# *Managing the Law Updated Edition (Canadian) 5th edition McInnes Test Bank*

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*Managing the Law, 5e* **(McInnes)**
**Chapter 2 Litigation and Alternative Dispute Resolution**

2.1 True/False Questions

1) Longhorn Inc has served a statement of claim on Trojan Ltd for breach of contract. Given the current trends in Canadian litigation, there is approximately a one in four chance that the case will eventually be resolved by a judge at a trial.
Answer: FALSE
Diff: 2 Type: TF Page Ref: 30
Topic: The Litigation Process
Skill: Applied

2) Screaming Eagle Inc, a company based in Los Angeles, wants to sue Canuck Manufacturing Inc in a court in Vancouver. While the American company may be entitled to sue in Canada, it must be represented by a litigation guardian.
Answer: FALSE
Diff: 2 Type: TF Page Ref: 30
Topic: Who Can Sue or Be Sued?
Skill: Applied

3) Although trade unions are unincorporated associations, and therefore are not legal persons, they generally can sue or be sued because of a statutory change made to the common law.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 30, 31
Topic: Who Can Sue or Be Sued?
Skill: Recall

4) The Crown can be sued only if a statute allows an action to be brought against the Crown.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 31
Topic: Who Can Sue or Be Sued?
Skill: Recall

5) Morley suffered a minor injury as a result of using a toothbrush manufactured by DentPlus Inc. The evidence indicates that the type of toothbrush in question suffers from a design defect and therefore is likely to have injured every person who used it. In the circumstances, Morley wants to bring a class action against DentPlus. Class action proceedings are, however, available only if certain requirements are met. Morley must, among other matters, satisfy the court that he has developed a workable plan for notifying all of the other members of the plaintiff class of the class action.
Answer: TRUE
Diff: 2 Type: TF Page Ref: 32
Topic: Class Actions
Skill: Applied


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6) Geeta was one of several hundred people who received tainted blood from a hospital that carelessly collected and stored blood. Although each of the victims will be able to make essentially the same arguments against the hospital, a court will, as a general rule, not certify a class action unless each of the victims also intends to claim roughly the same amount of damages.
Answer: FALSE
Diff: 3 Type: TF Page Ref: 32
Topic: Class Actions
Skill: Applied

7) A person generally is not entitled to act as a lawyer in Canada unless they have completed a "period of articles." That phrase refers to the fact that admission to the bar depends upon proof that a person went to law school for a certain length of time.
Answer: FALSE
Diff: 2 Type: TF Page Ref: 34
Topic: Lawyers
Skill: Recall

8) Citizens are protected from dishonest lawyers who steal money or breach conditions of trust for holding client's money, by the law society's assurance fund. That fund always consists of the professional liability insurance that each lawyer is required to hold while practising.
Answer: FALSE
Diff: 3 Type: TF Page Ref: 34
Topic: Lawyers
Skill: Recall

9) Makayla was recently served with a statement of claim that alleges that she committed a breach of contract. Makayla simply denies that allegation. She will likely present her arguments against the allegation by using a document called a counterclaim.
Answer: FALSE
Diff: 1 Type: TF Page Ref: 36
Topic: Pleadings
Skill: Applied

10) Katrina has sued Bensam Inc, her former employer, for unfairly firing her from her job. The company denies that it has done anything wrong. The parties have exchanged pleadings and are now preparing to participate in a pre-trial case planning conference. The trial is less than one month away. This means that they will necessarily meet with a mediator, rather than a judge, at the pre-trial case planning conference for the purpose of discussing their case and possibly reaching a settlement.
Answer: FALSE
Diff: 2 Type: TF Page Ref: 37
Topic: Pre-Trial Activity
Skill: Applied


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11) Scalia Inc sued Ginsberg Ltd. in tort. Scalia claimed that it was entitled to receive $15 000 in compensation. Ginsberg denied liability, but in an attempt to resolve the issue quickly and quietly, formally offered to settle the claim for $9000. Scalia rejected the offer and took the case to trial in the federal court. The trial judge has now decided the case in favour of Scalia, but damages were limited to $8000. In the circumstances, the trial judge must award party-and-party costs against Ginsberg for the period up to the day when the settlement offer was made, and double party-and-party costs against Ginsburg for the period between that day and the end of the trial.
Answer: FALSE
Diff: 3 Type: TF Page Ref: 41
Topic: Costs
Skill: Applied

12) Kathy has sued her employer in a superior court. Although Kathy is the first person in her province to make such a claim, similar cases have occurred elsewhere. In *Boe v Demarco*, the Federal Court of Appeal dealt with the same issue, but held that the law applied in favour of the employer. Under the doctrine of precedent, the judge hearing Kathy's claim will have to apply the same rule.
Answer: TRUE
Diff: 1 Type: TF Page Ref: 47, 48
Topic: Court Hierarchy
Skill: Recall

13) A *puisne* judge is a judge that hears trials rather than appeals. The word "*puisne*" is based on a Latin word meaning "small" or "less powerful."
Answer: FALSE
Diff: 3 Type: TF Page Ref: 43
Topic: The Supreme Court of Canada
Skill: Applied

14) Kabesa Inc sued Mahuja Ltd. The court held completely in favour of the defendant and the claim of Kahesa was dismissed in its entirety. The court probably also ordered Kabesa Inc to pay Mahuja Ltd's costs.
Answer: TRUE
Diff: 2 Type: TF Page Ref: 41
Topic: Costs
Skill: Applied


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15) A contractual dispute has arisen between Jyoti and Arlen. She believes that he owes her money, but he disagrees. The parties do, however, agree that it would be desirable to resolve the dispute as quickly and as amicably as possible. For that reason they should use litigation, rather than negotiation. Negotiation tends to take much longer, and is much more likely to generate hostility, because it requires the parties to discuss the matter between themselves, rather than through their lawyers.
Answer: FALSE
Diff: 2 Type: TF Page Ref: 52, 53
Topic: Alternative Dispute Resolution
Skill: Applied

2.2 Multiple Choice Questions

1) Hughes Inc hired Liz to act as the chief architect for a major shopping development. After about a year, however, the parties' relationship began to deteriorate and the situation quickly became intolerable and irreparable. Each side blamed the other. Hughes Inc sued Liz for breach of contract. Liz defended that claim and started a counterclaim in which she alleged that Hughes Inc had broken their agreement. The dispute was eventually resolved through arbitration. Which of the following statements is TRUE?
A) The parties probably used arbitration, rather than litigation, because a judge decided that the issues were too complicated to be understood by jurors.
B) Even if both parties are based in Manitoba, even if the contract was signed in Manitoba, and even if the shopping development was intended to be located in Manitoba, the arbitration could have taken place in a different province, as parties who arbitrate disputes are, subject to the contractual terms, free to choose the rules and jurisdiction of the arbitration.
C) Although the arbitration would not have taken place in a court, it was probably conducted by a judge.
D) Assuming that the parties served a complete set of pleadings on each other, Hughes Inc. would have used a document called a reply in order to respond to Liz's counterclaim.
E) Some provinces require the parties in commercial disputes to participate in a mandatory arbitration program, as opposed to a mandatory mediation program, before taking a case to trial.
Answer: B
Diff: 3 Type: MC Page Ref: 54, 55
Topic: Arbitration
Skill: Applied


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2) Demartini Inc sued Bentley Regehr for breach of contract. Demartini argued that it was entitled to receive a payment of $50 000 from Regehr. After failing to reach a settlement, the parties took their case to court. Which of the following statements is TRUE?
A) If Regehr offered to settle the claim out of court for $30 000, and if the judge eventually decides that Demartini is entitled to receive $35 000, the judge may award an unusually large amount of costs against Regehr in order to punish him for making an inadequate settlement offer.
B) While the courts generally refuse to receive hearsay evidence, the judge in this case will probably allow expert witnesses to provide such evidence.
C) If the court finds Regehr liable for $50 000, Demartini may try to obtain payment from Regehr by garnisheeing money that Regehr is entitled to receive from his employer.
D) There are no jurisdictions in Canada where a claim for $50 000 or less can be heard in a small claims court.
E) The parties' case will almost certainly be heard by a judge of the provincial court, as the issues in this claim can only be adjudicated in the small claims court division of the provincial court of whichever province has the closest connection to the parties and their agreement.
Answer: C
Diff: 3 Type: MC Page Ref: 39
Topic: Enforcement
Skill: Applied

3) Wolodko Engineering Inc sued Dhaliwal Ltd for the tort of negligence. At one point during the litigation process, an examination-in-chief occurred. This means that
A) one of the parties asked the other party's witness a question during an examination for discovery.
B) the other side asked the opponent's witness questions under oath.
C) one of the parties hired an expert witness to conduct a scientific investigation on a piece of physical evidence.
D) the examination in chief occurred while the case was on Appeal.
E) questions were answered under oath at a trial by one party of its own witnesses.
Answer: E
Diff: 1 Type: MC Page Ref: 37, 38
Topic: The Trial
Skill: Applied


