

EXAM 6 – CANADA, FALL 2012

12. (1.5 points)

a. (0.5 point)

Describe the legal doctrine of Joint and Several Liability.

b. (0.5 point)

Discuss how this doctrine may increase efficiency in the legal system.

c. (0.5 point)

A criticism of the Joint and Several Liability doctrine is that lawyers may search for “deep pockets” to sue. Briefly describe two reforms that have been proposed to address this concern.

CONTINUED ON NEXT PAGE

- b.
 - i. difficulty of predicting whether punitive damages will be awarded by a jury in any particular case
 - ii. the marked trend toward astronomically large amounts when they are awarded
- c. any 3 of below
 - i. Establishing a liability “trigger” that **reflects the intentional tort origins** and quasi-criminal nature of punitive damages awards – “actual malice”
 - ii. Requiring “clear and convincing evidence” to establish punitive damages liability
 - iii. Requiring proportionality in punitive damages so that the punishment fits the offence
 - iv. Enacting federal legislation to address the special problem of multiple punitive damages awards.

Actual candidate answer for full marks:

- a) –awarded when malicious, outrageous conduct directed at victim
 - Purpose -punish wrongdoer
 - deter “ & others from similar future conduct
 - retribution for victim
- b)
 - i) awards exorbitantly high
 - ii) multiple punitive damage awards (“overkill” of awards)
- c)
 - i) requiring a liability “trigger” reflecting quasi-criminal nature of misconduct
 - ii) require clear & convincing evidence of malicious misconduct warranting punitive damage
 - iii) damages awarded to be proportional to level misconduct

Examiner’s report:

- a. This is a foundational question, which has been asked numerous times. Full points required punish & deter. The graders allowed points for deterrence to society as well as deterrence to the defendant for future behavior as the paper did not clearly state the purpose of the deterrence.
- b. Candidates could draw from many sources and various solutions were allowed.
- c. There were four potential answers of which the candidate could pick any three.

Question 12

Answer key:

- a.

Under the current joint and several legal doctrine, courts allow the plaintiff to recover all of the damages from one of multiple wrongdoers, even if that party is only partially at-fault for the loss.
- b.

It may promote settlement owing to the fact that if parties were going to pay damages on a proportional basis, there may be more trials. This could increase costs and slow down the legal system.

-other reasonable answers are acceptable

c.

-RIMS supports the elimination of joint and several liability for all non-economic damages, such as pain and suffering and punitive damages as this would discourage plaintiffs and their counsel from approaching defendants on the 'deep pocket' syndrome.

-Amend it so that defendants pay damages in proportion to their contributory negligence.

-Create a fund to pay for these kinds of lawsuits, similar to PACICC

Actual candidate answer for full marks:

- a) Law that says that a plaintiff can recover losses from multiple defendants collectively or from each defendant individually. Even if a defendant is only 5% liable, he/she may have to cover 100% of damages if other defendants can't contribute their part
- b) Increases efficiency because it keeps the number of trials from being too high resulting in inefficiency. Lawyers only go to trial if believe can prove fully liable, so if only need to prove a % of liability a lot more lawyers would go to trial
- c) –proportionality in awards based on fault
–barring rule for plaintiffs that are a certain % or less at fault

Examiner's report:

- a. This was a foundational definition question. For full marks the graders required the candidate to specify that wrongdoers may be held fully liable even if they were only "partially at fault". Most candidates were able to obtain full marks.
- b. It is important to note that this question pertains to efficiency in the legal system as a whole, not efficiency from the plaintiff's perspective. Many candidates focused only on the plaintiff and stated that the system is beneficial for the plaintiff as it allows the plaintiff to sue only one party. While this is true, it is not the correct answer, as it ignores the settlement process between defendants after the fact where at fault parties could be involved in further negotiations / suits. The graders also gave part marks for "allows the victim full compensation". While this does not directly answer the question as written, part marks were allowed as this was noted as a benefit of Joint and Several in the Harris paper.
- c. This question allowed the candidates several points to choose from. The graders also allowed "set a threshold for joint and several to apply" which, while not directly from the Harris paper was considered a valid answer from other sources.

Question 13

Answer key:

a)/b)

Any 4 of:

- Filling needs unmet by private insurance (examples: crop insurance, flood insurance, TRIA)
- Compulsory purchase of insurance (examples: workers compensation, auto liability in Quebec/Saskatchewan/Manitoba/BC)
- Convenience (examples: Florida Hurricane Catastrophe Fund, TRIA, flood insurance)
- Efficiency (examples: TRIA, government health insurance)
- Social Purposes (examples: workers compensation, social security)