

Yates: Legal Fundamentals for Canadian Business, 3e
Chapter 1: The Canadian Legal System

1) Why is law important?

Answer:

Business activities involve significant human interaction. Our business relationships involve important rights, responsibilities, and obligations. These take the form of legal rules, so it's important to understand law as we participate in business.

Feedback: Business activities involve significant human interaction. Our business relationships involve important rights, responsibilities, and obligations. These take the form of legal rules, so it's important to understand law as we participate in business.

Diff: 1

Type: ES

Page Reference: 2a

Skill: Applied

2) Identify five ways in which companies can reduce legal risks in business transactions.

Answer:

Students may identify any number of options available to businesses. Some that they might suggest include these risk-avoidance strategies and practices:

1. Know enough about the law to be able to avoid legal problems.
2. Know when legal advice is needed.
3. Recognize legal risks associated with physical facilities.
4. Prepare contracts with an anticipation of all possible eventualities.
5. Include alternate dispute resolution options in contracts.
6. Protect intellectual property.

Feedback: Students may identify any number of options available to businesses. Some that they might suggest include these risk-avoidance strategies and practices:

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2. Know when legal advice is needed.
3. Recognize legal risks associated with physical facilities.
4. Prepare contracts with an anticipation of all possible eventualities.
5. Include alternate dispute resolution options in contracts.
6. Protect intellectual property.

Diff: 2

Type: ES

Page Reference: 2b

Skill: Applied

3) When a client consults with a lawyer, the lawyer provides instruction and direction as to what to do.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 2c

Skill: Applied

4) Risk avoidance involves anticipation of what can go wrong and taking steps to avoid that eventuality.

a. True

b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 2d

Skill: Recall

5) Which of the following is the most usable definition of law?

a. It is most useful to us to define law in terms of what we think people ought to do.

b. We must define law in terms of what people used to do.

c. We must define law in terms of what the courts or other agents of government will enforce.

d. We must define law in terms of what society needs people to do.

e. It is most useful to us to define law in terms of what people do.

Answer: c

Diff: 1

Type: MC

Page Reference: 3a

Skill: Recall

6) Law and morality are the same thing.

a. True

b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 3b

Skill: Applied

7) Substantive law is concerned with how legal institutions work.

a. True

b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 3c

Skill: Recall

- 8) Which of the following statements with regard to the characteristics of civil and criminal actions is true?
- a. The person who begins a civil action is usually called the prosecutor.
 - b. A civil action is a private action; that is, a person or persons sue another or others usually for the purpose of being compensated for injury or loss suffered.
 - c. If a person is convicted of a criminal offence, he or she cannot also be sued in a civil action by the victim.
 - d. In a criminal case, an individual person is taking the action against the accused.
 - e. The prosecutor must prove his or her case based "upon a balance of probabilities."

Answer: b

Diff: 2

Type: MC

Page Reference: 3d, 17d, 22b

Skill: Recall

- 9) Distinguish between a criminal trial and a civil trial.

Answer:

A criminal trial involves a prosecutor acting on behalf of the state, prosecuting an accused to the end that that person will be punished for his offence against the state. The status of the victim is as a witness. In a civil action (often referred as a private action), one person is suing another to the end that the court will award compensation for injury suffered or some other remedy requested by the plaintiff. The standard proof is also different in a criminal action, where the matter must be proved beyond a reasonable doubt, while in a civil action the standard is upon the balance of probabilities.

Feedback: A criminal trial involves a prosecutor acting on behalf of the state, prosecuting an accused to the end that that person will be punished for his offence against the state. The status of the victim is as a witness. In a civil action (often referred as a private action), one person is suing another to the end that the court will award compensation for injury suffered or some other remedy requested by the plaintiff. The standard proof is also different in a criminal action, where the matter must be proved beyond a reasonable doubt, while in a civil action the standard is upon the balance of probabilities.

Diff: 3

Type: ES

Page Reference: 3e, 21c, 30c, f

Skill: Applied

- 10) Who brings a civil action?

Answer: The plaintiff

Feedback: The plaintiff

Diff: 1

Type: FIB

Page Reference: 3f

Skill: Recall

11) Who are the parties in a civil action?

Answer: Plaintiff and defendant

Feedback: Plaintiff and defendant

Diff: 1

Type: FIB

Page Reference: 3g

Skill: Recall

12) Which of the following is incorrect regarding roles played in legal cases?

- a. In a civil action, the person suing is the plaintiff.
- b. In a civil action, the person being sued is the defendant.
- c. In an appeal, the person filing the appeal is the appellant.
- d. In a civil case, the appellant is the same as the defendant, but he or she is now in the appeals process.
- e. In a criminal case, the victim is likely to have the status of a witness.

Answer: d

Diff: 2

Type: MC

Page Reference: 3h, 30e

Skill: Recall

13) Identify the parties and their roles in a civil action.

Answer:

The person who is suing is the plaintiff and the person being sued is the defendant. If one party is dissatisfied with the outcome of the case and decides to appeal the decision, the one who files the appeal is the appellant and the other party is the respondent. Note that the appellant can be either the former plaintiff or the former defendant.

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Diff: 2

Type: ES

Page Reference: 3i

Skill: Recall

14) A person has the right to appeal a decision in a civil court.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 3j

Skill: Recall

15) The appellant may be either the plaintiff or the defendant.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 3k

Skill: Recall

16) A criminal matter is usually offensive conduct considered serious enough for the government to get involved and punish the wrongdoer.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 3l

Skill: Recall

17) What role does the civil code system of law play in Canada?

Answer:

Quebec uses a civil code for areas that fall under its jurisdiction.

Feedback: Quebec uses a civil code for areas that fall under its jurisdiction.

Diff: 1

Type: ES

Page Reference: 4a

Skill: Applied

18) Which province in Canada continues to use a civil code system of law?

Answer:
Quebec

Feedback: Quebec
Diff: 1
Type: FIB
Page Reference: 4b
Skill: Recall

19) Civil law is based on a codified system.
a. True
b. False

Answer: a
Diff: 1
Type: TF
Page Reference: 4c
Skill: Recall

20) Which of the following is correct with respect to the civil law system?
a. Quebec and New Brunswick use a system based on the French Civil Code.
b. The Civil Code as used in Quebec covers private disputes between individuals.
c. The code is persuasive only and the judges are free to disregard it where the situation warrants.
d. The system used in Quebec is based on Justinian's code rather than the Napoleonic Code.
e. The Civil Code governs all legal matters arising in Quebec, including criminal actions.

Answer: b
Diff: 2
Type: MC
Page Reference: 4d
Skill: Recall

21) If a lawsuit is filed in Quebec after a runner carelessly bumps into another and causes injury, the judge would rely on precedent cases to determine the outcome of the case.
a. True
b. False

Answer: b
Diff: 1
Type: TF
Page Reference: 4e
Skill: Applied

22) Explain what role precedent plays in the civil code system of law.

Answer:

Prior judges' decisions are merely persuasive, not binding; the Code is binding.

Feedback: Prior judges' decisions are merely persuasive, not binding; the Code is binding.

Diff: 1

Type: ES

Page Reference: 4f

Skill: Applied

23) At a recent computer show, you heard a student trying to explain our legal system to a man who recently immigrated from Russia. Which one of the following statements that he made is correct?

- a. Today, we are governed only by statutes passed by our elected representatives.
- b. All of the provinces follow law that stemmed from the English common law.
- c. With the creation of our court system, the equitable tradition was lost. Today, a judge of our superior court does not apply principles or remedies developed by the courts of equity.
- d. Judge-made law in England came from two traditions, civil law and parliamentary supremacy.
- e. The chief characteristic of the common law is the theory of precedent; that is, judges are bound by decisions of judges on superior courts in that jurisdiction on the same point of law.

Answer: e

Diff: 2

Type: MC

Page Reference: 4g

Skill: Recall

24) Judges in a common law system base their decisions on other judges' decisions.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 4h

Skill: Recall

25) (Modify this question for your province.) Which of the following is false with respect to our court system?