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4) A court recently held Acme Corp responsible for spilling pollutants into a stream. Which of the following statements is most likely TRUE?
A) If the court required proof beyond a reasonable doubt, the claim against Acme Corp arose in private law.
B) If the court required proof beyond a reasonable doubt, Acme Corp was called the accused and was prosecuted by the state in criminal or criminal like proceedings.
C) Since Acme Corp is not a human being, the case was heard in a special court called the Commercial Court of Canada.
D) If Acme Corp is dissatisfied with that decision, it is entitled to appeal, but only if it is willing to pay for the other side to bring its witnesses back into court.
E) If the claim against Acme Corp arose in private law, it almost certainly was heard by a jury, as well as a judge.
Answer: B
Diff: 1 Type: MC Page Ref: 38
Topic: The Trial
Skill: Applied

5) The doctrine of precedent
A) prevents a judge from resolving a dispute on the basis of a decision from another jurisdiction.
B) requires the Supreme Court of Canada to follow decisions of the Judicial Committee of the Privy Council in England.
C) is never relevant if the resolution of a case involves the interpretation of a statute.
D) draws a distinction between binding authorities and persuasive authorities. A judge is bound to follow a binding authority, even if the judge disagrees with the reasoning or conclusion of that authority.
E) prevents the Supreme Court of Canada from relying on a decision of a lower court.
Answer: D
Diff: 3 Type: MC Page Ref: 48, 49
Topic: Court Hierarchy
Skill: Recall


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6) A trial judge in Manitoba has heard a case dealing with a particular issue. Which of the following statements is TRUE according to the doctrine of precedent?
A) If there are no binding precedents, the judge may consider cases from anywhere in the world, and decide the case based on the extension or modification of established principles of law, thus creating a new precedent.
B) If there are no precedents, the judge is not entitled to decide the case, and therefore must refer the matter to the legislature because of the doctrine of parliamentary supremacy.
C) If there are conflicting precedents from the Court of Appeal of Ontario and the Court of Appeal of Saskatchewan, the judge must follow the former, because it comes from a jurisdiction with a larger population.
D) If there are conflicting precedents from the Court of Appeal of Ontario and a trial court in the Bahamas, the judge must follow the former because it is Canadian.
E) If there are no other precedents, the judge is required to follow a decision of the Alberta Court of Appeal.
Answer: A
Diff: 2 Type: MC Page Ref: 48, 49
Topic: Court Hierarchy
Skill: Applied

7) Jinyan has been involved in a law suit for several years. She recently sought "leave" from the Supreme Court of Canada. This means that
A) she wants the Supreme Court of Canada to grant her leave to hear her appeal at the Supreme Court of Canada.
B) she wants the court to release her from jail.
C) she wants the Supreme Court of Canada to hear a trial of her case with live witnesses.
D) she wants the Supreme Court of Canada to appoint a new lawyer to work for her.
E) she wants the Supreme Court of Canada to come to her province where she lives and to have a full new trial in front of the Supreme Court of Canada in her home province.
Answer: A
Diff: 3 Type: MC Page Ref: 44
Topic: The Court System
Skill: Applied

8) Justice Major dissented in the case of *Dobson v Dobson*. This means that
A) he was hearing the case as a trial judge and rejected the plaintiff's claim.
B) he disagreed with the result reached by the majority of his colleagues in an appeal that a panel of Justices of the Supreme Court of Canada heard.
C) he held that a statute was invalid because it violated the *Charter*.
D) he rejected a party's application for leave to appeal an earlier decision.
E) he was unable to decide the case because he had some personal connection to it so he recused himself from the panel that heard the case.
Answer: B
Diff: 2 Type: MC Page Ref: 40
Topic: Appeals
Skill: Applied


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9) Which of the following statements is TRUE?
A) The phrase "court hierarchy" refers to the fact that the courts must obey the words of a valid statute.
B) Arbitration is usually binding but it depends on the arbitration agreement of the parties and on the powers of the courts to review arbitration decisions.
C) The judges of the superior court in each province are appointed by that province's government.
D) The phrase "rule of law" refers to the fact that a law must contain a rule that either prohibits someone from doing something or allows someone to do something.
E) The phrase "court hierarchy" refers to the fact that the Supreme Court of Canada contains one chief justice and eight puisine justices.
Answer: B
Diff: 1 Type: MC Page Ref: 55
Topic: Arbitration
Skill: Recall

10) At the end of a case, a court awarded costs against Craig. Which of the following statements is TRUE?
A) Craig probably won a private law case.
B) Craig probably was convicted of a serious crime.
C) Craig necessarily must reimburse the other party for all of the expenses that it incurred in connection with the case.
D) The court almost certainly awarded costs against the other party as well.
E) Craig must pay money to the other side in compensation in whole or in part for legal fees and disbursements of the other side–even if he won his case.
Answer: E
Diff: 3 Type: MC Page Ref: 41
Topic: Costs
Skill: Applied

11) Which of the following statements is TRUE?
A) ADR stands for "additional decision resolution."
B) Mediation is normally binding, unless the parties agree otherwise.
C) The process of negotiation tends to correct any imbalance in bargaining power, and therefore is usually preferred if one party is a consumer and the other is a large corporation.
D) Even if the parties submit their dispute to binding arbitration, a court may become involved in the enforcement of the arbitrator's decision.
E) ADR is usually used in criminal law, particularly mediation by the police.
Answer: D
Diff: 2 Type: MC Page Ref: 55
Topic: Arbitration
Skill: Recall


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12) The front window of Polly's Flower Shop was recently broken when someone threw a rock through it. Which of the following statements is TRUE?
A) If the person who threw the rock is 13 years old, there will not be a lawsuit because children under the age of majority cannot be sued.
B) If the person who threw the rock is insane, Polly's Flowers will not be able to sue unless it receives permission from the Public Trustee.
C) If the person who threw the rock is a European who is visiting Canada for less than a year, the case will have to be heard in the International Court of Justice.
D) Because a lawsuit can be brought only by a human, the plaintiff named in the statement of claim cannot be the corporation that owns Polly's Flower Shop.
E) The person who threw the rock may be sued even if that person worked for the government and threw the rock while that person was on duty as a government employee.
Answer: E
Diff: 2 Type: MC Page Ref: 31
Topic: Who Can Sue or Be Sued?
Skill: Applied

13) Which of the following statements is TRUE?
A) A lawsuit may be brought against human beings, corporations, and any unincorporated associations.
B) A young child who is sued will be represented by an adult who acts *in parens patriae.*
C) In order to sue in Canadian courts, a person must either be a Canadian citizen or be represented by a lawyer who is a Canadian citizen.
D) Trade unions sometimes can sue or be sued even though they are unincorporated associations.
E) Foreign corporations, like Canadian corporations, have an absolute right to sue in Canadian courts.
Answer: D
Diff: 1 Type: MC Page Ref: 30, 31
Topic: Who Can Sue or Be Sued?
Skill: Recall


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14) Geetha has been diagnosed with skin cancer. Based on her physician's diagnosis, she believes that her condition was caused by SofSkin, a lotion that she used for many years. She wants to sue the manufacturer of SofSkin, but she realizes that a lawsuit would require a great deal of complicated evidence, and therefore would likely be long and expensive. Which of the following statements regarding class actions is TRUE in this situation?
A) Even if a court allowed a class action to proceed, it would be possible for other people in the same situation as Geetha to sue by themselves.
B) By participating in a class action, Geetha almost certainly would be able to avoid any expense if the claim failed.
C) A court would not allow a class action to proceed unless Geetha was joined by a substantial number of other people with virtually identical claims against the manufacturer of SofSkin.
D) Regardless of which province or territory the class action occurred in, it would be governed by statute.
E) A class action is possible only if Geetha's lawyer works for a contingency fee.
Answer: A
Diff: 2 Type: MC Page Ref: 32
Topic: Class Actions
Skill: Applied

15) Class actions have become more common in Canada in recent years. This increase in popularity can be explained, at least in part, by the fact that
A) lawyers are able to aggregate many small claims of similar factual circumstances and undertake the aggregated class claims on an economical contingency fee basis as the single claims, because they are so small would be uneconomic to litigate separately on a contingency fee basis.
B) the rules governing class actions are now contained in statutes in every province.
C) lawyers conducting class actions must work on a contingency fee basis, with the result that their clients are liable for their expenses only if the case is won.
D) the Supreme Court of Canada recently said that, in contrast to the past, class actions can now be certified even if success for one claimant does not necessarily mean that all of the other claimants will also enjoy success.
E) liability in a class action can never be appealed.
Answer: A
Diff: 3 Type: MC Page Ref: 31, 32
Topic: Class Actions
Skill: Recall


