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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) American cases cannot be used in Canada because the legal systems in each country grew out of very different roots.
   - ◎ true
   - ◎ false

2) Patricia successfully sued Mabel because Mabel's negligence in driving her car had caused injury to Patricia. It is up to the judge who heard the case to decide to what extent Mabel is required to compensate Patricia through the payment of damages.
   - ◎ true
   - ◎ false

3) The historical development of the court system in England shows a trend away from decisions being made by the community as a whole and towards decisions being made by one authoritative person.
   - ◎ true
   - ◎ false

4) The State of Louisiana and the Province of Quebec both base their non-criminal laws on the French Civil Code.
   - ◎ true
   - ◎ false

5) Colin has sued Peter, and Peter has just sent a counterclaim. Since Colin has received it, the case can now be set down for trial.
   - ◎ true
   - ◎ false

6) Walter was the only witness to an unprovoked assault by Queenie on June. June was attacked from behind and did not see who hit her. Queenie has denied she did it, but Walter told June that he saw her do so. When the case comes to trial, Walter is serving in West Africa with a non-profit organization and cannot be reached. Since June was there and has the direct evidence of a witness, she may tell the court what Walter saw.
   - ◎ true
   - ◎ false

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7) Antonella is suing Barbara for failing to pay her for goods she bought. It will be up to Antonella to prove her case based on the evidence provided.
   - ◎ true
   - ◎ false

8) Lorna successfully sued the Hot Stuff Restaurant because she was injured by a piece of glass in a pie that she was served there. She believes the judge used too low a duty of care in assessing whether Hot Stuff had been negligent, which was the legal issue. Lorna may appeal on the basis of the judge's error.
   - ◎ true
   - ◎ false

9) While researching his family history, Norman discovered that his grandmother was the first Canadian woman lawyer to appear in front of a surrogate court. She was there to deal with a will.
   - ◎ true
   - ◎ false

10) James had been dismissed from his employment after being caught stealing cash from the business during his shift. He decided to vindicate himself by bringing a long and costly lawsuit for unjust dismissal against his employer. The court will probably award costs on a party and party basis.
   - ◎ true
   - ◎ false

11) You believe that an error has been made in the court's decision in your case at trial. You may be able to reach a more favourable decision by having a jury rehear and decide upon the case if you wish to appeal it.
   - ◎ true
   - ◎ false

12) You are part of a family business which manufactures children's clothing. There is a dispute among some of the family members about the appropriate division of profits. In order to have a judicial resolution of the dispute you would need to enter pleadings in the Family Court.
   - ◎ true
   - ◎ false

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13) While simple actions can be undertaken by a paralegal in small claims court, the complexities of cases and senior courts require the services of a lawyer.
- ◎ true
- ◎ false

14) Discovery is a process which is used to clarify points in the statement of claim or statement of defence.
- ◎ true
- ◎ false

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

15) If you were a judge in a court system in Canada, which of the following would not be a role that you might be called upon to perform?
- A) Deciding whether or not federal legislation interfered with provincial legislative jurisdiction.
- B) Deciding whether or not a plumber has the proper qualifications to be granted a licence.
- C) Deciding whether or not an individual has breached the terms of a contract with another individual.
- D) Deciding whether a government agency has interfered with the constitutional rights of a citizen.
- E) Deciding whether or not a company is licensed to print copyrighted material.

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16) Raymond, who lives in Manitoba, appeals a trial court's decision in a case in which he sued a former business partner and lost. The highest court to which Raymond's case can possibly eventually be appealed is
- A) the Court of Appeal for Manitoba.
- B) the Federal Court of Appeal.
- C) the Supreme Court of Canada.
- D) the Privy Council of the House of Lords.
- E) the Court of Queen's Bench for Manitoba.

17) An electric shaver that you bought exploded and injured your hand. You are now suing the manufacturer. The first document which your lawyer will send to the manufacturer is
- A) a writ of summons/statement of claim.
- B) the pleadings.
- C) a notice of trial.
- D) a statement of defence.
- E) a demand for particulars.

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18) You have won the electric shaver suit and the manufacturer has appealed. Which of the following statements is not true?
   A) You are the respondent.
   B) The manufacturer is the appellant.
   C) The manufacturer can bring its appeal on the basis that the judge made an error in interpreting or applying the law.
   D) The manufacturer's witnesses will all give their evidence before any of your witnesses are called to give their evidence.

