

Chapter 2: The Canadian Legal System: An Overview

Multiple Choice Questions

1) The inquisitorial legal system:

- a. is used in most Canadian provinces and in most states in the U.S.A.
- b. is a system whereby the judge and jury acts as a passive fact finder and do not direct the trial or ask witnesses questions.
- c. is a system whereby expert witnesses are appointed by the court.
- d. is a system that is based on common law—that is, written in past court decisions.

Ans.: c

Type: Factual

Level of difficulty: Easy

Section reference: Legal Systems

Learning Objective 2.1 Differentiate between an inquisitorial and an adversarial legal system.

2) The adversarial legal system:

- a. is a system whereby the lawyers present evidence and examine witnesses while the judge acts as final arbitrator.
- b. is a system whereby the judge plays an active role in terms of directing the trial and asking witnesses questions.
- c. is a system that is codified—that is, written down as a set of principles or rules.
- d. is a system whereby expert witnesses are usually appointed by the court.

Ans.: a

Type: Factual

Level of difficulty: Easy

Section reference: Legal Systems

Learning Objective 2.1 Differentiate between an inquisitorial and an adversarial legal system.

3) Studies conducted on the public's opinion of the court systems (e.g., Anderson & Otto (2003) have shown that:

- a. the adversarial system is viewed as less fair than the inquisitorial system, especially regarding presentation of evidence.
- b. the adversarial system is viewed as more fair than the inquisitorial system, especially

regarding presentation of evidence.

- c. the public is generally unhappy with the system used in their country and tend to rate other systems as being preferable.
- d. adversarial and inquisitorial systems were rated equally high on all measures.

Ans.: b

Type: Factual

Level of difficulty: Difficult

Section reference: Legal Systems

Learning Objective 2.1 Differentiate between an inquisitorial and an adversarial legal system.

4) Which of the following statements is correct?

- a. In 1867, the Constitution was repatriated to Canada.
- b. According to the Constitution Act-1867, the federal government has full power to adjust or pass laws; provinces do not have jurisdiction in any area.
- c. According to the Constitution Act-1867, provinces have jurisdiction to adjust or pass laws in certain areas (e.g., Mental Health).
- d. According to the Constitution Act-1867, provinces have jurisdiction to adjust or pass any law outlined in the Criminal Code of Canada.

Ans.: c

Type: Factual

Level of difficulty: Difficult

Section reference: Division of Powers

Learning Objective 2.2 Explain the division of legislative powers between the federal and provincial governments.

5) Which of the following statements is correct?

- a. With regard to the law, all important areas are under the jurisdiction of the federal government whereas provinces have residual power.
- b. With regard to the law, all areas are under the jurisdiction of the federal government whereas provinces have no power.
- c. If the federal government attempts to pass a law that is typically under the domain of provinces, provinces are required to concede.
- d. If the federal government attempts to pass a law that is typically under the domain of provinces, the federal law will be struck down.

Ans.: d

Type: Factual

Level of difficulty: Difficult

Section reference: Division of Powers

Learning Objective 2.2 Explain the division of legislative powers between the federal and provincial governments.

6) Attempting to change a law outside of the jurisdiction of the body that passed the law may cause it to be struck down as _____.

- a. *amicus curiae*
- b. *ultra vires*
- c. *voir dire*
- d. *stare decisis*

Ans.: b

Type: Factual

Level of difficulty: Easy

Section reference: Division of Powers

Learning Objective 2.2 Explain the division of legislative powers between the federal and provincial governments.

7) According to sections 91 and 92 of the Constitution Act-1867:

- a. jurisdiction over the enactment of criminal law resides within the federal government.
- b. jurisdiction over the enactment of criminal law resides within the provincial government.
- c. jurisdiction over prosecuting and enforcing criminal law resides within the federal government.
- d. jurisdiction over most areas of civil law resides within the federal government.

Ans.: a

Type: Factual

Level of difficulty: Medium

Section reference: Division of Powers

Learning Objective 2.2 Explain the division of legislative powers between the federal and provincial governments.