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16) The requirements for certification in a class action include
A) proof that the class action will be substantially less convenient than individual proceedings.
B) proof that all of the claimants are being represented by the same law firm.
C) a clearly defined class and most substantive issues are common to every claimant in that class.
D) a payment of bond money to the court, to be used to pay for the defendant's costs if the claim is unsuccessful.
E) proof that every potential member of the class has been personally notified of the proceedings.
Answer: C
Diff: 1 Type: MC Page Ref: 32
Topic: Class Actions
Skill: Recall

17) A company that manufactures cigarettes has been named as the defendant in a class action. Which of the following statements is TRUE?
A) The fact that the defendant has been sued in a class action necessarily means that other companies have also been sued in the same action.
B) The company will likely place notifications in newspapers in an attempt to avoid certification.
C) The company will probably have to pay costs on a party-and-party or partial indemnity basis if it loses the case.
D) Because they have sued by way of a class action, the plaintiffs necessarily have hired lawyers on a contingency basis
E) As long as a class action is the plaintiff's preferred procedure, the court will grant certification, even if the judge believes that some other procedure would be better.
Answer: C
Diff: 2 Type: MC Page Ref: 41
Topic: Costs
Skill: Applied

18) Which of the following statements is TRUE with respect to representation in legal disputes?
A) Litigants are entitled to represent themselves in trials but not in appeals.
B) If a lawyer has acted improperly but has no money to pay, the client may receive compensation from a law society fund.
C) In-house counsel refers only to a situation in which a law firm that has been sued is represented by one of its own lawyers.
D) The Law Society of Canada has the responsibility of regulating lawyers across the country.
E) Communications between a paralegal and a client are always confidential and privileged.
Answer: B
Diff: 1 Type: MC Page Ref: 34
Topic: Lawyers
Skill: Recall


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19) Herbert & Hart Inc, an accounting firm, was legally represented in a recent dispute by Alan Munt, who is a lawyer. Herbert & Hart have now learned that Munt professionally misconducted himself by passing confidential information to the other side in the dispute. Herbert & Hart consequently lost approximately $12 million. Which of the following statements is TRUE?
A) Munt probably does not have liability insurance that will help to pay for his liabilities.
B) Munt may be investigated by the law society only if he is an articling student.
C) Munt may be sued, but his behaviour cannot be investigated by the law society.
D) Herbert & Hart very likely violated the law society's code of conduct.
E) If Herbert & Hart sue Munt they will likely recover their loss if Munt has sufficient insurance coverage, or personal assets in excess of his insurance coverage sufficient to pay for the loss.
Answer: E
Diff: 1 Type: MC Page Ref: 34
Topic: Lawyers
Skill: Applied

20) Kirndeep recently received a bachelor of business administration. She has, however, always dreamed of representing people with legal problems. She has come to you for advice and guidance regarding the various possibilities. Which of the following statements is TRUE?
A) Lawyers always make more money than paralegals.
B) Paralegals are permitted to help clients draft legal documents, but they are never entitled to appear in courts or tribunals.
C) Paralegals are allowed to represent clients in small claims courts in some jurisdictions in Canada.
D) Paralegals are more heavily regulated than lawyers.
E) Before starting a private practice, a paralegal is required to complete a period of articles with a law firm.
Answer: C
Diff: 2 Type: MC Page Ref: 34
Topic: Paralegals
Skill: Applied

21) Which of the following statements is TRUE with respect to pleadings?
A) The party that creates a counterclaim is usually also the same party that creates the statement of claim.
B) Each pleading must be filed with the opposing party and served on the court.
C) A demand for particulars is always created by a plaintiff.
D) The party that files and serves a reply is usually the same party that files and served the statement of claim.
E) The purpose of a counterclaim is to counter, or contradict, a statement of claim by alleging facts that have the effect of denying liability.
Answer: D
Diff: 2 Type: MC Page Ref: 36
Topic: Pleadings
Skill: Recall


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22) Rawls Inc recently sued Nozick Ltd. As Nozick has pointed out, however, Rawls' statement of claim was not filed within the limitation period. Which of the following statements is TRUE?
A) The length of the limitation period depends upon the nature of Rawls's claim.
B) If Nozick committed a tort, the limitation period must have started on the day that Nozick acted wrongfully.
C) If Rawls's claim was for breach of contract, the limitation period was probably 10 years.
D) The primary purpose of limitation periods is to save society money by reducing the number of cases that need to be heard by courts.
E) There would not be a limitation period if Rawls sued the government.
Answer: A
Diff: 2 Type: MC Page Ref: 35
Topic: Pleadings
Skill: Applied

23) Fuller Inc. has sued Perdue Corp. Which of the following statements is TRUE?
A) If Perdue counterclaims, Fuller will use a reply in order to deny Perdue's allegations.
B) All of the parties' pleadings must be stamped and filed at the registry of the court.
C) The judge may draft a demand for particulars in order to receive more information regarding Fuller Inc.'s claim.
D) If the case goes to court, it will likely be heard by a jury.
E) A counterclaim usually is used if the plaintiff wants to change the details in a statement of claim.
Answer: B
Diff: 2 Type: MC Page Ref: 36
Topic: Pleadings
Skill: Applied

24) Examinations for discovery
A) take place before the plaintiff drafts a statement of claim.
B) take place after a jury has decided a case.
C) are designed primarily to determine the defendant's financial situation, and therefore to help the plaintiff decide whether or not it makes sense to sue.
D) encourage settlement by allowing each party to gather information regarding the strengths and weaknesses of its side of the dispute.
E) usually discourage settlement by demonstrating the weaknesses of each party's arguments.
Answer: D
Diff: 1 Type: MC Page Ref: 36, 37
Topic: Pre-Trial Activity
Skill: Recall


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25) Hobbes has sued Kant for breach of contract. The facts and issues are very complicated. Which of the following statements is TRUE?
A) A pretrial conference will require the parties to explain their arguments to a mediator, who has the power to decide the case in favour of the defendant if the plaintiff's evidence is very weak.
B) Although it would be quicker and less expensive to have the case decided by arbitration, arbitrators usually have less expertise than judges.
C) If Hobbes wins the case at trial, but is awarded less than Kant offered in a formal settlement, the court will probably award costs against Hobbes on a solicitor-and-client basis.
D) Because they occur outside of court, examinations for discovery are entirely voluntary and neither party could be compelled to answer the other's questions
E) Hobbes must prove the facts necessary to establish his cause of action to the standard of a balance of probabilities.
Answer: E
Diff: 3 Type: MC Page Ref: 38
Topic: The Trial
Skill: Applied

26) Justice Veritas is hearing a case in court. Which of the following statements is TRUE?
A) If the case involves a civil matter, rather than a criminal matter, the only party entitled to conduct a cross-examination is the plaintiff.
B) If the case involves a criminal matter, rather than a civil matter, the prosecutor must prove the elements of the offence on a balance of possibilities.
C) Justice Veritas will allow an expert witness, but not an ordinary witness, to present hearsay evidence.
D) If the case involves a minor crime, Justice Veritas will require proof on a balance of probabilities.
E) The rules regarding hearsay evidence apply to statements that someone said to a witness, but not to documents that the witness personally read.
Answer: E
Diff: 2 Type: MC Page Ref: 38
Topic: The Trial
Skill: Applied


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27) Arvid Dunston was severely injured when a large rock tumbled off a steep cliff and crashed through his windshield as he drove. Arvid sued the company that manufactured his vehicle on the basis that it had tortiously failed to use a type of glass that might have prevented the rock from entering the vehicle. He also sued the provincial government on the basis that the government had tortiously failed to inspect the area for rocks that might fall onto the road and hurt motorists. Which of the following statements is TRUE?
A) While the common law traditionally said that "the King can do no wrong," the relevant rules have been changed so that exactly the same rules will govern both of Arvid's claims.
B) The limitation periods that are applicable to the two claims will almost certainly be the same.
C) Arvid's two claims cannot be heard together because all claims against the government must be heard in a special type of court that is not available for disputes between two private parties.
D) In order to sue both the company and the government at the same time, Arvid will be required to satisfy the rules governing class actions.
E) Even though one of the defendants is a private company and the other is a government, both claims against each defendant will require Arvid to prove his allegations on a balance of probabilities.
Answer: E
Diff: 1 Type: MC Page Ref: 38
Topic: The Trial
Skill: Applied