- a. The consequence of the merger of the common law courts with the courts of equity is that the courts now apply both legal and equitable principles and remedies.

- b. The lawyer arguing before the B.C. Supreme Court could cite a British case, but the judge is not bound to follow it.
- c. There is no monetary limitation on the B.C. Supreme Court (i.e., the case may involve any amount of money).
- d. A negligence action, where the extent of damage is \$1500, would most likely begin in the B.C. Provincial Court, small claims division.
- e. A judge on the B.C. Court of Appeal is bound to follow the decision of a judge on the B.C. Supreme Court on an identical case.

Answer: e

Diff: 2

Type: MC

Page Reference: 4i

Skill: Recall

26) A British Columbia judge is required to follow the decisions of a higher court in Alberta.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 4j

Skill: Recall

27) In the common law system, if a judge feels that the decision made by a judge in a higher court is wrong, he or she is free to disregard it.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 4k

Skill: Recall

28) Common law judges in Canada often look to decisions from other, similar judicial systems, including Great Britain, the United States, Australia, and New Zealand; these decisions are not binding, although they can be persuasive on Canadian courts.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 4l

Skill: Recall

29) The custom of following already decided cases is called:

- a. Substantive law
- b. Procedural law
- c. Res judicata
- d. Stare decisis
- e. Civil law system

Answer: d

Diff: 1

Type: MC

Page Reference: 4m

Skill: Recall

30) Which of the following statements is correct with respect to the sources of our law?

- a. The Courts of Chancery developed the law of contracts.
- b. Equity is a system of law developed by the provincial legislatures.
- c. The term stare decisis refers to the practice of following precedent, which forms the basis of our common law system.
- d. The only province in which a judge is required to follow a comprehensive civil code is Ontario.
- e. The common law derived aspects of the law of families and estates from the French Civil Code.

Answer: c

Diff: 1

Type: MC

Page Reference: 4n

Skill: Recall

31) Which of the following is correct with respect to stare decisis in the common law?

- a. Statutes play the same role as the code used in the French system.
- b. It prevents a higher court from overruling a lower one.
- c. It is based on trial by battle and trial by ordeal.
- d. This term refers to the role played by the law of equity in our system.
- e. It allows decisions of the courts to be set by precedent.

Answer: e

Diff: 2

Type: MC

Page Reference: 4o

Skill: Recall

32) Stare decisis is the Latin term for following the code.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 4p

Skill: Recall

33) Explain what is meant by stare decisis.

Answer:

This is the foundation of the common law system whereby one judge's decision must be followed by another. This system involves a complex set of rules to determine which precedent must be followed. Basically, a decision in a case involving the same legal issue decided in a higher court in the same jurisdiction is a binding precedent that must be followed.

Feedback: This is the foundation of the common law system whereby one judge's decision must be followed by another. This system involves a complex set of rules to determine which precedent must be followed. Basically, a decision in a case involving the same legal issue decided in a higher court in the same jurisdiction is a binding precedent that must be followed.

Diff: 2

Type: ES

Page Reference: 4q

Skill: Recall

34) The common law courts as developed by the king of England were used to impose the will of the sovereign on the people.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 5a

Skill: Recall

35) Which of the following was not one of the factors that led to the creation of the law of equity?

- a. The need for a supplement to the common law
- b. The adherence to precedent
- c. The outcome in the common law courts was unpredictable
- d. Stare decisis
- e. Rigidity in the common law courts

Answer: c

Diff: 2

Type: MC

Page Reference: 5b

Skill: Recall

36) Explain why the law of equity developed.

Answer:

Because of the inequity and harshness of the common law, people seeking unique remedies would petition the king for relief. Since, in theory, the king was the source of all power for all courts, he had the power to make orders overcoming individual injustices caused by the shortcomings of the common law courts. This task was soon assigned to others and eventually developed into a separate body known as the Court of Equity. The body of law that developed was equity, and so it can be said that equity developed to supplement the common law because of the inadequacy and rigidity of the common law.

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Diff: 2

Type: ES

Page Reference: 5c

Skill: Recall

37) Although the Court of Chancery and common law courts were merged, the bodies of law remain separate today.

a. True

b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 6a

Skill: Recall

38) "The term equity refers to fairness in our legal system." Discuss the accuracy of this statement.

Answer:

Equity is that body of law developed by the Court of Chancery and may or may not be considered fair by today's standards. In the 19th century, the Court of Chancery and common law courts were merged into one court system, but it must be emphasized that the bodies of law developed (that is, common law and equity) remain separate and distinct bodies of law.

Feedback: Equity is that body of law developed by the Court of Chancery and may or may not be considered fair by today's standards. In the 19th century, the Court of Chancery and common law courts were merged into one court system, but it must be emphasized that the bodies of law developed (that is, common law and equity) remain separate and distinct bodies of law.

Diff: 2

Type: ES

Page Reference: 6b

Skill: Applied

39) Which of the following is correct with respect to the law of equity?

- a. Equity means fairness in our legal system.
- b. Equity refers to the body of law created by the Court of Chancery.
- c. The Court of Equity was essentially a common law court.
- d. Equity no longer exists; the courts were merged.
- e. Equity refers to the amount still owing on a debt.

Answer: b

Diff: 2

Type: MC

Page Reference: 6c

Skill: Recall

40) The law of equity was developed in the Court of Chancery.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 6d

Skill: Recall

41) The body of law developed by the Court of Chancery is called _____.

Answer: Equity

Feedback:

Diff: 1

Type: FIB

Page Reference: 6e

Skill: Recall

42) The law of equity was developed by _____.

Answer:

The Court of Chancery

Feedback: The Court of Chancery

Diff: 1

Type: FIB

Page Reference: 6f

Skill: Recall

43) Civil law is also known as judge-made law.

a. True

b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 6g

Skill: Recall

44) Which of the following is incorrect regarding the development of common law in Canada?

a. Canon law (church law) influenced the development of common law in relation to the laws of wills and estates.

b. Common law was developed by the Court of Chancery.

c. Roman law influenced the development of common law in relation to property law.

d. The law merchant influenced the development of common law in relation to the law of negotiable instruments.

e. Common law is a body of rules based on cases developed in the common law courts.

Answer: b

Diff: 2

Type: MC

Page Reference: 6h

Skill: Recall

45) Although the English-speaking provinces adopted the English legal system at different times in their history, they now have a common body of laws.

a. True

b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 7a

Skill: Recall

46) Explain why statutes override the common law.

Answer:

Because of the principle of parliamentary supremacy, when Parliament passes a statute, it overrides common law or equity.

Feedback: Because of the principle of parliamentary supremacy, when Parliament passes a statute, it overrides common law or equity.

Diff: 2

Type: ES

Page Reference: 7b

Skill: Applied

47) Which of the following is correct with respect to the role of statutes in our legal system?

- a. Only the federal Parliament may enact statutes.
- b. In Canada, most new laws follow the Civil Code legal system.
- c. Where a properly passed provincial statute is in conflict with a well-established common law principle, the statute will be void.
- d. Once a statute has been interpreted and applied in a court, a subsequent judge in a lower court is not required to follow that decision if he or she disagrees with it.
- e. A statute, if it is clear and concise and properly passed, will always override common law and equity.

Answer: e

Diff: 1

Type: MC

Page Reference: 7c

Skill: Recall

48) Which of the following statements about statutes is true?

- a. A statute may be only federal.
- b. Statutes apply only when there is no common law covering the situation.
- c. Government regulations are considered supreme to statute law.
- d. Statutes are laws created by legislative bodies.
- e. Statutes often summarize or modify canon law.

Answer: d

Diff: 2

Type: MC

Page Reference: 7d

Skill: Recall

49) Which of the following will a judge not apply in a Canadian court?

- a. Constitutional law
- b. Equitable principles
- c. Statute law
- d. Common law principles
- e. Roman law

Answer: e

Diff: 1

Type: MC

Page Reference: 7e

Skill: Recall

50) What is the significance of the Constitution Act (1867)?

