

EXAM 6 – CANADA, FALL 2015

5. (2.25 points)

a. (1.5 points)

Identify and briefly describe three reasons why Canadian tort laws can be considered too "plaintiff-friendly".

b. (0.75 point)

For each of the reasons identified in a. above, briefly describe a reform to improve the balance between the plaintiff and the defendant.

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EXAM 6-CANADA SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 5	
TOTAL POINT VALUE: 2.25	LEARNING OBJECTIVE: A4
SAMPLE ANSWERS	
Part a: 1.5 points	
<p>Sample Response #1</p> <ul style="list-style-type: none"> Gross income wage replacement: Income replacement is based on gross income and doesn't consider expenses related to holding a job which result in overcompensation for the plaintiff Vicarious liability: Some party may be held responsible for actions of their subordinate/employees/sublease which make the search for deep pocket possible Collateral source: There is no need to disclose other source of compensation which may result in double recovery and overcompensation for the plaintiff <p>Sample Response #2</p> <ul style="list-style-type: none"> Joint and several liability which indemnify fully the injured person without regard to the harm done by the defendant. So if there's 3 defendants and 2 of them are insolvent and the 3rd one is 5% at fault, he gets to pay everything anyway. The collateral source: it is not mandatory to demonstrate to the court that the plaintiff's been already compensated by a collateral. So there's possibility of double-recovery. Class action: a group of plaintiffs can sue somebody together so that they can take one big amount of money. But this way, some may be overcompensated for their relatively minor injury when bigger injuries are in the group. <p>Sample Response #3</p> <ul style="list-style-type: none"> The joint and several liability rule allows plaintiffs to collect from an individual defendant for the collective award owed by defendants, ensures that plaintiffs are still indemnified to the fullest in the event one or more defendant is insolvent, to the detriment of solvent co-defendants. Collateral benefits rule bars the consideration of other amounts the plaintiff may have already received (e.g. from income continuation or disability plan offered by employer) for the same loss for which the plaintiff is suing damages. In essence, allows plaintiff to double recovery Economic damages are calculated on gross income basis and leads to plaintiffs being over compensated due to the lack of expenses related to employment and preferential tax treatment of awards. 	
Part b: 0.75 point	
<p>Sample Response #1</p> <ul style="list-style-type: none"> Change to several liability only: defendant only responsible for degree at fault (proportionate liability) Eliminate prejudgment interest: defendant should not suffer for reasons beyond their control (usually delays due to volume of cases in court) Eliminate collateral source: Prevent double recovery and reduce costs to multiple defendants who are paying for the same injury (also reduces costs in overall insurance 	

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system if insured collects from public program)

Sample Response #2

- Collateral source rule: abolish (cannot recover from multiple sources for the same damage)
- Reform to base payment on net basis (prevent plaintiff from making more then not working)
- Eliminate prejudgment interest (avoid high award when cases extend long time)

Sample Response #3

- Joint and several liability: ensures the plaintiff can recover all damages by allowing them to recover the full amount from any of the defendants if they are any part at-fault
- Collateral source rule: the plaintiff does not need to disclose any sources of other recovery creating the potential for over indemnification
- Punitive damages: An award that is meant to punish the defendant for their actions. These awards may be extravagant and unnecessary.

EXAMINER'S REPORT

Candidates scored very well on this question and most candidates received full credit.

Part a

Most candidates received full credit on this part.

The most common errors were:

- Any answer involving "Award for non-pecuniary damages" or "No caps on non-economic damages" as a reason for Canadian tort law being too plaintiff friendly.
 - Canadian tort law are already capping non-economic damages (trilogy)
 - It is reasonable that plaintiff may be compensated for non-pecuniary damages
- Not providing a sufficient description of the reason identified
- Proving less than 3 reasons

Part b

Most candidates received full credit on this part.

The most common errors were:

- Not providing reforms for all 3 of the reasons provided in part a.
- Not describing the reform, example: abolish it, eliminate it, etc.