28) Which of the following statements regarding the right to sue and representation in court is TRUE?
A) Because they are legally incapable of providing consent, children and people with mental disabilities cannot be members of class actions.
B) Even though unincorporated associations are not classified as legal persons and therefore generally cannot sue or be sued, an exception exists for trade unions even though they are unincorporated associations.
C) A lawyer who acts for the plaintiffs in a class action must work on a contingency fee basis.
D) For public policy reasons, a person who wants to sue the government cannot hire a lawyer on a contingency fee basis.
E) Paralegals are always entitled to appear in a provincial court but not in a superior court.
Answer: B
Diff: 2 Type: MC Page Ref: 30, 31
Topic: Who Can Sue or Be Sued?
Skill: Recall


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29) Retailers Inc. hired Clean Air Services (CAS) to develop and install an air conditioning system in a large office complex. The system that CAS installed turned out to be grossly inadequate, largely because, contrary to the terms of its contract, it used inferior materials. It did so in order to save money and increase its profits. A court has found CAS liable for breach of contract. In terms of a remedy, the judge
A) will probably impose a conditional sentence, unless CAS's breach caused someone to suffer an injury, in which case the judge would probably prefer imprisonment.
B) will classify Retailers Inc as a judgment debtor.
C) may hold CAS liable for a payment of money, in which case Retailers Inc may have some of CAS's assets seized and sold under the garnishee process.
D) cannot hold CAS liable for damages unless Retailers Inc has demonstrated that CAS has sufficient assets to satisfy judgment.
E) may award nominal damages if the defendant's breach of contract did not actually cause any loss to the plaintiff.
Answer: E
Diff: 3 Type: MC Page Ref: 38
Topic: The Remedy
Skill: Applied

30) Kirndeep Khan wants to sue her employer for sexual harassment. She has therefore hired Rory McAngus to represent her. Which of the following statements is TRUE?
A) If the limitation period has lapsed, Kirndeep will be unable to obtain judgment against her employer even if she satisfies the judge that she has all of the relevant documents and that all of the witnesses still have clear memories of the events.
B) If Rory is a lawyer, then Kirndeep's conversations with him will be privileged, meaning that Rory cannot reveal what Kirndeep said to him unless a judge orders him to do so.
C) Rory is probably the employer's in-house counsel.
D) If Kirndeep hired Rory on a contingency fee basis, and if she wins her case, then the judge will increase the measure of damages to ensure that Kirndeep receives full compensation even after Rory has received payment of his fee.
E) Whether he is a lawyer or a paralegal, Rory cannot act for Kirndeep unless he has completed a period of articles.
Answer: A
Diff: 3 Type: MC Page Ref: 35, 36
Topic: Pleadings
Skill: Applied


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31) A number of commentators have referred to litigation as a "lottery." By using that word, they are suggesting that
A) jurors are selected in a random manner.
B) because the results are often unpredictable, litigation is always risky, even if the plaintiffs believe that they have a strong case.
C) there are far more losers than there are winners.
D) the government heavily regulates trials in the same way that it heavily regulates lotteries.
E) many cases involve the enforcement of gambling debts.
Answer: B
Diff: 3 Type: MC Page Ref: 52
Topic: Alternative Dispute Resolution
Skill: Recall

32) Which of the following statements is TRUE with respect to remedies?
A) Nominal damages are defined as damages that are awarded against a named defendant, rather than against a corporation.
B) Punitive damages are available only in criminal proceedings.
C) Even if a judgment debtor is bankrupt, the successful plaintiff may be able to fully satisfy judgment if the court finds that the debtor holds an asset in trust for the plaintiff.
D) Each law society has an assurance fund in order to provide a source of compensation for claimants who are unable to fully enforce their judgments against bankrupt judgment debtors.
E) Nominal damages are awarded if a case involves several plaintiffs and the court must decide, or nominate, which plaintiff is entitled to enforce a remedy.
Answer: C
Diff: 3 Type: MC Page Ref: 39
Topic: Enforcement
Skill: Recall

33) Marisa successfully sued Ivan, a stockbroker who works for Blue Sky Investments, for breach of contract. The court held that Ivan's breach caused Marisa to suffer a financial loss of $50 000. The court also held that Ivan is personally liable to pay that amount to Marisa. Which of the following statements is TRUE?
A) Because Ivan acted wrongfully, the damages are properly classified as punitive damages.
B) An award of damages for breach of contract is the same as an order for specific performance.
C) Once judgment has been decided in her favour, Marisa became a judgment debtor.
D) If necessary, Marisa is entitled to have all of Ivan's assets seized and sold in order to pay for the judgment.
E) Marisa may garnish the non-exempt portion of Ivan's income if he does not otherwise pay his debt.
Answer: E
Diff: 2 Type: MC Page Ref: 39
Topic: Enforcement
Skill: Applied


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34) Kaelen works as a sales representative for a large book publisher. She was recently held liable in tort and ordered to pay $35 000 to Antony. Which of the following statements is TRUE?
A) If Kaelen wants to appeal the trial judge's decision, she normally must do so within one year of that decision.
B) The garnishee process will allow Antony to seize and sell some of Kaelen's assets in order to satisfy judgment.
C) Antony may be able to directly receive some of the money that Kaelen normally would receive as income from her employer, by garnisheeing Kaelen's wages.
D) The court's award can be classified as nominal damages because Antony is entitled to receive damages of a certain denomination in money.
E) If Kaelen does not have enough money to fully pay her debt to Antony, Antony will be entitled to collect the remainder either from Kaelen's lawyer or, if Kaelen's lawyer does not have sufficient funds, from the law society's assurance fund.
Answer: C
Diff: 2 Type: MC Page Ref: 39
Topic: Enforcement
Skill: Applied

35) Josie lost a breach of contract case against Charles. She has now launched an appeal of the trial judge's decision. Which of the following statements is TRUE with respect to that appeal?
A) Although the appellate court is always entitled to apply its own view of the law, the trial judge's finding of facts can be overruled only if the members of the appellate court are unanimously agreed that the trial judge made a mistake.
B) The appellate court may accept or reject the trial judge's decision, but it cannot vary the terms of the trial judge's final order.
C) If Josie loses her first appeal, she has a right to appeal to the Supreme Court of Canada as long as her claim is worth at least $100 000.
D) Josie's first appeal will likely be heard by three judges of the appellate court.
E) Although an appellate court is entitled to award damages, it cannot order specific performance of a contract.
Answer: D
Diff: 2 Type: MC Page Ref: 40
Topic: Appeals
Skill: Applied

36) Which of the following statements is TRUE with respect to small claims courts?
A) Small claims courts are a type of superior court with the inherent jurisdiction of the common law courts and the courts of equity.
B) In order to minimize costs and delays, small claims court judgments cannot be appealed.
C) Cases heard in small claims courts are decided by magistrates, rather than judges.
D) Small claims courts can award damages, but equitable relief.
E) A plaintiff has the right to have a claim heard in the small claims court that is closest to their home.
Answer: D
Diff: 3 Type: MC Page Ref: 46
Topic: Small Claims Courts
Skill: Recall


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37) Which of the following statements is TRUE with respect to small claims courts?
A) Although small claims courts often hear contractual cases, they may also resolve some types of personal injury claims.
B) Assuming that the amount in dispute is under $10 000, a taxpayer has the right to recover an improperly collected tax in the federal small claims court.
C) A small claims court may hear any type of claim, and has jurisdiction to grant all the same remedies, including injunctions, as could be granted by a superior court of common law and equity.
D) If a claim exceeds the monetary limit of a small claims court, the plaintiff is entitled to use the small claims court for part of the claim and another court for the remainder of the claim.
E) Because small claims courts often hear contractual disputes, they have the ability to order specific performance.
Answer: A
Diff: 2 Type: MC Page Ref: 46
Topic: Small Claims Courts
Skill: Recall

38) Rejean is a world class athlete, who was recently suspended by the Canadian Athletics Association. If that suspension remains in place, Rejean will not be allowed to compete in the upcoming world championships. Rejean therefore hopes to quickly and conclusively have the suspension overturned. The contract that Rejean had signed with the Canadian Athletics Association gives him the right to choose any form of dispute resolution. Which of the following alternatives is likely his best option?
A) litigation
B) mediation
C) negotiation
D) arbitration
E) small claims court
Answer: D
Diff: 1 Type: MC Page Ref: 55
Topic: Alternative Dispute Resolution
Skill: Applied

39) Which of the following statements regarding the Supreme Court of Canada is TRUE?
A) The court consists of the chief justice and eight filial justices.
B) Each member of the court was appointed by the premier of the judge's home province.
C) In addition to appeals, the court occasionally hears references for the purpose of providing advisory opinions to the governments on the constitutionality of laws.
D) Unless a member voluntarily retires, they are entitled to hold office for life as long as they are on good behaviour.
E) No court is ever required to hear an appeal unless it has granted leave.
Answer: C
Diff: 1 Type: MC Page Ref: 44
Topic: The Supreme Court of Canada
Skill: Recall