19) A customer of the bank for which you work as Chief Systems Analyst is suing your bank. The customer alleges that money apparently withdrawn through an automated teller machine from her account must have been removed through a bank error, since she did not do so, and no one knows her identification number nor has access to her card. You are to testify as to the security processes in the bank's computer system and the accuracy of the computerized automated teller machine's records. In this role you are called upon as an
   A) expert witness; you will be giving direct evidence at trial.
   B) expert witness; you will be giving opinion evidence at trial.
   C) expert witness; you will be giving hearsay evidence at trial.
   D) ordinary witness; you will be giving opinion evidence at trial.
   E) ordinary witness; you will be giving direct evidence at trial.

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20) As the representative of a major newspaper chain you are opposed to the recent tendency of judges to grant publication bans during the court proceedings of controversial and high-profile trials. Together with several of your colleagues from other media organizations you decide to challenge the most recent ban. Which of the following statements is correct?
   A) Your challenge would be brought as a proceeding in a court of original jurisdiction.
   B) If you are not successful you would be granted an appeal of your case to the Supreme Court of Canada.
   C) The proper forum for your challenge is the Canadian Judicial Council since it involves the actions of a judge.
   D) You would bring your challenge to an administrative tribunal.
   E) The process of bringing your challenge would begin with the Court of Appeal.

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21) Your company, a manufacturer of household cleaning products, successfully defended a product liability suit brought by a customer for a serious skin irritation she suffered after using an oven cleaning solution made by your company. Your defence was based on the fact that adequate warnings were placed on the container that users should wear gloves. The plaintiff has appealed the court's decision on the basis that the judge failed to apply the legal principle of strict liability to this case, which would automatically find the manufacturer liable if the product itself were, in fact, found to be inherently dangerous. Select the most appropriate statement from the following:

A) The Court of Appeal may find that the trial judge did not assess the inherent dangerousness of the cleaner sufficiently and order a new trial to assess this point.
B) The Court of Appeal may find that the trial judge did not assess the inherent dangerousness of the cleaner sufficiently and admit the appeal and reverse the decision.
C) The Court of Appeal may find that the trial judge did not properly apply the principle of strict liability and admit the appeal and reverse the decision.
D) The Court of Appeal may find that the trial judge properly considered the principle of strict liability and dismiss the appeal and affirm the decision.
E) All of the findings are possible except that the Court of Appeal may not find that the trial judge did not assess the inherent dangerousness of the cleaner sufficiently and admit the appeal and reverse the decision.

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22) *Hong Kong Bank of Canada v. Wheeler Holdings Ltd.* (1989), R.P.R. (2d) 189; affirmed, (1990), 14 R.P.R. (2d) 1; varied, (1993), 6 Alta. L.R. (3d) 337. Which of the following statements is correct?

A) This case was first reported in the Regina Public Reports.
B) The cite tells us that the last court that heard and decided this case was in the province of Alberta.
C) The case was last reported in 1993.
D) The initial 1989 decision was overturned by the 1993 decision.
E) The decision of the first judge was upheld by another judge who decided the case in 1990.

23) Each province has a Court of Appeal to review the convictions of accused persons by the following courts:

A) Youth Court
B) Supreme Court
C) Magistrate's (or Provincial) Court
D) Small Claims Court
E) All of the above except D

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24) At the discretion of the court, judges award costs that are frequently referred to as "costs on a party-and-party basis." These involve:
   A) the judge awarding incurred costs of the litigation to the unsuccessful party, plus a counsel fee.
   B) the judge awarding incurred costs of the litigation to the successful party, minus a counsel fee.
   C) the judge awarding incurred costs of the litigation to the unsuccessful party, minus a counsel fee.
   D) the judge awarding incurred costs of the litigation to the successful party, plus a counsel fee.
   E) the judge awarding all costs of the litigation split between both parties with no counsel fee.

