

Exam

Name \_\_\_\_\_

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

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

Answer: B

- 2) We have and need law because 2) \_\_\_\_\_  
A) it protects persons and property and prohibits conduct that society believes is harmful.  
B) it provides a framework within which freedoms can be exercised.  
C) it enables parties make legally binding agreements that are enforceable in the courts.  
D) it vests in the government the power to act for the benefit of all in society.  
E) all of the above

Answer: E

- 3) Laws are generally accepted and obeyed because 3) \_\_\_\_\_  
A) laws are just.  
B) people in society should be able to rely on having a system of rules applied fairly to resolve disputes.  
C) people in society should be able to rely on having their expectations met.  
D) disobedience will be punished.  
E) none of the above

Answer: C

- 4) According to natural law theorists, the legal principles on which laws of societies are based, 4) \_\_\_\_\_  
A) are founded on human laws.  
B) are derived from principles of everyday life.  
C) are derived from certain fundamental, immutable and moral principles.  
D) are founded on the rule of law.  
E) none of the above

Answer: C

- 5) Legal positivism is concerned with 5) \_\_\_\_\_  
A) determining who rules every society.  
B) determining the body of law that is.  
C) describing the laws of society.  
D) the normative laws of government.  
E) none of the above

Answer: B

- 6) Legislation is the name given to laws 6) \_\_\_\_\_  
A) made by members of the government.  
B) that are made by Parliament and Provincial legislatures.  
C) the general system of laws of a country.  
D) that are made by Judges.  
E) none of the above

Answer: B

- 7) In a federal country such as Canada, the Supreme Court of Canada, and not Parliament, usually has 7) \_\_\_\_\_  
the last word on the law because  
A) the Supreme Court of Canada is made up of Judges that make law.  
B) the Supreme Court of Canada is the highest court in the land.  
C) there are two distinct levels of government.  
D) Parliament only makes laws.  
E) the judges of the Supreme Court of Canada are appointed by the federal government.

Answer: C

- 8) The courts in Canada, among other things, 8) \_\_\_\_\_  
A) determine the validity of legislation.  
B) interpret legislation passed by Parliament.  
C) resolve disputes between private parties.  
D) protect civil liberties.  
E) all of the above

Answer: E

- 9) When a court adopts the liberal approach to interpreting a statute 9) \_\_\_\_\_  
A) it discusses liberal issues to determine the meaning.  
B) it examines the legislation in its larger context, including its purpose and those it will affect to determine the meaning.  
C) it refers to dictionaries to determine the meaning.  
D) it attempts to eliminate all ambiguity.  
E) it examines the plain meaning of the legislation to determine its meaning.

Answer: B

- 10) The English philosopher who described law as the "command of the sovereign" is 10) \_\_\_\_\_  
A) John Austin.  
B) Jeremy Bentham.  
C) David Hume.  
D) Margaret Thatcher.  
E) Socrates.

Answer: A

- 11) The Supreme Court of Canada performs several roles. One role it does NOT perform is 11) \_\_\_\_\_  
A) interpreter of legislation.  
B) resolving disputes between private parties.  
C) determining the validity of legislation.  
D) protector of civil liberties.  
E) an umpire between the various levels of government.

Answer: E

- 12) Law is derived from a variety of sources. These include the Constitution, Legislation, and 12) \_\_\_\_\_
- A) Supreme Court of Canada and subordinate legislation.
  - B) the Cabinet.
  - C) court decisions handed down by judges.
  - D) media reports and other news.
  - E) statements made by Ministers and administrative rulings

Answer: C

- 13) Whenever a law is determined by a Court to be outside the jurisdiction of the legislature, and 13) \_\_\_\_\_  
beyond its powers, the law or provision is said to be
- A) a federal law.
  - B) the result of concurrent powers.
  - C) ultra vires and therefore void.
  - D) the result of residual power.
  - E) excess of jurisdiction and therefore invalid.

Answer: C

- 14) Federalism is 14) \_\_\_\_\_
- A) the system of government that applies in the Province of Quebec.
  - B) the system of government in which power is divided between two levels of government.
  - C) the system of government that believes in health care for all.
  - D) the system of government in which the central government makes laws for all the people.
  - E) a system of government in which the various governments, such as feral and provincial, all come together to make laws for all the people.

Answer: B

- 15) Which one of the following is not part of the Canadian legal system? 15) \_\_\_\_\_
- A) court decisions
  - B) business ethics
  - C) constitution
  - D) statutes
  - E) administrative rulings

Answer: B

- 16) Which of the following is True? 16) \_\_\_\_\_
- A) The Canadian Charter is separate from the Canadian constitution.
  - B) The Canadian Charter is entrenched in the constitution.
  - C) The Canadian Charter can be repealed by an ordinary Act of Parliament or of the Provincial Legislatures.
  - D) The Canadian Charter is part of the Human Rights Act.
  - E) The Canadian Charter also applies to US Citizens.