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40) Which of the following statements is TRUE with respect to alternative dispute resolution?
A) Arbitration is often preferred to mediation when the parties want to receive a binding decision from a third party.
B) Arbitration cannot be used unless the parties previously created a contract that required all disputes to be resolved solely by arbitration.
C) Negotiation is often considered a binding process when used by large corporations.
D) Because they work outside of the regular court system, small claims courts are considered a form of binding arbitration.
E) While negotiation and mediation are confidential procedures, arbitration is not confidential because arbitrators' decisions are always reported in public documents.
Answer: A
Diff: 1 Type: MC Page Ref: 55
Topic: Alternative Dispute Resolution
Skill: Recall

41) Which of the following statements is TRUE?
A) It is sometimes possible for the Federal Court of Appeal to hear an appeal from a decision of the Court of Appeal in your province.
B) Every court other than a provincial court is classified as a superior court.
C) Most small claims courts are part of the Federal Court system
D) Justices of the Supreme Court of Canada are required to leave the court at age 75.
E) A small claims court action always occurs in the jurisdiction where the plaintiff resides.
Answer: D
Diff: 1 Type: MC Page Ref: 43
Topic: The Court System
Skill: Recall

42) Tom Servo sued Crow Robot Inc. The circumstances surrounding the company's allegedly wrongful act are highly unusual. Which of the following statements is TRUE?
A) Tom was entitled to commence the claim in the Federal Court as long as he is employed by the federal government.
B) If Tom sued in Alberta, then the judge will have to apply a decision of the Supreme Court of Canada even if the case that the Supreme Court of Canada decided was commenced in some other province.
C) If Tom sued in one of the northern territories, as opposed to a province, the judge is bound by a decision of the Federal Court.
D) If Tom's case is heard by the Supreme Court of Canada, the judges must apply an earlier decision by the same court that dealt with the same issue.
E) Because Tom's case occurs in civil law, rather than criminal law, decisions of the Federal Court are necessarily irrelevant.
Answer: B
Diff: 3 Type: MC Page Ref: 48
Topic: Court Hierarchy
Skill: Applied


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43) Within the context of administrative law, which of the following statements is TRUE?
A) An administrative tribunal is said to be *quasi*-judicial when it makes decisions that affect people's lives.
B) Because of the division of powers, there is always a right to appeal a decision of an administrative tribunal.
C) Judicial review is one of the most popular forms of alternative dispute resolution.
D) Judicial review refers to the process that the federal government uses to ensure that the provinces do not create invalid legislation.
E) Under the *Constitution*, administrative tribunals must be created by the federal government.
Answer: A
Diff: 2 Type: MC Page Ref: 51
Topic: Administrative Tribunals
Skill: Recall

44) Sarah acted very badly toward Max. Although Max suffered a small loss as a result of the event, he primarily wants Sarah to apologize to him. Which of the following statements is TRUE?
A) In addition to awarding monetary damages, a court that hears a claim in tort or breach of contract can order the defendant to apologize to the plaintiff.
B) Most provinces have created legislation that would encourage Sarah to apologize to Max without fear of admitting liability.
C) A court will have the power to order Sarah to apologize if Max testifies in a criminal case rather than a civil case.
D) A court will order Sarah to apologize only if Max proves that he suffered a compensable loss as a result of her wrongful act.
E) Because witnesses testify at trial but not on appeal, trial judges can order apologies, but appellate courts cannot.
Answer: B
Diff: 2 Type: MC Page Ref: 52
Topic: Alternative Dispute Resolution
Skill: Applied

45) Rachel has sued Nicholas in the superior court of the same province where you live. Although the trial judge denied liability, Rachel has appealed. The appellate court
A) is bound by a decision of the Federal Court of Appeal.
B) may deliver a decision that can be appealed to the Federal Court of Appeal.
C) may refuse to follow one of its own earlier decisions.
D) must follow decisions that the House of Lords reached before 1966.
E) must not apply the decision of a non-Canadian court if it conflicts with the decision of an appellate court in Canada.
Answer: C
Diff: 2 Type: MC Page Ref: 48
Topic: Court Hierarchy
Skill: Applied


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2.3 Essay Questions

1) Briefly explain the rules that determine the circumstances under which the following types of parties can sue or be sued: (i) children, (ii) adults suffering from a mental incapacity, (iii) corporations, and (iv) unincorporated associations.
Answer: (a) While a child may sue or be sued, they must be sued in the representative capacity in court of an adult representative, such as a parent or litigation guardian.

(b) Similarly, while a person suffering from a mental disability can sue or be sued, they must be represented by a litigation guardian to sue or be sued and that guardian must have the legal capacity to represent to the person under a disability.

(c) As a matter of law, a corporation has the same powers as a person and has legal personality. A company may therefore sue or be sued. There are, however, restrictions on foreign corporations, which may need to be registered in certain provincial jurisdiction before they can use Canadian courts in certain provincial jurisdictions–depending on the nature of the claim being brought.

(d) In contrast to corporations, unincorporated organizations (such as clubs and church groups) are not distinct legal entities with a legal personality. As a result, they normally cannot sue or be sued. Instead, it is usually necessary to sue the individual members of those organizations. In some provinces, however, there is an important exception to that rule. That exception is that, although trade unions are unincorporated organizations, they can sue and be sued directly.
Diff: 1 Type: ES Page Ref: 30, 31
Topic: Who Can Sue or Be Sued?
Skill: Recall

2) In the context of the ability to sue or be sued, what is the meaning and effect of the doctrine that "the King can do no wrong"?
Answer: The doctrine that "the King can do no wrong" traditionally meant, quite literally, that the courts would not accept claims that the King had acted unlawfully or illegally. As a result, it was impossible to sue the King unless the King gave his permission to be sued. That doctrine was extended to mean that the King's representatives in government similarly could not be sued without their permission. That traditional rule has now been changed by legislation. As a result, it generally is possible for the government to both sue and to be sued. The governing statutes are, however, complicated and they often introduce unusual restrictions, including special and sometimes very short limitation periods. They need to be read very carefully.
Diff: 1 Type: ES Page Ref: 31
Topic: Who Can Sue or Be Sued?
Skill: Recall


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3) Chad purchased an economics textbook online from Shady Press Inc for $40. While the information contained in the book appears to be correct and current, the book itself began to fall apart almost immediately. After he complained about the situation in an electronic chat room that had been set up by his course instructor, Chad discovered that a large number of other students had suffered through the same experience. Chad then emailed Shady Press to register his complaint and to ask for a rebate on at least part of the price. The company responded by saying that, as a matter of policy, it would not provide any sort of financial relief unless ordered to do so by a court. Although he is now even more annoyed at Shady Press than before, he assumes that he is, practically speaking, powerless to do anything. He has heard that litigation is expensive and he is unwilling to spend a lot of money in the hope of getting a refund on a book that cost only $40. Assuming that the company will not pay unless compelled by a judge to do so, what advice can you offer to Chad? Suggest, and briefly describe, several strategies that might overcome Chad's concerns about costs. (You need not go into great detail on each strategy.)
Answer: Because Shady Press Inc refuses to pay anything in the absence of a court order, Chad will need to proceed by way of litigation rather than some form of alternative dispute resolution. Within that context, his financial concerns might be overcome by various means: (i) class action, (ii) contingency fee, (iii) costs, and (iv) small claims court.

*Class Action* Chad could minimize the expense to himself by participating in a class action. Although that class action would involve many (perhaps all) of the people who purchased Shady Press books that fell apart, only one lawyer would be needed. Consequently, because the expenses of the action would be spread among all of the claimants, each claimant would likely stand to gain more than they lost in litigation costs. However, in some Canadian jurisdictions, Chad may be exposed to the costs of the litigation if the class action is not certified or otherwise fails.

*Contingency Fee* Whether or not he participated as a member of a class action, Chad could further reduce the expense associated with litigation by hiring a lawyer to act on a contingency fee basis. If so, Chad would need to pay his lawyer's fees only if the claim was successful. In that event, the lawyer's fees would be paid out of a judgment that the court awarded against Shady Press. However, it is highly unlikely any lawyer would agree to work on a contingency fee if the only damages were Chad's claim for $40.
*Costs* Regardless of whether he participates in a class action or a contingency fee arrangement, Chad should be informed that the winning party usually has costs awarded against the losing party. That means that if he won his case, Shady Press would have to pay for *some* of his litigation expenses. At the same time, however, Chad should realize that (i) judicially awarded costs seldom cover *all* of a party's actual expenses, and (ii) if he loses his case against Shady Press, he would likely have to pay for some of the company's litigation costs.

