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Chapter 01
The Law and the Legal System

Multiple Choice Questions

1. Maxine, an accountant annoyed with her employer for telling her that her work was substandard, created a computer virus that would erase key accounting data if Maxine's name was removed from the payroll. This is a crime under the Criminal Code. If Maxine is caught, she will be
A. prosecuted by the Crown because the Code is public law.
B. sued by the Crown because the Code is private law.
C. sued by her employer under the Criminal Code because it is a civil law matter.
D. sued by her employer under the Criminal Code because it is a private law matter.
E. prosecuted by the Crown for breach of the Civil Code.

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Difficulty: Easy

2. The federal government placed new legislation before Parliament regarding the regulation of telecommunication companies. Which of the following statements is not true?
A. This proposed legislation is called a "bill."
B. This legislation must be brought before the House of Commons three times and then it will be law if it is passed.
C. Once passed by the House of Commons, a bill is sent to the Senate for approval.
D. Once the proposed legislation has been passed by the Parliament of Canada; it must be given royal assent and be proclaimed.
E. Once the proposed legislation has been passed by the Parliament of Canada it can be amended by another statute.

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Difficulty: Moderate

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3. The Simpson brothers have applied to the Liquor Licence Board of the province for a wine and beer licence for their new restaurant. Which of the following is not true?
A. The board is an administrative tribunal, not a court of law.
B. The decisions of the board become part of the administrative law of the province.
C. Agencies and boards such as this one are part of the expanding government regulation of private citizens and businesses.
D. The Simpsons will deal with civil servants rather than elected representatives while applying for their licence.
E. The right to make its own rules and procedures is delegated to the board, but these are subject to the approval of the provincial legislature.

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Difficulty: Challenging

4. The government of the province has introduced a bill into the legislature to make the recycling of household garbage mandatory. Once it has passed third reading, the next step is that it must be
A. sent to the relevant committee for clause-by-clause study.
B. given royal assent by the Lieutenant-Governor.
C. debated in principle by the members of the legislature.
D. sent to the Senate for approval.
E. amended and prepared for its final reading.

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Difficulty: Easy

5. When judges apply the principle of *stare decisis* in deciding a case before them they are, in effect, applying the
A. substantive law.
B. doctrine of precedent.
C. principles of equity.
D. rules of public administrative law.
E. doctrine of precedent and substantive law.

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Difficulty: Easy

6. The Big Time Construction Company is erecting a large office tower for a major commercial property developer. In the course of construction, a dispute arises as to the timing of cash advances from the developer to finance the next stage of construction. The parties had executed a contract between them which stated that each cash advance from the developer would be provided to the builder after the work on the previous stage had been completed and inspected by the developer. The builder now says that the developer is delaying the inspections and that it cannot carry on to the next stage without the cash advance. The developer says that the builder is deliberately delaying the progress of the construction by not beginning the next stage while it waits for the inspection required to release the next cash advance. The developer intends to take legal action against the builder.
A. The developer must use procedural law to sue the builder.
B. The dispute between the parties will be resolved by substantive law.
C. The contract which the parties made will be interpreted by private law.
D. The court will reach a decision in the case using administrative law.
E. All types of law except administrative law will apply.

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Difficulty: Challenging

7. If it were decided to amend the Constitution to make ownership of property a right, it would be necessary to have the agreement of

i. at least two-thirds of the provinces, which together make up at least half of the population of Canada.
ii. at least half of the provinces, which together make up at least two-thirds of the population of Canada.
iii. more than half of the members of the federal Parliament.
iv. at least two-thirds of the members of the federal Parliament.
v. all ten provinces.
A. i.
B. ii.
C. i and iii.
D. ii and iv.
E. iii and v.

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Difficulty: Moderate

8. The provincial legislature is about to pass a piece of legislation that conflicts with one of the following rights. It had intended to do so under s. 33(1), the notwithstanding clause, but has just found out that s. 33 is not effective against this right. Which of the following is it?
A. The right to life, liberty and security of the person.
B. Freedom of speech.
C. Freedom of religion.
D. The right to vote.
E. Equality rights.

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Difficulty: Moderate

9. A small Ontario town passes a bylaw which says that shop signs must be only in English. A butcher's shop which caters to the local German-speaking population is charged with infringing the bylaw and the proprietor raises s. 2(b) of the Charter in his defence.
A. Since only political speech is protected by the Charter, he will lose.
B. Since the Charter does not apply to non-government bodies like a butcher's shop, he will lose.
C. Since the Charter protects commercial expression because it helps individuals make informed economic choices, he will win.
D. Since the Charter protects commercial expression, regardless of any value it may have, simply because we must all be free to say what we choose, he will win.
E. None of the answers are correct.

