

Introduction:

Canada's legal system and Real Estate Industry

Two types of law:

- Common law: law of precedence
- Equity law: law of unique situations

Generally, if there is any conflict or variance between the rules of equity and the rules of common law with respect to the same matter, the rules of equity will prevail. However, in the absence of any conflict, either equitable or common law, or both, may be applied.

Sources of law

- Common law / Case law
- legislation

Stare Decisis: Cases follow principles developed in earlier decisions.

1. In most cases, a person who works facilitating transactions in real estate in Canada must be currently licensed. Provincial real estate licensing legislation generally contains exemptions from this basic rule. Which of the following is NOT an example of an exemption typically found in provincial real estate legislation?

- (1) An individual selling property on his or her own behalf or on behalf of a relative from whom no payment of any kind is to be received.
- (2) A person who is employed full-time on salary by a licensed developer and who sells only the developer's real estate.
- (3) An executor selling the property of the deceased as provided by the will.
- (4) A family law lawyer who arranges a sale of property for a neighbour and receives, in addition to legal fees, a commission of 5% of the sale price.

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2. Which of the following is NOT a general objective of a Real Estate Board?

- (1) Enhancement of the reputation of members of the real estate industry.
- (2) Participation in the legislative processes affecting the real estate industry.
- (3) Ongoing reassessment of commission rates according to changes within the real estate industry.
- (4) Maintaining Multiple Listing Services for use by their members.

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3. After purchasing her fourth car, Diana decides it is time to build a new garage. Although not a construction professional, Diana is handy with tools and decides to design and build the garage herself. After many months and at great expense, Diana finishes her work and invites her next-door neighbour Andrew over to admire her new pink barn-shaped garage. Andrew thinks the garage is unsightly and demands that Diana tear it down. Diana, of course, refuses. That night, Andrew drives his car through Diana's garage and destroys her months of hard work. Diana sues Andrew. She succeeds and the court awards her \$80,000 in damages. Andrew feels the decision of the court is unfair. He refuses to pay Diana one cent. Diana may take which one of the following steps?

- (1) Diana can send a writ of execution to Andrew and then personally seize and sell enough of his property to pay the judgment.
- (2) Diana can apply to have a garnishing order served on Andrew's employer ordering the employer to pay all Andrew's wages directly paid out to her.
- (3) Diana can register her judgment in the land title office and apply to the court for a judicial sale of Andrew's property, and after payment of prior charges, the proceeds will go towards paying the judgment to Diana.
- (4) Diana may do all of the above.

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4. An examination for discovery:

- (1) usually takes place before the notice of civil claim is filed so that a person can ascertain whether a cause of action exists.
- (2) may be a major factor in the settlement of a dispute.
- (3) takes place before a judge, with all parties giving evidence under oath.
- (4) involves all of the above.

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5. Xavier has successfully sued Yolanda in provincial Supreme Court. The court has ordered Yolanda to pay court costs. Which of the following statements is FALSE?

- (1) Court costs are always awarded against unsuccessful litigants like Yolanda.
- (2) Court costs will cover some of Xavier's legal fees.
- (3) If the provincial Court of Appeal allowed an appeal by Yolanda, Xavier might have to pay the court costs of both courts.
- (4) In general, the possibility of being ordered to pay court costs helps to discourage people from bringing weak cases before the courts.

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6. During which one of the stages of the trial process does the defendant present the plaintiff with a response to civil claim denying some or all of the claims set out in the plaintiff's notice of civil claim?

- (1) Pleadings
- (2) Discovery
- (3) Commencing the action
- (4) Trial

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7. Which of the following is true about the principle of *stare decisis*?

- A. It has been eliminated by statute.
- B. It provides a way for the law to develop.
- C. It helps ensure consistency in court decisions.
- D. Courts are only bound by decisions of courts that are the same level or higher.

- (1) A only
- (2) A and B only
- (3) B, C, and D only
- (4) B and D only

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8. Which of the following statements is correct?

- (1) In all provinces, private disputes are settled under the common law system.
- (2) Although originally separate, common law and equity now together form the "common law".
- (3) Litigants can choose whether they want their case decided in an equitable or common law court.
- (4) Private law always involves a government actor.

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9. Which of the following would be prohibited by the Canadian Charter of Rights and Freedoms?

