

6. (1.25 points)

a. (0.5 point)

Explain the significance of the court case *Precision Plating Ltd. v. Axa Pacific Insurance Co.* as it applies to exclusions in Commercial General Liability coverage.

b. (0.75 point)

Discuss the treatment of mental and behavioral impairment for the purpose of determining catastrophic impairment under statutory accident benefits in Ontario, citing any relevant precedents to support the conclusion drawn.

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**QUESTION 6****TOTAL POINT VALUE: 1.25****LEARNING OBJECTIVE(S): A3****SAMPLE ANSWERS****Part a:** 0.5 pointSample

What is critical is not the cause of loss, but the cause of liability. The claim arose from pollution damages, but pollution was excluded so the insurer had no obligation to payout and potential for the insurer's liability to arise. So even though fire was a concurrent cause of loss, the claim was for pollution damages, an excluded item.

**Part b:** 0.75 pointSample 1

Kusnierz v. Economical

The mental and behavioral impairment can be combined with physical impairment in order to determine CAT claims.

Reasoning:

- 1) SABS doesn't expressly allow for the combination but also doesn't forbid the combination.
- 2) The combination is consistent with the Guidelines
- 3) It would be unfair for the CAT impaired people who fall into multiple categories than for those who only fall into one physical impairment category

Implication → It will increase the number of people who would be classified as catastrophically impaired. But due to its given rarity it would impact too much.

Sample 2

Aviva v. Pastore

Class 4 designation can be made if only 1 of daily life, social life work activities or concentration is impaired. Doesn't need all to be impaired. Also can use cumulative approach if mental cannot be separated from physical in assessment process.

Pastore was judged based on only daily life being impaired and was judged cumulatively because it was not possible to separate mental from physical.

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| <b>EXAMINER'S REPORT</b>  |
| Candidate were expected to demonstrate knowledge of specific landmark decisions.  |
| <b>Part a</b>   |
| Candidates had to articulate the impact of the legal case Pacific Plating vs Axa on commercial fire policy coverage or the reasoning being the decision.<br><br>A common error included: <ul style="list-style-type: none"><li>• Providing incomplete explanations</li></ul>  |
| <b>Part b</b>   |
| Candidates were expected explain that mental and physical impairment can be combined or that catastrophic impairment in one of the four categories is sufficient to determine catastrophic impairment in Ontario. A court case citation was also expected.<br><br>Common errors included: <ul style="list-style-type: none"><li>• Not citing at least one of the two relevant court cases.</li><li>• Not providing details on the reasoning behind the decisions.</li><li>• Stating that mental and physical impairment cannot be combined. (This ruling was overturned and was not the conclusion of the cases.)</li></ul> |