25) Easy Money Credit Ltd. is owed $8,000 by Irina for a debt to buy a television and home theatre system. Irena claims she did not pay the debt because two days after installing the system it was stolen by a bunch of 14-year-olds. Which is most likely the court of original jurisdiction?
   A) Youth Court
   B) Criminal Court
   C) Family Court
   D) Small Claims Court
   E) Provincial Supreme Court

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26) Orange Shop Ltd. sells electronics and grants credit to its customers. It sold a laptop computer system to Kelly and granted a $3,000 loan to finance the purchase. Two days after purchasing the computer it fell off a low bench and the screen cracked. Kelly wanted to either exchange the computer or have it repaired. Orange Shop Ltd. refused to assist Kelly as an extended warranty had not been purchased. Kelly refused to repay the loan. Which is most likely the court of original jurisdiction?
   A) Youth Court
   B) Criminal Court
   C) Family Court
   D) Small Claims Court
   E) Provincial Supreme Court

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27) Orange Shop Ltd. sells electronics and grants credit to its customers. It sold a laptop computer system to Kelly and granted a $3,000 loan to finance the purchase. Two days after purchasing the computer it fell off a low bench and the screen cracked. Kelly wanted to either exchange the computer or have it repaired. Orange Shop Ltd. refused to assist Kelly as an extended warranty had not been purchased. Kelly refused to repay the loan. Which pleading(s) will be filed by Kelly?

A) Statement of Claim
B) Statement of Defence
C) Counterclaim
D) Statement of Claim and Statement of Defence
E) Statement of Defence and Counterclaim

28) Orange Shop Ltd. sells electronics and grants credit to its customers. It sold a laptop computer system to Kelly and granted a $3,000 loan to finance the purchase. Two days after purchasing the computer it fell off a low bench and the screen cracked. Kelly wanted to either exchange the computer or have it repaired. Orange Shop Ltd. refused to assist Kelly as an extended warranty had not been purchased. Kelly refused to repay the loan. At trial, which party presents their case first?

A) Orange Shop Ltd. The plaintiff opens the trial.
B) Orange Shop Ltd. The defendant opens the trial.
C) Kelly. The plaintiff opens the trial.
D) Kelly. The defendant opens the trial.
E) The judge determines who opens the trial.

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29) Which of the following statements is false?

A) Contingency fees are paid to the lawyer only if the case is won.
B) Contingency fees only recently came into existence in Canada.
C) One of the concerns raised against contingency fees is that they lead to frivolous lawsuits.
D) One argument in support for contingency fees is that they provide greater access to justice.
E) Not all Canadian jurisdictions permit contingency fees.

30) Which statement does not apply to arbitration of a contractual dispute?

A) Arbitration clauses are contained in a contract.
B) Arbitration is mandated by provincial statute.
C) Agreements often specifically provide that the arbitration proceedings are confidential.
D) Arbitration is a quicker way of resolving disputes.
E) Arbitration decisions do not form part of the Common Law.

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

31) As a witness for the plaintiff in a large upcoming civil suit, you are feeling nervous about giving testimony, and would like to know how the whole trial process works. A friend of yours explains how a trial proceeds and how witnesses are dealt with during the trial. Repeat here what she tells you.

32) You have a family member who was unfortunately seriously injured in a train accident. Your friend understands that there might be the possibility of a class action lawsuit against the train company. She asks you to explain the process of a class action and what the advantages of class actions are versus individual lawsuits.

33) Explain in detail the information contained in the following case cite and annotations and explain how and why the information is relevant for the parties to the action. Who else may also find this information relevant and why? In this case, the defendant was successful at trial.

Canadian Olympic Assn./Assn Olympique Canadienne v. Olympus Optical Co. (1987), 14 C.I.P.R. 259; reversed, (1990), 31 C.P.R. (3d) 479, Fed. Ct. - Trial Division; affirmed, (1991), 38 C.P.R. (3d) 1, Fed. CA; leave to appeal to SCC refused, (1992), 41 C.P.R. (3d) 11.

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Answer Key

Test name: Chapter 02

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

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Students should list the Civil Court Procedure steps found in Chapter 2. Witnesses are usually given the chance prior to the trial to go over their evidence with the lawyer who will be examining them in chief, although he cannot tell them what to say. If you are an expert witness, your lawyer will generally have you first explain how you are qualified to give expert evidence. You would be testifying about the significance of direct evidence or about the background circumstances that explain or help verify the direct evidence. If you are an ordinary witness, you can only give evidence about matters of which you have direct knowledge. If you are being treated unfairly by the other party's lawyer on cross-examination, it is the responsibility of the lawyer for whose client you are appearing to ask the judge to prevent that from continuing. Once you have testified and the trial is over, you would not be called upon at any other stage of the process.