*Small Claims Court* Finally, because his individual claim is worth only $40 at most, Chad would be entitled to bring his action against Shady Press in a small claims court. Litigation in that type of court requires far fewer resources in terms of time and money. Chad would be well advised not to use a lawyer in the small claims court for this claim as it is almost certain that the lawyer's fees would be much more than any likely recovery.
Diff: 2 Type: ES Page Ref: 31, 42, 41, 46
Topic: Class Actions, Contingency Fees, Costs, Small Claims Courts
Skill: Applied


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4) Until recently, Enya did all of her banking at the Bank of the Prairies (BOP). She transferred her business to a different bank when she discovered that BOP had been systematically overcharging for a number of services. Enya was, for instance, charged excessive amounts every time that she wrote a cheque or withdrew money at an ATM. She knows that friends and relatives were similarly overcharged when, for example, they paid bills by telephone or received payment by way of direct deposit. Enya suspects that she personally was overcharged about $750. While that represents a substantial amount for her, she also realizes that litigation against BOP might involve a great deal of time and expense. She consequently wonders if her case might be a suitable candidate for a class action. She would like to participate in a class action alongside all (or many) of the other people who have been overcharged by BOP. What requirements must be satisfied before a court will grant certification to a class action?
Answer: Class actions are created by statute in most Canadian provinces. The criteria for certification of a class action are similar in each province.

(a) *Common Issues*: There must be *common issues* amongst the various members of the class. In this case, the court would have to be satisfied that all of the class members were subject to the same type of systematic overcharging by BOP. It is not necessary, however, for every claim to be identical. Even if the court certifies a class action to proceed, it may set up a process to deal with the special circumstances that affect some claimants. Consequently, it would not necessarily be fatal that different members were overcharged for different types of services.

(b) *Representative Plaintiff*: The plaintiff must qualify as a *representative plaintiff*. They must demonstrate a workable plan for fairly representing the interests of the class members. That will not be true, for instance, if the plaintiff wants the court to rely on a rule that will help their claim, but that will be adverse to the claims of some or all of the other claimants.

(c) *Notification*: A representative plaintiff must also have a workable plan for *notifying* potential class members. In this case, class members might, for instance, be notified by way of notices in newspapers and magazines. Those notices are very important. Often, a class action, once certified, automatically includes every claimant who has not expressly *opted out* within a certain length of time after the notice procedure has been followed. Every member of that class will be bound by the decision that the court gives at the end of the trial. People who have not opted out cannot bring separate actions of their own.

(d) *Preferable Procedure*: The court must be convinced that a class action is the *preferable procedure* for dealing with the claims. It will, for instance, consider whether a class action will become too complicated, and whether there are enough similarities between the class members.
Diff: 2 Type: ES Page Ref: 32
Topic: Class Actions
Skill: Applied


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5) List and briefly describe the options that are available in terms of legal representation.
Answer: We discussed three basic options in the text.

(a) An adult person of competent mental capacity always has the right to *self-representation*. That approach is most common in relatively simple matters, such as cases in small claims courts.

(b) Particularly in more complex cases, it is common to hire a *lawyer*. Some companies retain *in-house counsel* to provide legal services on an on-going basis as employees of the company.

(c) In some situations, it is possible to receive competent legal services, at less than the cost of a lawyer, by hiring a *paralegal*. A paralegal is a person who is not a lawyer, but who nevertheless has training and government recognized certification for providing certain limited legal advice and legal services.
Diff: 1 Type: ES Page Ref: 33, 34
Topic: Legal Representation
Skill: Recall

6) There is no guarantee that things will go well merely because you hire a lawyer. There are, however, certain conditions that are required of lawyers, which provide some assurance that (a) a lawyer is competent, (b) a lawyer will act ethically, and (c) compensation will be available if you suffer a loss as a result of a lawyer's careless or wrongful behaviour. Identify and briefly describe the relevant conditions for each of those three propositions.
Answer: (a) *Competence* In order to practice law in Canada, a person must (i) hold a *law degree*, (ii) serve an apprentice *period of articles* with a law firm or other legal organization, and (iii) *pass the bar* by successfully writing a number of examinations.

(b) *Ethical Behaviour* Although nothing can ensure that a person will always act ethically, lawyers are subject to *codes of conduct* that are administered by provincial and territorial *law societies*. The codes of conduct establish rules governing the behaviour of lawyers. A lawyer who is found guilty of professional misconduct or conduct unbecoming a lawyer, can be punished in a variety of ways, including fines, suspension, or disbarment (*ie* being deprived of the ability to practice law).

(c) *Compensation* Every practising lawyer is required to carry *professional liability insurance*. If a lawyer is found liable for negligence or breach of contract as a result of negligence, the insurance company will be required to pay damages for the loss caused by that negligence, to the plaintiff on the lawyer's behalf. Law societies maintain *assurance funds*, which can also provide compensation to people who are hurt by lawyer misconduct in the nature of dishonesty, theft or breach of trust.
Diff: 1 Type: ES Page Ref: 33, 34
Topic: Lawyers
Skill: Recall


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7) As a result of recent events, Marshall requires legal representation. Because he has limited knowledge of the law, he has ruled out the possibility of self-representation. He realizes that he therefore must hire someone to act on his behalf. In choosing between hiring a lawyer and hiring a paralegal, what factors should he take into consideration?
Answer: There is no bright line rule, for determining whether legal representation should come in the form of a lawyer or a paralegal. The decision depends upon the circumstances and these factors in particular.

*Cost* As a general rule, paralegals charge fees that are considerably less than lawyers, even when providing the same service. Consequently, if, for instance, Marshall requires someone to process a simple land transfer, he might consider hiring a paralegal.

*Expertise* Because paralegals tend to be confined to certain tasks, they naturally have no expertise in some areas of law. Often, however, lawyers and paralegals deal with precisely the same types of files. And in those areas, paralegals frequently have similar expertise and experience as some lawyers.

*Accessibility* Accessibility in this case will depend upon the nature of Marshall's needs. Some types of cases (*eg* murder trials) are handled only by lawyers. Other types of cases (*eg* house transfers) are handled by lawyers and paralegals.

*Training* Although most paralegals are well-trained and thoroughly-experienced, they are not, in contrast to lawyers, subject to the same mandatory educational requirements in every jurisdiction. (There is, however, a growing movement by Law Societies to impose standardized educational requirements on paralegals.)

*Regulated Profession* Lawyers are members of a regulated profession. Paralegals can only practice law to the extent that the legislature in a province or territory has permitted them to practice law; and they must confine their practice to those areas of law and procedures which they are allowed to practise and perform.

*Mandatory Codes of Conduct* Although every practising lawyer is subject to their law society's code of conduct, paralegals are not currently subject to any parallel regime although a paralegal may lose certification as a paralegal for unprofessional conduct or incompetence.

*Privilege* Whether he spoke with a lawyer or a paralegal, Marshall's conversations would be *confidential*. Consequently, neither a lawyer nor a paralegal would generally be entitled to disclose the content of those communications to some third party. In contrast, communications with a lawyer would be *privileged*, but those with a paralegal would not be privileged. A privilege would ensure that, unless Marshall agreed, his lawyer could not be judicially compelled to disclose the content of those communications in court, nor could the lawyer ever disclose the contents of those communications in any manner, including after the death of the client.
Diff: 3 Type: ES Page Ref: 33, 34
Topic: Lawyers, Paralegals
Skill: Applied


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8) Your company has purchased a wide variety of supplies from Acme Inc over the course of many years. Much to your surprise, Acme has just served a statement of claim on your company. You are puzzled and annoyed. First, you are puzzled because while the statement of claim clearly alleges that you owe Acme $15 000, the precise basis for that allegation is unclear. Given the amount of business that your company does with Acme, that claim might be made in reference to any one of literally dozens of recent transactions. You are quite sure, however, that you have not done anything wrong under any of those transactions. Second, you are annoyed because, in the interests of goodwill, your company has often accepted from Acme goods that were defective. In the past, you said nothing to Acme about those problems because you did not want to create bad feelings. But now that Acme has sued your company, you are feeling far less lenient. You are, in particular, dissatisfied with a shipment of shelving units that you received from Acme last week. Those shelves stand only 1.8 metres high, even though Acme promised in the contract of purchase and sale that the shelves would stand 2 metres high. In the circumstances, you have decided that you should sue Acme for breach of contract. Identify and briefly explain the pleadings that you will need to serve on Acme Inc. in the near future.
Answer: Your choice of pleadings is determined by the actions that you must take with respect to Acme Inc. to advance your claims. You will need to issue and serve three documents.

*Demand for Particulars* Because you require further information in order to understand the allegation contained within Acme's statement of claim, you will need to serve Acme with a *demand for particulars*.

