Test Bank for Law and Business Administration in Canada CDN 15th Smyth

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

1) A simple definition of law would be misleading because law is so
   A) bound up with the rule of law.
   B) difficult to define.
   C) diverse and complex.
   D) none of the above
   E) all of the above

   Answer: C

2) We need to have law because it
   A) regulates individuals' interactions with one another.
   B) protects persons, property, and society, and prohibits conduct that society believes is harmful.
   C) gives the government the power to act for the benefit of society in general.
   D) provides an element of certainty in determining contractual and property rights.
   E) all of the above

   Answer: E

3) The fact that laws that appear to be unjust must still be obeyed suggests that
   A) justice is merely a product of social morals.
   B) there is a difference between good laws and bad ones.
   C) in reality, we must think of justice as nothing more than the result of our legal system.
   D) justice is merely the result of the influence of ethics.
   E) those who make the laws just do not care.

   Answer: C

4) The Canadian legal profession is organized on a provincial basis with each province having its own "bar" society. However, a member of any provincial bar may appear before
   A) the House of Lords in England.
   B) any Landlord and Tenant Board Tribunal in any province.
   C) the Supreme Court of Canada.
   D) any Human Rights Tribunal in any province.
   E) the International War Crimes Tribunal.

   Answer: C

5) Joe hired Julie, a lawyer, to defend him on assault charges. At their first meeting he told her the details concerning his involvement in the assault. After a dispute between Joe and Julie in relation to legal fees, Joe decided to retain a new lawyer. The police attended at Julie's office to ask her questions concerning what Joe told her about the assault. In these circumstances
   A) given that the solicitor/client relationship has ended, Julie is at liberty to disclose the information.
   B) the solicitor/client privilege does not allow Julie to reveal any communications she had with Joe without his approval.
   C) the solicitor/client privilege does not extend to admissions by clients of wrongdoing so communications must be disclosed.
   D) the *Canada Evidence Act* permits Julie to disclose any information once the retainer has ended.
   E) Julie is at liberty to disclose any information in relation to the dispute with Joe over fees but not in relation to communications about the assault.

   Answer: B

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6) A compliance officer employed by a business for purposes of monitoring legislative requirements applicable to the business ensures
   A) that probationary employees are screened and monitored appropriately by the business in the 90 day period.
   B) that outside counsel are hired by the business on a general retainer basis to respond to urgent matters.
   C) that the business complies with all regulatory and legislative requirements to avoid claims, fines and other possible penalties or sanctions.
   D) that someone attends on all Small Claims Court matters where outside counsel are not required.
   E) that the business pays outstanding fines.

Answer: C

7) When we say that the law is part of every facet of business, we mean that
   A) it outlines what we do, how to do it, and what not to do.
   B) it is central to business interaction with customers, suppliers, competitors, and government.
   C) the failure of businesses to comply with the law may result in criminal, regulatory, and/or civil liability.
   D) business cannot succeed without understanding the law.
   E) all of the above

Answer: E

8) Effective operation of a business requires that business managers
   A) must know the law and must understand the legal risks associated with the everyday choices that they make.
   B) simply rely on the decisions made by those in authority above them.
   C) do not have to familiarize themselves with the law.
   D) rely on lawyers to form the right questions and answers for legal issues.
   E) do not have to become experts in the activities of their businesses.

Answer: A

9) A risk management plan
   A) does not require regular revision.
   B) helps a business to identify and anticipate potential legal liability.
   C) is only necessary in sophisticated businesses.
   D) does not necessarily involve a lawyer in every part of the overall plan.
   E) does nothing to promote the better conduct of a business.

Answer: B

10) Which of the following will a business use to reduce its liability?
   A) risk reduction
   B) risk transfer
   C) risk absorption
   D) risk avoidance
   E) all of the above

Answer: E

11) To implement a risk management plan, a business must first
   A) conduct a legal audit of the business operation.
   B) revise the plan on a regular basis.
   C) develop effective strategies to deal with the risks.
   D) implement the plan.
   E) prioritize the risks.

