

c1

Student: _____

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1. Jill's rights are an example of a legal privilege.

True False

2. The *Copyright Act* is an example of a statute.

True False

3. The *Copyright Act* applies throughout Canada.

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MCo. is suing ACo. because ACo. breached a contract to sell it 2,000 tonnes of first-grade steel. There is no legislation that deals with the issue between them.

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The Minister of Justice for the Parliament of Canada made an announcement that the federal government will introduce legislation to require the registration of firearms in Canada.

7. The new law will be proclaimed before it receives royal assent.

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9. If the government has a majority of seats in the House of Commons the bill may be passed with two readings and then sent to the Senate.

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10. Peters, who violates this new law by being found in possession of an unregistered weapon, will be charged with a violation of the law by the Crown but will not be sued for damages.

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Ned Stogers wishes to set up a radio station in a major metropolitan Canadian city that caters exclusively to the music preferences of senior citizens.

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18. Suppose the Government of Alberta passed legislation that conflicted with rights under s.8 of the *Charter*, and the Supreme Court of Canada struck down the legislation. The Government of Alberta can pass the legislation under s.33(1) of the *Charter* and it cannot be challenged in the courts because of the protection offered by s.33(1).

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- A. sent to the relevant committee for clause-by-clause study.
 - B. given royal assent by the Lieutenant-Governor.
 - C. debated in principle by the members of the legislature.
 - D. sent to the Senate for approval.
 - E. amended and prepared for its final reading.
48. When judges apply the principle of *stare decisis* in deciding a case before them they are, in effect, applying the
- A. principles decided in another court judgment.
 - B. doctrine of precedent.
 - C. principles of equity.
 - D. a and b.
 - E. b and c.

49. If the Constitution were to be amended to make ownership of property a right, it would be necessary to have the agreement of
- i) at least two-thirds of the provinces that together comprise at least half of the population of Canada.
 - ii) at least half of the provinces that together comprise at least two-thirds of the population of Canada.
 - iii) more than half of the members of the Federal Parliament.
 - iv) at least two-thirds of the members of the Federal Parliament.
 - v) all ten provinces.

- A. i.
- B. ii.
- C. i and iii.
- D. ii and iv.
- E. iii and v.

50. The provincial legislature is about to pass a piece of legislation that conflicts with one of the following rights. It had intended to do so under s.33(1), the notwithstanding clause, but has just found out that s.33 is not effective against this right. Which of the following is it?

- A. the right to life, liberty, and security of the person.
- B. freedom of speech.
- C. freedom of religion.
- D. the right to vote.
- E. equality rights.

51. A small Ontario town passes a by-law that says shop signs must be in English only. A butcher's shop that caters to the local German-speaking population is charged with infringing the by-law and the proprietor raises s.2(b) of the *Charter* in his defence. Which of the following is true?
- A. Since only political speech is protected by the *Charter*, he will lose.
 - B. Since the *Charter* does not apply to non-government bodies like a butcher's shop, he will lose.
 - C. Since the *Charter* protects commercial expression because it helps individuals make informed economic choices, he will win.
 - D. Since the *Charter* does not specifically protect commercial expression, regardless of any value it may have, he will not win.
 - E. None of these.
52. In response to the growing number of traffic deaths resulting from alcohol-related accidents, many provinces amended existing laws to permit their police forces to conduct arbitrary roadside checks to discourage drunk driving. When this practice was challenged in the courts as an infringement of s.9 of the *Charter*, which of the following is true?
- A. Counsel for the Crown successfully argued that the practice could be continued indefinitely because of s.33 of the constitution, which allows the provinces to exempt the legislation from the application of the *Charter*.
 - B. Counsel for the Crown successfully argued that the law permitting roadside checks is valid on the basis of s.1 of the *Charter*.
 - C. The challenging party, a motorist who had been stopped and found to have excessive blood-alcohol levels, successfully argued that the legislation violates his s.6 mobility rights.
 - D. a and b.
 - E. All of these.

53. If you were a judge in a court system in Canada, which of the following would not normally 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.
54. 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 Queens Bench for Manitoba.
55. An electric shaver you bought exploded and injured your hand. You are now suing the manufacturer. The first document that your lawyer will send to the manufacturer is
- A. a writ of summons.
 - B. the pleadings.
 - C. a notice of trial.
 - D. a statement of claim.
 - E. a demand for particulars.

56. 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.