*Statement of Defence* Because you dispute the allegations on that you are liable, you will need to serve a *statement of defence* on Acme that has been filed in the court registry. That document should be filed and served promptly. If you fail to do so in a timely manner, Acme may be entitled to obtain default judgment against you.

*Counterclaim* Because you want to sue Acme for breach of contract with respect to the defective shelving units, you will need to serve Acme with a *counterclaim*. That counterclaim is, in effect, your own statement of claim. You most likely will include your statement of defence and counterclaim in the same package of documents.
Diff: 2 Type: ES Page Ref: 36
Topic: Pleadings
Skill: Applied


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9) Briefly explain the difference between (a) examinations-in-chief and cross-examinations, (b) direct evidence and hearsay evidence, (c) ordinary witnesses and expert witnesses, and (d) proof on balance of probabilities and proof beyond a reasonable doubt.
Answer:
(a) *Examinations-in-Chief and Cross-Examinations* These concepts pertain to the manner in which evidence is presented in court, usually by a lawyer. An *examination-in-chief* occurs when the lawyer questions a witness who is giving evidence for that lawyer's side. Leading questions are not allowed, and the witness essentially tells the story of what happened or what they witnessed. A *cross-examination* occurs when a lawyer questions a witness who has testified for the other side. In cross-examination the lawyer seeks to obtain admissions from the witness favourable to the lawyer's client's case, and where necessary, to damage or destroy the credibility of the witness.

(b) *Direct Evidence and Hearsay Evidence* These concepts relate to the type of evidence that may or may not be allowed in court. *Direct evidence* occurs when a witness testifies and provides evidence with respect to an event that they personally experienced. The evidence is "direct" in the sense that the witness is testifying as to their *own* experience. Relevant direct evidence is generally admissible in court. *Hearsay evidence* occurs when a witness testifies and provides evidence with respect to an event that they learned about from another party or is testifying about out of court statements made by other parties. The witness does not, therefore, have personal knowledge of the events in question that are recounted in the out of court statements, therefore it is not possible to know whether the out of court statements repeated as hearsay evidence are relating the truth of what happened. As a general rule, hearsay evidence is inadmissible. The courts normally do not want to rely upon evidence that the witness cannot discuss from personal experience and that lawyers consequently cannot directly cross examine upon as to its veracity. There are many exceptions to this rule, such as out of court admissions by parties of facts adverse to their interest.

(c) *Ordinary Witnesses and Expert Witnesses* These concepts relate to the type of people who may testify and provide evidence. An *ordinary witness* testifies with respect to facts with which they have first-hand knowledge. An *expert witness* provides opinions and assessments on the basis of information provided by ordinary witnesses or hypothetical propositions. For instance, an ordinary witness may testify that they served the defendant with six glasses of wine during a dinner and an expert witness may offer an opinion as to the intoxicating effects of those drinks.


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(d) *Proof on Balance of Probabilities and Proof Beyond a Reasonable Doubt* These concepts relate to the extent of proof required by the court to grant judgment that a civil claim has been established or a criminal prosecution has been proven. In private law, generally the plaintiff has to prove its claim on a *balance of probabilities*. That means that every important part of its claim must be *probably* true. While it is impossible to accurately measure these things, it may help to think of a set of scales. At the end of the trial, the defendant will be held *liable* only if the scales are tipped in the plaintiff's favour–51 percent. If the scales are either evenly balanced or tipped in the defendant's favour, then the defendant will be *not liable*. In criminal cases, the standard of proof is much higher. The Crown has to prove the accused's guilt *beyond a reasonable doubt*. If that standard is met, then the accused will be found *guilty*. If not, the verdict will be *not guilty*. If at the end of the case, the judge or jury has a reasonable doubt on the facts that the prosecution must prove, the accused must be acquitted.
Diff: 2 Type: ES Page Ref: 37, 38
Topic: The Trial
Skill: Recall


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10) In a case filed in a superior court, Alpha Inc sued Beta Ltd for breach of contract. Alpha claimed damages of $250 000. Although Beta denied liability, it formally offered to settle the claim for $100 000. Alpha rejected that offer, but in response, it formally offered to settle its claim for $200 000. Beta rejected that offer. The case has now gone to trial. Explain what order the judge will likely make with respect to costs if (a) Beta is liable for $150 000, or (b) Beta is liable for $50 000?
Answer: As a general rule, the party that wins a private lawsuit is awarded *costs* against the losing party. Those costs are calculated, under the heading of *party-and-party costs* (or *partial indemnity costs* in Ontario), on the basis of standardized tariffs and only rarely cover the winning party's actual legal costs.

The applicable rules may be different in the province or territory where the trial took place, however, if one of the parties formally offered to settle out of court, the judge may award costs in a way that punishes an unreasonable refusal to settle a case that is not accepted, and this policy encourages parties in future cases to offer and accept reasonable settlement offers.

(a) The first part of the question assumes that Beta is held liable for $150 000: *ie* more than Beta's settlement offer but less than Alpha's settlement offer. In that situation, it is that Alpha may have acted unreasonably in rejecting Beta's offer. A superior court judge may therefore order Alpha (even though Alpha won its case) to pay Beta's costs in whole or in part, on a party-and-party basis.

(b) The second part of the question assumes that Beta is held liable for $200 000: *ie* more than Alpha's settlement offer. In that situation, Beta may have acted unreasonably in rejecting Alpha's offer. A superior court judge may therefore order Beta to pay Alpha's costs on a *party and party* basis or on *solicitor-and-client* basis (in Ontario, on a *substantial indemnity* basis). Although Alpha still will not be reimbursed for all of its actual legal costs, it will enjoy costs calculated on a tariff that is significantly more generous than the party-and-party tariff if solicitor-and-client costs are awarded to it.
Diff: 3 Type: ES Page Ref: 41
Topic: Costs
Skill: Applied


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11) In a case filed in the federal court, Gamma Inc sued Delta Ltd for breach of contract. Gamma claimed damages of $500 000. Although Delta denied liability, it formally offered to settle the claim for $200 000. Gamma rejected that offer, but in response, it formally offered to settle its claim for $400 000. Delta rejected that offer. The case has now gone to trial. Explain what order the judge will likely make with respect to costs if (a) Delta is held liable for $450 000, (b) Delta is held liable for $100 000, or (c) Delta is held not liable.
Answer: As a general rule, the party that wins a private lawsuit is awarded *costs* against the losing party. Those costs are calculated, under the heading of *party-and-party costs*, on the basis of standardized tariffs and only rarely cover the winning party's actual legal costs.

The applicable rules may be different in each Canadian jurisdiction. However, if one of the parties formally offered to settle out of court, the judge may award costs in a way that punishes an unreasonable refusal to settle a case and encourages parties in future cases to offer and accept reasonable settlement offers.

Although that is true generally in Canada, special variations on the rules apply in this case because as it is being heard in the federal court.

(a) The first part of the question assumes that Delta is held liable for $450 000: i.e., more than the amount contained in Gamma's formal offer to settle. In that situation, it is clear that Delta acted unreasonably in rejecting Gamma's offer. The judge may therefore (i) award party-and-party costs to Gamma for the period leading up to its formal offer of settlement, and (ii) *double* party-and-party costs to Gamma for the period after its formal offer of settlement.

(b) The second part of the question assumes that Delta is held liable for $100 000–less than the amount contained in Delta's formal offer to settle. In that situation, it is clear that Gamma acted unreasonably in rejecting Delta's offer. The judge may therefore (i) award party-and-party costs to Gamma for the period leading up to Delta's formal settlement offer, but (ii) *double* party-and-party costs to Delta for the period after its formal settlement offer.

(c) The third part of the question assumes that Delta was held liable for nothing at all: *ie* less than the amount contained in Delta's formal settlement offer. In that situation, it is clear that Gamma acted unreasonably in rejecting Delta's offer. The judge may therefore (i) award party-and-party costs to Delta for the period leading up to Delta's formal settlement offer, and (ii) *double* party-and-party costs to Delta for the period after its formal settlement offer.
Diff: 3 Type: ES Page Ref: 41, 42
Topic: Costs
Skill: Applied


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12) The Government of Canada is considering introducing a new law. However, the government is concerned that the law may not be constitutional. Can the Government of Canada ask for the Supreme Court of Canada to provide an advisory opinion on the constitutionality of a law or proposed law?
Answer: While the vast majority of the work performed by the Supreme Court of Canada consists of appeals from lower court decisions, the court also has jurisdiction to hear *references*. A reference occurs when a government asks for an opinion on the constitutional validity of a statute.
Diff: 3 Type: ES Page Ref: 44
Topic: The Supreme Court of Canada
Skill: Applied

13) Panaural Inc is a long-established entertainment company. Among other things, it manufactures and sells music CDs. One of its best-selling artists is a group called *Funky See Funky Do*. Under the contract that exists between Panaural and *Funky See Funky Do*, copyright in all of the group's songs is held by the company. Panaural was therefore especially upset when it discovered that Noize Records, a small music company, has been manufacturing and selling CDs containing music by *Funky See Funky Do*. Panaural intends to sue Noize Records in to obtain (a) an injunction to stop Noize Record's illegal sales, and (b) $75 000 in compensation for the losses that it has suffered as a result of Noize Record's breach of copyright. In an effort to keep costs down, however, Panaural wants to bring its case in a small claims court. Is it entitled to do so? Provide several reasons for your answer.
Answer: Panaural cannot bring its action against Noize Records in a small claims court. There are several reasons for that conclusion.