Accessibility: Keyboard Navigation
Difficulty: Challenging

10. In response to the growing number of traffic deaths resulting from alcohol-related accidents, many provinces amended existing laws to permit their police forces to conduct arbitrary roadside checks to try to discourage drunk driving. When this practice was challenged in the courts as an infringement of s. 9 of the Charter,
A. counsel for the Crown would successfully argue that the practice could be continued indefinitely because of s. 33 of the Constitution, which allows the provinces to exempt the legislation from the application of the Charter.
B. counsel for the Crown would argue that the roadside checks are permissible on the basis of s. 1 of the Charter.
C. the challenging party, a motorist who had been stopped and found to have excessive blood alcohol levels, would successfully argue that the legislation violates his s. 6 mobility rights.
D. the Crown would argue s. 33 and s. 1.
E. All of the answers are correct.

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Difficulty: Moderate

11. *(p. 6)* The government of Saskatchewan passed a statute that allocates water on the North Saskatchewan River. The function of this legislation is to
A. settle disputes.
B. establish rules of conduct.
C. provide protection for individuals.
D. settle disputes and establish rules of conduct.
E. All of the answers are correct.

Accessibility: Keyboard Navigation
Difficulty: Challenging

12. *(p. 6)* Nova Scotia has rules of court that state a party who commences a lawsuit must provide the other parties to the lawsuit with a copy of the document setting out their claim. The function of the rules of court is to
A. settle disputes.
B. establish rules of conduct.
C. provide protection for individuals.
D. settle disputes and establish rules of conduct.
E. All of the answers are correct.

Accessibility: Keyboard Navigation
Difficulty: Challenging

13. *(p. 14)* Which Canadian province does not utilize the Common Law system?
A. British Columbia
B. Newfoundland,
C. Ontario
D. Quebec
E. New Brunswick

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Difficulty: Easy

14. *(p. 10)* The Alberta Court of Appeal wrote a judicial decision defining a Vespa gas-powered scooter as a motor vehicle pursuant to the Highway Traffic Act. According to the principle of *stare decisis*, which of the following courts would have to apply this decision in determining whether Vespa scooters required a licence plate?
A. Supreme Court of Canada
B. Ontario Court of Appeal
C. Ontario Supreme Court
D. Alberta Provincial Court
E. All Canadian provincial courts

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Difficulty: Moderate

15. *(p. 17)* Under the Canadian Constitution the federal government has exclusive jurisdiction over which types of laws:
A. Trade and commerce, criminal law and bankruptcy and insolvency law.
B. Trade and commerce, criminal law and incorporation of companies.
C. Trade and commerce, the solemnization of marriage and local works and undertakings.
D. Criminal law, incorporation of companies, solemnization of marriage.
E. Trade and commerce, incorporation of companies and bills of exchange.

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Difficulty: Moderate

True / False Questions

16. Jill has written a mathematics textbook. Under the federal Copyright Act, only she or someone authorized by her may reproduce the contents of the book. Jill's rights are an example of a legal privilege.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

17. Jill has written a mathematics textbook. Under the federal Copyright Act, only she or someone authorized by her may reproduce the contents of the book. The Copyright Act is an example of a statute.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

18. Jill has written a mathematics textbook. Under the federal Copyright Act, only she or someone authorized by her may reproduce the contents of the book. The Copyright Act can be found at R.S.C. 1985. "R.S.C." stands for "Revised Statutes of Canada."
TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

19. Jill has written a mathematics textbook. Under the federal Copyright Act, only she or someone authorized by her may reproduce the contents of the book. Jill's copyright in the textbook is protected everywhere in Canada.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

20. Mary is suing Arthur because he breached a contract to sell her 2,000 tonnes of first-grade steel. There is no legislation that deals with the issue between them. The judge will make her decision based on the Common Law about this sort of issue.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

21. Mary is suing Arthur because he breached a contract to sell her 2,000 tonnes of first-grade steel. There is no legislation that deals with the issue between them. If the judge did not use the Common Law in this case, she would have to rely on the theory of precedent instead.
FALSE

Accessibility: Keyboard Navigation
Difficulty: Moderate

22. Mary is suing Arthur because he breached a contract to sell her 2,000 tonnes of first-grade steel. There is no legislation that deals with the issue between them. The modern law concerning commercial matters such as this has grown out of the ancient Law Merchant.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Moderate

23. Mary is suing Arthur because he breached a contract to sell her 2,000 tonnes of first-grade steel. There is no legislation that deals with the issue between them. Mary's rights and obligations in relation to contracts are part of the procedural law.
FALSE

Accessibility: Keyboard Navigation
Difficulty: Easy

24. The Minister of Justice for the Parliament of Canada has made an announcement that the federal government will introduce legislation to regulate the use and ownership of firearms in Canada. The new law will be proclaimed before it receives royal assent.
FALSE