Answer:

It created the Confederation of Canada and, for our purposes today, it divides powers between the federal and provincial governments.

Feedback: It created the Confederation of Canada and, for our purposes today, it divides powers between the federal and provincial governments.

Diff: 2

Type: ES

Page Reference: 7f, i

Skill: Recall

51) "Canada's Constitution is embodied in the British North America Act." Comment on the accuracy of this statement.

Answer:

This is incorrect. Canada has a constitution similar to that of the United Kingdom. It is an unwritten constitution in the sense that it is found in various proclamations, statutes, traditions, and judicially proclaimed principles. Thus, the rule of law, the Magna Carta, and parliamentary supremacy are all part of the constitutional tradition inherited by Canada. The BNA Act has constitutional status in Canada.

Feedback: This is incorrect. Canada has a constitution similar to that of the United Kingdom. It is an unwritten constitution in the sense that it is found in various proclamations, statutes, traditions, and judicially proclaimed principles. Thus, the rule of law, the Magna Carta, and parliamentary supremacy are all part of the constitutional tradition inherited by Canada. The BNA Act has constitutional status in Canada.

Diff: 2

Type: ES

Page Reference: 7g

Skill: Applied

52) Explain what is meant by the principle of the rule of law.

Answer:

Essentially, the rule of law ensures that all are subject to the law and the legal process.

Feedback: Essentially, the rule of law ensures that all are subject to the law and the legal process.

Diff: 2

Type: ES

Page Reference: 7h

Skill: Recall

53) Which of the following is incorrect with respect to the Charter and the Constitution?

- a. Canada is no longer required to go to the Parliament of England for any constitutional change.
- b. The most significant accomplishment of the Constitution Act (1982) was to create a new court structure for Canada.
- c. The BNA Act (Constitution Act [1867]) divides power between the federal and provincial governments.
- d. The provisions of the Charter of Rights and Freedoms guarantee us rights and freedoms that restrict both federal and provincial governments.
- e. Rights such as freedom of expression are now constitutionally guaranteed.

Answer: b

Diff: 2

Type: MC

Page Reference: 7j, 10b, 12f, r

Skill: Recall

54) Give examples of areas that fall under federal jurisdiction.

Answer:

Money and banking, the military, criminal law, and weights and measures

Feedback: Money and banking, the military, criminal law, and weights and measures

Diff: 2

Type: ES

Page Reference: 8a

Skill: Recall

55) Uncle Max just emigrated to Canada and learned some things about our laws and constitution on the plane. Which of the following things he heard is true?

- a. There are many aspects of our constitution that we have inherited from the United States.

- b. The Charter of Rights and Freedoms, part of the Constitution Act (1982), has been entrenched in our constitution and therefore cannot be changed.
- c. The Constitution Act (1982) was the first document to determine which classes of subjects could be dealt with by the provinces and which by the federal government.
- d. Our constitution provides that the provincial legislatures have exclusive jurisdiction to enact laws concerning health and education in the province.
- e. Our federal Parliament is supreme in enacting laws concerning municipalities.

Answer: d

Diff: 2

Type: MC

Page Reference: 8b

Skill: Recall

56) Give an example of powers that are given to the provincial government under section 92 of the Constitutional Act (1867).

Answer:

Health, education, and commercial activities carried on at the local level

Feedback: Health, education, and commercial activities carried on at the local level

Diff: 2

Type: ES

Page Reference: 8c

Skill: Recall

57) When an individual is faced with federal legislation and provincial legislation both dealing with the same subject matter, which should he or she obey?

Answer:

When this happens, and there is a true conflict (where it is impossible to obey both), the federal legislation takes precedence over the provincial legislation. This is called the principle of paramountcy.

Feedback: When this happens, and there is a true conflict (where it is impossible to obey both), the federal legislation takes precedence over the provincial legislation. This is called the principle of paramountcy.

Diff: 2

Type: ES

Page Reference: 8d

Skill: Applied

58) In addition to the federal and provincial governments, other bodies have the authority to make laws. Provide four examples of other bodies with this authority and limitations placed on the laws they create.

Answer:

The Yukon, the Northwest Territories, and Nunavut have been authorized by the federal government to pass legislation much like the provinces. Other bodies that also have authority to make law include cities and towns, as well as regional districts and First Nations communities. However, these bodies pass subordinate legislation (by-laws) and they must act within the limited authority granted under federal or provincial legislation.

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Diff: 2

Type: ES

Page Reference: 9a

Skill: Recall

59) What is meant by a statute?

Answer:

A statute is a parliamentary or legislative enactment having the force of law. It is sometimes referred to as a bill prior to passage and as legislation or an Act afterwards.

Feedback: A statute is a parliamentary or legislative enactment having the force of law. It is sometimes referred to as a bill prior to passage and as legislation or an Act afterwards.

Diff: 2

Type: ES

Page Reference: 9b

Skill: Recall

60) Since the passage of the Constitution Act (1982), federal legislation in Canada no longer requires royal assent from the governor general.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 9c

Skill: Recall

61) What is meant by the Revised Statutes of Canada?

Answer:

Every so many years, the statutes are summarized and brought up to date. When this happens, they are referred to as the Revised Statutes.

Feedback: Every so many years, the statutes are summarized and brought up to date. When this happens, they are referred to as the Revised Statutes.

Diff: 2

Type: ES

Page Reference: 9d

Skill: Recall

62) Explain the relationship between regulations and statutes.

Answer:

Statutes often authorize a cabinet minister or other official to create sublegislation or regulations to accomplish the objectives of the statute. These regulations are published and available to the public. If the regulations have been properly passed within the authority as specified in the statute, they have the same legal standing as a statute. Thus, the Canadian Human Rights Act has nine different bodies of regulations associated with it, including equal wage guidelines, immigration guidelines, and regulations protecting personal information. The general rules would be set out in the statute, whereas the regulations set out the specific procedures to be followed, penalties for violations, or the fees to be charged for different services. Both the statutes and the regulations passed under it have the force of law and can be enforced by the government department that created them.

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Diff: 2

Type: ES

Page Reference: 10a

Skill: Recall

63) Identify four prohibited discriminatory practices set out in the Canadian Human Rights Act.

Answer:

The Act includes the denial of goods, services, facilities, or accommodations that would normally be available to the public and the denial of access to commercial premises or residential accommodations on one of the prohibited grounds. Harassment and hate

messages are also prohibited. Prohibited discriminatory practices with regards to employment include advertising, application forms, hiring, training, wages, promotion, transfers, termination, and all other matters related to employment. Also included are harassment in the workplace and the requirement to accommodate people with special needs.

Feedback: The Act includes the denial of goods, services, facilities, or accommodations that would normally be available to the public and the denial of access to commercial premises or residential accommodations on one of the prohibited grounds. Harassment and hate messages are also prohibited. Prohibited discriminatory practices with regards to employment include advertising, application forms, hiring, training, wages, promotion, transfers, termination, and all other matters related to employment. Also included are harassment in the workplace and the requirement to accommodate people with special needs.

Diff: 2

Type: ES

Page Reference: 10c

Skill: Recall

64) Discuss why it is important for business people to become familiar with the human rights legislation in force in their province.

Answer:

While the legislation may vary by province, all provinces have human rights laws and strong enforcement bodies. These bodies have the power to hear complaints, gather information, hold hearings, and provide remedies. A business person is more likely to have dealings with provincial human rights bodies than with the Charter or other constitutional matters and should become well acquainted with their requirements and processes to avoid any practices that can give rise to complaints. It is critical that employees be trained properly on these laws to eliminate the risk of human rights violations.

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Diff: 2

Type: ES

Page Reference: 11

Skill: Applied

65) Discuss the significance of the passage of the Charter of Rights and Freedoms in Canada's legal system.

Answer:

Students should describe the nature of the Charter of Rights and Freedoms, why it was needed, and how it affected the rest of Canada's legal system. Before the Charter, there were few restrictions on government because of supremacy of Parliament. There was a need for overall entrenched rights that controlled the actions of government and government officials and agents. It is important that they indicate that the Charter only applies directly to governments but indirectly affects individuals' relations with each other because provincial and federal human rights legislation and other statutes must conform to the Charter. They should show that the Charter shifts power to the courts, that Parliament is no longer supreme, but also that there is an exception with the notwithstanding clause.