57. 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 his account must have been removed through a bank error, since he did not do so and no one knows his identification number nor has access to his card. You are called upon to testify as to the security processes in the bank's computer system and the accuracy of the computerized automated teller machine's records. Which of the following is true?

- A. As an expert witness, you will be giving direct evidence at trial.
- B. As an expert witness, you will be giving opinion evidence at trial.
- C. As an expert witness, you will be giving hearsay evidence at trial.
- D. As an ordinary witness, you will be giving opinion evidence at trial.
- E. As an ordinary witness, you will be giving direct evidence at trial.

58. 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 is true?
- 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. Both a and b.
 - E. None of these.
59. 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 stating 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. Which of the following is true?
- 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 properly considered the principle of strict liability and dismiss the appeal and affirm the decision.
 - D. All of these except b.
 - E. All of these.

60. An administrative law was passed and proclaimed in force on January 1, 2003, that prohibited anyone from operating a pet-supply business unless he or she was registered under the act. Harvey operates a pet-supply business. Which of the following is true?
- A. Harvey can ignore the law because he was carrying on his business before the law came into effect.
 - B. Harvey must register with the appropriate agency in order to lawfully carry on his business.
 - C. If Harvey ignores the law, he has violated a criminal law statute.
 - D. Registration is only a guideline, and registration is an option only.
61. Harvey decides to register his business as a pet-supply firm as required by the new law. He applies for registration, but is turned down because the agency policy rules state that anyone convicted of theft in the last five years may be denied registration. Harvey was convicted of a minor theft as a teenager five years ago. He decides to appeal the denial to the Business Appeal Tribunal established under the act to hear appeals. Which of the following is true?
- A. The Business Appeal Tribunal is an administrative tribunal.
 - B. Bodies like the Business Appeal Tribunal have no powers outside those granted to them under the act.
 - C. Tribunals such as the Business Appeal Tribunal must treat people who appeal in a fair manner, and give them a fair hearing.
 - D. All of these.

62. Under the *Ontario Travel Industry Act*, someone who is turned down for registration as a travel agent may appeal the Registrar's decision to the Commercial Registration Appeal Tribunal, a body appointed by the Ministry of Commercial and Consumer Relations. A conviction for theft within the previous five years is grounds to refuse registration. Ben, who had a conviction for shoplifting 10 years ago, has been turned down, and he has decided to appeal. Which of the following is not true?
- A. The Commercial Registration Appeal Tribunal is an administrative law body, not a court.
 - B. The hearing in front of a Tribunal like this is not conducted in exactly the same way as a trial in a court.
 - C. Bodies like the Tribunal have no powers outside those granted to them under the relevant legislation.
 - D. Tribunals such as this must treat persons who appeal to them in a fair manner, but they do not have to follow the same rules of evidence and procedure as a court.
 - E. All of these statements are true.
63. Helga was charged in 1987 with the theft of confidential information in Vancouver. The only case at the time that was relevant was one in which the Ontario Court of Appeal said that the defendant, in a situation identical to Helga's, was guilty of theft.
- A) Discuss how the theory of precedent applies here.
 - B) If the defendant in the Ontario case appealed and, in the summer of 1988, before Helga's case had come to trial, the Supreme Court of Canada reversed the Ontario Court of Appeal's decision, would this change your answer to the previous question? Why or why not?

64. You believe that trapping fur-bearing animals is inhumane and you want the province to prohibit it altogether. Discuss why it would be best to use statute law to achieve your goal, and explain any problems that could be created by your choice.

65. Occasionally when the Common Law is applied to the facts of a case before the courts, the injured party faces a financial or personal hardship as a result. This often occurs where the strict application of the law prevents the recovery of damages by the injured party because of some action taken by him that may have been unintentional. Discuss what the court may do in such an instance at the request of the injured party and explain whether you believe the outcome to be desirable.

66. Professor Dobson is 65 and, under the mandatory retirement policy of his university, must retire next July 1. He does not wish to do so.

A) Discuss whether he can bring a *Charter* action against the university.

B) Assuming he can bring a *Charter* action against the university, what would his argument be, and how would the university answer it?

67. 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 explains how a trial proceeds and how witnesses are dealt with during the trial. Repeat here what she tells you.

68. Legislation is passed to protect the public and control the business activities of travel consultants, and to establish an agency to carry out the mandate. If the control is to take the form of licensing, outline a process that the agency might establish to address appeals where a license is denied.

