

**EXAM 6 – CANADA, FALL 2013**

2. (1.5 points)

Identify two Canadian cases related to an insurer's duty to defend and describe the court's decision in each case.

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**Actual candidate answer for full marks:**

- (a) In Paul v. Virginia, insurance was ruled as not inter-state commerce, and as a result, is subject to individual state regulation, not federal regulation.

States have set up their own insurance commissions which are members of NAIC to try to bring uniformity to insurance regulation.

- (b) Federal Insurance Office was formed with the goal of collecting information about the insurance industry and developing a federal regulatory framework.

Federal Stability Oversight Committee was founded to oversee, identify and threats to the financial stability of the US economy.

**Examiner's report:**

- (a) This question asks to describe the ruling and discuss the implication of the case. However, some candidates spent a lot of effort on describing the case itself with little explanation on the implication. Candidates that focused on the ruling and implication generally performed well on this part.
- (b) Candidates did not do well on this part in general. It may be due to the fact that material is U.S. related and requires some memorization.

## Question 2

**Answer key:**

Any 2 of the following:

Sansalone v Wawanesa

- Insurer denies a duty to defend because sexual conduct involved came under the exclusion involving sexual or criminal acts
- no duty to defend in cases involving intentional sexual acts as coverage is excluded

Nichols v American Home

- Insured solicitor sues insurer for the unreimbursed settlement costs in a case where he is unsuccessfully sued for fraud
- no duty to defend in cases involving fraudulent acts or omissions if they are out of the scope of the policy.

Broadhurst & Ball v American Home

- Both have a duty to defend and costs should be split equally
- if the potential judgment puts an insurer at risk then all insurers with a duty to defend

Alie v Bertrand

- defective concrete requires replacement of basements of houses
- insurers who issue excess and/or umbrella policies that follow the form of the underlying policy are seen as having a duty to defend

**Actual candidate answer for full marks:**

- Sansaline vs Wawanesa  
No defence for sexual assault as not covered by policy.
  
- Nichols vs American Home  
No defence for fraud as not covered by policy

**Examiner's report:**

This question asks to identify the case and describe the court decision, and there are four cases in Landmark Legal that candidates can choose from. However, some candidates spent a lot of efforts on describing the case itself with little explanation on the court decision and the underlying rationale of the court decision. In general, candidates did well on this question. Some candidates were not able to give the full name of the legal cases; in this case, providing a brief description of the case serves the purpose to "identify" the case.

### Question 3

**Answer key:**

a) Three of the following four reasons:

- i. The claim of a severely injured person for damages for non-pecuniary loss is virtually limitless. The fact that there is no objective yardstick for measuring such loss leaves this area open to inconsistent and widely extravagant awards
- ii. Damages for non-pecuniary losses are not really "compensatory" as no money can provide true restitution. Accordingly, such damages should be viewed as simply providing additional money to make life more endurable
- iii. Under the law, the plaintiff will be fully compensated for future loss of income and future care costs which are arguably more important for ensuring that the injured person is well cared for in the future
- iv. Exorbitant awards for general damages can lead to an excessive social burden (i.e. unaffordable increases in insurance and social costs)

b)

- i. Types of torts:
  1. Sexual assaults
  2. Defamation

**Actual candidate answer for full marks:**

a)

- The plaintiff will be fully compensated for all future loss of income and pecuniary losses
- Claims for pain & suffering (non-economic damages) are limitless
- Amount for non-economic damages are not compensatory, they are merely to make life more endurable

b)

- Sexual Assault