

**EXAM 6 – CANADA, SPRING 2018**

7. (2 points)

a. (1 point)

Briefly describe an issue for each of the following, with regard to tort liability:

- i. Punitive damages
- ii. Peripheral asbestos defendants
- iii. Class action lawsuits
- iv. Contingent attorney fee

b. (1 point)

Briefly describe a reform to address each issue described in part a. above.

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**EXAM 6C SPRING 2018 SAMPLE ANSWERS AND EXAMINER'S REPORT**

<b>QUESTION 7</b>	
<b>TOTAL POINT VALUE: 2</b>	<b>LEARNING OBJECTIVE(S): A4</b>
<b>SAMPLE ANSWERS</b>	
<b>Part a: 1 point</b>	
<p>Part i (any one of the following)</p> <ul style="list-style-type: none"> <li>• Size of awards is increasing and uneven even with similar cases</li> <li>• There is no liability trigger standard, hard to predict the loss</li> </ul> <p>Part ii</p> <ul style="list-style-type: none"> <li>• Defendants that are very far from the asbestos producers or manufacturers are found liable because all others are bankrupt</li> </ul> <p>Part iii (any one of the following)</p> <ul style="list-style-type: none"> <li>• Some states are known to be more favorable towards asbestos defendants (due to laws in state). Multiple class actions are filed in these states even though there may not seem to be a link to the case</li> <li>• The class action lawsuits award tend to be astronomical but most goes to legal counsel/lawyer rather than the victims</li> <li>• Major and minor injured claimants grouped together, effective extortion of companies</li> <li>• Part iv (any one of the following)</li> <li>• Size of awards to attorney can be very large and even be tainted with political favour</li> <li>• Large fee because state retained lawyer and it increases corruption</li> </ul>	
<b>Part b: 1 point</b>	
<p>Part i (any one of the following)</p> <ul style="list-style-type: none"> <li>• Link the amount of the award to the size of the offense</li> <li>• Require clear evidence to set punitive damage and apply proportionality to harm made</li> </ul> <p>Part ii</p> <ul style="list-style-type: none"> <li>• Replace the joint and several liability by the proportionate liability</li> </ul> <p>Part iii (any one of the following)</p> <ul style="list-style-type: none"> <li>• Reform to specify distinct criteria as to where class actions can be filed</li> <li>• Require better proof of injury</li> </ul> <p>Part iv (any one of the following)</p> <ul style="list-style-type: none"> <li>• Attorney sunshine legislation</li> <li>• Require the approval of large contingent fee</li> </ul>	
<b>EXAMINER'S REPORT</b>	
<p>Candidates should understand the concept of mass torts and have knowledge of trends in tort litigation.</p>	

**EXAM 6C SPRING 2018 SAMPLE ANSWERS AND EXAMINER'S REPORT**

**Part a**

Candidates should understand issues with regard to tort liability.

A common error included:

- For the contingent attorney fee, not highlighting that the key issue is that this fee is linked to political favoritism, inside dealing, or corruption.

**Part b**

Candidates should have knowledge of various reforms with regard to tort liability.

A common error included:

- Providing an answer that did not address the issue, such as “eliminating class action or contingent attorney fees.”