5. (1.25 points)

In a series of decisions in 1978, commonly referred to as the Trilogy, the Supreme Court of Canada established a cap on non-pecuniary damages.

a. (0.75 point)

Briefly describe three justifications presented by the Supreme Court for establishing the cap.

b. (0.5 point)

Identify two types of tort losses for which the cap on non-pecuniary damages does not apply.

QUESTION 5	
TOTAL POINT VALUE: 1.25	**LEARNING OBJECTIVE(S): A3**
SAMPLE ANSWERS	

Part a: 0.75 point

Any three of the following:
- The claim of a severely injured person for damages for non-pecuniary loss is virtually limitless. The fact that there is no objective yardstick for measuring such loss leaves this area open to inconsistent and widely extravagant awards
- Damages for non-pecuniary losses are not really "compensatory" as no money can provide true restitution. Accordingly, such damages should be viewed as simply providing additional money to make life more endurable
- Under the law, the plaintiff will be fully compensated for future loss of income and future care costs which are arguably more important for ensuring that the injured person is well cared for in the future
- Exorbitant awards for general damages can lead to an excessive social burden (i.e. unaffordable increases in insurance and social costs)

Part b: 0.5 point
- Sexual Assault
- Defamation

EXAMINER'S REPORT

Candidates were expected to understand the reasons a cap on non-pecuniary damages was established by the Supreme Court of Canada and be able to identify cases where the cap was ruled not to apply.

Part a

Candidates were expected to provide three reasons why the Supreme Court of Canada established a cap on non-pecuniary damages.

A common mistake was:
- Listing a reason that was a restatement of another reason

Part b

Candidates were expected to briefly describe two cases where the cap was ruled not to apply.

Common mistakes include:
- Listing only one instance
- Listing an instance where the cap would apply (e.g., negligence)