

EXAM 6 – CANADA, FALL 2012

10. (1 point)

A large shopping mall has a general liability insurance policy with a limit of \$5 million. A customer slipped in the mall, severely damaged his spine and then sued the mall for negligence. Before the trial, the customer's lawyer offered to settle for \$4 million, an offer the insurance company declined. At trial, the jury awarded the customer \$7 million.

The shopping mall then sued the insurance company to recover the \$2 million by which the jury's award exceeded the policy limit. Based on Canadian case law, describe the expected ruling and the reasons for this conclusion. Cite any relevant cases to support your position.

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- b. The solution requires both the fact that the MIR was deemed unconstitutional or discriminatory, as well as the result – that the MIR was struck down.
- c. The fact that the cap was upheld was required.

Question 10

Answer key:

The insurer will be found absolutely liable* for the amount exceeding the policy limit, since they had the opportunity to settle for less than this amount. This ruling will be based on the case of Dillon vs, Guardian Insurance Co.

* if absolute liability is not explicitly mentioned, arguments leading towards that legal doctrine should be (ex: mentioning “gambling” with the insured’s money)

Other answers accepted by graders:

Alternative to “absolute liability”:

“In the situation where the insurer’s and insured’s interests necessarily conflict, the insurer, which may reap the benefits of its determination not to settle, should also suffer the detriments of its decision.”

Alternatives to “liable for the amount exceeding the policy limit”:

- 1) *The shopping mall will win the lawsuit.*
- 2) *The insurer will pay the \$7 million.*

Actual candidate answer for full marks:

relevant case to support position: Dillon vs. Guardian Insurance cie

the concept of absolute liab. state that an insurer should use reasonable care to settle within limits when he has the opportunity to do so. the insurance cie should have know that the case might exceed the limit due to his experience and knowledge. the insurer is found to breach that duty of care to the insured and must pay the xs damages.

Examiner’s report:

This question covers key material in the graders mind (except maybe for knowing the name of the court case), and overall, candidates did very well on it. The answers provided to this question really indicated that candidates understood what this is about. “Absolute Liability” was mentioned by a few, but most candidates were able to explain the concept using other words or expressions, like gambling with the insured’s money.

Question 11

Answer key:

- a. Punitive Damages: damages awarded not to compensate a plaintiff but to punish a defendant for intentional or malicious misconduct and to deter similar future misconduct.

Candidate does not have to specify “intentional or malicious misconduct” to receive full credit because it can be argued that this point is not part of either the definition or the purpose.