

REVIEW KEY TERMS

Match the key terms below with their corresponding description:

- | | |
|-------------------------|------------------------------|
| 1. burden of proof | 7. legal rights |
| 2. democratic rights | 8. mobility rights |
| 3. entrenched | 9. notwithstanding clause |
| 4. equality rights | 10. reasonable limits clause |
| 5. fundamental freedoms | 11. remedy |
| 6. infringed | 12. rights and freedoms |

- _____ a) the provision that allows limits to be placed on your rights and freedoms
- _____ b) the provision that allows a provincial or territorial law to be valid even though it contradicts certain rights and freedoms in the Charter
- _____ c) the right to vote
- _____ d) basic freedoms, including freedom of expression and freedom of religion
- _____ e) the right to express your opinion about a recent movie on your Internet blog
- _____ f) protection from discrimination
- _____ g) the responsibility for proving a criminal case in court
- _____ h) violated (as in an agreement or a right)
- _____ i) protected firmly (as in a right) under the Charter as part of the Constitution so it can only be changed by an amendment to the Constitution
- _____ j) a method to enforce your rights in court
- _____ k) legal safeguards for your procedural rights in the criminal justice system
- _____ l) the right to enter, remain in, and leave Canada

Chapter 1 and 2 Test

Law 12

Study Sheet

Knowledge and Understanding

Multiple Choice (30)

Matching (10)

Application and Communication

Short Answer

Substantive vs. Procedural Law

Criminal and Civil Citations

Rule of Precedent / Common Law

How UDHR was created and rights protected

Creating New Laws

Two sections of Charter that can limit a person's rights and freedoms

Types of discrimination specifically prohibited by Section 15 of the Charter

Other types added

Section 23 – Limited Language Education rights

Three options for courts when deciding that a law has infringed on the Charter

Research and Inquiry

Essay

Select ONE (1) of the following topics and multi-paragraph response.

- A. Using as many points as you can from the material covered in the first chapter, justify the following statement:


Great Britain has greatly influenced the development of Canadian Law.

- B. Should Section 33 - The Notwithstanding Clause, remain part of *The Charter*? Why or why not?

If a government decides to use it, how long can it be applied before they have to renew the clause?


How many times can they renew it?

What are some of the pros and cons of having this clause in *The Charter*?




Chapter 2

The Canadian Charter of Rights and Freedoms




Background

- The *Canadian Charter of Rights and Freedoms* was entrenched (safeguarded) in the Canadian Constitution on **April 17, 1982**.
- This means that our rights and freedoms are protected by the constitution.
- The Charter applies to every level of government and overcomes the limitations of the previous *Bill of Rights*.
- Most rights are not absolute; can be limited but this must be justified.




Reasonable Limits Clause

- **Section 1** of the Charter is the **Reasonable Limits Clause**.
- Rights and freedoms may be limited if the limitation can be justified in a free and democratic society.
- Courts usually decide what "reasonable" means on a case by case basis.
- E.g. a person's **freedom of expression** may be limited if they are promoting hate speech.




Analyzing a Charter case

- A simple four step guide to analyzing a potential Charter case:
 1. Does the Charter apply to the case?
 2. Has a right or freedom in the Charter been infringed upon?
 3. Does **Section 1** (the reasonable limits clause) justify the infringement?
 4. If not, is there a remedy provided by the Charter?




The Notwithstanding Clause

- **Section 33** of the Charter, also referred to as the "overriding clause" and the "opt-out clause"
- This clause allows governments to enact or maintain laws notwithstanding (or in spite of) the fact they may violate rights and freedoms in the Charter.
- If a government uses this clause, the law they are enacting must be reviewed every 5 years.



Fundamental Freedoms

- Section 2 of the Charter explains the basic freedoms provided to all Canadians.
- These are **fundamental freedoms**:
 - Freedom of Conscience and Religion
 - Freedom of Thought, Belief, Opinion, and Expression
 - Freedom of Peaceful Assembly and Association




Freedom of...

Conscience and Religion

- Everyone in Canada is free to practice and follow their religion or faith.
- No one can be forced to act in a way that violates their religious beliefs.

Thought, Belief, Opinion, Expression

- Includes all forms of communication and expression (e.g. speech, media, arts)
- This freedom may be limited if a person promotes hate or discrimination.




Freedom of...

Peaceful Assembly

- Usually associated with the right to participate in peaceful demonstrations

Association

- Refers to the right of individuals to join together in groups (e.g. political parties, unions, clubs)




Democratic and Mobility Rights

Democratic Rights

- Sections 3, 4, and 5 of the Charter
- **Definition:** right of citizens to vote
- Also guarantees that an election must be held every five years


Mobility Rights

- Section 6 of the Charter
- **Definition:** right to enter and leave Canada; right to move between provinces and territories




Legal Rights

- Sections 7–14
- **Definition:** Charter sections that protect personal and procedural rights in the criminal justice system
- Section 7: Life, Liberty, Security of the Person
- Section 8: Search and Seizure
- Section 9: Detention or Imprisonment
- Section 10: Arrest or Detention
- Section 11: Criminal Proceedings
- Section 12: Treatment or Punishment
- Section 13: Self-Crimination
- Section 14: Right to an Interpreter



Equality Rights

- Section 15 of the Charter
- **Definition:** Protection from discrimination
- Specific grounds for discrimination include: race, ethnic origin, colour, religion, gender, age, mental or physical disability, and (most recently) sexual orientation.
- A controversial equality issue in recent years has been equal rights for same-sex couples.



Language Rights

- Sections 16–22 of the Charter
- **Definition:** protection of Canada's **official languages** in all government institutions
- Canada's two official languages are English and French.
- These sections guarantee that both languages have equal importance in government matters.
- Canadian laws must be printed in both French and English.



Aboriginal Rights

- Section 25 of the Charter guarantees the existing rights of Aboriginal peoples (e.g. treaty rights).
- Aboriginal issues are often argued in the courts. Some of the more common issues:
 - right to hunt and fish
 - land claims
 - desire for self-government



Enforcing The Charter

Section 52 of the *Constitution Act, 1982*

- This section provides the courts and governments with these three remedies if legislation is found to be unconstitutional:
 1. Strike down – a court ruling that a law violates one or more Charter rights and therefore is invalid.
 2. Read down – a court ruling that a law violates one or more Charter rights and part of it needs to be changed or amended.
 3. Read in – a court ruling that a law needs to be changed or amended, but that the law is still constitutional.



Enforcing The Charter contd...

Section 24 of the Charter

- This section allows anyone who believes their rights have been **infringed** to apply to a court for a **remedy**.
- **Infringed** – violated or broken
- **Remedy** – a method for a person to enforce his/her rights in court



Courts and the Legislature

- Governments are elected to pass and change laws.
- Our courts have the power to interpret these laws and decide whether or not they are constitutional (Do they violate the Charter?)
- **Judicial activism** occurs when judges put their own views and values into court judgments.