Answer: B

- 17) The Canadian Charter is said to be entrenched in the Canadian Constitution, this means that 17) \_\_\_\_\_
- A) it is a rule of the Canadian constitution that must be considered by judges only.
  - B) the rights set out in the Charter are absolute.
  - C) it is not part of the Human Rights Act.
  - D) Judges are given the authority to resolve Charter problems.
  - E) it cannot be repealed by an ordinary act of Parliament or of the provincial legislatures.

Answer: E

- 18) Section 15 of the Canadian Charter of Rights and Freedoms deals with 18) \_\_\_\_\_
- A) equality rights.
  - B) national politics.
  - C) the applicability of the Human Rights Act.
  - D) legal rights.
  - E) its application to citizens of the United States.

Answer: A

- 19) Section 15 of the Charter of Rights and Freedoms provides that "Every individual is equal before the law and under the law and has the right to the \_\_\_\_\_ and \_\_\_\_\_ of the law without discrimination...." 19) \_\_\_\_\_
- A) equal protection; equal access.
  - B) equal protection; equal benefit.
  - C) equal benefit; protection.
  - D) equal benefit; equal access.
  - E) equal protection; equal remedy.

Answer: B

- 20) Section 33 of the Charter allows the Legislature to pass legislation which overrides the fundamental freedoms specified in the Charter only if 20) \_\_\_\_\_
- A) two-thirds of the provinces having at least 50% of the total population of Canada approve.
  - B) five years have passed since the legislation was first proposed.
  - C) a court determines that the freedoms can be overridden.
  - D) the legislation in question does not violate the Human Rights Act.
  - E) the legislation expressly declares that it "shall operate notwithstanding" a provision included in the Charter.

Answer: E

- 21) The "notwithstanding" provision in the Charter of Rights and Freedoms is one that 21) \_\_\_\_\_
- A) allows a legislature to pass laws that override the fundamental freedoms specified in the Charter if the provision specifically states that it shall operate notwithstanding the freedoms specified in the Charter.
  - B) allows a Court to decide that notwithstanding the fundamental freedoms specified in the Charter, the judgment of the court is supreme.
  - C) allows a legislature to pass a law that provides that notwithstanding the law that has been passed the Charter of Rights and Freedoms will still apply.
  - D) allows a legislature to pass laws that override the fundamental freedoms specified in the Charter.
  - E) allows a legislature to pass a law notwithstanding a court Order that prohibits it from doing so.

Answer: A

- 22) Which of the following is NOT true? 22) \_\_\_\_\_
- A) The Charter is entrenched in the Canadian Constitution.
  - B) Federal legislation takes precedence over the decisions of the Supreme Court of Canada.
  - C) Section 15 of the Charter is concerned with equality rights.
  - D) Supreme Court of Canada decisions take precedence over provincial legislation.
  - E) The Human Rights Acts of the provinces only apply between private persons and do not apply between private persons and governmental bodies.

Answer: B

- 23) Law that is made by government that establishes standards of behaviour and regulating human conduct is referred to as 23) \_\_\_\_\_
- A) positive law.
  - B) governmental law.
  - C) basic law.
  - D) natural law.
  - E) normative law.

Answer: E

- 24) Which of the following is not part of the role or function of the courts? 24) \_\_\_\_\_
- A) to determine the validity of legislation
  - B) to arrest offenders
  - C) to interpret legislation
  - D) to resolve disputes between parties
  - E) to protect civil liberties

Answer: B

- 25) The requirement that unless a party to a legal proceedings is able to show facts and law to prove its case it will lose, is referred to as 25) \_\_\_\_\_
- A) the issue.
  - B) the proof.
  - C) the presumption.
  - D) the burden.
  - E) ultra vires.

Answer: D

- 26) Section 1 of the Charter of Rights and Freedoms says that the rights in the Charter are not absolute. 26) \_\_\_\_\_
- Section 1
- A) enables Parliament to override decision of the courts regarding the Charter
  - B) permits the Supreme Court of Canada to amend the Charter to conform to the values of a free and democratic society
  - C) allows the courts to decide whether it is necessary to infringe rights in order to maintain the values of a free and democratic society
  - D) enables provincial legislatures to override decisions of the courts regarding the Charter
  - E) none of the above

Answer: C

- 27) Which of the following is NOT a source of law? 27) \_\_\_\_\_
- A) Crown corporations
  - B) court decisions
  - C) administrative tribunals
  - D) the provincial legislatures
  - E) Parliament

