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CHAPTER 2 RESOLUTION OF DISPUTES

Chapter Commentary

After reviewing the concepts of types, sources and areas of law in Chapter 1, this chapter focuses solely on the concept of civil law. Students should understand that businesses, at one time or another, may encounter a lawsuit. It is important that students, regardless of their position within a business, understand the importance of reducing the risk of a lawsuit from happening.

Students may hear the terms lawsuit, litigation, plaintiff and defendant and in Section 2.1, those terms are defined. Although the chances of an employee being embroiled personally in a lawsuit when employed by a business might be slight, knowing what the process is can be helpful. Understanding key terms such as plaintiff, defendant, discovery and other litigation terms can better prepare a business person for litigation. For example, knowing that litigation, lawsuit, action or case are synonymous is important to know. It will be interesting to ask your students if they know of any lawsuits that they have been involved in or someone they know was involved in or whether there are cases that come to mind. Lately, large cases such as Enron can be subjects for discussion. Although it is a US case, it shows how employees are affected by unethical decisions of officers of a business.

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Students generally know the criminal terms of 'innocent until proven guilty' from movies and TV but understanding the balance of probabilities may be more difficult. The concept of something 'more likely to have occurred than not have occurred' can take some time to drive home. By looking at various cases such as Childs v. Desormeaux and other cases can help students understand the decision of the court.

The notion that cases can go before a court and be settled or that the case goes to one level of court and stop there… or be put through each level of court and possibly arrive at the Supreme Court of Canada must also be discussed. Understanding the judicial history of a case helps a student realize the final disposition of the case. By reviewing various cases that are completed at various levels (supreme/superior court, court of appeal and the Supreme Court of Canada), helps the student realize that these are potential outcomes. By reviewing and discussing the hierarchy of the Canadian civil legal process will assist students with the roadmap of litigation.

The litigation process is an interesting part of the resolution of disputes. Students are generally not aware of the many steps that need to take place before a case goes to trial. The various documents and processes such as the pleadings, exchange of documents, notice of trial and discovery are great eye openers to the very costly and intensive development of a case, on both the Plaintiff and Defendant sides.

At the end of the day, ADR (alternative dispute resolution) is the 'kindest' of methods for both parties, if it is appropriate. Students should realize that some cases are not mention for ADR become of their complexity or because one or both sides are not amenable to

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resolution and a court has to make that decision. However, if both sides are agreeable, students will understand that it can be a definite consideration and alternative to going to court, and may understand that it can also be a choice in their personal lives.

Discussion Forum Topics

Increasingly discussion forums are being incorporated into courses to foster discussion between students that expand or augment that which has already taken place in class.

The following are suggested discussion board topics for this chapter, along with a suggested establishing paragraph.

You are required to make at least two thought-provoking postings each week to help facilitate the discussion. We hope this will ensure a lively discussion.

Please remember this is not a writing assignment but a conversation, please be respectful of the opinions of others.

1. Discuss the both the drawbacks and advantages of using "Balance of Probabilities" as the standard of proof in Civil Law cases.

2. Watch the following video: TBEXAM.COM

http://www.ted.com/talks/philip_howard

Discuss whether Phillip Howard's suggested remedies are needed in Canada.

3. Discuss whether the increase in judicial power in the Canadian political system due to the introduction of the Charter is good thing or not?

4. The Federal Government has announced that all appointees to the Supreme Court of Canada must be bilingual in both French and English. Discuss the advantages and drawbacks of this requirement.

5. From this Chapter , I want you to discuss the following questions:
   a. What is the most important thing you learned and;
   b. What is the most challenging concept you learned in this section.

Flipped Classroom

The Flipped classroom is an opportunity for students to prepare for class and for the instructor's to expand the students' learning through various activities and discussions. By reading the textbook, watching a YouTube video, or completing a short assignment prior to their class, the

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discussions and activities in the classroom become more robust and command an interesting learning experience.

Please note that not all pre-class activities are required. The authors have prepared a sample of items that can be provided to the student during a four-day, one hour course. Instructors may choose the items they feel are appropriate for their classroom time allocation and their expectations on out-of-classroom time.

