

**EXAM 6 – CANADA, FALL 2013**

3. (1.25 points)

In a series of decisions rendered in 1978, commonly referred to as the Trilogy, the Supreme Court of Canada established a cap on non-pecuniary damages.

a. (0.75 point)

Briefly describe three justifications presented by the Court for establishing the cap.

b. (0.5 point)

Identify two types of tort for which the cap on non-pecuniary damages does not apply.

**CONTINUED ON NEXT PAGE**

**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

- Defamation

**Examiner's report:**

The trilogy is a primordial part of the syllabus and has been asked for many years. Therefore candidate answers were generally quite good as most people know how to answer.

**Question 4**

**Answer key:**

a) The 3 basis :

- a. Extra-Territoriality (ultra vires)
  - i. The pith and substance of the legislation must be in relation to matters falling within the field of provincial legislative competence to be valid.
- b. Judicial Independence
  - i. Consists essentially in the freedom to render decisions based solely on the requirements of the law and justice and to be left free to act without improper interference from any other entity
- c. Rule of law
  - i. 3 principles :
    1. The law is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power (legislation be applied to all of those, including government officials, to whom it, by its terms, applies)
    2. Requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order (legislation must exist)
    3. Requires that the relationship between the state and the individual... be regulated by law (state official's actions be legally founded)

b) Outcome and reasons :

- a. The Act is not invalid by reason of extra-territoriality. The cause of action that is the pith and substance of the Act serves exclusively to make the persons ultimately responsible for tobacco-related disease suffered by British Columbians – namely the tobacco manufacturers, who, through their wrongful acts, caused those British Columbians to be exposed to tobacco – liable for the costs incurred by the government of British Columbia in treating that disease. There are thus a strong relationship among enacting territory (British Columbia), the subject matter of law (compensation for the government of British Columbia's tobacco-related health care costs) and the persons made subject to it (the tobacco manufacturers ultimately responsible for those costs), such that the Act can easily be said to be meaningfully connected to the province.
- b. The Act does not violate the independence of the judiciary. The fact that the Act shifts certain onuses of proof or limits the compellability of information that the appellants assert