8) In Canada, laws come from all of the following sources, except:

- a. *Canadian Charter of Rights and Freedoms*.
- b. common Law.
- c. authoritative Law.
- d. provincial and federal legislation.

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: Sources of Law

Learning Objective 2.3 Describe the four sources of law in Canada.

9) Which of the following statements is correct?

- a. The *Canadian Charter of Rights and Freedoms* is supreme law and cannot be overridden.
- b. The *Canadian Charter of Rights and Freedoms* is supreme law, but it can be overridden in some circumstances.
- c. Because interpretive language is avoided in the *Charter*, judges have no discretion in interpreting concepts described in the *Charter*.
- d. Application of the *Charter* is not affected by the current nature of our value system.

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: Sources of Law

Learning Objective 2.3 Describe the four sources of law in Canada.

10) All of the following statements are correct, except:

- a. Canada is a common-law country.
- b. Many of our laws are written in provincial or federal legislation.
- c. Legislation is written in the form of rules that must be strictly applied regardless of the location in which it is being applied.
- d. Legislation is written as a set of guidelines that are interpreted and applied with consideration of the particular circumstances concerning the case at hand.

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: Sources of Law

Learning Objective 2.3 Describe the four sources of law in Canada.

11) Common law:

- a. is law that is derived from previously decided cases.
- b. is generally written in legislation.
- c. is also called Administrative Law.
- d. is also called Constitutional Law.

Ans.: a

Type: Factual

Level of difficulty: Easy

Section reference: Sources of Law

Learning Objective 2.3 Describe the four sources of law in Canada.

12) Administrative law:

- a. is law that is derived from previously decided cases.
- b. is also called Constitutional Law
- c. deals with issues that are criminal in nature
- d. deals with issues such as immigration and employment standards

Ans.: d

Type: Factual

Level of difficulty: Easy

Section reference: Sources of Law

Learning Objective 2.3 Describe the four sources of law in Canada.

13) In Canada, the four levels of courts from lowest to highest, are:

- a. provincial superior courts, provincial courts of appeal, provincial courts, Supreme Court of Canada.
- b. provincial courts, provincial courts of appeal, provincial superior courts, Supreme Court of Canada.
- c. provincial courts, provincial superior courts, provincial courts of appeal, Supreme Court of Canada.
- d. provincial courts, provincial superior courts, provincial supreme courts, Supreme Court of Canada.

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: Canadian Court Structure

Learning Objective 2.4 Describe the levels within the Canadian court structure.

14) Which of the following Latin terms means “let the decision stand”?

- a. *amicus curiae*
- b. *stare decisis*
- c. *writ of certiorari*
- d. *sine qua non*

Ans.: b

Type: Factual

Level of difficulty: Easy

Section reference: Canadian Court Structure

Learning Objective 2.4 Describe the levels within the Canadian court structure.

15) In _____, judges are provincially appointed and hear most types of criminal cases, accused persons do not have the option to be tried by a jury and decisions are not binding.

- a. the Supreme Court of Canada
- b. provincial courts of appeal
- c. provincial courts
- d. provincial superior courts

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: Canadian Court Structure

Learning Objective 2.4 Describe the levels within the Canadian court structure.

16) In _____, judges are federally appointed, accused persons can elect to be tried by judge alone or by judge and jury for certain crimes and appeals regarding summary convictions may be heard.

- a. the Supreme Court of Canada
- b. provincial courts of appeal
- c. provincial courts
- d. provincial superior courts

Ans.: d

Type: Factual

Level of difficulty: Medium

Section reference: Canadian Court Structure

Learning Objective 2.4 Describe the levels within the Canadian court structure.

17) In _____, cases are presided over a panel of judges who are federally appointed, witnesses are not heard and the final decision of the court does not require a unanimous decision.

- a. the Supreme Court of Canada
- b. provincial courts of appeal
- c. provincial courts
- d. provincial superior courts

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: Canadian Court Structure

Learning Objective 2.4 Describe the levels within the Canadian court structure.

18) With regard to provincial courts of appeal, which of the following statements is incorrect?