Answer: A

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12) In deciding whether a statute is valid or invalid, the court must consider
A) whether it should interpret the statute narrowly.
B) the effect that the statute has.
C) the purpose of the statute.
D) whether it should interpret the statute broadly.
E) all of the above

Answer: E

13) A binding code of conduct is a
A) code of conduct that governments impose on business and industry.
B) code of conduct that regulates specified activities, such as those of professionals.
C) code of conduct that a firm or business imposes on itself.
D) general code of conduct that is available to anyone.
E) code of conduct established voluntarily by industry.

Answer: B

14) When a court interprets a statute narrowly, the result will most likely be that
A) the statute will be found to be outside, or *ultra vires*, the government that made it.
B) the court will change the wording in the statute so that it makes sense.
C) the statute will be struck down.
D) the statute will be found to fall inside the power of the government that made it.
E) the court will send the statute back to the government that made it for revision.

Answer: D

15) When we say that the law is linked to moral and ethical standards, we mean that
A) ethics and morality are one and the same.
B) the fundamental truths that give rise to the law include ethics and morality.
C) the moral and ethical values of a society as a whole shape the development of the law.
D) ethical behaviour is generally considered to be a higher standard.
E) the law is based on ethics.

Answer: C

16) Under our legal system, which is derived from English common law
A) our courts look to the constitution to resolve disputes between private parties.
B) our courts look to the way other countries have resolved disputes between private parties.
C) our courts simply resolve the dispute based on common sense.
D) our courts look to and apply principles of law that have evolved out of cases dealing with the same subject matter as does the dispute between the private parties.
E) our courts look to legislation passed by the federal and provincial governments to resolve disputes between private parties.

Answer: D

17) In a federal system such as our own, the role of the courts is to
A) ensure that the law is handed out equally to every Canadian.
B) draft legislation.
C) advise Parliament as to whether its laws are just and fair.
D) dispense the law, which includes interpreting it as well.
E) make it seem that we have a just legal system, when in fact we do not.

Answer: D

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18) The most common complaint about judges when they are interpreting statutes or legislation is that they
A) are too political and are usurping the powers of Parliament and the provincial legislatures.
B) are usurping the powers of Parliament and the provincial legislatures.
C) have no regard for the average citizen.
D) are much too powerful and have no regard for anyone other than themselves.
E) are too political.

Answer: A

19) Canadian law comes from a variety of sources including all of the following EXCEPT
A) regulations.
B) court decisions.
C) the constitution or basic law.
D) Wikipedia.
E) legislation or statutory law.

Answer: D

20) Legislation is the name given to
A) laws that are made by Parliament and provincial legislatures.
B) laws that are made by members of the government.
C) laws that are made by judges.
D) the general system of laws of a country.
E) none of the above

Answer: A

21) In a federal country such as Canada, the Supreme Court of Canada, and not Parliament, usually has the last word on the law because
A) the Supreme Court of Canada is made up of judges who make law.
B) the Supreme Court of Canada is the highest court in the land.
C) the judges of the Supreme Court of Canada are appointed by the federal government.
D) there are two distinct levels of government.
E) Parliament only makes laws.

Answer: D

22) The Supreme Court of Canada performs several roles. One role it does NOT perform is
A) interpreter of legislation.
B) protector of civil liberties.
C) an umpire between the various levels of government.
D) resolving disputes between private parties.
E) determining the validity of legislation.

Answer: C

23) Law is derived from a variety of sources. These include the constitution, legislation, and
A) statements made by ministers and administrative rulings.
B) court decisions handed down by judges.
C) the cabinet.
D) the Supreme Court of Canada and subordinate legislation.
E) media reports and other news.

Answer: B

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24) Whenever a law is determined by a court to be outside the jurisdiction of the legislature, and beyond its powers, the law or provision is said to be
A) the result of residual power.
B) *ultra vires* and therefore void.
C) the result of concurrent powers.
D) excess of jurisdiction and therefore invalid.
E) a federal law.

Answer: B

25) Federalism is
A) a system of government in which the various governments, such as federal and provincial, all come together to make laws for all the people.
B) the system of government in which the central government makes laws for all the people.
C) the system of government in which power is divided between two levels of government.
D) the system of government that believes in health care for all.
E) the system of government that applies in the Province of Quebec.