69. The Competition Tribunal has ordered that a hearing be held in response to the results of an inquiry made by the Commissioner into a proposed merger of the two largest companies in the food service industry. As the President of one of the companies involved in the merger you are concerned that the Tribunal may not permit you to enter crucial technical data as evidence that you need to show that the merger does not lessen competition to the detriment of the public.

A) Explain why you should or should not be concerned about this.

B) After the hearing is completed the Tribunal makes an order prohibiting the merger. You were able to present only part of your technical data as evidence, although the other company called upon an expert witness to interpret the data and present arguments about the nature of the food services industry. What is your response to the order? What is the probable outcome?

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- A. sent to the relevant committee for clause-by-clause study.
- B. given royal assent by the Lieutenant-Governor.
- C. debated in principle by the members of the legislature.
- D. sent to the Senate for approval.
- E. amended and prepared for its final reading.

Willes - Chapter 01 #47

48. When judges apply the principle of *stare decisis* in deciding a case before them they are, in effect, applying the

- A. principles decided in another court judgment.
- B. doctrine of precedent.
- C. principles of equity.
- D. a and b.
- E. b and c.

Willes - Chapter 01 #48

49. If the Constitution were to be amended to make ownership of property a right, it would be necessary to have the agreement of
- i) at least two-thirds of the provinces that together comprise at least half of the population of Canada.
 - ii) at least half of the provinces that together comprise at least two-thirds of the population of Canada.
 - iii) more than half of the members of the Federal Parliament.
 - iv) at least two-thirds of the members of the Federal Parliament.
 - v) all ten provinces.

A. i.

B. ii.

C. i and iii.

D. ii and iv.

E. iii and v.

Willes - Chapter 01 #49

50. The provincial legislature is about to pass a piece of legislation that conflicts with one of the following rights. It had intended to do so under s.33(1), the notwithstanding clause, but has just found out that s.33 is not effective against this right. Which of the following is it?

A. the right to life, liberty, and security of the person.

B. freedom of speech.

C. freedom of religion.

D. the right to vote.

E. equality rights.

Willes - Chapter 01 #50

51. A small Ontario town passes a by-law that says shop signs must be in English only. A butcher's shop that caters to the local German-speaking population is charged with infringing the by-law and the proprietor raises s.2(b) of the *Charter* in his defence. Which of the following is true?
- A. Since only political speech is protected by the *Charter*, he will lose.
 - B. Since the *Charter* does not apply to non-government bodies like a butcher's shop, he will lose.
 - C. Since the *Charter* protects commercial expression because it helps individuals make informed economic choices, he will win.
 - D. Since the *Charter* does not specifically protect commercial expression, regardless of any value it may have, he will not win.
 - E. None of these.

52. In response to the growing number of traffic deaths resulting from alcohol-related accidents, many provinces amended existing laws to permit their police forces to conduct arbitrary roadside checks to discourage drunk driving. When this practice was challenged in the courts as an infringement of s.9 of the *Charter*, which of the following is true?
- A. Counsel for the Crown successfully argued that the practice could be continued indefinitely because of s.33 of the constitution, which allows the provinces to exempt the legislation from the application of the *Charter*.
 - B. Counsel for the Crown successfully argued that the law permitting roadside checks is valid on the basis of s.1 of the *Charter*.
 - C. The challenging party, a motorist who had been stopped and found to have excessive blood- alcohol levels, successfully argued that the legislation violates his s.6 mobility rights.
 - D. a and b.
 - E. All of these.

Willes - Chapter 01 #52

53. If you were a judge in a court system in Canada, which of the following would not normally 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.

Willes - Chapter 01 #53

54. 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 Queens Bench for Manitoba.

Willes - Chapter 01 #54

55. An electric shaver you bought exploded and injured your hand. You are now suing the manufacturer. The first document that your lawyer will send to the manufacturer is

- A. a writ of summons.
- B. the pleadings.
- C. a notice of trial.
- D. a statement of claim.
- E. a demand for particulars.

Answer A or D, depending on the province.

Willes - Chapter 01 #55

56. 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.

Willes - Chapter 01 #56

57. 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 his account must have been removed through a bank error, since he did not do so and no one knows his identification number nor has access to his card. You are called upon to testify as to the security processes in the bank's computer system and the accuracy of the computerized automated teller machine's records. Which of the following is true?
- A. As an expert witness, you will be giving direct evidence at trial.
 - B. As an expert witness, you will be giving opinion evidence at trial.
 - C. As an expert witness, you will be giving hearsay evidence at trial.
 - D. As an ordinary witness, you will be giving opinion evidence at trial.
 - E. As an ordinary witness, you will be giving direct evidence at trial.