Students' answers should show that they know what the Charter of Rights and Freedoms is, why it was passed, and that it fundamentally altered the relationship between the courts and Parliament in this country.

Feedback: Students should describe the nature of the Charter of Rights and Freedoms, why it was needed, and how it affected the rest of Canada's legal system. Before the Charter, there were few restrictions on government because of supremacy of Parliament. There was a need for overall entrenched rights that controlled the actions of government and government officials and agents. It is important that they indicate that the Charter only applies directly to governments but indirectly affects individuals' relations with each other because provincial and federal human rights legislation and other statutes must conform to the Charter. They should show that the Charter shifts power to the courts, that Parliament is no longer supreme, but also that there is an exception with the notwithstanding clause.

Students' answers should show that they know what the Charter of Rights and Freedoms is, why it was passed, and that it fundamentally altered the relationship between the courts and Parliament in this country. Diff: 2

Type: ES

Page Reference: 12a

Skill: Recall

66) How does the Charter of Rights and Freedoms affect the principle of parliamentary supremacy?

Answer:

Prior to 1982, in theory at least, Parliament was supreme. Either the federal government or the provincial government had the power to pass all types of legislation. After 1982, however, the Charter placed limitations on that power, thus redirecting power to the courts and limiting the principle of supremacy of Parliament.

Feedback: Prior to 1982, in theory at least, Parliament was supreme. Either the federal government or the provincial government had the power to pass all types of legislation.

After 1982, however, the Charter placed limitations on that power, thus redirecting power to the courts and limiting the principle of supremacy of Parliament.

Diff: 2

Type: ES

Page Reference: 12b

Skill: Applied

67) With regard to the Constitution of Canada, which of the following is true?

- a. Federal judges have been given the sole power to amend the Charter of Rights and Freedoms.
- b. The Constitution provides for a single system of government.
- c. The British Parliament can continue to pass legislation that affects Canada.
- d. The Constitution Act (1982) contains a Charter of Rights and Freedoms that curbs the power of the federal and provincial legislatures.
- e. The Constitution Act (1982) outlines which matters can be dealt with only by the federal government.

Answer: d

Diff: 1

Type: MC

Page Reference: 12c

Skill: Recall

68) Which of the following statements is correct with respect to our constitutional law?

- a. The Constitution Act (1982) is the supreme law of Canada and overrides statutes.
- b. The Canadian Charter of Rights and Freedoms is part of the BNA Act (1867).
- c. The Constitution Act (1982) was passed only by the English Parliament.
- d. The Charter of Rights and Freedoms is entrenched and, as such, none of its provisions can be overridden by any level of government.
- e. Both the federal and provincial governments can change the provisions of the Charter of Rights and Freedoms without going through the constitutional amending process.

Answer: a

Diff: 2

Type: MC

Page Reference: 12d

Skill: Recall

69) Regarding the Charter of Rights and Freedoms, which of the following statements is true?

- a. Any statute, by any level of government, no matter how inconsistent it is with the provisions of the Charter, is still considered binding on all Canadians.
- b. Neither the federal government nor the provincial governments can change the provisions of the Charter without going through the constitutional amending process.
- c. Any action by a government official that violates the provisions of the Charter is not actionable under the Charter.

- d. The guarantee of the right of free speech allows citizens to avoid being held liable for defamation under the Constitution of Canada.
- e. The Charter protects fundamental freedoms that apply only to relations between private citizens.

Answer: b

Diff: 1

Type: MC

Page Reference: 12e

Skill: Recall

70) Which of the following statements is correct with respect to the application of the Charter of Rights and Freedoms?

- a. Any provincial human rights legislation must comply with the provisions of the Charter.
- b. The Charter applies to the federal and provincial governments.
- c. The Charter takes precedence over Aboriginal treaty rights when there are inconsistencies between the two.
- d. The provisions of the Charter apply only to government and to any government representative exercising a statutory power.
- e. The Charter specifically prohibits discrimination on the basis of sexual orientation.

Answer: b

Diff: 2

Type: MC

Page Reference: 12g

Skill: Recall

71) Which of the following is true with regard to our legal system?

- a. Our constitution can be amended by the federal Parliament acting alone.
- b. Our Charter of Rights and Freedoms diminishes the power of both the federal and provincial legislatures.
- c. Case law overrides the statute law on the same point.
- d. If a case were heard before a provincial trial-level court, the judge could apply legal principles and award only cash remedies.
- e. An appeal from the Supreme Court of Canada goes to the Federal Court of Appeal.

Answer: b

Diff: 2

Type: MC

Page Reference: 12h

Skill: Recall

72) Parliamentary supremacy is no longer completely in effect in Canada today.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 12i

Skill: Recall

73) With regard to the relationship between the judiciary (courts) and the legislatures, which of the following is true?

- a. Common law overrides case law on the same point.
- b. The courts have no authority to affect a statute once it has been passed by our elected representatives in the federal Parliament.
- c. A provincial statute could be struck down by the courts for being contrary to the Charter of Rights and Freedoms.
- d. The courts have no power to declare a provincial statute to be void; only federal statutes can be struck down by the courts.
- e. The courts cannot affect the meaning of the statute through subsequent interpretation.

Answer: c

Diff: 2

Type: MC

Page Reference: 12j, 15b

Skill: Recall

74) The Charter of Rights and Freedoms applies to which of the following?

- a. The police
- b. A municipal council
- c. The provincial cabinet
- d. A human rights commission
- e. All of the above

Answer: e

Diff: 1

Type: MC

Page Reference: 12k

Skill: Recall

75) Explain how the rights set up in the Charter of Rights and Freedoms are limited.

Answer:

1. The Charter applies only to government, government institutions, and agents acting on behalf of government.
2. Section 1 of the Charter allows for reasonable exceptions to the rights and freedoms set out in the Charter. This is only where it is reasonable (e.g., preventing prisoners from claiming mobility rights). Section 33, the "notwithstanding clause," allows the provinces

or the federal government to override section 2 and sections 7-15 by so declaring in the legislation.

Feedback: 1. The Charter applies only to government, government institutions, and agents acting on behalf of government.

2. Section 1 of the Charter allows for reasonable exceptions to the rights and freedoms set out in the Charter. This is only where it is reasonable (e.g., preventing prisoners from claiming mobility rights). Section 33, the "notwithstanding clause," allows the provinces or the federal government to override section 2 and sections 7-15 by so declaring in the legislation. Diff: 2

Type: ES

Page Reference: 121, r

Skill: Applied

76) How does section 33 limit the rights set out in the Charter of Rights and Freedoms?

Answer:

This is the "notwithstanding clause"; it allows the government, for a period of five years, to override the rights set out in sections 2 and 7-15 of the Charter by so stating in the legislation. At the end of five years, such overriding legislation lapses and must be passed again.

Feedback: This is the "notwithstanding clause"; it allows the government, for a period of five years, to override the rights set out in sections 2 and 7-15 of the Charter by so stating in the legislation. At the end of five years, such overriding legislation lapses and must be passed again.

Diff: 2

Type: ES

Page Reference: 12m

Skill: Recall

77) Explain the limitations on the application of the Charter of Rights and Freedoms.

Answer:

The Charter applies only to government, including laws made by all levels of government, government institutions, and agents acting on behalf of governments. Thus, the provisions of the Charter cannot be relied on to challenge nongovernmental situations such as employment, accommodation, or services, areas that are normally protected by provincial human rights legislation.

Feedback: The Charter applies only to government, including laws made by all levels of government, government institutions, and agents acting on behalf of governments. Thus, the provisions of the Charter cannot be relied on to challenge nongovernmental situations such as employment, accommodation, or services, areas that are normally protected by provincial human rights legislation.