32) Essay
Students can refer to chapter 2 (p.45) for the discussion on class action lawsuits. A class action allows a single person to represent an entire group of plaintiffs injured by a common cause such as a train derailment. In order for a class action to proceed, the ‘class’ of two or more people must be certified by the court. Typically, settlements are reached before the case goes to trial, with such settlements requiring court approval as being in the interest of the entire class. Rather than having hundreds of similar trials, the law permits greater efficiency by having one trial. It also increases the chances that defendants will be more careful given that significant damages can be imposed as a result of a successful class action lawsuit. Damages, if awarded, are then shared among the class of plaintiffs, with some adjustments possible depending on the degree of injury.

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33) Essay

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The plaintiff is the Canadian Olympic Assn./Assn Olympique Canadienne. The defendant is Olympus Optical Co. The case was first decided at trial in 1987. That trial decision was reported in the 14th volume of the Canadian Intellectual Property Reports at page 259. The unsuccessful party, the plaintiff, then appealed the case to the Federal Court - Trial Division. Therefore, the original trial could not have been heard in the Federal Court. The Federal Court - Trial Division, even though appearing to be a court of original jurisdiction, can hear appeals on matters within its jurisdiction that were decided in provincial trial courts. The plaintiff at trial became the appellant and the defendant at trial became the respondent. The Federal Court - Trial Division made its decision in 1990 and it allowed the appeal thereby reversing the trial decision. This appeal decision was reported in the 31st volume of the third series of the Canadian Patent Reporter at page 479. The party who was unsuccessful at this appeal (the defendant at trial, respondent in the first appeal) then appealed further to the Federal Court of Appeal. So, in this further appeal, Olympus Optical Co. became the appellant and the Canadian Olympic Assn./Assn Olympique Canadienne became the respondent. In 1991 the Federal Court of Appeal affirmed or upheld the decision of the Federal Court - Trial Division in the first appeal which had reversed the trial decision. The decision of the court in this second appeal was reported in the 38th volume of the third series of the Canadian Patent Reporter at page 1. The party who was unsuccessful at this second appeal (the defendant at trial, appellant in the second appeal) then appealed further to the Supreme Court of Canada. The right to be heard on appeal by the Supreme Court is not automatic and the Supreme Court itself will decide whether it believes there is any merit to hearing the appeal. In this case, the Supreme Court decided in 1992 that it would not hear and decide this further appeal. Its reasons for deciding in this way were reported in the 41st volume of the third series of the Canadian Patent Reporter at page 11. Thus, the original trial outcome remains reversed meaning that the plaintiff at trial has succeeded in obtaining the relief it sought in the action. Other people for whom this would be useful information are those in similar situations trying to decide whether court action is justified or whether these decisions are sufficiently clear to define their legal rights without litigation. Legal researchers and historians will be interested in following and chronicling the decisions and reasoning to develop legal commentary on trends. A lawyer preparing a similar case will also be interested as he or she can present the case reasoning in court to the judge as a persuasive precedent to guide the judge's decision about his or her own client's matter.

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CHAPTER 2. THE JUDICIAL SYSTEM AND ALTERNATIVE DISPUTE RESOLUTION

Chapter Topics

Introduction
Development of the Law Courts
The Structure of the Judicial System
The Judicial System in Action
Administrative Tribunals
Alternative Dispute Resolution (ADR)
The Legal Profession
The Role of the Legal Profession
Summary
Key Terms
Review Questions
Mini-Case Problems

Chapter Objectives

Knowing where and how to enforce rights and obligations is a key business survival skill. After study of this chapter, students should be able to:

- Describe the development, content and structure of the judicial system.
- Explain the sequence of steps in court procedure, particularly civil court procedure.
- Identify how and why alternative dispute resolution may be the best option for the settlement of business disputes.
- Explain the role of barristers and solicitors, the range of services provided by the legal profession, and the concept and limitations of court costs.

