

EXAM 6 – CANADA, FALL 2016

6. (2 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. (1.5 points)

Describe three reasons presented by the Court for establishing the cap.

b. (0.5 point)

Briefly describe two instances in which the cap was ruled not to apply.

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EXAM 6C FALL 2016 SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 6	
TOTAL POINT VALUE: 2	LEARNING OBJECTIVE(S): A3
SAMPLE ANSWERS	
Part a: 1.5 points	
<ul style="list-style-type: none"> • Non-pecuniary damages for a seriously injured person can be virtually limitless. With no objective yardstick, awards can be widely inconsistent and extravagant. • Exorbitant awards would lead to social inflation, leading to much higher premiums. • Non-pecuniary damages are not really “compensatory” since no money can provide full restitution. The purpose of non-pecuniary awards is to make life more endurable. • Exorbitant awards can lead to significant social burden (i.e. could cause huge increase in insurance premiums up to the point of unaffordability). • The injured person is already getting fully compensated for pecuniary damages. 	
Part b: 0.5 point	
<ul style="list-style-type: none"> • Sexual assault (S.Y. v. F.G.C.) • Defamation (Hill v. Church of Scientology and Young v. Bella) 	
EXAMINER'S REPORT	
Candidates were expected to understand the reasons why the Supreme Court of Canada established a cap on non-pecuniary damages and to identify cases where the cap was ruled not to apply.	
Part a	
Candidates were expected to demonstrate understanding of three reasons why the Supreme Court of Canada established a cap on non-pecuniary damages.	
Common mistakes included:	
<ul style="list-style-type: none"> • Listing three reasons, but one of the reasons was just a restatement of the other reasons • Not being specific enough when discussing that non-pecuniary damages can be exorbitant (should specify that awards can be widely inconsistent <i>and</i> extravagant/limitless) 	
Part b	
Candidates were expected to briefly describe two cases where the cap was ruled not to apply.	
Common mistakes included:	
<ul style="list-style-type: none"> • Listing an instance where the cap would apply (e.g. negligence) • Listing only one instance • Listing two instances, where the second instance was a restatement of the first instance in different words 	