Answer: C

26) The Canadian Charter of Rights and Freedoms is said to be entrenched in the Canadian constitution. This means that
A) it cannot be repealed by an ordinary act of Parliament or of the provincial legislatures.
B) the rights set out in the Charter are absolute.
C) judges are given the authority to resolve Charter problems.
D) it is not part of the Human Rights Act.
E) it is a rule of the Canadian constitution that must be considered by judges only.

Answer: A

27) Section 15 of the Canadian Charter of Rights and Freedoms deals with
A) legal rights.
B) equality rights.
C) national politics.
D) its application to citizens of the United States.
E) the applicability of the Human Rights Act.

Answer: B

28) Section 33 of the Charter allows the legislature to pass legislation that overrides the fundamental freedoms specified in the Charter only if
A) the legislation expressly declares that it "shall operate notwithstanding" a provision included in the Charter.
B) five years have passed since the legislation was first proposed.
C) two–thirds of the provinces having at least 50 percent of the total population of Canada approve.
D) the legislation in question does not violate the Human Rights Act.
E) a court determines that the freedoms can be overridden.

Answer: A

29) The Charter applies to governments and governmental activities. It has limited application
A) between private persons.
B) to Human Rights hearings.
C) to municipal governments.
D) to Small Claims Court.
E) to Courts of Appeal.

Answer: A

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30) The "notwithstanding" provision in the Charter of Rights and Freedoms is one that
A) allows a legislature to pass laws that override the fundamental freedoms specified in the Charter if the provision specifically states that it shall operate notwithstanding the freedoms specified in the Charter.
B) allows a legislature to pass a law that provides that notwithstanding the law that has been passed the Charter of Rights and Freedoms will still apply.
C) allows a legislature to pass a law notwithstanding a court order that prohibits it from doing so.
D) allows a court to decide that notwithstanding the fundamental freedoms specified in the Charter, the judgment of the court is supreme.
E) allows a legislature to pass laws that override the fundamental freedoms specified in the Charter.

Answer: A

31) Which of the following is NOT part of the role or function of the courts?
A) to interpret legislation
B) to arrest offenders
C) to resolve disputes between parties
D) to determine the validity of legislation
E) to protect civil liberties

Answer: B

32) Section 1 of the Charter of Rights and Freedoms says that the rights in the Charter are not absolute. Section 1
A) enables provincial legislatures to override decisions of the courts regarding the Charter.
B) allows the courts to decide whether it is necessary to infringe on rights in order to maintain the values of a free and democratic society.
C) permits the Supreme Court of Canada to amend the Charter to conform to the values of a free and democratic society.
D) enables Parliament to override decisions of the courts regarding the Charter.
E) none of the above

Answer: B

33) Any provision found by a court to be outside of the legislature's jurisdiction and therefore beyond its powers is referred to as
A) concurrent powers.
B) paramountcy.
C) *ultra vires.*
D) residual powers.
E) rule of law.

Answer: C

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

34) If a statute states that it "shall operate notwithstanding" certain rights, this means that permission of parliament is needed to infringe on Charter rights.

Answer: True ● False

35) A simple definition of law would be misleading because law is so diverse and complex.

Answer: ● True False

36) Certain fundamental truths, such as "all men are created equal," have been incorporated into our laws.

Answer: ● True False

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37) Responsibility for the consequences of breaking the law is often referred to as legal liability.
Answer: True False

38) The law reflects the highest level of moral and ethical standards that are universally accepted by all people.
Answer: True False

39) Law and justice must, of necessity, coincide regardless of whether the result is morally right or correct.
Answer: True False

40) Legal liability is the term used when a person breaks the law.
Answer: True False

41) To run a successful business, the owners and managers of that business are not required to know the law.
Answer: True False

42) A lawyer's right to have all communications with his client kept confidential is referred to as solicitor/client privilege.
Answer: True False

43) Developing a legal risk management plan is the best way to ensure that a business is managed and run properly.
Answer: True False

44) In commerce today, businesses have no need to live up to higher ethical standards. In other words, businesses need not consider the concept of corporate responsibility.
Answer: True False