Diff: 2

Type: ES

Page Reference: 12n

Skill: Applied

78) "An individual who is refused service at a restaurant because of his race has had his Charter rights violated." Comment on the accuracy of this statement.

Answer:

The Charter of Rights and Freedoms is not intended to cover this situation; it's not a public matter involving government, but rather a private matter between citizens. That must be dealt with by the human rights legislation in the province. However, if that local human rights legislation does not counter this situation, then that human rights legislation, which is an Act of the government, can be challenged under the Charter.

Feedback: The Charter of Rights and Freedoms is not intended to cover this situation; it's not a public matter involving government, but rather a private matter between citizens. That must be dealt with by the human rights legislation in the province. However, if that local human rights legislation does not counter this situation, then that human rights legislation, which is an Act of the government, can be challenged under the Charter.

Diff: 2

Type: ES

Page Reference: 12o

Skill: Applied

79) Which of the following situations would be addressed on the basis of the Charter of Rights and Freedoms?

- a. Discrimination in hiring at the local coffee shop on the basis of a physical disability
- b. Denying a promotion at a provincial ministry on the basis of age
- c. Refusing apartment accommodation on the basis of a mental disability
- d. Refusing access to a concert on the basis of having no ticket
- e. Denying employment at a provincial ministry on the basis of inadequate academic preparation

Answer: b

Diff: 2

Type: MC

Page Reference: 12q, 13h

Skill: Applied

80) Indicate what kind of fundamental freedoms are protected under the Charter.

Answer:

Freedoms of speech, religion, the press, and association

Feedback: Freedoms of speech, religion, the press, and association

Diff: 2

Type: ES

Page Reference: 12s

Skill: Recall

81) Which of the following is a right or freedom guaranteed in the Charter?

- a. The right to vote in federal and provincial elections
- b. The right to have your children educated in any language
- c. The right to be assured of a minimum level of income
- d. The right to own property
- e. The right to bear arms

Answer: a

Diff: 2

Type: MC

Page Reference: 13a

Skill: Recall

82) What kinds of rights are protected under the heading of mobility rights in the Charter?

Answer:

The rights of Canadians to live and work anywhere within Canada, as well as the right to enter and leave Canada

Feedback: The rights of Canadians to live and work anywhere within Canada, as well as the right to enter and leave Canada

Diff: 2

Type: ES

Page Reference: 13b

Skill: Recall

83) Which of the following is a legal right under the Charter?

- a. The Charter applies only to government employees.
- b. Legal rights include the rights to life, liberty, and the security of person.
- c. The Charter states that everyone is not equal under the law.
- d. The Charter does not protect the rights of Aboriginal people.
- e. The Charter applies only to the federal government.

Answer: b

Diff: 3

Type: MC

Page Reference: 13c

Skill: Recall

84) What kind of legal rights are protected under the Charter?

Answer:

The rights to life, liberty, and the security of person; the rights to be told why you are being arrested and to have a lawyer; the right not to incriminate yourself; the right to be tried within a reasonable time; the right to a jury trial; and the right not to be exposed to any unreasonable search and seizure or cruel or unusual treatment

Feedback: The rights to life, liberty, and the security of person; the rights to be told why you are being arrested and to have a lawyer; the right not to incriminate yourself; the right to be tried within a reasonable time; the right to a jury trial; and the right not to be exposed to any unreasonable search and seizure or cruel or unusual treatment

Diff: 2

Type: ES

Page Reference: 13d

Skill: Applied

85) Which of the following is a legal right under the Charter?

- a. Everyone has the democratic right to vote regardless of age or mental capacity.
- b. Everyone has the right to be employed.
- c. Everyone has the right not to be deprived of his or her property.
- d. Everyone has the right not to be exposed to any unreasonable search and seizure.
- e. Everyone has the right to freedom of expression even if it interferes with the freedom of others.

Answer: d

Diff: 2

Type: MC

Page Reference: 13e

Skill: Recall

86) What kind of equality rights are protected by the Charter of Rights and Freedoms?

Answer:

"Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination." Discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability is prohibited. (NOTE: Section 15 of the Charter is actually broader than this and prohibits any form of discrimination.)

Feedback: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination." Discrimination on the basis of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability is prohibited. (NOTE: Section 15 of the Charter is actually broader than this and prohibits any form of discrimination.)

Diff: 2

Type: ES

Page Reference: 13f, 14

Skill: Recall

87) Which of the following is correct with respect to the Charter of Rights and Freedoms?

- a. The Parliament or provincial legislature cannot override a section of the Charter.
- b. The federal or provincial legislatures cannot override a person's right not to be discriminated against on the basis of race or religion.
- c. The federal or provincial legislatures cannot override a person's right to free speech.
- d. Section 33 (the notwithstanding clause) applies to all provisions of the Charter.
- e. Mobility rights cannot be restricted by government or its agents.

Answer: b

Diff: 2

Type: MC

Page Reference: 13g

Skill: Recall

88) The provisions set out in the Charter of Rights and Freedoms are general principles. To understand what they really mean, it is necessary to examine the decisions of courts, especially those of the Supreme Court of Canada.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 15a

Skill: Recall

89) (Modify this question for your province.) Fred sold Carole his old Macintosh computer and his printer in addition to eight programs for \$2900. After she paid \$1000, Carole quit paying. When she had no complaint about the computer, printer, or programs but simply wouldn't pay, Fred decided to sue. He would most likely begin his action in:

- a. Small Claims Division, Provincial Court
- b. B.C. Supreme Court
- c. Criminal Division, Provincial Court
- d. Federal Court
- e. B.C. Court of Appeal

Answer: a

Diff: 1

Type: MC

Page Reference: 15c

Skill: Recall

90) The small claims court deals with civil actions where one party sues another for relatively small amounts of money.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 15d

Skill: Recall

91) Indicate the jurisdiction of the Small Claims Court in your area.

Answer:

This will vary from province to province. For example, in British Columbia and Ontario, it is civil matters up to \$25 000.

Feedback: This will vary from province to province. For example, in British Columbia and Ontario, it is civil matters up to \$25 000.

Diff: 2

Type: ES

Page Reference: 15e

Skill: Recall

92) What types of cases are handled in small claims court?

Answer:

The small claims court deals with civil actions where one party sues another for relatively small amounts of money.

Feedback: The small claims court deals with civil actions where one party sues another for relatively small amounts of money.

Diff: 2

Type: FIB

Page Reference: 15f

Skill: Recall

93) Which of the following is correct with respect to specialized divisions of lower-level provincial courts?

- a. Family courts deal with family law matters, including division of assets, custody of children, and divorce.
- b. Youth courts deal with juveniles.
- c. Criminal courts deal with all criminal offences.
- d. The small-claims courts deal with criminal actions involving relatively small amounts of money.

e. All provinces share the same court structure.

Answer: b

Diff: 3

Type: MC

Page Reference: 15g

Skill: Recall

94) Describe the court structure in place in your province.

Answer:

This will vary from province to province. In British Columbia, the bottom level is Provincial Court, including the Small Claims Court, the Family Court, and the Criminal Division. The next level is the B.C. Supreme Court; the highest level is the Court of Appeal.

Feedback: This will vary from province to province. In British Columbia, the bottom level is Provincial Court, including the Small Claims Court, the Family Court, and the Criminal Division. The next level is the B.C. Supreme Court; the highest level is the Court of Appeal.

Diff: 3

Type: ES

Page Reference: 15h

Skill: Applied

95) The highest-level trial court of the province cannot do which one of the following?

- a. Award punitive damages
- b. Try a case involving a claim for billions
- c. Hear trials (i.e., be a court of first instance)
- d. Hear criminal cases
- e. Bind the court of appeal of the province by its decisions

Answer: e

Diff: 2

Type: MC

Page Reference: 16a

Skill: Recall

96) A jury is not available in civil disputes.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 16b

Skill: Recall

97) What is the highest court in Canada?

Answer:

Supreme Court of Canada

Feedback: Supreme Court of Canada

Diff: 2

Type: FIB

Page Reference: 16c

Skill: Recall

98) How many judges are involved at the Supreme Court of Canada level and how are they appointed?

