

EXAM 6 – CANADA, FALL 2013

5. (2 points)

In order to reduce automobile insurance premiums in Ontario the P&C insurance industry has been exploring ways to reduce costs in the litigation system.

Develop a proposal for tort reform consisting of four changes to the current system. Briefly explain why each change would reduce expected losses.

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- is relevant does not in any way interfere, in either appearance or fact, with the court's adjudicative role or any of the essential conditions of judicial independence (court can still independently determine the applicability of the Act, independently assess the evidence led to support and defend that claim, independently assign that evidence weight and then independently determine whether its assessment of the evidence supports a finding of liability)
- c. The Act does not implicate the rule of law and is not unconstitutional by reason of interference with it. The Act did not breach the following requirements of legislation : prospectively, generality in character, not confer special privileges on the government and ensure a fair civil trial.

Actual candidate answer for full marks:

- (a) The act was unconstitutional by means of:
- (i) Extra-territoriality – they thought that act encompasses multiple provinces, not just the province of BC, so it is not with the province's jurisdiction.
 - (ii) Violate judicial independence – that it implies on the judicial system such that they are no longer making independent decisions.
 - (iii) Imposes on rule of law – that it was basically already decided what would happen in case.
- (b) The appeal found that the act was not unconstitutional on any of those grounds.
- (i) Under (i), it was found that the act was by pith and substance under the property and civil rights of the province.
 - (ii) Under (ii), it was found that even though the duty of proof has shifted to the tobacco companies, judges will still evaluate evidence determine its bindings independently.
 - (iii) Under (iii), it was found that the defendants will be given a fair trial.

Examiner's report:

- (a) Most candidates were able to identify at least two bases out of three. However, some were not able to provide further explanation on the bases that they identified.
- (b) For candidates who correctly identified the bases in part (a), they performed well in describing the outcome and the underlying reason.

Question 5

Answer key:

4 of the following:

- Modify joint-several liability rule: reduce lawyers search for “deep pocket” which will reduce defense expenses
- Abolish collateral source rule: prevent double recovery which would result in lower insurance premiums
- Eliminate class actions: reduce defense costs / eliminate claims without merit that have been included

- Replace gross earnings by net earnings: prevent insured from recovering more for loss of income than if they were working
- Increasing standards for testing vicarious liability
- Severe sanctions on frivolous lawsuits: reduce the frivolous lawsuits
- Elimination of prejudgment interest on general damages
- Cap non-economic/punitive damages
- Introduce No-fault system so injured claimants are compensated according to schedule without the right to sue.
- Increase the threshold for the tort system. This limits the number of claims that go to court so litigation cost is reduced.

Actual candidate answer for full marks:

Change joint-and-several liability to proportional liability. This would reduce losses because person potentially at fault would not have to pay the entire compensation if other could not.

Coordinate payment with collateral source to prevent double recovery and make sure injured persons do not receive more than what they are should be compensated.

Use net basis vs gross basis because injured people does not have similar cost living when they do not work.

Vicarious liability should be eliminated as people who do not have any fault in the case should not have to pay.

Examiner's report:

Candidates performed well on this question. However, some candidates were confused between the Tort System and Injury System. Those candidates proposed to make reform Ontario Auto Accident Benefits coverage, including change to minor injury claims guideline, reducing coverage benefits limits. Those proposed changes are related to Ontario Injury System from the Five Year Review reform paper that was on the 2012 syllabus and are not related to the Tort System.

Question 6

Answer key:

a) Either one of the following with description:

Defense costs and plaintiff's attorney fees consumed a large part of total payments

At least half of the total claims paid by defendants and their insurers is related to nonmalignant claims

b) Establish a no-fault trust from which claimants meeting asbestos exposure and medical criteria would have been compensated for their injuries

c) 2 of the following:

- How many claims of various disease types will be filed?
- Will the medical and exposure criteria be appropriate to identify victims?
- Is funding adequate?
- Are awards appropriate?
- Is allocation of funding from various contributors adequate?
- Should the federal government contribute to the fund?