Accessibility: Keyboard Navigation
Difficulty: Easy

25. The Minister of Justice for the Parliament of Canada has made an announcement that the federal government will introduce legislation to regulate the use and ownership of firearms in Canada This would be an example of substantive private law that has been codified from the Common Law.
FALSE

Accessibility: Keyboard Navigation
Difficulty: Challenging

26. The Minister of Justice for the Parliament of Canada has made an announcement that the federal government will introduce legislation to regulate the use and ownership of firearms in Canada. If the government has a majority of seats in the House of Commons, the bill may be passed with two readings and then sent to the Senate.
FALSE

Accessibility: Keyboard Navigation
Difficulty: Moderate

27. The Minister of Justice for the Parliament of Canada hmade an announcement that the federal government will introduce legislation to regulate the use and ownership of firearms in Canada. Peters, who later violates this new law by being found in possession of a restricted weapon, will be charged with a violation of the law by the Crown but will not be sued for damages.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

28. Ned Stogers wishes to set up a radio station that caters exclusively to the music preferences of senior citizens in a major metropolitan Canadian city. The CRTC, which hears applications and grants licences for new radio stations, may make laws governing its affairs that will affect Ned although it is not a government.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Challenging

29. Ned Stogers wishes to set up a radio station that caters exclusively to the music preferences of senior citizens in a major metropolitan Canadian city. Most of the laws that affect Ned's application are the procedural laws of precedent.
FALSE

Accessibility: Keyboard Navigation
Difficulty: Easy

30. Ned Stogers wishes to set up a radio station that caters exclusively to the music preferences of senior citizens in a major metropolitan Canadian city. The CRTC will apply the principles of equity in deciding whether to grant Ned's licence.
FALSE

Accessibility: Keyboard Navigation
Difficulty: Moderate

31. Ned Stogers wishes to set up a radio station that caters exclusively to the music preferences of senior citizens in a major metropolitan Canadian city. The CRTC is an administrative tribunal.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

32. The government of Great Britain is seeking, under a treaty, to extradite Ann to face murder charges. She is a Canadian citizen. Ann argues that she has the right under the Charter to remain in Canada. The Supreme Court of Canada would uphold her extradition.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Challenging

33. Tom, who is 14, wishes to vote in the next provincial election. Since he is a Canadian citizen, there is no means by which he can be prevented from exercising his right under the Charter to vote.
FALSE

Accessibility: Keyboard Navigation
Difficulty: Moderate

34. New Brunswick is the only officially bilingual province in Canada.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

35. The Barrel-o'-Beer Pub has a dress code for waitresses which require their skirts to be 10 cm above the knee. There is no dress code for waiters. Jacqueline is fired for refusing to shorten her knee-length skirt. If Jacqueline had a case, it would be under the equality rights section of the Charter.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

36. The Barrel-o'-Beer Pub has a dress code for waitresses which require their skirts to be 10 cm above the knee. There is no dress code for waiters. Jacqueline is fired for refusing to shorten her knee-length skirt. Since the Charter doesn't apply to private businesses like the Barrel-o'-Beer, Jacqueline has no recourse against her former employer.
FALSE

Accessibility: Keyboard Navigation
Difficulty: Moderate

37. Suppose the government of Alberta passed legislation that conflicted with rights under s. 8 of the Charter, and the Supreme Court of Canada struck down the legislation. The government of Alberta can pass the legislation under s. 33(1) of the Charter and it cannot be challenged in the courts because of the protection offered by s. 33(1).
TRUE

Accessibility: Keyboard Navigation
Difficulty: Challenging

38. The provincial government passed legislation that made a new kind of consumer scam a criminal act. Audrey was charged under the legislation. She can successfully defend herself by saying that the legislation is unconstitutional.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Moderate

39. By placing its proposed same sex marriage legislation before the Supreme Court of Canada, the federal government received the assurance that it had the power to define civil marriage as a lawful union between two persons, and the reminder that freedom of religion could not compel religious groups to change their practices.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Moderate

40. Online electronic consolidation of statute changes have made printed statute books obsolete.
TRUE

Accessibility: Keyboard Navigation
Difficulty: Moderate

Essay Questions

41. Helga was charged in 2003 with the theft of confidential information in Vancouver. The only case at the time that was relevant was one in which the Ontario Court of Appeal said that the defendant, in a situation identical to Helga's, was guilty of theft.

a. Discuss how the theory of precedent applies here
b. If the defendant in the Ontario case appealed and, in the summer of 2004, before Helga's case had come to trial, the Supreme Court of Canada reversed the Ontario Court of Appeal's decision, would this change your answer to the previous question? Why or why not?

a. Where the facts are the same, a judge must apply previous decisions of similar cases, provided the decisions are from his own court, a court of equal rank, or a higher court within the same province, or from the Supreme Court of Canada.
Here, the only case is from a higher court but of a different province so, while it is highly persuasive, it is not a precedent that must be followed.
b. Now that there is a Supreme Court of Canada case, it is precedent throughout Canada. Therefore it must be followed in Helga's case.