Answer:

There are nine judges. These judges are appointed by the governor general upon recommendation by the prime minister and cabinet.

Feedback: There are nine judges. These judges are appointed by the governor general upon recommendation by the prime minister and cabinet.

Diff: 2

Type: FIB

Page Reference: 16d

Skill: Recall

99) Which of the following is true in relation to the Supreme Court of Canada?

- a. The Supreme Court of Canada has one judge from each province and territory.
- b. The Supreme Court of Canada selects the cases it hears based on what it thinks is most important for the country.
- c. Private citizens have the right to take cases to the Supreme Court of Canada as a final appeal.
- d. The judges on the Supreme Court of Canada are appointed by Parliament.
- e. The Supreme Court of Canada hears appeals from federal courts, but not from provincial courts of appeal.

Answer: b

Diff: 2

Type: MC

Page Reference: 17a

Skill: Recall

100) The Supreme Court of Canada hears only appeals of private citizens.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 17b

Skill: Recall

101) Which of the following statements is correct?

- a. In a civil action, the prosecution is referred to as Rex or Regina.
- b. Tribunals act under provincial human rights legislation, which may not be in harmony with the provisions of the Charter of Rights and Freedoms.
- c. Provincial courts deal only with civil matters.
- d. In some provinces, discovery is increasing in scope, leading to a need to allow more time for it.
- e. The tax court and military tribunals have the status of federal courts with specialized functions.

Answer: e

Diff: 2

Type: MC

Page Reference: 17c

Skill: Recall

102) A case in which one person sues another for breach of contract would be conducted in a criminal court.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 17e

Skill: Recall

103) Which of the following is correct in relation to legal representation and services?

- a. People have the right to represent themselves, but only in civil cases.
- b. Notary publics are lawyers who specialize in estates and land transfers.
- c. In the English-speaking provinces of Canada, when lawyers are "called to the bar," they are designated as both barristers and attorneys.
- d. In England, the term solicitor is no longer accepted; only barristers and attorneys may provide legal representation.
- e. In both civil and criminal systems, people have the right to represent themselves.

Answer: e

Diff: 3

Type: MC

Page Reference: 17f

Skill: Recall

104) Describe the process involved when one person sues another in a civil action.

Answer:

Students should describe in some detail the process of civil litigation and note that it may vary by province. A bonus would be where students describe the difference between an action in the superior court and small claims court. Students should point out that usually there is a period of negotiation and that the action must be commenced within the limitation period. The action is commenced with the issuance and service of a particular document, which varies with the jurisdiction (e.g., a writ of summons). Once the action has started, the defendant must respond with an appearance and then the plaintiff responds with the statement of claim. The defendant then must file a statement of defence, and sometimes a counterclaim will be launched at this time. This concludes the pleadings. Discovery then takes place, being eliminated in some jurisdictions where the claim is for a lower amount. There may be formal offers to settle before trial. In many jurisdictions there is a pre-trial hearing to promote settlement. The trial then takes place, judgment is rendered, and remedies are ordered. Steps can be taken to enforce the judgment, including a post-trial hearing to identify the judgment debtor's assets. Enforcement tools may include garnishment of wages or seizing property. The question does not limit itself to the pre-trial process, and so students should deal with the trial and the enforcement of judgment as well.

Feedback: Students should describe in some detail the process of civil litigation and note that it may vary by province. A bonus would be where students describe the difference between an action in the superior court and small claims court. Students should point out that usually there is a period of negotiation and that the action must be commenced within the limitation period. The action is commenced with the issuance and service of a particular document, which varies with the jurisdiction (e.g., a writ of summons). Once the action has started, the defendant must respond with an appearance and then the plaintiff responds with the statement of claim. The defendant then must file a statement of defence, and sometimes a counterclaim will be launched at this time. This concludes the pleadings. Discovery then takes place, being eliminated in some jurisdictions where the claim is for a lower amount. There may be formal offers to settle before trial. In many jurisdictions there is a pre-trial hearing to promote settlement. The trial then takes place, judgment is rendered, and remedies are ordered. Steps can be taken to enforce the judgment, including a post-trial hearing to identify the judgment debtor's assets. Enforcement tools may include garnishment of wages or seizing property.

The question does not limit itself to the pre-trial process, and so students should deal with the trial and the enforcement of judgment as well. Diff: 2

Type: ES

Page Reference: 19a, 20b, 23d

Skill: Applied

105) (Modify this question for your province.) Which of the following is the document that initiates a court action in this jurisdiction?

- a. Discovery
- b. Writ of summons
- c. Appearance
- d. Statement of claim
- e. Statement of defence

Answer: b

Diff: 1

Type: MC

Page Reference: 19b

Skill: Recall

106) Indicate what a statement of claim is.

Answer:

The statement of claim is the document that summarizes the allegations that support the cause of action.

Feedback: The statement of claim is the document that summarizes the allegations that support the cause of action.

Diff: 2

Type: ES

Page Reference: 19d

Skill: Recall

107) Explain what is meant by the discovery process.

Answer:

Discovery is a two-stage process. First, each party has the right to look at and copy documents held by the other side (e.g., receipts, electronic documents) that may be used later as evidence in the trial. The second step involves examination under oath of each party by the other side's lawyer. This is done in the presence of a court reporter.

Transcripts can later be used as evidence at the trial.

Feedback: Discovery is a two-stage process. First, each party has the right to look at and copy documents held by the other side (e.g., receipts, electronic documents) that may be used later as evidence in the trial. The second step involves examination under oath of each party by the other side's lawyer. This is done in the presence of a court reporter.

Transcripts can later be used as evidence at the trial.

Diff: 2

Type: ES

Page Reference: 19f-20a

Skill: Recall

108) In the procedure leading to trial of a civil matter, the step in which one party can be required to answer under oath questions that are put to him by the other party's lawyer is known as which of the following?

- a. Stare decisis
- b. The appearance
- c. The statement of defence
- d. Discovery
- e. Default judgment

Answer: d

Diff: 2

Type: MC

Page Reference: 20c

Skill: Recall

109) Explain recent changes related to discovery.

Answer:

Pre-trial proceedings result in considerable delays. Some provinces (British Columbia, Alberta, Ontario, and Nova Scotia), in an effort to increase efficiency and reduce cost, have recently made significant changes to their litigation procedures. One of the most important reforms has been to reduce the scope of discovery and the time permitted for it. Where smaller claims are involved or where the facts are not in dispute, they eliminate it entirely.

Feedback: Pre-trial proceedings result in considerable delays. Some provinces (British Columbia, Alberta, Ontario, and Nova Scotia), in an effort to increase efficiency and reduce cost, have recently made significant changes to their litigation procedures. One of the most important reforms has been to reduce the scope of discovery and the time permitted for it. Where smaller claims are involved or where the facts are not in dispute, they eliminate it entirely.

Diff: 2

Type: ES

Page Reference: 20e

Skill: Applied

110) Which of the following is incorrect in relation to the trial and judgment?

- a. Usually, trials are open to the public.
- b. Criminal juries consist of 12 people, and if some are disqualified or become sick during the trial, at least 10 jurors must render the decision and they must be unanimous in their decision.
- c. Once a judgment for liability is obtained in a civil action, the standard remedy is an order that the defendant pay the plaintiff a sum of money called damages.
- d. "You were there on Saturday, weren't you?" would be allowed in direct examination.
- e. If a judgment debtor tries to conceal assets or otherwise avoid payment, his conduct may amount to contempt of court.

Answer: d

Diff: 3

Type: MC

Page Reference: 21a, 22a, c, 23k

Skill: Applied

111) With regard to the process of a civil law suit, which of the following is true?

- a. The plaintiff must prove his or her case on the balance of probabilities, not beyond a reasonable doubt.
- b. The statement of claim is a document registered by the plaintiff that contains a summary of the allegations that support the cause of action.
- c. Any admission by the defendant at the examination for discovery can be used against him or her by the plaintiff at trial.
- d. A counterclaim is an action by the defendant back against the plaintiff.
- e. All of the above

Answer: e

Diff: 2

Type: MC

Page Reference: 21b, 19c, 20e

Skill: Recall

112) What is the standard of proof used in a civil action?

