

## CHAPTER 1

### The Role of Law: What Is the Relevance and Purpose of Our Legal System?

#### TRUE/FALSE

1. In *Carter v. Canada, (Attorney General)*, the appellants argued that the criminal prohibition for assisted suicide violated Section 5 of the Canadian *Charter of Rights and Freedoms*.

ANS: F

2. According to the *Cannabis Act*, a number of licensed producers will have their cannabis product regulated by the federal government.

ANS: T

3. Individual perceptions of justice and injustice define our relationship as citizens of the state.

ANS: T

4. There are many theoretical perspectives on law. One theoretical perspective is called possibilism.

ANS: F

5. Theoretical perspectives of the law are normative because they make arguments about the objectives of the legal process.

ANS: T

6. Hart, a positivist, argues that there can be no penalty without a valid law.

ANS: F

7. Natural Law is a very new legal philosophy first developed by the “Naturalist Party” of Canada.

ANS: F

8. The legal maxim, *lex iniustia non est lex*, states that there can be no law without penalty.

ANS: F

9. The Marxist insisting on economic inequality justifies the equal taxation of all.

ANS: F

10. Critical legal theorists reject positivism and direct themselves to issues of social disadvantage.

ANS: T

11. The origins of feminist theories of law are found in the women’s suffragette movement of the early twentieth century.

ANS: T

12. The feminist theories of law fail to mount a significant challenge to contemporary theories of the role of law.

ANS: F

13. Third-wave feminists reject the claims of inequality and subordination of women made by first- and second-wave feminists.

ANS: F

14. Feminist legal theory describes the ways in which the law facilitates patriarchal dominance and control.

ANS: T

15. Twentieth-century anarchists are committed to principles of egalitarianism in wealth and power distribution.

ANS: T

16. Libertarians are also referred to as economic socialists.

ANS: F

17. Legal realists, in order to understand the legal process, must be aware of the political, economic and social contexts in which law arises, changes and persists

ANS: T

18. Law is a malleable human creation reflecting both the movements of political actors and changing values.

ANS: T

19. Positivism seeks to reveal the values that lie behind the law.

ANS: F

20. A perspective that denies a link between law and morality must set out the moral premises that will be operative at any specific time or place.

ANS: T

### **MULTIPLE CHOICE**

1. Which statement best reflects the positivist theory of law?

- a. Law is a legal manifestation of Parliamentary Supremacy.
- b. Law is a mechanical analysis which questions the law's morality.
- c. Law is a series of possible answers which can be applied based on the facts of each case.
- d. Law is a systematic approach which requires lawyers to argue for the application of ethics to judicial decision making.

ANS: A

2. Which statement best reflects a core positivist approach to the law?

- a. Only positive laws should be enforced.
- b. The moral impact of specific laws must be analyzed.
- c. Laws must be positively stated in order to be enforced.

d. The law represents a social contract between the individual and the state.

ANS: D

3. Why would natural law lawyers probably reject the reasoning of the Supreme Court of Canada in *Carter v. Canada (Attorney General)*?

- a. Natural law insists on a religious basis for the construction of law.
- b. The scientific method supports this.
- c. The Charter of Rights and Freedoms does not apply.
- d. It fails to conform to the historical record.

ANS: A

4. Which term best describes those who argue that law can only be understood by understanding political, economic, and social contexts?

- a. libertarians
- b. legal realists
- c. legal positivists
- d. natural law adherents

ANS: B

5. Who first advocated the idea that law and order should wither away with the state?

- a. Karl Marx
- b. H. L. A. Hart
- c. Roger Cotterell
- d. Karl Llewellyn

ANS: A

6. Legal positivists rely on which two concepts?

- a. the morality of law and the power of the state
- b. the legal process and the notion of a social contract
- c. morally equitable rules and *Supreme Court* rulings
- d. all Latin maxims and God's commands

ANS: B

7. Which statement is the primary argument of critics of the Marxist perspective?

- a. Labour is basic to wealth.
- b. Our goal should be to create a "classless" society.
- c. There exist substantial differences in individual contributions to society.
- d. The relationship between material circumstances and human beings is dialectical in form.

