

SAMPLE QUESTIONS

1. Amending Procedure

The Prime Minister has forwarded an advice to Parliament on the need to increase Quebec's quota of the SCC to 4 judges. Parliament is considering this advice. Which of the amending procedures must Parliament adopt and why?

2. General Amending Procedure under s. 42 - Resolution of Dissent

There is no difference in law between when a province passes a Resolution of Dissent under s. 42 of the Constitution Act, 1982 and when a province votes to reject an amendment.

3. Federalism – Distribution of Powers

You are the judge of a superior court assigned to decide an application challenging a provincial law on the ground that it is *ultra vires* the provincial legislature. What principle will you adopt in characterizing the law?

4. Doctrine of Federal Paramountcy

What are the essential principles that must apply before a party relying on the doctrine of federal paramountcy can succeed? Provide judicial authorities.

5. Trade & Commerce Power

In addition to regulating trade that affects the dominion as a whole, the General Trade and Commerce branch may also allow a federal statute to impact on provincial power by regulating intra-provincial trade. TRUE or FALSE?

SAMPLE QUESTIONS AND ANSWERS

1. Amending Procedure

The Prime Minister has forwarded an advice to Parliament on the need to increase Quebec's quota of the SCC to 4 judges. Parliament is considering this advice. Which of the amending procedures must Parliament adopt and why?

Answer

Unanimity procedure under Section 41 of the Constitution Act, 1982 will be adopted. This is because the consent of ALL provinces as well as the two houses of Parliament must be obtained for any amendment on the composition of the SCC.

Although section 42 (7-50 formula) also deals with amendments relating to the SCC, this cannot be used because the 7-50 formula deals with all other matters relating to the SCC except an amendment on composition.

2. General Amending Procedure under s. 42 - Resolution of Dissent

There is no difference in law between when a province passes a Resolution of Dissent under s. 42 of the Constitution Act, 1982 and when a province votes to reject an amendment.

Answer:

This is not true.

When the legislative assembly of a province passes a Resolution of Dissent against an amendment before the issue of the proclamation to which the amendment relates, then the amendment shall not have effect in that province even if it is passed nationwide. S. 38(3) Constitution Act, 1982. This has been described as giving provinces the right to "opt-out" of a proposed constitutional amendment even if the amendment applies in several other provinces. See **R. v. Ushkowski (1989)**.

But if a province merely votes to reject an amendment, then the amendment will nevertheless apply in that province.

Above notwithstanding, a province which had passed a Resolution of Dissent may later revoke this by passing a Resolution of Assent at any time before or after the issue of the proclamation to which it relates. S. 38(4).