- a. These courts are presided over by a panel of three or five justices.
- b. The final decision in these courts requires unanimity.
- c. The decision as to whether or not an appeal will be heard is not a decision about the merits of the case.
- d. For criminal cases, the Crown or the defence can apply to appeal a sentence or a verdict.

Ans.: b

Type: Factual

Level of difficulty: Difficult

Section reference: Canadian Court Structures

Learning Objective 2.4 Describe the levels within the Canadian court structure.

19) With regard to the Supreme Court of Canada, which of the following statements is incorrect?

- a. Appeals to the Supreme Court of Canada must first be heard in a provincial court of appeal.
- b. The final decision does not require unanimity.
- c. This court is presided over by a panel of five, seven, or nine justices.
- d. For criminal cases, the Crown, but not the accused, may appeal to the Supreme Court of Canada.

Ans.: d

Type: Factual

Level of difficulty: Difficult

Section reference: Canadian Court Structures

Learning Objective 2.4 Describe the levels within the Canadian court structure.

20) Which of the following statements is correct?

- a. Supreme Court decisions are not binding; they can be appealed by lower courts.
- b. Supreme Court decisions made about a law that is under provincial/territorial jurisdiction must be upheld by all provinces and territories in Canada.
- c. Supreme Court decisions made pertaining to a law that is under provincial/territorial

jurisdiction must be upheld by those provinces and territories that enact the same law.
d. decisions are final; even the Supreme Court of Canada cannot reverse its own decision

Ans.: c

Type: Factual

Level of difficulty: Difficult

Section reference: Canadian Court Structures

Learning Objective 2.4 Describe the levels within the Canadian court structure.

21) In criminal cases, if a person convicted of a crime challenges the conviction to the provincial court of appeal, the convicted person is the _____ and the Crown is the _____.

- a. plaintiff; prosecution
- b. appellant, respondent
- c. respondent, appellant
- d. defendant; prosecution

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: Canadian Court Structures

Learning Objective 2.4 Describe the levels within the Canadian court structure.

22) In criminal cases, if a person convicted of a crime challenges the conviction to the provincial court of appeals and wins the case, but the Crown appeals this court's decision to the Supreme Court of Canada, the convicted person is called the _____ and the Crown is called the _____.

- a. plaintiff; defendant
- b. appellant, respondent
- c. respondent, appellant
- d. defendant; prosecution

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: Canadian Court Structures

Learning Objective 2.4 Describe the levels within the Canadian court structure.

23) In a civil case, the person bringing the action is the _____ and the person responding to the action is called the _____.

- a. plaintiff; defendant
- b. appellant, respondent
- c. respondent, appellant
- d. defendant; prosecution

Ans.: a

Type: Factual

Level of difficulty: Medium

Section reference: Canadian Court Structures

Learning Objective 2.4 Describe the levels within the Canadian court structure.

24) In a civil case, if the person bringing the action loses at trial and appeals the decision to the provincial court of appeals, they are called the _____ and the person responding to the action is called the _____

- a. plaintiff; defendant
- b. appellant, respondent
- c. respondent, appellant
- d. defendant; prosecution

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: Canadian Court Structures

Learning Objective 2.4 Describe the levels within the Canadian court structure.

25) Which of the following statements is correct?

- a. Most cases that proceed to civil court may also proceed to criminal court.
- b. If a case may proceed both civilly and criminally, the case will proceed to civil court first.
- c. If a case may proceed both civilly and criminally, the case will proceed to criminal court first.
- d. A case may proceed to either civil court or criminal court, not both courts.

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: The Court Process

Learning Objective 2.5 Compare and contrast the criminal and civil court processes.

26) In civil cases:

- a. the police investigate the case.

- b. the possible outcome is restriction of liberty.
- c. The Standard of Proof is "beyond a reasonable doubt"
- d. The Standard of Proof is "on a balance of probabilities".

Ans.: d

Type: Factual

Level of difficulty: Easy

Section reference: The Court Process

Learning Objective 2.5 Compare and contrast the criminal and civil court processes.

27) In criminal cases

- a. The police investigate the case.
- b. The plaintiff brings the case to court.
- c. The defendant must prove the case.
- d. The possible outcome is monetary award.

