

Chapter 02 The Judicial System and Alternative Dispute Resolution

Multiple Choice Questions

1. 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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Difficulty: Moderate

2. 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.

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Difficulty: Easy

3. 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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Difficulty: Easy

4. 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.

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Difficulty: Easy

5. 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 The customer alleges that money apparently withdrawn through an automated teller machine from her account must have been removed through a bank error, since she did not do so, and no one knows her identification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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Difficulty: Moderate

6. 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.

Accessibility: Keyboard Navigation
Difficulty: Challenging

7. 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.

Accessibility: Keyboard Navigation
Difficulty: Challenging

8. *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.

Accessibility: Keyboard Navigation
Difficulty: Challenging

9. 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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Difficulty: Moderate

10. 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.

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Difficulty: Moderate

11. (p. 36) Easy Money Credit Ltd. is owed \$8,000 by Irina for a debt to buy a television and home theatre system. Irina 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

Accessibility: Keyboard Navigation
Difficulty: Easy

12. (p. 36) 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

Accessibility: Keyboard Navigation
Difficulty: Easy

13. (p. 40) 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

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Difficulty: Moderate

14. (p. 42) 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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Difficulty: Easy

15. (p. 45) 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.

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Difficulty: Moderate

16. (p. 48) 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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Difficulty: Moderate

True / False Questions

17. American cases cannot be used in Canada because the legal systems in each country grew out of very different roots.

FALSE

Accessibility: Keyboard Navigation
Difficulty: Easy

18. 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

Accessibility: Keyboard Navigation
Difficulty: Easy

19. 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

Accessibility: Keyboard Navigation
Difficulty: Moderate

20. The State of Louisiana and the Province of Quebec both base their non-criminal laws on the French Civil Code.

TRUE

Accessibility: Keyboard Navigation
Difficulty: Easy

21. 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.

FALSE

Accessibility: Keyboard Navigation
Difficulty: Moderate

22. 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.

FALSE

Accessibility: Keyboard Navigation
Difficulty: Moderate

23. 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

Accessibility: Keyboard Navigation
Difficulty: Easy

24. 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

Accessibility: Keyboard Navigation
Difficulty: Moderate

25. 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

Accessibility: Keyboard Navigation
Difficulty: Moderate

26. 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.

FALSE

Accessibility: Keyboard Navigation
Difficulty: Moderate

27. 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.

FALSE

Accessibility: Keyboard Navigation
Difficulty: Easy

28. 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.

FALSE

Accessibility: Keyboard Navigation
Difficulty: Moderate

29. 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

Accessibility: Keyboard Navigation
Difficulty: Easy

30. Discovery is a process which is used to clarify points in the statement of claim or statement of defence.

TRUE

*Accessibility: Keyboard Navigation
Difficulty: Moderate*

Essay Questions

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.

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.

Difficulty: Challenging

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.

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.

Difficulty: Moderate

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.

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.