Answer:

Balance of probabilities

Feedback: Balance of probabilities

Diff: 2

Type: FIB

Page Reference: 21d

Skill: Recall

113) In a criminal matter, the judge must be satisfied that the accused probably committed the crime.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 21e

Skill: Recall

114) Which of the following is true related to remedies the court might order?

- a. Permanent injunctions may be awarded prior to trial where circumstantial evidence shows a specific action must be prevented.
- b. Interim and interlocutory injunctions are given before trial, usually to prevent greater harm to one of the parties.
- c. A Mareva injunction allows the seizure of evidence and documents to ensure that they are not destroyed.
- d. Solicitor client costs refers to payment by the losing party to compensate the winner for such costs as photocopying and partial compensation for lawyers' fees.
- e. General damages are those that can be accurately calculated (e.g., medical expenses, lost wages).

Answer: b

Diff: 2

Type: MC

Page Reference: 22d, f, 23a

Skill: Recall

115) Which of the following statements is incorrect regarding legal remedies?

- a. If a business had improperly used the logo of another company to market its own products, misleading the public as to the source of the product, the judge might order an accounting.
- b. Where a person is selling pirated versions of a Disney movie, an Anton Piller order could be used to seize the movies and related documents in advance of the trial.
- c. If a business had improperly used the logo of another company to market its own products, misleading the public as to the source of the product, the judge would likely award damages for pain and suffering.
- d. Where a person is selling pirated versions of a Disney movie, both an Anton Piller order and a Mareva injunction might be authorized.
- e. In the case of dispute over the sale of land, if the judge determines that the sale should proceed, he or she might order specific performance.

Answer: c

Diff: 2

Type: MC

Page Reference: 22e

Skill: Applied

116) Which of the following is correct with respect to the litigation process?

- a. A statement of defence is a pleading prepared and filed by a plaintiff in response to the defendant's claims.
- b. Even though a judgment is obtained, payment is not assured.
- c. An offer to settle brings to an end the parties' right to proceed to trial.
- d. A counterclaim is brought by the plaintiff who is then claiming against the defendant.
- e. An examination for discovery of documents is an opportunity for the parties to settle the dispute before proceeding to trial.

Answer: b
Diff: 2
Type: MC
Page Reference: 23b
Skill: Recall

117) Mr. Holden, a program developer, had a successful business helping small firms and shops computerize their businesses. In his spare time, he developed software for inventory control that was superior to others on the market. He launched an ad campaign and all went well for several months until a competitor released a cheaper program. In time, he could not pay his debts when they became due and owing. A supplier sued for damages and was awarded \$21 000. Holden did not pay. With regard to the supplier's position at this time, which of the following is true?

- a. The supplier could ask for a post-trial hearing to identify Holden's assets and sources of income.
- b. Since the decision is in his favour, the supplier would be a judgment creditor and Holden would be a judgment debtor.
- c. The supplier could have a garnishee order served on Holden's bank, ordering the bank to pay money into court instead of to Holden.
- d. The supplier could get a government official to seize and sell enough of Holden's property to satisfy the debt.
- e. All of the above

Answer: e
Diff: 2
Type: MC
Page Reference: 23c, e, h, j
Skill: Applied

118) A significant disadvantage of the court system is that there is no way to enforce a judgment.

- a. True
- b. False

Answer: b
Diff: 1
Type: TF
Page Reference: 23f
Skill: Recall

119) Bruce told Ewen that he would be willing to pay a high rate of interest for a two-month loan of \$1000. Ewen agreed to lend Bruce this amount at an annual rate of 25%, repayable June 14. Bruce agreed to these terms. Meanwhile, Bruce had recently completed some plumbing work for Martinson for which he was owed \$2000. If Bruce failed to pay Ewen on June 14, which of the following is true?

- a. Ewen could execute against Bruce even if he had not obtained judgment against him.

- b. Ewen could sue Martinson for violation (breach) of the contract.
- c. Ewen could serve Martinson with a garnishing order after obtaining judgment commanding Martinson to pay the money owed to Bruce into court if the money had not yet been paid to Bruce.
- d. Ewen does not have to wait to obtain a judgment before executing against Bruce's assets.
- e. If Ewen obtained a judgment against Bruce, he could compel Bruce to be examined about Martinson's income, property, and debts.

Answer: c

Diff: 2

Type: MC

Page Reference: 23g

Skill: Applied

120) Explain what is meant by a garnishee.

Answer:

Funds that are owed to the judgment debtor can be intercepted by the judgment creditor by serving a garnishment order (issued by the court) on the bank or employer who owes that money to that judgment debtor.

Feedback: Funds that are owed to the judgment debtor can be intercepted by the judgment creditor by serving a garnishment order (issued by the court) on the bank or employer who owes that money to that judgment debtor.

Diff: 2

Type: ES

Page Reference: 23i

Skill: Recall

121) "A plaintiff must be very certain of some return before risking litigation." Discuss the wisdom of this statement as well as options that may increase the likelihood of collection after a judgment.

Answer:

This is a very wise statement. The cost of a trial can be significant and winning may not ensure compensation even if it is awarded by the court. If a judgment debtor has no assets or is bankrupt, trying to collect may be fruitless. This risk must be considered when deciding whether to sue. Often taking some form of security at the outset, before any conflict arises, can avoid much of the risk associated with litigation. Depending on the type of transaction, it is possible where debt is created to take a claim against some asset as security. This might be anything from tangible property (e.g., boat, car, land) to intangible property (e.g., shares, negotiable instruments, accounts receivable). Another alternative is to have a third party guarantee the debt. When security is present, the claimant can usually take possession of it and resell it without a court order.

Feedback: This is a very wise statement. The cost of a trial can be significant and winning may not ensure compensation even if it is awarded by the court. If a judgment debtor has no assets or is bankrupt, trying to collect may be fruitless. This risk must be considered when deciding whether to sue. Often taking some form of security at the outset, before any conflict arises, can avoid much of the risk associated with litigation. Depending on the type of transaction, it is possible where debt is created to take a claim against some asset as security. This might be anything from tangible property (e.g., boat, car, land) to intangible property (e.g., shares, negotiable instruments, accounts receivable). Another alternative is to have a third party guarantee the debt. When security is present, the claimant can usually take possession of it and resell it without a court order.

Diff: 2

Type: ES

Page Reference: 24a

Skill: Applied

122) Consider the alternatives to going to court and suing someone that are available, and discuss the relative merits of these different courses of action.

Answer:

The first alternative is for the parties to negotiate directly with each other to try to come up with a solution that is agreeable to both parties. When there is a higher level of conflict and the parties cannot reach agreement through negotiation, they may agree to hire a mediator to facilitate the resolution of the dispute. The mediator communicates with both parties and makes suggestions, but it is still up to the parties to make the final decision. When both parties agree to the settlement, it is more likely they will live up to their obligations and feel better about the settlement. If they fail to live up to the agreement, the terms of the settlement will be influential in a court hearing or may even form the basis of the court-imposed decision. Mediation is required in some situations (e.g., collective bargaining). A mediated settlement is convenient, inexpensive, and private, and allows the parties to resume their business relationship.

A third alternative is arbitration. In this case, the parties surrender the decision making to an arbitrator selected by both parties. This is often set out in the initial contract between the parties, or it can be agreed upon as a means of settling a dispute after it arises. The parties must agree in advance to be bound by the decision, but they can place limitations on the scope of the decision and what remedies can be imposed. Where arbitration is a requirement in a contract and one party chooses to litigate instead, the courts will usually refuse to hear the case on the basis that it should have been arbitrated. Arbitrators usually have expertise in the area under dispute. This expertise and the power to make a binding decision make arbitrators very effective and the process is relatively quick. Arbitration is required by law in some areas (e.g., collective bargaining).