(a) *Type of Claim* Panaural's claim is based on a breach of copyright. Copyright law is governed by the federal *Copyright Act* and copyright claims are generally heard in either the federal court or a superior court of the province. It is unlikely that the small claims court has jurisdiction to hear claims of breach of copyright.

(b) *Types of Remedies* A small claims court cannot grant equitable relief such as injunction. Consequently, while they can award compensatory damages, they cannot award the injunction that Panaural seeks.

(c) *Monetary Limit* A small claims court can deal only with *small* claims. The monetary limit varies across the country from $5000 to $50 000. Panaural is seeking compensation of $75 000, which clearly exceeds the limit of any small claims court.
Diff: 2 Type: ES Page Ref: 46, 47
Topic: Small Claims Courts
Skill: Applied


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14) Describe the relationship between the concept of hierarchy and the doctrine of precedent. How are those concepts related to the rule of law?
Answer: For present purposes, the relevant hierarchy consists of the fact that not all Canadian courts have equal authority. Some are more jurisdiction than others. As a general rule, trial courts have the jurisdiction to decide the facts and law at first instance–usually by trial. At the intermediate level, various courts of appeal have relatively more authority. That is, they can set aside the orders of trial courts that are errors of law, where there are no facts to support the finding, or where a palpable and overriding error was made by the trial court in deciding the facts. The Supreme Court of Canada sits atop the hierarchy because it has the final appeal jurisdiction. It is the highest court in the land.

In fact, there are a number of judicial hierarchies within the country. Each province and territory has its own system of trial courts and appellate courts. An additional system exists separately for certain matters that fall within the federal jurisdiction. There is one constant, however, in that the Supreme Court of Canada is at the apex of each and every hierarchy.

Those hierarchies are essential to the doctrine of precedent. The doctrine of precedent states that a court must adhere to a decision that was given by a court higher above in the same hierarchy and must not depart from previous decisions of courts at its own level without a good reason–such as a disagreement concerning the law. Consequently, a trial judge in Edmonton must follow a decision of the Alberta Court of Appeal, just as a trial judge in Sudbury must follow a decision of the Ontario Court of Appeal. Significantly, however, because they are not in the same hierarchy, a trial judge in Edmonton does not have to follow a decision of the Ontario Court of Appeal, nor does a trial judge in Sudbury have to follow a decision of the Alberta Court of Appeal. (In such circumstances, a decision of an appellate court in another jurisdiction may be persuasive, in the sense that it inclines the trial judge to adopt a similar approach. It is not, however, binding, and it need not be followed.) Once again, however, since the Supreme Court of Canada sits atop every hierarchy, its decisions must be followed by all Canadian courts.

The rule of law, in part, states that disputes should be settled on the basis of laws, rather than on the basis of personal opinions unrelated to law. The concept of a hierarchy and the doctrine of precedent support the rule of law by requiring judges to follow the courts above them, and generally to follow the decisions made by courts within their same jurisdiction. If there is a binding precedent on point, the judge has no choice but to follow the settled legal rule. Even if there is no binding precedent directly on point, the judge must make a rational legal decision in relation to previous decided decisions of Canadian courts.
Diff: 2 Type: ES Page Ref: 47, 48, 49
Topic: Court Hierarchy
Skill: Recall


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15) Omicron Inc is one of several companies that manufacture widgets. For many years, almost half of its annual sales have been made to Sigma Ltd. Despite those sales, its financial position has always been somewhat precarious. A dispute recently arose with respect to financial losses that Sigma claims to have suffered as a result of a defective widget. Omicron strongly denies that it is responsible for those losses. Sigma, however, has announced that it will not purchase any more items until the matter is resolved. Omicron has asked for your advice. Analyze the situation from a risk management perspective by outlining the advantages and disadvantages associated with the various ways in which the case might be resolved.
Answer: There are at least four possible ways of resolving the dispute: litigation, negotiation, mediation, and arbitration. Each has advantages and disadvantages.

Litigation is not a very attractive option in the circumstances. Given that half of Omicron's sales are to Sigma, and given that Sigma apparently could purchase its supply of widgets from another manufacturer, Omicron probably needs to resolve the issue quickly and amicably. It cannot afford to lose half of its sales, either temporarily while the dispute drags on, or permanently if litigation's adversarial nature causes a rift between the parties. Several other factors also militate against the litigation option.
(a) To some extent, litigation tends to be something of a lottery. Its outcome is unpredictable. The worrisome nature of that proposition is heightened by the fact that litigation also usually provides an all-or-nothing solution. Omicron might win the case and be entirely absolved of responsibility (but possibly lose Sigma as a customer), but it might also lose the case and therefore be held liable for all of Sigma's losses.

(b) Since some aspects of litigation are almost always open to the public, the case might create adverse publicity for Omicron. Even if Omicron wins the case, potential customers might recall Sigma's allegations, rather than the actual outcome. The result may be lost profits due to fewer sales.

The other three possibilities are forms of ADR (alternative dispute resolution). Consequently, they all share certain advantages.
(a) First, since they do not occur in court, they are not generally publicly accessible. Omicron therefore would have to worry less about adverse publicity.
(b) Second, they all tend to be quicker and less expensive than litigation. There is no need to wait for a trial date to come available, nor possibly to proceed through a series of appeals. Likewise, since they are relatively less formal and protracted, they tend to involve fewer costs.
(c) Third, since they are not based on an adversarial model, they tend to be less injurious to on-going business relations. That is especially true of negotiation and mediation. That is important to Omicron because so many of its sales are made to Sigma.
-Finally, because ADR generally involves give and take by both sides, Omicron ultimately might be required to pay less money than would be the case if it was held liable at the end of a trial.


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There are, however, other features that should be considered with respect to each form of ADR. (a) Negotiation is a discussion that leads to the settlement of a dispute. Although the parties may use their lawyers, they are not required to do so. Negotiation may have certain drawbacks in the present case. First, since it requires cooperation, it may not be possible if a dispute has already turned ugly. Second, the parties do not appear to have equal bargaining power because Omicron apparently needs Sigma more than Sigma needs Omicron. It also seems true that Omicron has fewer resources than Sigma. Consequently, Sigma may exploit its advantage to force a harsh settlement on Omicron. Third, if the dispute concerns a loss that is covered by an insurance policy, Omicron will be required to let the insurance company take control of the negotiations. If Omicron attempts to settle the matter itself, it may lose the benefits of the policy. Finally, there is no guarantee of success. Negotiations may collapse and a dispute may remain unresolved. If so, the effort put into the negotiations will be largely wasted.

(b) Mediation is a process in which a neutral person (called a mediator) helps the parties reach an agreement. Like negotiation, mediation is non-binding. A mediator would bring the parties together, listen to their arguments, outline the issues, comment on each side's strengths and weaknesses, and suggest possible solutions. But the mediator would *not* give a decision and the parties would *not* be required to obey any orders. In that sense, mediation is unlike formal litigation, but like negotiation. It has many of the same limitations and dangers as negotiation, except that it also provides the parties with a neutral perspective.

(c) Arbitration, in contrast, would look more like court proceedings. It is a process in which a neutral third person (called an arbitrator) imposes a decision on the parties. The fundamental difference between arbitration and mediation is that an arbitrator's decision is almost always binding, in the sense that the parties must obey it. Indeed, Omicron and Sigma might agree beforehand that the arbitrator's decision, unlike a trial judgment, cannot even be appealed. The trial-like features of arbitration may not be very attractive to Omicron. Given its precarious position, Omicron might prefer either negotiation or mediation, which involve greater flexibility and somewhat less likelihood of a devastating result.

Finally, it should be noted that the various forms of dispute resolution could all be used in this case. Omicron and Sigma might try to negotiate a settlement. If that fails, they might seek help from a mediator. If that also fails, they might send their dispute to an arbitrator. And if one party is unhappy with that decision, it might appeal it to a court (unless it had agreed that the arbitration was final and binding).
Diff: 3 Type: ES Page Ref: 53-55
Topic: Alternative Dispute Resolution
Skill: Applied


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