Ans.: a

Type: Factual

Level of difficulty: Easy

Section reference: The Court Process

Learning Objective 2.5 Compare and contrast the criminal and civil court processes.

28) Which of the following statements is correct?

- a. The purpose of criminal law is to deal with the plaintiff.
- b. The purpose of criminal law is to deal with the perpetrator.
- c. The purpose of criminal law is to restore the injured party to his or her pre-injury state.
- d. The purpose of criminal law is to prove on a balance of probabilities that the defendant is guilty.

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: The Court Process

Learning Objective 2.5 Compare and contrast the criminal and civil court processes.

29) Which of the following statements is correct?

- a. The purpose of civil law is to determine the sentence of the defendant.
- b. The purpose of civil law is to deal with the perpetrator.
- c. The purpose of civil law is to restore the injured party to his or her pre-injury state.
- d. The purpose of civil law is to prove on a balance of probabilities that the defendant is

guilty.

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: The Court Process

Learning Objective 2.5 Compare and contrast the criminal and civil court processes.

30) The two broad sources of human rights protections in Canada are:

- a. The Criminal Code of Canada and the *Canadian Charter of Rights and Freedoms*
- b. The Canadian Constitution and the *Canadian Charter of Rights and Freedoms*
- c. The Criminal Code of Canada and the Canadian Constitution
- d. The *Canadian Charter of Rights and Freedoms* and humans rights codes

Ans.: d

Type: Factual

Level of difficulty: Medium

Section reference: The *Canadian Charter of Rights and Freedoms*

Learning Objective 2.6 Outline the key elements of the *Canadian Charter of Rights and Freedoms*.

31) Two broad sources of human rights protections are used in Canada. The criteria that are considered when deciding which source applies to a particular case include:

- a. the identity of the victim
- b. the identity of the discriminator
- c. the province in which the violation occurred
- d. none of the above

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: The *Canadian Charter of Rights and Freedoms*

Learning Objective 2.6 Outline the key elements of the *Canadian Charter of Rights and Freedoms*.

32) With regards to human rights protections:

- a. if the discriminator is a government actor who is infringing on free speech, then the *Canadian Charter of Rights and Freedoms* apply.
- b. if the discriminator is non-government actor (e.g., administrator of a private school) who is infringing on a fundamental right such as free speech, then the *Canadian Charter of*

Rights and Freedoms apply.

- c. if the discriminator is a non-government actor (e.g., administrator of a private school) who is discriminating on the basis of race, sexual orientation and religion, then the *Canadian Charter of Rights and Freedoms* apply.
- d. all of the above are correct

Ans.: a

Type: Factual

Level of difficulty: Difficult

Section reference: The *Canadian Charter of Rights and Freedoms*

Learning Objective 2.6 Outline the key elements of the *Canadian Charter of Rights and Freedoms*.

33) _____, is supreme law in Canada, meaning:

- a. Human rights code; it should not be implemented without considering other laws.
- b. Human rights code; government actors should not pass legislation or behave in a manner that infringe upon it.
- c. *Canadian Charter of Rights and Freedoms*; it should be implemented without considering other laws.
- d. *Canadian Charter of Rights and Freedoms*; government actors should not pass legislation or behave in a manner that infringe upon it.

Ans.: d

Type: Factual

Level of difficulty: Medium

Section reference: The *Canadian Charter of Rights and Freedoms*

Learning Objective 2.6 Outline the key elements of the *Canadian Charter of Rights and Freedoms*.

34) _____, which is part of the *Constitution Act, 1982*, changes_____.

- a. Criminal Code of Canada; infrequently
- b. Human rights codes; frequently
- c. *Canadian Charter of Rights and Freedoms*; infrequently
- d. *Canadian Charter of Rights and Freedoms*; frequently

Ans.: c

Type: Factual

Level of difficulty: Easy

Section reference: The *Canadian Charter of Rights and Freedoms*

Learning Objective 2.6 Outline the key elements of the *Canadian Charter of Rights and Freedoms*.

35) Which of the following statement is incorrect?

