

***Managing the Law, 5e* (McInnes/Kerr/Van Duzer)
Chapter 1 Risk Management and Sources of Law**

1.1 True/False Questions

1) The law *can affect* a business both positively and negatively. It often prohibits actions that otherwise would be possible. However, it sometimes permits parties to do something that they could not otherwise do.

Answer: TRUE

Diff: 2 Type: TF Page Ref: 2

Topic: Why Study Law?

Skill: Recall

2) Beta Inc has recently discovered that a defect in one of its products poses a risk of injury to consumers. Its only option, from a legal risk management perspective, is to eliminate the risk of liability by removing the product from the market.

Answer: FALSE

Diff: 2 Type: TF Page Ref: 4

Topic: Risk Management

Skill: Applied

3) As described in the text, the four forms of risk management are risk avoidance, risk elimination, risk transfer, and risk acceptance.

Answer: FALSE

Diff: 1 Type: TF Page Ref: 4

Topic: Risk Management

Skill: Recall

4) Sabeka Inc has discovered that one of its products may cause consumers to suffer a certain form of property damage. In response to that risk, the company has written an exclusion clause into its sales contracts. In doing so, it has adopted a form of risk management known as risk shifting.

Answer: TRUE

Diff: 2 Type: TF Page Ref: 5

Topic: Risk Management

Skill: Applied

5) Jahume Ltd operates as an Internet service provider. It has retained Alison to work as in-house counsel. Following an increasingly common trend, this means that she will work for the company from her own home, rather than from a traditional law firm office.

Answer: FALSE

Diff: 2 Type: TF Page Ref: 6

Topic: Risk Management

Skill: Applied

6) Quebec is said to be a "civil law system" because it is derived from the legal system that governed the citizens of ancient Greece.

Answer: FALSE

Diff: 3 Type: TF Page Ref: 8

Topic: Map of the Law

Skill: Recall

7) "Administrative law" derives its name from the fact that it is concerned with the administration of the trial courts and appellate courts.

Answer: FALSE

Diff: 1 Type: TF Page Ref: 10

Topic: Map of the Law

Skill: Recall

8) Bianca punched Mick. She now finds herself in court. The person who has brought the claim for damages against her is Mick himself. It is safe to assume that the court is concerned with a private law issue, rather than a criminal law issue.

Answer: TRUE

Diff: 1 Type: TF Page Ref: 9

Topic: Map of the Law

Skill: Applied

9) Glimmer Co recently received a tax assessment with which it disagrees. It does not believe that it should be required to pay the full amount of the demand. If it challenges the assessment, the case will fall into the category of "public law" even though the company is a private corporation.

Answer: TRUE

Diff: 3 Type: TF Page Ref: 11

Topic: Map of the Law

Skill: Applied

10) Bastarache & Michel is a law firm in your province. Although it occasionally has clients from other jurisdictions, the vast majority of its work comes from within your province. Your legislature recently enacted a statute that imposes a 5% tax on the "sale of professional services, including ... legal services." As that wording suggests, the statute treats Bastarache & Michel as the taxpayer, even if the firm adds the cost of the tax onto the fees that it charges to its clients. The new tax is probably *intra vires* and valid because most professionals provide services in only one province.

Answer: FALSE

Diff: 3 Type: TF Page Ref: 15

Topic: Map of the Law

Skill: Applied

11) Because of the need to ensure that the fundamental rules for governing the country are kept up to date, the Constitution (unlike most statutes) is quite easily amended.

Answer: FALSE

Diff: 2 Type: TF Page Ref: 13

Topic: Sources of Law

Skill: Recall

12) Athlone Inc wants to start a new television channel. To do so, it requires a government licence. It should apply to the federal government, rather than the provincial government, because the issue of telecommunications is not mentioned in the Constitution. It therefore falls under federal jurisdiction because of the residual clause.

Answer: TRUE

Diff: 3 Type: TF Page Ref: 13

Topic: Sources of Law

Skill: Applied

13) Kane Media Inc wants to start a new radio station. The government has refused to grant a licence. Kane Media Inc believes that the government's position is blatantly discriminatory. Nevertheless, it cannot rely on the *Charter of Rights and Freedoms*, which was intended to protect the fundamental rights and freedoms of people, and which does not apply in favour of companies.

Answer: FALSE

Diff: 2 Type: TF Page Ref: 19

Topic: Sources of Law

Skill: Applied

14) A bill to amend a business corporations statute was introduced in the House of Commons. The statute in question must be a piece of federal legislation, as opposed to provincial legislation.

Answer: TRUE

Diff: 3 Type: TF Page Ref: 22

Topic: Sources of Law

Skill: Applied

15) Quiet Corner Bookstore is something of a landmark. It was opened in 1908 and it has long served the needs of the community. The store's popularity is based not only on its reputation for excellent service, but also on the fact that it has always been run by members of the same family: the Meyers clan. In an age of increasingly anonymous chain stores, customers appreciate the personal touch that they receive at the Quiet Corner. Recently, however, the government has announced that it intends to expropriate the land upon which the store is located in order to build a highway through the neighbourhood. The Meyers family may, however, be able to defeat that plan, and save their store, by relying on a provision of the *Charter* that protects cherished property.

Answer: FALSE

Diff: 3 Type: TF Page Ref: 18

Topic: Sources of Law

Skill: Applied

1.2 Multiple Choice Questions

- 1) The three steps in risk management are
A) realization, response, and reaction.
B) recognition, evaluation, and insurance.
C) identification, evaluation, and response.
D) evaluation, qualification, and litigation.
E) assessment, formulation, and implementation.

Answer: C

Diff: 2 Type: MC Page Ref: 3

Topic: Risk Management

Skill: Recall

- 2) Alpha Corp has discovered that one of its products is potentially dangerous. It therefore has purchased liability insurance. It has employed a form of risk management known as

- A) risk capitalization.
B) risk elimination.
C) risk shifting.
D) risk acceptance.
E) risk avoidance.

Answer: C

Diff: 1 Type: MC Page Ref: 5

Topic: Risk Management

Skill: Applied

- 3) Beta Inc has discovered that one of its products is potentially dangerous. It therefore pulled that product from the store shelves before any were sold. It has employed a form of risk management known as

- A) risk destruction.
B) risk avoidance.
C) risk reduction.
D) risk acceptance.
E) risk denial.

Answer: B

Diff: 1 Type: MC Page Ref: 4

Topic: Risk Management

Skill: Applied

4) Gamma Co has discovered that one of its products is potentially dangerous. That danger, however, is not great. There is only a small chance that someone will be hurt, and even if someone is hurt, the injury will not be life threatening. Gamma Co therefore has decided to do nothing about the danger. It has employed a form of risk management known as

- A) risk ignorance.
- B) risk aversion.
- C) risk displacement.
- D) risk harmonization.
- E) risk acceptance.

Answer: E

Diff: 1 Type: MC Page Ref: 4

Topic: Risk Management

Skill: Applied

5) In an effort to increase sales, Delta Ltd hired Chandra, a marketing expert. Because Delta was concerned about being held responsible for any torts that Chandra might commit, it arranged to hire her as an independent contractor, rather than an employee. It has employed a form of risk management known as

- A) vicarious liability.
- B) independent responsibility.
- C) risk allowance.
- D) risk shifting.
- E) incorporation.