In anticipation of Chapter 2 – Day 1, students should:

Preparation:
- Read Section 2.1 and do a search for Imperial Tobacco's lawsuits. Read relevant articles on this case.
- Review the concept of Balance of Probabilities. Research the concept of the reliability of witnesses. Find a case where the balance of probabilities (or balance of proof) and witnesses was paramount in the court's decision.

In class:
- Discuss how a witness's statement plays a major part on the balance of probabilities/burden of proof.
- Discuss the concept of settlement. Examine one of the largest settlement in Canada at http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7957/index.do?r=AAAAAQAQSW1wZXJpYWwgdG9iYWNjbwE

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In anticipation of Chapter 2 – Day 2, students should:

Preparation:
- Read Sections 2.2.
- Find examples of cases that have a final judgement in the superior court of a province, a case where the final judgement is in the court of appeal and another that has its final judgment in the Supreme Court of Canada.

In class:
- Discuss the types of cases that are considered by the Supreme Court of Canada.
  - Watch the YouTube entitled "Final Argument: A Young Litigator's First Trip to the Supreme Court of Canada found at https://www.youtube.com/watch?v=KKNKHJnpROU
  - Watch a portion of the YouTube entitled "Air Guns @ the Supreme Court of Canada found at https://www.youtube.com/watch?v=TryQMSqYJRU to understand how this Court works. (NOTE: This is a 50 minute video so you may want to watch a portion of it for students to get the general idea)
  - Discuss Questions 1-5.

In anticipation of Chapter 2 – Day 3, students should:

Preparation:
- Read Sections 2.3.
- Find an example of a pleading.

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- Watch the YouTube entitled Examination for Discovery at https://www.youtube.com/watch?v=44J9AeNabFs
- Although it is not a Canadian YouTube video – it has valid points regarding Torts in the Age of Coronavirus Torts in the age of the coronavirus - YouTube

In class:

- Discuss the types of pleadings that exist in a lawsuit.
- Have students show the pleading documents they have found.
- Discuss the Examination for Discovery video. What are some observations of the students regarding this process.

In anticipation of Chapter 2 – Day 4, students should:

Preparation:

- Read Section 2.4 and 2.5
- Although it is a US law firm, they have a very good website about ADR: Go to YouTube entitled "Alternative Dispute Resolution – What is ADR?" found at https://www.youtube.com/watch?v=5IfPqPIPSmI
- Prepare a mini case in your own words about a situation that would be used for ADR.
- Research and explain when a lawyer would be needed. Provide a scenario when you, as an employee, should contact your employer about a situation that might have legal consequences.

In class:

- Review the students' mini cases and discuss.
- Review and discuss the scenario. TBEXAM.COM
- Discuss the pros and cons of ADR
- Short quiz.
- Provide answers to the crossword.

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HELP

The fact situations described in the **Help!** feature of the chapter can be used to assist students in developing a logical, progressive approach to the analysis of a fact situation and identification of issues involved in the law of tort.

Based on the information and definitions provided in the chapter, the students could be asked to: a) identify and describe the action that has been committed by the individual or business that has caused harm to another party;

b) determine whether the action was intentional or unintentional, and name the type of tort that has taken place (for example: defamation).

The fact situations can be further used to review and/or initiate discussion amongst students about the various component parts that make up a legal action based on tort.

The following are some suggestions for this purpose along with references to the sections in the text where the issues have been addressed.

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As a businessperson, you may experience any of these scenarios below:

- **HELP! I have just received a legal notice with my company's name on it but I'm not sure what it is.**

This fact situation can be used to introduce students to the different forms of 'legal notice' a business might encounter (Statement of Claim, Notice of a Hearing, notice under landlord and tenant legislation) all of which will lead to interaction with some sort of court or administrative body. This could be used to enter into a discussion of the civil courts systems in Canada for example. This situation can be used as well to begin the process of having students become more analytical and detailed in their description of documents or in identifying issues.

- **HELP! A company owes my organization money but I'm not sure how to collect it.**

This fact situation leads into a discussion of the litigation process and the rules involved in commencing and maintaining a legal action. Students can be asked to explore practical resolutions to collecting the money before turning to civil litigation and the procedures that come into place once that route is chosen.

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- **HELP! A former employee is suing my business for unjust dismissal. Can he do that?**

This fact situation predicts issues that will be explored in Chapter 8 on Employment. Students can be asked to describe what they think constitutes 'unjust dismissal' prior to referring them to Chapter 8 to find the explanation. With the definition in mind, a discussion of the litigation process and the court systems can be held.