- a. Under no circumstance are legislators allowed to pass a law that is contrary to the Charter of Human Rights and Freedoms.
- b. If a law that is passed infringes on a *Charter* right, the courts may strike down the legislation in its entirety.
- c. If a law that is passed infringes on a *Charter* right, the courts may revise or delete part of the legislation.
- d. If a law that is passed infringes on a *Charter* right, the courts may make the legislation more inclusive.

Ans.: a

Type: Factual

Level of difficulty: Medium

Section reference: The *Canadian Charter of Rights and Freedoms*

Learning Objective 2.6 Outline the key elements of the *Canadian Charter of Rights and Freedoms*.

36) Two elements in most criminal offences include:

- a. amicus curiae and actus reus
- b. mens rea and locutus reus
- c. mens rea and actue reus
- d. amicus curiae and mens rea

Ans.: c

Type: Factual

Level of difficulty: Easy

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

37) With regard to “mens rea”, which of the following statements is correct?

- a. “Mens rea” refers to the commission of a criminal act and/or the failure to engage in a necessary act (e.g., negligence causing death).
- b. The “Mens rea” that is needed to prove that an act is criminal in nature is the same regardless of the crime committed.
- c. “Mens rea” refers to the motivation of the perpetrator.
- d. “Mens rea” refers to the state of mind of the perpetrator at the time of the crime.

Ans.: d

Type: Factual

Level of difficulty: Easy

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

38) In Canada, first-degree murder would be classified as a(n) _____ offence and would be heard in a _____ court.

- a. capital; superior
- b. indictable; superior
- c. capital, provincial
- d. indictable; provincial

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

39) In Canada, keeping a betting house would be classified as a(n) _____ and would be heard in a _____ court.

- a. summary; superior
- b. indictable; superior
- c. summary, provincial
- d. indictable; provincial

Ans.: d

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

40) In Canada, _____ offences are of a less serious nature, and carry a fine of not more than \$2000.00 and/or a prison term of not more than six months.

- a. hybrid
- b. summary
- c. indictable
- d. capital

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

41) In Canada, _____ offences are heard in provincial court, cannot be heard by a jury, and generally must be charged within six months of the commission of the offence.

- a. summary
- b. electable
- c. indictable
- d. hybrid

Ans.: a

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

42) In Canada, _____ offences may be heard in a provincial court or superior court, at the discretion of the _____.

- a. electable; accused
- b. electable; Crown
- c. hybrid; accused
- d. hybrid, Crown

Ans.: a

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

43) In Canada, _____ offences may proceed as indictable offences or as summary offenses, at the discretion of the _____.

- a. electable; accused

- b. electable; Crown
- c. hybrid; accused
- d. hybrid; Crown

Ans.: d

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

44) When the accused admits to having committed the crime in question, but argues that he or she was provoked to commit the act, the _____ defence is being used.

- a. justification
- b. excuse
- c. negating the actus reus
- d. negating the mens rea

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

45) When the accused admits to having committing the crime in question but argues that he or she did not intend to commit the crime, the _____ defence is being used

- a. justification
- b. excuse
- c. negating the actus reus
- d. negating the mens rea

Ans.: d

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

46) When the accused admits to having committed the crime in question, but argues that

he or she committed the act in self-defence, the _____ defence is being used.

- a. justification
- b. excuse
- c. negating the actus reus
- d. negating the mens rea

Ans.: a

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

47) When the accused admits to having committed the crime in question, but argues that the actions were not under his or her control due to a medical condition, the _____ defence is being used.

- a. justification
- b. excuse
- c. negating the actus reus
- d. negating the mens rea

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

48) When the accused admits to having committed the crime in question, but argues that he or she was intoxicated at the time, the _____ defence is being used.

- a. justification
- b. excuse
- c. negating the actus reus
- d. negating the mens rea

Ans.: d

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

49) When the accused admits to hitting a child with a belt across the head, but argues that the he or she was trying to correct the child, the _____ defence is being used.

- a. justification
- b. excuse
- c. negating the actus reus
- d. negating the mens rea

Ans.: a

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

50) If the _____ defence is being used, the accused _____.