45) In Canada, only the federal and provincial governments make the laws.
Answer: True False

46) In any legal system, justice is merely the end result of that legal system and should not be equated with moral right and wrong.
Answer: True False

47) The law is central to a business's interactions with its customers, suppliers, competitors, and government.
Answer: True False

48) The rights prescribed in the Charter of Rights and Freedoms are absolute.
Answer: True False

49) The literal approach to the interpretation of statutes requires a consideration of the plain meaning of the provision of a statute.
Answer: True False

50) Unlike United States Supreme Court judges, Canadian Supreme Court judges are not subjected to a public and politicized confirmation process.
Answer: True False

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

51) Uber is an extremely popular form of transportation. Many users are not concerned with the fact that Uber initially failed to comply with numerous laws. Make an argument that in circumstances where the public stands to benefit significantly, a corporate entity may disregard existing laws if they are too expensive or onerous to comply with.

Answer: An important consideration of lawmakers is the effect a particular law or regulation will have on the public. If there is a significant benefit to the public then disregarding a regulatory law may be a factor that municipal authorities could consider before charging. However, the failure of municipalities to prosecute Uber would lead to significant unfairness to taxi drivers who have at all material times complied with significant obligations in relation to permits, insurance and bonding.

52) What is subordinate legislation?

Answer: Subordinate legislation is the rules that are passed by a body designated in a statute, pursuant to the provisions of that statute.

53) There are five distinct steps in developing a legal risk management plan. List these steps.

Answer: Conduct a legal audit of the business; prioritize the risks; develop a strategy to address each risk; implement the plan; and regularly review and update the plan.

54) Canada is a federal system. Briefly explain what this means.

Answer: In the Canadian federal system there are two levels of government: the Federal government, or Parliament, and the Provincial governments. The power is shared between each under sections 91 and 92 of the Constitution Act.

55) What do we mean when we say that the two levels of government have concurrent powers?

Answer: Concurrent powers describes the situation when, under the constitution, both the federal and provincial governments appear to have the same authority to regulate a given activity.

56) Generally speaking, there are three types of codes of conduct that may be imposed on a business. List or state these codes of conduct.

Answer: The three types of codes of conduct are binding codes, voluntary codes and self–imposed codes.

57) Generally speaking, there are two reasons why a court will declare a statute invalid. State these two reasons.

Answer: 1) The subject matter of the statute is outside the jurisdiction of the government that passed it; and 2) the statute violates the Charter of Rights and Freedoms.

58) In a federal country such as Canada, the Supreme Court often has the last word. Explain.

Answer: In a federal country such as Canada, there are two levels of government, the national government and the provincial governments. Pursuant to the Constitution Act, 1867, each level of government has an independent existence and its own sphere of activity. There are also areas where the two levels of government have concurrent jurisdiction. When problems arise with respect to jurisdiction, it is the Supreme Court of Canada that makes a final determination as to the interpretation of the law and the exercise of jurisdiction.

59) List four kinds of rights that are covered by the Canadian Charter of Rights and Freedoms.

Answer: These are equality, mobility, legal, and democratic rights.

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60) Explain the notion of concurrent powers as it pertains to the federal system of government in Canada.

Answer: A federal system of government is different from a unitary system of government. In a unitary system of government, such as the system of government that exists in England, there is only one level of government that makes laws. In a federal system of government such as the systems of government of the United States and Canada, there are two levels of government, the federal government and the provincial or state governments, and law–making power is divided between these two levels of government. Each level of government has jurisdiction to make laws with respect to certain areas. Sometimes the power of the federal and provincial governments may overlap in certain areas. When this happens, it is said that the federal and provincial governments have concurrent jurisdiction.

61) What burden does a private person have when attacking the constitutional validity of legislation?

Answer: The only burden that a private person has attacking the constitutional validity of legislation is to show that a constitutionally guaranteed right has been infringed by the law. The burden of the individual ends at this point in time. The burden then shifts to the government to show that the interference is justifiable in a free and democratic society.