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CHAPTER COMMENTARY

Chapter 2 represents a continuation of the material contained in the previous chapter, but focuses upon the administration of the law. The text material includes the structure of the courts in Canada, and as a class exercise, it might be useful to carry simple criminal and civil actions (based upon easily understood incidents) through the various steps and appeals to their final resolution at the highest appeal levels. In this fashion, the text material may be re-enforced, and the various limitations on appeal, etc., noted in the process.

The distinction between criminal and civil proceedings should be emphasized, as experience has indicated that students frequently fail to realize that an incident which gives rise to both civil and criminal proceedings (such as a "criminal negligence" incident) would follow two separate legal paths, one dealing with the criminal act, and the second, dealing with the civil aspect.

Some time should be given to the procedure by which judgments of lower courts may be appealed. The conditions under which a judgment may be appealed should be stressed (error of law, rejection of important evidence in reaching a decision, etc.) and the appeal routes examined for both civil and criminal cases. These are depicted on the charts which follow.

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Since alternate dispute resolution (ADR) is considered by many business firms as a more efficient system of resolving disputes, the topic should be opened for class discussion as an alternative to the court system. Discussion should note the particular advantages of ADR over the court system (speed of resolution, lower costs, etc.) but it should also be noted that certain kinds of disputes still lend themselves to court resolution.

Review Questions

1. Why is arbitration sometimes a more attractive means of settling contract disputes between business persons?

   Answer: Arbitration is a confidential process as well as a relatively low cost and efficient process for resolving disputes. Often business people do not wish to destroy a business relationship if a dispute arises, and arbitration will often allow them to obtain an answer or solution to their problem that will allow them to continue to do business with each other.

2. Discuss the importance of an independent judiciary.

   Answer: Important because:

   (a) not open to manipulation by political action.

   (b) free to resolve differences between individuals without fear of the consequences.

   (c) able to determine differences between governments without concern that the powers of the court will be attacked.

   (d) permanent body to administer the law is vital in order to maintain continuity and confidence in the system.

   (e) "independence" generally equated to "fairness".

3. If a provincial government should pass a law which prohibits any person from expressing any criticism of any elected government official on penalty of imprisonment, how might the law itself be challenged?

   Answer: A person accused may ask the court to review the law in the light of the Charter of Rights and Freedoms or the jurisdiction of the province to make such a law. The court will then determine if the law is enforceable.

4. Explain the differences between a Small Claims Court and a Magistrate's Court.

   Answer: A Small Claims Court deals with civil disputes between individuals where the monetary amount is small (limit varies from province to province, $3,000 - $10,000, and in some, up to $25,000). Magistrate's Court is a court which enforces by-laws, provincial statutes and the Criminal Code (except for the more serious offences). It does not deal with civil disputes.

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5. On what basis is it possible to justify the right of the court to declare unconstitutional legislation enacted by a legislature?

Answer: The right may be justified because the court represents an independent, permanent body that is made up of persons with the expertise to interpret the constitution and to oversee its application. No political body is able to do so in an unbiased or fair manner.

6. How does a criminal case differ from a civil action?

Answer:

Criminal:

- Crown brings the charge against the accused. A two-step process in many cases: (1) preliminary hearing, (2) full hearing.
- Crown obliged to prove the particular offence was committed by the accused, and that the offence is one which is set out in the criminal code.
- Crown must prove act, identity, and intent to commit the offence (subject to certain exceptions).
- must prove its case beyond any reasonable doubt in order to obtain a conviction.

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Civil:

- the party who alleges a violation of his or her rights brings the action.
- onus of proof of facts alleged rests on the plaintiff.
- case is outlined through "pleadings".
- plaintiff not subject to the higher standard of proof of criminal courts.

7. In criminal proceedings, what obligation rests on the Crown in order to obtain a conviction?

Answer: Crown must normally prove beyond any reasonable doubt that the accused committed the particular offence, intended to commit it, and was the person who committed it.

8. What is the purpose of "pleadings" in a civil case?

Answer: The purpose of pleadings in a civil action is to set out the facts of the case and the issues in dispute in sufficient detail to enable each party to know the matters in dispute and prepare their respective cases for the trial. They avoid surprise at trial, and minimize the time required by the courts to dispose of the case.

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9. How does "direct" evidence differ from "opinion" evidence? How do these types of evidence differ from "hearsay" evidence?