Answer: D

Diff: 2 Type: MC Page Ref: 4

Topic: Risk Management

Skill: Applied

6) Epsilon Inc has recently retained the services of Noriko as in-house counsel. Which of the following statements is most likely TRUE?

- A) Although Noriko is not an employee of Epsilon Inc, she can be called in from her law firm whenever the company has a legal problem.
- B) Noriko can both help to resolve legal problems and help to prevent legal problems from arising in the first place.
- C) Epsilon Inc has probably made a mistake because, like most in-house counsel, Noriko is probably available because she cannot find work in a law firm.
- D) Epsilon Inc has hired Noriko for the purpose of resolving a single legal problem that it expects will drag on for several years.
- E) Noriko may provide advice to Epsilon, but she cannot represent the company in court.

Answer: B

Diff: 2 Type: MC Page Ref: 6

Topic: Risk Management

Skill: Applied

- 7) Which of the following statements is TRUE with respect to risk management and incorporation?
- A) Incorporation is irrelevant to risk management because corporations cannot be held liable.
 - B) Incorporation increases the risk of liability because a shareholder of a corporation is personally liable for all of the corporation's torts.
 - C) Incorporation completely eliminates the risk of liability because the government is responsible for a corporation's debts.
 - D) Incorporation reduces the risk of liability because the doctrine of limited liability usually means that a corporation's debts must be paid by the corporation and not by the people who run the corporation.
 - E) Incorporation spreads the risk of liability because if one corporation becomes liable, every other corporation in the same province may be required to pay the debt.

Answer: D

Diff: 3 Type: MC Page Ref: 6

Topic: Risk Management

Skill: Recall

- 8) Which of the following statements is TRUE with respect to exclusion clauses and risk management?
- A) An exclusion clause can be inserted into a contract for the sale of goods.
 - B) An exclusion clause can affect liability for property damage but not for personal injury.
 - C) An exclusion clause can be used by a person but not by a corporation.
 - D) An exclusion clause represents a type of risk acceptance.
 - E) An exclusion clause always shifts the risk of liability onto an insurance company.

Answer: A

Diff: 2 Type: MC Page Ref: 5

Topic: Risk Management

Skill: Recall

- 9) Techniques for managing risks include
- A) insurance and incorporation but not exclusion clauses.
 - B) exclusion clauses, negligence, and contract.
 - C) incorporation, insurance, and exclusion clauses.
 - D) vicarious liability, employment, and the *Charter*.
 - E) independent contractors, exclusion clauses, and residual powers.

Answer: C

Diff: 1 Type: MC Page Ref: 5-6

Topic: Risk Management

Skill: Recall

10) Red River Inc, which is based in Winnipeg, Manitoba, has sued a company called Eiffel Tours, which is based in Paris, France. That dispute will be decided by the "common law." That most likely means that the case will be decided by

- A) the provision of a statute.
- B) a legal system that can be traced to England.
- C) a legal system that can be traced to France.
- D) a government official, other than a judge.
- E) a law that is frequently applied in both France and Manitoba.

Answer: B

Diff: 1 Type: MC Page Ref: 8

Topic: Map of the Law

Skill: Applied

11) Which of the following statements is TRUE with respect to the law of Quebec?

- A) Because Quebec inherited its laws from France, its criminal laws are different from those that apply in other parts of Canada.
- B) Because Quebec inherited its laws from France, its constitutional laws are different from those that apply in other parts of Canada.
- C) Even though Quebec inherited much of its law from France, it has the same criminal law as provinces and territories that inherited most of their laws from England.
- D) Quebec is considered a common law jurisdiction because it inherited most of its laws from England.
- E) Quebec is considered a common law jurisdiction because it inherited laws that were once common to all parts of the Roman Empire.

Answer: C

Diff: 2 Type: MC Page Ref: 8

Topic: Map of the Law

Skill: Recall

12) Eric, who is a resident of Saskatchewan, has sued Trois Étoiles Ltd, which is a company based in Quebec, for breach of contract. Which of the following statements is TRUE?

- A) The case can be classified as a "public matter" because it involves a person suing a company for breach of contract.
- B) The case will be heard in a "civilian jurisdiction" if the claim is heard by a Saskatchewan court applying the laws of Saskatchewan.
- C) The case can be classified as an "international law" matter if the claim is heard by a Quebec court applying the laws of Quebec.
- D) The case would be classified as a "criminal matter" if Eric sued the government of Quebec rather than the Quebec company.
- E) The case can be classified as a "civil matter" under the "common law" if it is decided on the basis of the laws of Saskatchewan.

Answer: E

Diff: 2 Type: MC Page Ref: 8

Topic: Map of the Law

Skill: Applied

13) Which of the following statements is TRUE with respect to administrative law?

- A) Administrative law is concerned with the behaviour of public officials and therefore is not particularly important to business people.
- B) Because of the Constitution, administrative law applies at the federal and provincial levels but not at the municipal level
- C) Administrative law affects the government but not private individuals or corporations.
- D) Administrative law is the law by which the decisions of government-appointed decision-makers and government-appointed tribunals are reviewed by the courts.
- E) Administrative law is usually classified as a branch of criminal law.

Answer: D

Diff: 2 Type: MC Page Ref: 9

Topic: Map of the Law

Skill: Recall

14) Attila works for Epsilon Inc. The police recently became aware of illegal activities in connection with that organization. Which of the following statements is TRUE?

- A) Epsilon Inc may be charged with a "white collar crime," which is any crime that was committed by a corporate organization rather than an individual.
- B) Neither Attila nor Epsilon Inc can be charged with a "corporate crime" unless they broke a law that was intended to protect another corporation.
- C) A "white collar crime" is the same thing as a "corporate crime."
- D) Attila may be charged with a crime, but Epsilon Inc cannot, because only a human being can be convicted of a criminal offence.
- E) Even if Attila and Epsilon Inc are convicted of crimes, they may also be sued privately if their actions also amounted to torts committed against other individuals.

Answer: E

Diff: 3 Type: MC Page Ref: 9

Topic: Map of the Law

Skill: Applied

15) The category of public law contains

- A) constitutional law and administrative law but not tax law.
- B) constitutional law and tax law, among other things.
- C) criminal law, employment law, and constitutional law.
- D) administrative law and tax law but not criminal law.
- E) any case in which a government sues or is being sued.

Answer: B

Diff: 1 Type: MC Page Ref: 9

Topic: Map of the Law

Skill: Recall

16) The category of private law contains

- A) contract law and tort law but not if a government has sued or is being sued.
- B) real estate transactions, lawsuits based on deceit, and the violation of copyrights, among other things.
- C) contract law and property law but not tort law, which is closely related to criminal law.
- D) only those cases that the parties resolve themselves, or with the assistance of a neutral third party other than a judge.
- E) rules that govern personal matters, such as the right to privacy but not rules that govern public matters, such as the contracts of a public company.

