

**EXAM 6 – CANADA, FALL 2016**

**7. (3 points)**

For each of the following situations, assess the potential size of damages received by the plaintiff and briefly describe whether any tort reforms may impact the potential compensation.

**a. (0.75 point)**

The plaintiff has retained legal counsel on a contingent fee basis and is suing a large tobacco company for \$100 million in damages.

**b. (0.75 point)**

In an asbestos class action lawsuit, the plaintiffs have been awarded \$50 million in damages. The plaintiffs have not filed any trust claims prior to trial.

**c. (0.75 point)**

The plaintiff is suing two defendants for a total of \$10 million in non-economic damages in a joint and several liability jurisdiction. One defendant has been assessed to be 5% at fault and the other defendant has declared bankruptcy.

**d. (0.75 point)**

The plaintiff has alleged a loss of income in the amount of \$100,000 gross and \$70,000 net.

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

<b>QUESTION 7</b>	
<b>TOTAL POINT VALUE: 3</b>	<b>LEARNING OBJECTIVE(S): A4</b>
<b>SAMPLE ANSWERS</b>	
<b>Part a: 0.75 point</b>	
<ul style="list-style-type: none"> <li>Sample 1: If they win \$100M, the plaintiff will provide a large percentage of the settlement to the lawyer, contingent that they win. This could lead to public corruption. Reform: Attorney sunshine reform to limit contingent fee basis.</li> <li>Sample 2: Tort reforms to eliminate or limit contingent fees could have a large impact on the potential compensation for the plaintiff. Without reforms, the plaintiff would receive the award less the contingent fee, which could be a large portion of the payment.</li> </ul>	
<b>Part b: 0.75 point</b>	
<ul style="list-style-type: none"> <li>Sample 1: The award could be higher than \$50M, as the collateral source rule may lead to double compensating plaintiffs. Tort reform: Need to abolish the collateral source rule and award could be lower.</li> <li>Sample 2: Plaintiffs might receive double compensation by filing trust claims after receiving the \$50M, since trust claims do not verify if plaintiffs have already been compensated, but trials do verify. A reform limiting recovery from multiple sources would limit the compensation to the \$50 million they have been awarded.</li> </ul>	
<b>Part c: 0.75 point</b>	
<ul style="list-style-type: none"> <li>The joint and several liability allows the plaintiff to recover the full \$10M claim from the co-defendant that is only 5% at fault since the other is bankrupt. Reform: i) Replace J&amp;S liability with proportional liability, so the co-defendant will only be responsible for their part: 5% * 10M\$ in this case. ii) Bar application of J&amp;S liability on non-economic damages to prevent deep pocketing.</li> </ul>	
<b>Part d: 0.75 point</b>	
<ul style="list-style-type: none"> <li>Without reform, they could collect the gross amount and receive more than if they were working. A reform requiring net income for damages could reduce the claim to \$70K.</li> </ul>	
<b>EXAMINER'S REPORT</b>	
Candidates were expected to properly argue the damage amount and propose a reform. Candidates were expected to demonstrate knowledge of the various litigation environments and tort reforms.	

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

### Part a

Candidates were expected to properly argue the damage amount and propose a reform.

Common mistakes included:

- Properly arguing the damage amount, but failing to propose a reform
- Properly identifying a reform, without sufficient details on how the reform would impact the awarded damages

### Part b

Candidates were expected to properly argue the damage amount and propose a reform.

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- Properly identifying a reform, without sufficient details on how the reform would impact the awarded damages

### Part c

Candidates were expected to properly argue the damage amount propose a reform.

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- Properly identifying a reform, without sufficient details on how the reform would impact the awarded damages

### Part d

Candidates were expected to properly argue the damage amount propose a reform.

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- Properly identifying a reform, without sufficient details on how the reform would impact the awarded damages