- (1) The City of Halifax passing a bylaw which discriminates on the basis of religion.
- (2) A sole proprietor refusing to hire an old lady due to her age and disability.
- (3) A corporation refusing to do business with a United States customer.
- (4) A club refusing to allow women in the bar.

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10. In Canada:

- (1) the federal government can bring in legislation which overrules provincial legislation.
- (2) the provincial governments can bring in legislation which overrules the federal government.
- (3) if there is a dispute as to which government can legislate in an area, the courts can determine which government has jurisdiction over the matter.
- (4) the courts can override the federal constitution.

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11. Which of the following statements is FALSE?

- (1) A major concern of a provincial Real Estate Act is protection of the public.
- (2) Most provinces provide optional insurance for real estate sales licensees.
- (3) A senior licensee in most provinces is called either an agent or a broker.
- (4) The Canadian Real Estate Association cannot take a licensee to court (start an action) in a criminal matter.

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12. Who is responsible for arbitrating disputes between members of a Real Estate Board?

- (1) The Canadian Real Estate Association
- (2) The Superintendent of Real Estate
- (3) The Real Estate Board
- (4) The real estate agencies involved in the dispute

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13. Which of the following statements regarding the equitable jurisdiction of the court is/are TRUE?

- A. The rules of equity developed as a response to the rigidity of the common law in England.
- B. Where the principles of equity and common law conflict, the court will apply the common law rule.
- C. Equitable remedies are available to parties in a court action as a right, regardless of their conduct.
- D. Specific performance, injunctions and legal damages are three types of equitable remedies.

- (1) A, B, and D only
- (2) B and C only
- (3) A only
- (4) All of the above statements are true.

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14. Which one of the following statements is FALSE?

- (1) The doctrine of precedent provides uniformity to the common law system.
- (2) The Supreme Court of Canada is not required to hear all appeals.
- (3) A provincial Supreme Court may exercise both common law and equitable jurisdiction.
- (4) An appeal by a taxpayer to reduce a tax assessment would fall within the sphere of private law.

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15. If a plaintiff wishes to start a court action:

- A. they must ensure they have brought the claim within the limitation period.
- B. court costs may be awarded against them if they reject a reasonable offer to settle from the defendant.
- C. they must commence the action in the correct court.
- D. they will be required to prepare written pleadings for a civil case.

Which of the statements above are TRUE?

- (1) A and B only
- (2) C and D only
- (3) B, C, and D only
- (4) All of the statements are true.

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16. Which of the following is NOT a possible meaning of the term "common law"?

- (1) The law created by the courts as opposed to statute law.
- (2) The principles derived from the common law courts in England as opposed to the principles derived from the courts of Chancery.
- (3) The laws created by the federal government in accordance with its power under the Constitution.
- (4) The system of law which relies upon the principle of *stare decisis* for its development.

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17. In Canada, the power to make laws is divided between the federal and provincial levels of government. Which of the following have been assigned to the federal government?

- A. Jurisdiction over designing new twenty dollar bills
- B. Jurisdiction over the regulation of banking
- C. Jurisdiction over matters affecting private property and the power to delegate some provincial authority to a third level of government
- D. Jurisdiction over the military

- (1) A, B, and C only
- (2) A, B, and D only
- (3) A and B only
- (4) C and D only

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18. When a judge "distinguishes" a case on its facts, this means:

- (1) the judge decides that factors crucial to a former decision are not present in the case at hand, and does not follow the former decision.
- (2) the judge formally reports the case before him or her because it is a crucial decision.
- (3) the judge follows a former decision because the same facts exist in the case which is being decided.
- (4) None of the above

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19. Where there is statute law regarding a particular legal issue:

- (1) case law on point is binding due to *stare decisis*.
- (2) a judge will not try to interpret and apply the statute.
- (3) the statute law will typically be enforced over the usually applicable case law.
- (4) a judge will only enforce the sections of the statute that are aligned with the prevailing case law.

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20. When commencing a lawsuit in Small Claims Court, the plaintiff may originate the action in the jurisdiction where:

- (1) either the plaintiff resides or the defendant resides.
- (2) the plaintiff resides.
- (3) either the cause of action arose or the defendant resides.
- (4) either the plaintiff resides or the cause of action arose.

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