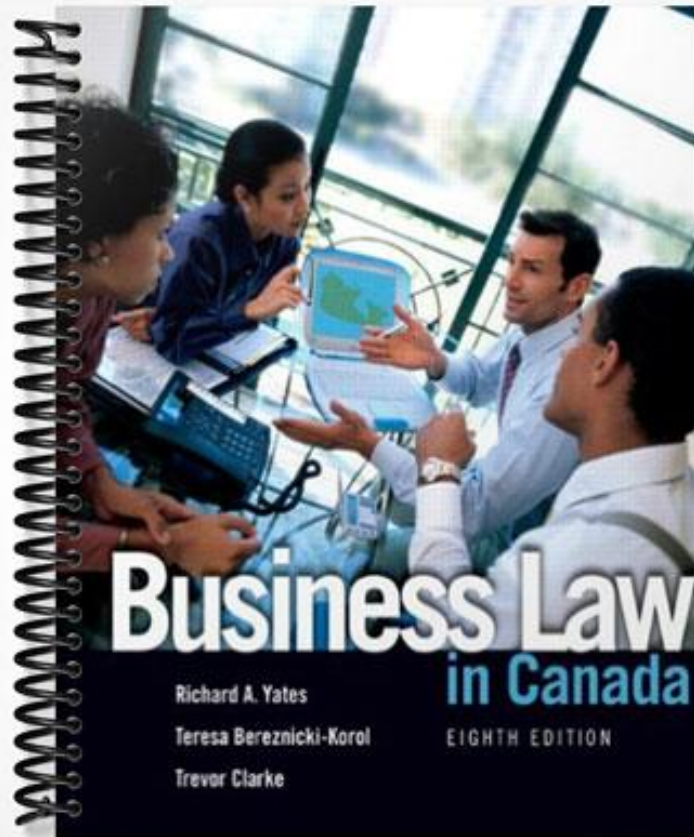


TEST BANK



Business Law
in Canada

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EIGHTH EDITION

MULTIPLE CHOICE. Choose the one alternative that best completes the statement or answers the question.

- 1) In a CBC interview, a noted environmentalist said that if he were forced to choose between the lives of the last breeding pair of whales and those of a boatload of men who were out to kill them, he would sacrifice the men to save the whales. He cited the war-crimes trials after World War II for the principle that immoral laws should be resisted to protect "the higher good." This position exemplifies which one of the following? 1) _____
- A) Natural law
 - B) The law of equity
 - C) The law of the sea
 - D) Legal realism
 - E) Legal positivism
- 2) Which of the following is correct with respect to the definition of law? 2) _____
- A) Law defined in terms of authority is a reflection of natural law theory.
 - B) Law defined in practical terms as to what the court will do is a reflection of legal positivism.
 - C) Law defined in terms of morality is a reflection of natural law theory.
 - D) Law defined in terms of authority is a reflection of legal realism.
 - E) Law defined in moral terms is a reflection of legal positivism.
- 3) Which of the following is the most usable definition of law? 3) _____
- A) We must define law in terms of what society needs people to do.
 - B) It is most useful to us to define law in terms of what people do.
 - C) It is most useful to us to define law in terms of what we think people ought to do.
 - D) We must define law in terms of what the courts will enforce.
 - E) We must define law in terms of what people used to do.
- 4) Which of the following is an example of substantive law? 4) _____
- A) The rule that establishes the type of document by which an action is commenced
 - B) The rule that a victim of fraud can sue
 - C) The rule that a tort action must be commenced within 2 years of the action complained of
 - D) The rule that any action under \$10,000 must be brought in the small claims court
 - E) The rule that hearsay evidence is not permitted in a trial
- 5) Which of the following is not an example of public law? 5) _____
- A) A person seeks review of a decision of the workers' compensation board for being beyond their authority.
 - B) A person challenges a local bylaw as being unconstitutional.
 - C) The police fail to inform you why you are being arrested.
 - D) A person sues their employer when they have been wrongfully dismissed.
 - E) A person is charged with breaking and entering under the criminal code.
- 6) Which of the following is true regarding categories of law? 6) _____
- A) Substantive law determines how procedural laws will be enforced.
 - B) Substantive law establishes the rights an individual has in society.
 - C) Procedural law establishes the limits on an individual's conduct.
 - D) Private law includes constitutional law.
 - E) Criminal law involves the rules that govern our personal, social, and business relations.
- 7) Which of the following is true regarding the history of the legal system used in England? 7) _____
- A) Historically, kings and nobles worked together to establish a common system of justice.

- B) During times when power was decentralized, local lords, barons, or sheriffs would administer justice.
- C) England alternately used common law and civil law legal systems, depending on the strength of the reigning king.
- D) The early Norman kings failed to establish a feudal system, which allowed Roman civil law to take hold in England.
- E) Strained relations between the English and French kingdoms explain why England adopted Roman civil law as its system of justice.
- 8) In terms of the development of the common law legal system, which of the following is true? 8) _____
- A) Trial by battle involved some psychological test.
- B) Trial by ordeal involved armed combat between the litigants or their champions.
- C) Historically, local lords, barons, or sheriffs held court as part of their feudal responsibility.
- D) Traveling courts, established by weak kings, provided a relatively unattractive method of resolving disputes.
- E) The courts of the nobles grew in power, eventually evolving into the modern courts of today.
- 9) The custom of following already decided cases is called 9) _____
- A) *Res judicata*.
- B) *Stare decisis*.
- C) civil law system.
- D) common law.
- E) *Ultra vires*.
- 10) Which of the following will override a particular provincial common-law rule as articulated by a trial-court judge of the highest trial level court in the province? 10) _____
- A) A contrary ruling by an appeal court judge in another province
- B) A new provincial statute to the contrary in another province
- C) A contrary ruling by a small claims court judge
- D) A similar subsequent ruling by a trial-court judge in another province
- E) A contrary subsequent ruling by the Court of Appeal of the province
- 11) Which one of the following statements is not accurate with respect to the Canadian legal system? 11) _____
- A) The original Canadian Constitution is now known as the *Constitution Act (1867)*.
- B) The full normal route of a civil action is from a provincial trial court to a provincial Court of Appeal to the Supreme Court of Canada.
- C) The principle of *stare decisis* provides that courts within a province are bound to follow previous decisions on the same legal point from the courts of other provinces.
- D) The traditional supremacy of parliament to make law has been limited to some extent by the *Charter of Rights and Freedoms*.
- E) The three major components of present Canadian law are the common law, equity, and statutes.
- 12) Predictability is important in a legal system for all of the following reasons except 12) _____
- A) to save time for judges.
- B) so that the facts can be distinguished.
- C) to enable the parties to avoid costly litigation.
- D) so matters can be settled without going to court.
- E) to save unnecessary court costs.
- 13) Which of the following is correct with respect to the civil law system? 13) _____