Answer: "Direct" evidence is given by ordinary witnesses who testify as to what they heard, saw, or did. "Opinion" evidence is evidence given by experts who have special knowledge about the subject matter of the evidence, and who express an opinion about the matter based upon their specialized knowledge or expertise.

Hearsay evidence is neither direct nor expert evidence, but evidence given by a third party who was informed by someone else (usually a person who would normally be an ordinary witness) of the facts. Hearsay evidence is usually not admissible in a court of law.

10. Describe the role performed by legal counsel in the administration of justice.

Answer: Legal Counsel are learned in the law and advise others of their legal rights and duties. They also carry out on behalf of their clients the job of processing an action through the courts or negotiating legal matters on their behalf.

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11. Distinguish between a "barrister" and a "solicitor".

Answer: A barrister is a lawyer who handles litigation matters on behalf of clients. A "court-room" lawyer. A solicitor advises clients of their legal rights and duties, and normally prepares contracts, deeds, wills, and other legal documents for clients.

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12. On what basis might an appeal be allowed from a judgment of a court of original jurisdiction?

Answer: An appeal may be allowed where the judge improperly applied the law, (improperly instructed the jury as to the law) or made an error in rendering a decision.

13. Where a judgment is reviewed by a Court of Appeal, what type of decision might the court make?

Answer: A Court of Appeal may:

(1) reverse the decision, if the trial judge erred.

(2) affirm the decision of the trial judge, or

(3) send the matter back to the lower court for a new trial.

14. What is a court of original jurisdiction? How does it differ from a court of appeal?

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Answer: A court of original jurisdiction (sometimes referred to a court of first instance) is a court where a case is heard for the first time. A court of appeal is a court which reviews the decision of the court of original jurisdiction to make certain that the judgment was fairly and properly made.

15. How does arbitration differ from a court action?

Answer: Arbitration is conducted much like a court action, but in a much less formal setting. While the rules of evidence and procedure are usually followed, the process generally does not require pleadings or discovery. The parties are usually responsible for the selection of the arbitrator, and the arbitrator's fees. The hearing does not involve 'court costs'.

16. Explain the nature of mediation, and how it is used in the resolution of disputes.

Answer: Mediation is an attempt to resolve a dispute between parties prior to formal court or arbitration proceedings by a third party through a discussion process. A mediator has no authority to impose a dispute by suggesting ways in which the parties may reach agreement on a solution to their problem.

17. "In a free and democratic society, the courts perform the important role of guardians of the rights and freedoms of the individual. While important, this is far from being the only part they play in society." How do the courts perform this important role? What other functions do they have in society?

Answer: Courts guard the rights and freedoms of the individual by acting as the medium through which rights and duties are determined and enforced. They also act as a "check" on government action which might improperly encroach on the rights and freedoms of individuals protected by the Charter. Finally, they preserve peace and order by providing an obligatory process for dispute resolution (replacing vengeance).

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Mini-Case Problems

1. Michael, an otherwise well-behaved boy of 11, fell in with Gavin, 13, a repeat offender as a delinquent. The boys were arrested by police while spray painting a school and breaking into a portable outside classroom. Under the provisions of the *Youth Criminal Justice Act*, there was no public disclosure of their names, and the Youth Court proceedings were sealed from public scrutiny now and future.

   Are the provisions of the law appropriate for both boys?
   Whether yes or no, explain why.

Answer:

The fact situation calls for a reasoned opinion, rather than a yes or no answer. In most instances students will provide an answer that in some measure provides a reflection of their personal values, as well as their perception of the criminal justice system.

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2. Anne is unsuccessful in her suit at trial and on appeal to the provincial appeal court. If she wishes to proceed, where must she go, and what burden will she face before her case will be heard again? What factors may prevent her case from being heard again?

Answer:

The only remaining route of appeal for Anne is to the Supreme Court of Canada, however this appeal is not a matter of right. She faces the burden of being successful in seeking "leave to appeal" before she can have her case presented. The Supreme Court of Canada could give leave to hear any case it wishes, however it is doubtful that it will do so unless it is in the public interest, and/or commonly, any of the following: errors at appeal are evident such that a denial of fundamental justice would otherwise take place, a significant Charter or other constitutional determination is at stake, or the lower ruling employs outdated Common Law in need of reform.