- a. actus reus; must establish a defence on balance of probabilities
- b. justification; need only raise a reasonable doubt with the defence
- c. mens rea; need only raise a reasonable doubt with the defence
- d. excuse; need only raise a reasonable doubt with the defence

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

51) Which of the following statements is correct?

- a. If a case is being heard by a jury alone, the jury serves as the trier of law, but not trier of fact.
- b. If the case is being heard by a judge and jury, the jury serves as the trier of law and the judge serves as the trier of fact.
- c. If the case is being heard by a judge and jury, the jury serves as the trier of fact and the judge serves as the trier of law.
- d. If the case is being heard by a judge alone, the judge serves as the trier of law, but not trier of fact.

Ans.: c

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

- 52) Hearsay evidence is usually considered inadmissible in a court of law because it is:
- a. generally unreliable.
 - b. generally prejudicial.
 - c. generally in breach of a *Charter* right.
 - d. all of the above

Ans.: a

Type: Factual

Level of difficulty: Easy

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

- 53) Which of the following statements is incorrect regarding use of witnesses in criminal cases?
- a. Witnesses of a crime are allowed to present their opinions of the case to the court.
 - b. Witnesses of a crime are allowed to present information to the court on what they've seen and heard regarding the crime.
 - c. Expert Witnesses are allowed to present their opinions to the court based on their specialized knowledge.
 - d. Expert Witnesses are allowed to present their opinions to the court based on what they've seen/heard while evaluating the accused.

Ans.: a

Type: Factual

Level of difficulty: Difficult

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

- 54) In *R. v. Mohan* (1994), the Supreme Court of Canada provided the following criteria for admission of expert evidence, EXCEPT
- a. the opinion must be necessary to render a fair and just decision
 - b. the opinion must be supported by other experts
 - c. the opinion must be relevant to the material issue at trial
 - d. the expert must be properly qualified

Ans.: b

Type: Factual

Level of difficulty: Medium

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

Essay Questions

55) Contrast the inquisitorial legal system and the adversarial legal system in terms of the how legal decisions are made, the role of lawyers and judges, how experts are appointed and where each system is exercised.

Type: Factual

Level of difficulty: Medium

Section reference: Legal Systems

Learning Objective 2.1 Differentiate between an inquisitorial and an adversarial legal system.

Ans.:

In the *inquisitorial legal system*, the laws are codified—that is, they are written down systematically as a set of principles or rules. Lawyers represent their client and assist the court. Judges play an active role in terms of directing the trial and calling/questioning witnesses. Expert witnesses are appointed by the court, not by any one side of the dispute. This type of system is used in many European countries.

In the *adversarial system*, common law is used—that is, law is written in past court decisions. Lawyers present evidence and examine witnesses; defence lawyers acts as advocates for their client, fighting to the full extent allowable by the law. Judges listen to evidence presented by both sides and play the role of the final arbitrator. Expert witnesses are typically appointed by one side of the dispute. This type of system is used in North America.

56) Describe the four sources of law used in Canada.

Type: Factual

Level of difficulty: Medium

Section reference: Division of Powers

Learning Objective 2.2 Explain the division of legislative powers between the federal and provincial governments.

Ans.:

The four sources of law in Canada are the 1) *Canadian Charter of Rights and Freedoms*, 2)

legislation, 3) common law, and 4) administrative law.

1. The *Canadian Charter of Rights and Freedoms* is supreme law in Canada. It is part of the Canadian Constitution. With few exceptions, it cannot be overridden by other courts. The *Charter* is “entrenched” in the sense that it is difficult to amend it. Amendments have not been attempted since the *Charter* was enacted in 1982 when the constitution was repatriated. The *Charter* is applicable when the discriminator is a government actor who is accused of infringing on a fundamental right (e.g., freedom of speech). Interpretable language is used in the *Charter* to allow judges to make decisions that consider contextual factors and current values.

2. Much of Canadian law is written in federal and provincial legislation. In the *Constitution Act, 1867*, powers to pass laws were divided such that the provinces were given jurisdiction in some areas and the federal government was given power to pass laws in other areas. Most laws required further interpretation by judges—thus the laws act as guidelines that are to be applied in a reasonable manner to the facts at hand.