- A) The *Civil Code* governs all legal matters arising in Quebec including criminal actions.
 B) The *Civil Code* as used in Quebec covers private disputes between individuals.
 C) Quebec and New Brunswick use a system based on the French *Civil Code*.
 D) The code is persuasive only and the judges are free to disregard it where the situation warrants.
 E) The system used in Quebec is based on Justinian's code rather than the *Napoleonic Code*.
- 14) Which of the following is correct with respect to the characteristics of *stare decisis* in the common law? 14) _____
- A) It is based on trial by battle and trial by ordeal.
 B) Our statutes play the same role as the code used in the French system.
 C) It allows decisions of the courts to be predictable by the parties.
 D) This term refers to the role played by the law of equity in our system.
 E) It prevents a higher court from overruling a lower one.
- 15) Which of the following is correct with respect to the law of Quebec? 15) _____
- A) The code is binding and prior cases are just persuasive.
 B) The *Quebec Civil Code* was most recently revised in 1985.
 C) The code used in Quebec is a variant of Justinian's code rather than the *Napoleonic Code*.
 D) Once judges make decisions based on the code, it is those decisions that are binding on other judges faced with similar problems.
 E) The *Civil Code* used in Quebec is a direct copy of the Napoleonic code used in France.
- 16) Which one of the following is not generally recognized as a source of the common law? 16) _____
- A) Local British customs and traditions
 B) Roman civil law
 C) The law merchant
 D) The law of equity
 E) Church (or canon) law
- 17) Which of the following statements is incorrect with respect to the sources of our law? 17) _____
- A) The common law derived aspects of the law of families and estates from church (canon) law.
 B) The Courts of Chancery developed the law of equity.
 C) Equity is a system of law developed by the common-law judges to counter the unfair edicts of the king.
 D) The only province in which a judge is required to follow a comprehensive civil code is Quebec.
 E) The term *stare decisis* refers to the practice of following precedent, which forms the basis of our common-law system.
- 18) With regard to the relationship between the judiciary (courts) and the legislatures, which of the following is false? 18) _____
- A) The Supreme Court of Canada has the power to find the province didn't have the power to pass the statute, with the result that the statute would no longer be law.
 B) Although a statute is the creation of the legislature, the courts can affect the meaning of the statute through subsequent interpretation.
 C) A provincial statute could be struck down by the courts for being contrary to the *Charter of Rights and Freedoms*.
 D) The Supreme Court of Canada cannot strike down any statute passed by the federal parliament because "Parliament is supreme."
 E) Statute law overrides case law on the same point.

- 19) Which of the following statements best describes the law merchant? 19) _____
- A) The law merchant is a body of law designed to control trade practices.
 - B) Our laws relating to consumer protection are derived from the law merchant.
 - C) The law merchant was designed to protect consumers from unscrupulous merchants.
 - D) The law merchant is a body of law created by merchant guilds, which was incorporated into the common law.
 - E) The law merchant is another name for the *Sale of Goods Act*.
- 20) Which of the following will a judge not apply in a Canadian court? 20) _____
- A) Common law principles
 - B) Constitutional law
 - C) Roman law
 - D) Statute law
 - E) Equitable principles
- 21) Which of the following statements about statutes is false? 21) _____
- A) Statutes are laws created by legislative bodies.
 - B) Statutes often summarize or modify common law.
 - C) Government regulations are considered subordinate to statute law.
 - D) Statutes only apply when there is no common law covering the situation.
 - E) A statute may be federal or provincial.
- 22) At a recent computer show, you heard a student trying to explain our legal system to a man who recently immigrated from Russia. Which one of the following statements he made is incorrect? 22) _____
- A) Judge-made law in England came from two traditions, law and equity. Equity was a system of rules developed by the courts under the King's chancellor to counter the harshness of the common law.
 - B) All the provinces except Quebec follow law that stemmed from the English common law.
 - C) With the creation of our court system, the equitable tradition was lost. Today a judge of our superior court does not apply principles or remedies developed by the courts of equity.
 - D) The chief characteristic of the common law is the theory of precedent; that is, judges are bound by decisions of judges on superior courts in that jurisdiction on the same point of law.
 - E) We are governed by statutes passed by our elected representatives as well as by judge-made law.
- 23) The common-law courts refers to 23) _____
- A) the court of common pleas, the court of king's bench, and the chancery court.
 - B) the court of king's bench, the chancery court, and the court of equity.
 - C) the court of common pleas, the chancery court, and the exchequer court.
 - D) the court of common pleas, the court of king's bench, and the exchequer court.
 - E) the court of king's bench, the chancery court, and the exchequer court.
- 24) Which of the following was not one of the factors that led to the creation of the law of equity? 24) _____
- A) Rigidity in the common law courts
 - B) The adherence to precedent
 - C) The outcome in the common law courts was unpredictable
 - D) *Stare decisis*
 - E) The need for a supplement to the common law
- 25) Which of the following was not a source of law incorporated into the common law? 25) _____

- A) The law merchant
- B) Canon law
- C) Customs and traditions
- D) Roman law
- E) The *Napoleonic Code*

- 26) Which of the following is correct with respect to the law of equity? 26) _____
- A) Equity refers to the body of law created by the Courts of Chancery.
 - B) Equity no longer exists; the courts were merged.
 - C) Equity refers to the amount still owing on a debt.
 - D) Equity means fairness in our legal system.
 - E) The Court of Equity was one of the original common law courts along with the Court of King's Bench and the Court of the Exchequer.
- 27) Which of the following is not correct with respect to what the Courts of Chancery became? 27) _____
- A) Originally the Courts of Chancery were not bound by precedent but decided each case on its own merits.
 - B) The courts of equity also adopted *stare decisis*.
 - C) The Courts of Chancery developed the law of equity.
 - D) The law of equity ceased to exist when the courts were merged by the *Judicature Act* in the late 19th century.
 - E) The Courts of Chancery became as bogged down as the common-law courts.
- 28) In *R. v. Clough*, the BC Court of Appeal stated that 28) _____
- A) the Provincial Court Judge could not refuse to follow the decision of a senior court on the basis that the case had been wrongly decided.
 - B) provincial Court Judges have no authority to impose sentences in matters involving criminal offences such as drug trafficking.
 - C) the decision of a senior court must always be followed, regardless of the specific facts of the case.
 - D) decisions of the Supreme Court of Canada ought only be applied in federal cases.
 - E) the doctrine of *stare decisis* no longer applies.
- 29) Which of the following is true in respect of delegation between the federal and provincial governments? 29) _____
- A) Direct delegation between the federal and provincial government bodies is the only way governmental bodies can conduct their business.
 - B) The federal government is considered an inferior legislative body, so it can abdicate its powers, but only to a provincial government.
 - C) The provincial governments are considered inferior legislative bodies, so they can abdicate their powers, but only to the federal government.
 - D) Federal and provincial governments can delegate their powers to inferior bodies, such as boards and individual civil servants.
 - E) There is no practical way for governments to overcome the prohibition against delegation.
- 30) With regard to the Constitution of Canada, which of the following is false? 30) _____
- A) Members of our federal parliament in Ottawa have been given the sole power to amend the *Charter of Rights and Freedoms*.
 - B) The *Constitution Act (1867)* was a statute passed by the British Parliament, but it is no longer necessary to have the British Parliament amend it if Canadians want it amended.
 - C) The *Constitution Act (1867)* (formerly, the *British North America Act*) clarifies which matters can be dealt with by the provincial governments (i.e., the provincial legislatures).

- D) The *Constitution Act (1982)* contains a *Charter of Rights and Freedoms* that curbs the power of the federal and provincial legislatures.
- E) Our Constitution provides for a federal system of government, i.e., for two levels of government, federal and provincial.