62) A business can be managed and run in either a prudent and responsible manner or a stupid manner. Explain how a prudent and responsible businessperson would manage and run a new business that he or she has just began as compared to a person who was not prudent or responsible.

Answer: A prudent and responsible businessperson would first familiarize him– or herself with the law. Then he or she would develop a risk management plan that deals with the risks, prioritize them in relation to the business, and implement the plan. Further, he or she would regularly review and update the plan to take into consideration any change of laws or any new laws. Finally, in order to better manage the business, he or she would voluntarily implement a code of conduct by creating one or looking to see whether the business was already governed by one, as in the case of many professions. A businessperson who was neither prudent nor responsible would not do any of these things but would simply run the business as he or she chose, maximizing the legal risks affecting the business and exposing it to all sorts of liability.

63) You are a judge sitting on the Supreme Court of Canada, which has been asked to rule on the interpretation of a provision in a new statute and to decide whether it is constitutional. What are the two approaches that you can take and what would be the outcome of each?

Answer: The first approach is to determine whether the words should be interpreted in a broad or restrictive manner. A broad interpretation might result in the provision being found unconstitutional, while a restrictive meaning would leave it valid. The second approach is to try to avoid interpreting the provision so narrowly that the result does not interfere with existing private rights, which may have the effect of frustrating any intended reform.

64) In Canada, law comes from a variety of sources. State each source and explain what type of law comes from it.

Answer: In Canada, our law comes from the Constitution, which is the basic law from which all other laws draw their power. After the Constitution, the law comes from legislation passed by both the federal and provincial governments, as well as subordinate legislation called regulations, which are passed by a specific body referred to in that legislation, and decisions made by administrative tribunals set up by the legislation. Finally, law comes from decisions of the courts, based on principles of law that have been developed in earlier court decisions and to which we refer as case law.

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65) The Charter of Rights and Freedoms provides that all are entitled to certain fundamental freedoms. What are these fundamental freedoms? Are there any limits on these freedoms?

Answer: Section 2 of the Charter of Rights and Freedoms provides that everyone has the following freedoms: (a) freedom of conscience and religion; (b) freedom of thought belief, expression, opinion, including freedom of the press and communication; (c) freedom of peaceful assembly; and (d) freedom of association. These freedoms are not absolute. Section 1 of the Charter provides that the above freedoms are all subject to reasonable limits as can be demonstrably justified in a free and democratic society.

66) Explain how the introduction of the Charter of Rights and Freedoms increased the protection of human rights in Canada.

Answer: Before the introduction of the Charter, human rights were not entrenched in the Constitution. After the introduction of the Charter, the court could strike down government action that did not conform to the Charter. Government could override court decisions regarding human rights only by passing legislation notwithstanding the rights contained in it. The Charter can be amended not by ordinary legislation but only by using the difficult amendment process contained in it.

67) A bartender employed in a licensed establishment over–serves a patron. As a result of the over–service, the patron physically assaults another patron by striking him with a beer bottle. Identify and describe the three forms of liability that may arise as a result of this single incident.

Answer: There may very well be criminal charges laid against the patron who committed the assault. This is a matter of public law and would impose the most serious consequences as a result of this criminal act. Additionally, the injured patron may very well sue for compensation as a result of the injuries sustained. The court would be required to determine whether the patron who committed the assault and/or the bartender who over–served him are civilly liable. Finally, liquor licence authorities may request a tribunal hearing to determine whether the tavern is responsible for violating regulatory laws that govern the service of alcohol in a licensed establishment.