Willes - Chapter 01 #57

58. 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 is true?

- 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. Both a and b.
- E. None of these.

59. 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 stating 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. Which of the following is true?
- 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 properly considered the principle of strict liability and dismiss the appeal and affirm the decision.
 - D. All of these except b.
 - E. All of these.

Willes - Chapter 01 #59

60. An administrative law was passed and proclaimed in force on January 1, 2003, that prohibited anyone from operating a pet-supply business unless he or she was registered under the act. Harvey operates a pet-supply business. Which of the following is true?
- A. Harvey can ignore the law because he was carrying on his business before the law came into effect.
 - B. Harvey must register with the appropriate agency in order to lawfully carry on his business.
 - C. If Harvey ignores the law, he has violated a criminal law statute.
 - D. Registration is only a guideline, and registration is an option only.

Willes - Chapter 01 #60

61. Harvey decides to register his business as a pet-supply firm as required by the new law. He applies for registration, but is turned down because the agency policy rules state that anyone convicted of theft in the last five years may be denied registration. Harvey was convicted of a minor theft as a teenager five years ago. He decides to appeal the denial to the Business Appeal Tribunal established under the act to hear appeals. Which of the following is true?
- A. The Business Appeal Tribunal is an administrative tribunal.
 - B. Bodies like the Business Appeal Tribunal have no powers outside those granted to them under the act.
 - C. Tribunals such as the Business Appeal Tribunal must treat people who appeal in a fair manner, and give them a fair hearing.
 - D. All of these.

62. Under the *Ontario Travel Industry Act*, someone who is turned down for registration as a travel agent may appeal the Registrar's decision to the Commercial Registration Appeal Tribunal, a body appointed by the Ministry of Commercial and Consumer Relations. A conviction for theft within the previous five years is grounds to refuse registration. Ben, who had a conviction for shoplifting 10 years ago, has been turned down, and he has decided to appeal. Which of the following is not true?
- A. The Commercial Registration Appeal Tribunal is an administrative law body, not a court.
 - B. The hearing in front of a Tribunal like this is not conducted in exactly the same way as a trial in a court.
 - C. Bodies like the Tribunal have no powers outside those granted to them under the relevant legislation.
 - D. Tribunals such as this must treat persons who appeal to them in a fair manner, but they do not have to follow the same rules of evidence and procedure as a court.
 - E. All of these statements are true.

63. Helga was charged in 1987 with the theft of confidential information in Vancouver. The only case at the time that was relevant was one in which the Ontario Court of Appeal said that the defendant, in a situation identical to Helga's, was guilty of theft.

A) Discuss how the theory of precedent applies here.

B) If the defendant in the Ontario case appealed and, in the summer of 1988, before Helga's case had come to trial, the Supreme Court of Canada reversed the Ontario Court of Appeal's decision, would this change your answer to the previous question? Why or why not?

A) Where the facts are the same, a judge must apply previous decisions of similar cases, provided the decisions are from his own court, a court of equal rank, or a higher court within the same province, or from the Supreme Court of Canada. Here, the only case is from a higher court but of a different province so, while it is highly persuasive, it is not a precedent that must be followed.

B) Now that there is a Supreme Court of Canada case, it is precedent throughout Canada. Therefore it must be followed in Helga's case.

Difficulty: Easy

Willes - Chapter 01 #63

64. You believe that trapping fur-bearing animals is inhumane and you want the province to prohibit it altogether. Discuss why it would be best to use statute law to achieve your goal, and explain any problems that could be created by your choice.

A statute is a much faster way of changing the law, and has as comprehensive a scope as the legislators choose to give it. The legislature is sensitive to public opinion so, if you can persuade many people to agree with you and to apply political pressure to the members of the legislature, it is comparatively easy to effect change. The courts will, however, interpret statutes strictly; therefore, to achieve its ends, the statute must be very carefully drafted.

Difficulty: Average

Willes - Chapter 01 #64

65. Occasionally when the Common Law is applied to the facts of a case before the courts, the injured party faces a financial or personal hardship as a result. This often occurs where the strict application of the law prevents the recovery of damages by the injured party because of some action taken by him that may have been unintentional. Discuss what the court may do in such an instance at the request of the injured party and explain whether you believe the outcome to be desirable.