- 31) Jake was charged with an offence. Which of the following could not be a legitimate defence in any circumstances? 31) _____
- A) The legislation violated his *Charter* rights.
 - B) The legislation creating the offence is beyond the authority of the body that created the offence.
 - C) He had a legal excuse for doing what he did.
 - D) He did not do the act complained of.
 - E) The legislative branch of government is the proper body to hear criminal cases.
- 32) Which of the following is incorrect with respect to the role of statutes in our legal system? 32) _____
- A) Where a properly passed provincial statute is in conflict with a well-established common-law principle, the statute will be void.
 - B) A bill is the term given to a statute before it has been passed by the legislature.
 - C) R.S.C. (1985) is a reference to the *Revised Statutes of Canada*, last done in 1985.
 - D) A statute, if it is clear and concise and properly passed, will always override common law and equity.
 - E) Once a statute has been interpreted and applied in a court, a subsequent judge in a lower court must follow that decision even though he disagrees with it.
- 33) In which one of the following cases can the Supreme Court of Canada not override the will of the federal parliament? 33) _____
- A) Parliament enacts legislation that is not clear.
 - B) The Supreme Court of Canada disagrees with the substance of the legislation.
 - C) Parliament enacts legislation that is *ultra vires*.
 - D) Parliament enacts legislation that infringes on rights contained in the *Charter of Rights and Freedoms*.
 - E) Parliament enacts legislation in an area outside their jurisdiction.
- 34) Which of the following is false with regard to Canada's Constitution? 34) _____
- A) The *Charter of Rights and Freedoms* cannot be amended by the federal parliament acting alone.
 - B) The *Constitution Act (1982)* "repatriated" the constitution; that is, we no longer have to ask the British Parliament to amend it.
 - C) Our constitution consists of more than just the *Constitution Act (1982)*.
 - D) The *Charter of Rights and Freedoms* is a part of the *Constitution Act (1982)*.
 - E) The *British North America Act of 1867*, the first document to determine which classes of subjects could be dealt with by the provinces and which by the federal government, was passed by our federal parliament.
- 35) To prepare for his immigration interview, Uncle Max needs some information about the relationship between the judiciary (courts) and the legislatures. Which of the following is false? 35) _____
- A) The courts have the power to declare a federal statute to be beyond the authority of the federal government to pass such a law.
 - B) The courts only have the power to overrule provincial statutes, not federal statutes.
 - C) The courts have no authority to affect a statute once the statute has been passed by our elected representatives in the federal parliament.
 - D) Although a statute is the creation of the legislature, the courts can affect the meaning of a

provincial statute through subsequent interpretation.

E) A provincial statute could be struck down by the courts for being contrary to the *Charter of Rights and Freedoms*.

- 36) In *Reference re Firearms Act (Can.)*, the Supreme Court of Canada 36) _____
- A) found that the pith and substance of the *Firearms Act* was primarily connected to trade and commerce.
 - B) stated that the control and regulation of guns was not a valid purpose for a criminal law.
 - C) determined that registration of guns was exclusively within the ambit of property and civil rights.
 - D) declined to make a decision, citing a conflict of interest.
 - E) upheld the *Firearms Act* as *intra vires* Parliament.
- 37) In *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, the Supreme Court of Canada 37) _____
- A) concluded that the federal and provincial legislation were in conflict, with the result that paramountcy would apply.
 - B) held that only the provincial legislation was invalid.
 - C) held that only the federal legislation was invalid.
 - D) concluded that the federal and provincial legislation were not in conflict; one simply went further than the other.
 - E) held that both the federal and provincial legislation were invalid.
- 38) Which one of the following statements is false with respect to Canadian constitutional law? 38) _____
- A) The *Charter of Rights and Freedoms* sets out basic rights and freedoms of Canadians that cannot be limited in any way.
 - B) The federal or provincial legislatures may pass legislation contrary to some sections of the *Charter of Rights and Freedoms* if they say that they are doing so.
 - C) The federal parliament and the provincial legislatures have separate, exclusive legislative powers.
 - D) The Canadian Constitution can now be amended by Canadians without having to seek the co-operation of the British Parliament.
 - E) The definitive word on the meaning of the provisions of the Canadian Constitution is left to the Supreme Court of Canada.
- 39) Which of the following is incorrect with respect to the *Charter* and Constitution? 39) _____
- A) Such rights as freedom of expression are now constitutionally guaranteed.
 - B) The most significant accomplishment of the *Constitution Act (1982)* was to create a new court structure for Canada.
 - C) Canada is no longer required to go to the parliament of England for any constitutional change.
 - D) The *B.N.A. Act (Constitution Act [1867])* divides power between the federal and provincial governments.
 - E) The provisions of the *Charter of Rights and Freedoms* guarantees us rights and freedoms that restrict both federal and provincial government.
- 40) Uncle Max just immigrated to Canada and learned some things about our laws and constitution on the plane. Which of the following things he heard is false? 40) _____
- A) The *British North America Act of 1867*, the first document to determine which classes of subjects could be dealt with by the provinces and which by the federal government, was passed by the British Parliament.
 - B) The *Charter of Rights and Freedoms*, part of the *Constitution Act (1982)*, has been entrenched in our constitution and therefore cannot be changed.

- C) There are many aspects of our constitution we have inherited from Great Britain.
- D) Our constitution provides that the provincial legislatures have exclusive jurisdiction to enact laws concerning education and property in the province.
- E) Our federal parliament is not supreme; it was limited by the *Constitution Act (1867)* and further by the *Constitution Act (1982)*.

- 41) Which of the following is not a legal right under the *Charter*? 41) _____
- A) Everyone has the right to be presumed innocent until proven guilty.
 - B) Everyone has the right not to be deprived of life, liberty, and security.
 - C) Everyone has the right not to be subjected to any cruel and unusual punishment.
 - D) Everyone has the right not to be arrested or detained without being told why.
 - E) Everyone has the right, if acquitted of an offence, not be tried for it again.
- 42) Ms. Lott was required by a provision in the B.C. school act to retire from her position as an elementary teacher at the age of 65. She did not want to retire. She commenced an action against the school board. Which of the following is false with regard to this situation? 42) _____
- A) The federal legislature is the proper body to decide if the provincial school act is lawful.
 - B) A provision of the *Charter of Rights and Freedoms* of the *Constitution Act* prohibits discrimination.
 - C) The people of Canada, through their elected representatives, could change the *Constitution Act*, including the *Charter of Rights and Freedoms*.
 - D) The Constitution allows the legislature to discriminate if it can be demonstrated that the discrimination is justified in a free and democratic society.
 - E) The legislature, if it is acting within its authority (i.e., within s. 92 of the *Constitution Act*), can pass a statute that discriminates if it states that the statute will operate notwithstanding the provisions of the *Charter of Rights and Freedoms*.
- 43) With regard to the relationship between the judiciary (courts) and the legislatures, which of the following is false? 43) _____
- A) Although a statute is the creation of the legislature, the courts can affect the meaning of the statute through subsequent interpretation.
 - B) The courts have no authority to affect a statute once it has been passed by our elected representatives in the federal parliament.
 - C) A provincial statute could be struck down by the courts for being contrary to the *Charter of Rights and Freedoms*.
 - D) Statute law overrides case law on the same point.
 - E) The courts have the power to declare a provincial statute to be void and of no effect, if it is beyond the authority of the provincial government to pass such a law.
- 44) Which one of the following is not one of the protections given under the *Charter of Rights and Freedoms*? 44) _____
- A) The right not to have your life, liberty or security interfered with without the fundamental rules of justice being followed
 - B) The right to own and use property
 - C) The right to move from one part of Canada to another
 - D) The right for citizens to vote
 - E) The right not to be discriminated against on the basis sex race or age
- 45) Which one of the following statements is not correct with respect to the limitations on the operation of the *Charter of Rights and Freedoms*? 45) _____
- A) Any provision of the *Charter* can be overridden simply by the provincial or federal enactment stating that it operates notwithstanding the provision of the *Charter*.