Answer: B

Diff: 2 Type: MC Page Ref: 11

Topic: Map of the Law

Skill: Recall

17) The Canadian legal system contains various types of laws. It occasionally is necessary to consider the relationship between two or more areas of law. Which of the following statements is TRUE?

- A) Because they deal with different types of rules, it is impossible for criminal law and tort law to ever apply to the same set of facts.
- B) Because they involve obligations that arise from different sources, it is impossible for tort law and contract law to ever apply to the same set of facts.
- C) "White collar crime" is a misleading phrase because the relevant concepts arise in tort law rather than criminal law.
- D) The relationship between an employer and an employee is governed entirely by the law of contract.
- E) A lawyer who provides careless services usually is sued in both tort and contract because the lawyer owes the client a duty of care to not be careless and is also bound by the terms of the contract with the client not to be careless.

Answer: E

Diff: 3 Type: MC Page Ref: 12

Topic: Map of the Law

Skill: Recall

18) Suppose that there is a general feeling in certain parts of the country that judges should be elected rather than appointed. A system of electing judges can be introduced only through a constitutional amendment. This means that

- A) there must be unanimous agreement by all of the provincial legislatures.
- B) the federal Parliament can adopt the new system as long as there is majority support in both the House of Commons and the Senate.
- C) the prime minister must call an election.
- D) the new system must be supported by at least half the provinces, and those provinces must contain at least two-thirds of the country's population.
- E) the new system must be supported by Parliament, plus two-thirds of the provinces, where those consenting provinces represent at least half of the Canadian population.

Answer: E

Diff: 3 Type: MC Page Ref: 13

Topic: Sources of Law

Skill: Applied

19) The Citizen's Coalition for Property Rights (the CCPR) believes that the *Charter* should protect the right to own property. Which of the following statements is TRUE?

- A) The CCPR has no need to worry because property rights are already expressly protected by the *Charter*.
- B) The *Charter* cannot be amended unless, among other things, the federal Parliament agrees.
- C) Because property rights are listed under section 91 of the Constitution, the CCPR will not have to persuade the federal government to amend the *Charter*.
- D) The *Charter* can be amended as long as at least half of the Canadian population supports the protection of property rights.
- E) The *Charter* cannot be amended unless the government holds a referendum and allows individual Canadians to vote on the issue.

Answer: B

Diff: 3 Type: MC Page Ref: 18

Topic: Sources of Law

Skill: Applied

20) During a trial, a lawyer raised an argument based on the concept of the "residual power." The lawyer's argument must

- A) involve an issue of private law.
- B) be concerned with the amending formula.
- C) be based on either section 98 or section 99 of the Constitution.
- D) have something to do with the municipal governments.
- E) be concerned with the federal government and constitutional law.

Answer: E

Diff: 2 Type: MC Page Ref: 13

Topic: Sources of Law

Skill: Applied

- 21) A province created a statute. A court ruled that the statute was *ultra vires*. That means that
- A) the statute has full force (*ultra* means "most" and *vires* means "strength," as in "virility").
 - B) the province acted contrary to the division of powers because it enacted legislation that it did not have the constitutional jurisdiction to enact.
 - C) the statute must violate the *Charter*.
 - D) the statute applies both inside and outside of the province.
 - E) the statute must deal with public law rather than private law.

Answer: B

Diff: 3 Type: MC Page Ref: 14

Topic: Sources of Law

Skill: Applied

- 22) In an effort to protect its dairy industry, a provincial government passed a law that prohibits the importation or manufacture of soy milk. If a soy milk company challenges that statute on constitutional grounds, what would a court likely say?

- A) Because property rights are protected by the *Charter*, the statute is constitutionally invalid.
- B) Inter-provincial trade is an issue that provinces are entitled to decide for themselves.
- C) The federal government has jurisdiction over international trade but not over inter-provincial trade.
- D) The statute is entirely *ultra vires* because federal jurisdiction over international and inter-provincial trade extends to every issue that is related to trade, including the manufacture or production of soy milk.
- E) The statute is at least partially *intra vires* because provinces have the authority to regulate the production or manufacture of things like soy milk within the province, but the law may be constitutionally *ultra vires* because it interferes with the federal jurisdiction over inter-provincial trade, or mobility rights under the *Charter*.

Answer: E

Diff: 3 Type: MC Page Ref: 14, 18

Topic: Sources of Law

Skill: Applied

- 23) Which of the following statements is TRUE with respect to the *Charter*?

- A) It was introduced in 1982.
- B) It is a federal statute.
- C) Because it is intended to protect people's rights and freedoms, it severely limits the grounds upon which courts can strike down laws.
- D) It only applies in favour of a government or a government actor.
- E) It applies to federal laws but not provincial laws.

Answer: A

Diff: 1 Type: MC Page Ref: 16

Topic: Sources of Law

Skill: Recall

24) The federal, provincial, and territorial governments have decided to re-consider the contents of the *Charter*. They are particularly interested in the possibility of protecting economic and property rights. Which of the following statements is TRUE?

- A) Although the *Charter* does not currently contain a section devoted exclusively to the protection of economic and property rights, the right to "liberty" in section 7 of the *Charter* has been judicially interpreted in a way that broadly provides such protection.
- B) The introduction of a new *Charter* right for the protection of economic and property rights would be desirable primarily because it would increase the federal government's ability to regulate natural resources.
- C) The Supreme Court of Canada has said that because the *Charter* does not limit economic and property rights, every Canadian enjoys the unconstrained right to transact business whenever one wishes.
- D) The introduction of a new *Charter* right for the protection of economic and property rights might allow courts to compel governments to ensure that every Canadian enjoys adequate housing.
- E) Since the *Charter* applies to the relationship between private citizens, it should protect economic and property rights.

Answer: D

Diff: 2 Type: MC Page Ref: 18

Topic: Sources of Law

Skill: Applied

25) The *Charter* includes (among other things) rights regarding

- A) mobility, housing, and equality.
- B) contracts, sexual orientation, and religion.
- C) ownership, expression, and association.
- D) equality based on religion, age, and ethnic origin.
- E) Aboriginals, multiculturalism, and accommodation.

Answer: D

Diff: 1 Type: MC Page Ref: 17

Topic: Sources of Law

Skill: Recall

26) A provincial government recently enacted a statute that established a scholarship for "Aboriginal students who are enrolled at Canadian universities." Melissa, a university student whose ancestors were all born in England, believes that the scholarship is unconstitutional because it unfairly discriminates against her on the basis of her race. If Melissa brought that complaint to court, a judge would likely say that

A) the scholarship presumably is unconstitutional because it discriminates on the basis of race, and that it can be saved, if at all, only under section 1 of the *Charter*.

B) the scholarship is unconstitutional because the federal government has exclusive jurisdiction over education as a result of section 92 of the Constitution.

C) the scholarship is valid under section 15(2) of the *Charter* because it is aimed at improving the conditions of a disadvantaged group.

D) because Canadian universities are private institutions, the facts do not reveal any government action that could possibly trigger the *Charter's* provisions.

E) Melissa is entitled to participate in the scholarship scheme because she is a woman and because the *Charter* prefers rights based on sex to rights based on race.