3. Carlson invented a new valve for natural gas pipelines, and sold his drawings to Pipeco, a manufacturer of such items. A dispute arose before production began, and both parties immediately agreed to ADR. What would lie behind this mutual aversion to court proceedings?

Answer:

The most likely reasons behind the selection of ADR in this case are (in order of importance):

(a) **Secrecy** – the invention is new, which may have great value from a competitive standpoint.

(b) **Speed** – production is likely set up already and any delay is expensive.

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(c) **Cost** – a cheaper proceeding producing a better result is in the interest of both parties.

Case Problems for Discussion

Case 1

A backhoe owned by Digger Ltd. was involved in the trenching for a water pipeline located along a city sidewalk. In moving a bucketful of rock into a waiting truck, the backhoe operator accidentally struck and cut an overhead power line. The cut power line fell to the sidewalk, injuring and electrocuting a pedestrian who had been observing the trenching. The pedestrian required extensive hospitalization and reconstructive surgery, and later commenced legal proceedings against Digger for the injuries suffered, including six month's lost wages while hospitalized.

Outline the various steps the parties to the action would take to bring the case to trial, and briefly describe the trial process.

Answer:

The case is quite straightforward, and students should not be thrown off by the causal chain of backhoe, power line and passer-by. Although students have not yet been exposed to the principles of negligence law, most will recognize the duty, breach, damage elements of this incident and as something more than a simple and blameless accident. As to the substance of the question, the stages by which the case will be

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brought to trial, and the trial process itself, are described the sections entitled “Civil Courts” and “Civil Court Procedure”.

Case 2

As the Head of Information Systems at Equity Brokerage, you maintain the computer systems which support all aspects of stock trading accounts at Equity, including access for trading purposes. Your firm is being sued by a customer who alleges trading irregularities occurred on her account. When you testify at trial as to the identity of the person who conducted the transactions and the actions that affected the status of the account, what kind of witness are you, and what kind of evidence are you providing?

Answer:
Despite having some particular expertise, the witness would be considered to be only an “ordinary witness”. As an employee of the defendant firm, the witness lacks the independence of opinion that is usually one of the hallmarks of most “expert witnesses”. As the witness has direct knowledge of the events (regarding the computer system itself), the witness is giving “direct” evidence rather than “hearsay”.

Case 3

Farhan is personally injured and his home is badly burned by a toaster oven that, on first use, burst into flame. With Farhan successful in an action for damages, what factors should a judge take into consideration in determining the issue of costs?

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Answer:
The issue of an award of costs is covered in the section entitled “Court Costs”. The judge would take into account the behaviour of the parties, especially the defendant, in forcing the case to a judicial hearing. While there may be genuine issues for trial, including the amount of damages claimed, the judge will be concerned as to whether the defendant manufacturer was simply attempting to stall or bankrupt Farhan, thus perverting justice rather than seeking it. Such efforts will be penalized in costs, in addition to disposing the court toward generosity in the award in the first place.