- B) The federal parliament or provincial legislatures can override certain sections of the *Charter* if they say that their enactment operates notwithstanding the section of the *Charter*.
- C) A federal statute can override the *Charter* where it is reasonable to do so.
- D) A provincial statute can override the *Charter* where it is reasonable to do so.
- E) The *Charter* only applies to relations with government and government institutions, not relations between private individuals.
- 46) If the following questions were before the courts, which would not raise a constitutional issue? 46) _____
- A) Can the federal government pass a law banning all advertising of tobacco products?
- B) Can a federal statute, the *Narcotic Control Act*, prevent a man from using marijuana in his church, the Church of the Universe?
- C) Can the provincial legislature pass a statute prohibiting students from meeting to protest school fee increases?
- D) Are an accused's rights infringed if he is arrested solely on the basis of a Crime Stoppers tip?
- E) Is a lawyer negligent if he fails to do a computer search of the latest provincial regulations relevant to his case?
- 47) Which of the following questions does not raise a constitutional issue? 47) _____
- A) Does the federal government have the right to pass a statute dealing with property rights?
- B) Is a provision of the *Income Tax Act* invalid if it discriminates between married and unmarried persons?
- C) Do the members of a provincial government have the power to pass a statute requiring young men to pay more for car insurance than young women?
- D) Is the contract void if it lacks adequate consideration flowing from the buyer to the seller?
- E) Is a provincial act making it a crime for a person to advertise his house for sale by a sign on his front lawn beyond the power of the provincial legislature?
- 48) Which among the following was not a purpose of the *Constitution Act (1982)*? 48) _____
- A) To guarantee individual rights
- B) To list government enactments having constitutional status
- C) To place some limitations on the supremacy of parliament
- D) To redefine the role of the queen and her representative, the Governor General
- E) To protect individuals against acts of governments or their agencies that infringe on their rights
- 49) Which of the following is correct with respect to limitations on the *Charter*? 49) _____
- A) It cannot be used by a resident who is not a citizen of Canada.
- B) Interference with rights must be justifiable in a free and democratic society.
- C) It only applies to the federal government.
- D) It only applies to government employees.
- E) It does not protect the rights of aboriginal people.
- 50) Which of the following statements is correct with respect to human rights laws in Canada? 50) _____
- A) Protection against discrimination on the basis of sexual orientation is recent and not yet specified in some human rights statutes.
- B) Federal and provincial human rights commissions are courts, and the commissioners are superior court judges with the rights and powers associated with that office.
- C) All employers have an obligation to accommodate all of the religious practices and disabilities of their employees.
- D) Human rights in the federal area are protected by the federal human rights commission, which enforces the *Canadian Bill of Rights*.

E) From a business point of view, the *Charter* is much more important than the provincial human rights legislation.

- 51) Which of the following statements is incorrect with respect to our constitutional law? 51) _____
- A) The *Bill of Rights* wasn't effective because it was interpreted narrowly and not entrenched.
 - B) The *Charter* is part of the *Constitution Act (1982)*.
 - C) The *Constitution Act (1982)* was passed by both the English and Canadian parliaments.
 - D) The *Charter* is entrenched and, as such, none of its provisions can be overridden by any level of government.
 - E) The *Constitution Act (1982)* is the supreme law of Canada and overrides not only statutes but judge-made law as well.
- 52) Which of the following is incorrect with respect to the impact of the passage of the *Charter of Rights and Freedoms* in Canada? 52) _____
- A) Section 33 allows parliament or the legislature to override any provision of the *Charter* providing they clearly state they are doing so "notwithstanding" the specific provision of the *Charter*.
 - B) Section 1 of the *Charter* places reasonable limitations on the rights set out in the *Charter*.
 - C) The *Charter* does not apply to private disputes between individuals.
 - D) The passage of the *Charter* has given judges more power than they had before its passage.
 - E) The passage of the *Charter* has placed limits on the supremacy of parliament.
- 53) Which of the following is correct with respect to the *Charter of Rights and Freedoms*? 53) _____
- A) The effect of the notwithstanding clause is to shift the power back to the judges.
 - B) Section 33 (the notwithstanding clause) only applies to some specified provisions of the *Charter*.
 - C) The federal or the provincial legislature cannot override a person's right not to be discriminated against on the basis of race or religion.
 - D) The parliament or provincial legislature can only override a section of the *Charter* under the notwithstanding clause if they clearly state they are doing so and then wait 5 years before implementing the provision.
 - E) The federal or provincial legislature cannot override a person's right to free speech.
- 54) The *Charter of Rights and Freedoms* does not apply to which of the following? 54) _____
- A) The police
 - B) The provincial cabinet
 - C) A restaurant
 - D) A human rights commission
 - E) A municipal council
- 55) Which of the following statements is incorrect with respect to the application of the *Charter of Rights and Freedoms*? 55) _____
- A) Any provincial human rights legislation must comply with the provisions of the *Charter*.
 - B) The *Charter of Rights and Freedoms* applies to the federal and provincial governments but not to local municipal governments.
 - C) The *Charter of Rights and Freedoms* does not regulate the relationship between a university or hospital and its employees.
 - D) The *Charter* does not specifically prohibit discrimination on the basis of sexual preference.
 - E) The provisions of the *Charter* only apply to government and to any government representative exercising a statutory power.
- 56) Which of the following is incorrect with respect to the rights of the party whose *Charter* rights have been

violated? 56)

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- A) The court is free to impose any remedy for a *Charter* violation that it considers appropriate.
- B) The rights and freedoms guaranteed in the *Charter* vary depending on whether a person is a citizen, a resident, or a visitor.
- C) When evidence is obtained in violation of a person's *Charter* rights, the court may exclude that evidence.
- D) The *Charter* gives a court the power to exclude any evidence that has been obtained in violation of a *Charter* right.
- E) The remedies available to the victim of a violation of a *Charter* provision are restricted to those listed in the *Charter*.

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

57) _____

- A) The right to bear arms
- B) The right to have your children educated in any language
- C) The right to own property
- D) The right to be assured of a minimum level of income
- E) The right to vote in federal and provincial elections

58) Which of the following is correct with respect to language rights as set out in the *Charter*?