Answer: C

Diff: 3 Type: MC Page Ref: 17

Topic: Sources of Law

Skill: Applied

27) The rights and freedoms contained in the *Charter* are limited

A) to cases involving interactions between different governments.

B) to human beings, with the result that the *Charter* cannot work in favour of a company.

C) by the ability of a federal or provincial government to invoke the notwithstanding clause only in relation to the rights and freedoms in section 2 or sections 7 to 15 of the *Charter*, and the general limitation of those limits demonstrably justified in a free and democratic society pursuant to section 1.

D) to situations in which the government created a law in bad faith.

E) to cases involving substantial amounts of money.

Answer: C

Diff: 1 Type: MC Page Ref: 19

Topic: Sources of Law

Skill: Recall

28) Lamda Corp is based in Vancouver but sells products across Canada. Which of the following statements is TRUE with respect to Lamda Corp and the *Charter*?

- A) Although the people who work for Lamda Corp enjoy *Charter* protection, the company itself is not a person and therefore is not protected by the *Charter*.
- B) Although Lamda Corp enjoys freedom of religion, it does not enjoy freedom of expression.
- C) Although Lamda Corp enjoys freedom of expression, it does not enjoy freedom of religion.
- D) Although Lamda Corp enjoys freedom of religion and freedom of expression, it is not a person and therefore it does not enjoy equality rights.
- E) Although Lamda Corp does not enjoy any *Charter* rights, it may be sued if it violates the *Charter* rights of one of its employees.

Answer: C

Diff: 3 Type: MC Page Ref: 19

Topic: Sources of Law

Skill: Applied

29) The premier of your province wants to invoke the notwithstanding clause in order to avoid the consequences of a recent decision by the Supreme Court of Canada. Before trying to do so, however, the premier wants to know as much as possible about the notwithstanding clause.

Which of the following statements is TRUE?

- A) The notwithstanding clause cannot be invoked unless the relevant people are willing to amend the Constitution.
- B) If the notwithstanding clause is invoked, it will have effect for 10 years, after which it will lapse unless it is reapplied.
- C) The notwithstanding clause can be invoked by the federal government but not by a provincial government.
- D) The notwithstanding clause can be used against equality rights but not against mobility rights.
- E) The notwithstanding clause has been invoked frequently in the western provinces but not in Ontario.

Answer: D

Diff: 2 Type: MC Page Ref: 19

Topic: Sources of Law

Skill: Applied

30) The Dark Room Bookstore was recently charged under the *Criminal Code* with selling magazines that contain photographs of people involved in violent and degrading sexual acts. The owner of the bookstore believes, however, that the government should not interfere in the private lives of its citizens and that he has a right to express his sexuality through the sale of such magazines. Which of the following statements is TRUE with respect to the *Charter* in this situation?

- A) Because freedom of expression is one of the fundamental rights that is contained in section 2 of the *Charter*, it cannot be subject to the notwithstanding clause.
- B) Once a court decides that the relevant provision of the *Criminal Code* does violate the right to freedom of expression, it becomes impossible to save that provision under section 1 of the *Charter*.
- C) The *Charter* is irrelevant in this case because the corporation that owns the store is not a person and therefore cannot claim the right to freedom of expression.
- D) Because the *Charter* applies only to government actions, it will not apply to this case unless the court is satisfied that at least one of the magazines was sold to a government official.
- E) The owner would have a good legal defence that his *Charter* rights of freedom of expression are infringed by the law. However, that law may be upheld as a reasonable infringement of the right of expression, if infringement is demonstrably justified in a free and democratic society.

Answer: E

Diff: 3 Type: MC Page Ref: 19

Topic: Sources of Law

Skill: Applied

31) A provincial statute says that a monthly allowance of \$250 is available to "any parent or set of parents that cares for an adopted child who is under the age of 12." That provision was challenged under the *Charter* by a parent who cares for a young child to whom she gave birth. The court agrees that the statute discriminates against "birth parents." As a remedy, the court could

- A) declare that the relevant provision is valid under the *Charter* and is therefore unconstitutional.
- B) allow the federal government to amend the provincial statute.
- C) grant an injunction that allows the parents to re-draft the statute in a way that extends the allowance to birth parents.
- D) read in a broader definition of "parent" that excludes both adoptive parents and birth parents.
- E) strike down the statute, but suspend the effect of that remedy in order to give the government time to re-draft the legislation.

Answer: E

Diff: 3 Type: MC Page Ref: 20

Topic: Sources of Law

Skill: Applied

- 32) Sigma Inc sued Tau Ltd for breach of contract and asked for the remedy of specific performance. The case will be heard in Alberta. Which of the following statements is TRUE?
- A) Specific performance is an equitable remedy because it historically was awarded by the court of legislators.
 - B) Because of the fusion of courts, there no longer is any need to draw a distinction between law and equity.
 - C) Sigma Inc's claim against Tau Ltd is an example of legislative litigation because it involves a claim by one private party against another private party.
 - D) Sigma Inc's claim against Tau Ltd is a common law claim because it will be decided on the basis of laws that historically were developed in French courts.
 - E) Specific performance is an equitable remedy that is now granted by the courts as the courts of common law have been fused with the courts of equity.

Answer: E

Diff: 2 Type: MC Page Ref: 24

Topic: Sources of Law

Skill: Applied

- 33) Omicron Inc claims that a municipal by-law violates its right to equality under section 15(1) of the *Charter*. Section 15(1) states: "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" based on various grounds. The company will lose its argument because
- A) the *Charter* never applies to corporations.
 - B) the *Charter* applies to federal, provincial, and territorial statutes but not to municipal by-laws.
 - C) although some parts of the *Charter* apply to corporations, section 15(1) is limited to "individuals" and therefore cannot apply to Omicron.
 - D) section 15(1) of the *Charter* was recently repealed (that is, done away with).
 - E) section 15(2) of the *Charter* prevents Omicron Inc from using section 15(1).

Answer: C

Diff: 2 Type: MC Page Ref: 19

Topic: Sources of Law

Skill: Applied

34) Civitas Inc sells widgets. The company recently complained in court that it was being prevented from using a particular type of advertisement. In some circumstances, such a restriction violates section 2(b) of the *Charter*. Ultimately, however, the court upheld the restriction and prevented Civitas Inc from advertising as it wished. Which of the following statements may explain that end result?

- A) The restriction was imposed by a statute and the government responsible for that statute reacted to the court's decision by invoking the residual clause.
- B) The party was not entitled to freedom of expression because it is a company rather than a human being.
- C) The court held that the restriction was an "unreasonable limitation" on the freedom of expression.
- D) The restriction was saved under section 15(2) of the *Charter*.
- E) The restriction was imposed by a contract that Civitas Inc created with another private corporation.

Answer: E

Diff: 2 Type: MC Page Ref: 18, 19

Topic: Sources of Law

Skill: Applied

35) The notwithstanding clause

- A) is contained in section 1 of the *Charter*.
- B) is applied to Canadian laws regularly.
- C) must be reinvoked every ten years in order to remain in effect.
- D) can be applied with respect to each and every the right and freedom contained in the *Charter*.
- E) is seldom used by governments because it involves a potentially controversial political decision to override fundamental rights and freedoms protected by the Constitution of Canada.