ANS: C

8. In the term "CLS movement," what does the abbreviation "CLS" mean?

- a. critical legal studies
- b. critical liberal sceptics
- c. Canadian labour studies
- d. constructive legal studies

ANS: A

9. Which statement best reflects the views of law held by feminist legal theorists?

- a. Law is unnecessary.
- b. Law is a source of women's oppression.
- c. Law is a site of struggle for political transformation.
- d. Law is a historically and socially constructed artefact.

ANS: B

10. According to your textbook, which of the following statements best describes Catherine MacKinnon?

- a. She is a legal realist.
- b. She is a radical third-wave feminist.
- c. She is a pioneer of first-wave feminism.
- d. She is an important second-wave feminist.

ANS: B

11. What aspect of Canadian society do libertarians oppose?

- a. private jails
- b. privately funded health care
- c. mandatory seatbelt legislation
- d. tax incentives for saving for your own retirement

ANS: C

12. Why would legal positivists support the reasoning of the *Supreme Court* in the *Carter* case?

- a. Because the Charter is validly enacted law.
- b. Because public opinion favoured striking down the Criminal Code provisions.
- c. Because the minority judges misapplied the Charter.
- d. Because the government ignores timeless human rights.

ANS: A

13. The *U.S. Constitution* and the *Canadian Charter of Rights and Freedoms*:

- a. fundamentally conflict.
- b. are time specific only.
- c. are statements of natural law ideas.
- d. have no moral premises to support them.

ANS: C

14. *Laissez-faire* Libertarians would:

- a. support both the decision in *Carter* and the *Cannabis Act*.
- b. support only the *Cannabis Act* and condemn *Carter*.
- c. support neither *Carter* or the *Cannabis Act*.
- d. take a position identical to the communitarian anarchist.

ANS: A

15. The feminist theory of law manifests itself in which of the following?

- a. two waves of thought

- b. three waves of thought
- c. one universal doctrine
- d. a fundamental foundational document

ANS: B

16. What was the critical legal studies movement a reaction to?

- a. Marxist legal analysis
- b. libertarian doctrine
- c. a positivist understanding of the law
- d. anarchist uncertainty

ANS: C

17. Legal realists share a method for obtaining knowledge but:

- a. avoid confrontation at all costs.
- b. may not have a consensus on moral, economic and political issues.
- c. follow a strict orthodox ideology.
- d. may support a fusion of morality and science.

ANS: B

18. Why is it almost absurd to speak of a Marxist theory of law?

- a. Marxists advocate the withering away of the state.
- b. They support dialectical materialism.
- c. Marxists are prone to totalitarian solutions.
- d. The law is fixed in the core of this theory.

ANS: A

19. Which perspective of law is suspicious of all state action?

- a. legal realism
- b. positivism
- c. libertarianism
- d. anarchism

ANS: D

20. Which of the following are legal realists more concerned with?

- a. the internal logic of a legal decision
- b. the social context of a legal decision
- c. the existence of a social contract
- d. political forces in society

ANS: A

## ESSAY

1. The Supreme Court of Canada struck down Criminal Code sections prohibiting physician assisted suicide. Explain the different approaches that would be brought to this debate by both the positivists and the naturalist law theorists.

ANS: Answers will vary.

2. What would the positivist response be if Parliament enacted a law which made it a crime to *own* a firearm?

ANS: Answers will vary.

3. How might a critical legal theorist respond to the *Carter* decision?

ANS: Answers will vary.

4. Explain Professor Gall's analysis of the CLS movement.

ANS: Answers will vary.

5. What did E. P. Thompson mean when he said that law could be both an instrument of oppression and a tool for liberation?

ANS: Answers will vary.