58) _____

- A) Everyone in Canada has the right to have all federal and provincial government services provided in both English and French where numbers warrant.
- B) Everyone in Canada has the right to have all federal and provincial government services provided in both French and English no matter where they are.
- C) Everyone in Canada has the right to have their child educated in their choice of English or French where numbers warrant.
- D) Only Canadian citizens have the right to have their children educated in their choice of English or French where numbers warrant.
- E) Only federal government services must be provided in both English and French.

59) Which one of the following is a *Charter* right that the provinces could not override through the use of the notwithstanding clause (Section 33 of the *Charter*)?

59) _____

- A) The right to not be discriminated against because you are black
- B) The right not to be subjected to any cruel or unusual punishment
- C) The right to move anywhere you want in Canada
- D) The right to worship who, how, or what you wish
- E) The right to be told why you are being arrested

60) Which of the following is correct with respect to the impact of the *Charter of Rights and Freedoms*?

60) _____

- A) The passage of the *Charter* has shifted power from the courts to the parliament.
- B) The passage of the *Charter* has increased the power of both parliament and the provincial legislatures.
- C) The passage of the *Charter* has increased the power of the courts.
- D) The passage of the *Charter* has shifted power from the federal to the provincial government.
- E) The *Charter* has shifted power from the provinces to the federal government.

61) Which of the following is not correct with respect to the impact of the *Charter of Rights and Freedoms*?

61) _____

- A) The passage of the *Charter* has shifted power from the parliament to the courts.
- B) The passage of the *Charter* has placed significant limitations on the power of parliament and provincial legislatures.
- C) The passage of the *Charter* has increased the power of the courts.

- D) The passage of the *Charter* has shifted power from the federal to the provincial government.
- E) The passage of the *Charter* has led the courts to become more activist in making law.

62) Consider the following statements with respect to the Canadian Constitution. Identify the false statement. 62) _____

- A) One effect of the new Constitution and its *Charter* is to change the role of the courts into a more active law-making one than previously existed.
- B) The federal and provincial legislatures can override some of the fundamental constitutional rights, such as freedom of expression and religion, by simply saying that some new legislation "operates notwithstanding" the *Charter of Rights and Freedoms*.
- C) The *Charter of Rights and Freedoms* only applies to public matters and governmental bodies.
- D) The *Charter* prohibits discrimination on the basis of sex.
- E) The rights established in the Constitution are absolute and not subject to amendment.

63) In *Newfoundland (Treasury Board) v. Newfoundland and Labrador Association of Public and Private Employees*, the Supreme Court of Canada 63) _____

- A) found that neither section 1 nor section 15 of the *Charter* could be applied to actions of the government.
- B) concluded that the government was not facing serious financial difficulty.
- C) determined that the section 15 equality rights of the female employees had not been infringed.
- D) held that there was no gender discrimination.
- E) agreed that the government could renege on its agreement, because it was reasonable to do so under section 1 of the *Charter*.

64) Which of the following is true regarding human rights? 64) _____

- A) There is still no legislative protection against sexual harassment.
- B) Both the federal and provincial governments have established special human rights tribunals authorized to hear complaints of human rights violations.
- C) Human rights tribunals have the power to investigate human rights complaints, but no authority to impose sanctions nor to provide remedies.
- D) Human rights protection applies to all areas, without restriction.
- E) All remaining legal issues concerning human rights protection of same-sex relationships have been resolved.

65) In *Ontario Human Rights Commission et al. v. Simpsons-Sears Ltd.*, the Supreme Court of Canada 65) _____

- A) determined that it is the intention to discriminate that is relevant, not whether or not discrimination actually occurred.
- B) found that the employer was required to take reasonable steps to accommodate the religious practices of an employee.
- C) held that religious discrimination is acceptable in the workplace.
- D) decided that only certain religions are worthy of protection under human rights legislation.
- E) concluded that it is unnecessary to accommodate an employee when doing so would inconvenience the employer.

66) Which of the following is true regarding human rights legislation? 66) _____

- A) Material on the Internet is exempt from the application of human rights legislation.
- B) Since the introduction of the *Charter of Rights and Freedoms*, provincial human rights codes are no longer significant.
- C) Human rights commissions cannot deal with complaints arising from business interactions.
- D) Canada's first-ever human rights complaint concerning an Internet hate site involved Ernst Zundel.

E) The mandate of human rights commissions is to encourage the government to follow principles of equality.

TRUE/FALSE. Write 'T' if the statement is true and 'F' if the statement is false.

- 67) Law and morality are the same thing. 67) _____
- 68) The legal philosophy that defines law in terms of the authority of the person who passed it is called legal realism. 68) _____
- 69) Substantive law deals with rules that establish a structure for enforcing rights and obligations. 69) _____
- 70) Civil law is based on a codified system. 70) _____
- 71) Judges in a common-law system base their decisions on other judges' decisions. 71) _____
- 72) *Stare decisis* is the Latin term for following the Code. 72) _____
- 73) A British Columbia judge is required to follow the decisions of a higher court in Alberta. 73) _____
- 74) The common-law courts as developed by King Henry and subsequent kings were used to impose the will of the sovereign on the people. 74) _____
- 75) In our system, if a judge feels that the decision made by a judge in a higher court is wrong, he or she is free to disregard it. 75) _____
- 76) *Stare decisis* can contribute to stagnation. 76) _____
- 77) *Stare decisis* in the common-law system plays the same role as the code in the French system, lending predictability to the law. 77) _____
- 78) Common law is also known as judge-made law. 78) _____
- 79) Canon law refers to the law created by the Church. 79) _____
- 80) The law of equity was developed in the Court of Chancery. 80) _____
- 81) The Courts of Chancery originally followed *stare decisis* and precedent, as did the common-law courts. 81) _____
- 82) Although the Courts of Chancery and common-law courts were merged, the bodies of law remain separate today. 82) _____
- 83) The law of equity simply means fairness in our legal system. 83) _____
- 84) Subordinate legislation includes regulations and municipal bylaws. 84) _____
- 85) Legislation forms the foundation of our legal system, although judge-made law continues to take precedence over statutes. 85) _____
- 86) Parliamentary supremacy is no longer completely in effect in Canada today. 86) _____
- 87) Transfer payment schemes can allow the federal government to exercise some control over how a provinc

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governm
ent
operates
certain
program
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with
provinci
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jurisdicti
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- 88) Once a bill has received royal assent, it may be effective immediately or it may be effective on later proclamation. 88) _____
- 89) All provincial bills require royal assent of the Governor General before they can become law. 89) _____
- 90) While the *Charter of Rights and Freedoms* protects individuals' rights from government abuses, there is still no legislation to protect individuals' rights from abuse by the public. 90) _____
- 91) Sexual harassment is regarded as a form of discrimination on the basis of gender. 91) _____
- 92) Legislation prohibiting all prison inmates from voting in federal elections was found to constitute an unjustified denial of the right to vote. 92) _____

SHORT ANSWER. Write the word or phrase that best completes each statement or answers the question.

