

EXAM 6 – CANADA, SPRING 2017

6. (2.5 points)

a. (0.5 point)

Describe the concept of joint and several liability.

b. (0.5 point)

Briefly describe two arguments in favour of joint and several liability.

c. (0.25 point)

Briefly describe one argument against joint and several liability.

d. (0.25 point)

Briefly describe the concept of proportionate liability.

e. (0.5 point)

Briefly describe two reforms to joint and several liability which may reduce settlement costs for the defendant.

f. (0.25 point)

Briefly describe the term “peripheral asbestos defendants”.

g. (0.25 point)

Briefly describe how peripheral asbestos defendants may be disadvantaged in a jurisdiction that applies joint and several liability.

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EXAM 6C SPRING 2017 SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 6	
TOTAL POINT VALUE: 2.5	LEARNING OBJECTIVE(S): A4
SAMPLE ANSWERS	
Part a: 0.5 point	
<p>Sample answers include the following:</p> <ul style="list-style-type: none"> • Plaintiff can recover from one or more of the at-fault defendants • Plaintiff can sue multiple defendants if they are found responsible. Plaintiff can be compensated fully from remaining defendants if other defendants went bankrupt • Insured is able to recover damages from any defendant who is liable regardless of their percentage of fault • It is a recovery system that allows claimants to recover collectively from several defendants or individually from single defendant • Liable parties are responsible for the compensation to insured no matter how much fault they are responsible for. For example, a party which is only 5% fault could pay all of the compensation if other parties all default • It allows a plaintiff to recover 100% of damages from a defendant who may only be partially at fault 	
Part b: 0.5 point	
<p>Sample answers include the following:</p> <ul style="list-style-type: none"> • Plaintiff will be fully indemnified regardless of the solvency of a particular defendant • Increases the efficiency of the legal system by reducing the number of trials 	
Part c: 0.25 point	
<p>Sample answers include the following:</p> <ul style="list-style-type: none"> • Lawyers may name defendants with little fault but with deep pockets in order to maximize awards • Not fair for defendants with small portion of fault to bare the majority of liability • Defendants may have to pay more than their fair share because of insolvent defendants 	
Part d: 0.25 point	
<p>Sample answers include the following:</p> <ul style="list-style-type: none"> • Defendants are only responsible for the portion of their assigned fault • Each defendants pays a percentage of damages equal to their percentage at fault • If only 5% liable, only have to pay 5% of damage 	
Part e: 0.5 point	
<p>Sample answers include two the following:</p> <ul style="list-style-type: none"> • Change to proportionate liability (or reform the rule to several liability) • Establish industry fund/trust/pool to cover the liability of the insolvent defendants • Bar application of joint and several liability for non-pecuniary damages • Only have joint and several liability apply if a defendant is liable above a certain threshold (i.e. 25%) 	

EXAM 6C SPRING 2017 SAMPLE ANSWERS AND EXAMINER'S REPORT

Part f: 0.25 point

Sample answers include the following:

- A defendant who was not involved in the manufacture or sale of asbestos, but who has exposure through use of products/buildings containing asbestos
- Those involved in the asbestos use or production, but not the key players
- Are defendants whose products encapsulated asbestos products of major defendants
- Defendants that were sued because of peripheral use of asbestos

Part g: 0.25 point

Sample answers include the following:

- Primary asbestos defendants often became insolvent, so peripheral defendants would be liable for the full amount of damages
- When the key players are being sued and go bankrupt, these peripheral defendants will have to pay all the remaining damage
- If the primary defendants are bankrupt, they may have to pay for 100% of damages even though they are only partly at fault

EXAMINER'S REPORT

Candidates were expected to describe the litigation environment with respect to insurance and know the concepts of joint and several liability and proportionate liability. They were also expected to know about the asbestos mass tort event.

Part a

Candidates were expected to know the definition of joint and several liability.

No common errors were made; candidates performed well on this part.

Part b

Candidates were expected to know the advantages of joint and several liability.

Common errors were:

- Providing two answers that were similar to each other. For example, to protect the plaintiff who suffer injuries or losses so they can be compensated fully and plaintiff will not worry too much about one defendant being bankrupt
- Only providing one reason

Part c

Candidates were expected to know the disadvantage of joint and several liability.

No common errors were made; candidates performed well on this part.

Part d

Candidates were expected to know the definition of proportionate liability.

No common errors were made; candidates performed well on this part.

EXAM 6C SPRING 2017 SAMPLE ANSWERS AND EXAMINER'S REPORT

Part e

Candidates were expected to know potential reforms to joint and several liability that could reduce settlement costs to the defendant.

Common errors were:

- Stating that eliminating pre-judgement interest was a potential reform. This was not accepted as it is not related to joint and several liability specifically, but is another legal reform.
- Providing an incomplete response by only describing one reform instead of two.

Part f

Candidates were expected to be able to describe the litigation environment with respect to asbestos mass tort including the concept of peripheral defendants.

A common error was:

- Failing to mention how peripheral defendants had used asbestos in their products. For example:
 - Group of defendants jointly liable with main asbestos defendants, but to a lesser degree.
 - They are defendants not primarily at fault, however they have deep pockets and are sued so that plaintiff may recover full awards

Part g

Candidates were expected to know how peripheral asbestos defendants may be disadvantaged in a jurisdiction that applies joint and several liability.

A common error was:

- Not mentioning why peripheral defendants may be held liable (if the primary defendant (i.e., manufacturer of asbestos) became insolvent or bankrupt). For example:
 - Claimants are able to recover full damages from peripheral asbestos defendants in jurisdictions with joint and several liability
 - Peripheral defendants will pay large amount of money, but liability is very low