- HELP! **Are my employees taking all precautions to protect our customers during the pandemic? Do I feel okay with our duty of care during a pandemic?**

It is important for students to realize and, further, discuss what precautions businessperson/manager must take for their staff during a pandemic – by going to the Government of Canada's website to research the most recent information will help. Also, to ensure that all employees feel safe in their environment and are provided all the necessary equipment, cleaning supplies, etc. In addition, a section of the employee or organization manual should be dedicated to Pandemic Preparations and What happens during a pandemic is advised. As time goes on, there will be more information available to employers regarding their duty of care to their employees and students should spend some time researching and discussing the best course of action.

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- **HELP! My lawyer is using words like "discovery" and "interlocutory" in the lawsuit against my company and I'm very confused.**

Students should be directed to Understanding civil litigation process and proceedings *in section 2.3 of the text for explanations of terminology. This is an opportunity to open a discussion on the unique language of the law and its use.*

HELP! I don't like the result of my lawsuit in court. What can be done?

This fact scenario can serve as an introduction to the Civil Court Systems in Canada, which are explained in this chapter.

- **HELP! I don't want to go through an expensive lawsuit in the court system. What are my alternatives?**

A discussion on the use of a mediator to avoid the time and expense of a lawsuit in these circumstances can be used to introduce a broader conversation about alternative dispute resolution (ADR). Students can be referred to that section in the chapter to obtain more detail following the general discussion of the topic of ADR.

- **HELP! I need to ensure my organization won't get into any legal trouble, when should I be talking to a lawyer?**

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Risk management is a critical element in running a commercial enterprise and the ability to recognize it and determine how to address it is important. This scenario offers an opportunity to open a discussion on the balance to be achieved between making decisions based on generalized knowledge and knowing when to turn to professional help.

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For Review

Questions

1. What is the difference between a plaintiff and a defendant? Can you have more than one plaintiff or defendant? Explain. **(LO 2.1)**

The difference between a plaintiff and defendant is that the plaintiff is the person who brings an action (or case) against the defendant. The defendant must defend themselves against the plaintiff's claim. You can have multiple plaintiffs and defendants.

2. Find three cases from three different courts. Who are the parties in each case? **(LO 2.1, 2.2)**

Answers will vary.

3. Explain what is involved in a "settlement" of a civil litigation matter, and what benefits or problems it may present. **(LO 2.3)**

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A settlement can occur at anytime during a lawsuit. Up until a decision is rendered by a judge (or judge and jury), two parties can agree on a settlement – an agreement that has both parties agreeing on a monetary amount or other resolution. The benefits is that the costs are lower the farther the case is from trial. The problems it may present is that one party may feel pressured, financially or otherwise, to settle so that the matter is resolved.

4. What is the difference between the balance of probabilities and beyond a reasonable doubt? **(LO 2.1)**

The difference between these two concepts are:

Balance of probabilities is that the plaintiff must prove that the defendant has done them a 'wrong' in a civil case while Beyond a Reasonable Doubt exists in a criminal case where the Crown/prosecution must prove, beyond a reasonable doubt that the Defendant is guilty of the wrong according to criminal law.

5. List other titles/expressions for civil litigation. **(LO 2.3)**

Also called: matters, actions, cases, lawsuits, proceedings, and applications.

6. Why does it take so long for some cases to be resolved? **(LO 2.3)**

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Litigation cases take a considerable time to be resolved because, in some cases, their complexity but also that they need to be put into a 'line up' of cases before the court. Also, it takes time for the litigation process to occur – pleadings, exchange of documents, discovery and then trial.

7. What does it mean to "appeal a case"? **(LO 2.2)**

When a party in any case that appears before the courts is unhappy with the decision of the Court, they can appeal to a higher court to look at the matter again in the hope that they will get a resolution in their favour. The party that is appealing is the Appellant and they must have specific reasons that the decision was in error.

8. Why is having a small claims court important? **(LO 2.2)**

Small Claims Court allows claims under a certain amount to be adjudicated – meaning that lawyers conduct the trial in a more casual way, the costs are less and the process is easier for both parties. The courts are not 'clogged' up with cases of lesser monetary value but still have a significant decision that affects the party who loses.