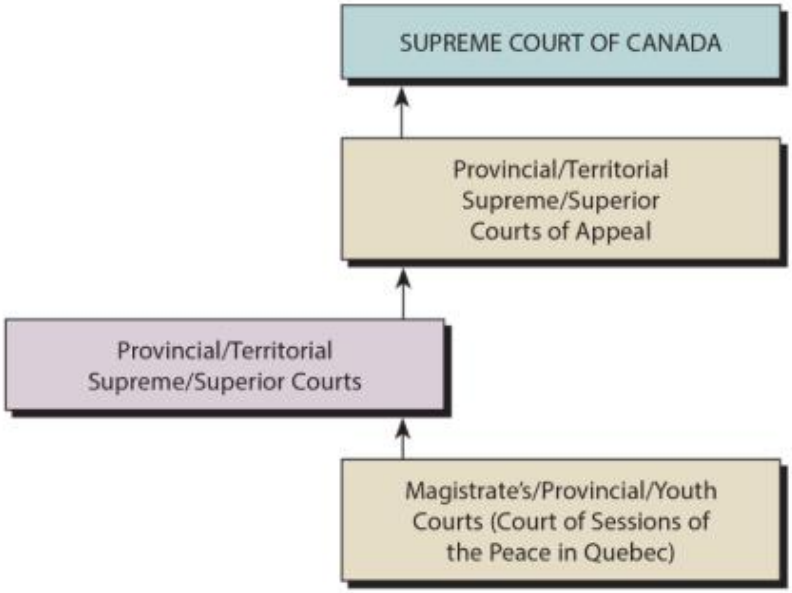
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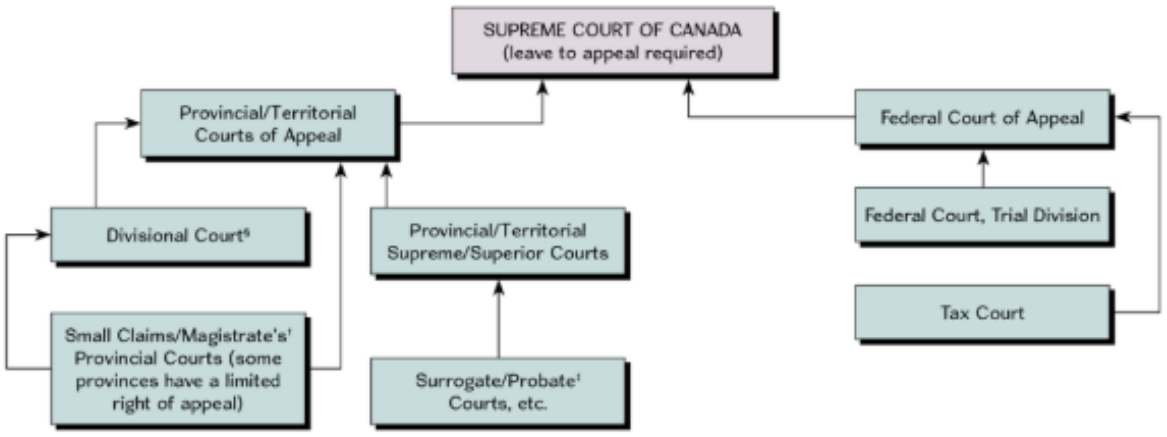
CHAPTER CHARTS

FIGURE 2–1 Criminal Appeals*



* Court names and, in some cases, appeal routes, differ for some provinces.

FIGURE 2–2 Civil Appeals*



* Some provinces do not have all of the courts shown on this chart.
† Appeal routes vary from province to province with respect to Small Claims Courts.
‡ Special courts, such as Probate or Surrogate, usually have disputes litigated in the Supreme Court of the province.
§ Ontario only. The Divisional Court is a unique court in that it can conduct both trials and certain types of appeals.

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Table 2–1

Trial Level

Jurisdiction	Designation of Court
Alberta	Court of Queen's Bench of Alberta
British Columbia	Supreme Court of British Columbia
Manitoba	Court of Queen's Bench of Manitoba
New Brunswick	Court of Queen's Bench of New Brunswick
Newfoundland & Labrador	Supreme Court of Newfoundland & Labrador (Trial Division)
Northwest Territories	Supreme Court of the Northwest Territories
Nova Scotia	Supreme Court of Nova Scotia
Nunavut	Nunavut Court of Justice
Ontario	Superior Court of Justice
Prince Edward Island	Supreme Court of Prince Edward Island
Quebec	Superior Court of Quebec
Saskatchewan	Court of Queen's Bench for Saskatchewan
Yukon Territory	Supreme Court of Yukon
Appeal Level	**Designation of Court**
Alberta	Court of Appeal of Alberta
British Columbia	British Columbia Court of Appeal
Manitoba	Manitoba Court of Appeal
New Brunswick	Court of Appeal of New Brunswick
Newfoundland & Labrador	Supreme Court of Newfoundland & Labrador (Court of Appeal)
Northwest Territories	Court of Appeal for the Northwest Territories
Nova Scotia	Court of Appeal for Nova Scotia
Nunavut	Nunavut Court of Appeal
Ontario	Court of Appeal for Ontario
Prince Edward Island	Court of Appeal of Prince Edward Island
Quebec	Court of Appeal of Quebec
Saskatchewan	Court of Appeal for Saskatchewan
Yukon Territory	Court of Appeal of Yukon

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