Answer: A

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

- 28) "Law" is the same thing as "Justice". 28) \_\_\_\_\_

Answer: True  False

- 29) Modern legal theorists have refined Austin's theory of law by substituting the idea of the "sovereign" with the notion of a "basic law." 29) \_\_\_\_\_  
 Answer:  True  False
- 30) The basic law, according to modern legal theorists, is nothing more than a constitution that is habitually obeyed by members of the society. 30) \_\_\_\_\_  
 Answer:  True  False
- 31) In a federal country such as Canada, the federal government has the authority to alter the structure of the provincial government. 31) \_\_\_\_\_  
 Answer:  True  False
- 32) Whenever a provision in a law is found by a court to be outside the jurisdiction of the legislature, that provision is said to be ultra vires. 32) \_\_\_\_\_  
 Answer:  True  False
- 33) The Charter of Rights and Freedoms is not entrenched in the Constitution. 33) \_\_\_\_\_  
 Answer:  True  False
- 34) The Canadian Charter of Rights and Freedom is entrenched in the Constitution. This means that it can be repealed by an ordinary Act of Parliament. 34) \_\_\_\_\_  
 Answer:  True  False
- 35) If a statute states that it "shall operate notwithstanding" certain rights, this means that permission of parliament is needed to infringe on Charter rights. 35) \_\_\_\_\_  
 Answer:  True  False
- 36) The rights prescribed in the Charter of Rights and Freedoms are absolute. 36) \_\_\_\_\_  
 Answer:  True  False
- 37) The literal approach to the interpretation of statutes, requires a consideration of the plain meaning of the provision of a statute. 37) \_\_\_\_\_  
 Answer:  True  False
- 38) Affirmative action programs are permitted under the Charter of Rights and Freedoms. 38) \_\_\_\_\_  
 Answer:  True  False
- 39) A primary objective of the Charter of Rights and Freedoms is to ensure that business practices conform to basic human rights. 39) \_\_\_\_\_  
 Answer:  True  False
- 40) In Canada, municipal governments have the power to pass legislation. 40) \_\_\_\_\_  
 Answer:  True  False

SHORT ANSWER. Write the word or phrase that best completes each statement or answers the question.

- 41) What is the rule of law? 41) \_\_\_\_\_  
 Answer: Established legal principles that treat all persons equally and that government itself obeys.

- 42) What is the difference between positive law and normative law? 42) \_\_\_\_\_  
 Answer: Positive law describes ascertainable rules that are binding. It is the law that is. Normative law is law made by government that establishes standards of behaviour and regulates human conduct.
- 43) What is the difference between a unitary and federal system of government? 43) \_\_\_\_\_  
 Answer: In a unitary system of government, there is only one level of government. In a federal system of government, there are two main levels of government and power is divided between the national and provincial or state governments.
- 44) What is subordinate legislation? 44) \_\_\_\_\_  
 Answer: Subordinate legislation is the rules that are passed by a body designated in a statute, pursuant to the provisions of that statute.
- 45) In a federal country such as Canada, the Supreme Court of Canada often has the last word. Explain. 45) \_\_\_\_\_  
 Answer: In a federal country such as Canada, there are two levels of government, the national government and the provincial governments. Pursuant to the Constitution Act, 1867, each level of government has an independent existence and its own sphere of activity. There are also areas where both levels of government have concurrent jurisdiction. When problems arise with respect to jurisdiction, it is the Supreme Court of Canada that makes a final determination as to the interpretation of the law and the exercise of jurisdiction.
- 46) None of the rights set out in the Canadian Charter of Rights and Freedoms is absolute. Explain. 46) \_\_\_\_\_  
 Answer: None of the rights set out in the Canadian Charter is absolute. Section 1 of the Charter makes it clear that the rights set out in the Charter are "subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."
- 47) All legal systems require that persons in society accept an assumption as about laws. What is this assumption? 47) \_\_\_\_\_  
 Answer: The assumption is that law must be obeyed because it is expected to produce just results.
- 48) Give four kinds of rights that are covered by the Canadian Charter of Rights and Freedoms. 48) \_\_\_\_\_  
 Answer: These are equality, mobility, legal and democratic rights.

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

- 49) Legal theory draws a distinction between "is" and "ought". Explain.  
 Answer: Legal theorists such as Hume, draw a distinction between two kinds of human rules. First, there are rules that attract sanction in the event of a breach. Second, there are human rules that do not attract any sanction for their breach. The first group of human rules that attract sanction are binding and clearly ascertainable, are referred to as laws. They comprise the law that "is" or positive law. The second group of human rules that do not attract sanction are referred to as morals, they are rules that "ought" to be obeyed even when there are no sanctions.

50) Explain Austin's theory of law, and the difficulty of applying it to a country such as Canada.

Answer: John Austin defined law as the "command of the sovereign." The sovereign, according to Austin, was not merely the person of the King or Queen, but the King or Queen in parliament. The command of the sovereign was thus tantamount to a statute enacted by the King or Queen in parliament. This definition of law works well in a unitary system of government with a constitutional monarchy where laws emanate from the monarch in parliament. It is difficult to apply this concept of law to a federal system such as Canada where the power to make laws is divided between two levels of government.

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

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

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

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

53) Explain the approaches that the courts in Canada use when they have to interpret legislation.

Answer: There are two main approaches that are used widely by the courts when interpreting statutes. These are the literal approach and the liberal approach. The literal approach means that the courts will adopt the literal meaning of the words used in the statute. In the liberal approach, the court will view the legislation in its larger context by viewing its purpose. In practice, the courts usually use a combination of the two approaches when interpreting statutes.

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

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