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Activities – *answers will vary*

1. Browse newspapers, magazines or websites and other periodicals for a recent civil case. Explain the background of the case, the issues of the case and provide the outcome. (LO 2.1)
2. Interview a lawyer or look for an interview of a Canadian lawyer online who talks about the legal system in Canada or a case they were involved with. (LO 2.1)
3. Find a case in each level of court (Supreme, Appeal and Supreme Court of Canada) and explain the case and its final outcome. (LO 2.2)
4. Create your own civil case and explain the issues, the parties and the court in which it will be heard. Indicate the steps that your plaintiff or defendant will have to go through. (LO 2.2, 2. 3)
5. Choose a province and explain the hierarchy of its court system. (LO 2.2)
6. Choose a province, other than British Columbia: research and outline the litigation process for that province. (LO 2.3)
7. Briefly explain the differences between mediation and arbitration and provide examples of circumstances in which one of these forms of ADR might be more effective than the other in resolving a dispute. (LO 2.4)
8. Discuss individually or in small groups the various risks that businesses might experience. Provide a list of 5 risks and find a case that represents those risks and discuss the outcome. (LO 2.5)

Cases for Discussion

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Case #1

Fred ran a small business selling customized signs and banners. Dennila ordered 15 custom designed and printed banners from Fred for an event she was planning. The order cost $26,500.00. Unfortunately the event was a disaster when only a third of the people Dennila had hoped to attract, showed up and bought tickets. As a result, Dennila defaulted on her payment to Fred for the order he delivered.

Fred, needless to say, is very angry and cannot afford to write off the money owed to him. Knowing you took an excellent course on business law at your college and still have your textbook, *Canadian Business Law Today,* for reference, he has come to you to ask advice as to what his options are in these circumstances. You know that the monetary limit for a claim in the Small Claims Court where Fred operates his business is $25,000.00.

Outline for Fred the different methods available to him in trying to collect his outstanding account against Dennila. Explain the benefits and problems that each approach may present. (LO 2.1)

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Based on the information available to the students in the text, the response to this case should involve Fred taking such practical steps as writing a demand letter with a final date for payment before taking further steps. A student might raise the possibility of handing the matter over to a collection agency or using ADR methods such as a mediator or arbitrator. Finally commencement of a court action would be a possibility, but the decision would have to be made whether to drop the claim to the level at which it can be started in Small Claims Court, or go to a higher-level court with the accompanying costs.

Students should provide an analysis of time, cost and risk for each of these options. Although a recommendation for Fred is not requested, asking the students for their recommendation and the reason behind it would help to cement the lessons from the chapter.

Case #2

Danah and Amal, a young couple, had purchased their dream home on a lovely street in their home town. It was in a newly developed neighborhood with a great price of $250,000. The young couple decided that they would get funding from a bank through a mortgage but required a down payment. It was decided that they would get their down payment from their friends, Mohammad and Bahija, close friends who had come into some money when they sold their business a few years ago. The down payment of $30,000 was given to Danah and Amal with a verbal agreement to pay it back over five years.

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As the years went on, Danah and Amal made their mortgage payments but they had not paid one cent back on the down payment that they had borrowed from their friends, Mohammad and Bahija. Mohammad and Bahija had made numerous requests to Danah and Amal, after two years of non-payment, for their $30,000 or even a payment schedule. Danah and Amal ignored all requests.

Mohammad and Bahija really weren't sure what to do. This process put a serious strain on their friendship. At this point, they knew they couldn't go to small claims court because of the amount they were claiming. Also, they were at a point in their lives where they had children in sports and also had purchased some assets and didn't have the money to get involved in a lawsuit.

What would you suggest Mohammad and Bahija should do and why? (LO 2.4)

Depending on the province or territory Mohammad and Bahija reside in, the amount of money that would be claimed in any lawsuit is important. For example, most jurisdictions have a cap of $25,000 for Small Claims Court. If the Miller's dropped the amount of their claim by $5000 they could file their case with the local Small Claims Court, as it would meet the $25,000 threshold. The loss of the $5,000 can be justified by

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the costly process of litigation.