At the request of the plaintiff's lawyer, the court may resolve the dispute by applying the principles of equity. These are frequently applied in those cases where the strict interpretation of the plaintiff's legal rights, as under the Common Law, would result in a hardship for the plaintiff or would create a clearly unfair result. Having evolved from general principles of fairness or natural justice, the principles of equity tend to allocate responsibility for damages according to the actions of the parties in the circumstances rather than according to a set of rigid legal rules.

Difficulty: Challenging

66. Professor Dobson is 65 and, under the mandatory retirement policy of his university, must retire next July 1. He does not wish to do so.

A) Discuss whether he can bring a *Charter* action against the university.

B) Assuming he can bring a *Charter* action against the university, what would his argument be, and how would the university answer it?

A) It is unclear as yet whether a university is a government body, and therefore subject under s.32 to compliance with the *Charter*. If the university is not a government body, then the *Charter* is not a possible protection for Professor Dobson. If his province has a Human Rights Code that forbids employment discrimination on the basis of age, he could use that. If it allows discrimination against those over 65, he could try a *Charter* challenge against the Code. If the university is a government body, then he may do so.

B) If he could bring a *Charter* action, he would show that the mandatory retirement policy interfered with his right under s.15(1) not to be discriminated against on the basis of age. It would then be up to the Crown, acting for the government, to show that the retirement policy was either justified under s.1 of the *Charter* or passed under a s.33(1) declaration. If the Crown could not prove this on the balance of probabilities, Professor Dobson would have succeeded in showing his rights had been infringed by the policy, and the *Charter*, being the supreme law of Canada, would cause the policy to have no force or effect.

Difficulty: Average

67. 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 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 1. 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 or she 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 will 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 give evidence only 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 will not be called upon at any other stage of the process.

Difficulty: Average

Willes - Chapter 01 #67

68. Legislation is passed to protect the public and control the business activities of travel consultants, and to establish an agency to carry out the mandate. If the control is to take the form of licensing, outline a process that the agency might establish to address appeals where a license is denied.

If the agency establishes a licensing requirement for anyone who wishes to engage in the business activity, it must ensure that the requirements for obtaining a license are reasonable and necessary. It must also establish a hearing process that would permit someone denied a license to appeal the decision to someone other than the original decision maker. The hearing process should be fair, provide the appellant with the reasons for the denial, provide the appellant with time to prepare a response, and provide the appellant an opportunity to be heard at the hearing.

Difficulty: Average

Willes - Chapter 01 #68

69. The Competition Tribunal has ordered that a hearing be held in response to the results of an inquiry made by the Commissioner into a proposed merger of the two largest companies in the food service industry. As the President of one of the companies involved in the merger you are concerned that the Tribunal may not permit you to enter crucial technical data as evidence that you need to show that the merger does not lessen competition to the detriment of the public.

A) Explain why you should or should not be concerned about this.

B) After the hearing is completed the Tribunal makes an order prohibiting the merger. You were able to present only part of your technical data as evidence, although the other company called upon an expert witness to interpret the data and present arguments about the nature of the food services industry. What is your response to the order? What is the probable outcome?

A) As one of the parties to the merger you should be concerned about this. The Competition Tribunal, regardless of its powers under its constituting legislation, has an obligation to conduct any hearing in a fair manner, providing all parties a full opportunity to present their case. This includes the opportunity to present all evidence to support a defence and the opportunity to present ordinary and expert witnesses and to cross-examine witnesses. If any party is restricted in its ability to present all relevant evidence, the hearing is unfair and may result in an unjust order.

B) Either or both of the companies to the merger may apply to the courts for a review of the Tribunal's decision in light of its procedural fairness. The court will examine whether the Tribunal acted improperly by denying the right to present all of the data in light of the evidence from the expert witness. If it finds the Tribunal did, in fact, act unfairly, it will quash the order, thus allowing the merger to proceed. In this case it is likely that the order would be quashed as the data should be allowed as evidence. Although an expert witness is a valuable asset to a case providing interpretation of factual evidence and insight to specific areas, he or she cannot replace the evidence itself.

c1 Summary

<u>Category</u>	<u># of Questions</u>
Difficulty: Average	4
Difficulty: Challenging	2
Difficulty: Easy	1
Willes - Chapter 01	74