet, and the Supreme Court heads the judicial branch.

PTS: 1 DIF: Medium REF: 23 BLM: Remember

5. Briefly describe the origins of the *common law system* and the *civil law system* as they exist in Canada and the comparable and contrasting characteristics of each system of law.

ANS:

The Quebec civil law system originated from the French legal system and was brought to Quebec by the French when they colonized the region. The Canadian common law system is rooted in England’s legal system, which was established in all provinces excluding Quebec by the British when they conquered and colonized the Canadian regions of North America.

The key principle of common law is that laws are interpreted and applied in decisions of the court known as judgments. Judgments become precedents, which form the body of case law that must be referred to and applied by every judge hearing a similar matter when making a legal determination in a similar dispute involving the same laws.

The key principle of the civil law system is that the Quebec legislature makes civil law, and those laws are *codified* or compiled in one source known as the *Civil Code*. The judges’ task in the civil code system is to find the specific provision in the code that applies to the case at hand, and to apply it to resolve the dispute. Civil code judges do not refer to past decisions at all.

Both systems are designed to deliver constant, consistent justice.

PTS: 1 DIF: Medium REF: 41 BLM: Remember

6. Identify the nature of the question that Rothmans would use to challenge Saskatchewan's power wall ban under its *Tobacco Control Act*. Briefly explain how the government of Saskatchewan would be required to respond to such a challenge. Identify and briefly explain what actions the Supreme Court of Canada would take and the source of its authority to do so in the event that a Rothmans challenge was able to demonstrate that Saskatchewan's *Tobacco Control Act* violated a *Charter* provision and the provincial government failed to prove its legislation met the standard set by s. 1 of the *Charter*.

ANS:

A challenge of the Saskatchewan legislation banning use of the power wall to advertise cigarette brands by Rothmans would involve the question of whether the provincial legislation violated the *Charter's* guarantee of freedom of expression. The Saskatchewan government would respond by arguing that such a violation is justified under s. 1 of the *Charter* due to both the provincial and federal governments pressing and substantial purpose, which is to prevent young people from becoming addicted to the drugs contained in cigarettes.

If Rothmans were able to demonstrate that Saskatchewan's *Tobacco Control Act* violated a *Charter* provision and the government failed to prove that its legislation met the standard set by s. 1, the court would be entitled to strike down the province's legislation by declaring it to be of no force and effect because it is unconstitutional. The court's authority to order such a powerful remedy is set out s. 24 and s. 52 of the *Charter*.

PTS: 1

DIF: Challenging REF: 33

BLM: Remember

7. Identify and briefly describe the statement made by Madam Justice Wilson with respect to the Supreme Court of Canada's view that in Canadian society, a liberal and democratic system of government is not just about majority rule.

ANS:

Madam Justice Wilson of the Supreme Court of Canada stated that the *Charter* recognizes that an individual is not totally independent from society, nor just a body in an impersonal system where individual values, goals, and aspirations are subordinate to the collectivity. In Canada, the *Charter* leaves a wide range of activities and decisions open to legitimate government control while placing limits on the proper scope of that control. Thus, the rights guaranteed in the *Charter* erect around each individual an invisible fence over which the state will not be allowed to trespass. The role of the courts is to map out, piece by piece, the parameters of the fence.

PTS: 1

DIF: Challenging REF: 35

BLM: Remember