Another answer students might suggest is using ADR to resolve their issue with Danah and Amal. In order to get Danah and Amal' attention, it may be necessary for Mohammad and Bahija to file and serve the Small Claims Court claim, and then suggest using ADR. By engaging Danah and Amal in mediation, for example, they may be able to come to an agreement with the help of a mediator, and also perhaps save the friendship. The cost would be lower and the atmosphere could be conducive to a happy resolution for both sides.

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CORRECT ANSWERS ARE LOCATED IN THE 2ND HALF OF THIS DOC.

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

1) Civil litigation is a form of Alternative Dispute Resolution.
   - ◎ true
   - ◎ false

2) The *Desormeaux* and *Clendenning* cases are examples of how the same set of facts can result in both a criminal and civil matter.
   - ◎ true
   - ◎ false

3) Most civil court matters are decided by having a trial.
   - ◎ true
   - ◎ false

4) The standard of proof in a civil trial is beyond a reasonable doubt.
   - ◎ true
   - ◎ false

5) Mary is suing John for failing to pay for the goods he brought from her. Mary is required to settle with John instead of going to trial.
   - ◎ true
   - ◎ false

6) Mary is suing John for failing to pay for the goods he bought from her. Mary has to prove her case beyond a reasonable doubt.
   - ◎ true
   - ◎ false

7) You believe that the Judge made an error in your case. You can have your case re-heard by a jury.
   - ◎ true
   - ◎ false

8) In some cases, a business person can represent themselves in a Small Claims Court.
   - ◎ true
   - ◎ false

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9) A business person needs to only be aware of the levels of court in the province in which they do business.
- ◎ true
- ◎ false

10) Decisions of the Supreme Court of Canada are final and can cannot be appealed.
- ◎ true
- ◎ false

11) Decisions of the Supreme Court of Canada must be decided by all 9 Justices.
- ◎ true
- ◎ false

12) A party can appeal any case in which they do not like the decision.
- ◎ true
- ◎ false

13) The Superior Court of each province is the highest trial court in that province.
- ◎ true
- ◎ false

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14) Provincial Court Judges in each province are appointed by the provincial government.
- ◎ true
- ◎ false

15) Missing a limitation deadline may result in your claim being dismissed.
- ◎ true
- ◎ false

16) Each province has a uniform set of Civil Procedure Rules that must be followed in every litigation
- ◎ true
- ◎ false

17) Documents that are labelled without prejudice for the purpose of settlement do not need to be disclosed
- ◎ true
- ◎ false

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18) A mediator controls the process of the dispute resolution.
- ◎ true
- ◎ false

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

19) A settlement in a civil matter is
- A) mandatory
- B) optional
- C) binding
- D) required by the provincial civil rules

20) A lawsuit can have
- A) more than one plaintiff and defendant
- B) only one plaintiff and one defendant
- C) only a third party
- D) always two plaintiffs

21) The same set of facts
- A) can result in both a criminal and civil action
- B) must always only be based on the civil dispute
- C) should always have a civil and criminal component
- D) must require settlement between the parties

22) An Appeal from the British Columbia Small Claims can be brought to
- A) any provincial court for the monetary value
- B) the British Columbia Supreme Court
- C) the Supreme Court of Canada
- D) the British Columbia Federal Court

23) Mary is suing John for failing to pay for the goods valued at $20,000 and lives in Manitoba; Mary should file
- A) In the Supreme Court of Manitoba
- B) In the provincial court of Manitoba
- C) In the Small Claims court of Manitoba
- D) In Federal Court

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24) If the losing party disagrees with the decision of the court, then they
- A) cannot appeal
- B) can have a different judge in that same level of court re-hear the case
- C) can appeal to the higher court
- D) can Immediately have their case heard at the Supreme Court of Canada

25) To have a case heard at the Supreme Court of Canada, parties
- A) must do nothing
- B) must seek leave to appeal and await the court's decision
- C) must file their materials for their hearing immediately
- D) cannot appeal to the Supreme Court of Canada unless it is a Federal matter

26) A decision by a provincial Appeal Court is made by
- A) 1 Judge
- B) 2 Judges
- C) 3 Judges
- D) 5 Judges

27) A party can appeal a case
- A) at any time
- B) within the prescribed time frame listed in the Rules of Civil Procedure
- C) within 10 days in all cases
- D) within 90 days in all cases