3. Common law is derived from previously decided cases. They are not written in legislation.

4. The federal or provincial government may delegate powers to administrative tribunals to enforce and interpret laws in some areas, such as human rights breaches, employment standards, immigration issues, parole issues, and some mental health issues. The legislations outline the boundaries of the tribunal’s authority.

57) List the four levels of courts that make up the Canadian Court System, moving from the lowest to the highest level. For each level, describe how judges are appointed, the number of judges who preside over cases, whether juries are used, the types of cases heard, and whether decisions are binding.

Type: Factual

Level of difficulty: Difficult

Section reference: Canadian Court Structure

Learning Objective 2.4 Describe the levels within the Canadian court structure.

Ans.:

The four levels of courts from lowest to highest are: 1) provincial courts, 2) provincial superior courts, 3) provincial courts of appeal, and 4) Supreme Court of Canada.

1. Provincial courts are trial courts that are presided over by provincially appointed judges—one judge hears the case. There is no option to be tried by a jury. Most criminal cases, almost all youth cases, all civil cases involving small sums of money, and half of family cases (involving neglected/abused children, adoption, division of property) are heard here. Decisions are not binding but are influential on other provincial court judges. Decisions may be appealed to a higher court.

2. Provincial superior courts are trial courts that are presided over by federally appointed

judges—one judge hears the case. Accused persons may opt to be tried by judge alone, or by judge and jury if subject to a prison sentence of five years or more. Some criminal cases and civil cases, applications for divorce and appeals from provincial courts on small claims, family cases, and summary convictions may be heard here. Decisions are binding to other provincial superior courts in the same province and other provinces. Decisions may be appealed to a higher court.

3. Provincial courts of appeal are presided over by a panel of 3 or 5 federally appointed judges whereby the final decision is that of the majority. They are not trial courts—rather they are appeal courts who hear criminal and civil appeals from lower courts. Juries are not used. The Crown or the defence may apply to appeal their case. Decisions are binding on superior courts and provincial courts in that province and are persuasive on other provinces that have the same law.

4. The Supreme Court of Canada is presided over by a panel of 5, 7 or 9 federally appointed judges whereby the final decision is that of the majority. They are not trial courts; juries are not used. Appeals must go to the provincial court of appeals before being brought forward to the Supreme Court of Canada. The Crown or the accused may apply to have the appeal heard.

For laws under provincial jurisdiction, the judgment is binding on all inferior courts in provinces that enact the law under appeal. For laws under federal jurisdiction, the judgment is binding throughout Canada.

58) Compare and contrast the court process for criminal courts and civil courts. Include information on the purpose of the process, who investigates the case, who brings the case to court, who pays for the prosecution, who pays for the defense, who must prove the case, the standard of proof, and the possible outcome.

Type: Factual

Level of difficulty: Medium

Section reference: The Court Process

Learning Objective 2.5 Compare and contrast the criminal and civil court processes.

Ans.:

	CRIMINAL	CIVIL
Purpose	Deal with the perpetrator	Restore the injured party
Who investigates?	The police	An individual
Who brings the case?	The Crown	The plaintiff
Who pays for the prosecution?	The State	The plaintiff
Who pays for the defence?	The defendant	The defendant
Who must prove the Case?	The Crown	The plaintiff
Standard of proof	Beyond a reasonable doubt	On a balance of probabilities
Possible outcome	Restriction of liberty	Monetary award

59) In Canada, in what document are criminal offences listed. Describe the two elements that must be proven for a case to be considered to be criminal in nature. What is the standard of proof required by each?

Type: Factual

Level of difficulty: Easy

Section reference: Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

Ans.:

In Canada, criminal offences are listed in the Criminal Code of Canada. The two elements that must be proven by the Crown beyond a reasonable doubt are “actus reus” and “mens rea”. Actus reus means “guilty act”. It must be shown that the act in question was either one that involved engaging in a criminal act or one that involved a failure to engage in an act required by law (e.g., failing to provide the necessities of life to someone under your care). Mens rea means “guilty mind”. It must be shown that the actor had intent to commit the act (or failure to engage in required act) at the time of the crime. Mens rea does not refer to motive to commit the act. The specific mens rea that must be proven varies with the crime committed.