Answer: E

Diff: 2 Type: MC Page Ref: 19

Topic: Sources of Law

Skill: Recall

36) Subordinate legislation

- A) involves a statute that was introduced to change an existing statute.
- B) always prohibits certain forms of behaviour.
- C) is always created at the provincial level, rather than at the federal level.
- D) is practically necessary because it is impossible for legislators to constantly monitor all of their statutes and continuously update laws in order to reflect local conditions and society's changing needs.
- E) always consists of by-laws.

Answer: D

Diff: 2 Type: MC Page Ref: 22, 23

Topic: Sources of Law

Skill: Recall

37) The Town of Blackville created a set of rules for the licensing of businesses. Which of the following statements is likely TRUE?

- A) The rules take the form of statutes rather than by-laws.
- B) The rules are a form of superior legislation.
- C) Blackville was created by a statute in Parliament.
- D) Blackville is located in Quebec.
- E) The Town of Blackville was created under the authority of a provincial statute that gave the town the power to create these rules.

Answer: E

Diff: 1 Type: MC Page Ref: 23

Topic: Sources of Law

Skill: Applied

38) Which of the following statements is TRUE?

- A) The Queen is represented by a lieutenant governor in each province and territory.
- B) The legislature in each and every province and territory is called the Legislative Assembly.
- C) The territories have legislative assemblies similar to legislatures, but they do not have senates.
- D) Parliamentary bills are always introduced in the House of Commons before being sent to the Senate.
- E) Each province has a senate.

Answer: C

Diff: 3 Type: MC Page Ref: 22

Topic: Sources of Law

Skill: Recall

39) Which of the following statements is TRUE with respect to indirect taxation?

- A) The issue of indirect taxation arises in connection with municipalities.
- B) A province can impose an indirect tax because of the doctrine of "residual powers."
- C) An indirect tax is always *ultra vires* because of the constitutional principle that requires governments to act in an "open and straightforward manner."
- D) An indirect tax is a tax that was created by subordinate legislation.
- E) The federal government can impose an indirect tax, but a provincial government cannot do so.

Answer: E

Diff: 2 Type: MC Page Ref: 14, 15

Topic: Sources of Law

Skill: Recall

40) Which of the following statements is TRUE?

- A) The prime minister is the person who leads the party that has the most number of senators.
- B) Before a bill becomes a federal law, it must receive royal proclamation, which is given by the Lieutenant General on behalf of the Queen.
- C) In Parliament, a bill cannot become a law unless it has passed through four readings in the House of Commons and four readings in the Senate.
- D) Regulations, statutory instruments, ordinances, by-laws, and orders-in-council are types of subordinate legislation.
- E) In Parliament, a bill can become a law only if it is supported by at least two-thirds of senators.

Answer: D

Diff: 2 Type: MC Page Ref: 23

Topic: Sources of Law

Skill: Recall

41) The Doubleday Baseball Academy operates a training facility across the road from a number of houses. The homeowners have begun to complain about baseballs occasionally crashing into their yards and through their windows. As a form of risk management, the Academy could

- A) shift the risk to homeowners by encouraging them to buy liability insurance.
- B) accept the risk and pay for any damage that occurs.
- C) require its baseball players to sign exclusion clauses before they begin training.
- D) hire in-house counsel, which is a type of lawyer that specializes in limiting liability for damage caused to residential properties.
- E) purchase property insurance to pay for any damage that is done to nearby homes.

Answer: B

Diff: 2 Type: MC Page Ref: 5

Topic: Risk Management

Skill: Applied

42) Lake Charybdis has long been a popular area for nature-lovers, but it recently was the site of an unfortunate tragedy. A canoe carrying a woman and her young daughter tipped over. The woman desperately tried to hold onto her child while calling for help. Because the event occurred early in the morning, the normally crowded beach was empty with the exception of Glaucus. He is an expert swimmer and he easily could have saved the pair. As he later explained to the police, however, he had just lit a cigarette and he wanted to finish his smoke before getting into the water. By the time he was ready to rescue the woman and her child, both had drowned. Which of the following statements is most likely TRUE?

- A) Glaucus can be convicted of a crime for failing to rescue the girl, but not for failing to rescue her mother.
- B) Glaucus will be held liable in private law and guilty in criminal law.
- C) A court will find that a crime was committed as long as it is convinced that, given the circumstances, Glaucus had a moral obligation to rescue the pair.
- D) Glaucus will be held legally responsible for failing to rescue only if he was the woman's husband and the girl's father.
- E) If Glaucus had rented the canoe to the woman, he will be held liable in tort for failing to rescue.

Answer: E

Diff: 3 Type: MC Page Ref: 7

Topic: Nature of Law

Skill: Applied

43) The Government of Canada thinks that Harpreet has purposefully misfiled his taxes in order to pay less. The Government will pursue Harpreet under

- A) public law — the government will use both criminal and tax law.
- B) common law — the government will sue Harpreet for the tort of negligence.
- C) civil law — but only if Harpreet lives in Quebec.
- D) public law — Harpreet can be tried under tax law, but not criminally.
- E) private law — public law can be applied to a government, but not a private citizen.

Answer: A

Diff: 2 Type: MC Page Ref: 9, 11

Topic: Map of the Law

Skill: Applied

44) A triple ionized defraculator (or "TID," as people in the industry call it) is a special type of equipment used in a small number of mining operations. The market for TIDs is very narrow. Queensway Inc, which is located in Calgary, is one of only three TID manufacturers in the world, and within Canada, only five mining companies purchase and use TIDs. Four years ago, the Province of Alberta imposed a 10% "green tax" on the sale of every TID. During that period, Queensway paid the province a total of \$2 000 000. As the Province expected, however, Queensway passed the burden of the "green tax" onto its customers by simply adding 10% to the purchase price of each TID. Which of the following statements is most likely TRUE?

A) The doctrine of "federal paramountcy" will require the Province to pay part of the "green tax" over to the federal government.

B) Because the division of powers gives the provinces jurisdiction over "mines and minerals," the tax is valid as long as Queensway did not sell a TID to a customer outside of Canada.

C) Because of the principle that "the law operates on substance — not form," the tax is valid as long as all of Queensway's customers are located in Alberta.

D) Even though the customers actually paid for the tax, Queensway will be entitled to recover the \$2 000 000 from the Province if a court holds that the tax was unconstitutional.

E) A court will hold that the "green tax" was not a true tax because the Province did not provide anything of value in exchange for it.

Answer: D

Diff: 3 Type: MC Page Ref: 14, 15

Topic: Sources of Law

Skill: Applied

1.3 Essay Questions

1) Omega Inc manufactures several types of widgets and sells them directly to consumers. One type of widget contains a design defect that creates a risk of injury. Briefly explain the steps that the company should take by way of risk management. Identify the sorts of additional facts that would be required for the purpose of effective risk management.

Answer: Although there are not enough facts to properly formulate a response, students can be expected to explain the general process of risk management, and to identify the sorts of information that they would require in order to fully address the situation.