28) A decision from the Federal Court
- A) can be appealed to the Federal Court of Appeal
- B) must first ask for leave to the Supreme Court of Canada
- C) may be appealed in the provincial courts
- D) may be re-heard by a different judge in the same Federal Court

29) Indigenous Courts
- A) Follow the same procedures as the provincial courts
- B) Decisions may be appealed to the Court of Appeal of the Particular province
- C) Are exclusively dealt with by the First Nations People
- D) Have the power to make laws that must be followed by Provincial Courts

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30) Provincial Administrative Tribunals
- A) hear all types of matters
- B) hear specialized administrative matters such as Human Rights allegations, such as the case of *O.P.T v. Presteve Foods Limited*
- C) appeals from provincial courts
- D) are formed by the Federal government

31) Document Disclosure means
- A) disclosing only the material documents
- B) withholding the documents that may weaken your case
- C) disclosing all of the documents in your possession
- D) promising to disclose pertinent documents at a later date just before trial

32) The litigation process commences by
- A) serving and filing a Statement of Claim or Notice of Action
- B) serving a Writ of Summons
- C) serving and Filing Minutes of Settlement
- D) filing a Notice to the Court

33) These documents do not need to be disclosed
- A) documents that are solicitor client privileged
- B) documents that are not notarized
- C) all documents, including privileged documents must be disclosed
- D) documents that are more than 7 years old

34) A mediator
- A) will issue a final and binding decision for the parties
- B) will assist in the settlement process
- C) will issue a decision
- D) will not give an opinion as to the strengths or weaknesses of the parties' position

35) ADR is not suitable
- A) where evidentiary processes are required to secure a party's rights
- B) where a business person has failed to obtain legal advice early on
- C) where mediation has failed
- D) where the parties wish to settle in good faith

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36) Risk management for a business involves
- A) Obtaining legal advice as soon as possible when a dispute arises and using mediation as a tool to resolve the issues
- B) Obtaining legal advice and then letting the dispute evolve in accordance with the best practices
- C) Preparing a plan for risk for management but not implementing it
- D) Contracting out of ADR procedures with suppliers

37) The Supreme Court of Canada hears appeals on
- A) Everything
- B) Questions of mistake of fact and mistake of law
- C) Questions on mistake of procedure only
- D) Questions of Law only

38) Which one of the following is **not** a usual term for civil litigation?
- A) Action
- B) Case
- C) Judgment
- D) Lawsuit

39) Raymond, who lives in Winnipeg, appeals a trial courts' decision he lost. The highest court his case can eventually be appealed to is:
- A) Federal Court of Appeal
- B) Manitoba Court of Appeal
- C) Manitoba Court of Queen's Bench
- D) Supreme Court of Canada

40) Bob bought a new stereo system for $3500 from A&C Sound in Vancouver. He agreed to make monthly payments of $500 and did so for the first 2 months. He really liked the system, but did not feel like paying the balance. A&C Sound decided to sue. Their action would be in the:
- A) Court of Appeal
- B) Provincial Court, Criminal Division
- C) Provincial Court, Small Claims Division
- D) Supreme Court

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41) In the *Snazzy v James* example, the Nova Scotia Court of Appeal dismissed the case. Snazzy can now:
A) Refer the action back to the Nova Scotia trial court for a new hearing
B) Refer the action directly to the Supreme Court of Canada
C) Seek leave from the Nova Scotia Court of Appeal for another hearing
D) Seek leave to appeal from the Supreme Court of Canada

42) Which statement is correct with respect to the process of civil litigation?
A) In a civil action, a plaintiff is taking action against another individual or corporation for compensation
B) In a civil action, a defendant is taking action against another individual or corporation for compensation
C) In a criminal action, a defendant is taking action against an accused for compensation
D) In a criminal action, a plaintiff is taking action against an accused for compensation

43) In British Columbia the amount of a monetary claim made in Small Claims Court cannot exceed?
A) $5000
B) $15,000
C) $25,000
D) $50,000

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44) If a business person had a dispute with the Canada Revenue Agency, the court action must be heard in:
A) Federal Appeal Court
B) Federal Trial Court
C) Provincial Small Claims Court
D) Provincial Superior Court