Including such litigation alternatives in commercial dealings is a valuable cost-reducing tactic and should be included in a risk-avoidance strategy formulated for any business. The advantages with each of these processes is that they are faster, less costly, and more private for the parties, and although there is still typically a winner and loser, the decision

is usually easier for the parties to live with. The difficulty is that there are limited powers of enforcement.

Feedback: The first alternative is for the parties to negotiate directly with each other to try to come up with a solution that is agreeable to both parties. When there is a higher level of conflict and the parties cannot reach agreement through negotiation, they may agree to hire a mediator to facilitate the resolution of the dispute. The mediator communicates with both parties and makes suggestions, but it is still up to the parties to make the final decision. When both parties agree to the settlement, it is more likely they will live up to their obligations and feel better about the settlement. If they fail to live up to the agreement, the terms of the settlement will be influential in a court hearing or may even form the basis of the court-imposed decision. Mediation is required in some situations (e.g., collective bargaining). A mediated settlement is convenient, inexpensive, and private, and allows the parties to resume their business relationship.

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Including such litigation alternatives in commercial dealings is a valuable cost-reducing tactic and should be included in a risk-avoidance strategy formulated for any business.

The advantages with each of these processes is that they are faster, less costly, and more private for the parties, and although there is still typically a winner and loser, the decision is usually easier for the parties to live with. The difficulty is that there are limited powers of enforcement. Diff: 2

Type: ES

Page Reference: 24b, 25b, 26

Skill: Applied

123) Negotiation works only when both parties are willing to make concessions.

- a. True
- b. False

Answer: a

Diff: 1

Type: TF

Page Reference: 24c

Skill: Recall

124) Distinguish between mediation and arbitration.

Answer:

Mediation involves someone trying to help the parties to get a settlement, but any recommendations are not binding and the mediator has no power to impose an agreement. Arbitration involves a third party deciding the matter, and that decision is binding on the parties.

Feedback: Mediation involves someone trying to help the parties to get a settlement, but any recommendations are not binding and the mediator has no power to impose an agreement. Arbitration involves a third party deciding the matter, and that decision is binding on the parties.

Diff: 2

Type: ES

Page Reference: 25a, d

Skill: Recall

125) The job of the mediator is to make a decision for the parties.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 25c

Skill: Recall

126) Which of the following statements is true?

- a. The rules of precedent apply to arbitration hearings.
- b. Mediators have the power to enforce decisions.
- c. The public is entitled to know the result of mediated cases.
- d. Alternate dispute resolution methods are less costly than litigation.
- e. Use of alternate dispute resolution precludes parties from litigating.

Answer: d

Diff: 2

Type: MC

Page Reference: 26b

Skill: Recall

127) Which of the following statements is correct?

- a. Alternate dispute resolution agreements are enforceable and appealable.
- b. The parties to a dispute lose control in negotiations.
- c. There is a great deal of flexibility in negotiation and mediation.
- d. Goodwill is most likely maintained in litigation.
- e. Privacy is maintained in an adjudication.

Answer: c

Diff: 2

Type: MC

Page Reference: 26c

Skill: Recall

128) A negotiation will most likely lead to agreement when the parties are:

- a. Equal in power
- b. Coercive
- c. Vulnerable
- d. Uncommunicative
- e. Aggressive

Answer: a

Diff: 2

Type: MC

Page Reference: 26d

Skill: Applied

129) Serious disadvantages of alternate dispute resolution are that it is expensive and time consuming.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 26e

Skill: Recall

130) There are many characteristics associated with the use of the court process that may be considered advantages and disadvantages when compared to alternate dispute resolution. Which of the following is a favourable characteristic one would associate with the litigation process?

- a. It is a less costly method of obtaining a resolution to a dispute.
- b. It is a method of dispute resolution where both parties are more likely to be satisfied with the outcome.
- c. Confidentiality is protected.
- d. It is a speedier method of obtaining resolution of a dispute.
- e. Enforcement of the decision is more likely.

Answer: e

Diff: 2

Type: MC

Page Reference: 26f

Skill: Applied

131) Which of the following regulatory board decisions would likely merit a court review?

- a. A decision where the party involved had a fair hearing but felt the board decision was not the best one for her
- b. A decision made despite the absence of one member of the board for 15 minutes during the hearing
- c. A decision in which the party was not allowed to cross-examine witnesses
- d. A decision in which the board did not apply the rules of evidence commonly used in a judicial hearing
- e. A decision made after the person had been given reasonable notice of the hearing and related information, but he was not prepared with an appropriate response

Answer: b

Diff: 3

Type: MC

Page Reference: 27, 30b

Skill: Applied

132) With regards to administrative law, the court exercises its review power with the option to apply which of the following remedies?

- a. Mandamus
- b. Injunction
- c. Prohibition
- d. Certiorari
- e. All of the above are remedies available to the court.

Answer: e

Diff: 2

Type: MC

Page Reference: 29a

Skill: Recall

133) Prohibition involves overturning the decision of the decision-maker.

- a. True
- b. False

Answer: b

Diff: 1

Type: TF

Page Reference: 29b

Skill: Recall

134) Mandamus involves the decision-maker being required to make a decision.

- a. True
- b. False

Answer: a
Diff: 1
Type: TF
Page Reference: 29c
Skill: Recall

135) Administrative decisions are excluded from the Charter of Rights and Freedoms.
a. True
b. False

Answer: b
Diff: 1
Type: TF
Page Reference: 29d
Skill: Recall

136) Ms. Jones was dissatisfied with the decision of the worker's compensation tribunal, feeling its decision may have been fair but that it did not take her personal objectives into consideration. She decided to ask for a court to review the decision, but her request was denied. Explain when courts will intervene in such situations.

Answer:
The Supreme Court of Canada has made it clear that considerable deference should be given to such regulatory bodies, and only rarely should the courts interfere with their decisions. The grounds for such interference have been reduced to "correctness" and "reasonableness." Correctness refers to the process and includes the tribunal having the authority (jurisdiction) and to the fairness of the process. The reasonableness standard means essentially that where the board has several different options, the choice made is reasonable. Where the board has several different options, and if the one chosen could be said to be reasonable, a reviewing court cannot substitute its own decision even if it determines it to be more reasonable than that of the board.

Feedback: The Supreme Court of Canada has made it clear that considerable deference should be given to such regulatory bodies, and only rarely should the courts interfere with their decisions. The grounds for such interference have been reduced to "correctness" and "reasonableness." Correctness refers to the process and includes the tribunal having the authority (jurisdiction) and to the fairness of the process. The reasonableness standard means essentially that where the board has several different options, the choice made is reasonable. Where the board has several different options, and if the one chosen could be said to be reasonable, a reviewing court cannot substitute its own decision even if it determines it to be more reasonable than that of the board.

Diff: 2
Type: ES
Page Reference: 29e, 30a
Skill: Applied

Yates: Legal Fundamentals for Canadian Business, 3e
Chapter 1: The Canadian Legal System

137) Who prosecutes a criminal matter?

Answer: The state (i.e., the Crown)

Feedback:

Diff: 2

Type: FIB

Page Reference: 30d

Skill: Recall

138) What is the standard of proof used in a criminal matter?

Answer: Beyond a reasonable doubt

Feedback:

Diff: 2

Type: FIB

Page Reference: 30g

Skill: Recall

139) Which of the following statements is incorrect?

- a. If a person is accused of a crime, the prosecutor must establish "beyond a reasonable doubt" that he or she is guilty of the offence.
- b. The huge bonuses that executives at U.S. financial institutions took for themselves after the government bailout may be viewed as morally reprehensible, but it is doubtful that any law was broken.
- c. "You were there at noon on the day the event occurred, weren't you?" would be allowed on cross-examination.
- d. If a person drinks and drives and injures someone, he or she can usually rely on intoxication as a defence.
- e. If two parties include a clause in a contract that stipulates that any disputes will be resolved by arbitration, it is unlikely a court would hear the case if one of the parties decided to litigate instead of relying on arbitration.

Answer: d

Diff: 2

Type: MC

Page Reference: 30h, 31

Skill: Applied