60) List and describe three types of criminal offences outlined in the Criminal Code of Canada.

Type: Factual

Level of difficulty: Easy

Section reference: Types of Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

Ans.:

The three types of criminal offences outline in the Criminal Code of Canada are 1) summary offences, 2) indictable offences, and 3) hybrid offences.

1. Summary offences are less serious criminal offences that carry relatively minor penalties of a fine of not more than \$2000.00 and/or a prison term of not more than six months. The charge must be laid within six months of committing the offence, unless the Crown and accused agree to extend this limit. These offences are heard in a provincial court and cannot be heard by a jury.

2. Indictable offences are more serious criminal offences that carry serious penalties. The most serious offences are within the jurisdiction of a superior court (e.g., first degree murder). Electable offences are indictable offences that can be heard in a provincial or superior court, at the discretion of the accused (e.g., manslaughter). The least serious indictable offences are heard only in provincial courts (e.g., keeping a betting house).

3. Hybrid offences may proceed as indictable or summary offences at the discretion of the Crown. An example is assault.

61) List and describe the five categories of defences described in the textbook and describe the standard of proof that needs to be raised by each defence.

Type: Factual

Level of difficulty: Medium

Section reference: Types of Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

Ans.:

The five types of defences are 1) identification, 2) justification, 3) excuse, 4) negating the actus reus, and 5) negating the mens rea

1. Identification is used when the accused either did not commit the crime or refuses to admit he or she committed the crime. In cases whereby the accused admits to committing the crime, one of the following four defences may be used.

2. Justification is used when the accused admits committing the crime, but argues it was justified (e.g., self-defence). The accused must establish the defence on a balance of probabilities.

3. Excuse is used when the accused admits to committing the crime, but argues that there is a legal excuse for the act, such as provocation. The accused must establish the defence on a balance of probabilities.

4. Negating the actus reus is when the accused admits to committing the crime, but argues that his or her actions were not under his or her voluntary control. The accused need only raise a reasonable doubt with this defence.

5. Negating the mens rea is when the accused admits to committing the crime, but argues that he or she lacked intent at the time of the crime (e.g., he or she was mentally disordered at the time, he or she was intoxicated at the time, he or she misunderstood the situation at the time). The accused need only raise a reasonable doubt with this defence.

62) What is the source of evidence law? What criteria of evidence must be met for it to be deemed admissible? Contrast eyewitness evidence versus expert witness evidence in terms of what is allowable to be admitted to the courts.

Type: Factual

Level of difficulty: Easy

Section reference: Types of Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

Ans.:

Most laws of evidence are found in case law. Some laws of evidence are found in statutes, namely the Canada Evidence Act and each province's provincial evidence acts.

Eyewitnesses of crime are allowed only to speak to what they saw or heard regarding the crime in question. They are not allowed to give their opinion. Expert witnesses are called upon to give their opinion with regard to their specialized knowledge (regarding mental health or general theory). They may also be asked to provide an opinion based on what they perceived during the evaluations they performed on the defendant or complainant.

63) Describe the criteria for admission of expert opinion evidence as provided by the Supreme Court of Canada regarding R. v. Mohan (1994).

Type: Factual

Level of difficulty: Medium

Section reference: Types of Criminal Offences

Learning Objective 2.7 Explain the elements of a criminal offence, list the types of criminal offences, and describe the defences used.

Ans.:

1. Expert opinion evidence must be necessary to help the trier of fact understand the case and render a fair and just decision.

2. Expert opinion evidence must be relevant to the material issue at trial (e.g., the type of defence used).

3. The expert must be properly qualified in that he or she is expert with regard to specialized knowledge needed for the case. The qualifications may be based on education and/or experience.

4. The opinion must be admissible on its face—if the evidence is inadmissible on its face, having this evidence presented by an expert will not make it admissible.