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

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51) An important consideration of lawmakers is the effect a particular law or regulation will have on the public. If there is a significant benefit to the public then disregarding a regulatory law may be a factor that municipal authorities could consider before charging. However, the failure of municipalities to prosecute Uber would lead to significant unfairness to taxi drivers who have at all material times complied with significant obligations in relation to permits, insurance and bonding.
52) Subordinate legislation is the rules that are passed by a body designated in a statute, pursuant to the provisions of that statute.
53) Conduct a legal audit of the business; prioritize the risks; develop a strategy to address each risk; implement the plan; and regularly review and update the plan.
54) In the Canadian federal system there are two levels of government: the Federal government, or Parliament, and the Provincial governments. The power is shared between each under sections 91 and 92 of the Constitution Act.
55) Concurrent powers describes the situation when, under the constitution, both the federal and provincial governments appear to have the same authority to regulate a given activity.
56) The three types of codes of conduct are binding codes, voluntary codes and self–imposed codes.
57) 1) The subject matter of the statute is outside the jurisdiction of the government that passed it; and 2) the statute violates the Charter of Rights and Freedoms.
58) In a federal country such as Canada, there are two levels of government, the national government and the provincial governments. Pursuant to the Constitution Act, 1867, each level of government has an independent existence and its own sphere of activity. There are also areas where the two levels of government have concurrent jurisdiction. When problems arise with respect to jurisdiction, it is the Supreme Court of Canada that makes a final determination as to the interpretation of the law and the exercise of jurisdiction.
59) These are equality, mobility, legal, and democratic rights.
60) A federal system of government is different from a unitary system of government. In a unitary system of government, such as the system of government that exists in England, there is only one level of government that makes laws. In a federal system of government such as the systems of government of the United States and Canada, there are two levels of government, the federal government and the provincial or state governments, and law–making power is divided between these two levels of government. Each level of government has jurisdiction to make laws with respect to certain areas. Sometimes the power of the federal and provincial governments may overlap in certain areas. When this happens, it is said that the federal and provincial governments have concurrent jurisdiction.
61) The only burden that a private person has attacking the constitutional validity of legislation is to show that a constitutionally guaranteed right has been infringed by the law. The burden of the individual ends at this point in time. The burden then shifts to the government to show that the interference is justifiable in a free and democratic society.
62) A prudent and responsible businessperson would first familiarize him– or herself with the law. Then he or she would develop a risk management plan that deals with the risks, prioritize them in relation to the business, and implement the plan. Further, he or she would regularly review and update the plan to take into consideration any change of laws or any new laws. Finally, in order to better manage the business, he or she would voluntarily implement a code of conduct by creating one or looking to see whether the business was already governed by one, as in the case of many professions. A businessperson who was neither prudent nor responsible would not do any of these things but would simply run the business as he or she chose, maximizing the legal risks affecting the business and exposing it to all sorts of liability.
63) The first approach is to determine whether the words should be interpreted in a broad or restrictive manner. A broad interpretation might result in the provision being found unconstitutional, while a restrictive meaning would leave it valid. The second approach is to try to avoid interpreting the provision so narrowly that the result does not interfere with existing private rights, which may have the effect of frustrating any intended reform.
64) In Canada, our law comes from the Constitution, which is the basic law from which all other laws draw their power. After the Constitution, the law comes from legislation passed by both the federal and provincial governments, as well as subordinate legislation called regulations, which are passed by a specific body referred to in that legislation, and decisions made by administrative tribunals set up by the legislation. Finally, law comes from decisions of the courts, based on principles of law that have been developed in earlier court decisions and to which we refer as case law.

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65) Section 2 of the Charter of Rights and Freedoms provides that everyone has the following freedoms: (a) freedom of conscience and religion; (b) freedom of thought belief, expression, opinion, including freedom of the press and communication; (c) freedom of peaceful assembly; and (d) freedom of association. These freedoms are not absolute. Section 1 of the Charter provides that the above freedoms are all subject to reasonable limits as can be demonstrably justified in a free and democratic society.
66) Before the introduction of the Charter, human rights were not entrenched in the Constitution. After the introduction of the Charter, the court could strike down government action that did not conform to the Charter. Government could override court decisions regarding human rights only by passing legislation notwithstanding the rights contained in it. The Charter can be amended not by ordinary legislation but only by using the difficult amendment process contained in it.
67) There may very well be criminal charges laid against the patron who committed the assault. This is a matter of public law and would impose the most serious consequences as a result of this criminal act. Additionally, the injured patron may very well sue for compensation as a result of the injuries sustained. The court would be required to determine whether the patron who committed the assault and/or the bartender who over–served him are civilly liable. Finally, liquor licence authorities may request a tribunal hearing to determine whether the tavern is responsible for violating regulatory laws that govern the service of alcohol in a licensed establishment.

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