- 93) Why is law important? 93) _____
- 94) The type of law that depends on a moral code or morality to define what the law is, is called _____. 94) _____
- 95) The legal theory that defines law in terms of a command by someone in authority is called _____. 95) _____
- 96) The theory of law that defined law in terms of what the courts actually do is called _____. 96) _____
- 97) Contrast substantive law and procedural law. 97) _____
- 98) Contrast public law and private law. 98) _____
- 99) What role does the civil code system of law play in Canada? 99) _____
- 100) Explain what role precedent plays in the civil code legal system. 100) _____
- 101) When was the last time Quebec revised its *Civil Code*? 101) _____
- 102) Explain what is meant by *stare decisis*. 102) _____
- 103) Is the B.C. Supreme Court judge bound to follow an Ontario Court of Appeal decision? 103) _____

- 104) What role does the decision made by an Ontario Court of Appeal judge have on a B.C. Supreme Court judge? 104) _____
- 105) Indicate the three courts that together made up the common-law courts. 105) _____
- 106) The body of rules developed by the Court of Common Pleas, Court of King's Bench, and Exchequer Court became known as _____. 106) _____
- 107) What gives judges flexibility in deciding whether or not to apply a particular precedent? 107) _____
- 108) Give two examples of other areas of law from which the common-law judges borrowed in order to create the common law. 108) _____
- 109) Explain why the law of equity developed. 109) _____
- 110) The body of law developed by the Courts of Chancery is called _____. 110) _____
- 111) The law of equity was developed by _____. 111) _____
- 112) "If somebody did not like the decision of the judge in the common-law court, they could appeal to the Court of Chancery." Indicate what is wrong with that statement. 112) _____
- 113) "The term 'equity' refers to fairness in our legal system." Discuss the accuracy of this statement. 113) _____
- 114) What is meant by a statute? 114) _____
- 115) Explain the relationship between regulations and statutes. 115) _____
- 116) Explain why statutes override the common law. 116) _____
- 117) Which province in Canada continues to use a civil code system? 117) _____
- 118) "Canada's Constitution is embodied in the *British North America Act*." Comment on the accuracy of that statement. 118) _____
- 119) What is the significance of the *Constitution Act (1867)*? 119) _____
- 120) Explain what is meant by the principle of the rule of law. 120) _____
- 121) When we speak of parliamentary supremacy in Canada, which is based on a confederation between federal and provincial government, which level of government is supreme? 121) _____
- 122) Give examples of areas that fall under federal jurisdiction. 122) _____
- 123) Give an example of powers that are given to the Provincial government under Section 92 of the *Constitutional Act (1867)*. 123) _____
- 124) When an individual is faced with federal legislation and provincial legislation both dealing with the same subject matter, which should he obey? 124) _____

- 125) How do transfer-payment schemes help to circumvent the constitutional rigidity created by the division of powers? 125) _____
- 126) What is meant by the *Revised Statutes of Canada*? 126) _____
- 127) How does the *Charter of Rights and Freedoms* affect the principle of parliamentary supremacy? 127) _____
- 128) Why did we need the *Charter of Rights and Freedoms*? 128) _____
- 129) What is the effect of the passage of *Charter of Rights and Freedoms* on the principle of supremacy of parliament? 129) _____
- 130) Explain the limitations on the application of the *Charter of Rights and Freedoms*. 130) _____
- 131) "An individual who is refused service at a restaurant because of his race has had his *Charter* rights violated." Comment on the accuracy of this statement. 131) _____
- 132) What is a "sunset clause" in the context of limitations on the *Charter of Rights and Freedoms*? 132) _____
- 133) Indicate what kind of personal freedoms are protected under the *Charter*. 133) _____
- 134) Indicate the kind of democratic rights protected under the *Charter*. 134) _____
- 135) What kind of rights are protected under the heading of mobility rights in the *Charter*? 135) _____
- 136) What kind of legal rights are protected under the *Charter*? 136) _____
- 137) Explain what is meant by the term "principles of fundamental justice." 137) _____
- 138) What kind of equality rights are protected by the *Charter of Rights and Freedoms*? 138) _____
- 139) How are language rights protected by the *Charter of Rights and Freedoms*? 139) _____
- 140) Explain how the rights set up in the *Charter of Rights and Freedoms* are limited. 140) _____
- 141) Explain how Section 1 of the *Charter of Rights and Freedoms* limits those rights and freedoms. 141) _____
- 142) How does Section 33 limit the rights set out in the *Charter of Rights and Freedoms*? 142) _____
- 143) "The *Charter of Rights and Freedoms* is separate from, and therefore has no bearing on, other human rights legislation." Discuss the accuracy of this statement. 143) _____

ESSAY. Write your answer in the space provided or on a separate sheet of paper.

- 144) The term "law" may be defined in a variety of ways. Explain.
- 145) Explain the relationship between common law and equity in the development of our legal system.
- 146) "In our modern legal system, the term 'equity' is synonymous with fairness." Discuss the accuracy of that statement.

- 147) Explain the relationship between statutes, equity, and common law in our legal system, including a brief discussion on the historical development of these three major aspects of our law.
- 148) Explain the role the *British North America Act* played in Canada's constitutional history.
- 149) Discuss the constitutional rigidity created by the 1867 division of powers and the means used by the federal and provincial governments to overcome this.
- 150) Compare and contrast provincial and federal passage of bills.
- 151) Discuss the significance of the passage of the *Charter of Rights and Freedoms* in Canada's legal system.
- 152) Discuss any limitations on the application of the *Charter of Rights and Freedoms*.
- 153) Discuss why it is important for businesspeople to become familiar with the human rights legislation in force in your province.

- 1) A
- 2) C
- 3) D
- 4) B
- 5) D
- 6) B
- 7) B
- 8) C
- 9) B
- 10) E
- 11) C
- 12) B
- 13) B
- 14) C
- 15) A
- 16) D
- 17) C
- 18) D
- 19) D
- 20) C
- 21) D
- 22) C
- 23) D
- 24) C
- 25) E
- 26) A
- 27) D
- 28) A
- 29) D
- 30) A
- 31) E
- 32) A
- 33) B
- 34) E
- 35) C
- 36) E
- 37) D
- 38) A
- 39) B
- 40) B
- 41) B
- 42) A
- 43) B
- 44) B
- 45) A
- 46) E
- 47) D
- 48) D
- 49) B
- 50) A
- 51) D

- 52) A
- 53) B
- 54) C
- 55) B
- 56) E
- 57) E
- 58) E
- 59) C
- 60) C
- 61) D
- 62) E
- 63) E
- 64) B
- 65) B
- 66) D
- 67) FALSE
- 68) FALSE
- 69) FALSE
- 70) TRUE
- 71) TRUE
- 72) FALSE
- 73) FALSE
- 74) FALSE
- 75) FALSE
- 76) TRUE
- 77) TRUE
- 78) TRUE
- 79) TRUE
- 80) TRUE
- 81) FALSE
- 82) TRUE
- 83) FALSE
- 84) TRUE
- 85) FALSE
- 86) TRUE
- 87) TRUE
- 88) TRUE
- 89) FALSE
- 90) FALSE
- 91) TRUE
- 92) TRUE
- 93) It determines how effectively we interact with one another. It governs personal and commercial relationships.
- 94) Natural law
- 95) Legal positivism
- 96) Legal realism
- 97) Substantive law establishes the rights an individual has in society and the limits on that individual's conduct.
Procedural law determines how the substantive laws will be enforced.
- 98) Public law includes constitutional law and the laws that affect an individual's relationship with the government.
Private law involves the rules that govern our personal, social, and business relations.
- 99) Quebec uses a civil code for areas that fall under their jurisdiction.
- 100) Prior judges' decisions are merely persuasive, not binding; the code is binding.
- 101) A new *Civil Code* in Quebec came into effect on January 1, 1994.

