

EXAM 6 – CANADA, FALL 2014

8. (2.25 points)

The insurance industry supports a reform of key legal principles within the Canadian tort system in order to achieve claims stability and predictability.

a. (1.5 points)

Discuss three amendments to the tort system that may stabilize insurance costs.

b. (0.75 point)

Briefly describe arguments against each of the amendments described in part a. above.

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QUESTION: 8

TOTAL POINT VALUE: 2.25

LEARNING OBJECTIVE(S): A4

SAMPLE/ACCEPTED ANSWERS:

Part a: 1.5 points

Sample 1

- Collateral source rule → remove or modify collateral source rule which shields the plaintiffs from disclosing other sources of compensation. This will allow the parties to know how much the plaintiff is getting and therefore cannot be overcompensated
- Gross vs. Net Income → awards are given based on gross income not net income which reflects deductions for taxes and other work related deductions. Therefore, by getting gross income they are being overcompensated
- Vicarious Liability → issue where one party held responsible for actions of subordinate/employee/sublease. Remove this to hold party at fault responsible and therefore stop looking for deep pockets

Sample 2

- Introduction of severe penalties for frivolous lawsuits
 - Should reduce defense costs associated with frivolous lawsuits
- Introduction of several liability
 - Should prevent plaintiff from filing lawsuits based on the "deep pocket syndrome"
- Removing pre-judgment interest on non-economic damages
 - Should reduce the size of awards

Sample 3

- Eliminate joint and several liability for non-pecuniary damages so that the plaintiff can't seek a defendant with deep pockets
- Eliminate collateral source rule so client can't be over-indemnified by collecting from multiple sources for the same loss
- Eliminate class actions since they are seen as distortion by lawyers rather than a means of compensating the plaintiff

Part b: 0.75 point

Sample 1

- Collateral source rule → plaintiff shouldn't have to disclose because should be fully compensated for harm regardless of other sources of recovery

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- Gross vs. Net Income → taxation and deductions are not a concern of the defendant, those are government issues. Defendant can't be held responsible
- Vicarious Liability → Need to hold involved parties responsible regardless of amount of liability

Sample 2

- Lawyers are not filing suits they believe they have no chance of winning
- Prevents plaintiffs from being fully compensated for their losses
- Removes an incentive for defendants to settle out of court

Sample 3

- Joint and several liability insures that the plaintiff will be compensated in full, even if some of the defendants are unable to pay
- Collateral source rule ensures the plaintiff is compensated from their view, they might not think that one party's liability should influence the other
- Class actions allow plaintiffs to save on their legal fees when suing a company for the same reason

EXAMINER'S REPORT:

General Commentary

In general, candidates responded well on this question.

The question was specific to the Canadian tort system and the insurance industry. Reasonable amendments that have been enacted/discussed in other jurisdictions were given credit as long as they were not mentioned in the syllabus as something that has already taken place in Canada.

Part a

Most candidates responded well on this part.

Caps on non-economic damages or punitive damages were not given credit as these amendments have already been enacted in Canada and will have minimal impact in improving claims stability and predictability (according to the syllabus).

Part b

Most candidates responded well on this part.

Various reasonable arguments against enacting each amendment were given credit from multiple perspectives (insureds, society, plaintiffs, etc.).

For candidates that did not receive full credit, their argument against the reform was not appropriate. For example, when arguing against the ability of defendants to net payments from collateral sources, some candidates stated that the insured would no longer be "fully compensated". However, this is not

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correct. When collateral sources are not netted, more than full compensation amount can be received, potentially allowing double recovery.