- *Identification:* It would first be necessary for Omega Inc to identify the risk management problem, by recognizing that one of its widgets contains a design defect that creates the possibility of injury. Identification might involve steps like pre-sale testing and post-sale surveys.

- *Evaluation:* Having identified the risk of injury, Omega Inc would then have to evaluate it. To do so, it would need to know the likelihood of injury, the potential severity of injury, the possible costs of liability, the possible costs of adverse publicity, the extent to which it wishes to act as a good corporate citizen (regardless of financial costs) and so on.

- *Response:* After identifying and evaluating the risk, Omega Inc would be in a position to formulate an appropriate response. It might, for instance, take steps to avoid or reduce the risk, or shift the burden of the risk onto someone else, or simply accept the risk.

Diff: 1 Type: ES Page Ref: 3

Topic: Risk Management

Skill: Applied

2) Sigma Corp manufactures widgets. It has discovered a design defect that creates a risk that one or more widgets may cause property damage. Briefly explain how the company could manage that risk by shifting it. Identify a potential cost of shifting the risk.

Answer: Risk management often has both a front end and a back end. In this case, if it has recognized the problem in time, Sigma Corp might take steps to avoid causing property damage in the first place. The question, however, pertains to ways in which the company can allow losses to occur, but then shift their financial burden onto someone else. There are two possibilities.

First, Sigma Corp might be able to purchase liability insurance. By doing so, it would pay a price in exchange for an insurance company's promise to pay for any losses that the defective widgets create.

Second, Sigma Corp could ensure that its sales contracts contain exclusion clauses. Such clauses would exempt the company from liability for losses that occur. The financial burden of those losses would fall instead on the parties that actually suffered them (or perhaps upon those parties' insurers).

Either of those possibilities might allow Sigma Corp to shift the financial burden of any losses onto a third party, at least in an immediate sense. The company would not have to directly pay for such losses.

Both tactics, however, entail costs of their own. An exclusion clause might frighten away some customers, while causing others to demand a lower price because their usual right to sue is limited or eliminated. An exclusion clause may not be enforceable if it is unconscionable or contrary to public policy. Therefore, exclusion clauses are a risk management tool to shift risk that may not necessarily be always enforceable. An insurance policy might be expensive to buy. Furthermore, to pay for such a policy, Sigma Corp might be required to raise its prices, thereby once again hurting its ability to sell widgets at a competitive price.

Diff: 3 Type: ES Page Ref: 5

Topic: Risk Management

Skill: Applied

3) Theta Motor Co manufactures the Presto, which is a type of compact car. It has discovered a design defect that affects the Presto. Identify and briefly explain situations in which it would be appropriate for the company to manage the risk by: (a) avoiding it, (b) reducing it, and (c) accepting it.

Answer: This question requires students to recognize that the third stage of risk management (response) flows from the second (evaluation). Broadly speaking, the strategies of avoidance, reduction, and acceptance should reflect the extent and nature of the danger that the design defect in the Presto creates.

If the danger is very significant, the company should probably use a strategy of risk avoidance. For instance, if the design defect causes the Presto to blow up frequently or to roll over, the vehicle should almost certainly be taken off the road. That is true for obvious moral reasons. It is also true as a matter of good business sense. Such accidents will likely entail substantial liability costs. Those costs may include not only compensatory damages, but also punitive damages. Furthermore, Theta Motor Co could suffer substantial financial costs as a result of adverse publicity, especially if the public knew that it left the Presto on the road even after its defect was discovered.

Diff: 1 Type: ES Page Ref: 4

Topic: Risk Management

Skill: Applied

4) Lamda Inc recently decided to use "in-house counsel." What does that phrase mean? Explain the advantages and disadvantages of the company's decision.

Answer: Businesses usually hire lawyers as the need arises. Once a problem is identified, a lawyer can be retained to deal with it. Quite often, however, businesses retain in-house counsel.

As the name suggests, in-house counsel refers to a lawyer that is part of the business's organization. In-house counsel is permanently on the payroll and therefore works within the business on a full-time basis, and not merely as the need arises.

While that option obviously creates an additional expense, it also provides more efficient risk protection. Lawyers will not only be on hand to resolve legal problems, but also to help identify them.

A disadvantage to in-house counsel is that in-house counsel may consider themselves part of the corporate team, rather than objective and independent professionals who must give advice candidly without fear of consequence including future employment. Therefore, the largest and most sophisticated corporations often use in-house counsel to perform routine corporate governance tasks and to manage outside counsel.

Diff: 1 Type: ES Page Ref: 6

Topic: Risk Management

Skill: Applied

5) Identify and briefly explain four areas of public law.

Answer: Public law is concerned with governments and the ways in which they deal with their citizens. The text discussed four areas: (a) constitutional law, (b) administrative law, (c) criminal law, and (d) tax law.

- *Constitutional law*: The Constitution provides the basic rules of our political and legal systems. It determines who is entitled to create and enforce laws, and it establishes the fundamental rights and freedoms that Canadians enjoy.

- *Administrative law*: In the past 50 years, Canadians have grown to expect more and more from their elected officials. In order to manage that workload, governments regularly delegate or assign responsibility to a wide variety of agencies, boards, commissions, and tribunals.

Administrative law is concerned with the creation and operation of those bodies. It has a profound impact on business simply because so much government work has been delegated.

- *Criminal law*: Criminal law deals with offences against the state and therefore is concerned with people who break rules that are designed to protect society as a whole. Crimes are prosecuted by the government on behalf of the community. If convicted, the accused may be punished, for instance by a fine or imprisonment. Although there is a tendency to think of criminals as violent individuals, it is important to appreciate that crime can happen in the business world as well. "White collar crimes," as the name suggests, are committed by people in suits. And "corporate crime" occurs when a company itself commits a criminal offence.

- *Tax law*: In order to operate, the various branches of government (such as Parliament, administrative bodies, courts, and so on) require a great deal of money. Tax law is concerned with the rules that are used to collect money for the purposes of public spending. Taxes are obviously of great interest to the business community.

Diff: 1 Type: ES Page Ref: 8-11

Topic: Map of the Law

Skill: Recall

6) What are the main differences between a tort and a crime? Can the same event ever give rise to both a tort and a crime? Explain your answer.

Answer: A tort is an offence against a particular person. A crime, in contrast, is an offence against the state. Significantly, however, while crimes are offences against the state, they very often are based on actions that are committed against a person.

Take a simple case in which Ann punches Bob. She has committed the tort of battery against him personally. But she has also committed a crime against society. Bob obviously has an interest in not being punched. He does not want to suffer personal injury or the indignity of being hit. But even beyond that, society has an interest in ensuring that people are not punched. It wants to keep the peace. A community cannot properly function if it condones a great deal of violence.

The basic differences between a tort and a crime are reflected in the ways in which the two concepts are addressed. With respect to the tort, Bob has the choice as to whether or not he will bring Ann into court in a private matter. He might decide not to do so if, for instance, she is his girlfriend and if she hit him during a fight that has since been resolved. And if he does successfully sue her in tort, she will probably be required to pay money to him as compensation for the damage that she caused. (That point was not mentioned in Chapter 1 of the textbook, but it is addressed elsewhere in the text.)