- 102) This means essentially "let the decision stand" and involves the process existing in the common-law system whereby one judge's decision must be followed by another. This is the system of precedent whereby one judge's decision forms a precedent that must be followed by other judges as made in other cases.
- 103) No, it's only at the same level or higher in the same court hierarchy (i.e., the B.C. Court of Appeal, the B.C. Supreme Court) that the decision must be followed. Every judge must follow Supreme Court of Canada decisions, but the Supreme Court of British Columbia need only follow the B.C. Court of Appeal, and the Supreme Court of Canada need not follow the decision of any provinces.
- 104) The decision is merely persuasive. It is not binding since that judge is not in the same court hierarchy (i.e., B.C. Court of Appeal, Supreme Court of Canada).
- 105) Court of Common Pleas, Court of King's Bench, Exchequer Court.
- 106) The common law
- 107) While a judge cannot stray very far from the established line of precedents, a judge can "distinguish the facts" by finding essential differences in the facts of the current case and the prior decision.
- 108) Roman civil law, canon law or church law, and the law merchant (not equity or the Chancery).
- 109) Because of the inequity and harshness of the common law, people petitioned the king for relief. The king appointed the chancellor and eventually the chancery courts to overcome the inflexibility and harshness of the common-law rules. The body of law that developed was equity, and so it can be said that equity developed to supplement the common law because of the inadequacy and rigidity of the common law.
- 110) Equity
- 111) The Courts of Chancery
- 112) The Court of Chancery was a separate court system altogether. You didn't need to appeal from the common-law courts to the Courts of Chancery; rather, you went to the Chancery in the first place because you knew that there would be no remedy provided or available in the common-law courts.
- 113) Equity is that body of law developed by the Courts of Chancery and may or may not be considered fair by today's standards. By the *Judicature Acts*, the Courts of Chancery and common-law courts were merged into one court system, the English High Court of Justice. It must be emphasized that the bodies of law developed (that is, common law and equity) remain separate and distinct bodies of law.
- 114) A statute is a parliamentary or legislative enactment having the force of law. It is sometimes referred to as a bill prior to passage and legislation or an act afterwards.
- 115) Often a statute will empower a particular government department to develop regulations pursuant to the statutes to enforce or give effect to the provisions of that statute. For example, regulations under the *Employment Insurance Act*, *Workers' Compensation Act*, etc., have the force of legislation if they are passed properly pursuant to these statutes.
- 116) Because of the principle of parliamentary supremacy, when parliament passes a statute, it overrides common law or equity and determines the law.
- 117) Quebec
- 118) This is incorrect. Canada has a constitution similar to Great Britain, which is an unwritten constitution that includes a great many separate constitutional documents such as the *Magna Carta*, *English Bill of Rights*, etc. The *British North America Act* is just one of the elements of that constitution. The *British North America Act* is now referred to as the *Constitution Act (1867)*.
- 119) It created the Dominion of Canada and, for our purposes today, it divides powers between the federal and provincial governments.
- 120) This principle protects citizens of Canada from arbitrary action; that is, any government official in Canada must be able to point to some statute or regulation authorizing them to do what they have done.
- 121) Both or neither; Sections 91 and 92 divide powers between the federal and provincial governments.
- 122) money, banking, postal service, currency, criminal law, appointment of judges to a higher level of provincial and federal courts, aviation, telecommunications.
- 123) Hospitals, education, public health, administration of courts, commercial activities carried on at the local level
- 124) If the federal legislation is valid, the provincial legislation is valid, and there is no conflict between them (that is, one just sets higher standards than the other), the individual must obey the higher standard. If there is a true conflict between them, however, the principle of paramountcy dictates that the federal legislation be followed.
- 125) Through such schemes, the federal government can exercise influence over how a provincial government operates

programs under provincial control.

- 126) Every so many years the statutes are summarized and brought up to date. When this happens, it is referred to as the *Revised Statutes*. The last time this was done in Canada was 1985. Hence the *Revised Statutes of Canada (1985)*.
- 127) Prior to 1982, in theory at least, parliament was supreme. Either the federal government or the provincial government had the power to pass all types of legislation. After 1982, however, the *Charter* placed limitations on that power, thus redirecting power to the courts and limiting the principle of supremacy of parliament.
- 128) Although we relied on the parliamentarians, before the passage of the *Charter*, to protect basic rights and freedoms, there are enough examples of violations of those basic rights and freedoms in recent times to cast doubt on whether there were sufficient safeguards. Thus, the *Charter of Rights and Freedoms* was passed to place a check on the power exercised by the parliamentarians.
- 129) Prior to passage of the *Charter*, reliance was placed on the parliamentarians to protect basic rights and freedoms. Subsequent to the *Charter*, that same reliance is now placed on the judges in the court. There has been a transfer of power from the parliamentarians to the courts, and to that extent at least it can be said that parliament is no longer supreme.
- 130) The *Charter* only applies to public matters such as government and the laws they create. This applies to the federal, provincial and municipal levels of government.
- 131) The *Charter of Rights and Freedoms* is not intended to cover this situation; it's not a public matter involving government, rather, a private matter between citizens. That must be dealt with by the local human rights legislation in the province. However, if that local human rights legislation does not counter this situation, then that human rights legislation, which is an act of the government, can be challenged under the *Charter*.
- 132) A "sunset clause" is applied to the operation of section 33. If the notwithstanding clause is invoked, the statute must be re-enacted by that legislative body every five years.
- 133) Freedom of conscience, religion, freedom of belief, opinion, expression, freedom of peaceful assembly and association.
- 134) The right to vote, the requirement that elections be held on a regular basis, and that the legislature be elected and sit at least once a year.
- 135) The rights of Canadians to travel and live anywhere within the geographical limitation of Canada, and the right to earn a livelihood in those areas.
- 136) The rights to life, liberty and security of person and not to be deprived thereof, except in accordance with the principles of fundamental justice; the right to be free from any unreasonable search and seizures; the right to be free of arbitrary imprisonment; the right to be informed about why we are arrested; the right to retain counsel; the right to be tried within a reasonable time; the presumption of innocence; the right not to be tried twice for the same offence; the right not to be subjected to any cruel and unusual punishment.
- 137) This is similar to the American "due process" or the rules of natural justice. A person is entitled to a fair hearing, including an opportunity to have notice of the charges that are brought against him, an opportunity to speak to those charges, to present his side of the case, the right to cross-examine witnesses if necessary to determine the validity of the accusation or charges, the right to be tried by somebody free of bias.
- 138) The *Charter* prohibits discrimination on the basis of sex, religion, race, age, colour, mental or physical disability, and national or ethnic origin. It also states that equality of male and female is guaranteed and that aboriginal rights of the Native peoples are not affected in any way. (NOTE: Section 15 of the *Charter* is really broader than this and prohibits any form of discrimination.)
- 139) The *Charter* gives French and English equal status and protects the right of minorities to use those languages, including the right to have your children educated in one of those languages providing it is the first language of the parents or they received their primary education in that language.
- 140) 1. The *Charter* only applies to public matters and government relations.
2. Section 1 of the *Charter* limits the rights and freedoms so that they can be interfered with where to do so could be "demonstrably justified in a free and democratic society." Section 33, the "notwithstanding clause," allows the provinces or the federal government to override Section 2 or Sections 7-15 by so declaring in the legislation.
- 141) Legislation can be passed inconsistent with the rights set out in the *Charter of Rights and Freedoms* where to do so can be justified in a free and democratic society—in other words, where it is reasonable to do so.
- 142) This is the "notwithstanding clause"; it allows the government, for a period of five years, to override the rights set out in Sections 2 and 7-15 of the *Charter* by so stating in the legislation. At the end of five years, such overriding

legislation lapses and must be passed again.