Difficulty: Moderate

42. You believe that trapping fur-bearing animals is inhumane, and you want the province to prohibit it altogether. Discuss why it would be best to use statute law to achieve your goal and explain any problems that could be created by your choice.

A statute is a much faster way of changing the law and has as comprehensive a scope as the legislators choose to give it. The legislature is sensitive to public opinion so, if you can persuade many people to agree with you and to apply political pressure to the members of the legislature, it is comparatively easy to effect change. The courts will, however, interpret statutes strictly so, to achieve its ends, the statute must be very carefully drafted.

Difficulty: Moderate

43. Occasionally, when the common law is applied to the facts of a case that is before the courts, the injured party faces a financial or personal hardship as a result. This often occurs where the strict application of the law prevents the recovery of damages by the injured party because of some action taken by him, which may have been unintentional of inadvertent. Discuss what the court may do in such an instance at the request of the injured party and explain whether you believe the outcome to be desirable.

At the request of the plaintiff's lawyer, the court may resolve the dispute by applying the principles of equity. These are frequently applied in those cases where the strict interpretation of the plaintiff's legal rights, as under the common law, would result in a hardship for the plaintiff or would create a clearly unfair result. The principles of equity, having evolved from general principles of fairness or natural justice, tend to allocate responsibility for damages according to the actions of the parties in the circumstances rather than according to a set of rigid legal rules.

Difficulty: Challenging

44. Professor Dobson is 65 and, under the mandatory retirement policy of his university, must retire next July 1st. He does not wish to do so.

a. Discuss whether he can bring a Charter action against the university.
b. Assuming he can bring a Charter action against the university, what would his argument be, and how would the university answer it?

a. It is unclear as yet whether a university is a government body, and therefore subject under s. 32 to compliance with the Charter. If it is not, then the Charter is not a possible protection for him. If his province has a Human Rights Code that forbids employment discrimination on the basis of age, he could use that. If it allows discrimination against those over 65, he could try a Charter challenge against the Code. If it is, then he may do so.
b. If he could bring a Charter action, he would show that the mandatory retirement policy interfered with his right under s. 15(1) not to be discriminated against on the basis of age. It would then be up to the Crown, acting for the Government, to show that the retirement policy was either justified under s. 1 of the Charter or passed under a s. 33(1) declaration. If it could not prove this on the balance of probabilities, Professor Dobson would have succeeded in showing his rights had been infringed by the policy, and the Charter, being the supreme law of Canada, would cause the policy to have no force or effect.

Difficulty: Challenging

45. Some people argue that Canadians were better off before they had a Charter of Rights and Freedoms entrenched in a Constitution. What do you think?

Students should discuss the different effect on individual rights of the previous Canadian Bill of Rights and the Charter. The former was a normal piece of government legislation that could be ignored and overridden at the whim of government. In fact it often was, with the result that citizens had little predictability of the extent of their rights or the certainty of their enforcement. The Charter, however, entrenches the rights in a constitutional document which supersedes all other legislation. All government actions must conform to the Charter to retain their validity as enforceable actions and the Charter cannot easily be amended to dilute the rights as happened with the Bill of Rights.
Students may like to take the alternative approach and argue that the Charter has entrenched only opportunistic attempts by individuals and groups of individuals to gain guaranteed rights and freedoms, which would have been available in the Common Law under principles of equity in the appropriate circumstances. Some may also argue that the Charter focuses more public attention on the receipt of guaranteed rights than on the, arguably, equally important acceptance of responsibilities in a society.

Difficulty: Challenging

46. Describe the evolution of the Civil Code of Quebec.

Quebec made its own Civil Code of Lower Canada in 1866, a right preserved to it by the Quebec Act of 1774, more than a decade after the colony had been ceded by France to Britain. A complete review of the Code was not undertaken for over a century when the new Civil Code of Quebec came into force in 1994.
The Civil Code of Quebec is more than just an act of a legislature setting down rules. It was a short evolution from its original philosophical roots shortly after the French Revolution. Its makers intended it to be a complete legal pathway for life: birth, family, business relationships, death, inheritance, and management of chief obligations and assets along the way. The modern code of 3,168 articles preserves this philosophical journey, set into ten books: Persons; The Family; Successions; Property; Obligations; Prior Claims and Hypothecs; Evidence; Prescription; Publication of Rights; and Private International Law.
Quebec does have other laws beyond its Civil Code. It creates statute law for specific matters just as the other provinces do. Even the Code itself is a statue of the Quebec legislature.

Difficulty: Challenging

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