45) Which document is used to commence a civil action in British Columbia?
A) Notice of Application
B) Notice of Civil Claim
C) Statement of Claim
D) Writ of Summons

46) The successful party who obtains a judgment is:
A) Execution Creditor
B) Execution Debtor
C) Judgment Creditor
D) Judgment Debtor

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47) You injured your hand when an electric shaver you bought exploded in your hand. Your lawyer is filing a claim in BC Supreme Court. The first court document your lawyer will send you a copy of is:
   A) List of Documents
   B) Notice of Application
   C) Notice of Civil Claim
   D) Writ of Summons

48) If a defendant wanted to make their own claim against a plaintiff in a BC Supreme Court action, they would need to file a:
   A) Counter-claim
   B) Notice of Application
   C) Petition
   D) Statement of Claim

49) In British Columbia, the discovery stage of the litigation process allows the parties to examine each other under oath. This is called an:
   A) Examination in Aid
   B) Examination for Discovery
   C) Examination for Documents
   D) Examination under Oath TBEXAM.COM

50) Which is **not** an example of a pre-trial application in a BC trial court?
   A) Application for directions
   B) Application for discovery of documents
   C) Application to add a party
   D) Application to find a defendant guilty

51) Diane is a physical therapist who runs a small business from her home. Her long-time customer, Bob, is behind on his payments and is unhappy with the outcome of his treatment. Which of the following statements is true?
   A) If her primary concern is to keep costs low, Diane should start a Small Claims action.
   B) If her primary concern is to deal with the matter quickly, Diane should hire a lawyer to file a claim in the superior trial court.
   C) If her primary concern is to resolve the issue, Diane must file a claim as alternative dispute resolution is not applicable to this type of dispute.
   D) If her primary claim is to keep her relationship with Bob, Diane should consider an alternative form of dispute resolution.

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52) Which of the following cases would be a good one to mediate?
A) Where the parties want to maintain goodwill
B) Where the parties want to ensure the right to appeal
C) Where the parties want to drag the matter out
D) Where the parties want to have their case made public

53) What is an advantage of arbitration?
A) Less expensive than litigation
B) Outcomes are consistent
C) Outcomes are subject to appeal
D) Process is lengthy

54) Which of the following is an advantage of using a form of ADR?
A) Can be appealed to a Judge
B) Can be resolved quicker than through litigation
C) More expensive than litigation
D) More time consuming than litigation

55) Having a risk management plan allows a business person to:
A) Manage their business activities so they never need legal advice
B) Manage their business activities so they know what legal risks require legal advice
C) Protect their business activities from ever needing legal advice
D) Protect their business activities from ever having to do their own legal research

56) Having a risk management plan for a business will:
A) Assist a business person in managing legal risks
B) Ensure that a business person will never need legal advice
C) Protect a business person from all litigation
D) Provide a business person with all necessary legal information

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

57) Define Balance of Probabilities. Who has the burden?

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58) Define "leave to appeal" and provide a reason why leave may be granted.

59) What effect, if any, does a ruling of the Supreme Court of Canada have on law and society?

60) Under what circumstances might documents not be disclosed in a litigation to the other side?

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Answer Key

Test name: Chapter 02

1) FALSE
2) TRUE
3) FALSE
4) FALSE
5) FALSE
6) FALSE
7) FALSE
8) TRUE
9) FALSE
10) TRUE
11) FALSE
12) FALSE
13) TRUE
14) TRUE
15) TRUE
16) TRUE
17) TRUE
18) FALSE
19) B
20) A
21) A
22) B
23) A
24) C
25) B
26) C
27) B
28) A
29) C
30) B
31) C
32) A
33) A
34) B
35) A
36) A
37) B

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38) C
39) D
40) C
41) D
42) A
43) C
44) B
45) B
46) C
47) C
48) A
49) B
50) D
51) D
52) A
53) A
54) B
55) B
56) A
57) Short Answer
In a civil matter this is the burden of the plaintiff to prove that something has more likely than not occurred.

58) Short Answer
Permission by the three justices of the court to have a case heard.

59) Short Answer
The decisions of the Supreme Court present the core of what a democratic society requires to settle differences that affect the people of Canada. Their rulings eventually become codified, where applicable.

60) Short Answer
Solicitor-Client Privilege
Litigation Privilege
Without Prejudice documents

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