In contrast, the choice to bring criminal proceedings against Ann generally lies with the government. Even if Bob wants to drop the matter, the police and prosecutor may take action against Ann because they are concerned not so much with the effect that the punch had on Bob, but with the effect that the incident had on society as a whole. Given the complex nature of intimate relationships, too few instances of domestic violence would be addressed in the criminal courts if the decision to prosecute was left entirely up to the individual victim. If convicted of the criminal offence, Ann would be punished, possibly through imprisonment or a fine.

Diff: 1 Type: ES Page Ref: 9

Topic: Map of the Law

Skill: Recall

7) Howard is a manager with Rogue Used Cars Inc. He and the company have both misbehaved. The police have laid charges concerning a white collar crime and a corporate crime. Describe the differences between those two types of crimes.

Answer: White collar crime is a crime that is committed by a business person (which traditionally meant a person who wore a white shirt to work) in a business context. For instance, Howard may have been charged with stealing money from the petty cash drawer at Rogue Used Cars Inc.

Corporate crime, in contrast, is a crime that is committed by a corporation itself. Since a corporation is an artificial entity, the criminal offence must actually be carried on by one of its human agents on its behalf. Nevertheless, the corporation itself can be held responsible. That would be true, for instance, if Rogue Used Cars Inc had a policy of turning back odometers on its vehicles, which constitutes a crime of fraud.

Diff: 2 Type: ES Page Ref: 10

Topic: Map of the Law

Skill: Applied

8) A town called Malice has undertaken a risk management study in an effort to minimize its exposure to legal liability. Since it is a form of government, and therefore a public body, it wants to know if it ever needs to worry about private law. Provide an answer to that question.

Answer: Private law is concerned with the rules that apply in private matters. But that does not mean that private law never applies to the government like the municipality of Malice. Broadly speaking, there are two possibilities.

- Private law applies to Malice when it is involved in private law matters. That is true, for instance, when it orders paper supplies from a stationery store, or when it leases a vehicle from a car dealership. Sales and leases are forms of contracts. And contracts are part of private law. In such cases, the town's status as a public authority is generally irrelevant. It is treated as if it was a person or a private corporation.

- In some circumstances, private law may also apply to Malice with respect to acts that it undertakes in discharge of its public functions. For instance, municipalities generally enact bylaws that require building projects to be inspected and approved by a government official from time to time. If the town fails to do so in one instance, with the result that a building is completed in a defective manner, the owner of that structure may be entitled to sue Malice for the tort of negligence.

Diff: 3 Type: ES Page Ref: 11

Topic: Map of the Law

Skill: Applied

9) Is it easy or difficult to change the Constitution? What is the policy that underlies the correct answer to that question? Who must agree before the Constitution can be changed?

Answer: The Constitution is *very* difficult to change. The justification for that fact stems from its nature and purpose. It is the document that creates the basic rules for Canadian society, including our political and legal systems. It therefore must remain relatively stable. Although amendments are possible, they should reflect fundamental changes in national values, rather than merely transitory shifts in public perceptions. It is one thing, for instance, to tinker with the rules that govern the enforcement of contracts. It is a far more serious matter to alter the fundamental rules of Canadian society.

Most laws can be changed by a legislature or by a court. The Constitution is different. It can only be changed through a special amending formula. It is necessary to have the consent of Parliament plus the legislatures of at least two-thirds of the provinces that represent at least 50 percent of the country's population. Consequently, constitutional amendments are rare.

However, the Canadian courts have interpreted the Constitution as a "living tree" the text of which is interpreted in accordance with changes in the historical circumstances. Sometimes controversially, the courts have construed the construction in a manner which the courts claim is consistent with changing Canadian values; as the courts perceive those values and those changes.

Diff: 2 Type: ES Page Ref: 13

Topic: Sources of Law

Skill: Recall

10) An appellate court recently heard two cases. In the first, it decided that a statute was *ultra vires*. In the second, it decided that another statute violated the *Charter*. What is the significance, in each case, of section 52 of the Constitution?

Answer: The Constitution is the document that creates the basic rules for Canadian society, including our political and legal systems. Consequently, every other law in the country must be compatible with it. Section 52 of the Constitution states: "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."

In addition to section 52, the Constitution contains sections 91 and 92, which allocate legislative authority over various topics to either the federal government or the provincial governments. (Topics not mentioned are allocated to the federal government because it enjoys the residual power.) A government acts *ultra vires* when it creates laws in an area outside of its scope of authority. And since an *ultra vires* law contravenes the allocation of powers established in sections 91 and 92 of the Constitution, it is inconsistent with the Constitution and hence invalid by virtue of section 52.

The *Charter* is also part of the Constitution. It provides the guarantee of certain rights and freedoms to people in Canada. If a statute is inconsistent with those protections (*e.g.* because it discriminates on the basis of sexual orientation, contrary to section 15(1) of the *Charter* and that discrimination is not constitutionally justifiable), then it is inconsistent with the Constitution and, once again, may be invalidated under section 52.

Diff: 3 Type: ES Page Ref: 12, 13, 20

Topic: Sources of Law

Skill: Applied

11) What is the residual power? What is meant by the phrase "*ultra vires*"? How are those two concepts related to the notion of federalism?

Answer: Canada is a federal country because it has two constitutionally recognized levels of government: federal and provincial. (Municipalities are a third level of government formed pursuant to provincial or territorial legislation.) Both levels of government have legislative power, in the sense that they can both create laws by enacting statutes. In most instances, however, it would be undesirable if both levels of government were able to legislate with respect to the same issue. To take a simple example, chaos would ensue if the federal government required driving on the left side of a highway at the same time that a provincial government required driving on the right side. To avoid such difficulties, sections 91 and 92 of the Constitution allocate authority over certain topics to one level of government or the other.

Sections 91 and 92 are not, however, exhaustive. They do not list every possible topic. Indeed, since they were drafted in the nineteenth century, when Canada first became a country, they could not possibly deal with more modern issues, such as telecommunications and space travel. Consequently, to deal with such gaps, the Constitution gives the residual power to the federal government. That means that the federal government has authority over every topic that has not otherwise been granted to the provinces.

As a general rule, then, every issue is allocated to either the federal government or the provincial government. Each level of government must act *intra vires*, which means "within the power." If a government acts outside of its proper scope of authority, or *ultra vires*, then the purported law is inconsistent with the Constitution and, by virtue of section 52 of that document, "of no force or effect."

Diff: 2 Type: ES Page Ref: 13

Topic: Sources of Law

Skill: Recall

12) Ranji wants to start a new company, but he is concerned about risk management and legal liability. He is particularly concerned about the *Charter*, in both a positive sense and a negative sense. Explain the extent to which the *Charter* applies in favour and against a corporation.

Answer: Section 32(1) of the *Charter* states that the document applies to "Parliament" and "the legislature ... of each province." Consequently, its rights and freedoms have full effect only if a person is complaining about the government's behaviour. In contrast, the *Charter* does not directly apply to disputes involving private parties. For instance, the right to freedom of expression that is found in section 2(b) does not entitle a union to picket a private corporation. That is not to say, however, that Ranji's corporation would be entirely immune to the effect of the *Charter*. The Supreme Court of Canada has said on several occasions that even the rules that apply between private parties should be developed in a manner that is consistent with *Charter* values. Although the precise meaning of that proposition is not yet entirely clear, Canadian courts have, on several occasions, formulated private law rules with the *Charter* in mind.