- 143) The statement is inaccurate. Because the *Charter* requires that every individual have "equal protection and equal benefit of the law", the courts will essentially rewrite human rights legislation that is found to be under-inclusive (such as in *Vriend v. Alberta* with respect to sexual orientation).
- 144) Students should note that it is not possible to define law in a single, all-inclusive way, and that philosophers have been trying to define law for centuries. Students should identify the different ways in which law has been defined. In particular, law has been defined in moral terms (natural law theorists), defined by looking at its source (legal positivists), and defined in practical terms (legal realists). For purposes of studying business law, law can be defined as the body of rules that can be enforced by the courts or by other government agencies. Students ought to recognize that this definition of law has limitations, as it does not suggest what is just or moral.
- 145) The student should relate how equity developed and why. The inadequacies of the common law led to the need for equity. Problems with the common law included the fact that *stare decisis* caused stagnation, and the remedies provided in common law were inadequate. This led to people petitioning the king for relief. Eventually this is taken over by the chancellor, and the Court of Chancery developed. The body of law called equity was developed by the Court of Chancery. It supplements the common law. But the Chancery Courts also became stagnant. Equity also became inadequate and unfair. Eventually the courts merged but not the separate bodies of law.

Equity is the body of law developed by the Courts of Chancery and, although the courts were merged, the bodies of law remain distinct. Today the law of equity is applied by judges along with the common law and statutes.

- 146) Students should point out that equity is that body of law developed by the Courts of Chancery and may or may not be fair in modern terms. This requires a discussion of how equity developed and why as discussed above. The student should comment on the inadequacies of the common law, including the use of *stare decisis* causing the development of law to stagnate, and the inadequate common-law remedies. This led to people petitioning the king for relief. This was taken over by the chancellor and eventually the Court of Chancery developed. Equity then is the body of law developed by the Court of Chancery and it is intended to supplement the common law. But the Chancery Courts also became stagnant with their own serious problems, so much so that the law as administered in those courts was not much better than in the common law courts. Equity then does not mean fairness but that body of law developed in the Courts of Chancery, and it may or may not be fair by today's standards. The two courts' structures were merged but not the bodies of law.

The answer should show that students understand that the law of equity was developed by the Chancery Court and hopefully is fairer than the common law, but that it is a mistake to equate equity with fairness in our legal system.

- 147) Students should explain how equity and common law are judge-made law and that statutes are made by parliament or by the provincial legislatures. They should also explain that equity was created as a supplement to the common law to overcome its harshness and rigidity. Since parliament is supreme, its acts override judge-made law, and thus statutes override common law and equity. If there is no overriding statute, a judge will apply either equity or common law, depending on the subject matter and what is asked for in a given case. The constitutional authority of the body passing the statute with reference to the *Constitution Act (1867)* and the *Charter* will determine its validity. The statute will normally only override judge-made law if its provisions are specific and unambiguous.

Students' answers should show that they understand not only what statutes, equity, and common law are as the components that make up our law, but also where they come from and how they are applied in our courts today.

- 148) Students should describe the nature of Canada's constitution and the place of the BNA Act in it. They should point out that Canada has a constitution similar to Great Britain's, that it is unwritten in the sense that it is not contained in just one document, and that all of the great English constitutional traditions are also part of our constitution. These traditions include the rule of law, the *Magna Carta*, and the supremacy of parliament. Students should also state that the BNA Act was an act of the British Parliament; that it created Canada as a confederation; that its primary significance today is that it divides powers between the federal and provincial governments; and that today it is called the *Constitution Act (1867)*.

Students' answers should show that they know not only what the *BNA Act* is but also how it relates to the other elements of Canada's constitution and just what the overall nature of that constitution is.

- 149) Students should describe how the *Constitution Act (1867)* assigns different powers to the federal government (under s. 91) and to the provincial governments (under s. 92). The key to this question is a discussion of the prohibition on

direction. Students should explain how indirect delegation can be used to overcome the problems this creates.

Agreements to share powers, such as transfer payment schemes, should also be discussed. Good students will also raise the possibility of constitutional amendment, and the process required to accomplish this. Students would be expected to refer to certain historical examples, such as employment insurance.

150) Students should summarize the traditional passage of bills from both a provincial and a federal perspective, making note of key differences. Provincially, bills are introduced in the Legislative Assembly with a first reading (usually without debate), followed by a second reading (and debate), then review (and possible amendment) by the Committee of the Whole, and a third reading (with final debate and vote). Mention should be made of the requirement of royal assent by the Lieutenant-Governor, noting that some legislation is effective immediately while other legislation is not effective until later proclamation. Federally, the process is similar, but not identical. Students should point out that federal bills are subject to three readings in each of two houses (the House of Commons and the Senate), that there are variations involving review by Committee, and that royal assent for federal legislation falls to the Governor General.

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

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

152) Here students are expected to discuss the three major limitations on the *Charter* (Sections 33, 32, and 1), but also to explain how those limitations work with respect to the application of the *Charter* in our courts. They should indicate that the purpose of the *Charter* was to limit the power of government. Section 32 limits the application of the rights and freedoms specified in the *Charter* to the federal and the provincial governments. The *Charter* applies to legislation, regulations, and bylaws passed by all levels of government, and it also applies to actions by government officials carrying out their official functions. The *Charter* applies to all representatives of the government exercising statutory authority, including police and other law enforcement bodies. The *Charter* does not apply to private relations between individual persons. Section 33 allows the parliament or legislature through legislation to override certain sections of the *Charter*, but they can only override Section 2 and Sections 7 to 15. These are important provisions of the *Charter*. To override the *Charter* in this way, they must clearly state that the provision applies notwithstanding the specific provision of the *Charter*. This must be repeated every 5 years.

Section 1 allows reasonable exceptions to the application of the rights and freedoms listed. They must be reasonably necessary (justified) and must not go further than necessary to accomplish the reasonable goal. Therefore, the rights and freedoms set out in the *Charter* are not absolute.

Students' answers should show that they understand that the rights and freedoms set out in the *Charter* are not absolute, that it only applies to government action, and that power has been given to the provinces and federal government to specifically override some important provisions of the *Charter*.

153) Students should identify the legislation currently in force in your jurisdiction and explain how this legislation applies to general public. The protected areas (such as public services, employment practices, etc.) should be outlined, and examples of prohibited grounds of discrimination should also be raised. Students should explain how the duty to accommodate those facing discrimination applies, along with exceptions to this rule (e.g. bona fide occupational requirements, etc.). Students' answers should reveal that they understand that compliance with such legislation should be regarded as a necessary cost of doing business.