The *Charter* therefore generally will not apply *against* Ranji's corporation. It may not apply in *favour* of the company either. It depends upon the circumstances. Some *Charter* provisions, such as section 2 which deals with basic freedoms, refer to "everyone." Others, however, such as section 15(1) which deals with equality, refer to "every individual." A corporation is a kind of "person," but it is not an "individual." As a result, Ranji's company may enjoy some freedoms, but not the right to equality.

Furthermore, even though it falls within the scope of "everyone" in section 2, the company will not be able to claim the protection of some specific freedoms that are contained in that section. For instance, a company may have the need for the freedom of expression that is found in section 2(b), but not the freedom of religion that is found in section 2(a). A corporation can express itself, but it cannot hold religious beliefs.

Diff: 3 Type: ES Page Ref: 19

Topic: Sources of Law

Skill: Applied

13) A judge recently decided a *Charter* case that involved the government on one side and a corporation on the other. After that decision was released, one of the parties indicated its intention to use the "notwithstanding clause." What is the effect of that clause? Who is entitled to use it?

Answer: Given the expressed intention to invoke the notwithstanding clause, it can be assumed that the company won its *Charter* challenge and that the court held that a particular law was invalid. The notwithstanding clause, which is found in section 33 of the *Charter*, allows Parliament or a legislature to create and enforce a law "notwithstanding" the fact that it violates the *Charter*. It can only ever be used by the government, and not by a corporation. It is intended to allow the government to override a *Charter* violation in the greater public interest. In that sense, it is part of the delicate balance that the *Charter* seeks to strike between individual rights and the rights of the majority (as expressed through a democratically elected government).

The notwithstanding clause only applies to some of the rights and freedoms listed in the *Charter*. Parliament or a legislature can override section 2 (fundamental freedoms) or section 15 (equality rights), for instance, but not section 6 (mobility rights). Furthermore, the notwithstanding clause can only be used for five years at a time. At the end of that period, the clause must be reapplied. That rule ensures that the significant constitutional rules are re-examined on a regular basis.

In practice, the notwithstanding clause is almost never used. The section requires the government to expressly declare that it is overriding fundamental rights and freedoms. That sort of declaration may be politically unpopular or politically unwise

Diff: 2 Type: ES Page Ref: 19

Topic: Sources of Law

Skill: Applied

14) Statutes may be created at either the federal level or at the provincial (or territorial) level. In either event, the rules and procedures are much the same. There are, however, some differences in terms of the people, processes, and types of laws that are involved. Identify and briefly explain those differences.

Answer: The differences can be discussed under three headings.

Legislatures At the federal level, the legislature is Parliament. It consists of two chambers: the House of Commons, which contains elected Members of Parliament (MPs), and the Senate, which contains Senators appointed by the Governor-General in Council, which in substance and practice means the Prime Minister. While MPs must stand for re-election from time to time, Senators do not. The political party that has the greatest number of MPs (generally) forms the government. The leader of that party is called the Prime Minister. At the provincial or territorial level, the legislature is usually called the Legislative Assembly. (There is some variation. Newfoundland, for instance, has a House of Assembly, while Quebec has a National Assembly.) The Legislative Assembly contains only elected members. There is no equivalent to the federal Senate. The political party that elects the greatest number of people to the Legislative Assembly (generally) forms the government. The leader of that party is called the Premier.

Jurisdiction Sections 91 and 92 of the Constitution create a division of powers that determines which level of government has jurisdiction (authority) to legislate with respect to particular subjects. The federal government also enjoys the residual power, with the result that it has jurisdiction over subjects that are not enumerated in sections 91 or 92.

Any attempt to legislate outside of one's jurisdiction is *ultra vires* (outside the power). By virtue of section 52 of the Constitution, a law "inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."

Legislative Process Laws begin life as bills. At the federal level, a bill must be introduced by either a Member of Parliament or a Senator. It must then pass through three readings in the chamber where it originated (usually the House of Commons). In order to pass a reading, a bill must be supported by a majority of those members of the chamber who chose to vote. The first reading usually consists of the mere introduction of the bill. Substantive debate in the chamber typically occurs at the second reading. After the second reading vote, the bill is sent to a legislative committee for detailed study. Once a bill has fully passed through the first chamber, it must then similarly pass through three readings in the other chamber (usually the Senate). Finally, if a bill has passed through both chambers, it must receive royal assent from the Governor General, who acts on behalf of the Queen. That final step is a mere formality.

The legislative process at the provincial or territorial level is much the same. The primary difference is that while it must pass through three readings in the elected chamber, there is no equivalent to the federal Senate. And in terms of the final formality, the Queen's royal assent is given by the Lieutenant Governor (or Commissioner in the territories) instead of the Governor General.

Diff: 3 Type: ES Page Ref: 22

Topic: Sources of Law

Skill: Recall

15) Identify and briefly explain the remedies that a judge may award after finding a *Charter* violation.

Answer: The courts enjoy considerable latitude in awarding relief for a *Charter* violation. The basic provisions are section 52 of the *Constitution* and section 24 of the *Charter*.

Section 52 states: "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect." Since the *Charter* is part of the Constitution, a law that violates the *Charter* is "of no force or effect."

Section 24 of the *Charter* states that upon finding a violation of the *Charter*, a court may award "such remedy as [it] considers appropriate and just in the circumstances." The precise nature of the court's response therefore depends upon the situation. The most significant possibilities were discussed in the text.

- *Declaration*: A court may simply *declare* that the *Charter* has been violated. The legislature will then have the obligation of finding some solution to the problem.
- *Injunction*: A court may take a more active role. It may impose an *injunction* that requires the government to address the problem in a certain way. The choice therefore lies with the judge, rather than with the legislature.
- *Striking Down*: Going even further, a court may *strike down* or eliminate a statute that violates the *Charter*. The decision to do so may take effect immediately or its effect may be *temporarily suspended*. A temporary suspension is appropriate where the immediate elimination of a statute would create substantial problems.
- *Severance, Reading Down and Reading In*: Sometimes, a court may save a statute by re-writing part of it. If only one part of a statute is offensive, it may be *severed* or cut out. If a statute is written too broadly, it may be *read down* so that it applies only where it can be justified. Likewise, if a statute is written too narrowly, the court may *read in* a broader interpretation so that the law no longer discriminates against some people by excluding them from a certain benefit.
- *Damages*: Just as a successful litigant in a private law case may be awarded damages for a loss that has been suffered, so too may a person who has suffered a *Charter* violation. *Charter* damages are awarded by the courts for the purposes of compensating losses caused by the *Charter* breach, to demonstrate the vindication of the plaintiff's *Charter* rights, and to discourage further breaches of the *Charter of Rights and Freedoms*.

Diff: 2 Type: ES Page Ref: 20

Topic: Sources of Law

Skill: Recall